

1 HOUSE BILL NO. 443

2 INTRODUCED BY G. CLANCY

3 BY REQUEST OF THE SECRETARY OF STATE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING STATUTES APPLYING TO NOTARIES
6 PUBLIC; CLARIFYING DURATIONAL RESIDENCY REQUIREMENTS FOR NOTARIES PUBLIC; PROHIBITING
7 A PERSON FROM HOLDING MORE THAN ONE COMMISSION AS A MONTANA NOTARY PUBLIC;
8 REQUIRING A COUNTY ATTORNEY TO PROSECUTE VIOLATIONS OF LAWS APPLYING TO NOTARIES
9 PUBLIC; REVISING THE STATUTE GOVERNING AN APPLICATION TO BECOME A NOTARY PUBLIC;
10 ALLOWING THE SECRETARY OF STATE TO CHARGE FEES FOR CHANGES MADE BY THE SECRETARY
11 OF STATE TO THE COMMISSIONS OF NOTARIES PUBLIC; REQUIRING CERTAIN INFORMATION TO BE
12 FILED BY A NOTARY PUBLIC WITH THE SECRETARY OF STATE; CLARIFYING STATUTES REGARDING
13 CHANGES TO A NOTARY PUBLIC'S COMMISSION; APPLYING CONDITIONS AND CLARIFYING ACTIONS
14 PERTAINING TO CERTAIN NOTARIAL ACTS; PROHIBITING A NOTARY PUBLIC FROM ACTING IN
15 CERTAIN CASES IN WHICH THE NOTARY MAY HAVE A CONFLICT OF INTEREST; CLARIFYING THE
16 STATUTE GOVERNING FEES CHARGED BY NOTARIES PUBLIC; AUTHORIZING A NOTARY PUBLIC TO
17 CHARGE FOR CERTAIN EXPENSES; PROVIDING A PENALTY; AND AMENDING SECTIONS 1-5-402,
18 1-5-403, 1-5-404, 1-5-405, 1-5-408, 1-5-409, 1-5-416, 1-5-417, 1-5-418, 1-5-603, 1-5-609, AND
19 1-5-610, MCA."

20

21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22

23 **Section 1.** Section 1-5-402, MCA, is amended to read:

24 **"1-5-402. Qualifications -- residence.** A person appointed as notary public may not, at the time
25 of appointment, be a convicted felon. Each person appointed as a notary public must be a ~~citizen of the~~
26 ~~United States and of the state~~ resident of Montana for at least 1 year immediately preceding appointment;
27 and must continue to reside within the state of Montana. Removal from the state or conviction of a felony
28 vacates the office and is equivalent to resignation."

29

30 **Section 2.** Section 1-5-403, MCA, is amended to read:

1 **"1-5-403. Term of office -- limit on commissions.** (1) The term of office of a notary public is 4
2 years from ~~and after~~ the date of commissioning.

3 (2) A person may not have more than one Montana notary public commission in effect at one
4 time."

5

6 **Section 3.** Section 1-5-404, MCA, is amended to read:

7 **"1-5-404. ~~Revocation~~ Penalties -- revocation of commission -- prosecution for violation of law.**

8 (1) Upon 10 days' notice, the secretary of state may revoke the commission of ~~any a~~ notary public for just
9 cause.

10 (2) The county attorney of a county in which a violation of this chapter or another law applicable
11 to notaries public or notarial acts occurs shall prosecute the violation."

12

13 **Section 4.** Section 1-5-405, MCA, is amended to read:

14 **"1-5-405. Bond and commission -- dates -- fees and documents.** (1) Each notary public shall
15 submit an application, a signed oath of office, and ~~give~~ an official bond in the ~~sum~~ amount of ~~\$5,000~~
16 \$10,000 for each 4-year term of office. The application and bond must be approved by the secretary of
17 state. Upon the approval of the application and the bond, the payment of fees, and the filing in the office
18 of the secretary of state of the official oath of the notary public, the secretary of state may issue a
19 commission.

20 (2) The effective date of the surety bond and the notary commission must be the same.

21 (3) All required fees and required and properly completed documents must be submitted to the
22 office of the secretary of state within 30 days before or by the effective date of the surety bond."

23

24 **Section 5.** Section 1-5-408, MCA, is amended to read:

25 **"1-5-408. Fees for filing or amending commission and issuing certificates.** The secretary of state
26 shall set by rule the fees for filing or issuing, in the manner provided for in 1-5-407, certificates. The
27 secretary may charge a fee for changes made in the commission of a notary public, during the term of that
28 commission, regarding the notary's name, residential address, business address, or residential or business
29 telephone number. The fees must be commensurate with costs. The secretary of state shall use application
30 forms soliciting the information required by this part. The county clerk of any county in this state shall

1 must receive a fee, as provided in 7-4-2631, for filing a copy of the commission and certifying to the
2 official character."

3

4 **Section 6.** Section 1-5-409, MCA, is amended to read:

5 **"1-5-409. Information to be filed -- amendments to commission.** (1) A person appointed as a
6 notary public shall file ~~his address~~ the person's business, if any, and residential addresses and telephone
7 ~~number~~ numbers with the office of the secretary of state. If the notary public changes ~~his~~ the notary's
8 address or telephone number during ~~his~~ the notary's term of commission, ~~he~~ the notary shall notify the
9 office of the ~~change~~ secretary of state in writing and shall sign the writing using the same signature that
10 is used for notarial acts.

11 (2) A notary public wishing to change the notary's name during the notary's term of commission
12 shall file with the secretary of state a rider or other document from the notary's surety company showing
13 the change of name. The notary public shall also file with the secretary of state a written example of the
14 notary's new official signature."

15

16 **Section 7.** Section 1-5-416, MCA, is amended to read:

17 **"1-5-416. Powers and duties.** (1) A notary public shall:

18 (a) subject to subsection (2), take the acknowledgment or proof of any power of attorney,
19 mortgage, deed, grant, transfer, or other instrument executed by any person and give a certificate of the
20 proof or acknowledgment, endorsed on or attached to the instrument;

21 (b) take depositions and affidavits, if the notary is knowledgeable of the applicable legal
22 requirements, and administer oaths and affirmations in all matters incident to the duties of the notary
23 public's office or to be used before any court, judge, officer, or board in this state;

24 (c) whenever requested and upon payment of the required fees, make and give a certified copy
25 of any record kept or that originated in the notary public's ~~office~~ place of employment;

26 (d) provide and keep an official crimper-type or ink stamp seal, upon which must be engraved the
27 name of the state of Montana and the words "Notarial Seal", with the ~~surname~~ name of the notary public
28 ~~and at least the initials of the notary public's given name~~ exactly as that name appears on the notary's
29 certificate of commission issued by the secretary of state;

30 (e) authenticate with the notary public's official seal, and the notary's original signature as it

1 appears on the notary's certificate of commission, all official acts. Whenever the notary public signs
 2 officially as a notary public, the notary public shall add to the signature the words "Notary Public for the
 3 State of Montana, residing at.... (stating the name of the notary public's post office)" and shall endorse
 4 upon the instrument the date, showing the month, day, and four-digit year, of the expiration of the notary
 5 public's commission.

6 (f) on every document on which the notary's seal of office is used, type, stamp, or legibly print
 7 the notary's name, as shown on the notary's certificate of commission, after or below the original
 8 signature of the notary.

9 (2) ~~The~~ A notary public may not:

10 (a) notarize the notary's own signature;

11 (b) notarize a document in which the notary is individually named or has an interest from which
 12 the notary will directly benefit by a transaction involving the document; or

13 (c) certify a document issued by a public entity, such as a birth, death, or marriage certificate,
 14 unless the notary is employed by the entity issuing or holding the original version of that document."

15

16 **Section 8.** Section 1-5-417, MCA, is amended to read:

17 **"1-5-417. Authority of notaries who are stockholders, officers, or employees of banks or other**
 18 **corporations.** ~~It shall be lawful for any~~ (1) Except as provided in this section, a notary public who is a
 19 stockholder, director, officer, or employee of a bank or other corporation ~~to~~ may:

20 (a) take the acknowledgment of ~~any~~ a party to ~~any~~ a written instrument executed to or by ~~such~~
 21 that bank or corporation, ~~to~~;

22 (b) administer an oath to any other stockholder, director, officer, employee, or agent of ~~such~~ that
 23 bank or corporation, ~~or to~~; or

24 (c) protest for nonacceptance or nonpayment bills of exchange, drafts, checks, notes, and other
 25 negotiable instruments ~~which~~ that may be owned or held for collection by ~~such~~ that bank or other
 26 corporation; ~~provided, it shall be unlawful for any.~~

27 (2) A notary public ~~to~~ who is a stockholder, director, officer, or employee of a bank or other
 28 corporation and is individually named in an instrument or signs an instrument as a representative of the
 29 bank or other corporation may not:

30 (a) take the acknowledgment of ~~an~~ that instrument by or to a that bank or other corporation of

1 ~~which he is a stockholder, director, officer, or employee where such notary is a party individually to such~~
 2 ~~instrument or signs the instrument as a representative of such bank or other corporation or to; or~~

3 (b) protest any a negotiable instrument owned or held for collection by such that bank or other
 4 ~~corporation where such notary is individually a party to such instrument.~~

5 (3) A notary public who violates this section is guilty of a misdemeanor and upon conviction must
 6 be punished as provided by law."

7

8 **Section 9.** Section 1-5-418, MCA, is amended to read:

9 **"1-5-418. Fees Maximum fees of notaries.** Fees Maximum fees of notaries public are as follows:

10 (1) for drawing an affidavit, deposition, or other paper for which ~~provision is not herein made a~~
 11 maximum fee is not otherwise specified, \$3.50 \$7.50 \$3.50 per a page;

12 (2) for taking an acknowledgment or proof of a deed or other instrument, ~~to include~~ including the
 13 seal and the writing of the certificate, for the first signature, ~~\$1~~ \$5;

14 (3) for each additional signature of the same person as referred to in subsection (1), ~~50 cents~~ \$1;

15 (4) for administering an oath or affirmation, ~~\$1~~ \$5;

16 (5) for certifying an affidavit, with or without seal, including oath, ~~\$1~~ \$5; and

17 (6) for mileage or other charge to travel to or from or to and from the place of the notarial act,
 18 the amount provided by law for state employees when using the same mode of travel and traveling on
 19 state business."

20

21 **Section 10.** Section 1-5-603, MCA, is amended to read:

22 **"1-5-603. Notarial acts.** (1) In taking an acknowledgment, the notarial officer shall determine,
 23 either from personal knowledge or from satisfactory evidence, that the person appearing before the officer
 24 and making the acknowledgment is the person whose true signature is on the instrument.

25 (2) In taking a verification upon oath or affirmation, the notarial officer shall determine, either from
 26 personal knowledge or from satisfactory evidence, that the person appearing before the officer and making
 27 the verification is the person whose true signature is on the statement verified.

28 (3) In witnessing or attesting a signature, the notarial officer shall determine, either from personal
 29 knowledge or from satisfactory evidence, that the signature is that of the person appearing before the
 30 officer and named in the instrument.

1 (4) In certifying or attesting a copy of a document or other item, the notarial officer shall
 2 determine that the proffered copy is a full, true, and accurate transcription or reproduction of that which
 3 was copied.

4 (5) (a) In making or noting a protest of a negotiable instrument, the notarial officer shall identify
 5 the instrument and certify either:

6 (i) that due presentment has been made; or

7 (ii) the reason why it is excused and that the instrument has been dishonored by nonacceptance
 8 or nonpayment.

9 (b) The protest may also certify that notice of dishonor has been given to all parties or to specified
 10 parties.

11 (6) A notarial officer has satisfactory evidence that a person is the person whose true signature
 12 is on a document if that person is:

13 (a) personally known to the notarial officer;

14 (b) identified upon the oath or affirmation of a credible witness personally known to the notarial
 15 officer; or

16 (c) identified on the basis of a current identification document or documents that show a
 17 photograph and signature of the person."

18

19 **Section 11.** Section 1-5-609, MCA, is amended to read:

20 **"1-5-609. Certificate of notarial acts.** (1) A notarial act must be evidenced by a certificate signed
 21 and dated by a notarial officer. The certificate must include identification of the jurisdiction in which the
 22 notarial act is performed, the date on which the notarial act is performed, the type of notarial act being
 23 performed, and the title of the office of the notarial officer and must include the official seal of office. If
 24 the officer is a Montana notary public, the certificate must also indicate the place of the notarial officer's
 25 residence and the date of expiration,~~if any,~~ of the commission of office, but omission of ~~that information~~
 26 that place or date may subsequently be corrected. If the officer is a commissioned officer on active duty
 27 in the military service of the United States, it must also include the officer's rank.

28 (2) A certificate of a notarial act is sufficient if it meets the requirements of subsection (1) and
 29 it:

30 (a) is in the short form set forth in 1-5-610;

- 1 (b) is in a form otherwise prescribed by the law of this state;
- 2 (c) is in a form prescribed by the laws or regulations applicable in the place in which the notarial
- 3 act was performed; or
- 4 (d) sets forth the actions of the notarial officer and those are sufficient to meet the requirements
- 5 of the designated notarial act.

6 (3) By executing a certificate of a notarial act, the notarial officer certifies that the officer has
 7 made the determinations required by 1-5-603."

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9 **Section 12.** Section 1-5-610, MCA, is amended to read:

10 **"1-5-610. Short forms.** The following short-form certificates of notarial acts are sufficient for the
 11 purposes indicated if they are completed with the information required by 1-5-416 and 1-5-609(1):

12 (1) For an acknowledgment in an individual capacity:

13 State of _____

14 (County) of _____

15 This instrument was acknowledged before me on (date) by (name(s) of
 16 person(s)) _____

17

 (Signature of notarial officer)

18

19 (Seal, if any)

20

 Title (and Rank)

21

22

 (RESIDING AT)

23

[My commission expires: _____]

24

25 (2) For an acknowledgment in a representative capacity:

26 State of _____

27 (County) of _____

28 This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of
 29 authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed).

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(Signature of notarial officer)

(Seal, if any)

Title (and Rank)

(RESIDING AT)

[My commission expires: _____]

(3) For a verification upon oath or affirmation:

State of _____

(County) of _____

Signed and sworn to (or affirmed) before me on (date) by (name(s) of person(s) making statement):- _____

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)

(RESIDING AT)

[My commission expires: _____]

(4) For witnessing or attesting a signature:

State of _____

(County) of _____

Signed or attested before me on (date) by (name(s) of person(s)):- _____

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)



(RESIDING AT)

[My commission expires: _____]

(5) For attestation of a copy of a document:

State of _____

(County) of _____

I certify that this is a true and correct copy of a document in the possession of _____.

Dated _____

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)

(RESIDING AT)

[My commission expires: _____]"

NEW SECTION. **Section 13. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before October 1, 2001.

- END -