

SENATE BILL 297

By Johnson

AN ACT to amend Tennessee Code Annotated, Title 8,
Chapter 16, relative to notaries public.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 8, Chapter 16, Part 1, is amended by adding the following as new sections thereto:

Section 8-16-122.

(a) New and renewing notaries shall be required to complete five (5) hours of instruction at each renewal period by an approved notary public vendor or an approved notary instructor. The secretary of state shall be responsible for approving both vendors and individuals and may charge an administrative fee for such application. Attorneys shall not be exempt from this requirement.

(b) The education may be provided by the state or private vendors, or both.

(c) The notary vendor instructor shall ensure that each student has spent no less than five (5) hours learning Tennessee notary law. Upon successful completion, the vendor/instructor shall issue a certificate of completion containing the following:

- (1) Vendor name;
- (2) Vendor license number;
- (3) Instructor name;
- (4) Instructor license number;
- (5) Number of hours completed;
- (6) Date course was completed; and
- (7) Statement that certificate of completion is valid for up to one (1) year.

(d) Completion shall be attached to the notary application, which will be submitted to the state with a copy of the "passed" certificate from the testing vendor.

Section 8-16-123.

All new and renewing notaries shall pass a written exam, at the applicant's expense. The exam shall be designed to evaluate the applicant's ability to understand the basic procedures related to the notary commission. Any individual applying as a notary public who is also an active licensed attorney in the state of Tennessee, shall be exempt from taking the exam.

Section 8-16-124.

(a) All notaries public shall keep and maintain their own sequential notarial journal with individually numbered entries in a well-bound book. The information contained in the front of the notarial journal shall be kept current. The information shall include the following information:

- (1) Notary's name;
- (2) Notarial commission number;
- (3) Expiration date; and
- (4) Notary's address.

(b) Upon resignation or expiration of commission, the notary shall surrender all journals to the appropriate county clerk within thirty (30) days.

(c) Each journal entry shall include the following information:

- (1) Date and time the notarial act was performed;
- (2) Type of notarial act performed;
- (3) Date of the document notarized;
- (4) Type of document notarized;
- (5) Printed name of the signer;

- (6) Signature of the signer;
- (7) Description of how the notary public identified the signer;
- (8) Any other pertinent information; and
- (9) Fees collected, if any.

Section 8-16-125.

The following are guidelines each notary public shall follow when notarizing documents:

- (1) Look over the document, including looking for blank spaces and a date;
- (2) Identify the signer;
- (3) Determine the signer's willingness and ability to understand what is being signed;
- (4) Complete the notarial journal; and
- (5) Complete the notarial certificate.

SECTION 2. Tennessee Code Annotated, Section 8-16-114, is amended by adding the following as a new subsection thereto:

(d) No seal shall be manufactured without an original certificate of authorization provided by the secretary of state. The seal manufacturer shall make an impression of the notary seal on the certificate and submit it back to the state to remain on file. The state shall approve vendors to be able to manufacture a notary public seal. A vendor identification number shall be displayed on each notarial seal that the vendor manufactures. The vendor shall submit an application in addition to an administrative fee to the secretary of state in order to be approved to manufacture seals.

SECTION 3. Tennessee Code Annotated, Section 8-16-118, is amended by deleting the language "one dollar (\$1.00)" and substituting instead the language "five dollars (\$5.00)".

SECTION 4. Tennessee Code Annotated, Section 8-16-119, is amended by deleting the language “one dollar and fifty cents (\$1.50)” and substituting instead the language “five dollars (\$5.00)”.

SECTION 5. Tennessee Code Annotated, Title 8, Chapter 16, is amended by adding the following sections as a new part thereto:

Section 8-16-501.

(a) The state of Tennessee hereby authorizes notaries to perform electronic notarizations.

(b) The electronic notary signature shall be independently verifiable and unique to the electronic notary. The electronic notary signature shall be retained under the electronic notary's sole control.

(c) When the electronic notary performs an electronic notarization, the electronic signature used by the electronic notary shall be accessible by and attributable solely to the electronic notary to the exclusion of all other persons and entities for the entire time necessary to perform the electronic notarization.

(d) The electronic notary signature shall be attached or logically associated with the document, linking the data in such a manner that any subsequent alterations to the underlying document or electronic notary certificate are observable through visual examination.

(e) An image of the electronic notary's handwritten signature shall appear on any visual or printed representation of an electronic notary certificate regardless of the technology being used to affix the electronic notary's electronic signature.

Section 8-16-502.

(a) The electronic notary seal shall be independently verifiable and unique to the electronic notary.

(b) The electronic notary seal shall be retained under the electronic notary's sole control.

(c) When the electronic notary performs an electronic notarization, the electronic seal used by the electronic notary shall be accessible by and attributable solely to the electronic notary to the exclusion of all other persons and entities for the entire time necessary to perform the electronic notarization.

(d) The electronic notary seal shall be attached or logically associated with the document, linking the data in such a manner that any subsequent alterations to the underlying document or electronic notary certificate are observable through visual examination.

(e) An image of the electronic notary's electronic seal shall appear on any visual or printed representation of the electronic notary certificate regardless of the technology being used to affix the electronic notary's electronic seal.

(f) The perimeter of the electronic notary seal shall contain a border such that the physical appearance of the seal replicates the appearance of an inked seal on paper.

(g) The electronic notary seal must have the same requirements as a physical notary seal.

Section 8-16-503.

When an electronic notary performs an electronic notarization, the principal and the electronic notary shall be in each other's physical presence during the entire electronic notarization so that the principal and the electronic notary can see, hear, communicate with, and give identification documents, as required, to each other without the use of electronic devices such as telephones, computers, video cameras, or facsimile machines.

Section 8-16-504.

(a) Any person or entity applying to the state for designation as an approved electronic notary solution provider shall complete and submit an application to the secretary of state for review and approval before authorizing any electronic notary seals or electronic signatures to Tennessee electronic notaries. The application shall include the following information:

- (1) Hardware and software specifications and requirements for the provider's electronic notarization system;
- (2) A description of the type(s) of technology used in the provider's electronic notarization system; and
- (3) A demonstration of how the technology is used to perform an electronic notarization.

Section 8-16-505.

(a) Each applicant and each approved electronic notary solution provider shall:

- (1) Provide a free and readily available viewer/reader so as to enable all parties relying on the electronically notarized record or document to view the electronic notary signature and the electronic notary seal without incurring any cost;
- (2) Comply with the laws, policies, and rules that govern Tennessee notaries;
- (3) Provide an electronic notarization system or solution that complies with the technical specifications of the rules and standards that govern electronic notarization processes and procedures in Tennessee;
- (4) Require such of the provider's principals or employees to take the mandatory electronic notary education course online and pass the required

examination as is necessary to ensure the provider possesses sufficient familiarity with Tennessee's electronic notary laws and requirements;

(5) Require notaries to present the secretary of state's Electronic Notary Certificate to Perform Electronic Notary Acts prior to authorizing an electronic notary seal and signature;

(6) Verify the authorization of a Tennessee notary to perform electronic notary acts by logging on to the secretary of state's website and comparing the name, notary commission number and commission expiration date with the information on the Electronic Notary Certificate to Perform Electronic Notary Acts prior to authorizing an electronic notary seal and signature;

(7) Provide prorated fees to align the usage and cost of the electronic notary system or solution with the commission term limit of the electronic notary purchasing the electronic notary seal and signature;

(8) Suspend the use of any electronic notarization system or solution for any notary whose commission has been revoked or suspended by the secretary of state; and

(9) Submit an exemplar of the electronic notary signature and the electronic notary seal to the state for each electronic notary who subscribes to the provider's electronic notary solution.

Section 8-16-506.

(a) An electronic notary solution provider shall notify the secretary of state's office within forty-five (45) days of changes, modifications or updates to information previously submitted to the secretary of state.

(b) An approved electronic notary solution provider shall obtain approval of the secretary of state pursuant to this act before making available to Tennessee electronic

notaries any updates or subsequent versions of the provider's electronic notarization system.

Section 8-16-507.

The electronic notary seal is the property of the electronic notary and shall be subject to laws governing private property.

Section 8-16-508.

(a) Neither the employer nor any of the employer's employees or agents shall use or permit the use of an electronic notary seal or signature by anyone other than the electronic notary to whom it is registered.

(b) Upon the cessation of employment of an electronic notary, the employer of the notary shall:

(1) Relinquish control of the electronic notary seal;

(2) Transfer possession of the electronic notary seal to the electronic notary; or

(3) Eliminate the ability of any other person to use the former employee's electronic notary seal if the electronic notarization system used by the employer does not permit transfer of possession of the electronic notary seal.

Section 8-16-509.

Access to electronic notary signatures and electronic notary seals shall be protected by the use of a password, token, biometric, or other form of authentication approved by the secretary of state.

SECTION 6. The secretary of state is authorized to promulgate rules and regulations to effectuate the purposes of SECTIONS 3 and 4 of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 7. For the purposes of promulgating rules and regulations, this act shall take effect upon becoming a law, and for all other purposes, this act shall take effect January 1, 2010, the public welfare requiring it.