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MEMORANDUM

To: Senate Committee on Judiciary
From: Office of Revisor of Statutes
Date: February 9, 2021
Subject: Bill Brief for SB 106

Senate Bill 106 enacts the revised uniform law on notarial acts, repeals the uniform law on notarial acts, and repeals other provisions related to notaries public in article 1 of chapter 53 of the Kansas Statutes Annotated.

Section 1 names the act and section 2 provides for definitions to be used throughout the act. Section 3 provides for the prospective application of the act on and after January 1, 2023. Section 4 lists the acts a notarial officer may perform. Section 5 requires a notarial officer to determine the identity of the individual appearing before them. It also requires a notarial officer who certifies or attests a copy of a record to determine that the copy is a true and accurate transcription or reproduction. Section 6 requires that 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 shall appear personally before the notarial officer. Section 7 provides that a notarial officer has personal knowledge of the identity of an individual if they are personally known to the officer, and it also provides other ways the identity of an individual can be proven. Section 8 provides reasons a notarial officer may refuse to perform a notarial act. Section 9 contains rules to use when an individual is physically unable to sign a record.

Section 10 lists the people who may perform a notarial act. Section 11 provides circumstances under which a notarial act performed in another state has the same effect as if performed in this state. Section 12 provides circumstances under which a notarial act performed in the jurisdiction of a federally recognized Indian tribe has the same effect as if performed in this state. Section 13 provides circumstances under which a notarial act performed under federal law has the same effect as if performed in this state. Section 14 provides circumstances under which a notarial act performed in a foreign state has the same effect as if performed in this state.

Section 15 allows for remotely located individuals to comply with the personal appearance requirement of section 6 by using communication technology to appear before the notary public. The section also lists the circumstances under which a notary located in this state can perform a notarial act using communication technology for a remotely located individual and provides the requirements to do so. Relevant definitions for this section are included in subsection (g).

Section 16 requires a notarial act to be evidenced by a certificate and contains the requirements for that certificate to be considered sufficient. Section 17 requires the secretary of state to adopt rules and regulations providing short-form certificates of notarial acts. Section 18 provides the requirements of the official stamp used by a notary public. Section 19 makes the notary public responsible for the security of their stamp. If the stamp is lost or stolen, the secretary of state must be notified. Section 20 requires a notary public to maintain a journal chronicling all notarial acts performed and provides retention and content requirements for the journal. Section 21 contains guidelines for a notary public to follow when performing notarial acts with respect to electronic records.

Section 22 governs the application process for a notary public and provides for registration by the secretary of state. Section 23 requires a notary public to pass an examination and requires the secretary of state to regularly offer a course of study for notaries public. Section 24 provides the reasons the secretary of state may deny, refuse to renew, revoke, suspend or impose a condition on a commission as a notary public. Section 25 provides what acts a commission as a notary public does not authorize a person to perform. Section 26 provides that the failure to perform a duty or meet a requirement of the act does not invalidate a notarial act except as provided in section 25(b). Section 27 requires the secretary of state to adopt rules and regulations to implement this act and provides the items to include in such rules and regulations.

Section 28 provides that a commission as a notary public in effect on January 1, 2023, continues until its expiration date, and a person who applies after January 1, 2023, shall comply with this act. A notary public performing notarial acts after January 1, 2023, shall comply with this act. Section 29 provides that this act does not affect the validity of a notarial act performed before January 1, 2023. A cause of action that has accrued before January 1, 2023, will be governed under the old act. Section 30 provides for consideration to be given to the need to promote uniformity in the law and section 31 describes the extent to which this act impacts the electronic signatures in global and national commerce act.

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Section 32 amends K.S.A. 16-1611 to remove authority for the secretary of state to adopt rules and regulations for procedures for electronic notarization. Sections 33 through 41 amend K.S.A. 25-3602, 25-3902, 25-3902a, 25-3904, 25-3904a, 49-512, 58-652, 58-2209, and 58-2211, updating these statutes to reference the new revised uniform law on notarial acts. Finally, Section 42 amends K.S.A. 58-4403 to conform to the new act regarding use of an electronic signature.

The sections requiring the secretary of state to adopt rules and regulations would go into effect on July 1, 2021. The remaining sections would go into effect on January 1, 2023.