

SESSION OF 2020

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2713

As Amended by House Committee on Judiciary

Brief*

HB 2713, as amended, would enact the Revised Uniform Law on Notarial Acts (RULONA) and repeal the Uniform Law on Notarial Acts (ULONA), as well as other current laws regarding notaries. Throughout RULONA, some provisions from ULONA and other current law are continued, reorganized, or updated without substantive changes. The bill also would update references to ULONA in other areas of statute. This brief summarizes the RULONA structure and notes provisions containing substantive changes or additions to ULONA and other current law provisions. Except as noted below, all sections of the bill would take effect January 1, 2022.

Definitions (Section 2)

RULONA would continue definitions from current law, modifying the definitions of “acknowledgment,” “notarial act,” and “verification on oath or affirmation.”

RULONA would add definitions of “electronic,” “electronic signature,” “notary public,” “official stamp,” “person,” “record,” “sign,” “signature,” “stamping device,” and “state.”

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Date of Applicability (Section 3)

RULONA would state it would apply to a notarial effect performed on or after January 1, 2022.

Authority to Perform Notarial Act (Section 4)

RULONA would draw most of the language of this section from current law and add a provision allowing a notarial officer to certify that a tangible copy of an electronic record is an accurate copy of the electronic copy.

Requirements for Certain Notarial Acts (Section 5)

RULONA would continue these provisions from ULONA in a substantially similar form.

Personal Appearance Required (Section 6)

RULONA would require, if a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature to appear personally before the notarial officer.

Identification of Individual (Section 7)

RULONA would continue these provisions from ULONA, adding a “dealings sufficient to provide reasonable certainty” standard to the “personally known” qualification and providing additional detail regarding the identification documents or verification or affirmation of a credible witness that may be used to identify an individual. RULONA would allow a notarial officer to require an individual to provide additional information or identification credentials necessary to assure the officer of the individual’s identity.

Authority to Refuse to Perform Notarial Act (Section 8)

RULONA would allow a notarial officer to refuse to perform a notarial act if the officer is not satisfied that the individual executing the record is competent or has capacity to execute the record, or that the individual's signature is knowingly and voluntarily made. A notarial officer could refuse to perform a notarial act unless refusal is prohibited by Kansas law.

Signature if Individual Unable to Sign (Section 9)

RULONA would provide, if an individual is physically unable to sign a record, the individual may direct another individual, other than the notarial officer, to sign the individual's name on the record, with specified language to be added by the notarial officer in such cases.

Notarial Act in Kansas (Section 10)

RULONA would continue these provisions from ULONA in a substantially similar form and would add a provision stating the signature and title of any of the officers specifically listed in the section would conclusively establish the authority of the officer to perform the notarial act.

Notarial Act in Another State (Section 11)

RULONA would continue these provisions from ULONA but would add a requirement that the laws of the state that has commissioned the notary public who performed the notarial act require the notary public to be present in that state while performing the notarial act. If the physical presence requirement for a notarial act is satisfied by the use of audio and video communication between the notary public and a remotely located individual, the bill would require the laws of the state that has commissioned the notary public require the notary public to ascertain the identity of the

remotely located individual by personal knowledge of the identity of the individual or obtaining satisfactory evidence of the identity of the remotely located individual by review of personal information from two different public or private data sources.

Notarial Act under Authority of Federally Recognized Indian Tribe (Section 12)

RULONA would provide that a notarial act performed by certain specified individuals, under the authority and in the jurisdiction of a federally recognized Indian tribe, has the same effect under Kansas law as if performed by a Kansas notarial officer. The signature and title of such individual would be *prima facie* evidence that the signature is genuine and the individual holds the designated title. The signature and title of a tribal notary public, judge, clerk, or deputy clerk of a court would conclusively establish the authority of the officer to perform the notarial act.

Notarial Act under Federal Authority (Section 13)

RULONA would continue these provisions from ULONA in a substantially similar form, consolidating them from two ULONA sections and rewording language regarding individuals in military service and individuals designated notarizing officers by the State Department for performing notarial acts overseas.

Foreign Notarial Act (Section 14)

RULONA would continue this section from ULONA but would reorganize and provisions, remove a list of specific persons who could perform a notarial act in a foreign nation, and clarify a provision regarding apostilles.

***Notarial Act Performed for Remotely Located Individual
(Section 15)***

RULONA would allow a remotely located individual, defined as an individual who is not in the physical presence of the notary public who performs a notarial act, to comply with the personal appearance requirement of Section 6 by using communication technology to appear before a notary public.

A notary public in Kansas could perform a notarial act using communication technology for a remotely located individual if:

- The notary public has personal knowledge of the identity of the individual, has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public, or has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identity proofing;
- The notary public is able reasonably to confirm that a record before the notary public is the same record in which the remotely located individual made a statement or on which the individual executed a signature;
- The notary public, or a person acting on behalf of the notary public, creates an audio-visual recording of the performance of the notarial act; and
- For a remotely located individual located outside the United States, the record has a specified connection with the United States, and the act would not be prohibited by the foreign state in which the individual is located.

The bill would require the certificate for a remotely-performed notarial act indicate the act was performed using

communication technology, and would specify how short-form certificates would be sufficient.

The bill would require retention of an audio-visual recording created under this section for 10 years, unless a different period is required by rules and regulations.

The bill would provide requirements before a notary public performs an initial remote notarial act, including notification to the Secretary of State, identification of the technology to be used, and evidence of completion of the course of study and passing of the examination required by Section 23. If the technology and identity proofing complies with any standards established by the Secretary of State in rules and regulations, the Secretary of State would have to approve the technology and identity proofing. The bill would require the notary public to include a fee set by the Secretary of State, not to exceed \$25, with the notification, and the Secretary of State would remit these fees to the State Treasurer to deposit in the state treasury to the credit of the Information and Services Fee Fund.

For purposes of this section, in addition to the definition of “remotely located individual,” the bill also would define “communication technology,” “foreign state,” “identity proofing,” and “outside the United States.”

Certificate of Notarial Act (Section 16)

RULONA would continue provisions from ULONA and other current law regarding a certificate of notarial act, with the following additions:

- RULONA would clarify the certificate must be executed contemporaneously with the performance of the notarial act and be signed by the notary public in the same manner as on file with the Secretary of State, would make use of the official stamp on the certificate mandatory, and would

provide for use of an official stamp for certification of electronic records; and

- RULONA also would prohibit a notarial officer from affixing the officer's signature to, or logically associate it with, a certificate until the notarial act has been performed, and would specify requirements for attaching, affixing, or associating a certificate with tangible and electronic records, including compliance with any rules and regulations adopted by the Secretary of State.

Short-Form Certificates (Section 17)

RULONA would replace ULONA's statutory short-form certificates with a provision requiring the Secretary of State to adopt rules and regulations providing short-form certificates of notarial acts that are sufficient for the purposes indicated, if completed with the information required by Section 16.

This section would be effective upon publication in the statute book.

Official Stamp (Section 18)

RULONA would continue this provision from current law, modifying it to focus on stamps instead of seals and to simplify and clarify its language.

Stamping Device (Section 19)

RULONA would state a notary public is responsible for the security of the notary public's stamping device and shall not allow another individual to use the device to perform a notarial act. This section would set forth required actions for disabling or rendering the stamping device unusable upon commission resignation, revocation, or expiration; stamp expiration; or the death or incompetency of the notary public.

If the stamping device is lost or stolen, this section would require, upon discovery, the notary public or notary public's personal representative or guardian to promptly notify the Secretary of State.

Journal (Section 20)

RULONA would require a notary public to maintain a journal in which the notary public chronicles all acts the notary public performs, and would require the notary public retain this journal for 10 years after the performance of the last notarial act chronicled in the journal. The bill would provide additional specific requirements for the creation and maintenance of the journal, as well as for the timing and contents of entries in the journal.

If a journal is lost or stolen, the notary public would be required, upon discovery, to promptly notify the Secretary of State.

Upon resignation, revocation, or suspension of a commission, the notary public would be required to retain the journal for the required 10-year period and inform the Secretary of State of the location of the journal. Alternatively, the notary public could transmit the journal to a repository approved by the Secretary of State.

Upon death or incompetency of a notary public, the notary public's personal representative, guardian, or any other person knowingly in possession of the journal would be required to retain or transmit the journal and inform the Secretary of State of the journal's location.

Notarial Acts on Electronic Records (Section 21)

RULONA would provide a notary public may select one or more tamper-evident technologies to perform notarial acts with respect to electronic records, and a person could not

require a notary public to perform a notarial act with respect to an electronic record with a technology the notary public has not selected.

RULONA would provide requirements before a notary public performs an initial notarial act with respect to an electronic record, including notification to the Secretary of State, identification of the technology to be used, and evidence of completion of the course of study and passing of the examination required by section 23. If the technology complies with any standards established by the Secretary of State in rules and regulations, the Secretary of State would have to approve the technology. The bill would require the notary public to include a fee set by the Secretary of State, not to exceed \$25, with the notification, and the Secretary of State would remit these fees to the State Treasurer to deposit in the state treasury to the credit of the Information and Services Fee Fund.

RULONA would allow a register of deeds to accept for recording a tangible copy of an electronic record containing a notarial certificate as satisfying any requirements that a record accepted for recording be an original, if the notarial officer executing the notarial certificate certifies the tangible copy is an accurate copy of the electronic record.

Commission as Notary Public; Qualifications (Section 22)

RULONA would continue provisions from current law regarding application for and commission as a notary public, with the following modifications.

The bill would add to the required contents of the application evidence of the completion of the course of study and passing of examination regarding electronic records, if required.

The required assurance in the form of a surety bond or its functional equivalent would be increased from \$7,500 to \$12,000. The bill would clarify this assurance would cover acts performed during the term of the notary public's commission; if the notary public violates law with respect to notaries public in Kansas, the surety or issuing entity would be liable under the assurance; and a notary public may perform notarial acts in Kansas only during the period that a valid assurance is on file with the Secretary of State. The bill would change the deadline for a required notice regarding cancellation of assurance from 14 days to 30 days.

The bill would add to the requirements for an applicant that the applicant be able to read and write the English language, and not be disqualified to receive a commission by Section 24 of RULONA.

The bill would clarify a commission to act as a notary public authorizes the notary public to perform notarial acts, and does not provide the notary public any immunity or benefit conferred by Kansas law on public officials or employees.

Examination Regarding Electronic Records (Section 23)

RULONA would require, before performing an initial notarial act with respect to an electronic record, a notary public to pass an examination administered by the Secretary of State or an entity approved by the Secretary of State. The examination would have to be based on a course of study offered regularly by the Secretary of State or an approved entity to Kansas notaries public covering the laws, rules, procedures, and ethics relevant to notarial acts with respect to electronic records.

Grounds to Deny or Take Other Actions Regarding a Commission (Section 24)

RULONA would continue and expand provisions from current law regarding disciplinary actions the Secretary of State may take respecting a commission as a notary public.

It would add “suspend” and “impose a condition” to the disciplinary actions the Secretary of State could take; allow the Secretary of State to take disciplinary action for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a notary public; and change the current listing of grounds for disciplinary action from an exhaustive list to an exemplary list, modifying this listing as follows:

- Expand grounds involving application for a commission;
- Reword grounds involving convictions of a crime, including adding entering into a diversion agreement;
- Add grounds involving findings or admissions in any legal proceeding or disciplinary action based on fraud, dishonesty, or deceit;
- Add grounds involving violation of a rule and regulation regarding a notary public;
- Add grounds involving disciplinary action regarding a notary public commission in another state; and
- Add grounds involving failure to maintain an assurance as required by RULONA.

The bill would state the authority of the Secretary of State to take disciplinary action would not prevent a person from seeking and obtaining other criminal or civil penalties provided by law.

Prohibited Acts (Section 25)

RULONA would continue and expand provisions from current law regarding prohibited acts for notaries.

It would clarify a commission as a notary public does not authorize an individual to:

- Assist persons in drafting legal records, give legal advice, or otherwise practice law;
- Act as an immigration consultant or an expert on immigration matters;
- Represent a person in a judicial or administrative proceeding relating to immigration to the United States, U.S. citizenship, or related matters; or
- Receive compensation for performing any of the activities listed above.

The bill would continue current prohibitions on performing a notarial act when the notary is a party or has a direct financial or beneficial interest, and would expand these to include the notary's spouse.

The bill would prohibit a notary public from engaging in false or deceptive advertising, and would provide additional detail regarding continuing restrictions on and requirements for advertisements or representations by a notary public.

Validity of Notarial Acts (Section 26)

RULONA would provide, except as otherwise provided in the act, the failure of a notarial officer to perform a duty or meet a requirement specified in RULONA would not invalidate a notarial act. The validity of a notarial act under RULONA would not prevent an aggrieved person from seeking to invalidate the record or transaction that is the

subject of the notarial act or from seeking other remedies under state or federal law. This section would specify it would not validate a purported notarial act performed by an individual who does not have the authority to perform notarial acts.

Rules and Regulations (Section 27)

RULONA would require the Secretary of State to adopt rules and regulations:

- To implement RULONA, and rules and regulations adopted regarding the performance of notarial acts with respect to electronic records could not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification. The bill would provide a non-exclusive list of topics such rules and regulations could address; and
- Regarding notarial acts using communication technology for a remotely located individual, including several specified standards, requirements, and procedures.

The bill would require the Secretary of State, in adopting rules and regulations regarding notarial acts respecting electronic records, to consider certain standards, practices, and customs, to the extent they are consistent with RULONA.

This section would be effective upon publication in the statute book.

Commission in Effect (Section 28)

RULONA would provide a commission or appointment as a notary public in effect on January 1, 2022, would continue until its date of expiration. Commission renewal for

and performance of notarial acts by such notaries public on or after January 1, 2022, would be subject to RULONA.

Savings Clause (Section 29)

RULONA would provide it would not affect the validity or effect of a notarial act performed before January 1, 2022, and a cause of action accruing against a notary public or notary public's security before January 1, 2022, would be governed by any statute or other rule amended or repealed by the bill as if the amendment or repeal had not occurred.

Other Provisions (Sections 30-31)

Like ULONA, RULONA would include a uniformity provision (Section 30). RULONA also would add a provision specifying RULONA's interaction with the Electronic Signatures in Global and National Commerce Act (Section 31).

Updates to Other Areas of Statute (Sections 32-39)

Section 32 would amend a statute governing notarization and acknowledgment of electronic transactions to remove a provision authorizing the Secretary of State to promulgate rules and regulations establishing procedures for an electronic notarization (a substantially similar provision is added in Section 27).

Sections 33 through 41 would update references from ULONA to RULONA in various statutes.

Section 42 would add a provision to the Uniform Real Property Electronic Recording Act stating a requirement that a document or signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information

required to be included, is attached to or logically associated with the document or signature, and a physical or electronic image of a stamp, impression, or seal is not required to accompany an electronic signature. This section also would remove an out-dated effective date.

Effective Date (Section 38 and throughout)

Sections 17 and 27 would be effective upon publication in the statute book. All other sections would be effective January 1, 2022.

Background

The bill was introduced by the House Committee on Judiciary at the request of the Kansas Land Title Association. In the House Committee hearing, representatives of the Kansas Land Title Association and the Uniform Law Commission (ULC) testified as proponents, stating the bill would clarify law regarding notaries public and provide frameworks for notarial acts respecting electronic records and remote notarization. The ULC representative stated RULONA was updated in 2018, and nine states have enacted the updated version, with four additional states (other than Kansas) considering the updated version this year. A representative of the Office of the Secretary of State provided written-only proponent testimony. No neutral or opponent testimony was provided.

The House Committee adopted an amendment updating additional statutory references to RULONA.

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the Secretary of State indicates enactment of the bill would cause the agency to incur costs to develop and provide a course of study and examination for notaries, update notary forms, and develop any required rules and regulations, and these expenditures

could be covered with existing resources and revenue generated through notary commissions or registrations. It is estimated up to 1.0 percent of the 50,000 notaries commissioned in Kansas would initially register to provide remote notary services, paying an additional \$25 in addition to the current fee of \$25, which would increase total revenues approximately \$12,500. The agency anticipates the number of notaries choosing to provide remote services will increase in future years. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2021 Governor's Budget Report*.