

CHAPTER 86

(SB 114)

AN ACT relating to official documents and making an appropriation therefor.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 32 of this Act:

- (1) *"Acknowledgment" means a declaration by an individual before a notarial officer that the individual has signed a record for the purpose stated in the record and, if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the individual or entity identified in the record;*
- (2) *"Acknowledged before me" or "appears before me" means being in:*
 - (a) *The same physical location as another individual person and close enough to see, hear, communicate with, and exchange credentials with that person; or*
 - (b) *A different physical location from another person but able to see, hear, and communicate with that person by means of communication technology;*
- (3) *"Communication technology" means an electronic device or process that:*
 - (a) *Allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and*
 - (b) *When necessary and consistent with other applicable law, facilitates communication with a remotely located individual with a vision, hearing, or speech impairment;*
- (4) *"Credential" means a non-expired record issued by a government which bears an individual's photo and which evidences an individual's identity;*
- (5) *"Credential analysis" means a process or service that meets the standards adopted under subsection (7) of Section 12 and Section 24 of this Act by which a third person provides confidence as to the validity of a government-issued identification credential through review of public and proprietary data sources;*
- (6) *"Dynamic knowledge-based authentication assessment" means an identity assessment that is based on a set of questions formulated from public or private data sources for which the signer of an electronic record has not provided a prior answer;*
- (7) *"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;*
- (8) *"Electronic notarization" means a notarial act performed with respect to an electronic record by means of communication technology that meets the standards adopted under subsection (7) of Section 12 and Section 24 of this Act;*
- (9) *"Electronic signature" means an electronic symbol, sound, or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record;*
- (10) *"Foreign state" means a jurisdiction other than the United States, a state, or a federally recognized Indian tribe;*
- (11) *"Identity proofing" means, in the use of communication technology, a process or service that meets standards adopted under subsection (7) of Section 12 and Section 24 of this Act by which a third person provides confidence as to the identity of an individual through review of personal information from public or proprietary data sources;*
- (12) *"In a representative capacity" means acting as:*
 - (a) *An authorized officer, agent, partner, trustee, or other representative for a person other than an individual;*

- (b) *A public officer, personal representative, guardian, or other representative, in the capacity stated in a record;*
- (c) *An agent or attorney-in-fact for a principal; or*
- (d) *An authorized representative of another in any other capacity;*
- (13) *"Notarial act" means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under Section 3 of this Act and any other law of the Commonwealth;*
- (14) *"Notarial officer" means a notary public or other individual authorized to perform a notarial act;*
- (15) *"Notary public" means an individual commissioned to perform a notarial act by the Secretary of State. This term does not include other notarial officers who may perform a notarial act in this state;*
- (16) *"Official stamp" means a physical image affixed to or embossed on a tangible record or an electronic image attached to or logically associated with an electronic record, including an official notary seal;*
- (17) *"Online notary public" means a notary public who has registered with the Secretary of State, pursuant to any standards and rules adopted under Sections 19 and 24 of this Act, to perform electronic notarizations under Sections 1 to 32 of this Act;*
- (18) *"Outside the United States" means a location outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory, insular possession, or other location subject to the jurisdiction of the United States;*
- (19) *"Person" means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;*
- (20) *"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;*
- (21) *"Remotely located individual" means an individual who is not in the physical presence of the notary public who performs a notarial act or is appearing remotely before the notary;*
- (22) *"Remote presentation" means transmission to an online notary public through communication technology of an image of a government-issued identification credential that is of sufficient quality to enable the online notary public to identify the individual seeking the online notary public's services and to perform credential analysis;*
- (23) *"Sign" means, with present intent to authenticate or adopt a record, to:*
 - (a) *Execute or adopt a tangible symbol; or*
 - (b) *Attach to or logically associate with the record an electronic symbol, sound, or process;*
- (24) *"Signature" means a tangible symbol or an electronic signature that evidences the signing of a record;*
- (25) *"Stamping device" means:*
 - (a) *A physical device capable of affixing to or embossing on a tangible record an official stamp; or*
 - (b) *An electronic device or process capable of attaching to or logically associating with an electronic record an official stamp;*
- (26) *"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States; and*
- (27) *"Verification on oath or affirmation" means a declaration, made by an individual on oath or affirmation before a notarial officer, that a statement in a record is true.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 32 of this Act apply to a notarial act performed on or after the effective date of this Act.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

- (1) *A notarial officer may perform the following notarial acts:*
 - (a) *Take acknowledgements;*

- (b) *Administer oaths and affirmations;*
 - (c) *Take verifications of statements on oath or affirmation;*
 - (d) *Certify that a copy of any document, other than a document is recorded or in the custody of any federal, state, or local governmental agency, office, or court, is a true copy;*
 - (e) *Certify depositions of witnesses;*
 - (f) *Make or note a protest of a negotiable instrument;*
 - (g) *Witness or attest signatures; and*
 - (h) *Perform any notarial act authorized by a law of the Commonwealth other than Sections 1 to 32 of this Act.*
- (2) *A notary public may perform any of the notarial acts listed in subsection (1) of this section with respect to tangible records and electronic records.*
 - (3) *Upon registration with the Secretary of State, an online notary may perform any of the notarial acts listed in subsection (1) of this section as an electronic notarization.*
 - (4) *A notarial officer shall not perform a notarial act with respect to a record to which the notarial officer or the notarial officer's spouse or other member of the notarial officer's immediate family is a party, or in which any of those individuals has a direct beneficial interest. A notarial act performed in violation of this subsection is voidable.*
 - (5) *A notarial officer may certify that a tangible copy of an electronic record is an accurate copy of the electronic record.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

A notarial officer who takes an acknowledgment of a record, takes a verification of a statement on oath or affirmation, or witnesses or attests to a signature, shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the notarial officer has the identity claimed and that the signature on the record is the signature of the individual. A notarial officer who makes or notes a protest of a negotiable instrument shall determine the matters as set forth in KRS 355.3-505(2).

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

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 6. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

- (1) *A notarial officer has personal knowledge of the identity of an individual appearing before the officer if the individual is personally known to the officer through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.*
- (2) *A notarial officer has satisfactory evidence of the identity of an individual appearing before the officer if the officer can identify the individual by means of one (1) of the following credentials:*
 - (a) *A non-expired passport, driver's license, or government-issued identification card;*
 - (b) *Another current form of government identification issued to an individual, which contains the signature and a photograph of the individual, and is satisfactory to the notarial officer; or*
 - (c) *If the means presented in paragraphs (a) and (b) of this subsection are unavailable, verification on oath or affirmation of a credible witness personally appearing before the notarial officer and known to the notarial officer or whom the notarial officer can identify on the basis of a current passport, driver's license, or government-issued identification card.*
- (3) *Notwithstanding subsection (2) of this section, in performing an electronic notarization, an online notary public has satisfactory evidence of the identity of an individual appearing before the online notary public if the online notary public can identify the individual through the use of communication technology that meets the requirements of this section and the administrative regulations promulgated by the Secretary of State under subsection (7) of Section 12 and Section 24 of this Act, and by the following:*
 - (a) *The online notary public's personal knowledge of the individual; or*

- (b) *Each of the following:*
1. *Remote presentation by the individual of a government-issued identification credential specified in this section that contains the signature and photograph of the individual;*
 2. *Credential analysis of the identification credential described by subparagraph 1. of this paragraph; and*
 3. *Identity proofing of the individual, which may include a dynamic knowledge-based authentication assessment; or*
- (c) *A valid public key certificate that complies with the administrative regulations promulgated by the Secretary of State pursuant to Section 24 of this Act.*
- (4) *A notarial officer may require an individual to provide additional information or identification credentials necessary to assure the notarial officer of the identity of the individual.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

- (1) *A notarial officer may refuse to perform a notarial act if the officer is not satisfied that:*
- (a) *The individual executing the record is competent or has the capacity to execute the record; or*
 - (b) *The individual's signature is knowingly and voluntarily made.*
- (2) *A notarial officer may refuse to perform a notarial act unless refusal is prohibited by law other than Sections 1 to 32 of this Act.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

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 by proxy, in the presence of two (2) witnesses unaffected by the record, one (1) of whom may be the individual who signs, by proxy, on behalf of the individual physically unable to sign. Both witnesses shall sign their own names beside the proxy signature, and the notarial officer shall insert "Signature affixed by (name of proxy signer) at the direction of (name of individual) and in the presence of (names and addresses of the two witnesses)" or words of similar import.

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

- (1) *A notarial act may be performed in this state by:*
- (a) *A notary public of this state; or*
 - (b) *A county clerk of this state.*
- (2) *The signature and title of an individual performing a notarial act in this state are prima facie evidence that the signature is genuine and that the individual holds the designated title.*
- (3) *The signature and title of a notarial officer described in this section conclusively establishes the authority of the notarial officer to perform the notarial act.*
- (4) *A county clerk shall have the powers of a notarial officer in the exercise of the official functions of the office of clerk within his or her county, and the official actions of the county clerk shall not require the witness or signature of a notary public.*

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *A notarial act performed in another state has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed in that state is performed by:*
1. *A notary public of that state;*
 2. *A judge, clerk, or deputy clerk of a court of that state; or*
 3. *Any other individual authorized by the law of that state to perform the notarial act.*
- (b) *The signature and title of an individual performing a notarial act in another state are prima facie evidence that the signature is genuine and that the individual holds the designated title.*
- (c) *The signature and title of a notarial officer described in paragraph (a) or (b) of this subsection conclusively establish the authority of the officer to perform the notarial act.*

- (2) (a) *A notarial act performed under the authority and in the jurisdiction of a federally recognized Indian tribe has the same effect as if performed by a notarial officer of this state, if the act performed in the jurisdiction of the tribe is performed by:*
1. *A notary public of the tribe;*
 2. *A judge, clerk, or deputy clerk of a court of the tribe; or*
 3. *Any other individual authorized by the law of the tribe to perform the notarial act.*
- (b) *The signature and title of an individual performing a notarial act under the authority and in the jurisdiction of a federally recognized Indian tribe are prima facie evidence that the signature is genuine and that the individual holds the designated title.*
- (c) *The signature and title of a notarial officer described in paragraph (a) or (b) of this subsection conclusively establish the authority of the notarial officer to perform the notarial act.*
- (3) (a) *A notarial act performed under the authority of federal law has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed under federal law is performed by:*
1. *A judge, clerk, or deputy clerk of a court;*
 2. *An individual in military service or performing duties under the authority of military service who is authorized to perform notarial acts under federal law;*
 3. *An individual designated a notarizing officer by the United States Department of State for performing notarial acts overseas; or*
 4. *Any other individual authorized by federal law to perform the notarial act.*
- (b) *The signature and title of an individual acting under federal authority and performing a notarial act are prima facie evidence that the signature is genuine and that the individual holds the designated title.*
- (c) *The signature and title of an officer described in paragraph (a) or (b) of this subsection conclusively establish the authority of the officer to perform the notarial act.*

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

- (1) *In this section, "foreign state" means a government other than the United States, a state, or a federally recognized Indian tribe.*
- (2) *If a notarial act is performed under the authority and in the jurisdiction of a foreign state or constituent unit of the foreign state or is performed under the authority of a multinational or international governmental organization, the act has the same effect under the law of this state as if performed by a notarial officer of this state.*
- (3) *If the title of office and indication of authority to perform notarial acts in a foreign state appears in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.*
- (4) *The signature and official stamp of an individual holding an office described in subsection (3) of this section are prima facie evidence that the signature is genuine and the individual holds the designated title.*
- (5) *An apostille in the form prescribed by the Hague Convention of October 5, 1961, and issued by a foreign state party to the Convention conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.*
- (6) *A consular authentication issued by an individual designated by the United States Department of State as a notarizing officer for performing notarial acts overseas and attached to the record with respect to which the notarial act is performed conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.*

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

- (1) *An online notary public:*

- (a) *Shall be commissioned as a notary public pursuant to Sections 1 to 32 of this Act and has the powers and duties of a traditional notary public as provided by Sections 1 to 32 of this Act;*
 - (b) *May perform notarial acts as provided by Sections 1 to 32 of this Act in addition to performing electronic notarizations; and*
 - (c) *May, upon registration with the Secretary of State as an online notary public pursuant to Section 19 of this Act, perform electronic notarizations authorized under this section.*
- (2) *An online notary public may perform an electronic notarization provided the online notary public is physically located in this state while performing the notarial act and if:*
- (a) *The online notary public has:*
 - 1. *Personal knowledge of the identity of the individual pursuant to Section 6 of this Act; or*
 - 2. *Satisfactory evidence of the identity of the individual pursuant to subsection (3) of Section 6 of this Act; and*
 - (b) *At the time of electronic notarization:*
 - 1. *The individual appearing before the online notary public is located within this state, or elsewhere within the geographic boundaries of a state of the United States; or*
 - 2. *The individual is located outside the United States and:*
 - a. *The individual confirms to the online notary public that the record is to be filed with or relates to a matter before a court, governmental entity, public official, or other entity located in the territorial jurisdiction of the United States, or relates to property located in the United States, or relates to a transaction substantially connected to the United States; and*
 - b. *To the online notary public's actual knowledge, the act of making the statement or signing the record is not prohibited by the jurisdiction in which the individual is located.*
- (3) *In addition to the authority of a notary public to refuse to perform a notarial act pursuant to Section 7 of this Act, a notary public may refuse to perform a notarial act under this section if the notary public is not satisfied that a notarial act performed would conform with subsection (2)(b)2. of this section.*
- (4) *If a notarial act involves a statement made in or a signature executed on an electronic record by an individual by means of communication technology, the certificate of notarial act required by Section 13 of this Act shall indicate that the individual making the statement or signing the record appeared before the online notary public by means of communication technology.*
- (5) *For each electronic notarization, the online notary public shall:*
- (a) *Include, in addition to the journal entries required under Section 17 of this Act, an indication of whether an individual making a statement or executing a signature which is the subject of the notarial act appeared before the online notary public in the notary's physical presence or by means of communication technology;*
 - (b) *Create a complete recording of the conference session containing the audio-video communication between the online notary public and individual appearing before the online notary public, in accordance with the standards adopted under subsection (7) of this section and Section 24 of this Act; and*
 - (c) *Maintain the recording described by paragraph (b) of this subsection for at least ten (10) years after the date of the applicable transaction or proceeding or for the period of retention of a notary public's journal pursuant to Section 17 of this Act, whichever is longer.*
- (6) *Before an online notary public performs any electronic notarizations under this section, the online notary public shall register with the Secretary of State pursuant to Section 19 of this Act.*
- (7) *The Secretary of State may promulgate administrative regulations regarding the performance of electronic notarizations. The administrative regulations may:*
- (a) *Prescribe the means of performing a notarial act involving communication technology;*

- (b) *Establish standards for communication technology and the process of credential analysis and identity proofing;*
 - (c) *Establish procedures for the requirements of providers of communication technology; and*
 - (d) *Establish standards and requirements for the retention of a video and audio copy of the performance of a notarial act.*
- (8) *Regardless of the physical location of the individual at the time of the notarial act, the validity of an electronic notarization performed by an online notary public commissioned in this state shall be determined by applying the laws of this state.*
- (9) *An online notary public shall take reasonable steps to ensure that:*
- (a) *Any registered device or credential used to create an electronic signature is current and has not been revoked or terminated by the device's or credential's issuing or registering authority;*
 - (b) *The audio-video communication used in an electronic notarization is secure from unauthorized interception or use;*
 - (c) *A backup exists for all information pertaining to an electronic notarization required to be kept by administrative regulations promulgated pursuant to subsection (7) of this section and Section 24 of this Act; and*
 - (d) *The backup described by paragraph (c) of this subsection is secure from unauthorized use.*

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

- (1) *A notarial act shall be evidenced by a certificate. The certificate shall:*
- (a) *Be executed contemporaneously with the performance of the notarial act;*
 - (b) *Be signed and dated by the notarial officer and, if the notarial officer is a notary public, be signed in the same manner as on file with the Secretary of State;*
 - (c) *Identify the jurisdiction in which the notarial act is performed;*
 - (d) *Contain the title of office and name of the notarial officer; and*
 - (e) *If the notarial officer is a notary public, indicate the commission number and date of expiration, if there is an expiration date, of the officer's commission.*
- (2) *If a notarial act is performed regarding a tangible record by a notarial officer, including a notary public, the certificate shall contain the information specified in paragraphs (b), (c), and (d) of subsection (1) of this section, along with the additional information in paragraph (e) of subsection (1) of this section, if the certificate is completed by a notary public. An official stamp may be affixed to or embossed on the certificate. If a notarial act regarding an electronic record is performed by a notarial officer, the certificate shall contain the information specified in paragraphs (b), (c), and (d) of subsection (1) of this section, along with the additional information in paragraph (e) of subsection (1) of this section if the certificate is completed by a notary public. An official stamp may be attached to or logically associated with the certificate.*
- (3) *A certificate of a notarial act is sufficient if it meets the requirements of subsections (1) and (2) of this section and:*
- (a) *Is in a short form set forth in Section 14 of this Act;*
 - (b) *Is in a form otherwise permitted by the laws of this state;*
 - (c) *Is in a form permitted by the law applicable in the jurisdiction in which the notarial act was performed; or*
 - (d) *Sets forth the actions of the notarial officer and the actions are sufficient to meet the requirements of the notarial act as provided in Sections 1 to 32 of this Act or other law of this state other than Sections 1 to 32 of this Act.*
- (4) *By executing a certificate of a notarial act, a notarial officer certifies that the officer has complied with the requirements and made the determinations specified in Sections 1 to 32 of this Act.*

- (5) *A notarial officer may not affix the officer's signature to, or logically associate it with, a certificate until the notarial act has been performed.*
- (6) *If a notarial act is performed regarding a tangible record, a certificate shall be part of, or securely attached to, the record. If a notarial act is performed regarding an electronic record, the certificate shall be affixed to, or logically associated with, the electronic record. If the Secretary of State has established standards pursuant to Section 24 of this Act for attaching, affixing, or logically associating the certificate, the process shall conform to the standards.*

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

The Secretary of State shall promulgate short form certificates for notarial acts which shall contain space for the information required by subsections (1) and (2) of Section 13 of this Act, and include a space to indicate the manner of notarization of the document.

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

A notary public commissioned pursuant to Sections 1 to 32 of this Act is not required to use a stamp. If a notary public chooses to use a stamp, the notary public shall have an official stamp which shall:

- (1) *Include the notary public's name, title, jurisdiction, commission number, and expiration date; and*
- (2) *Be capable of being copied together with the record to which it is affixed or attached or with which it is logically associated.*

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

- (1) *A notary public is responsible for the security of the notary public's stamping device and may not allow another individual to use the device to perform a notarial act. On resignation from, or the revocation or expiration of, the notary public's commission, or on the expiration of the date set forth in the stamping device, if any, the notary public shall disable the stamping device by destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it unusable. On the death or adjudication of incompetency of a notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the stamping device shall render it unusable by destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it unusable.*
- (2) *If a notary public's stamping device is lost or stolen, the notary public or the notary public's personal representative or guardian shall notify promptly the Secretary of State on discovering that the device is lost or stolen.*

➔SECTION 17. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

- (1) *An online notary public shall maintain a journal in which the online notary public chronicles all electronic notarizations that the online notary public performs. The online notary public shall retain the journal for ten (10) years after the performance of the last electronic notarization chronicled in the journal.*
- (2) *The journal shall be created in an electronic format. An online notary public may maintain more than one (1) journal to chronicle electronic notarizations. The journal shall be maintained in an electronic format in a permanent, tamper-evident electronic format complying with administrative regulations promulgated pursuant to Section 24 of this Act.*
- (3) *An entry in a journal shall be made contemporaneously with performance of the notarial act and contain the following information:*
 - (a) *The date and time of the notarial act;*
 - (b) *A brief description of the record, if any, and type of notarial act as authorized in Section 3 of this Act;*
 - (c) *The full name and address of each individual for whom the notarial act is performed;*
 - (d) *If identity of the individual is based on personal knowledge, a statement to that effect;*
 - (e) *If identity of the individual is based on satisfactory evidence, a brief description of the method of identification and the identification and the means used as well as the date of issuance and expiration of any identification credential presented; and*
 - (f) *The fee, if any, charged by the online notary public.*

- (4) *If a notarial act involves the use of communication technology, the notary public shall retain the audio-visual recording of the performance of the notarial act in compliance with both subsection (7) of Section 12 of this Act and the administrative regulations promulgated pursuant to Section 24 of this Act.*
- (5) *If a notary public's journal is lost or stolen, the notary public promptly shall notify the Secretary of State on discovering that the journal is lost or stolen.*
- (6) *On resignation from, or the revocation or suspension of, a notary public's commission, the notary public shall retain the notary public's journal in accordance with subsection (1) of this section.*
- (7) *On the death or adjudication of incompetency of a current or former notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the journal shall transmit it to the Secretary of State or otherwise as directed in administrative regulations promulgated by the Secretary of State pursuant to Section 24 of this Act.*
- (8) *A notary public may designate a custodian to do any of the following:*
 - (a) *Maintain the journal required under subsection (1) of this section; or*
 - (b) *Retain an audio or visual recording of a notarial act required under subsection (4) of this section.*

➔SECTION 18. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

- (1) *A notary public shall register with the Secretary of State pursuant to Section 19 of this Act if the notary public intends to perform notarial acts:*
 - (a) *With respect to electronic records where the individual will appear before the notary in the notary's physical presence; or*
 - (b) *As an online notary public to perform electronic notarizations by means of communication technology.*
- (2) *A notary public may select one (1) or more tamper-evident technologies to perform notarial acts in the physical presence of the individual signer with respect to electronic records, or to perform electronic notarizations. A person may not require a notary public to perform any notarial act with a technology that the notary public has not selected.*
- (3) *If the Secretary of State has established standards respecting technology to perform notarial acts in the physical presence of the individual signer with respect to electronic records, or to perform electronic notarizations, the technology chosen by the notary public shall conform to those standards.*
- (4) *A tangible copy of an electronic record containing a notarial certificate may be accepted as satisfying any requirement that a record accepted for recording be an original, if the notarial officer executing the notarial certificate certifies that the tangible copy is an accurate copy of the electronic record.*

➔SECTION 19. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

- (1) *An individual qualified under subsection (2) of this section may apply to the Secretary of State for a commission as a notary public. The applicant shall comply with and provide the information required by administrative regulations promulgated by the Secretary of State and be accompanied by payment of the specified fee.*
- (2) *An applicant for a commission as a notary public shall:*
 - (a) *Be at least eighteen (18) years of age;*
 - (b) *Be a citizen or permanent legal resident of the United States;*
 - (c) *Be a resident of or have a place of employment or practice in the county within this Commonwealth where the application is made;*
 - (d) *Be able to read and write English;*
 - (e) *Not be disqualified to receive a commission under Section 20 of this Act;*
 - (f) *Submit to the Secretary of State any application forms, information, disclosures, and verifications as are required by administrative regulations promulgated by the Secretary of State;*

- (g) *Submit to the Secretary of State proof of having obtained the requisite surety bond required under subsection (4) of this section;*
 - (h) *Take an oath of office as set forth in in subsection (4) of this section; and*
 - (i) *Submit a fee payment, as specified in Section 27 of this Act, made payable to the State Treasurer.*
- (3) *On compliance with this section, the Secretary of State shall issue a commission as a notary public to an applicant for a term of four (4) years. The Secretary of State shall assign a unique commission number to each notary public, which same commission number shall continue to be assigned to the notary public in the event of the renewal or later issuance of another commission to the same individual notary public.*
- (4) *Within thirty (30) days of receiving a notary public commission from the Secretary of State, the applicant shall appear in person to take an oath of office, submit an assurance in the form of a surety bond, and file the commission, all of which shall take place before the county clerk listed in the commission application. The applicant shall pay fees to the county clerk for filing the assurance and administering the oath as set forth in KRS 64.012.*
- (5) *The assurance required by this section shall be in the amount of one thousand dollars (\$1,000) and shall be issued by a surety or other entity licensed or authorized to do business in this state. The assurance shall cover acts performed during the term of the notary public's commission and shall be in the form prescribed by the Secretary of State. If a notary public violates the law with respect to notaries public in this state, the surety or issuing entity is liable under the assurance. The surety or issuing entity shall give thirty (30) days' notice to the Secretary of State before canceling the assurance or of the assurance's expiration if such expiration is prior to the date of expiration of the notary's commission. A notary public may perform notarial acts in this state only during the period that a valid assurance is on file with the county clerk.*
- (6) *A notarial officer may perform a notarial act in any county of the Commonwealth after filing the commission and assurance and taking the oath required by this section, and for so long as the notary public's commission and surety bond are valid and in effect.*
- (7) *If, at any time during his or her period of commission under this section, or period of registration under subsection (10) of this section, a notary public changes his or her mail or electronic mail address, county of residence, name, signature, electronic signature, or the technology or device used to perform notarial acts or to maintain his or her journal or to render electronic documents tamper-evident, the notary public shall, within ten (10) days after making the change, submit to the Secretary of State the changed information upon the form and containing all information required by the Secretary of State, along with a fee payment, as specified in Section 27 of this Act, payable to the State Treasurer.*
- (8) (a) *Prior to the expiration of his or her commission period, a notary public may apply to the Secretary of State to renew his or her commission, and shall comply with the qualifications, renewal application filings, and other requirements then applicable to obtaining an original commission from the Secretary of State. The application for commission renewal shall be accompanied by a fee payment, as specified in Section 27 of this Act, made payable to the State Treasurer.*
- (b) *If approved, the Secretary of State shall issue a renewed commission to the notary public for an additional four (4) year term, using the same commission number as the notary public's original commission and indicating the new commission expiration date.*
- (c) *Pursuant to the procedures set forth in subsections (4) and (5) of this section, the commission along with the required assurance shall be filed with the county clerk listed in the renewal application, and a new oath of office administered by the county clerk and new fees paid by the notary public to the county clerk, as determined by KRS 64.012.*
- (d) *A renewed commission shall be valid and effective only upon compliance with this subsection. A notary public shall have no authority to perform notarial acts during any period between the expiration of his or her current commission and the effective date of any renewal commission.*
- (9) *A commission to act as a notary public shall authorize the notary public to perform notarial acts. The commission shall not provide the notary public with any immunity or benefit conferred by the law of this state on public officials or employees.*
- (10) *Before performing an initial notarial act with respect to electronic records, or before performing an initial online notarial act, a notary public shall first register with the Secretary of State. The notary public shall:*

- (a) *At the time of registration, be a commissioned notary public in this Commonwealth who has complied with the requirements set forth in subsections (1) to (8) of this section, and who has complied with all applicable notarial requirements set forth in this chapter;*
 - (b) *Register with the Secretary of State by submitting an electronic registration pursuant to this subsection;*
 - (c) *Pay to the Secretary of State a registration fee payment, as specified in Section 27 of this Act, which is in addition to the commission application fee required to be a notarial officer in this state and any fees required to be paid to the county clerk to file a commission and assurance and to take an oath pursuant to KRS 62.010;*
 - (d) *Submit to the Secretary of State any registration forms, information, disclosures, and verifications required by administrative regulations promulgated by the Secretary of State; and*
 - (e) *Submit to the Secretary of State with the registration proof satisfactory to the Secretary of State that the registrant has satisfied the requirement to post an assurance as a notary public, as set forth in subsections (4) and (5) of this section.*
- (11) *The Secretary of State shall promulgate administrative regulations to establish forms and procedures applicable to the registrations governed by subsection (10) of this section, and shall obtain at least the following information in connection with each registration:*
- (a) *The registrant's commission number and full legal name as it appears on the registrant's commission, and the name to be used for registration, if different;*
 - (b) *The county in this state in which the registrant resides or has his or her place of employment or practice;*
 - (c) *The electronic mail and resident address of the registrant;*
 - (d) *Whether the registrant is registering to perform one (1) or both of the following:*
 - 1. *Notarial acts with respect to electronic records in which the individual will appear before the notary in the notary's physical presence; or*
 - 2. *As an online notary public to perform electronic notarizations;*
 - (e) *A description of the technologies or devices that the registrant intends to use to perform notarial acts with respect to electronic records or electronic notarizations, to maintain the journal required by Section 17 of this Act, and to render electronic records tamper-evident after a notarial act is completed, each of which technologies or devices shall comply with any standards established by the Secretary of State;*
 - (f) *The digital certification of the registrant; and*
 - (g) *Any other information, evidence, disclosures, or declarations required or deemed beneficial by the Secretary of State pursuant to any administrative regulations promulgated by the Secretary of State.*
- (12) *The Secretary of State may reject a registration if the applicant fails to comply with any provision of Sections 1 to 32 of this Act.*
- (13) *Thirty (30) days after compliance with all registration requirements and payment of the required registration fee, a notary public will be registered with the Secretary of State to perform notarial acts in the physical presence of an individual signer with respect to electronic records, or to perform electronic notarizations as an online notary public, or as both.*
- (14) *The Secretary of State may at any time cancel the registration of a notary public to perform notarial acts with respect to electronic records, or as an online notary public to perform electronic notarizations, if the notary public fails to comply with any of the requirements of Sections 1 to 32 of this Act or based upon any of the grounds for revocation or suspension of a notary public's commission.*
- (15) *Registration of a notary public under this section is suspended by operation of law when the notary public is no longer commissioned as a notary public in this state. If the commission of a notary public has expired or been revoked or suspended, the Secretary of State shall immediately notify the notary public in writing that his or her registration under this section will be suspended by operation of law until he or she is appointed as a notary public in this Commonwealth.*

➔SECTION 20. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

- (1) *The Secretary of State may deny, refuse to renew, revoke, suspend, or impose a condition on a commission as notary public for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a notary public, including:*
- (a) *Failure to comply with Sections 1 to 32 of this Act;*
 - (b) *A fraudulent, dishonest, or deceitful misstatement or omission in the application for a commission as a notary public submitted to the Secretary of State;*
 - (c) *A conviction of the applicant or notary public of any felony or a crime involving fraud, dishonesty, or deceit;*
 - (d) *A finding against, or admission of liability by, the applicant or notary public in any legal proceeding or disciplinary action based on the applicant's or notary public's fraud, dishonesty, or deceit;*
 - (e) *Failure by the notary public to discharge any duty required of a notary public, whether by Sections 1 to 32 of this Act, administrative regulations promulgated by the Secretary of State, or any federal or state law;*
 - (f) *Use of false or misleading advertising or representation by the notary public representing that the notary has a duty, right, or privilege that the notary does not have;*
 - (g) *Violation by the notary public of an administrative regulation of the Secretary of State regarding a notary public;*
 - (h) *Denial, refusal to renew, revocation, or suspension of a notary public commission in another state; or*
 - (i) *Failure of the notary public to maintain an assurance.*
- (2) *The authority of the Secretary of State to deny, refuse to renew, suspend, revoke, or impose conditions on a commission as a notary public does not prevent a person from seeking and obtaining other criminal or civil remedies provided by law.*

➔SECTION 21. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

- (1) *The Secretary of State shall maintain an electronic database of notaries public:*
- (a) *Through which a person may verify the authority of a notary public to perform notarial acts; and*
 - (b) *Which indicates whether a notary public has registered with the Secretary of State in order to perform notarial acts on electronic records or to act as an online notary public.*
- (2) *Each county clerk who files a notary public's assurance and administers the oath of office to a notary public shall promptly record the fact and date in the database described in subsection (1) of this section.*

➔SECTION 22. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

- (1) *A commission as a notary public does not authorize an individual to engage in the practice of law.*
- (2) *A notary public shall not engage in false or deceptive advertising.*
- (3) *A notary public, other than an attorney licensed to practice law in this state, shall not advertise or represent that the notary public may assist persons in drafting legal records, give legal advice, or otherwise engage in the unauthorized practice of law as defined by rule of the Supreme Court.*
- (4) *Except as otherwise allowed by law, a notary public shall not withhold access to or possession of an original record provided by a person that seeks performance of a notarial act by the notary public.*

➔SECTION 23. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

Except as otherwise provided in subsection (4) of Section 3 of this Act, the failure of a notarial officer to perform a duty or meet a requirement specified in Sections 1 to 32 of this Act does not invalidate a notarial act performed by the notarial officer. The validity of a notarial act does 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 based on other laws of this state. This section does not validate a purported notarial act performed by an individual who does not have the authority to perform notarial acts.

➔SECTION 24. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

The Secretary of State may promulgate administrative regulations to implement Sections 1 to 32 of this Act. Promulgated administrative regulations regarding the performance of notarial acts with respect to electronic records or electronic notarizations shall not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification. The administrative regulations may:

- (1) *Prescribe the manner of performing notarial acts regarding tangible and electronic records;*
- (2) *Establish requirements for notarial training or education as a condition of obtaining or renewing a commission or before registering to perform notarial acts with respect to electronic records or to perform electronic notarizations;*
- (3) *Include provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident;*
- (4) *Include provisions to ensure integrity in the creation, transmittal, storage, or authentication of electronic records or signatures;*
- (5) *Prescribe the process of granting, renewing, conditioning, denying, suspending, or revoking a notary public commission and assuring the trustworthiness of an individual holding a commission as notary public;*
- (6) *Include provisions to prevent fraud or mistake in the performance of notarial acts; and*
- (7) *Establish the process for approving and accepting surety bonds and other forms of assurance under Section 19 of this Act.*

➔SECTION 25. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

- (1) *A commission as a notary public in effect on the effective date of this Act shall continue until its date of expiration. A notary public who applies to renew a commission as a notary public on or after the effective date of this Act shall be subject to and comply with Sections 1 to 32 of this Act. A notary public, in performing notarial acts after the effective date of this Act, shall comply with Sections 1 to 32 of this Act.*
- (2) *An existing commission as a notary public does not constitute authority to act as an online notary public. Registration pursuant to Section 19 of this Act, and compliance with Sections 1 to 32 of this Act, is required before a notary public with an existing commission may act as an online notary public.*

➔SECTION 26. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 32 of this Act does not affect the validity or effect of a notarial act performed before the effective date of this Act.

➔SECTION 27. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

- (1) *For a notarial act relating to a tangible or electronic record, or for an electronic notarization, a notary public may charge a fee:*
 - (a) *In compliance with KRS 64.300; and*
 - (b) *Which has been clearly disclosed to the person requesting the service in advance.*
- (2) *Compensation for services provided by a notary public which do not constitute notarial acts is not governed by this section.*
- (3) *The Secretary of State may charge the following fees in relation to notaries public:*
 - (a) *Application for a commission or renewal as a notary public.....\$10*
 - (b) *Issuance of a replacement commission upon loss or destruction of the original.....\$10*
 - (c) *Update to commission or registration information upon a change of name or address or other specified information.....\$10*
 - (d) *Issuance of an electronic certificate of authority or Apostille.....\$5 per document.*
- (4) *In accordance with KRS 64.012, county clerks may assess fees for services required to fulfill obligations set forth in Sections 1 to 32 of this Act.*

➔SECTION 28. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

- (1) *If an electronic record or paper printout of an electronic record relating to real property located in this state contains an acknowledgement performed by electronic means, notwithstanding any omission or error in the certificate of acknowledgement or failure of the record to show an acknowledgement in compliance with applicable law, upon the record being recorded with the county clerk of the county in which the real property is located or filed with the Secretary of State:*
- (a) *The electronic record or paper printout of an electronic record shall be deemed to be lawfully recorded or filed; and*
- (b) *All persons, including without limitation any creditor, encumbrancer, mortgagee, subsequent purchaser for valuable consideration, or any other subsequent transferee thereof or of any interest therein, are deemed to have notice of its contents.*
- (2) *For the purposes of this section, a record is deemed to comply with all applicable requirements upon the recording by the county clerk of the county in which the real property is located or the filing of the record with the Secretary of State, as required by law.*

➔SECTION 29. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

- (1) *A writing or record that appears on its face to have been properly notarized in accordance with Sections 1 to 32 of this Act shall be presumed to have been notarized properly and may be recorded by the clerk.*
- (2) *A writing or record notarized outside this state by a notary public or other person referenced in Section 10 or 11 of this Act that appears on its face to be properly notarized shall be presumed to have been notarized properly in accordance with the laws and regulations of the jurisdiction in which the document was notarized.*
- (3) *The county clerk shall be immune from suit arising from any acts or omissions relating to recording records that have been notarized by electronic means as set forth in Sections 1 to 32 of this Act unless the clerk was grossly negligent or engaged in willful misconduct.*

➔SECTION 30. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

- (1) *Sections 1 to 32 of this Act are to be construed and applied in a manner consistent with KRS 369.101 to 369.120. In accordance with KRS 369.105, nothing in Sections 1 to 32 of this Act shall affirmatively require any person to create, generate, send, communicate, receive, store, or otherwise process or use electronic records or complete a transaction using electronic means, and in accordance with KRS 369.118, nothing shall require any governmental agency to send and accept electronic records and electronic signatures to and from other persons, or to otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures, except as may be otherwise required by law.*
- (2) *A requirement that a record or a signature associated with a record be notarized, acknowledged, verified, witnessed, or made under oath is satisfied by a paper printout of an electronic record bearing an electronic signature of the person authorized to perform that act and all other information required to be included pursuant to KRS 369.111.*
- (3) *In accordance with KRS 369.118, a governmental agency that accepts paper printouts of electronic records may establish rules, procedures, or requirements governing this acceptance.*

➔SECTION 31. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

- (1) *With respect only to notarial acts performed in relation to tangible records, the county clerk of a county in whose office any notary public has so filed his or her signature and surety bond shall when requested subjoin to any certificate of proof or acknowledgement signed by the notary a certificate under his or her hand and seal stating that such notary public's written signature is on file in the clerk's office, and was at the time of taking such proof or acknowledgement duly authorized to take the same, that the clerk is well acquainted with the handwriting of the notary public, and believes that the signature to the proof or acknowledgement is genuine.*
- (2) *For all notarial acts performed in relation to electronic records that are transmitted to another state or nation, electronic evidence of the authenticity of the official signature and seal of a notary public of this state, if required, shall be attached to, or logically associated with, the record and shall be in the form of an electronic certificate of authority signed by the Office of the Secretary of State in conformance with any current and pertinent international treaties, agreements, and conventions subscribed to by the United States.*

- (3) *An electronic certificate of authority evidences the authenticity of the official signature and seal of an online notary public of this state and shall contain substantially the following:*

"Certificate of Authority for a Notarial Act

I, (name), Secretary of State of the Commonwealth of Kentucky, certify that (name of electronic notary), the person named as a Notary Public in the attached or associated electronic document, was indeed commissioned as a Notary Public for the Commonwealth of Kentucky and authorized to act as such at the time of the document's electronic notarization.

To verify this Certificate of Authority for a Notarial Act, I have included herewith my electronic signature this day of , (year).

(Electronic signature and seal of the Kentucky Secretary of State)"

➔SECTION 32. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

- (1) *A remotely located individual may comply with Section 5 of this Act by appearing before a notary public by means of communication technology.*
- (2) *A notary public located in this state may perform a notarial act facilitated by communication technology for a remotely located individual if:*
- (a) *The notary public:*
1. *Has personal knowledge pursuant to subsection (1) of Section 6 of this Act of the identity of the individual;*
 2. *Has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public under subsection (2) of Section 6 of this Act; or*
 3. *Reasonably can identify the individual by at least two (2) different types of identity-proofing processes or services;*
- (b) *The notary public is able reasonably to identify a record before the notary public as the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature;*
- (c) *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*
- (d) *For a remotely located individual who is located outside the United States:*
1. *The record:*
 - a. *Is to be filed with or relates to a matter before a court, governmental entity, public official, or other entity subject to the jurisdiction of the United States; or*
 - b. *Involves property located in the territorial jurisdiction of the United States or a transaction substantially connected with the United States; and*
 2. *The act of making the statement or signing the record is not prohibited by the foreign state in which the remotely located individual is located.*
- (3) *If a notarial act is performed pursuant to this section, the certificate of notarial act required by Section 13 of this Act and the short-form certificate provided in Section 14 of this Act shall indicate that the notarial act was performed by means of communication technology.*
- (4) *A short-form certificate provided in Section 14 of this Act for a notarial act subject to this section is sufficient if it:*
- (a) *Complies with administrative regulations promulgated pursuant to subsection (7)(a) of this section; or*
- (b) *Is in the form provided by Section 14 of this Act and contains a statement substantially as follows: "This notarial act involved the use of communication technology."*

- (5) *A notary public, a guardian, a conservator, or agent of a notary public, or a personal representative of a deceased notary public shall retain the audio-visual recording created under subsection (2)(c) of this section or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. Unless a different period is required by administrative regulations promulgated under subsection (7)(d) of this section, the recording shall be retained for no less than ten (10) years after the recording is made.*
- (6) *Before a notary public performs the notary public's initial notarial act under this section, the notary public shall notify the Secretary of State that the notary public will be performing notarial acts facilitated by communication technology and identify the technology. If the Secretary of State has established standards for approval of communication technology or identity proofing under Section 27 of this Act, the communication technology and identity proofing shall conform to those standards.*
- (7) *In addition to promulgating administrative regulations under Section 27 of this Act, the Secretary of State may promulgate administrative regulations regarding performance of a notarial act. The administrative regulations may:*
 - (a) *Prescribe the means of performing a notarial act involving a remotely located individual using communication technology;*
 - (b) *Establish standards for communication technology and identity proofing;*
 - (c) *Establish requirements or procedures to approve providers of communication technology and the process of identity proofing; and*
 - (d) *Establish standards and a period of the retention of an audio-visual recording created under subsection (2)(c) of this section.*
- (8) *Before promulgating administrative regulations governing performance of a notarial act with respect to a remotely located individual, the Secretary of State shall consider:*
 - (a) *The most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard-setting organizations and the National Association of Secretaries of State;*
 - (b) *Standards, practices, and customs of other jurisdictions that have laws substantially similar to this section; and*
 - (c) *The views of governmental officials and entities and other interested persons.*
- (9) *By allowing its communication technology or identity proofing technology to facilitate a notarial act for a remotely located individual or by providing storage of the audio-visual recording created under subsection (2)(c) of this section, the provider of the technology appoints the Secretary of State as the provider's agent for service of process in any civil action in this state related to the notarial act.*

➔SECTION 33. A NEW SECTION OF KRS CHAPTER 382 IS CREATED TO READ AS FOLLOWS:

- (1) *If a law requires, as a condition for recording by the county clerk upon the records relating to real property, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement shall be satisfied by an electronic document that complies with the requirements of Sections 1 to 32 of this Act or this section.*
- (2) *If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.*
- (3) *A requirement that a document or a 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. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.*
- (4) *As used in this section, "paper document" means a document that is received by the clerk in a form that is not electronic. A clerk:*
 - (a) *May receive, index, store, archive, and transmit electronic documents;*
 - (b) *May provide for access to, and search and retrieval of, documents and information by electronic means;*

- (c) *Who accepts electronic documents for recording shall continue to accept paper documents as authorized by state law and shall place entries for both types of documents in the same index;*
 - (d) *May convert paper documents accepted for recording into electronic form;*
 - (e) *May convert into electronic form information recorded before the clerk began to record electronic documents;*
 - (f) *May accept electronically any fee, levy, or tax that the clerk is authorized to collect; and*
 - (g) *May agree with other officials of a state or a political subdivision of that state, or of the United States, on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees, levies, and taxes that the clerk is authorized to accept.*
- (5) *This section shall be known and may be cited as the "Uniform Real Property Electronic Recording Act." In applying and construing this section, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.*

➔SECTION 34. A NEW SECTION OF KRS CHAPTER 382 IS CREATED TO READ AS FOLLOWS:

- (1) *If a law requires that an instrument relating to real property within the Commonwealth to be admitted to the public record and recorded, to be an original, to be on paper or another tangible medium, to be in writing, or to be signed, the requirement shall be satisfied by a paper copy of an electronic record, including an electronic record bearing an electronic signature, that a notary public has certified, pursuant to subsection (3) of this section, to be a true and correct copy of the record that was originally in electronic form and bearing an electronic signature.*
- (2) *A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied by a paper copy of an electronic document bearing an electronic signature of the person authorized to perform that act, and all other information required to be included, that a notary public has certified, pursuant to subsection (3) of this section, to be a true and correct copy of a document that was originally in electronic form and bearing an electronic signature of the person. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.*
- (3) *A county clerk shall record a paper copy of a document that was originally in electronic form and that is otherwise entitled to be recorded under the laws of this state, if the paper copy has been certified to be a true and correct copy of the electronic record by a notary public as evidenced by a certificate attached to or made a part of the record. The certificate:*
- (a) *Shall:*
 - 1. *Be signed and dated by the notary public;*
 - 2. *Identify the jurisdiction in which the certification is performed;*
 - 3. *Contain the title of the notary public; and*
 - 4. *Indicate the number and date of expiration, if any, of the notary public's commission; and*
 - (b) *May include an official stamp of the notary public affixed to or embossed on the certificate.*
- (4) *The following form of certificate is sufficient for the purposes of this section, if completed with the information required by subsection (3) of this section:*

State of _____

[County] of _____

I certify that the foregoing and annexed document entitled _____

[document title], dated _____ [document date, if applicable],

and containing _____ pages is a true and correct copy of an electronic document bearing one (1) or more electronic signatures.

Executed this _____ [date].

[Signature of notary public]

Stamp

[_____]

Notary Public

[My commission expires:_____]

[My notary registration number is:_____]

- (5) *A notary public duly commissioned under the laws of this Commonwealth or of another state within the United States has the authority to make the certification provided in this section.*
- (6) *A notary public making the certification provided in this section shall:*
- (a) *Personally print or supervise the printing of the electronic document onto paper;*
 - (b) *Not make any changes or modifications to the electronic document other than the certification described in subsection (3) of this section; and*
 - (c) *Confirm that the electronic document has been rendered tamper-evident.*
- (7) *If a certificate is completed with the information required by subsection (3) of this section and is attached to or made a part of a paper record, the certificate shall be considered conclusive evidence that the requirements of this section have been satisfied with respect to the record.*
- (8) *A record purporting to convey or encumber real property or any interest therein that has been recorded by a clerk for the jurisdiction in which the real property is located, although the record may not have been certified in accordance with the provisions of this section, shall import the same notice to third persons from the time of recording as if the record had been certified in accordance with the provisions of this section.*
- (9) *This section shall not apply to a plat, map, or survey of real property if under another law of this state, or under a rule, regulation, or ordinance applicable to a clerk if:*
- (a) *There are requirements of format or medium for the execution, creation, or recording of the plat, map, or survey beyond the requirements applicable to a deed to real property; or*
 - (b) *The plat, map, or survey must be recorded in a different location than a deed to real property.*

➔SECTION 35. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 32 and Sections 33 and 34 of this Act modify, limit, and supersede the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. secs. 7001 et seq., but do not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. sec. 7003(b).

➔SECTION 36. A NEW SECTION OF KRS CHAPTER 423 IS CREATED TO READ AS FOLLOWS:

In the event of a conflict between the provisions of this chapter and any other law in this state, the provisions of this chapter shall control.

➔Section 37. KRS 423.200 is amended to read as follows:

Notwithstanding any other provision of law, any certificate of an acknowledgment given and certified as provided by *Sections 1 to 32 of this Act* ~~[KRS 423.110 to 423.190]~~ or as provided by those sections and other provisions of law, together with the instrument acknowledged, may be admitted to the public record provided for the type of instrument so acknowledged, and any instrument required to be sworn to or affirmed in order to be recorded may be admitted to record upon a jurat recognized under the provisions of *Sections 1 to 32 of this Act* ~~[KRS 423.110 to 423.190]~~.

➔Section 38. KRS 369.103 is amended to read as follows:

- (1) Except as otherwise provided in subsection (2) of this section, KRS 369.101 to 369.120 applies to electronic records and electronic signatures relating to a transaction.
- (2) KRS 369.101 to 369.120 does not apply to a transaction to the extent it is governed by:
 - (a) A law governing the creation and execution of wills, codicils, or testamentary trusts;

(b) KRS Chapter 355 other than KRS 355.1-107 and 355.1-206, and Articles 2 and 2A of KRS Chapter 355; **and**

(c) ~~}[A law governing the conveyance of any interest in real property; and~~

~~(d)]~~A law governing the creation or transfer of any negotiable instrument or any instrument establishing title or an interest in title **to a motor vehicle and governed by KRS Chapter 186 or 186A.**

(3) KRS 369.101 to 369.120 applies to an electronic record or electronic signature otherwise excluded from the application of KRS 369.101 to 369.120 under subsection (2) of this section to the extent it is governed by a law other than those specified in subsection (2) of this section.

(4) A transaction subject to KRS 369.101 to 369.120 is also subject to other applicable substantive law.

➔Section 39. KRS 382.230 is amended to read as follows:

(1) No conveyance of real property shall be void or invalid because of a failure by the county clerk to incorporate in his certificate to such conveyance an endorsement of acknowledgment made by his deputy thereon.

(2) When acknowledgments to conveyances of real property have been taken by a deputy clerk, and a note or memorandum thereof endorsed by him on the conveyance, and a certificate of such acknowledgment has been afterward written out by the principal clerk and signed by him as having been done by such deputy or as if the acknowledgment had been before such principal clerk, such conveyance and certificate, and the recording thereof, shall be valid although the note or memorandum made by the deputy was not copied into the certificate.

(3) No conveyance of real property certified, proven or lodged for record prior to June 17, 1924, shall be void or invalid because it was not certified, proven, or lodged for record as required by the law in force at the time, if it was certified or proven in the manner prescribed by the Act of 1910 c 82, or by KRS 382.130~~[, 382.140]~~ or 382.150.

➔SECTION 40. A NEW SECTION OF KRS CHAPTER 382 IS CREATED TO READ AS FOLLOWS:

Documents physically presented to a county clerk for recording during regular business hours shall be considered for immediate recording if requested by the party presenting the documents, except that the county clerk may refuse unreasonable requests. Documents delivered by all other methods shall be processed as they are received, with priority assigned by the date the documents are received. All documents received on a given date shall have equal priority, and the county clerk shall have discretion to decide in what order documents are processed. A county clerk shall be held harmless for any disputes that arise regarding the timing of a recorded document.

➔Section 41. KRS 382.200 is amended to read as follows:

(1) Except as provided in subsection (2) of this section **and Section 40 of this Act**, each county clerk shall make and keep an alphabetical cross-index of all conveyances recorded in his office, and when a mortgage or deed of trust, or any other conveyance, lease, or contract is lodged in his office for record, he shall, at once and before attending to any other business, place the names of the parties to the instrument upon the cross-index in his office, and shall within six (6) days thereafter record the instrument.

(2) Chattel mortgages, financing statements or security agreements shall be filed and recorded in the manner set out in KRS 355.9-519.

➔Section 42. KRS 382.280 is amended to read as follows:

Except as provided in Section 40 of this Act, all bona fide deeds of trust or mortgages shall take effect in the order that they are legally acknowledged or proved and lodged for record.

➔Section 43. KRS 64.012 is amended to read as follows:

(1) The county clerk shall receive for the following services the following fees:

(a) ~~1. (1) (a)]~~ Recording and indexing of a:

~~a. (1)]~~ Deed of trust or assignment for the benefit of creditors;

~~b. (2)]~~ Deed;

~~c. (3)]~~ ~~Real estate mortgage;~~

~~4.]~~ Deed of assignment;

- d. File-stamped copy of documents set forth in KRS 14A.2-040(1) or (2) that have been filed first with the Secretary of State;*
- ~~e. {5.}~~ Real estate option;
- ~~f. {6.}~~ Power of attorney;
- ~~g. {7.}~~ Revocation of power of attorney;
- ~~h. {8.}~~ Lease which is recordable by law;
- ~~i. {9.}~~ Deed of release of a mortgage or lien under KRS 382.360;
- ~~j. {10.}~~ United States lien;
- ~~k. {11.}~~ Release of a United States lien;
- ~~l. {12.}~~ Release of any recorded encumbrance other than state liens;
- ~~m. {13.}~~ Lis pendens notice concerning proceedings in bankruptcy;
- ~~n. {14.}~~ Lis pendens notice;
- ~~o. {15.}~~ Mechanic's and artisan's lien under KRS Chapter 376;
- ~~p. {16.}~~ Assumed name;
- ~~q. {17.}~~ Notice of lien issued by the Internal Revenue Service;
- ~~r. {18.}~~ Notice of lien discharge issued by the Internal Revenue Service;
- ~~s. {19.}~~ Original, assignment, amendment, or continuation financing statement;
- ~~t. {20.}~~ Making a record for the establishment of a city, recording the plan or plat thereof, and all other service incident;
- ~~u. {21.}~~ Survey of a city, or any part thereof, or any addition to or extensions of the boundary of a city;
- ~~v. {22.}~~ Recording with statutory authority for which no specific fee is set, except a military discharge;
- w. Will or other probate document pursuant to KRS Chapter 392 or 394;*
- x. Court ordered name change pursuant to KRS Chapter 401;*
- y. Land use restriction according to KRS 100.3681; and*
- ~~z. {23.}~~ Filing with statutory authority for which no specific fee is set.

For all items in this subsection if the entire thereof does not exceed
five (5)~~three (3)~~ pages **\$33.00**~~[\$12.00]~~
 And, for all items in this subsection exceeding *five (5)*~~three (3)~~ pages,
 for each additional page\$3.00
 And, for all items in this subsection for each additional reference
 relating to same instrument\$4.00

~~2. {b.}~~ The *thirty-three dollar (\$33)*~~twelve dollar (\$12)~~ fee imposed by ~~paragraph (a) of~~ this subsection shall be divided as follows:

- ~~a. {1.}~~ *Twenty-seven dollars (\$27)*~~Six dollars (\$6)~~ shall be retained by the county clerk; and
- ~~b. {2.}~~ Six dollars (\$6) shall be paid to the affordable housing trust fund established in KRS 198A.710 and shall be remitted by the county clerk within ten (10) days following the end of the quarter in which the fee was received. Each remittance to the affordable housing trust fund shall be accompanied by a summary report on a form prescribed by the Kentucky Housing Corporation.

- ~~(b)(2)~~ ~~[Recording and indexing a file stamped copy of documents set forth in KRS 14A.2-040(1) or (2) that have been filed first with the Secretary of State:~~
 - ~~(a) The entire record thereof does not exceed three (3) pages\$10.00~~
 - ~~(b) And, exceeding three (3) pages, for each additional page\$3.00~~
- ~~(3) Recording wills or other probate documents pursuant to KRS Chapter 392 or 394 \$ 8.00~~
- ~~(4) Recording court ordered name changes pursuant to KRS Chapter 401 \$ 8.00~~
- ~~(5) For noting a security interest on a certificate of title pursuant to KRS Chapter 186A\$12.00~~
- ~~(c)(6) For filing the release of collateral under a financing statement and noting same upon the face of the title pursuant to KRS Chapter 186 or 186A \$5.00~~
- ~~(d)(7) Filing or recording state tax or other state liens\$5.00~~
- ~~(e)(8) Filing release of a state tax or other state lien\$5.00~~
- ~~(9) Marginal release, noting release of any lien, mortgage, or redemption other than a deed of release \$8.00~~
- ~~(f)(10) Acknowledging or notarizing any deed, mortgage, power of attorney, or other written instrument required by law for recording and certifying same \$5.00[\$4.00]~~
- ~~(g)(11) Recording a land use restriction according to KRS 100.3681\$15.00~~
- ~~(12) Recording plats, maps, and surveys, not exceeding 24 inches by 36 inches, per page \$40.00[\$20.00]~~
- ~~(h)(13) Recording a bond, for each bond\$10.00~~
- ~~(i)(14) Each bond required to be taken or prepared by the clerk\$4.00~~
- ~~(j)(15) Copy of any bond when ordered\$3.00~~
- ~~(k)(16) Administering an oath and certificate thereof\$5.00~~
- ~~(l)(17) Issuing a license for which no other fee is fixed by law\$8.00~~
- ~~(m)(18) Issuing a solicitor's license\$15.00~~
- ~~(n)(19) Marriage license, indexing, recording, and issuing certificate thereof \$26.50[\$24.00]~~
- ~~(o)(20) Every order concerning the establishment, changing, closing, or discontinuing of roads, to be paid out of the county levy when the road is established, changed, closed, or discontinued, and by the applicant when it is not\$3.00~~
- ~~(p)(21) Registration of licenses for professional persons required to register with the county clerk\$10.00~~
- ~~(q)(22) Certified copy of any record\$5.00
Plus fifty cents (\$.50) per page after three (3) pages~~
- ~~(r)(23) Filing certification required by KRS 65.070(2)(a)\$5.00~~
- ~~(s)(24) Filing notification and declaration and petition of candidates~~

- | | | |
|---------------------------------|---|-----------------------|
| | for Commonwealth's attorney | \$200.00 |
| (t) (25) | Filing notification and declaration and petition of candidates for county
and independent boards of education | \$20.00 |
| (u) (26) | Filing notification and declaration and petition of candidates for
boards of soil and water conservation districts | \$20.00 |
| (v) (27) | Filing notification and declaration and petition of candidates for
other office | \$50.00 |
| (w) (28) | Filing declaration of intent to be a write-in candidate for office..... | \$50.00 |
| (x) (29) | Filing petitions for elections, other than nominating petitions | \$50.00 |
| (y) (30) | Notarizing any signature, per signature | \$2.00 |
| (z) (31) | Filing bond for receiving bodies under KRS 311.310 | \$10.00 |
| (aa) (32) | Noting the assignment of a certificate of delinquency and recording
and indexing the encumbrance under KRS 134.126 or 134.127 | \$27.00 |
| (ab) (33) | Filing a going-out-of-business permit under KRS 365.445 | \$50.00 |
| (ac) (34) | Filing a renewal of a going-out-of-business permit under KRS 365.445 | \$50.00 |
| (ad) (35) | Filing a grain warehouseman's license under KRS 359.050 | \$10.00 |
| (ae) (36) | Filing and processing a transient merchant permit under KRS 365.680 | \$25.00 |
| (af) | <i>Recording and indexing a real estate mortgage:</i> | |
| | <i>1. For a mortgage that does not exceed thirty (30) pages</i> | <i>\$63.00</i> |
| | <i>2. And, for a mortgage that exceeds thirty (30) pages, for each additional page.....</i> | <i>\$3.00</i> |
| (2) | <i>The sixty-three dollar (\$63) fee imposed by subsection (1)(af) of this section shall be divided as follows:</i> | |
| | <i>(a) Fifty-seven dollars (\$57) shall be retained by the county clerk; and</i> | |
| | <i>(b) Six dollars (\$6) shall be paid to the affordable housing trust fund established in KRS 198A.710 and shall be remitted by the county clerk within ten (10) days following the end of the quarter in which the fee was received. Each remittance to the affordable housing trust fund shall be accompanied by a summary report on a form prescribed by the Kentucky Housing Corporation.</i> | |
| (3) | <i>For services related to the permanent storage of records listed in paragraphs (a), (g), (n), and (af) of subsection (1) of this section, the clerk shall be entitled to receive a reimbursement of ten dollars (\$10).</i> | |

➔Section 44. KRS 382.240 is amended to read as follows:

Each instrument that is recorded shall be delivered to the party entitled thereto. The county clerk shall require prepayment of postage ***and a three dollar (\$3) reimbursement*** for delivery of said instruments at the time they are left for record in his office. If the county clerk is unable to locate the parties entitled thereto, he shall retain the instruments for at least ***one (1) year***~~two (2) years~~. The clerk may then destroy the instruments ~~provided that he shall first make the following announcement by public notice in the newspaper of the largest circulation in the county: "Legal instruments which have been filed for record in the (name of county) county clerk's office and which have been in the custody of the clerk for over two (2) years must be claimed by the persons entitled thereto within thirty (30) days, or they shall be destroyed." The date of the notice and the name of the clerk shall be appended to the notice. Thirty (30) days after the appearance of the public notice, the county clerk may destroy the instruments~~.

➔Section 45. KRS 382.360 is amended to read as follows:

- (1) Liens by deed or mortgage may be discharged by an entry acknowledging their satisfaction on the margin of the record thereof, or in the alternative, at the option of the county clerk, in a marginal entry record, signed by the person entitled thereto, or his or her personal representative or agent, and attested by the clerk, or may be discharged by a separate deed of release, which shall recite the date of the instrument and deed book and the page wherein it is recorded. Such release in the case of a mortgage or deed of trust shall have the effect to

reinstate the title in the mortgagor or grantor or person entitled thereto. Each entry in the marginal entry record shall be linked to its respective referenced instrument in the indexing system for the referenced instruments.

- (2) If a lien or mortgage is released by a deed of release, the clerk shall immediately, at the option of the clerk, either link the release and its filing location to its respective referenced instrument in the indexing system for the referenced instrument, or endorse on the margin of the record wherein the lien is retained "Released by deed of release (stating whether in whole or in part) lodged for record (giving date, deed book and page wherein such deed of release may be found)" and the clerk shall also attest such certificate. ~~[-The clerk shall cause the original deed of release to be delivered to the mortgagor or grantor or person entitled thereto.]~~
- (3) When a mortgage is assigned to another person, the assignee shall file the assignment for recording with the county clerk within thirty (30) days of the assignment and the county clerk shall attest the assignment and shall note the assignment in the blank space, or in a marginal entry record, beside a listing of the book and page of the document being assigned. Provided, however, that an assignee that reassigns the note prior to the thirtieth day after first acquiring the assignment may request that the subsequent assignee file the unfiled assignment with the new reassignment.
- (4) Delivering an assignment to the assignee or a lien release to the mortgagor shall not substitute for filing the assignment or release with the county clerk, as required by this section.
- (5) Notwithstanding the provisions of this section, nothing in this chapter shall require the legal holder of any note secured by lien in any deed or mortgage to file a release of any mortgage when the mortgage securing such paid note also secures a note or other obligation which remains unpaid.
- (6) Failure of an assignee to record a mortgage assignment shall not affect the validity or perfection, or invalidity or lack of perfection, of a mortgage lien under applicable law.

➔Section 46. (1) The Legislative Research Commission shall create a task force on issues regarding the implementation of electronic recording, fees or functions of the county clerk involved in the recording of documents, issues concerning notaries public or notarial officers, or any further legislation relating to this Act.

- (2) The task force shall comprehensively investigate the electronic recording process in the Commonwealth to identify policy options to streamline the process of recording and notarizing documents, increasing efficiency, reducing costs, and decreasing paperwork and redundancy.
- (3) The task force shall review studies and legislative action by other states and by the federal government on notarizing and recording public documents.
- (4) The task force shall be composed of the following members, with final membership subject to the consideration and approval of the Legislative Research Commission:
 - (a) One member of the House of Representatives, appointed by the Speaker of the House of Representatives, who shall be designated to serve as co-chair;
 - (b) One member of the Senate, appointed by the President of the Senate, who shall be designated to serve as co-chair;
 - (c) Four county clerks, one who is the current chair of the recording committee of the Kentucky County Clerks Association and three clerks designated by the President of the County Clerk's Association;
 - (d) Two attorneys selected from a list of three attorneys of the Real Estate Section of the Kentucky Bar Association submitted by the Kentucky Bar Association, one to be appointed by the Speaker of the House of Representatives and one to be appointed by the President of the Senate;
 - (e) Two representatives of the banking industry selected from a list of three individuals submitted by the Kentucky Bankers Association, one to be appointed by the Speaker of the House of Representatives and one to be appointed by the President of the Senate;
 - (f) Two representatives of the mortgage banking industry from a list of three individuals submitted by the Kentucky Mortgage Bankers Association, one to be appointed by the Speaker of the House of Representatives and one to be appointed by the President of the Senate;
 - (g) Two representatives of the land title industry selected from a list of three individuals submitted by the Kentucky Land Title Association, one to be appointed by the Speaker of the House of Representatives and one to be appointed by the President of the Senate;;

- (h) One representative from the Secretary of State's office submitted by the Secretary of State; and
- (i) Two representatives from either e-recording or e-notary companies doing business in Kentucky nominated by the Secretary of State, one to be appointed by the Speaker of the House of Representatives and one to be appointed by the President of the Senate.

➔Section 47. The task force shall meet at least four times during both the 2019 and the 2020 legislative interims, and shall submit its findings and recommendations to the Legislative Research Commission no later than December 1, 2020.

➔Section 48. Provisions of this section to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

➔Section 49. Sections 46 and 47 of this Act shall have the same legal status as a Senate Concurrent Resolution.

➔Section 50. The following KRS sections are repealed:

382.140 Recording of deeds executed out of state.

382.190 Unrecorded deeds to be advertised by clerk.

423.010 Appointment, term, and qualifications of notaries -- County clerk has powers of notary when acting in capacity as clerk.

423.020 Notary may act in any county -- Certification of notary's authority.

423.030 Protests to be recorded -- Copies as evidence.

423.040 Notice of dishonor -- To whom sent.

423.050 Records of notary to be delivered to county clerk, when.

423.060 Foreign notary -- When protest by is evidence.

423.070 Commissioners of foreign deeds -- Appointment, term.

423.080 Powers of commissioners.

423.990 Penalties.

➔Section 51. This Act shall take effect January 1, 2020.

Signed by Governor March 25, 2019.