

HOUSE BILL NO. 370

INTRODUCED BY B. BEARD

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3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO NOTARIAL
5 OFFICERS AND NOTARIAL ACTS; REVISING PROVISIONS RELATED TO ELECTRONIC RECORDS,
6 REMOTE NOTARIZATION, AND THE USE OF ELECTRONIC NOTARIZATION SYSTEMS AND
7 COMMUNICATION TECHNOLOGY; PROVIDING FOR CREDENTIAL ANALYSIS, AUTHENTICATION
8 ASSESSMENTS, AND SECURITY PROCEDURES; REVISING PROVISIONS RELATED TO
9 DOCUMENTATION, REQUIRED INFORMATION, FORMS, SIGNATURES, AND STAMPS; REVISING
10 PROVISIONS RELATED TO JOURNALS, AUDIO-VIDEO RECORDINGS, AND THE SECURITY, ACCESS, AND
11 RETENTION OF JOURNALS AND RECORDINGS; REVISING PROVISIONS RELATED TO QUALIFICATIONS
12 AND TRAINING; AUTHORIZING THE SECRETARY OF STATE TO CHARGE FEES FOR TRAINING;
13 INCREASING THE SURETY BOND AMOUNT REQUIRED; REVISING AUTHORITY TO REFUSE TO
14 PERFORM A NOTARIAL ACT; REVISING PROHIBITED ACTS; REVISING FEES NOTARIES MAY CHARGE;
15 REVISING INFORMATION INCLUDED IN THE DATABASE OF NOTARIES PUBLIC; REVISING THE
16 SECRETARY OF STATE'S RULEMAKING AUTHORITY; CLARIFYING NOTARIAL JURISDICTION AND
17 VENUE; AUTHORIZING NOTARIES PUBLIC TO SOLEMNIZE MARRIAGES; PROVIDING FOR A
18 CERTIFICATE OF AUTHORITY TO AUTHENTICATE ACTS RELATED TO DOCUMENTS FOR USE OUTSIDE
19 THE UNITED STATES; ESTABLISHING UNLAWFUL ACTS AND PROVIDING PENALTIES; AND AMENDING
20 SECTIONS 1-5-602, 1-5-603, 1-5-609, 1-5-610, 1-5-615, 1-5-616, 1-5-617, 1-5-618, 1-5-619, 1-5-620, 1-5-621,
21 1-5-622, 1-5-623, 1-5-624, 1-5-625, 1-5-626, 1-5-627, 1-5-628, AND 40-1-301, MCA."

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

24
25 **Section 1.** Section 1-5-602, MCA, is amended to read:

26 **"1-5-602. Definitions.** As used in this part, the following definitions apply:

27 (1) "Acknowledgment" means a declaration by an individual appearing before a notarial officer that the
28 individual has willingly signed a record for the purposes stated in the record and, if the record is signed in a
29 representative capacity, that the individual signed the record with proper authority and signed the record as the
30 act of the individual or entity identified in the record.

1 (2) "Appearing before" means:

2 (a) being in the same physical location as another person and close enough to see, hear, communicate
3 with, and exchange identification credentials with that individual; or

4 (b) interacting with another individual by means of communication technology in compliance with this
5 part.

6 (3) "Certification of fact" means a notarial act in which a notary reviews public or vital records or other
7 legally accessible data to ascertain or confirm any of the following facts:

8 (a) date of birth, death, marriage, or divorce, or that an individual is alive;

9 (b) name of parent, marital partner, offspring, or sibling;

10 (c) that an event has occurred; or

11 (d) any matter authorized by law or rule of this state for certification by a notary public.

12 (4) "Communication technology" means a real-time, two-way audio-visual electronic device or process
13 that:

14 (a) allows a notarial officer located in this state and a remotely located individual to communicate with
15 each other simultaneously by sight and sound;

16 (b) facilitates communication with a remotely located individual with a vision, hearing, or speech
17 impairment when necessary under and consistent with applicable law; and

18 (c) complies with this part and implementing rules.

19 (5) "Credential analysis" means a process or service operating according to criteria approved by the
20 secretary of state through which a third person affirms the validity of a government-issued identification credential
21 through review of public and proprietary data sources.

22 (6) "Dynamic knowledge-based authentication assessment" means an identity assessment that is based
23 on a set of questions formulated from public or private data sources that does not contain a question for which
24 the principal provided a prior answer to the entity doing the assessment.

25 ~~(2)~~(7) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical,
26 electromagnetic, or similar capabilities.

27 (8) "Electronic notarization system" means a set of applications, programs, hardware, software, or
28 technologies designed to enable a notary public to perform electronic notarizations that renders every electronic
29 notarial act tamper-evident through the use of a security procedure and that meets the requirements of this part
30 and implementing rules.

1 ~~(3)~~(9) "Electronic signature" means an electronic symbol, sound, or process attached to or logically
2 associated with a record and executed or adopted by an individual with the intent to sign the record.

3 (10) "Identification credential" means a government-issued record evidencing an individual's identity.

4 (11) "Identity proofing" means a process or service by which a third person provides a notarial officer with
5 a means to verify the identity of a principal by:

6 (a) a review of personal information from public or proprietary data sources; or

7 (b) biometric data including but not limited to facial recognition, voice analysis, or fingerprint analysis.

8 ~~(4)~~(12) "In a representative capacity" means acting as:

9 (a) an authorized officer, agent, partner, trustee, or other representative for a person other than an
10 individual;

11 (b) a public officer, personal representative, guardian, or other representative, in the capacity stated in
12 a record;

13 (c) an agent or attorney in fact for a principal; or

14 (d) an authorized representative of another in any other capacity.

15 ~~(5)~~(13) "Notarial act" means an act, whether performed with respect to a tangible or electronic record,
16 that a notarial officer may perform under the law of this state. The term includes but is not limited to taking an
17 acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or
18 attesting a signature, certifying or attesting a copy, certifying or attesting a transcript of an affidavit or deposition,
19 and noting a protest of a negotiable instrument.

20 ~~(6)~~(14) "Notarial officer" means a notary public or other individual authorized to perform notarial acts.

21 ~~(7)~~(15) "Notary public" or "notary" means an individual commissioned to perform a notarial act by the
22 secretary of state.

23 (16) "Oath or affirmation" means a solemn verbal promise by which a person knowingly and willingly
24 attests to the truthfulness of a statement and that is administered by a notarial officer.

25 (17) (a) "Official record" means a record or copy of a record attested by the officer or the officer's deputy
26 with legal custody of the record that is accompanied by a certificate that the officer has custody of the record.

27 (b) The certificate must have been made under seal by:

28 (i) a clerk of a court of record in the district or political subdivision where the record is kept; or

29 (ii) a public officer with a seal of office and with official duties in the district or political subdivision where
30 the record is kept.

1 ~~(18)~~(18) "Official stamp" means a physical image affixed to or embossed on a tangible record or an
2 electronic image attached to or logically associated with an electronic record.

3 (19) "Outside the United States" means a location outside of the geographic boundaries of the United
4 States, Puerto Rico, the United States Virgin Islands, or any territory, insular possession, or other location subject
5 to the jurisdiction of the United States.

6 ~~(20)~~(20) "Person" means an individual, corporation, business trust, statutory trust, estate, trust,
7 partnership, limited liability company, association, joint venture, public corporation, government or governmental
8 subdivision, agency, or instrumentality, or any other legal or commercial entity.

9 (21) "Principal" means:

10 (a) an individual whose signature is notarized; or

11 (b) an individual taking an oath or affirmation from the notary public but not in the capacity of a credible
12 or other witness for the notarial act.

13 (22) "Public key certificate" means an electronic credential that is used to identify an individual who
14 signed an electronic record with the credential and is issued and managed by a third-party provider utilizing public
15 key infrastructure technology.

16 (23) "Public key infrastructure technology" means a method of enabling a user of an unsecured public
17 network, including the internet, to securely and privately exchange data and money through a public and private
18 cryptographic key pair that is obtained and shared through a trusted certificate authority that provides for:

19 (a) a digital certificate that is able to identify an individual or organization; and

20 (b) a directory service that is able to store and, if necessary, revoke a digital certificate.

21 ~~(24)~~(24) "Record" means information that is inscribed on a tangible medium or that is stored in an
22 electronic or other medium and is retrievable in perceivable form.

23 (25) "Remote notarization" means a notarial act performed by means of communication technology on
24 a tangible record that meets the standards adopted under this part.

25 (26) "Remote online notarization" means a notarial act or notarization performed by means of
26 communication technology and an electronic notarization system on an electronic record that meets the standards
27 adopted under this part.

28 (27) "Remote presentation" means transmission to the notarial officer through communication technology
29 of an image of a government-issued identification credential that is of sufficient quality to enable the notarial
30 officer to:

1 (a) identify the individual seeking the notarial officer's services; and

2 (b) visually review the identity credential and its data; and

3 (c) perform credential analysis.

4 (28) "Security procedure" means a procedure employed for the purpose of verifying that an electronic
 5 signature, record, or performance is that of a specific person or for detecting changes or errors in the information
 6 in an electronic record. The term includes a procedure that requires the use of algorithms or other codes,
 7 identifying words or numbers, encryption, or callback or other acknowledgment procedures.

8 ~~(11)~~(29) "Sign" means, with present intent to authenticate or adopt a record:

9 (a) to execute or adopt a tangible symbol; or

10 (b) to attach to or logically associate with the record an electronic symbol, sound, or process.

11 ~~(12)~~(30) "Signature" means a tangible symbol or an electronic signature that evidences the signing of a
 12 record.

13 (31) "Signature witnessing" means the notarial act in which a notarial officer witnesses a principal execute
 14 a record knowingly and willingly for the purposes intended while appearing before the notarial officer.

15 (32) "Sole control" means at all times being in the direct physical custody of the notarial officer or
 16 safeguarded by the notarial officer with a password or other secure means of authentication or access.

17 ~~(13)~~(33) "Stamping device" means:

18 (a) a physical device capable of affixing to or embossing on a tangible record an official stamp; or

19 (b) an electronic device or process capable of attaching to or logically associating an official stamp with
 20 an electronic record. The notarial official stamp, whether applied to the record physically or electronically, is
 21 considered to be a seal for the purposes of admitting a ~~document~~ record in court.

22 ~~(14)~~(34) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United
 23 States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

24 (35) "Tamper-evident" means that any change to a record must provide evidence of the change.

25 ~~(15)~~(36) "Verification on oath or affirmation" or "jurat" means a declaration, made by ~~an individual~~ a
 26 principal on oath or affirmation before a notarial officer, that a statement in a record is true and that the record
 27 has been executed knowingly and willingly before the notarial officer for the purposes intended."

28

29 **Section 2.** Section 1-5-603, MCA, is amended to read:

30 **"1-5-603. Requirements for certain notarial acts -- personal and remote appearance --**

1 **identification methods.** (1) A notarial officer who takes an acknowledgment of a record shall determine, from
 2 personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before
 3 the notarial officer and making the acknowledgment has the identity claimed and that the signature on the record
 4 is the signature of the individual and was made knowingly and willingly for the purposes intended.

5 (2) A notarial officer who takes a verification on oath or affirmation of a statement shall determine, from
 6 personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before
 7 the notarial officer, signing the record, and making the verification has the identity claimed and that the signature
 8 on the statement verified is the signature of the individual and was made knowingly and willingly for the purposes
 9 intended.

10 (3) A notarial officer who witnesses or attests to a signature shall determine, from personal knowledge
 11 or satisfactory evidence of the identity of the individual, that the individual appearing before the notarial officer
 12 and signing the record has the identity claimed and has executed the record knowingly and willingly for the
 13 purposes intended.

14 (4) (a) A notarial officer who takes an acknowledgment or witnesses a signature of an individual who
 15 signs a record in a representative capacity shall determine:

16 (i) from personal knowledge or satisfactory evidence of the identity of the individual that the individual
 17 appearing before the notarial officer has the identity claimed; and

18 (ii) from the record, personal knowledge, or presentment of an official record that the individual holds the
 19 title or capacity claimed and has knowingly and willingly signed the record in that capacity for the purposes
 20 intended.

21 (b) The notarial officer may refuse to perform the notarial act if the notarial officer is not satisfied that the
 22 official record or the presented record evidences the individual's capacity to act as the principal's representative
 23 on the record presented for notarization.

24 ~~(4)~~(5) A notarial officer who certifies or attests a copy of a record or an item that was copied shall
 25 determine that the copy is a full, true, and accurate transcription or reproduction of the original or official record
 26 or the item. A notarial officer may certify that a tangible copy of an electronic record is an accurate copy of the
 27 electronic record. A county clerk shall accept for recording a tangible copy of an electronic record containing an
 28 original notarial certificate as satisfying any requirement that a record be an original.

29 ~~(5)~~(6) A notarial officer who makes or notes a protest of a negotiable instrument shall determine the
 30 matters set forth in 30-3-510(2).

1 (7) A notarial officer who administers an oath or affirmation shall determine from personal knowledge
 2 or satisfactory evidence of the identity of the individual that the person appearing before the notarial officer and
 3 taking the oath or affirmation has the identity claimed and is knowingly and willingly making the statement with
 4 the intent to be bound by the statement.

5 ~~(6)~~(8) A notarial officer who administers an oath in conjunction with taking a deposition and certifies or
 6 attests to the transcript of the deposition shall certify to the matters set forth by this part, other laws, or the court
 7 of jurisdiction.

8 ~~(7)~~(9) (a) If a notarial act relates to a statement made in or a signature executed on a record, the
 9 individual making the statement or executing the signature shall appear physically before the notarial officer or
 10 by ~~real-time, two-way video and audio~~ communication technology as authorized in 1-5-615 and rules adopted
 11 pursuant to 1-5-628.

12 (b) Except as provided in subsection ~~(7)(c)~~ (9)(c), subsection ~~(7)(a)~~ (9)(a) modifies, limits, and
 13 supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq.

14 (c) Subsection ~~(7)(a)~~ (9)(a) does not modify, limit, or supersede 15 U.S.C. 7001(c) or authorize electronic
 15 delivery of any of the notices described in 15 U.S.C. 7003(b).

16 (10) (a) Subject to subsection (10)(b), a notarial officer may perform a remote notarization or remote
 17 online notarization for a principal who is located:

18 (i) in this state;

19 (ii) outside of this state but within the United States; or

20 (iii) outside the United States if:

21 (A) the act is not known by the notarial officer to be prohibited in the jurisdiction in which the principal
 22 is physically located at the time of the act; and

23 (B) the record is part of or pertains to:

24 (I) a matter that is to be filed with or is before a public official or court, governmental entity, or other entity
 25 located in the territorial jurisdiction of the United States;

26 (II) property located in the territorial jurisdiction of the United States; or

27 (III) a transaction substantially connected with the United States.

28 (b) A notarial officer may perform a remote notarization or remote online notarization only if the notarial
 29 officer:

30 (i) is physically located in this state at the time the notarial act is performed;

- 1 (ii) identifies the principal through personal knowledge or satisfactory evidence;
2 (iii) executes the notarial act in a single recorded session that complies with this part;
3 (iv) is satisfied that any record that is signed, acknowledged, or otherwise presented for notarization by
4 the principal is the same record remotely notarized by the notarial officer;
5 (v) is satisfied that the quality of the communication technology is sufficient to make the determinations
6 required for the notarial act under this part and any other applicable law of this state;
7 (vi) identifies the venue as described in [section 19]; and
8 (vii) is capable of meeting the requirements of 1-5-618.
9 (c) A notarial officer who performs a remote notarization or remote online notarization shall take
10 reasonable steps to ensure that:
11 (i) the notarial officer, the principal, and any required witness are accessing the communication
12 technology or the electronic notarization system, or both, through an authentication procedure that is reasonably
13 secure from unauthorized access;
14 (ii) the principal and any required witness are viewing the same record; and
15 (iii) all signatures, changes, and attachments to the record are made in real-time.
16 (d) A notarial act performed by means of communication technology is considered to have been
17 performed in Montana and is governed by Montana law regardless of the physical location of the principal at the
18 time of the notarization.
19 (11) (a) A notarial officer who certifies a fact may review a public or private record to ascertain or verify
20 that specific data is contained or shown on the record or memorialized in a publication that the notary believes
21 to be reliable.
22 (b) A notarial officer who certifies that an individual is alive shall verify from personal knowledge or
23 satisfactory evidence that the individual appearing before the notarial officer is alive at the time of certification.
24 (c) A notarial officer who certifies a photograph shall verify from personal knowledge or satisfactory
25 evidence that the photograph is an accurate representation of the individual or item represented.
26 ~~(8)~~(12) (a) A notarial officer has personal knowledge of the identity of an individual appearing before the
27 notarial officer if the individual is personally known to the notarial officer through dealings sufficient to provide
28 reasonable certainty that the individual has the identity claimed.
29 ~~(9)~~(b) A notarial officer has satisfactory evidence of the identity of an individual appearing before the
30 notarial officer if the notarial officer can identify the individual:

1 ~~(a)~~(i) by means of:

2 ~~(i)~~(A) a passport, driver's license, or government-issued nondriver identification card credential, which

3 may be current or expired, and if expired may not be expired for more than 3 years before the performance of

4 the notarial act; or

5 ~~(ii)~~(B) another form of government identification issued to an individual, which:

6 ~~(A)~~(I) may be current or expired, and if expired may not be expired for more than 3 years before the

7 performance of the notarial act;

8 ~~(B)~~(II) must contain the signature or a photograph of the individual; and

9 ~~(C)~~(III) must be satisfactory to the notarial officer; or

10 ~~(b)~~(ii) by ~~verification on~~ oath or affirmation of a credible witness ~~personally appearing~~:

11 (A) physically present before the notarial officer and known to the notarial officer or whom the notarial

12 officer can identify on the basis of a passport, driver's license, or government-issued nondriver identification card

13 record, which is current or expired, and if expired may not be expired for more than 3 years before the

14 performance of the notarial act; or

15 (B) appearing by means of communication technology and identified by the notarial officer as provided

16 in subsection (12)(c).

17 (c) If a principal or witness is appearing by means of communication technology, a notarial officer has

18 satisfactory evidence of the identity of the individual if the notarial officer can identify the individual by two or more

19 different types of technologies, processes, or services approved by the secretary of state, such as dynamic

20 knowledge-based authentication assessment, valid public key certificate, identity proofing, remote presentation

21 and credential analysis, or any other means prescribed in rule by the secretary of state.

22 ~~(10)~~(13) A notarial officer may use one or more approved identification technologies described in

23 subsection (12)(c) for an individual who is physically in the presence of the notarial officer as satisfactory

24 evidence of identity.

25 (14) A notarial officer may require an individual to provide additional information or identification

26 credentials necessary to assure the notarial officer of the identity of the individual."

27

28 **Section 3.** Section 1-5-609, MCA, is amended to read:

29 **"1-5-609. Certificate of notarial acts.** (1) (a) A notarial act must be evidenced by a certificate ~~signed~~

30 ~~and dated~~ completed by a notarial officer.

- 1 **(b)** The certificate must:
- 2 ~~(a)~~(i) be executed contemporaneously with the performance of the notarial act;
- 3 ~~(b)~~(ii) specify the notarial act performed;
- 4 (iii) identify the venue as described in [section 19];
- 5 (iv) identify the name of the principal, the type of record and issuing entity that is copied, or the
- 6 information the notarial officer has certified under 1-5-603(11);
- 7 (v) be signed and dated by the notarial officer. If the notarial officer is a notary public, a clerk of court, a
- 8 deputy clerk of court, a clerk and recorder, a deputy clerk and recorder, the state registrar, or the authorized agent
- 9 of the state registrar, the certificate must be signed in the same manner as on file with the secretary of state.
- 10 ~~(c)~~ identify the jurisdiction in which the notarial act is performed;
- 11 ~~(d)~~(vi) contain the title of the office of the notarial officer; and
- 12 ~~(e)~~ if the notarial officer is a notary public, indicate the date of expiration, if any, of the notarial officer's
- 13 ~~commission~~
- 14 (vii) contain the impression or electronic image of the notary public's official stamp or the notarial officer's
- 15 seal.
- 16 (2) (a) ~~If a notarial act regarding a tangible record is performed by:~~
- 17 ~~(i) a notary public, the notary public shall affix an official stamp to or emboss on the certificate. The~~
- 18 ~~certificate for a notarial act on a tangible record must be part of or securely affixed to the record.~~
- 19 ~~(ii) a notarial officer other than a notary public and the certificate contains the information specified in~~
- 20 ~~subsections (1)(b) through (1)(d), the notarial officer may affix to or emboss an official stamp on the certificate.~~
- 21 (b) ~~If a notarial act regarding an electronic record is performed by a notarial officer and the certificate~~
- 22 ~~contains the information specified in subsections (1)(b) through (1)(d), the certificate and official stamp The~~
- 23 ~~certificate for a notarial act on an electronic record must be attached to or logically associated with the record.~~
- 24 (3) A certificate of a remote notarization or remote online notarization must include the information
- 25 specified in subsection (1)(b), indicate that the notarial act was performed using communication technology, and
- 26 include any other information required by rule.
- 27 ~~(3)~~(4) A certificate of a notarial act is sufficient if the certificate meets the requirements of subsections
- 28 (1) ~~and~~ (2) through (3) and this subsection and:
- 29 (a) is in the short form set forth in 1-5-610;
- 30 (b) is in a form otherwise permitted by the law of this state;

1 (c) is in a form permitted by the laws applicable in the jurisdiction in which the notarial act was performed;
2 or

3 (d) sets forth the actions of the notarial officer and the actions are sufficient to meet the requirements
4 of the notarial act as provided in 1-5-610, 1-5-616, and this section or of the laws of this state other than specified
5 in this part.

6 ~~(4)(5)(a)~~ A ~~notarial officer~~ notary public may subsequently correct any information included on or omitted
7 from a certificate executed by that ~~notarial officer~~ notary if the change or correction can be evidenced by the
8 information contained in the notary's journal record of the transaction.

9 (b) A notary public may not change or correction may not be made to the correct an impression or
10 electronic image of a notarial seal or the notarial an official stamp, but may affix a subsequent impression on a
11 tangible record or attach or logically associate with an electronic record an electronic image of a missing, illegible,
12 or incorrect official stamp.

13 (c) Any changes or corrections must be dated and initialed by the notary public and a corresponding
14 notation of the changes must be made in the journal record. Only the notary public who performed the
15 notarization may make or authorize a change or correction to a previously completed certificate. If a notary public
16 authorizes a third party to change or correct the information included or omitted on a previously completed
17 certificate, the authorization must be granted in writing and a copy of the message authorizing the change and
18 a copy of the changed certificate must be attached to the notary public's journal record for that transaction."

19

20 **Section 4.** Section 1-5-610, MCA, is amended to read:

21 **"1-5-610. Short forms.** The following short-form certificates of notarial acts are sufficient for the
22 purposes indicated if they are completed with the information required by 1-5-609(1) ~~and (2)~~ through (4):

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

24 State of.....

25 County of.....

26 This record was acknowledged before me on (date) by (name(s) of individual(s))
27

28
29 (Signature of notarial officer)

30 (Official Stamp)



1
2

Title Printed name and title of officer (if not shown in stamp)

(2) For an acknowledgment in a representative capacity:

4 State of.....

5 County of.....

6 This record was acknowledged before me on (date) by (name(s) of individual(s)) as (~~type of authority~~ title
7 or capacity) of or for (name of party on behalf of whom the record was executed).

8

(Signature of notarial officer)

10 (Official stamp)

11

Title Printed name and title of officer (if not shown in stamp)

(3) For a verification on oath or affirmation (jurat):

14 State of.....

15 County of.....

16 This record was signed and sworn to (or affirmed) before me on (date) by (name(s) of individual(s))
17

18

(Signature of notarial officer)

20 (Official stamp)

21

(Name - typed, stamped, or printed)

23

Title Printed name and title of officer (if not shown in stamp)

(4) For witnessing or attesting a signature:

26 State of.....

27 County of.....

28 The record was signed before me on (date) by (name(s) of individual(s))

29

(Signature of notarial officer)

30



1 (Official stamp)

2

3 Title Printed name and title of officer (if not shown in stamp)

4 (5) For a signature witnessing in a representative capacity:

5 State of.....

6 County of.....

7 This record was signed before me on (date) by (name(s) of individual(s)) as (title or capacity) of or for

8 (name of party on behalf of whom the record was executed).

9 (Signature of notarial officer)

10 (Official Stamp)

11

12 Printed name and title of officer (if not shown in stamp)

13 (5)(6) For certifying a copy of a tangible record:

14 State of.....

15 County of.....

16 I certify that this is a true and correct copy of (identification of record), an original record in the possession
17 of, or issued by, (custodian or issuer) and made by me on (date).

18

19 (Signature of notarial officer)

20 (Official stamp)

21

22 Title Printed name and title of officer (if not shown in stamp)

23 (7) For certifying a copy of an electronic record:

24 State of.....

25 County of.....

26 I certify that the foregoing and annexed record entitled (title of record), dated _____, and consisting
27 of _____ (pages or size of file) is a true and correct copy of an electronic record printed directly from the
28 electronic file by me on (date)

29

30 (Signature of notarial officer)



1 (Official stamp)

2

3 Printed name and title of officer (if not shown in stamp)

4 ~~(6)~~(8) For certifying a transcript of a deposition or affidavit:

5 State of.....

6 County of.....

7 I hereby certify and state the following:

8 that I have sworn in the deponent;

9 that the deposition was taken before me and this is a true and accurate transcription of the testimony;

10 that I am not a relative, agent, or employee of the deponent or the attorney or counsel of any of the
11 parties;

12 that I am not an interested party to the matter.

13 A review of this transcript (was / was not) requested.

14 Dated this day of, 20...

15

16 (Signature of notarial officer)

17 (Official stamp)

18

19 ~~Title~~ Printed name and title of officer (if not shown in stamp)

20 (9) For a remote notarization or remote online notarization on a tangible or electronic record for a principal

21 located outside the United States:

22 State of.....

23 County of.....

24 This record was (acknowledged) (signed) (signed and sworn to or affirmed) before me by use of
25 communication technology on (date) by (name of principal(s)), who declared that (he) (she) (they) (is) (are)
26 located in (place where principal(s) was/were physically located at the time of notarial act) and that this record
27 is part of or pertains to a matter that is to be filed with or is before a court, governmental entity, or other entity
28 located in the United States or involves property located in, or a transaction substantially connected with, the
29 United States.

30



1 (Signature of notarial officer)

2 (Official stamp)

3

4 Printed name and title of officer (if not shown in stamp)

5 (10) For a remote notarization or remote online notarization on a tangible or electronic record for a
6 principal located in or outside this state but within the United States:

7 State of.....

8 County of.....

9 This record was (acknowledged) (signed) (signed and sworn to or affirmed) before me by use of
10 communication technology on (date) by (name of principal(s)), who declared that (he) (she) (they) (is) (are)
11 located in (place within the United States where principal(s) was/were physically located at the time of notarial
12 act).

13

14 (Signature of notarial officer)

15 (Official stamp)

16

17 Printed name and title of officer (if not shown in stamp)

18 (11) For a certification of fact or event:

19 State of.....

20 County of.....

21 I certify that I have confirmed that (information that is being verified) is true and correct based on a review
22 of (the source of the information) made by me on (date).

23

24 (Signature of notarial officer)

25 (Official stamp)

26

27 Printed name and title of officer (if not shown in stamp)

28 (12) For certification of life:

29 State of.....

30 County of.....



1 I certify that (name of individual) is alive and appeared physically before me at (location where individual
2 appeared) on (date) at (time a.m. or p.m.).

3 _____
4 (Signature of notarial officer)

5 (Official stamp)

6 _____
7 Printed name and title of officer (if not shown in stamp)

8 (13) For certification of photograph:

9 State of.....

10 County of.....

11 I certify that the attached photograph is an accurate representation of (name of individual or item) based
12 on (how subject was confirmed) on (date).

13 _____
14 (Signature of notarial officer)

15 (Official stamp)

16 _____
17 Printed name and title of officer (if not shown in stamp)"

18

19 **Section 5.** Section 1-5-615, MCA, is amended to read:

20 **~~"1-5-615. Notification regarding performance of notarial~~ Notarial act on regarding electronic**
21 **~~record -- selection of technology system -- notification -- training.~~ (1) (a) A ~~notary public~~ notarial officer may**
22 **~~select one or more tamper-evident technologies~~ electronic notarization systems to perform notarial acts with**
23 **~~respect to electronic records.~~**

24 (b) A person may not require a ~~notary public~~ notarial officer to perform a notarial act with respect to an
25 electronic record with a ~~technology~~ an electronic notarization system that the ~~notary public~~ notarial officer has
26 not selected.

27 (2) An electronic notarization system provider shall take reasonable steps to ensure that a notary public
28 opting to use the provider's system has the knowledge to use it to perform electronic notarial acts in compliance
29 with this part.

30 ~~(2)(3)~~ Before a notary public performs the notary public's initial notarial act ~~with respect to an electronic~~



1 ~~record; using an electronic notarization system or a communication technology,~~ a notary public shall:

2 (a) notify the secretary of state that the notary public will be performing notarial acts ~~with respect to~~
3 ~~electronic records~~ using the electronic notarization system or the communication technology; ~~and~~

4 (b) identify the electronic notarization system or communication technology, or both, that the notary
5 public intends to use. If the secretary of state has established by rule the standards for the system or technology
6 ~~used by the notary public,~~ the system or technology must comply with the standards. If the system or technology
7 complies with the standards, the secretary of state shall approve the use of the system or technology.

8 (c) complete a course of instruction approved by the secretary of state and pass an examination based
9 on the course. The course must cover notarial rules, procedures, and ethical obligations pertaining to remote or
10 electronic notarization under this part or pursuant to any other law or official guideline of this state. The course
11 may be completed in conjunction with any course required by the secretary of state for a notary public
12 commission. A notary shall submit proof to the secretary of state that the notary has successfully completed the
13 course and examination.

14 ~~(3) A notary public in this state may perform acknowledgments or verifications on oath or affirmation by~~
15 ~~means of a real-time, two-way audio-video communication, according to the rules and standards established by~~
16 ~~the secretary of state, if:~~

17 ~~—— (a) the signer is personally known to the notary or identified by a credible witness and, except for a~~
18 ~~transaction described in subsection (3)(b)(iv), is a legal resident of this state; and~~

19 ~~—— (b) the transaction:~~

20 ~~—— (i) involves real property located in this state;~~

21 ~~—— (ii) involves personal property titled in this state;~~

22 ~~—— (iii) is under the jurisdiction of any court in this state; or~~

23 ~~—— (iv) is pursuant to a proxy marriage under 40-1-213 or 40-1-301."~~

24

25 **Section 6.** Section 1-5-616, MCA, is amended to read:

26 **"1-5-616. Official signature and stamp.** (1) The official signature of a notary public must:

27 (a) be filed with the secretary of state on a form prescribed by the secretary of state;

28 (b) be reasonably similar to the official signature on file with the secretary of state;

29 (c) if executed on a tangible record, be in blue or black ink;

30 (d) if executed on an electronic record, be an electronic image of the official signature submitted to the

1 secretary of state; and

2 (e) be affixed to all tangible and electronic records.

3 (2) The official stamp of a notary public must:

4 (+)(a) include the notary public's name, title, city of residence, commission expiration date, or other
5 information required by the secretary of state;

6 (-)(b) if a physical image, be in blue or black ink in a format prescribed by the secretary of state; or
7 ——(3) be and capable of being copied together with the record to which the official stamp is affixed or
8 attached or with which the official stamp is logically associated;

9 (c) if an electronic image, be the same format, color, content, and approximate size as the tangible
10 official stamp and capable of being copied together with the record to which the official stamp is affixed or
11 attached or with which the official stamp is logically associated."

12

13 **Section 7.** Section 1-5-617, MCA, is amended to read:

14 **"1-5-617. Stamping device.** (1) A notary public is the sole owner of the notary public's stamping device
15 and is responsible for the security of the notary public's stamping device and may not allow another individual
16 to use the stamping device to perform a notarial act or for any other reason.

17 (2) (a) On resignation from or the revocation or expiration of the notary public's commission or on the
18 expiration of the date set forth in the stamping device, the notary public shall disable the stamping device by
19 destroying, defacing, damaging, erasing, or securing the stamping device against use in a manner that renders
20 the stamping device unusable.

21 (b) On the death or adjudication of incompetency of a notary public, the notary public's personal
22 representative or guardian or any other person knowingly in possession of the stamping device shall render the
23 stamping device unusable by destroying, defacing, damaging, erasing, or securing the stamping device against
24 use in a manner that renders the stamping device unusable.

25 (3) The notary public or the notary public's personal representative or guardian shall promptly notify the
26 secretary of state's office on discovering that the notary public's stamping device is lost, or stolen, or otherwise
27 inaccessible to the notary public."

28

29 **Section 8.** Section 1-5-618, MCA, is amended to read:

30 **"1-5-618. Notary Audio-video recordings -- notary public journal -- security and retention.** (1) (a)

1 If a notarial act is performed using communication technology, the notarial officer shall make an audio-visual
 2 recording of the entire communication.

3 (b) Except as provided in subsection (1)(d)(ii), a notarial officer must keep sole possession of an
 4 audio-visual recording.

5 (c) (i) A notarial officer shall allow a person to inspect or obtain a copy of an audio-visual recording if:

6 (A) the requester specifies the month, year, type of record, and name of the principal for the notarial act,
 7 in a signed tangible or electronic request;

8 (B) the notarial officer does not surrender possession or control of the original recording;

9 (C) the requester is shown or given a copy of only the recording specified; and

10 (D) the notarial officer is satisfied that the requester has reasonable purpose directly relating to the
 11 notarization.

12 (ii) A recording may be examined and copied without restriction by a law enforcement officer in the
 13 course of an official investigation, subpoenaed by court order, or surrendered at the direction of the secretary of
 14 state.

15 (d) (i) Except as provided in subsection (1)(d)(ii), a notarial officer shall retain an audio-visual recording
 16 for 10 years from the date of the recording.

17 (ii) A current or former notarial officer may transmit the audio-visual recording to a repository approved
 18 by the secretary of state.

19 ~~(1)(2) (a) A notary public shall maintain one or more journals in which the notary public chronicles all~~
 20 ~~notarial acts that the notary public performs. Unless the provisions of subsection (7) apply, the notary public shall~~
 21 ~~retain the journal for 10 years after the performance of the last notarial act chronicled in the journal.~~

22 ~~(2)(b) A journal may be created on a tangible medium or in an electronic format to chronicle all notarial~~
 23 ~~acts, whether those notarial acts are performed regarding tangible or electronic records. The format of a journal~~
 24 ~~maintained on a tangible medium must be a permanent, bound register designed to deter fraud. A journal~~
 25 ~~maintained in an electronic format must be in a permanent, tamper-evident electronic format that complies with~~
 26 ~~the rules adopted by the secretary of state.~~

27 (3) An entry in a journal must be made contemporaneously with performance of the notarial act and
 28 contain:

29 (a) the date and time of the notarial act;

30 (b) a description of the record, ~~if any~~ including the date of the record if indicated, and the type of notarial

1 act;

2 (c) the full name and address of each ~~individual for whom the notarial act is performed~~ principal;

3 (d) the signature of each ~~individual for whom the notarial act is performed~~ principal, except ~~that~~;

4 (i) transcripts of depositions and certified copies do not require the signature of the individual for whom
5 the notarial act is performed; and

6 (ii) if the notarial act is performed using communication technology, the journal record must reference
7 the storage location of the audio-video recording in lieu of the signature of the principal;

8 (e) if the identity of the ~~individual for whom the notarial act is performed~~ principal is based on personal
9 knowledge, a statement to that effect;

10 (f) if the identity of the ~~individual for whom the notarial act is performed~~ principal is based on satisfactory
11 evidence, a brief description of the method of identification and the identification credential presented, if any,
12 including the date of issuance or expiration of any identification credential; ~~and~~

13 (g) if the notarial act is performed using an electronic notarization system or communication technology,
14 or both, a notation identifying the system or technology, or both; and

15 ~~(g)(h)~~ (h) the fee, if any, charged by the notary public.

16 ~~(4) If in performing the notarial act the notary public uses audio-video communication technology, as~~
17 ~~provided in 1-5-615 and by rule, the notary public shall keep a copy of the an audio-visual recording of the entire~~
18 ~~communication and a notation of the identification used for a period of 10 years from the date of the notarization.~~
19 ~~The provisions of subsection (7) apply to this subsection.~~

20 (4) A notary public may not record in the journal a social security number, passport number, driver's
21 license number, birth date, or any other information prohibited by the secretary of state. A notary public may
22 include other information descriptive of the record, including the number of pages in a document, whether the
23 document was written in a foreign language, or other information pertaining to the record that is not otherwise
24 prohibited by law or rule.

25 (5) (a) Except as provided in subsection (9)(b), a notary public shall keep sole control of the journal and
26 all other notarial records and surrender or destroy them only as authorized by law or rule, by court order, or at
27 the direction of the secretary of state.

28 (b) A notary public shall not allow the notary's journal to be used by any other notary and shall not
29 surrender the journal to an employer upon termination of employment without the approval of the secretary of
30 state. An employer may retain a copy of the journal of an employee who is a notary after the notary's employment

1 ceases if the journal contains records of notarial acts performed within the scope of the notary's employment.

2 (6) (a) Any person may inspect or obtain a copy of an entry in a notary public's journal if:

3 (i) the person specifies in a signed tangible or electronic request the month, year, type of record, and
4 name of the principal;

5 (ii) the notary public does not surrender possession or control of the journal;

6 (iii) the person is shown or given a copy of only the entry specified; and

7 (iv) the notary is satisfied that a person requesting the inspection or copy does not have a criminal or
8 other illegal purpose for inspecting the entry or obtaining the copy.

9 (b) A journal may be examined and copied without restriction:

10 (i) by a law enforcement officer in the course of an official investigation

11 (ii) if subpoenaed by court order; or

12 (iii) at the direction of the secretary of state.

13 ~~(5)(7)~~ A notary public shall promptly notify the secretary of state on discovering that the notary public's
14 journal is lost or stolen.

15 ~~(6)(8)~~ A notary public shall ~~retain the notary public's journal as provided in subsection (1) or (7) and~~ notify
16 the secretary of state of the journal's location upon resignation of a commission or if the notary public's
17 commission has been revoked or suspended.

18 (9) (a) Except as provided in subsection (9)(b), a notary public shall retain a journal for 10 years after the
19 performance of the last notarial act chronicled in the journal.

20 ~~(7)(b)~~ A ~~current or former~~ notary public may, ~~instead of retaining a journal as provided in subsection (1),~~
21 ~~(4), or (6),~~ transmit the journal to ~~the~~ a repository approved by the secretary of state.

22 ~~(8)(10)~~ On the death or adjudication of incompetency of a current or former notary public, the notary
23 public's personal representative or guardian or any other person knowingly in possession of the notary public's
24 journal ~~or journals~~ or audio-visual recordings shall transmit all journals and recordings to ~~the~~ a repository
25 approved by the secretary of state.

26 (11) Upon revocation of a notary public's commission, the notary shall transmit the notary's journal and
27 audio-visual recordings to a repository approved by the secretary of state."

28

29 **Section 9.** Section 1-5-619, MCA, is amended to read:

30 **"1-5-619. Notary public qualifications -- commission -- renewals.** (1) An applicant for To hold a

1 commission as a notary public, an individual must:

2 (a) be at least 18 years old;

3 (b) be a citizen or permanent legal resident of the United States;

4 (c) (i) be a resident of ~~or have a place of employment or practice in this state;~~ Montana;

5 (ii) be the spouse or legal dependent of military personnel assigned to active duty in this state;

6 (iii) maintain a place of business in the state of Montana that is registered pursuant to Title 35 and meet
7 any applicable business licensing requirements of the local government where the business is located;

8 (iv) be regularly employed at an office, business, or facility located within the state of Montana by an
9 employer registered and licensed to do business in this state; or

10 (v) hold a current professional license to practice the profession in Montana issued by an appropriate
11 Montana authority; and

12 (d) be able to read and write English; ~~and~~

13 ~~—— (e) be eligible to receive a commission as provided in subsection (2).~~

14 (2) To be eligible for a new or renewed commission, an applicant shall pass an examination and meet
15 the education requirements as provided in 1-5-620 and may not have been disqualified as provided in 1-5-621.

16 (3) An individual qualified under subsections (1) and (2) may apply to the secretary of state for a new
17 or renewed commission as a notary public.

18 (4) An applicant for a new or renewed commission, ~~including an applicant to renew an existing~~
19 ~~commission~~, shall:

20 (a) complete an application and provide information required by rule by the secretary of state;

21 (b) pay a filing fee set by rule;

22 (c) execute an oath of office and comply with requirements adopted by rule by the secretary of state;

23 (d) obtain an assurance in the form of a surety bond or its functional equivalent in the amount of ~~\$10,000~~

24 \$25,000. The assurance must be issued by a surety or other entity licensed or authorized to do business in this

25 state. The assurance must cover acts performed during the term of the notary public's commission and must be

26 in the form prescribed by the secretary of state. The surety or issuing entity is liable under the assurance if a

27 notary public violates a law with respect to notaries public in this state. The surety or issuing entity shall give 30

28 days' notice to the secretary of state before canceling the assurance. The surety or issuing entity shall notify the

29 secretary of state not later than 30 days after making a payment to a claimant under the assurance. A notary

30 public may perform notarial acts in this state only during the period that a valid assurance is on file with the

1 secretary of state.

2 (e) provide certification that the applicant has passed the examination and completed the education
3 requirements in 1-5-620; and

4 (e)(f) submit the application, bond, certification, and nonrefundable filing fee to the secretary of state
5 within 30 days before or after the effective date of the surety bond or the expiration of the previous commission.

6 (5) The secretary of state shall issue a commission for a 4-year term as a notary public to an applicant
7 for a new or a renewed commission who has complied with this section.

8 (6) An individual may not have more than one Montana notary public commission in effect at the same
9 time."

10

11 **Section 10.** Section 1-5-620, MCA, is amended to read:

12 **"1-5-620. Examination and education of notary public -- fee.** (1) An applicant for a new or renewed
13 commission as a notary public who does not hold a commission in this state shall pass an examination
14 administered by the secretary of state or by an entity approved by the secretary of state. The examination must
15 be based on the course of study described in subsection (2).

16 (2) The secretary of state or an entity approved by the secretary of state shall offer regularly a course
17 of study to applicants who do not hold commissions as notaries public in this state for a new or renewed
18 commission. The course must cover the laws, rules, procedures, and ethics relevant to notarial acts.

19 (3) On and after July 1, 2020, in addition to passing the examination:

20 (a) for a new commission, the applicant must have completed at least 4 hours of notary public education
21 approved by the secretary of state within the previous 12 months;

22 (b) to renew a commission, an applicant must have completed:

23 (i) at least 4 hours of notary public continuing education approved by the secretary of state within the
24 previous 12 months; or

25 (ii) at least 2 hours of notary public continuing education approved by the secretary of state in each of
26 the previous 3 years.

27 (4) The secretary of state shall collect fees commensurate with the cost incurred by the secretary of
28 state's office for providing notary public education and examination."

29

30 **Section 11.** Section 1-5-621, MCA, is amended to read:

1 **"1-5-621. Grounds to deny -- terms for refusing to renew, revoking, suspending, or conditioning**
2 **notary public commissions.** (1) The secretary of state may deny, refuse to renew, revoke, suspend, or impose
3 a condition on a commission as a notary public for any act or omission that demonstrates the individual lacks the
4 honesty, integrity, competence, or reliability to act as a notary public, including:

5 (a) failure to comply with the provisions of this part;

6 (b) a fraudulent, dishonest, or deceitful misstatement or omission in the application submitted to the
7 secretary of state for a commission as a notary public;

8 (c) pending release from supervision, a conviction of the applicant or notary public of any felony or crime
9 involving fraud, dishonesty, or deceit, although conviction of a criminal offense is not a complete bar to receiving
10 a commission if the individual's full rights have been restored;

11 (d) admission by the applicant or notary public or a finding in any legal proceeding or disciplinary action
12 of the applicant's or notary public's fraud, dishonesty, or deceit;

13 (e) failure by the notary public to discharge any duty required of a notary public, whether the provisions
14 of this part, rules of the secretary of state, or any state or federal law;

15 (f) use of false or misleading advertising or representation by the notary public representing that the
16 notary public has a duty, right, or privilege that the notary does not have;

17 (g) violation by the notary public of a rule of the secretary of state regarding a notary public;

18 (h) denial, refusal to renew, revocation, suspension, or conditioning of a notary public commission in
19 another state; and

20 (i) failure of the notary public to maintain an assurance, as provided in 1-5-619.

21 (2) The secretary of state may require a notary public who has violated a provision of this part or a rule
22 of the secretary of state implementing a provision of this part to complete a notary public education class
23 approved by the secretary.

24 (3) A notary who is convicted of or pleads guilty or no contest to a felony crime involving fraud,
25 dishonesty, or deceit shall notify the secretary of state within 30 days of the conviction or plea.

26 ~~(2)~~(4) If the secretary of state denies, refuses to renew, revokes, suspends, or imposes conditions on
27 a commission as a notary public, the applicant or notary public is entitled to ~~timely notice and hearing~~ contest the
28 action in accordance with the Montana Administrative Procedure Act.

29 ~~(3)~~(5) The authority of the secretary of state to deny, refuse to renew, revoke, suspend, or impose
30 conditions on a commission as a notary public does not prevent an individual from seeking and obtaining other

1 criminal or civil remedies provided by law."

2

3 **Section 12.** Section 1-5-622, MCA, is amended to read:

4 **"1-5-622. Authority and requirements to refuse to perform notarial act.** (1) A notarial officer ~~may~~
5 shall refuse to perform a notarial act if the notarial officer is not satisfied that:

6 (a) the individual executing the record is competent or has the capacity to execute the record; or

7 (b) the individual executing the record is signing knowingly or voluntarily.

8 (2) A notarial officer may refuse to perform a notarial act unless refusal is prohibited by a law other than
9 as provided in this part.

10 (3) A notary public shall refuse a request that would require the notary to:

11 (a) use an electronic notarization system or a communication technology that the notary does not know
12 how to operate; or

13 (b) use an electronic notarization system or communication technology that does not meet the
14 requirements of this part or standards adopted by rule."

15

16 **Section 13.** Section 1-5-623, MCA, is amended to read:

17 **"1-5-623. Signature if ~~individual~~ principal unable to sign.** (1) If ~~an individual~~ a principal intending to
18 execute a record is physically unable to sign a record, the ~~individual~~ principal may direct an individual other than
19 the notarial officer to sign the ~~individual's~~ principal's name on the record. The notarial officer shall insert
20 "Signature affixed by (name of the other individual) at the direction of (name of ~~individual~~ principal intending to
21 execute the record)" or words with similar intent.

22 (2) A notary public shall record in the notary's journal the name and address of the individual who signs
23 the record as well as the name and address of the principal unable to sign."

24

25 **Section 14.** Section 1-5-624, MCA, is amended to read:

26 **"1-5-624. Validity of notarial acts.** ~~Except as otherwise provided in 1-5-604(4), the failure of~~ Failure
27 by a notarial officer to perform a duty or meet a requirement specified in this part, except failure to comply with
28 the provisions of 1-5-603(12) or 1-5-625(1)(a) through (1)(d) and (2), does not invalidate a notarial act performed
29 by the notarial officer. The validity of a notarial act under this part does not prevent an aggrieved person from
30 seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies

1 based on the laws of this state, other than this part, or the laws of the United States. This section does not
 2 validate a purported notarial act performed by an individual who does not have the authority to perform notarial
 3 acts."

4

5 **Section 15.** Section 1-5-625, MCA, is amended to read:

6 **"1-5-625. Prohibited acts -- advertising requirements.** (1) A notary public may not:

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

8 (b) notarize a record in which the notary is individually named or from which the notary will directly benefit
 9 by a transaction involving the record, including as provided in subsection (2);

10 (c) certify a copy of ~~a~~ an official record issued by a public entity, such as a birth, death, or marriage
 11 certificate, a court record, or a school transcript unless the notary is employed by the entity issuing or holding the
 12 original version of the record;

13 (d) affix the notary public's official signature or stamp to any record that does not contain the notary
 14 public's completed notarial certificate, unless otherwise directed by statute or rule;

15 ~~(d)~~(e) engage in false or deceptive advertising;

16 ~~(e)~~(f) advertise or represent that the notary public, unless also licensed as an attorney in this state, is
 17 able to assist persons in drafting legal records, give legal advice, or otherwise practice law. To meet the
 18 requirements of this subsection ~~(1)(e)~~ (1)(f), advertising must include the statement provided in subsection (4).

19 ~~(f)~~(g) except as otherwise allowed by law, withhold access to or retain possession of an original record
 20 provided by a person that seeks performance of a notarial act by the notary public; or

21 ~~(g)~~(h) unless the notary public is an attorney licensed to practice law in this state, use the term "notario"
 22 or "notario publico".

23 (2) A notary public who is a partner, stockholder, director, officer, or employee of a partnership or
 24 corporation and is individually named in the record or who signs a record as a representative of that partnership
 25 or corporation may not notarize the signature of any individual on that record.

26 (3) A commission as a notary public does not authorize an individual to:

27 (a) assist persons in drafting legal records, give legal advice, or otherwise practice law;

28 (b) act as an immigration consultant or an expert on immigration matters;

29 (c) represent a person in a judicial or administrative proceeding relating to immigration to the United
 30 States or United States citizenship or related matters; or

1 (d) receive compensation for performing any of the activities listed in this subsection (3).

2 (4) (a) A notary public who is not an attorney licensed to practice law in this state shall provide in
3 advertising or other representations regarding an offering of notarial services, whether oral or written, used in
4 broadcast media, print media, or on the internet a statement as provided in subsection (4)(b) or an alternate
5 statement authorized or required by the secretary of state. The statement must be prominently displayed and in
6 each language used in the advertisement or representation. If the form of advertisement or representation is not
7 broadcast media, print media, or the internet and does not permit inclusion of the statement required by this
8 subsection because of its size, the statement must be displayed prominently or provided at the place of
9 performance of the notarial act before the notarial act is performed.

10 (b) To meet the requirements of subsection (4)(a), a notary public who is not an attorney licensed to
11 practice law in this state shall use either an alternate statement authorized or required by the secretary of state
12 or the following statement:

13 "I am not an attorney licensed to practice law in this state. I am not allowed to draft legal records, give
14 advice on legal matters, including immigration, or charge a fee for those activities.""

15

16 **Section 16.** Section 1-5-626, MCA, is amended to read:

17 **"1-5-626. Fees for notarial acts -- collection of fees.** (1) A notary public may charge a fee not to
18 exceed \$10 for each notarial act:

19 (a) performing an acknowledgment;

20 (b) witnessing a signature;

21 (c) ~~verifying~~ executing a verification on oath or affirmation (jurat);

22 (d) certifying a transcript; ~~or~~

23 (e) certifying a copy;

24 (f) performing a certification of fact; or

25 (g) performing another notarial act authorized by law, unless charging a fee for the act is expressly
26 prohibited by that law.

27 (2) ~~A~~ (a) Subject to subsections (2)(b) through(2)(d), a notary public may charge an additional fee, as
28 provided by rule, to:

29 (i) perform a notarial act using an electronic notarization system or communication technology; or

30 (ii) travel to perform a notarial act if;

- 1 ~~(a) the~~(b) The notary public ~~explains~~ shall explain to the person requesting the notarial act that:
- 2 (i) the fee is in addition to a fee specified in subsection (1); and
- 3 (ii) the fee is an amount not determined by law; ~~and~~
- 4 ~~(iii) the~~(c) The person requesting the notarial act ~~agrees~~ must agree in advance on the amount of the
- 5 additional fee; ~~or~~
- 6 ~~(b) the~~(d) A fee charged ~~is for travel~~ must be equal to or less than the standard mileage rates allowed
- 7 by the internal revenue service.
- 8 (3) A notary public may also charge a fee to recover the actual cost of providing a copy of a journal entry
- 9 or audio-visual recording of a notarial act performed using communication technology.
- 10 ~~(3)(4)~~ If a notary public charges fees under this section for performing notarial acts, the notary public
- 11 shall display in English a list of the fees the notary public will charge.
- 12 ~~(4)(5)~~ A notary public who is employed by a private entity may enter into an agreement with the entity
- 13 under which fees collected by the notary public under this section are collected by and accrue to the entity.
- 14 ~~(5)(6)~~ A public official may collect the fees described in this section for notarial acts performed in the
- 15 course of employment by notaries public who are employed by the public body."

16

17 **Section 17.** Section 1-5-627, MCA, is amended to read:

18 **"1-5-627. Database of notaries public.** The secretary of state shall maintain an electronic database

19 of notaries public:

20 (1) through which a person may verify the authority of a notary public to perform notarial acts; ~~and~~

21 (2) that indicates whether a notary public has notified the secretary of state that the notary public will be

22 performing notarial acts on electronic records; and

23 (3) that describes any active or pending administrative or disciplinary action against the notary public."

24

25 **Section 18.** Section 1-5-628, MCA, is amended to read:

26 **"1-5-628. Rulemaking.** (1) The secretary of state may adopt rules to implement this part.

27 (2) Rules adopted regarding the performance of notarial acts with respect to electronic records, or

28 electronic notarization systems, or two-way audio-video communications communication technology may not

29 require or accord legal status or effect to the implementation or application of a specific system, technology, or

30 technical specification.

- 1 (3) The rules may:
- 2 (a) prescribe the manner of performing notarial acts regarding tangible and electronic records;
- 3 (b) include provisions to ensure that any change to or tampering with a record bearing a certificate of
- 4 a notarial act is self-evident;
- 5 (c) include provisions to ensure integrity in the creation, transmittal, storage, or authentication of
- 6 electronic records or signatures;
- 7 (d) prescribe the process of granting, renewing, conditioning, denying, suspending, or revoking a notary
- 8 public commission and ensuring the trustworthiness of an individual holding a commission as notary public;
- 9 (e) include provisions to prevent fraud or mistake in the performance of notarial acts;
- 10 (f) establish the process for approving and accepting surety bonds and other forms of assurance under
- 11 1-5-619; and
- 12 (g) provide for the administration of the examination under 1-5-620(1) and the course of study under
- 13 1-5-620(2).
- 14 (4) In adopting, amending, or repealing rules about notarial acts with respect to electronic records, the
- 15 secretary of state shall consider, consistent with this part:
- 16 (a) the most recent standards regarding electronic records promulgated by national bodies, such as the
- 17 national association of secretaries of state;
- 18 (b) the standards, practices, and customs of other jurisdictions that substantially implement the
- 19 provisions of this part; and
- 20 (c) the views of governmental officials and entities as well as other interested persons."

21

22 **NEW SECTION. Section 19. Authority and venue for notarial acts.** (1) A notary public may perform

23 a notarial act within the jurisdiction authorized in the notary's commission from the secretary of state.

24 (2) The venue for a notarial act is the state and the county where the notarial officer is physically located

25 at the time the notarial act is performed.

26

27 **NEW SECTION. Section 20. Solemnization of marriage authorized.** As provided in 40-1-301 and

28 subject to rules adopted by the secretary of state, a notary public may solemnize a marriage.

29

30 **NEW SECTION. Section 21. Evidence of authenticity of notarial act for record sent to foreign**

1 **country.** (1) The authenticity of the official seal and signature of a Montana notarial officer may be evidenced by
 2 a certificate of authority from the secretary of state confirming the authority of a Montana notarial officer to perform
 3 a notarial act on a record that will be sent to a foreign country. The certificate must be in a form prescribed by the
 4 Hague Convention of October 5, 1961, or in a form approved by the United States department of state.

5 (2) A certificate of authority may not be issued for a record that is intended for use within the United
 6 States, including its territories, or by a federally recognized tribe.

7 (3) The secretary of state may refuse to issue a certificate of authority if the secretary of state has reason
 8 to believe that the record may be used within the United States, including its territories, or by a federally
 9 recognized tribe, or for any unlawful, fraudulent, or improper purpose.

10

11 NEW SECTION. **Section 22. Unlawful acts -- penalties.** (1) It is unlawful to:

12 (a) intentionally withhold from a notary public the notary public's official stamp, journal, or certificate of
 13 commission of a notary public;

14 (b) attach, photocopy, alter, or otherwise reproduce a notary public's signature, stamp, or completed
 15 notarial certificate for use on a record other than the original record for which it was intended;

16 (c) knowingly destroy, deface, or conceal a notarial record;

17 (d) change, modify, correct, or in any other way amend a notarial certificate, except as provided in
 18 1-5-609(5).

19 (2) A person convicted of an offense under this section is subject to a fine not to exceed \$2,500,
 20 incarceration for a period not to exceed 1 year, or both, for each offense.

21

22 **Section 23.** Section 40-1-301, MCA, is amended to read:

23 **"40-1-301. Solemnization and registration.** (1) A marriage may be solemnized by a judge of a court
 24 of record, by a public official whose powers include solemnization of marriages, by a mayor, city judge, or justice
 25 of the peace, by a notary public authorized pursuant to [section 20], by a tribal judge, or in accordance with any
 26 mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either
 27 the person solemnizing the marriage or, if no individual acting alone solemnized the marriage, a party to the
 28 marriage shall complete the marriage certificate form and forward it to the clerk of the district court.

29 (2) If a party to a marriage is unable to be present at the solemnization, the party may authorize in writing
 30 a third person to act as proxy. If the person solemnizing the marriage is satisfied that the absent party is unable

1 to be present and has consented to the marriage, the person may solemnize the marriage by proxy. If the person
2 solemnizing the marriage is not satisfied, the parties may petition the district court for an order permitting the
3 marriage to be solemnized by proxy.

4 (3) The solemnization of the marriage is not invalidated by the fact that the person solemnizing the
5 marriage was not legally qualified to solemnize it if either party to the marriage believed that person to be
6 qualified.

7 (4) One party to a proxy marriage must be a member of the armed forces of the United States on federal
8 active duty or a resident of Montana at the time of application for a license and certificate pursuant to 40-1-202.
9 One party or a legal representative shall appear before the clerk of court and pay the marriage license fee. For
10 the purposes of this subsection, residency must be determined in accordance with 1-1-215."

11
12 **NEW SECTION. Section 24. Codification instruction.** [Sections 19 through 22] are intended to be
13 codified as an integral part of Title 1, chapter 5, part 6, and the provisions of Title 1, chapter 5, part 6, apply to
14 [sections 19 through 22].

15 - END -