

1 SENATE BILL NO. 45

2 INTRODUCED BY D. LEWIS

3 BY REQUEST OF THE SECRETARY OF STATE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO NOTARIES PUBLIC;
6 ALLOWING ELECTRONIC FILING OF THE NOTARY PUBLIC APPLICATION, OATH, AND BOND; REMOVING
7 THE AUTHORITY OF THE COUNTY CLERK AND RECORDER TO CERTIFY THE OFFICIAL CHARACTER
8 OF A NOTARY PUBLIC; CLARIFYING THAT THE SIGNER IS REQUIRED TO APPEAR IN PERSON;
9 CLARIFYING WHICH NOTARIES PUBLIC MAY MAKE OR NOTICE A PROTEST; CLARIFYING WHEN
10 SIGNATURES ARE REQUIRED FOR JOURNAL ENTRIES; SPECIFYING THE NOTARY JOURNAL IS A
11 PRIVATE DOCUMENT; REQUIRING THE NOTARY JOURNAL TO BE TRANSFERRED TO THE SECRETARY
12 OF STATE UPON TERMINATION FROM OFFICE; PROVIDING RULEMAKING AUTHORITY; AMENDING
13 SECTIONS 1-5-405, 1-5-407, 1-5-408, 1-5-416, 1-5-419, AND 1-5-603, MCA; REPEALING SECTION 1-5-420,
14 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

15

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

17

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

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

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

25 (3) All required fees and required and properly completed documents must be submitted to the office
26 of the secretary of state within 30 days before or within 30 days after the effective date of the surety bond.27 (4) The secretary of state may allow electronic filing of the documents required by this section.

28

29 **Section 2.** Section 1-5-407, MCA, is amended to read:30 **"1-5-407. Certifying official character of notary.** The secretary of state may certify to the official

1 character of a notary public. ~~A notary public may file a copy of the notary public's commission in the office of any~~
2 ~~county clerk of any county in the state, and the county clerk may certify to the official character of the notary~~
3 ~~public."~~

4

5 **Section 3.** Section 1-5-408, MCA, is amended to read:

6 **"1-5-408. Fees for filing or amending commission and issuing certificates.** The secretary of state
7 shall set and deposit fees in accordance with 2-15-405 for ~~filing or issuing; certificates~~ in the manner as provided
8 ~~for~~ in 1-5-407, ~~certificates~~. The secretary of state may charge a fee for changes made in the commission of a
9 notary public, during the term of that commission, regarding the notary's name, residential address, business
10 address, or residential or business telephone number. The secretary of state shall use application designated
11 forms soliciting the information required by this part. The secretary of state may allow the use of electronic forms.
12 ~~The county clerk of any county in this state must receive a fee, as provided in 7-4-2631, for filing a copy of the~~
13 ~~commission and certifying to the official character."~~

14

15 **Section 4.** Section 1-5-416, MCA, is amended to read:

16 **"1-5-416. Powers and duties.** (1) A notary public shall:

17 (a) subject to subsection ~~(2)~~ (3), take the acknowledgment or proof of any power of attorney, mortgage,
18 deed, grant, transfer, or other instrument executed by any person and give a certificate of the proof or
19 acknowledgment, endorsed on or attached to the instrument;

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

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

25 (d) provide and keep an official ink stamp and seal prescribed by the secretary of state;

26 (e) authenticate with the notary public's official seal and the notary's original signature, which must be
27 in blue or black ink, as it appears on the notary's certificate of commission, all official acts. Whenever the notary
28 public signs officially as a notary public, the notary public shall add to the signature the words "Notary Public for
29 the State of Montana, residing at.... (stating the name of the town or city of the notary public's ~~post office~~ physical
30 residence)" and shall endorse upon the instrument the date, showing the month, day, and four-digit year, of the

1 expiration of the notary public's commission.

2 (f) on every document on which the notary's seal of office is used, type, stamp, or legibly print the
3 notary's name, as shown on the notary's certificate of commission, after or below the original signature of the
4 notary;

5 (g) keep and maintain an official notary journal recording the details of each notarial act performed,
6 including the date, the type of notarial act, the type of document, the date of the document, the name, address,
7 and signature of the individual for whom the notarization was performed, the type of identification used, and any
8 other information prescribed by the secretary of state, except that the following signatures are not required:

9 (i) the signature of a deponent or affiant for depositions and affidavits of court reporters; and

10 (ii) a signature of a person requesting a copy certification, although all other information must be entered
11 in the journal.

12 (2) The notary journal is a private document that is the property of the notary public. Information contained
13 in a notary journal or a copy of a specific notarial transaction must be provided upon request and may be provided
14 only by the following:

15 (a) a court;

16 (b) the person directly involved in a notarial transaction or possessing a document involved in a notarial
17 transaction; and

18 (c) the secretary of state.

19 ~~(2)~~(3) A notary public may not:

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

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

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

25

26 **Section 5.** Section 1-5-419, MCA, is amended to read:

27 **"1-5-419. Transfer of records upon termination of office.** (1) A notary public, upon resignation or
28 removal from office or at the expiration of the notary public's term if the notary public is not reappointed, or, in
29 case of the notary public's death, the notary public's legal representative shall:

30 (a) transfer in a timely manner all the journals kept by the notary public to the ~~office of the county clerk~~

1 ~~and recorder of the county in which the notary public was a resident~~ secretary of state; and

2 (b) destroy the notary's official stamp and seal.

3 (2) A knowing failure to take the actions prescribed in subsection (1) makes the offending person liable
4 for damages to any person injured by the failure."

5

6 **Section 6.** Section 1-5-603, MCA, is amended to read:

7 **"1-5-603. Notarial acts.** (1) In taking an acknowledgment, the notarial officer shall determine, either from
8 personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the
9 acknowledgment is the person whose true signature is on the instrument.

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

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

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

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

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

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

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

25 (c) A protest may be made or noticed only by a notarial officer who is a current employee of a financial
26 institution and who has been trained in financial practices.

27 (6) A notarial officer has satisfactory evidence that a person appearing before the officer is the person
28 whose true signature is on a document if that person is:

29 (a) personally known to the notarial officer;

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

1 or

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

4

5 NEW SECTION. **Section 7. Rulemaking authority.** The secretary of state may adopt rules to carry out
6 the provisions of parts 4 and 6 of this chapter.

7

8 NEW SECTION. **Section 8. Repealer.** The following section of the Montana Code Annotated is
9 repealed:

10 1-5-420. Powers and duties of county clerk and recorder with whom records deposited.

11

12 NEW SECTION. **Section 9. Codification instruction.** [Section 7] is intended to be codified as an
13 integral part of Title 1, chapter 5, and the provisions of Title 1, chapter 5, apply to [section 7].

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15 NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

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