



Montana Legislative Services Division
Legal Services Office

PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

TO: State Administration and Veterans' Affairs Interim Committee

FROM: K. Virginia Aldrich

DATE: July 17, 2019

RE: Legislative Administrative Rule Review Report

Pursuant to 5-5-228, MCA, the State Administration and Veterans' Affairs Interim Committee is responsible for reviewing administrative rules within its jurisdiction. Staff for the State Administration and Veterans' Affairs Interim Committee has prepared this report for informational purposes only. This report does not represent any action or opinion of the State Administration and Veterans' Affairs Interim Committee and does not preclude additional action that may be taken by the State Administration and Veterans' Affairs Interim Committee pursuant to its authority under the Montana Administrative Procedure Act (Title 2, chapter 4, MCA).

MAR NOTICE NUMBER: 44-2-232

AGENCY/BOARD: Secretary of State

RULE CLASSIFICATION: (e.g. substantive/interpretive/emergency/temporary): Substantive

SUBJECT: Notaries Public

NOTICE DESCRIPTION: (e.g. proposal notice/adoption notice): Notice of Public Hearing on Proposed Adoption and Amendment

SUMMARY OF RULE(S):

The Secretary of State proposes to amend six rules and adopt one rule relating to notaries public.

The Secretary of State proposes to adopt one new rule concerning the retention of a notary public journal. New Rule I authorizes a notary to transmit the journal, while the notary's commission is still active, to the notary's employer after the notary and the employer complete certain paperwork, including the employer's approval and acceptance of the "responsibility and conditions." The language of newly enacted statutory revisions read together with the requirement that notaries retain their journals for 10 years make it unclear whether the notary can transmit the original, and not a copy, to the employer. Staff recommends that the committee consider clarifying the statutory language.

Additionally, New Rule I allows a notary who voluntarily resigns or chooses not to renew a commission to transmit the notary journal to an approved repository by submitting a form stating

where the journal will be kept, the proposed custodian, the custodian's agreement to accept the responsibility and conditions, and the notary's authorization.

The Secretary of State proposes to amend one rule concerning notary public applications. The proposed updates require certain contact information, including the applicant's work email address or, if the applicant is unemployed or self-employed, the name and phone or email of an alternate contact person. Additionally, the proposed amendments provide that the applicant must provide an example of the applicant's official signature, identify any electronic certification service that the applicant intends to use, adhere to certain electronic certification service education requirements, adhere to the statutory list of residency requirements, and disclose guilty or no contest pleas related to certain crimes within the last 10 years. The proposed amendments also provide the oath that the applicant must take, clarify that all applicants (including current and prospective notaries) must complete the educational requirements, and specify when applicants must take and pass the notary exam, what constitutes a passing grade, and how long an applicant must wait before retaking the exam.

The Secretary of State proposes to amend one rule concerning the notary bond. To reflect changes made by Chapter 123, L. 2019, the proposed amendments require a notary to submit a bond covering the notary's 4-year term for \$25,000, rather than \$10,000. In addition, the changes specify that the bond must be on a form prescribed by the Secretary of State and that the bonding company must notify the Secretary of State's office within 30 business days if a claim is made against the bond.

The Secretary of State proposes to update one rule concerning certificates of authority. The proposed amendments update terminology and clarify that a request for a certificate of authority must be on a form prescribed by the Secretary of State.

The Secretary of State proposes to amend one rule concerning notification of a change in the notary's information or status. The proposed changes require a notary to report within 30 days changes in the notary's work email address or, if applicable, the alternate contact's phone number or address. The proposed changes also require a notary to notify the Secretary of State within 30 days if the notary is convicted or has entered a plea of guilty or no contest to certain crimes. The notary must also notify the Secretary within 30 days if the notary resigns before the commission expires, no longer meets the residency requirements, or does not intend to renew the notary's commission.

The Secretary of State proposes to amend one rule concerning remote notarizations. The proposed amendments update terminology to incorporate remote online notarizations into current language that addresses remote notarizations, require certain declarations by individuals located outside of the United States (specifically to state that the individual is unaware of any legal conflicts that prohibit the individual's participation in the remote notarization), require a credible witness to make a sworn statement identifying the principal, eliminate the requirement that a credible witness must be in the physical presence of a notary public, and provide that if an

individual was identified via identification technology, the notary must state the two or more types of technologies used.

Lastly, the Secretary of State proposes to amend a rule concerning fees for notarial acts to provide that a notary may charge an additional fee for using an electronic notarization system or electronic communications technology or to recover the cost of providing a journal entry or audiovisual recording. The rule itself does not set the fees; instead, the rule allows each notary to set the additional fees.

NOTES: A public hearing is scheduled for July 26, 2019, at 10:00 a.m. in Room 261 of the State Capitol, Helena, Montana. The public comment period ends on August 2, 2019.

FULL TEXT OF NOTICE: The full text of the notice proposal may be found online at http://www.mtrules.org/gateway/Cycle_Home.asp?CID=2927.

Cla305 9198GAFB.