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Referred: Judiciary and
Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2

HOUSE BILL NO. 127

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to notaries public."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 44.50 is amended by adding a new section to read:

9

Sec. 44.50.015. APPLICATION. (a) The application for a notari-
10 al commission must be made on forms provided by the lieutenant gover-
11 nor and must include a statement of the applicant's personal qualifi-
12 cations. The statement of personal qualifications must include at
13 least the following information:

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(1) the applicant's date of birth;

15

(2) the applicant's residence address;

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(3) the applicant's occupation and work address;

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(4) all criminal convictions of the applicant, including

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any pleas of admission and nolo contendere; and

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(5) all issuances, denials, revocations, suspensions,

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restrictions, and resignations of a notarial commission or other pro-

21

fessional license of the applicant in Alaska or any other state.

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(b) Disciplinary information submitted by an applicant in a
23 statement of personal qualifications under (a)(4) and (5) of this sec-
24 tion is confidential, may be used by the lieutenant governor and des-
25 ignated state employees for the sole purpose of performing official
26 duties under this chapter, and may not be disclosed to any person
27 other than

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(1) the applicant, or the applicant's authorized represen-

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tative or surety;

1 (2) a representative of federal, state, or municipal gov-
2 ernment acting in an official capacity; or

3 (3) a person specified by court order.

4 * Sec. 2. AS 44.50.040 is amended to read:

5 Sec. 44.50.040. FEES. A fee of \$40 must [~~\$20 SHALL~~] be paid to
6 the lieutenant governor for each commission issued other than to a
7 state employee.

8 * Sec. 3. AS 44.50 is amended by adding a new section to read:

9 Sec. 44.50.045. BOND. Every person appointed a notary public
10 after the effective date of this section shall execute an official
11 bond of \$10,000. The bond must be executed by a licensed surety, for
12 a term of four years commencing on the notary commission's effective
13 date.

14 * Sec. 4. AS 44.50 is amended by adding new sections to read:

15 Sec. 44.50.072. DISQUALIFICATIONS. A notary is disqualified
16 from performing a notarial act if the notary

17 (1) is a signer of or named in the document that is to be
18 notarized;

19 (2) will receive directly from a transaction connected with
20 the notarial act any commission, fee, advantage, right, title, inter-
21 est, cash, property, or other consideration exceeding in value the
22 fees specified in AS 44.50.092; or

23 (3) is related to the person whose signature is to be
24 notarized as a spouse, sibling, or lineal ascendant or descendant to
25 the second degree of kindred.

26 Sec. 44.50.074. IMPARTIALITY. (a) A notary may not influence a
27 person to enter or not enter into a lawful transaction involving a
28 notarial act by the notary.

29 (b) A notary shall perform notarial acts in lawful transactions

1 for any requesting person who tenders the appropriate fee specified in
2 AS 44.50.092, if any fee is required by the notary, unless the notary
3 has stated a reason for refusal and recorded that reason in the jour-
4 nal as required by AS 44.50.095(c).

5 Sec. 44.50.076. FALSE CERTIFICATE. A notary may not execute a
6 certificate containing a statement known by the notary to be false or
7 perform any official action with intent to deceive or defraud.

8 Sec. 44.50.078. TESTIMONIALS. A notary may not endorse or pro-
9 mote any product, service, contest, or other offering if the notary's
10 title or seal is used in the endorsement or promotional statement.

11 Sec. 44.50.085. UNAUTHORIZED PRACTICE OF LAW. (a) A notary who
12 is not an attorney may complete but may not select notarial certifi-
13 cates, and may not assist another person in drafting, completing,
14 selecting, or understanding a document or transaction requiring a
15 notarial act.

16 (b) This section does not prohibit a notary who is qualified in,
17 and, if required, licensed to practice, a particular profession from
18 giving advice relating to matters in that professional field.

19 (c) A notary may not make representations to have powers, quali-
20 fications, rights, or privileges that the office of notary does not
21 have, including the power to counsel on immigration matters.

22 Sec. 44.50.092. FEES FOR NOTARIAL ACTS. (a) The maximum fees
23 that may be charged by a notary for notarial acts are

24 (1) for acknowledgements, oaths, or affidavits, \$5 per sig-
25 nature;

26 (2) for certified copies, \$2 for the first page and \$1 for
27 each additional page of the certified document.

28 (b) A notary may charge a travel fee when traveling to perform a
29 notarial act if

1 (1) the notary explains to the person requesting the notar-
2 ial act that the travel fee is separate from the notarial fee in (a)
3 of this section and is neither specified nor required by law; and

4 (2) the notary and the person requesting the notarial act
5 agree upon the travel fee in advance.

6 (c) Nothing in this section requires a notary to charge fees for
7 services rendered.

8 (d) If a notary charges any fee, the notary shall display a
9 schedule of fees for notarial acts, which may not exceed the maximum
10 fees specified in (a) of this section.

11 Sec. 44.50.095. JOURNAL. (a) A notary shall keep, protect as a
12 public record, and provide for lawful inspection a chronological,
13 permanently bound, official journal of notarial acts, containing
14 numbered pages.

15 (b) For every notarial act, the notary shall record in the jour-
16 nal at the time of notarization at least the following:

17 (1) the date and time of day of the notarial act;

18 (2) a description of the document or proceeding;

19 (3) the printed name and address of each person for whom a
20 notarial act is performed;

21 (4) the evidence of identity of each person for whom a
22 notarial act is performed, in the form of either

23 (A) a statement that the person is "personally known"
24 to the notary; or

25 (B) a description of the identification document, its
26 issuing agency, its serial or identification number, and its date
27 of issuance or expiration; or

28 (C) the signature and printed name and address of a
29 credible witness swearing or affirming to the person's identity;

1 and

2 (5) the fee, if any, charged for the notarial act.

3 (c) A notary shall record in the journal the circumstances in
4 refusing to perform or complete a notarial act.

5 (d) At the time of notarization, the notary's journal must be
6 signed by the person for whom a notarial act is performed.

7 (e) A journal of notarial acts is an official public record that
8 may be inspected in the notary's presence as provided in AS 09.25.110
9 and 09.25.120.

10 (f) Upon request, in compliance with (e) of this section, the
11 notary shall provide a photocopy of an entry in the journal at a rea-
12 sonable cost of not more than \$2. If a certified copy is requested,
13 the cost is as specified in AS 44.50.092(a)(2).

14 (g) The journal must be kept in the exclusive custody of the
15 notary, and may not be used by any other notary or surrendered to an
16 employer upon termination of employment. Nothing in this section
17 prohibits a notary from being required to provide copies of the jour-
18 nal to a notary's employer.

19 (h) Upon resignation, revocation, or expiration of a notarial
20 commission, or death of the notary, the notarial journal and other
21 records must be delivered to the office of the lieutenant governor in
22 accordance with AS 44.50.100.

23 * Sec. 5. AS 44.50.100 is amended to read:

24 Sec. 44.50.100. RETURN OF PAPERS TO LIEUTENANT GOVERNOR. If a
25 notary public dies, resigns, is disqualified, removed from office, or
26 moves [REMOVES] from the state, all the notary's public papers, in-
27 cluding the notary's journal, must [SHALL] be delivered to the lieu-
28 tenant governor.

29 * Sec. 6. AS 44.50 is amended by adding a new section to read:

1 Sec. 44.50.105. CHANGES OF STATUS. (a) Within 30 days after
2 the change of a notary's business or residence address, the notary
3 shall notify the lieutenant governor of the change, giving both old
4 and new addresses.

5 (b) A notary with a change of name shall notify the lieutenant
6 governor in writing of the change, giving both old and new names. A
7 notary with a new name shall sign that name on all notarial certifi-
8 cates, but only after the following steps have been completed:

9 (1) the notice described in this section has been deliv-
10 ered;

11 (2) a new seal has been obtained, bearing the new name; and

12 (3) the surety for the notary's bond has been informed in
13 writing.

14 (c) Within 10 days after the loss or theft of an official jour-
15 nal or seal, the notary shall deliver to the lieutenant governor a
16 signed notice of the loss or theft.

17 (d) A notary who resigns a notarial commission shall notify the
18 lieutenant governor indicating the effective date of resignation.
19 Notaries who cease to reside or work in this state or who become un-
20 able to read or write shall resign their commissions.

21 (e) When a notarial commission is resigned, revoked, or expires,
22 the notary shall

23 (1) as soon as reasonably practicable, destroy the official
24 seal; and

25 (2) within 30 days after the effective date of resignation,
26 revocation, or expiration, deliver to the lieutenant governor at the
27 lieutenant governor's office, the certificate of commission.

28 (f) If a notary dies during the term of commission, the notary's
29 heirs or personal representative shall, as soon as reasonably

1 practicable after death

2 (1) destroy the official seal;

3 (2) notify the lieutenant governor of the notary's death;

4 and

5 (3) send the notarial journal and records to the lieutenant
6 governor as required in AS 44.50.100.

7 * Sec. 7. AS 44.50.160 is amended to read:

8 Sec. 44.50.160. MISCONDUCT OR NEGLIGENCE. (a) A notary and the
9 sureties on the official bond are liable to persons injured for the
10 damages sustained on account of misconduct or neglect of the notary,
11 as follows:

12 (1) a notary is liable to a person for all damages proximately
13 caused that person by the notary's official misconduct in per-
14 forming a notarization;

15 (2) a surety for a notary's bond is liable to a person for
16 damages proximately caused that person by the notary's official mis-
17 conduct in performing a notarization, but this liability may not
18 exceed the penalty of the bond or of any remaining bond money that has
19 not been expended to other claimants; regardless of the number of
20 claimants, a surety's total liability may not exceed the penalty of
21 the bond.

22 (b) An employer of a notary is liable

23 (1) to a person for all damages proximately caused that
24 person by the notary's official misconduct in performing a notari-
25 zation related to the employer's business, if the employer directed,
26 encouraged, consented to, or approved the notary's misconduct, either
27 in the particular transaction or, impliedly, by previous actions in at
28 least one similar transaction;

29 (2) to the notary for all damages recovered from the notary

1 as a result of official misconduct that was coerced by threat of the
2 employer, if the threat, such as of demotion or dismissal, was made in
3 reference to the particular notarization or, impliedly, by the employ-
4 er's previous action in at least one similar transaction; and

5 (3) to the notary for damages caused the notary by demo-
6 tion, dismissal, or other action resulting from the notary's refusal
7 to commit official misconduct.

8 * Sec. 8. AS 44.50 is amended by adding new sections to read:

9 Sec. 44.50.165. CRIMINAL PROSECUTION. (a) A notary who know-
10 ingly performs an act prohibited, or fails to perform an act required,
11 by this chapter is guilty of a class A misdemeanor.

12 (b) A person not a notary who knowingly acts as or otherwise
13 impersonates a notary is guilty of a class A misdemeanor.

14 (c) A person who knowingly obtains, conceals, defaces, or de-
15 stroys the seal, journal, or official records of a notary is guilty of
16 a class A misdemeanor.

17 (d) A person who knowingly solicits, coerces, or in any way
18 influences a notary to commit official misconduct is guilty of a class
19 A misdemeanor.

20 Sec. 44.50.167. REMEDIES. The remedies of this chapter supple-
21 ment other remedies provided by law.

22 * Sec. 9. AS 44.50.120 is repealed.