

LEGISLATIVE BILL 315

Approved by the Governor April 9, 2004

Introduced by Brashear, 4

AN ACT relating to notaries public; to amend sections 33-133, 64-101 to 64-103, 64-113, and 64-210, Reissue Revised Statutes of Nebraska; to provide for and change provisions relating to fees, appointments, examinations, notarial acts, and removal; to define terms; to provide powers and duties; to provide penalties; to harmonize provisions; to provide a duty for the Revisor of Statutes; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 33-133, Reissue Revised Statutes of Nebraska, is amended to read:

33-133. Except as otherwise provided in this section, notaries public may charge and collect fees as follows: For each protest, one dollar; for recording the same, two dollars; for each notice of protest, two dollars; for taking affidavits and seal, two dollars; for administering oath or affirmation, two dollars; ~~for taking deposition, for each one hundred words contained in such deposition and in the certificate, one dollar and no more,~~ for each certificate and seal, five dollars; for taking acknowledgment of deed or other instrument, five dollars; and for each mile traveled in serving notice, mileage at the rate provided in section 81-1176. An employee of the state or its political subdivisions may not charge the fees prescribed in this section if his or her governmental employer paid the commission and bonding fees required of notaries public.

Sec. 2. Section 64-101, Reissue Revised Statutes of Nebraska, is amended to read:

64-101. (1) ~~The Governor is hereby authorized to~~ Secretary of State may appoint and commission such number of persons to the office of notary public as he ~~shall deem~~ or she deems necessary.

(2) There shall be one class of such appointments which shall be valid in the entire state and referred to as general notaries public.

(3) The term effective date, as used with reference to a commission of a notary public, shall mean the date of the commission unless the commission ~~shall state~~ states when it goes into effect, in which event that date shall be the effective date.

(4) A general commission may refer to the office as notary public and shall contain a provision showing that the person therein named is authorized to act as a notary public anywhere within the State of Nebraska or, in lieu thereof, may contain the word general or refer to the office as general notary public.

(5) No person shall be appointed a notary public unless ~~his or her application is accompanied by the petition of at least twenty-five legal voters of the county in which he or she resides.~~ he or she has taken and passed a written examination on the duties and obligations of a notary public as provided in section 3 of this act.

(6) No appointment shall be made if such applicant has been convicted of a felony or other crime involving fraud or dishonesty.

(7) No appointment shall be made until such applicant shall have attained the age of nineteen years nor unless such applicant shall certify certifies to the ~~Governor~~ Secretary of State under oath that he or she has carefully read and understands the laws relating to the duties of notaries public and will, if commissioned, faithfully discharge the duties pertaining to ~~said~~ the office and keep records according to law.

~~(7)~~ (8) Each person appointed a notary public shall hold office for a term of four years from the effective date of his or her commission unless sooner removed.

Sec. 3. The written examination required by section 64-101 shall be developed and administered by the Secretary of State and shall consist of questions relating to laws, procedures, and ethics for notaries public. All applicants for commission as a notary public on and after the effective date of this act shall be required to take and pass the examination prior to being commissioned.

Sec. 4. Section 64-102, Reissue Revised Statutes of Nebraska, is amended to read:

64-102. Any person may apply for a commission authorizing the applicant to act as a notary public anywhere in the State of Nebraska, and

thereupon the ~~Governor~~ Secretary of State may, at his or her discretion, issue a commission authorizing such notary public to act as such anywhere in the State of Nebraska. A general commission shall not authorize the holder thereof to act as a notary public anywhere in the State of Nebraska until a bond in the sum of ~~ten~~ fifteen thousand dollars, with an incorporated surety company as surety, has been executed and approved by and filed in the office of the Secretary of State. Upon the filing of such bond with the Secretary of State and the issuance of such commission, such notary public shall be authorized and empowered to perform any and all the duties of a notary public in any and all the counties in the State of Nebraska. Such bond shall be conditioned for the faithful performance of the duties of such office. Such person so appointed to the office of notary public shall make oath or affirmation, to be endorsed on such bond, and subscribed by him or her before some officer authorized by law to administer oaths, and by him or her certified thereon, that he or she will support the Constitution of the United States and the Constitution of ~~the State of~~ Nebraska, and will faithfully and impartially discharge and perform the duties of the office of notary public.

Sec. 5. Section 64-103, Reissue Revised Statutes of Nebraska, is amended to read:

64-103. When any person is appointed to the office of notary public, the ~~Governor~~ Secretary of State shall cause his or her signature or a facsimile thereof to be affixed to the commission and ~~deliver the same to the Secretary of State.~~ Upon the receipt of the commission by the secretary, he or she shall affix thereto the great seal of the state. Upon the filing and approval of the bond, as provided for in section 64-102, the Secretary of State shall mail or deliver the commission to the applicant. The form and format of the commission shall be prescribed by the Secretary of State. ~~on behalf of the Governor.~~

Sec. 6. (1) A notary public shall not perform any notarial act as authorized by Chapter 64, articles 1 and 2, if the principal:

(a) Is not in the presence of the notary public at the time of the notarial act; and

(b) Is not personally known to the notary public or identified by the notary public through satisfactory evidence.

(2) For purposes of this section:

(a) Identified by the notary public through satisfactory evidence means identification of an individual based on:

(i) At least one document issued by a government agency that is current and that bears the photographic image of the individual's face and signature and a physical description of the individual, except that a properly stamped passport without a physical description is satisfactory evidence; or

(ii) The oath or affirmation of one credible witness unaffected by the document or transaction to be notarized who is personally known to the notary public and who personally knows the individual, or the oaths or affirmations of two credible witnesses unaffected by the document or transaction to be notarized who each personally knows the individual and shows to the notary public documentary identification as described in subdivision (a) (i) of this subsection; and

(b) Personal knowledge of identity or personally known means familiarity with an individual resulting from interactions with that individual over a period of time sufficient to dispel any reasonable uncertainty that the individual has the identity claimed.

Sec. 7. A notary public is disqualified from performing a notarial act as authorized by Chapter 64, articles 1 and 2, if the notary is a spouse, ancestor, descendant, or sibling of the principal, including in-law, step, or half relatives.

Sec. 8. (1) A notary public may certify the affixation of a signature by mark on a document presented for notarization if:

(a) The mark is affixed in the presence of the notary public and of two witnesses unaffected by the document;

(b) Both witnesses sign their own names beside the mark;

(c) The notary public writes below the mark: "Mark affixed by (name of signer by mark) in presence of (names and addresses of witnesses) and undersigned notary public"; and

(d) The notary public notarizes the signature by mark through an acknowledgment, jurat, or signature witnessing.

(2) A notary public may sign the name of a person physically unable to sign or make a mark on a document presented for notarization if:

(a) The person directs the notary public to do so in the presence of two witnesses unaffected by the document;

(b) The notary public signs the person's name in the presence of the person and the witnesses;

(c) Both witnesses sign their own names beside the signature;

(d) The notary public writes below the signature: "Signature affixed by notary public in the presence of (names and addresses of person and two witnesses)"; and

(e) The notary public notarizes the signature through an acknowledgment, jurat, or signature witnessing.

Sec. 9. (1) A notary public who is not an attorney shall not engage in the unauthorized practice of law as provided in this section.

(2) If notarial certificate wording is not provided or indicated for a document, a notary public who is not an attorney shall not determine the type of notarial act or certificate to be used.

(3) A notary public who is not an attorney shall not assist another person in drafting, completing, selecting, or understanding a document or transaction requiring a notarial act.

(4) A notary public who is not an attorney shall not claim to have powers, qualifications, rights, or privileges that the office of notary public does not provide, including the power to counsel on immigration matters.

(5) A notary public who is not an attorney and who advertises notarial services in a language other than English shall include in any advertisement, notice, letterhead, or sign a statement prominently displayed in the same language as follows: "I am not an attorney and have no authority to give advice on immigration or other legal matters".

(6) A notary public who is not an attorney may not use the term notario publico or any equivalent non-English term in any business card, advertisement, notice, or sign.

(7) This section does not preclude a notary public who is duly qualified, trained, or experienced in a particular industry or professional field from selecting, drafting, completing, or advising on a document or certificate related to a matter within that industry or field.

(8) A violation of any of the provisions of this section shall be considered the unauthorized practice of law and subject to the penalties provided in section 7-101.

Sec. 10. A notary public shall notify the Secretary of State of any change of his or her residence no later than forty-five days after such change. Information provided on the change-of-address form shall include the notary public's name as it appears on his or her commission, the date the commission expires, and the notary public's new address. The Secretary of State shall prescribe forms consistent with the requirements of this section.

Sec. 11. Section 64-113, Reissue Revised Statutes of Nebraska, is amended to read:

64-113. (1) Whenever charges of malfeasance in office shall be are preferred to the Governor Secretary of State against any notary public in this state, or whenever the Governor shall have Secretary of State has reasonable cause to believe any notary public in this state is guilty of acts of malfeasance in office, he the Secretary of State may appoint any disinterested person, not related by consanguinity to either the notary public or person preferring the charges, and authorized by law to take testimony of witnesses by deposition, to notify such notary public to appear before him or her on a day and at an hour certain, after at least ten days from the day of service of such notice. He Such appointee may summon witnesses, in the manner provided by section 64-108, to appear before him at the time specified in said the notice, and he or she may take the testimony of such witnesses in writing, in the same manner as is by law provided for taking depositions, and certify the same to the Governor Secretary of State. The notary public may appear, at such time and place, and cross-examine witnesses, and produce witnesses in his or her behalf, which cross-examination and testimony shall be likewise certified to the Governor Secretary of State. Upon the receipt of such examination, duly certified in the manner prescribed for taking depositions to be used in suits in the district courts of this state, the Governor Secretary of State shall examine the same, and if therefrom he or she is shall be satisfied that the charges are substantially proved, he or she may remove the person charged from the office of notary public or temporarily revoke such person's commission. Within thirty fifteen days from after such removal or revocation and notice thereof, such notary public shall deposit, with the Secretary of State, his the commission as notary public and notarial seal. The commission shall be canceled or temporarily revoked by the Secretary of State. Thereafter such A person so removed from office shall be forever disqualified from holding the office of notary public. A person whose commission is temporarily revoked shall be returned his or her commission and seal upon completion of the revocation period and passing the examination described in section 3 of this act. The fees for taking such testimony shall be paid by the state at the same rate as fees for taking depositions by

notaries public. The failure of the notary public to deposit his or her commission and seal with the Secretary of State as required by this section shall subject him or her to a penalty of ~~two hundred~~ one thousand dollars, to be recovered in the name of the state.

(2) For purposes of this section, malfeasance in office means, while serving as a notary public, (a) failure to follow the requirements and procedures for notarial acts provided for in Chapter 64, articles 1 and 2, or (b) being convicted of a felony or other crime involving fraud or dishonesty.

Sec. 12. Section 64-210, Reissue Revised Statutes of Nebraska, is amended to read:

64-210. (1) Each notary public, before performing any duties of his or her office, shall provide himself or herself with an official seal on which shall appear the words State of Nebraska, General Notary or State of Nebraska, General Notarial, and his or her name, and in addition, at his or her option, the date of expiration of his or her commission. A ~~+~~ PROVIDED, a notary public may use the initial letters of his or her first name and middle name. A notary public shall authenticate all his or her official acts with such seal. Under his or her official signature, on all certificates of authentication made by him or her, ~~he~~ a notary public shall write, stamp, or otherwise show the date when his or her term of office as such notary public will expire if such date of expiration is not engraved on the seal.

(2) The official seal of a notary public ~~shall be~~ may be either an engraved ~~or~~ ink stamp seal with which he or she shall authenticate all of his or her official acts. ~~+~~ PROVIDED, that every notary who receives a commission, either new or renewal, ~~on or after January 1, 1972,~~ shall use an ink stamp seal to authenticate any instrument.

Sec. 13. The Revisor of Statutes shall assign sections 3 and 6 to 10 of this act to Chapter 64, article 1.

Sec. 14. Original sections 33-133, 64-101 to 64-103, 64-113, and 64-210, Reissue Revised Statutes of Nebraska, are repealed.