

## HOUSE BILL No. 2696

By Committee on Judiciary

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

2-4

1 AN ACT concerning the modernization of notarization and the notary  
2 public process with respect to real estate documents; concerning  
3 mitigation of real estate document-related fraud; creating a new  
4 category of verified notaries public with respect to real estate  
5 documents; providing for the development, implementation and  
6 administration of a device-bound authentication system for notarization  
7 of real estate documents; requiring the use of a three-dimensional  
8 liveness biometric antifraud system by all notaries public in such new  
9 category by December 31, 2027; amending K.S.A. 58-2209 and 58-  
10 2211 and repealing the existing sections.

11

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

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

15 (a) "Biometric antifraud system" means a system including device-  
16 bound hardware, software, internet transmission, authentication and  
17 storage technology components that:

18 (1) Is capable of capturing, transmitting, processing, authenticating  
19 and storing biometric data; and

20 (2) incorporates security elements to protect the integrity of the  
21 system and authenticity of the biometric information, including, but not  
22 limited to, three-dimensional liveness detection technology.

23 (b) "Device-bound hardware" means a dedicated physical internet  
24 terminal that:

25 (1) Includes a camera system capable of recording three-dimensional  
26 digital images;

27 (2) is physically separate from any other electronic device, including  
28 a cell phone, computer or tablet;

29 (3) incorporates technology providing a secure internet connection  
30 and data transmission;

31 (4) is designed to protect against remote attacks on data authenticity,  
32 including by substituted, altered or created images; and

33 (5) is intended for use as a component of a biometric antifraud  
34 system.

1       (c) "Biometric information" means a digital record of an individual's  
2 facial features obtained via a device-bound hardware camera system that  
3 utilizes three-dimensional liveness detection and other technologies to  
4 protect the authenticity of such digital record against remote internet  
5 attacks.

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

8           (1) Real estate listing agreements;  
9           (2) affidavits pertaining to real estate, including, but not limited to,  
10 affidavits of:

11           (A) Equitable interest;

12           (B) non-production;

13           (C) matters pertaining to homestead;

14           (D) marital status;

15           (E) affixation; and

16           (F) adverse possession;

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

18           (A) Bills of sale;

19           (B) contracts for deed; and

20           (C) memorandums of understanding;

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

22           (A) Mortgage; and

23           (B) rents;

24           (5) articles of incorporation;

25           (6) certified copies of foreign judgements filed with the county;

26           (7) covenants;

27           (8) deeds, including, but not limited to:

28           (A) Administrator deeds;

29           (B) corporation deeds;

30           (C) deeds in lieu of foreclosure;

31           (D) deeds of revocation;

32           (E) quitclaim deeds;

33           (F) sheriff's deeds;

34           (G) special warranty deeds;

35           (H) transfer on death deeds;

36           (I) trustee deeds; and

37           (J) warranty deeds;

38           (9) power of attorney, including, but not limited to:

39           (A) Durable;

40           (B) real estate; and

41           (C) general;

42           (10) all easements, including, but not limited to:

43           (A) Right-of-way;

1       (B) shared driveway; and  
2       (C) first right of refusal;  
3       (11) leases, including, but not limited to:  
4       (A) Real property;  
5       (B) oil and gas;  
6       (C) mineral rights; and  
7       (D) lease agreements;  
8       (12) all liens upon real estate and such lien releases, including, but  
9 not limited to:  
10      (A) Artisan;  
11      (B) repairman's; and  
12      (C) agister's;  
13      (13) lis pendens;  
14      (14) mortgages, including, but not limited to:  
15      (A) Mortgages upon real estate;  
16      (B) merger mortgages;  
17      (C) mortgage releases; and  
18      (D) mortgage assignments;  
19      (15) plats;  
20      (16) homeowners association documents, including, but not limited  
21 to:  
22      (A) Covenants and restrictions; and  
23      (B) liens; and  
24      (17) any other miscellaneous documents that pertain to real estate if  
25 required by the county.

26      (e) "Verified notary public" means a certified notary public who is  
27 authorized to notarize real estate documents using the biometric antifraud  
28 system pursuant to the provisions of this act.

29      New Sec. 2. (a) (1) As a result of rapidly growing fraud with respect  
30 to documents relating to real estate and the significant financial losses and  
31 hardship to victims of such fraud, vulnerabilities to such fraud inherent in  
32 the current procedure and process of notarization and filing of documents  
33 pertaining to real estate with the county shall be addressed. An  
34 authentication process for confirming the identity and presence of a notary  
35 public witnessing a signature and obtaining identification information of  
36 the signer of the document utilizing the most current available technology  
37 shall be implemented. As provided by this section, the submission of  
38 biometric information by a certified notary public as required by a  
39 biometric antifraud system shall be a condition of certification as a verified  
40 notary public for all notaries public who elect to notarize signatures for  
41 real estate documents. The use of such system as provided by this section  
42 shall be a condition of the grant of authority or continued authority to  
43 verified notaries public to notarize signatures for real estate documents.

1       (2) Not later than December 31, 2027, each notary public who  
2 notarizes real estate documents shall be a verified notary public and shall  
3 utilize a process incorporating a biometric antifraud system as provided by  
4 this section. All counties shall require use by verified notaries public of  
5 such biometric antifraud system as a condition of recording of such real  
6 estate documents with the county on or before such date. Banks or other  
7 private entities shall use of such system by verified notaries public at any  
8 time that real estate documents are presented for recording with the county.  
9 Any such system to be used by a verified notary public for the recording of  
10 real estate documents with the county shall be approved by the secretary of  
11 state to ensure functionality across all counties.

12     (3) On or before December 31, 2027, every county shall develop and  
13 implement protocols, procedures and requirements for the use and  
14 integration of indicia of authentication of the identity of a verified notary  
15 public, or other information for the purpose of authentication of a  
16 document, that is provided by a verified notary public utilizing a biometric  
17 antifraud system. In assisting counties with the development and  
18 implementation of such protocols, procedures and requirements,  
19 representatives for notaries public shall collaborate with the office of the  
20 secretary of state and the vendor or vendors for such biometric antifraud  
21 system. On and after December 31, 2027, no document pertaining to real  
22 estate shall be accepted for recording by a county without authentication  
23 through the biometric antifraud system as provided by this section.

24     (4) On and after December 31, 2027, all applicants for certification as  
25 a verified notary public with the secretary of state shall, at the time of  
26 certification, be required to provide biometric information as provided by  
27 this section. Such biometric information may be provided at any location  
28 authorized for such purpose by the secretary of state and shall be  
29 conducted using hardware authorized by the secretary of state for purposes  
30 of functionality across all counties. Certification of notaries public as  
31 verified notaries public and necessary hardware for obtaining their  
32 biometric information shall be available at least at one county  
33 governmental office within each county.

34     (5) Notwithstanding any other provision of law, notaries public who  
35 elect authorization to notarize real estate documents as verified notaries  
36 public and provide biometric information for use by the biometric  
37 antifraud system may charge a reasonable additional fee when notarizing  
38 real estate documents for the purpose of reimbursing expenses of acquiring  
39 device-bound hardware and any other expenses incurred by the use of the  
40 biometric antifraud system and as compensation for the use of their  
41 biometric information. Such fee shall be in an amount set in the discretion  
42 of the notary public and approved by the secretary of state.

43     (b) It is the intent of the legislature that to accomplish the goal of

1 minimizing real estate document fraud, the biometric antifraud system,  
2 including liveness-capable face recognition hardware, software,  
3 transmission, authentication and storage elements, shall be continually  
4 developed, customized, enhanced or upgraded. Each verified notary  
5 public, in collaboration with the secretary of state and office of  
6 information technology services, shall ensure on an ongoing basis that the  
7 antifraud biometric system is utilizing current technology, features,  
8 security provisions and best practices to protect real estate documents and  
9 personal identification information. Each county shall ensure that the  
10 procedures and protocols of such county utilize the authentication  
11 information or other information provided by the biometric antifraud  
12 system in a manner that will best accomplish the purposes of this act.

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

14 (1) Provide for the secure identification using biometric information  
15 of a verified notary public at the time of certification with the secretary of  
16 state and, at the time of notarizing a real estate document secure  
17 identification using biometric information of the signer of a real estate  
18 document and correlation of such information with such document and  
19 notarization event. Biometric information of a verified notary public shall  
20 be anonymized and held in such form by the vendor or vendors of the  
21 system. Personal identification information of a verified notary public  
22 shall be stored in the custody of the secretary of state. No biometric  
23 identification information shall be stored in the custody of the state or any  
24 subdivision of the state;

25 (2) securely maintain and provide access to an anonymized digital  
26 record of such information and enable authentication of a verified notary  
27 public's identity by the matching of the biometric information of such  
28 verified notary public obtained at the time of certification with biometric  
29 information provided by such verified notary public at the time of  
30 notarization of a real estate document. Information for purposes of  
31 authentication shall be securely and immediately available to a verified  
32 notary public at the time of notarization;

33 (3) provide a means of authentication of the identity of the verified  
34 notary public and the validity of the signature and notarization for use by  
35 the county when a real estate document is presented for recording. Such  
36 indicia of identification and authenticity shall include a uniquely designed  
37 statewide notary stamp to be used solely by verified notaries public with a  
38 space for imprinting by a verified notary public of a unique, single-use  
39 numeric or alphanumeric verification code for purposes of authentication  
40 that shall be provided to the verified notary public at the time of  
41 notarization; and

42 (4) store and provide access to biometric information of the signer of  
43 a real estate document for authentication purposes or the prevention or

1 prosecution of fraud. Anonymized biometric information shall be stored  
2 and maintained by the system vendor. Any personal identification  
3 information of the signer of a document shall only be stored and  
4 maintained in the custody of the secretary of state.

5 (d) The components of the system shall include:

6 (1) A device-bound hardware system that shall produce three-  
7 dimensional digital images for purposes of identifying, authenticating and  
8 documenting the verified notary public, signer of a real estate document  
9 and the document being notarized during the notarization process. The  
10 hardware system shall permit the immediate secure transmission of  
11 anonymized biometric information for authentication of the verified notary  
12 public's identity when notarizing a real estate document and documenting  
13 biometric information of the signer of such document. The hardware  
14 system shall additionally be provided to and enabled for use by the  
15 secretary of state for purposes of obtaining biometric information of a  
16 notary public at the time of certification of a verified notary public and  
17 transmitting such anonymized information to the system vendor;

18 (2) secure software and an integrated remote system that shall  
19 securely record, store and transmit anonymized biometric information and  
20 other information that shall include, but not be limited to, a time stamp.  
21 The system shall enable secure and immediate matching of anonymized  
22 biometric information for the purpose of authenticating the identity of a  
23 verified notary public at the time of notarization and providing indicia of  
24 such authentication, including a unique, single-use numeric or  
25 alphanumeric code, to the verified notary public for purposes of  
26 authenticating the notarization for recording with the county; and

27 (3) robust security and privacy controls that protect the storage,  
28 anonymity, transmission and integrity of anonymized biometric  
29 information and personal identification information held by the vendor and  
30 the secretary of state, respectively.

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

33 Sec. 3. K.S.A. 58-2209 is hereby amended to read as follows: 58-  
34 2209. All deeds or other conveyances of lands, or of any estate or interest  
35 therein, shall be subscribed by the party granting ~~the same~~ *such deeds or*  
36 *conveyances*, or by the party's lawful agent or attorney, and may be  
37 acknowledged or proved and certified in the manner prescribed by the  
38 revised uniform law on notarial acts and K.S.A. 58-2216, and amendments  
39 thereto, *except as provided by section 1, and amendments thereto.*

40 Sec. 4. K.S.A. 58-2211 is hereby amended to read as follows: 58-  
41 2211. All conveyances; and other instruments affecting real estate ~~must~~  
42 *shall* be acknowledged before a person authorized by the revised uniform  
43 law on notarial acts to perform notarial acts or, if acknowledged within this

1 state, by a county clerk, register of deeds or mayor or clerk of an  
2 incorporated city. *The manner of acknowledgment and requirements for*  
3 *authorization of a person to perform notarial acts with respect to*  
4 *conveyances and other instruments affecting real estate shall be subject to*  
5 *the provisions of section 1, and amendments thereto.*

6 Sec. 5. K.S.A. 58-2209 and 58-2211 are hereby repealed.

7 Sec. 6. This act shall take effect and be in force from and after its  
8 publication in the statute book.