

SENATE BILL NO. 299

INTRODUCED BY J. TROPILA, COONEY, GILLAN, LEWIS, STEWART-PEREGOY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE APPOINTMENT, QUALIFICATIONS, AND DUTIES OF NOTARIES PUBLIC; REQUIRING TRAINING ~~AND AN EXAMINATION~~ IN SPECIFIED CIRCUMSTANCES; REQUIRING THAT A JOURNAL BE KEPT; REQUIRING THE DESTRUCTION OF THE NOTARY PUBLIC'S STAMP AND SEAL UPON TERMINATION FROM OFFICE; AMENDING SECTIONS 1-5-401, 1-5-402, 1-5-416, 1-5-419, AND 1-5-610, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

Section 1. Section 1-5-401, MCA, is amended to read:

"1-5-401. Appointment. The secretary of state may appoint and commission as many qualified notaries public for the state of Montana as in the secretary of state's judgment ~~may be deemed best~~ is considered appropriate."

Section 2. Section 1-5-402, MCA, is amended to read:

"1-5-402. Qualifications -- training -- residence. (1) ~~A person may not be appointed or reappointed as a notary public unless the person has satisfactorily completed a training program certified by the secretary of state that includes a written examination prescribed by the secretary of state. The examination must be included as part of the application process.~~

~~(2) A PERSON MAY NOT BE REAPPOINTED AS A NOTARY PUBLIC IF AT ANY TIME DURING THE NOTARY'S TERM A COMPLAINT HAS BEEN FILED AGAINST THE NOTARY OR THE SECRETARY OF STATE'S OFFICE HAS RECEIVED EVIDENCE OF IMPROPERLY NOTARIZED DOCUMENTS BY THE NOTARY UNLESS THE PERSON HAS SATISFACTORILY COMPLETED A TRAINING PROGRAM CERTIFIED BY THE SECRETARY OF STATE.~~

~~(2)(3)~~ (3) A person appointed or reappointed as a notary public may not, at the time of appointment or reappointment, be a convicted felon. Each person appointed or reappointed as a notary public must be a resident of Montana for at least ~~4-year~~ 30 days immediately preceding appointment or reappointment and must continue to reside within the state of Montana. Removal from the state or conviction of a felony vacates the office and is equivalent to resignation."

Section 3. Section 1-5-416, MCA, is amended to read:

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

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

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

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

(d) provide and keep an official ~~embossed type or ink stamp~~ and seal prescribed by the secretary of state; upon which must be engraved the name of the state of Montana and the words "Notarial Seal" or "Notary Public", with the name of the notary public exactly as that name appears on the notary's certificate of commission issued by the secretary of state;

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

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

(g) keep and maintain an official notary journal recording the details of each notarial act performed, including the date, the type of notarial act, the type of document, the date of the document, the name, address, and signature of the individual for whom the notarization was performed, the type of identification used, and any other information prescribed by the secretary of state.

(2) A notary public may not:

(a) notarize the notary's own signature;

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

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

Section 4. Section 1-5-419, MCA, is amended to read:

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

~~(a) to deposit transfer~~ in a timely manner all the ~~records~~ journals kept by the notary public ~~in~~ to the office of the county clerk and recorder of the county in which the notary public was a resident; ~~and~~

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

~~(2) On failure to do so, the~~ Failure A KNOWING FAILURE to take the actions prescribed in subsection (1) makes the offending person ~~is~~ liable for damages to any person injured by the failure."

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

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

(1) For an acknowledgment in an individual capacity:

State of _____

(County) of _____

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

(Signature of notarial officer)

(Seal, if any)

(Name - typed, stamped, or printed)

Title (and Rank)

(Residing at)

[My commission expires: _____]

(2) For an acknowledgment in a representative capacity:

State of _____

(County) of _____

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

(Signature of notarial officer)

(Seal, if any)

(Name - typed, stamped, or printed)

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)

(Name - typed, stamped, or printed)

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)

(Name - typed, stamped, or printed)

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)

(Name - typed, stamped, or printed)

Title (and Rank)

(Residing at)

[My commission expires: _____]"

NEW SECTION. **Section 6. Effective date.** [Section 2] is effective July 1, 2010.

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