Session of 2025

HOUSE BILL No. 2309

By Committee on Legislative Modernization

Requested by TerriLois Mashburn on behalf of the Register of Deeds of Leavenworth County

2-5

AN ACT concerning the modernization of notarization and the county register of deeds process with respect to real estate documents; concerning mitigation of real estate document-related fraud; providing for the development, implementation and administration of a two-tiered authentication system for notarization of real estate documents; requiring use of a 3D liveness biometric antifraud system by all notaries public by December 31, 2026; allowing any register of deeds to delay recording of real estate documents in the event of suspected fraud for purpose of investigating the validity of such document; amending K.S.A. 58-2241 and K.S.A. 2024 Supp. 58-2209 and 58-2211 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. For purposes of sections 1 and 2, and amendments thereto:

(a) "3D biometric information" means a digital record of an individual's facial features obtained via an internet of things-based camera system utilizing 3D liveness detection and other technologies.

(b) "Real estate document" or "document pertaining to real estate" includes, but is not limited to:

(1) Real estate listing agreements;

(2) affidavits pertaining to real estate, including, but not limited to, affidavits of:

(A) Equitable interest;

(B) non-production;

(C) matters pertaining to homestead;

(D) marital status;

(E) affixation; and

(F) adverse possession;

(3) agreements, including, but not limited to:

(A) Bills of sale;

(B) contracts for deed; and

(C) memorandums of understanding;

(4) assignments, including, but not limited to, assignments of:

(A) Mortgage; and
(B) rents;
(5) articles of incorporation;
(6) certified copies of foreign judgements filed with the register of deeds;
(7) covenants;
(8) deeds, including, but not limited to:
(A) Administrator deeds;
(B) corporation deeds;
(C) deeds in lieu of foreclosure;
(D) deeds of revocation;
(E) quitclaim deeds;
(F) sheriff's deeds;
(G) special warranty deeds;
(H) transfer on death deeds;
(I) trustee deeds; and
(J) warranty deeds;
(9) power of attorney, including, but not limited to:
(A) Durable;
(B) real estate; and
(C) general;
(10) all easements, including, but not limited to:
(A) Right-of-way;
(B) shared driveway; and
(C) first right of refusal;
(11) leases, including, but not limited to:
(A) real property;
(B) oil and gas;
(C) mineral rights; and
(D) lease agreements;
(12) all liens upon real estate and such lien releases, including, but not limited to:
(A) Artisan;
(B) repairman's; and
(C) agister's;
(13) lis pendens;
(14) mortgages, including, but not limited to:
(A) Mortgages upon real estate;
(B) merger mortgages;
(C) mortgage releases; and
(D) mortgage assignments;
(15) plats;
(16) homeowners association documents, including, but not limited

to:

(A) Covenants and restrictions; and

(B) liens; and

(17) any other miscellaneous documents that pertain to real estate if required by the register of deeds.

New Sec. 2. (a) (1) As a result of rapidly growing fraud with respect to documents relating to real estate and the significant financial losses and hardship to victims of such fraud, vulnerabilities to such fraud inherent in the current procedure and process of notarization and filing of documents pertaining to real estate with the register of deeds shall be addressed. An authentication process for confirming the identity of a notary public witnessing a signature and obtaining identification information of the signer of the document utilizing the most current available technology shall be implemented. As provided by this section, the submission of 3D biometric information by a notary public as required by a biometric antifraud system shall be a condition of certification for all notaries public and that use of the biometric antifraud system as provided by this section shall be a condition of the grant of authority or continued authority to notarize signatures for real estate documents.

(2) Each notary public who notarizes real estate documents shall utilize a process incorporating a biometric antifraud system as provided by this section not later than December 31, 2026. All counties shall require use by notaries public of such biometric antifraud system as a condition of recording of such real estate documents with the register of deeds on or before such date. Banks or other private entities shall require use of such system by notaries public at any time that real estate documents are presented for recording with the register of deeds. Any such system to be used by a notary public for the recording of real estate documents with the register of deeds shall be approved by the secretary of state to ensure functionality across all counties.

(3) On or before December 31, 2026, every county shall develop and implement protocols, procedures and requirements for the use and integration of indicia of authentication of the identity of a notary public, or other information for the purpose of authentication of a document, that is provided by a notary public utilizing such biometric antifraud system. In assisting counties with the development and implementation of such protocols, procedures and requirements, representatives for notaries public shall collaborate with the office of the secretary of state and the vendor or vendors for such biometric antifraud system. On and after December 31, 2026, no document pertaining to real estate shall be accepted for recording by a register of deeds without authentication through the biometric antifraud system as provided by this section.

(4) On and after December 31, 2026, all applicants for certification as

a notary public with the secretary of state shall, at the time of certification, be required to provide 3D biometric information as provided by this section. Such 3D biometric information may be provided at any location authorized for such purpose by the secretary of state and shall be conducted using hardware authorized by the secretary of state for purposes of functionality across all counties. Certification of notaries public and necessary hardware for obtaining their 3D biometric information shall be available at least at one county governmental office within each county.

(5) Notwithstanding any other provision of law, notaries public who elect authorization to notarize real estate documents and provide 3D biometric information for use by the biometric antifraud system may charge a reasonable additional fee when notarizing real estate documents for the purpose of reimbursing expenses of acquiring 3D liveness-enabled hardware and any other expenses incurred by the use of the biometric antifraud system and as compensation for the use of their biometric information. Such fee shall be in an amount set in the discretion of the notary public and approved by the secretary of state.

(b) It is the intent of the legislature that to accomplish the goal of minimizing real estate document fraud, the biometric antifraud system, including liveness-capable face recognition hardware, software, transmission, authentication and storage elements, shall be continually developed, customized, enhanced, upgraded or changed. Each notary public, in collaboration with the secretary of state and office of information technology services, shall ensure on an ongoing basis that the antifraud biometric system is utilizing current technology, features, security provisions and best practices to protect real estate documents and personal identification information. Each county shall ensure that the procedures and protocols of the register of deeds of such county utilize the authentication information or other information provided by the biometric antifraud system in a manner that will best accomplish the purposes of this section.

(c) The capabilities of the biometric antifraud system shall:

(1) Provide for the secure identification using 3D biometric information of a notary public at the time of certification with the secretary of state and at the time of notarizing a real estate document, identification using 3D biometric information of the signer of a real estate document and correlation of such information with such document and notarization event. A 3D biometric information of a notary public shall be anonymized and held in such form by the vendor or vendors of the system. Personal identification information of a notary public shall be stored in the custody of the secretary of state. No 3D biometric identification information shall be stored in the custody of the state or any subdivision of the state;

(2) securely maintain and provide access to an anonymized digital

record of such information and enable authentication of a notary public's identify by the matching of the 3D biometric information of the notary public obtained at the time of certification with 3D biometric information provided by the notary public at the time of notarization of a real estate document. Information for purposes of authentication shall be securely and immediately available to a notary public at the time of notarization;

(3) provide a means of authentication of the identity of the notary public and the validity of the signature and notarization for use by the register of deeds when a real estate document is presented for recording. Such indicia of identification and authenticity may include the addition to the notary stamp, imprinted upon the document, of information for purposes of authentication provided to the notary public at the time of notarization, including, but not limited to, a time stamp and a unique numeric or alphanumeric code; and

(4) store and provide access to 3D biometric information of the signer of a real estate document for authentication purposes or the prevention or prosecution of fraud. Anonymized 3D biometric information shall be stored and maintained by the system vendor. Any personal identification information of the signer of a document shall only be stored and maintained in the custody of the secretary of state.

(d) The components of the system shall include:

(1) A 3D liveness-enabled camera-based internet-connected hardware system that shall produce three-dimensional digital images for purposes of identifying, authenticating and documenting the notary public, signer of a real estate document and the document being notarized during the notarization process. The hardware system shall permit the immediate secure transmission of anonymized 3D biometric information for authentication of the notary public's identity when notarizing a real estate document and documenting 3D biometric information of the signer of such document. The hardware system shall additionally be provided to and enabled for use by the secretary of state for purposes of obtaining 3D biometric information of a notary public at the time of certification of a notary public and transmitting such anonymized information to the system vendor;

(2) secure software and an integrated remote system that shall securely record, store and transmit anonymized 3D biometric information and other information that may include, but not be limited to, a time stamp. The system shall enable secure and immediate matching of anonymized 3D biometric information for the purpose of authenticating the identity of a notary public at the time of notarization and providing indicia of such authentication to the notary public for purposes of authenticating the notarization for recording with the register of deeds; and

(3) robust security and privacy controls that protect the storage,

anonymity, transmission and integrity of anonymized 3D biometric information and personal identification information held by the vendor and the secretary of state, respectively.

(e) The provisions of this section shall supersede state law that are inconsistent with any such provisions.

Sec. 3. K.S.A. 2024 Supp. 58-2209 is hereby amended to read as follows: 58-2209. All deeds or other conveyances of lands, or of any estate or interest therein, shall be subscribed by the party granting ~~the same~~ *such deeds or conveyances*, or by the party's lawful agent or attorney, and may be acknowledged or proved and certified in the manner prescribed by the revised uniform law on notarial acts and K.S.A. 58-2216, and amendments thereto*, except as provided by section 1, and amendments thereto*.

Sec. 4. K.S.A. 2024 Supp. 58-2211 is hereby amended to read as follows: 58-2211. All conveyances~~,~~ and other instruments affecting real estate ~~must~~ *shall* be acknowledged before a person authorized by the revised uniform law on notarial acts to perform notarial acts or, if acknowledged within this state, by a county clerk, register of deeds or mayor or clerk of an incorporated city. *The manner of acknowledgment and requirements for authorization of a person to perform notarial acts with respect to conveyances and other instruments affecting real estate shall be subject to the provisions of section 1, and amendments thereto.*

Sec. 5. K.S.A. 58-2241 is hereby amended to read as follows: 58-2241. *(a) Except as provided by subsection (b),* it shall be the duty of the register of deeds, when ~~he or she shall receive~~ *receiving* any instrument conveying real estate ~~which~~ *that* has not been entered on the transfer record to have such instrument entered on ~~said~~ *such* transfer record immediately upon the recording of ~~the same~~ *such instrument* in ~~his or her~~ *the register of deed's* office.

(b) If the register of deeds receives any instrument conveying real estate that, in the judgment of the register of deeds, may bear a fraudulent signature, notarization or otherwise raises suspicion of fraud, the register of deeds may delay the recording of such instrument or entering such instrument on the transfer record for up to five business days for the purpose of investigating the authenticity of the instrument. If upon investigation, the register of deeds is unable to verify the authenticity of the instrument, the register of deeds may decline to record such instrument or enter such instrument on the transfer record. In such event, if the notary public or person who signed the document may be ascertained, the register of deeds shall notify such persons that the instrument has been rejected for recording or entering on the transfer record. The register of deeds shall also notify the appropriate law enforcement agency.

Sec. 6. K.S.A. 58-2241 and K.S.A. 2024 Supp. 58-2209 and 58-2211 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.