STATE OF KANSAS

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GOVERNOR LAURA KELLY

EXECUTIVE ORDER NO. 20-40

Temporarily allowing notaries and witnesses to act via audio-video communication technology during state of disaster emergency

WHEREAS, securing the health, safety, and economic well-being of residents of the State of Kansas is this Administration's top priority;

WHEREAS, Kansas is facing a crisis of economic insecurity resulting from a rapid increase in unemployment and lost wages;

WHEREAS, economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of Kansas, as expressed in K.S.A 44-702 of the Kansas Employment Security Law;

WHEREAS, the economic recovery of Kansas is imperiled by the imminent threat of surges in COVID-19 infections in the State of Kansas as statewide restrictions on businesses and individual movement and gatherings are lifted—since May 15, 2020, fifteen counties in the State have for the first time issued an emergency declaration resulting from the pandemic, indicating a further threat to the State's economic recovery;

WHEREAS, on April 9, 2020, I executed Executive Order 20-20 temporarily allowing notaries and witnesses to act via audio-video communication technology, and the justifications for that Order are fully set forth therein and incorporated herein by reference;

WHEREAS, the operative provisions of Executive Order 20-20 were not only necessary to deal with the public health crisis caused by COVID-19 but are now also necessary to deal with the economic emergency resulting from COVID-19 in that the operative provisions allow continued operation of business and personal transactions requiring notarization via remote to individuals who may still not be willing to seek in-person notarization due to fear of contracting or spreading the disease;

WHEREAS, continuing the operative provisions of Executive Order 20-20 minimizes the economic loss that would result if business and personal transactions could not be completed remotely for persons who would forego the transaction due to fear of contracting or spreading the disease during an in-person notarization; and

WHEREAS, in these challenging times this Administration will do whatever it can to avoid immediate dangers to the health, safety, and welfare of Kansans.

NOW, THEREFORE, pursuant to the authority vested in me as Governor of the State of Kansas, including but not limited to the authority granted me by K.S.A 48-924 and K.S.A 48-925, in order to slow the spread of COVID-19, I hereby direct and order the following:

1. During the duration of the State of Disaster Emergency related to the outbreak of COVID-19, the requirements that a person must appear before a Notary Public commissioned under the laws of Kansas pursuant to K.S.A. 53-503 and any related statutes, are suspended and such requirements are satisfied if the Notary Public performs a remote notarization via two-way audio-video communication technology, provided that:

    a. the Notary Public commissioned in Kansas and the individual signing the document are both physically within the State while performing the notarial act;

    b. the Notary Public is able to identify the individual signing the document, from personal knowledge or satisfactory evidence of the identity of the individual; and

    c. the transaction follows any guidance posted by the Kansas Secretary of State on its website.

2. During the duration of the State of Disaster Emergency related to the outbreak of COVID-19, any act of witnessing required by Kansas law may be completed remotely by two-way audio-video communication technology, provided that:

    a. The two-way audio-video communication technology must allow for direct, contemporaneous communication between the individual signing the document ("the signatory") and the witness by sight and sound;

    b. The signatory must attest to being physically located in Kansas during the two-way audio-video communication;

    c. The witness must attest to being physically located in Kansas during the two-way audio-video communication;

    d. The signatory must affirmatively state on the two-way audio-video communication what document the signatory is signing;

    e. Each page of the document being witnessed must be shown to the witness on the two-way audio-video communication technology in a means clearly legible to the witness and initialed by the signatory in the presence of the witness;

    f. The act of signing must be captured sufficiently up close on the two-way audio-video communication for the witness to observe;

    g. The signatory must transmit by fax or electronic means a legible copy of the entire signed document directly to the witness no later than the day after the document is signed;

h. The witness must sign the transmitted copy of the document as a witness and transmit the signed copy of the document back via fax or electronic means to the signatory within 24 hours of receipt;

i. If necessary, the witness may sign the original signed document as of the date of the original execution by the signatory provided that the witness receives the original signed document together with the electronically witnessed copy within thirty days from the date of the remote witnessing; and

j. If the Notary Public is being asked to certify to the appearance of the witnesses to a document, multiple-way audio-video communication technology must allow for direct, contemporaneous communication between the Notary Public, the signatory, and the witness by sight and sound.

3. All provisions of Article 16 of Chapter 16 of the Kansas Statutes Annotated concerning electronic transactions remain in full effect.

4. During the duration of the State of Disaster Emergency related to COVID-19, notwithstanding any law or regulation of the State of Kansas to the contrary, absent an express prohibition in a document against signing in counterparts, all legal documents, including deeds, last wills and testaments, trusts, durable powers of attorney for property, and powers of attorney for health care, may be signed in counterparts by the witness(es) and the signatory. A Notary Public must be presented with a fax or electronic copy of the document signature pages showing the witness signatures on the same date the document is signed by the signatory if the Notary Public is being asked to certify to the appearance of the witnesses to a document.

This document shall be filed with the Secretary of State as Executive Order No. 20-40. It shall become effective immediately and remain in force until rescinded, until June 13, 2020, or until the statewide State of Disaster Emergency proclaimed on May 26, 2020, expires, whichever is earlier.

THE GOVERNOR'S OFFICE BY THE GOVERNOR

DATED 5.26.2020

FILED
MAY 26 2020
SCOTT SCHWAB
SECRETARY OF STATE

Secretary of State

Assistant Secretary of State