

HB

127

# STATE OF ALASKA THE LEGISLATURE

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May, 1986

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Jeanie Henry

House Judiciary	2-4-85	1:30 pm
" "	3-13-85	1:30 pm

Edwards  
3/11/85✓

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 127 (Judiciary)

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 09.63.030(c) is amended to read:

9 (c) If the document is sworn to or affirmed before a notary  
10 public of the state, the notary public shall

11 (1) endorse after the signature of the notary public the  
12 date of expiration of the notary's commission;

13 (2) print or emboss the notary's seal on the document;

14 (3) comply with AS 44.50.060, 44.50.075, 44.50.080, and  
15 44.50.101 or other applicable law.

16 \* Sec. 2. AS 09.63.040(d) is amended to read:

17 (d) If the verification is sworn to or affirmed before a notary  
18 public of the state, the notary public shall

19 (1) endorse after the signature of the notary public the  
20 date of expiration of the notary's commission;

21 (2) print or emboss the notary's seal on the document;

22 (3) comply with AS 44.50.060, 44.50.075, 44.50.080, and  
23 44.50.101 or other applicable law.

24 \* Sec. 3. AS 09.63.100(b) is amended to read:

25 (b) If a document is acknowledged before a notary public of the  
26 state, the notary public shall

27 (1) endorse after the notary's signature the date of ex-  
28 piration of the notary's commission;

29 (2) print or emboss the notary's seal on the document;

1 (3) comply with AS 44.50.060, 44.50.075, 44.50.080, and  
2 44.50.101 or other law.

3 \* Sec. 4. AS 44.50.010 is amended by adding a new subsection to read:

4 (b) The lieutenant governor shall provide to a newly appointed  
5 or renewed notary public a commission as notary public, a copy of this  
6 chapter and AS 09.63, a copy of any regulations pertaining to notaries  
7 public, and a copy of the oath set out in AS 39.05.045 with instruc-  
8 tions for its return as required under AS 44.50.055.

9 \* Sec. 5. AS 44.50 is amended by adding a new section to read:

10 Sec. 44.50.015. APPLICATION. (a) The application for a notari-  
11 al commission shall be made on forms provided or approved by the  
12 lieutenant governor and must include a sworn statement of the  
13 applicant's personal qualifications. The statement of personal  
14 qualifications must include at least the following information:

15 (1) the applicant's date of birth;  
16 (2) the applicant's residence address;  
17 (3) the applicant's occupation and work address;  
18 (4) criminal convictions of the applicant, including pleas  
19 of admission and nolo contendere; and

20 (5) issuances, denials, revocations, suspensions, restric-  
21 tions, and resignations of a notarial commission or other professional  
22 license of the applicant in this state or any other jurisdiction.

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

29 (1) the applicant, or the applicant's authorized

1 representative or surety;

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

4 (3) a person specified by court order.

5 \* Sec. 6. AS 44.50.040 is amended to read:

6 Sec. 44.50.040. FEES. A fee established by the lieutenant  
7 governor by regulation [OF \$20] shall be paid to the lieutenant gover-  
8 nor for each notarial commission issued other than to a state em-  
9 ployee.

10 \* Sec. 7. AS 44.50 is amended by adding new sections to read:

11 Sec. 44.50.043. BOND. (a) Except as provided in AS 44.50.045,  
12 a person appointed a notary public after the effective date of this  
13 section shall execute an official bond of \$10,000. The bond shall be  
14 executed by a licensed surety for a term of four years commencing on  
15 the notarial commission's effective date. It shall be filed with the  
16 lieutenant governor before appointment.

17 (b) The lieutenant governor shall keep the bond for two years  
18 after the end of the term of the notarial commission for which the  
19 bond is issued. Disposition of the bond after the end of the notarial  
20 commission does not affect the time for commencing an action on the  
21 bond.

22 Sec. 44.50.045. FILING OF OATH. (a) A person who makes appli-  
23 cation for a notarial commission, except for a commission under  
24 AS 44.50.051, shall include with the application a statement under  
25 oath that the applicant is a resident of Alaska. In this subsection,  
26 "resident" has the meaning given in AS 44.50.020.

27 (b) After appointment as a notary public but before undertaking  
28 official duties, a notary public shall sign a copy of the oath set out  
29 in AS 39.05.045, have the oath notarized, and deliver the signed and

1 notarized oath, personally or by certified mail, to the lieutenant  
2 governor.

3 Sec. 44.50.048. POSTMASTERS AS NOTARIES. (a) Each postmaster  
4 in the state may perform the functions of a notary public in the  
5 state.

6 (b) A postmaster is not required to post a bond or to have a  
7 commission under this chapter.

8 (c) Each official act of a postmaster as a notary public shall  
9 be signed by the postmaster, with a designation of the person's title  
10 as postmaster, have the cancellation stamp of the post office affixed,  
11 and state the name of the post office and the date on which the act  
12 was performed.

13 (d) A postmaster may charge and receive the same fees as a  
14 notary for similar services.

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

16 Sec. 44.50.051. STATE EMPLOYEES AS NOTARIES PUBLIC. (a) The  
17 lieutenant governor may appoint and commission state employees as  
18 notaries public of the state to act for a department of the state  
19 government as the lieutenant governor considers proper. If a state  
20 employee is appointed and commissioned, the executive officer of the  
21 employee's department shall execute a certificate that the appointment  
22 is made for the purposes of the department. A notary public  
23 commissioned under this section may not charge fees for filing or  
24 issuing a document in connection with the appointment.

25 (b) A department for which a notary public is appointed and  
26 commissioned under this section may pay for premiums on the bond and  
27 the cost of stamps, seals, or other supplies required in connection  
28 with the appointment, notarial commission, or performance of the  
29 duties of the notary public.

1 (c) Notwithstanding AS 44.50.030, the termination of employment  
2 revokes the commission of a notary public whose documents have been  
3 filed without charge and for whom bond premiums have been paid by a  
4 state agency.

5 \* Sec. 9. AS 44.50.060 is repealed and reenacted to read:

6 Sec. 44.50.060. DUTIES. (a) Unless the notary public has  
7 stated a reason for refusal and recorded that reason in the notary's  
8 official journal as required by AS 44.50.101(d), a notary public shall  
9 perform the following notarial acts in lawful transactions for any  
10 requesting person who tenders the appropriate fee established under  
11 AS 44.50.091:

- 12 (1) take acknowledgments;  
13 (2) administer oaths, affirmations, and verifications;  
14 (3) witness affidavits and depositions upon oath or affir-  
15 mation; and  
16 (4) make certified copies.

17 (b) An acknowledgment, oath, affirmation, verification, certi-  
18 fied copy, affidavit, or deposition shall be signed by a notary public  
19 in the notary's own handwriting and the notary public shall endorse  
20 after the signature the date of expiration of the notarial commission.

21 \* Sec. 10. AS 44.50 is amended by adding a new section to read:

22 Sec. 44.50.065. PROHIBITED ACTS. (a) A notary public is dis-  
23 qualified from performing a notarial act

24 (1) if the notary public is a signer of or named in the  
25 document that is to be notarized;

26 (2) if the notary public will receive directly from a  
27 transaction connected with the notarial act any commission, fee,  
28 advantage, right, title, interest, cash, property, or other consid-  
29 eration other than a fee specified in AS 44.50.091 except as a rea-

1 estate agent, banker, insurance agent, or attorney at law acting in  
2 that capacity;

3 (3) if the notary public is related to the person whose  
4 signature is to be notarized as a spouse, sibling, parent, child,  
5 grandparent, or grandchild; or

6 (4) in a situation that impugns or compromises the notary's  
7 impartiality.

8 (b) A notary public shall refuse to perform a notarial act

9 (1) for a transaction that the notary public knows or  
10 suspects is illegal, false, or deceptive;

11 (2) involving a certificate with a statement known by the  
12 notary public to be false;

13 (3) with intent to deceive or defraud;

14 (4) for a person who is being coerced; or

15 (5) for a person whose demeanor causes a compelling doubt  
16 in the notary public about whether the person knows the consequences  
17 of the transaction requiring the notarial act.

18 (c) A notary public may not endorse or promote any product,  
19 service, contest, or other offering if the notary's title or seal is  
20 used in the endorsement or promotional statement.

21 \* Sec. 11. AS 44.50 is amended by adding new sections to read:

22 Sec. 44.50.071. UNAUTHORIZED PRACTICE OF LAW. (a) A notary  
23 public who is not an attorney authorized to practice law in this state  
24 may complete but may not select notarial certificates, and may not  
25 assist another person in drafting, completing, selecting, or under-  
26 standing the legalities of a document or transaction requiring a  
27 notarial act.

28 (b) This section does not prohibit a notary public who is quali-  
29 fied in, and, if required, licensed to practice, a particular

1 profession from giving advice relating to matters in that professional  
2 field.

3 (c) A notary public may not make representations to have powers,  
4 qualifications, rights, or privileges that the office of notary public  
5 does not have, including the power to counsel on immigration matters  
6 and to give legal advice.

7 Sec. 44.50.075. CERTIFICATION OF NOTARIAL ACTS. (a) A notary  
8 public who performs a notarial act shall certify

9 (1) the identity of the signer, oath-taker, or affiant,  
10 based on personal knowledge or on satisfactory evidence; and

11 (2) that the signer, oath-taker, affiant, or person who  
12 requested a certified copy personally appeared before the notary  
13 public on the date and in the place indicated on the notarial certifi-  
14 cate and in the notary's official journal.

15 (b) A notary public who performs the following shall certify:

16 (1) for an acknowledgment, that the signer acknowledged  
17 signing the document to the notary public;

18 (2) for an oath or affirmation, that the oath-taker swore  
19 to or affirmed truthfulness under penalty of perjury;

20 (3) for an affidavit, that the signer signed the document  
21 in the presence of the notary public, and that the notary public  
22 administered an oath or affirmation to the signer; and

23 (4) for a certified copy, that it is a true and exact copy  
24 of the original document.

25 (c) In this section

26 (1) "personal knowledge" means knowledge gained through  
27 familiarity with the signer, oath-taker, or affiant;

28 (2) "satisfactory evidence" means clear and convincing  
29 written proof of identification, including the signature and printed

1 name and address of a credible witness who swears to or affirms famil-  
2 iarity with and the identification of the signer, oath-taker, or  
3 affiant.

4 \* Sec. 12. AS 44.50 is amended by adding a new section to read:

5 Sec. 44.50.091. FEES FOR NOTARIAL ACTS. (a) The lieutenant  
6 governor shall establish by regulation the maximum fees that may be  
7 charged by a notary public for notarial acts.

8 (b) A notary public may charge a travel fee when traveling to  
9 perform a notarial act if

10 (1) the notary public explains to the person requesting the  
11 notarial act that the travel fee is separate from the notarial fee  
12 established under (a) of this section and is neither specified nor  
13 required by law; and

14 (2) the notary public and the person requesting the notari-  
15 al act agree upon the travel fee in advance.

16 (c) A notary public may establish an independent fee schedule  
17 for acts not included within the fee schedule established by the  
18 lieutenant governor under this section.

19 (d) If a notary public charges any fee, the notary public shall  
20 prominently display a schedule of fees for notarial acts. The fees  
21 may not exceed the maximum fees established under (a) of this section.  
22 Upon request, the notary shall provide a person with a copy of the fee  
23 schedule.

24 (e) Nothing in this section requires a notary public to charge  
25 fees for services rendered.

26 \* Sec. 13. AS 44.50 is amended by adding a new section to read:

27 Sec. 44.50.101. JOURNAL. (a) A notary public shall keep and  
28 preserve a chronological, permanently bound, official journal of  
29 notarial acts, containing numbered pages.

1 (b) For every notarial act, the notary public shall record in  
2 the official journal at the time of the act at least the following:

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

4 (2) the description of a document or proceeding that re-  
5 quired the notarial act;

6 (3) the printed name and address of each signer, oath-  
7 taker, or affiant for whom a notarial act is performed;

8 (4) the evidence of identity of each signer, oath-taker or  
9 affiant for whom a notarial act is performed, in the form of either

10 (A) a statement that the signer, oath-taker, or  
11 affiant is personally known to the notary public; or

12 (B) a description of the document used to identify the  
13 signer, oath-taker, or affiant, its issuing agency, its serial or  
14 identification number, and its date of issuance or expiration; or

15 (C) the signature and printed name and address of a  
16 credible witness who swears to or affirms familiarity with and  
17 the identification of the signer, oath-taker, or affiant; and

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

19 (c) At the time of notarization, the signer, oath-taker, or  
20 affiant for whom a notarial act is performed shall sign the notary's  
21 official journal.

22 (d) A notary public who refuses to perform or complete a notari-  
23 al act shall record in the notary's official journal the circum-  
24 stances, the date, and the identity of the person refused service.

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

28 (f) Upon request, in compliance with (e) of this section, the  
29 notary public shall provide a photocopy or a certified copy of an

1 entry in the notary's official journal at a cost not to exceed that  
2 established by the lieutenant governor by regulation.

3 (g) The official journal shall be kept in the exclusive custody  
4 of the notary public and may not be used by any other notary public or  
5 surrendered to an employer upon termination of employment. Nothing in  
6 this subsection prohibits a notary public from being required to  
7 provide copies of the official journal to the notary's employer.

8 (h) A notary public or former notary public shall retain an  
9 official journal used to record notarial acts, or a complete microfilm  
10 copy of that journal, for at least two years following the date of the  
11 last notarial act recorded in the journal.

12 \* Sec. 14. AS 44.50 is amended by adding a new section to read:

13 Sec. 44.50.111. CHANGES OF STATUS. (a) Within 30 days after  
14 the change of a notary's business or residence address, the notary  
15 public shall deliver to the lieutenant governor, personally or by  
16 certified mail, written notice of the change including both old and  
17 new addresses.

18 (b) Within 30 days after the change of a notary's name, the  
19 notary public shall deliver to the lieutenant governor, personally or  
20 by certified mail, written notice of the change including both old and  
21 new names and a certified copy of either a marriage license or a  
22 court's certificate that verifies the name change. A notary public  
23 with a new name shall sign that name on all notarial certificates, but  
24 only after the following steps have been completed:

- 25 (1) the notice described in this subsection has been deliv-  
26 ered;
- 27 (2) a new seal has been obtained, bearing the new name; and
- 28 (3) the surety for the notary's bond has been informed in  
29 writing.

1 (c) Within seven days after the loss or theft of a notary's  
2 official journal or seal, the notary public shall deliver to the  
3 lieutenant governor, personally or by certified mail, a signed notice  
4 of the loss or theft.

5 (d) A notary public may resign a notarial commission by deliver-  
6 ing to the lieutenant governor, personally or by certified mail, a  
7 letter stating the effective date of resignation. A notary public who  
8 ceases to reside or work in this state or who loses the mental capac-  
9 ity to carry out notarial duties shall resign the notarial commission.

10 (e) A notary public who resigns or whose commission has been  
11 revoked under AS 44.50.165 shall, at the time of resignation or within  
12 30 days of receiving notice of the revocation, return the notarial  
13 commission, personally or by certified mail, to the lieutenant gover-  
14 nor.

15 (f) If a notary public dies during the term of the notarial  
16 commission or within two years after the commission's termination, the  
17 notary's heirs or personal representative shall, as soon as reasonably  
18 practicable after death

19 (1) destroy the notary's official seal; and

20 (2) deliver to the lieutenant governor, personally or by  
21 certified mail, the notary's official journal and commission along  
22 with a written confirmation of the notary's date of death.

23 \* Sec. 15. AS 44.50.160 is repealed and reenacted to read:

24 Sec. 44.50.160. MISCONDUCT OR NEGLIGENCE. (a) A notary public  
25 is liable to a person for all damages proximately caused that person  
26 by the notary's official misconduct or negligence in performing a  
27 notarial act.

28 (b) A surety for a notary's bond is liable to a person for  
29 damages proximately caused that person by the notary's official

1 misconduct or negligence in performing a notarial act, but this  
2 liability may not exceed the value of the bond or of any remaining  
3 bond money that has not been paid to or on behalf of other claimants  
4 regardless of the number of claimants.

5 (c) An employer of a notary public is liable

6 (1) to a person for all damages proximately caused that  
7 person by the notary's official misconduct in performing a notarial  
8 act related to the employer's business only if the employer actually  
9 directed, encouraged, consented to, or approved the notary's official  
10 misconduct, either in the particular transaction or, impliedly, by  
11 previous actions in at least one similar transaction;

12 (2) to the notary public for all damages recovered from the  
13 notary public as a result of official misconduct that was coerced by  
14 threat of the employer, if the threat, such as of demotion or dismiss-  
15 al, was made in reference to the particular notarial act or,  
16 impliedly, by the employer's previous action in at least one similar  
17 transaction; and

18 (3) to the notary public for damages proximately caused the  
19 notary public by demotion, dismissal, or other action resulting from  
20 the notary's refusal to commit official misconduct.

21 (d) In this section "official misconduct" means conduct know-  
22 ingly engaged in that violates a provision of this chapter or regula-  
23 tions adopted under it, and includes the failure to act when required  
24 by law to perform an act.

25 \* Sec. 16. AS 44.50 is amended by adding a new section to read:

26 Sec. 44.50.165. REVOCATION OF COMMISSION. (a) The lieutenant  
27 governor shall revoke, or deny renewal of, the commission of any  
28 notary public who, during the current term of appointment,

29 (1) commits an act of official misconduct or criminal

1 negligence under this chapter; or

2 (2) is found to have submitted an application or endorse-  
3 ment for a notarial commission that contains a substantial and materi-  
4 al misstatement or omission of fact.

5 (b) The adjudication provisions of the Administrative Procedure  
6 Act (AS 44.62) apply to proceedings brought against a notary public  
7 under this section.

8 (c) Proceedings or an investigation against a notary public  
9 under this section may be pursued, at the discretion of the lieutenant  
10 governor, after the resignation or expiration of the notarial commis-  
11 sion. If pursued to conclusion, the results of the proceedings or  
12 investigation are a matter of public record, including a finding of  
13 whether or not grounds existed for revocation of or refusal to renew  
14 the notarial commission.

15 \* Sec. 17. AS 44.50 is amended by adding a new section to read:

16 Sec. 44.50.171. CRIMINAL PROSECUTION. (a) A notary public who  
17 knowingly performs an act prohibited or, with criminal negligence,  
18 fails to perform an act required by this chapter is guilty of a class  
19 A misdemeanor.

20 (b) A person not a notary public who knowingly acts as or other-  
21 wise impersonates a notary public is guilty of a class A misdemeanor.

22 (c) A person who knowingly and unlawfully obtains, conceals,  
23 alters, defaces, or destroys the seal, official journal, or notarial  
24 commission of a notary public is guilty of a class A misdemeanor.

25 (d) A person who knowingly solicits, coerces, or in any way  
26 influences a notary public to commit official misconduct is guilty of  
27 a class A misdemeanor.

28 (e) In this section "official misconduct" has the meaning given  
29 in AS 44.50.160.

1 \* Sec. 18. AS 44.50 is amended by adding a new section to read:

2 Sec. 44.50.181. REMEDIES. The remedies of this chapter supple-  
3 ment other remedies provided by law.

4 \* Sec. 19. AS 45.03.509(a) is amended to read:

5 (a) A protest is a certificate of dishonor made under the hand  
6 and seal of a United States consul or vice consul [OR A NOTARY PUBLIC]  
7 or other person authorized to certify dishonor by the law of the place  
8 where dishonor occurs. It may be made upon information satisfactory  
9 to the person.

10 \* Sec. 20. The following laws are repealed: AS 44.50.050, 44.50.070,  
11 44.50.090, 44.50.100, 44.50.110, 44.50.120, 44.50.130, 44.50.140, 44.50.-  
12 150, 44.50.170, and 44.50.180.

AMENDMENT TO HB 127  
IN THE HOUSE JUDICIARY COMMITTEE  
By Representative Gruenberg

Page 5, line 23 - page 6, line 7

Amend AS 44.50.065(a) to read as follows:

Sec. 44.50.065. PROHIBITED ACTS.

(a) A notary public is disqualified from performing a notarial act if the notary public or if a spouse, sibling, parent, child, grandparent or grandchild of the notary public is a signer of or named in the document that is to be notarized.

Amendment to  
44.50.092 Fees for Notarial Acts

Sub section (e) A Notary may establish an independent fee schedual for acts performed for which a fee is not stated in this section.

FISCAL NOTE

Revision Date: \_\_\_\_\_

*cc  
supB*

REQUEST

Bill/Resolution No.: HB 127  
 Title: An Act relating to notaries public  
 Sponsor: Rules Committee  
 Requestor: Governor  
 Date of Request: \_\_\_\_\_

FISCAL DETAIL

Agency Affected: Office of the Governor  
 Program Category Affected: Executive Operations  
 BRU, Program or Subprogram(s) Affected: Office of the Lieutenant Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE	70.0	140.0	140.0	140.0	140.0	140.0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Passage would double the revenue per year to the general fund. Currently the fee is \$20.00 per commission. This bill would increase the fee to \$40.00 (there is no fee for state employees). The revenues reflected above is an estimate based on 3,500 (per year) new and renewed notary commissions.

Prepared By: Sally R. Hanson Phone: 465-3520  
 Division: Office of the Lieutenant Governor Date: 01/21/85  
 Approved by Commissioner: Stephen McAlpine Date: 01/21/85  
 Agency: Lieutenant Governor

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

HB 126

The lease tracts these firms acquire are often the most likely to contain valuable oil, gas, or mineral resources. However, these firms conduct massive high pressure telephone sales and media advertising aimed at would-be investors in the lower 48 states, promising them high returns if they "invest" in a portion of one of these Alaskan oil or gas leases. The offering firms often falsely represent that they have expertise in oil, gas or mineral exploration or development. What is especially offensive to our state is that these slick operators often use names such as "Alaska Oil and Gas Exploration" or "Alaska Petroleum Investments," and set up empty "shell" corporations with Alaska addresses.

This bill would broaden the Alaska Securities Act to cover these business firms even if the "investment" sales are not made in our state or to Alaska residents. Essentially, the bill would do this by extending the jurisdiction of our state securities regulators and of our courts over these fraudulent schemes. The state would be able to take legal action against these out-of-state sellers of Alaska mineral rights. By amending the Securities Act, Alaska can require these firms to file securities registrations regarding their sales, and to give prospective purchasers truthful information about the likelihood of realizing a gain on such investments.

This legislation will not affect legitimate companies engaged in oil, gas, or mineral exploration or production, as they are already exempted from the Alaska Securities Act by AS 45.55.140(b)(17).

This bill should be supported by consumer groups as well as by the legitimate members of the oil and gas industry. Therefore, I urge your prompt action on this bill to prevent further damage to the commercial image, nationwide, of Alaska.

Sincerely,

/s/

Bill Sheffield  
Governor"

HB 127

HOUSE BILL NO. 127 by the Rules Committee by request of the Governor, entitled:

"An Act relating to notaries public."

was read the first time and referred to the Judiciary and Finance Committees.

A fiscal note was attached and appears in House Journal Supplement No. 8.

The Governor's transmittal letter, dated January 25, 1985, appears as follows:

HB 127

"Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to notaries public. This bill amends AS 44.50 to provide both notaries and the public with a more detailed delineation of a notary's functions.

Besides amending several existing sections of AS 44.50, the bill incorporates many features of the Model Notary Act, a September 1984 revision of the 1973 Uniform Notary Act. The Model Notary Act was written by an advisory committee of the National Notary Association, comprised primarily of public officials and members of the legal profession. Interested persons should see the association's official commentary published with the Model Notary Act. As indicated in the preface to the Model Act, that Act is more comprehensive than the Uniform Law on Notarial Acts that was adopted by the National Conference of Commissioners on Uniform State Laws in 1982.

The attached bill increases the application fee for a notary other than a state employee from \$20 to \$40 (AS 44.50.040), as well as requiring posting of a bond in the amount of \$10,000, rather than \$1,000. New AS 44.50.045. A new section proposed by this bill, AS 44.50.015, requires an applicant for a notarial commission to submit a statement of personal qualifications. Other new sections specify the instances in which a notary is disqualified from performing a notarial act (AS 44.50.072), require the notary to be impartial (AS 44.50.074), prohibit the execution of a false certificate (AS 44.50.076), and proscribe the endorsement of products by a notary if the notary's title or seal is used in the promotion (AS 44.50.078). Furthermore, new AS 44.50.085 defines and prohibits the unauthorized practice of law by a notary.

The bill establishes for the first time maximum fees that can be charged for notarial acts and clearly states that a notary is not required to charge fees for services rendered. New AS 44.50.092. Another new provision requires all notaries to maintain an official journal of notarial acts performed, which must include information on the requesting party and description of the notarial act performed. New AS 44.50.095. The journal is to remain in the notary's sole custody, until revocation or expiration of the notarial commission or death of the notary, when the journal and the certificate of commission are to be delivered to the lieutenant governor's office. AS 44.50.100. The lieutenant governor's office is to be notified of changes of address or of name, loss or theft of an official journal or seal, resignation of a commission, or death of a notary, under new AS 44.50.105.

Liability of a notary, or the sureties on the notary's bond, for misconduct or neglect is described in greater detail than before. AS 44.50.160. This amended section also defines the liability of a notary's employer to the notary or the public, where the employer is responsible for misconduct in the performance of a notarial act. Finally, class A misdemeanor penalties of a \$5,000 fine, imprisonment for up to a year, or both, are provided for

**HB 127**

knowing violations of AS 44.50, impersonation of a notary; theft or destruction of a notary's seal, journal, or official records; and solicitation or coercion of a notary to commit official misconduct. New AS 44.50.165.

The current notary public statutes were enacted in 1960 and have not been amended since that time. The changes proposed by this bill would provide greater protection for the public and greater guidance to notaries. I urge your prompt and favorable consideration of this much-needed bill.

Sincerely,

/S/

Bill Sheffield  
Governor"

**HB 128**

HOUSE BILL NO. 128 by Pignalbari, Gruenberg, Boucher, Jenkins, Koponen and Taylor, entitled:

"An Act relating to mental health trust lands; and providing for an effective date."

was read the first time and referred to the Resources, Judiciary and Finance Committees.

**HB 129**

HOUSE BILL NO. 129 by Pignalbari, Phillips and Jenkins, entitled:

"An Act relating to compensation of legislators; establishing a commission on legislative compensation; and providing for an effective date."

was read the first time and referred to the State Affairs, Judiciary and Finance Committees.

**HB 130**

HOUSE BILL NO. 130 by the Rules Committee by request of the Governor, entitled:

"An Act relating to educational employees' collective bargaining agreements; and providing for an effective date."

was read the first time and referred to the Labor & Commerce, Health, Education & Social Services and the Finance Committees.



A Non-Profit  
Educational Organization

# NATIONAL NOTARY ASSOCIATION

23012 Ventura Blvd., P.O. Box 4625, Woodland Hills, California 91365-4625  
Telephone: (818) 347-2035, Cable: NOTARIAN

MILTON G. VALERA  
President

DEBORAH M. THAW  
Executive Director

RAYMOND C. ROTHMAN  
Founder

MAR 4 1985

February 27, 1985

Representative Mike M. Miller  
House of Representatives  
Pouch V  
Juneau, AK 99811

Dear Representative Miller:

On behalf of the National Notary Association, a non-profit educational organization serving the nation's 3.3 million Notaries, I want to commend the recent introduction of House Bill 127, a proposal affecting Notaries Public in Alaska.

Based in large part on the Model Notary Act, HB 127 is progressive legislation that many other states would do well to emulate. Of particular benefit to the public are the sections that establish a \$10,000 Notary bond, define disqualifying interests and the unauthorized practice of law, delineate the liability of both Notary and employer, and require journals of notarial acts. We suggest that a Notary journal would be an even more useful tool for the public protection if it included the signature of each document signer, in addition to the signature of each credible witness.

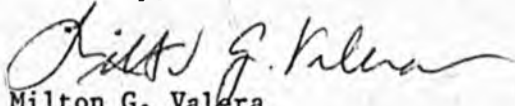
As you may know, the NNA assists Notaries through a variety of educational programs, including seminars, an annual conference, reference books, a magazine and newsletter, and an "Information Service." The NNA also provides information about the office of Notary to the general public and assists lawmakers in drafting notarial legislation.

Indeed, one of the NNA's major accomplishments was publication of the Model Notary Act in collaboration with a national panel of law professors, secretaries of state, attorneys and Notary-regulating officials. Notarial laws in many states have drawn heavily from this model legislation in its present and prior versions, and I would be pleased to send you a copy.

Representative Mike M. Miller  
February 27, 1985  
Page 2

As the nation's clearinghouse for notarial data, we welcome your questions about the laws, customs and practices of Notaries. Please let us know if we can be of service.

Sincerely,



Milton G. Valera  
President

MGV:jd  
020913

cc: Honorable Stephen McAlpine  
Lieutenant Governor

P.S. - I'd also be pleased to send you complimentary copies of our magazine, The National Notary, and newsletter, Notary Viewpoint, on request.

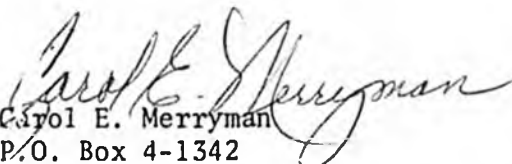
Honorable Mike Miller  
Chairman, House Judiciary Committee  
Honorable Pat Rodey  
Chairman, Senate Judiciary Committee  
Honorable John Sackett & Honorable Jan Faiks  
Co-Chairman, Senate Finance Committee  
Honorable Al Adams  
Chairman, House Finance Committee

FEB 14 1985

Re: HB 127

Besides upping the price and making it more difficult to become a notary, I don't know what HB 127 will accomplish. In my case, I would just like simple clarification of what is considered "purposes of the department" when notary authorized by a State department. See attached.

I also find the Alaska Administrative Code lacking in any further clarification of Notary Public duties.

  
Carol E. Merryman  
P.O. Box 4-1342  
Anchorage, Alaska 99509

2/11/85

My Commission authorized by DOT&PF expires 11/17/85  
My Private Notary Commission expires 4/28/86

Re HB 127 "An Act Relating to Notaries Public" as regards State employees

Sec. 44.50.170 (a) ... "head of the department shall execute a certificate that the appointment is made for the purposes of the department."

If the purpose of HB 127 is to clarify the rules for notaries, then I think "purposes of the department" should also be clarified.

In our office, because it is a State (DOT&PF) document signed by both a State official and a private individual, the department-sanctioned notary will notarize both signatures. Is it the document that is for "purposes" of the department or person that is "purposes" of the department? I have been a State employee for 21 years and have had a State furnished notary most of that time. Due to necessity in an effort to assist private individuals, I acquired another notary commission as a private individual about eight years ago. There are many occasions on State documents where I notarize with the two different commissions.

Since the private notary commission was acquired just to assist private individuals and State employees' private business, I do not now want to go to the expense of renewing it (under the new rules) if I do not have to. Am I authorized to notarize documents for individuals other than Department employees on Department documents with my State, or Department furnished notary? Or, in other words, would the State's bonding cover my notarization of a document for a private individual on private business? EXAMPLE: Contractor comes in few minutes before bid opening but finds he has not had his documents properly notarized and does not have time to go some place else. As a private notary, I have notarized his signature with my private commission; I would not notarize his signature with my State or Department furnished commission

I have never charged for this service I provide. It is easier to provide the service than to try to explain that you cannot notarize some things but can notarize others. This has been a longstanding problem but some employees with State or Department furnished notary commissions notarize anything.

I can see the expense for a private notary going to about \$100 now and if I don't have to acquire but can still provide the service, I would like to know. If I can have the notary commission furnished by the State it will be much cheaper for me.

Carol E. Merryman

2/11/85

Home: 345-1330  
P.O. Box 4-1342  
Anchorage, Ak 99509

work: DOT&PF  
P.O. Box 6900  
Anchorage, Ak 99502  
266-1663

October 26, 1984

Re: Notary Public

Ms. Betty Michael  
Notary Commission Clerk  
Office of the Lieutenant Governor  
Pouch AA  
Juneau, Alaska 99811

Dear Ms. Michael:

Recently I became aware of legislation to increase the notary bond from \$1,000 to \$10,000. Since I am a private notary where I pay the cost of bonding out of my own pocket and also have a notary for "official" State (DOT&PF) business, I would like to have clarification of what is meant by "official" business.

Many of the individuals with notaries furnished by the State presume "official" business is the document, not the person. If this is the case, please advise. If this is not the case, please advise.

EXAMPLE: DOT&PF has a form to sign where they collect charges for damages done by private individuals in auto accidents. When the private individual commits himself to some form of payment for damages, I notarize his signature with my private notary, and the State "official" with my State furnished notary on the same form. This same situation also occurs on some State leases, MBE/EEO forms, etc.

Most all of the notarizing of private individuals signatures is done at the office because most of the forms/documents are State forms and people just forget to have them notarized before they come out here. There is a need to notarize non-State employee signatures, and I originally secured the private notary just for this need.

What I want to know, since the cost of bonding is going up, do I have to go to the personal expense of obtaining a private notary or, can I use the State-furnished notary for notarizing signatures of private (non-State employee) individuals?

Sincerely,

Carol E. Merryman  
P.O. Box 4-1342  
Anchorage, Alaska 99509

*see 4B27*

*No answer as of 2-11-85  
km*

*Example*

FEB 7 1985

DALE P. TURBBS  
LAND MANAGEMENT CONSULTANT  
1234 W. HILLCREST DRIVE ANCHORAGE, ALASKA 99503  
TELEPHONE (907) 279-9831

February 4, 1985

Representative Mike Miller, Chairman  
House Judiciary Committee  
Alaska State Legislature  
Pouch V (MS 3100)  
Juneau, Alaska 99811

Re: HB 127, An Act Relating to Notaries Public

Dear Representative Miller:

I request your judiciary committee not pass HB 127 as requested by the Governor. The bill is over-restrictive and apparently attempts to fix a wagon that is not broken. This bill puts all kinds of restrictions and burdens on a notary public that are not warranted. An examination of Title 44 shows the present statute has been on the books since 1961 and shows one court case relating to notary public litigation in Alaska.

I am a notary public and use the authority in my right-of-way acquisition work for municipal and public utility matters. My work as the right-of-way agent requires the negotiation of the easement and when agreement is reached, I am able to have the property owner sign the agreement and notarize it at the same time. I also deliver the utilities' or municipalities' payment at the same time. Before I had the notary authority, the property owner was required to make a special trip to a notary and then make delivery of the document to the agency and wait for the payment. In some instances the return time was more than two months. It also required repeated follow-up calls.

AS 44.50.072(2) is of particular concern. I receive compensation for my services. That is how I make my living. This section of the bill says that if the notary receives cash (in this case my hourly fee), I cannot notarize the document. If I were to look at my best interest I would make more money if I can get more hours of work instead of providing the on-the-spot notary.

A further absurdity to the bill is that no one in an agency's office, or anyone's office, could notarize a document because the notary is on the payroll and is receiving compensation for documents required by the office.

I also have objections to AS 44.50.085(a) which states the notary, unless they are an attorney, may not assist a person in understanding a document. Again, in my right-of-way work I am more knowledgeable than an attorney on explaining the road or utility project to the land owner.

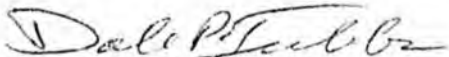
Some persons working in right-of-way acquisition work put a witness of signature statement on the document. The right-of-way agent then signs as a witness to the property owners' signature, then takes the form back to the office notary or another notary for notarizing. This is a sham and accomplishes nothing. The witnessing signature is no better. In fact, it removes the notary from even seeing the actual signing; if the agent is dishonest, there is a better chance for an impropriety.

It would seem AS 44.50.076 sums up the whole intent of the notary. If there are violations, then take back the stamp.

There are several other sections to the bill that are objectional. Most specifically, the journal to be kept.

Thank you for consideration of these comments. One really needs to look at the bottom line as to the real need for a notarized signature. All it provides is an act of witnessing. Perhaps the number of documents that require it is out of hand.

Sincerely,



DALE P. TUBBS

DPT:bw



A Non-Profit  
Educational Organization

# NATIONAL NOTARY ASSOCIATION

23012 Ventura Blvd. P.O. Box 4625, Woodland Hills, California 91365-4625  
Telephone: (818) 347-2035. Cable: NOTARIAN

MILTON G. VALERA  
President

DEBORAH M. THAIN  
Executive Director

RAYMOND C. ROTHMAN  
Founder

February 27, 1985

Representative Al Adams  
House of Representatives  
Pouch V  
Juneau, AK 99811

Dear Representative Adams:

On behalf of the National Notary Association, a non-profit educational organization serving the nation's 3.3 million Notaries, I want to commend the recent introduction of House Bill 127, a proposal affecting Notaries Public in Alaska.

Based in large part on the Model Notary Act, HB 127 is progressive legislation that many other states would do well to emulate. Of particular benefit to the public are the sections that establish a \$10,000 Notary bond, define disqualifying interests and the unauthorized practice of law, delineate the liability of both Notary and employer, and require journals of notarial acts. We suggest that a Notary journal would be an even more useful tool for the public protection if it included the signature of each document signer, in addition to the signature of each credible witness.

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Representative Al Adams  
February 27, 1985  
Page 2

As the nation's clearinghouse for notarial data, we welcome your questions about the laws, customs and practices of Notaries. Please let us know if we can be of service.

Sincerely,

Milton G. Valera  
President

MGV:jd  
020912

cc: Honorable Stephen McAlpine ✓  
Lieutenant Governor

P.S. - I'd also be pleased to send you complimentary copies of our magazine, The National Notary, and newsletter, Notary Viewpoint, on request.

RAND DAWSON  
ATTORNEY AT LAW  
A PROFESSIONAL CORPORATION  
BOX 111646  
ANCHORAGE, ALASKA 99511-1646  
(907) 345-2687

June 14, 1985

Mr. Stephen McAlpine  
Lieutenant Governor  
Pouch AA  
Juneau, AK 99811

RE: House Bill 127  
Notary Conduct and Law

Dear Lieutenant Governor:

Thank you for your materials regarding HB 127.

As currently drafted, the Bill would essentially preclude my practice of law since my wife is my office staff. She routinely notarizes my signature for court materials several times a day.

I do not practice in a "downtown" urban or commercial area and do not have a notary readily available aside from my wife. I can think of no reasonable alternative aside from having to hire a separate staff member just to notarize my rather mundane signature on documents which often are no more significant than mere summaries describing materials I have already filed in court or events that have transpired in a particular case.

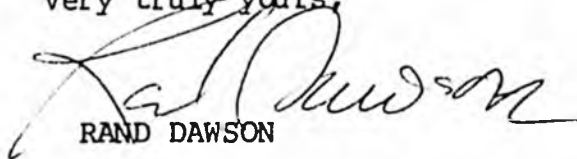
In this respect the "log" requirement is burdensome but not intolerable. I would suggest some form of division wherein specific categories of "significant" documents might be logged such as promissory notes or wills. However, in my ten years of litigation practice I have yet to see a case where the timing of the notary ever became an issue. Nor have I seen any cases discussed or reported in this jurisdiction as to that issue. Accordingly, I think, overall, the log requirement is unreasonably burdensome on balance with any benefits which may obtain from such requirement.

Frankly, I think, in this instance, I cannot see the need for the increased regulation. While the potential for abuse or deceit is always present, as it is in any transaction, I am simply not aware of an existing need for the regulatory scheme.

McAlpine  
June 14, 1985  
Page 2.

Thank you for this opportunity.

Very truly yours,



RAND DAWSON

cc: M. Mike Miller, House Judiciary Committee  
Representative L. Adams, House Finance Committee  
RD/kd

JUNEAU OFFICE

COURT PLAZA BUILDING, SUITE 800  
240 MAIN STREET  
POST OFFICE BOX 1211  
JUNEAU, ALASKA 99802-1211  
PHONE: (907) 586-3340  
TELEX: 099-45-376  
TELECOPY: 907-586-6818

OF COUNSEL  
M E MONAGLE

R E ROBERTSON (1885-1961)  
F O EASTAUGH  
J B BRADLEY  
WILLIAM G RUDDY  
JAMES F CLARK  
PAUL M HOFFMAN  
J P TANGEN  
HAROLD E SNOW, JR.  
D ELIZABETH CUADRA  
STEVEN W SILVER  
JAMES M SHINE  
PAMELA FINLEY  
JOSEPH D DARNELL

ROBERTSON, MONAGLE, EASTAUGH & BRADLEY

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
POST OFFICE BOX 1211  
JUNEAU, ALASKA 99802-1211

ANCHORAGE OFFICE

THE HUNT BUILDING  
550 WEST SEVENTH AVE, SUITE 1290  
POST OFFICE BOX 679  
ANCHORAGE, ALASKA 99510-0679  
PHONE: (907) 277-6693  
TELEX: 090-26-486  
TELECOPY: 907-279-1959

ROBERT B BAKER  
MICHAEL T THOMAS  
LEROY J BARKER  
L G BERRY  
CARL W WINNER  
SUSAN L MENDENHALL  
KENNETH W LEGACKI  
JULIA B BOCKMON

June 18, 1985

Hon. Stephen McAlpine  
Lieutenant Governor  
State of Alaska  
Pouch AA  
Juneau, Alaska 99811

Dear Steve:

Thank you for your letter of June 7, 1985 informing me of certain proposed changes to Alaska's present notary law which are embodied in House Bill 127.

The misuse of the notarial seal does not seem to be widespread in Alaska. House Bill 127 only adds more record keeping and paper to the bureaucracy. This in turn will only add expense to our clients. What is now a service performed without charge probably would have to pay for itself at about \$5.00 per whack.

As they say, "If it ain't broke, don't fix it."

Sincerely,

Bill

W. G. Ruddy

WGR:ee/1.030

cc: Hon. Bill Ray  
Hon. Jim Duncan  
Hon. Mike M. Miller

**LARRY R. WEEKS**  
ATTORNEY AT LAW  
319 SEWARD STREET • JUNEAU, ALASKA 99801  
(907) 586-6812

June 17, 1985

Mike M. Miller  
Pouch V  
Juneau, AK 99811

Re: Notary Bill HB127

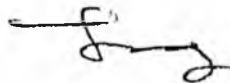
Dear Mike :

Unless there is something wrong with the notary law, we shouldn't change it. The proposed legislation HB127 adds a new level of bureaucracy on the existing framework virtually making notaries into European magistrates.

It will cause additional expense that has to be borne by the consumer. I've never heard of such abuse of the notary system that these steps are called for.

The added time and expense of having every piece of paper in a lawyer's practice notarized by someone independent of the lawyer means substantial additional expenses that is unnecessary.

Sincerely,



Larry R. Weeks

BISS AND HOLMES

ATTORNEYS AT LAW  
AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

BURTON C. BISS  
ROGER F. HOLMES

618 CHRISTENSEN DRIVE  
ANCHORAGE, ALASKA 99501  
TELEPHONE (907) 277-8564

WASILLA OFFICE  
SR BOX 5111  
WASILLA, ALASKA 99687  
TELEPHONE (907) 376-5318

June 7, 1985

Mr. Stephen McAlpine  
Lieutenant Governor  
State of Alaska  
Pouch AA  
Juneau, Alaska 99811

Re: House Bill 127

Dear Steve:

Thank you for bringing to my attention House Bill 127. I have obtained a copy of the proposed statute and reviewed it carefully. One of the disqualifications in 44.50.072 is paragraph 3 prohibiting a person from notarizing a document if they are related to the person whose signature is being notarized. In some instances I can see a reason why this should be true. For instance, wills, possibly deeds, etc.

However, as you are aware, many lawyers in the State of Alaska have their spouse as their secretary. A certain number of these attorneys, such as my partner Burt Biss, live in remote areas where no one else is available to notarize a document except their spouse working in their office. This provision in the law will place an almost insurmountable burden on sole practitioners in this position. Off the top of my head, I can think of six or eight lawyers whom I know personally who would find it almost impossible to carry on the day-to-day legal practice if they could not notarize their secretary's signature and vice-versa. In the course of a week each probably notarizes the other's signature at least 25 times on affidavits of service, etc.

While I have no objection to keeping a journal, and can see the merit for one in certain instances, my journal and that of my secretary, will certainly become voluminous in a very short period of time. In some of the larger law firms in the state I can foresee volumes of journals for basically routine transactions.

Mr. Stephen McAlpine  
Page Two  
June 7, 1985

Very truly yours,

BISS & HOLMES

Roger F. Holmes

RFH:kp

cc: Representative M. Mike Miller, House Judiciary  
Representative L. Adams, House Finance