

HB

97

SECTIONAL ANALYSIS

CSHB 97(FIN)

An Act relating to the authority to take oaths, affirmations, and acknowledgments in the state; to notarizations, to verifications, to acknowledgments, to fees for issuing certificates with the seal of the state affixed, and to notaries public; and providing for an effective date.

Section 1. Adds presiding officers of each house of the Legislature and the Lieutenant Governor to the list of persons permitted to administer oaths. This permission is limited to the administration of the oath of office to new legislators (AS 24.05.160) and to the presiding officer for the same purpose during second and special sessions (AS 24.05.170).

Sections 2 and 3. Conform sections of Alaska Civil Procedure concerning notarial acts to the updated language in Sec. 44.50.061 (5). These sections apply to court system employees, U.S. Postmasters, U.S. military personnel and municipal clerks.

Sections 4 and 5. Update 09.63 to include reference to limited liability companies, limited partnerships, and limited liability partnerships. In Section 5, (H) STA added "or Municipality of" on the forms of acknowledgment in recognition of Alaska not having counties.

Section 6. Increases fee per notarial certificate from \$2/three folios to \$5/certificate. "Folio" is an outdated term not used in current practice. The increase reflects the State's cost to process the certificates. Deletes territorial language re: accounting for fees.

Section 7. Two categories of notaries:

- a) notary public without limitation
 - terms are for 4 years
 - can charge fees for service
- b) limited governmental notary public (state, municipal and federal employees)
 - conduct only official government business
 - terms are for the length of government employment
 - cannot charge fees for service (new Sec. 44.50.039)

Can have concurrent commissions as a notary public without limitation and as a limited governmental notary public, as long as the activities are separated.

Section 8. Changes Qualifications to be commissioned notary public:

- Lowers the age from 19 to 18.
- Must have established Alaska residency. The definition of "residency" is updated to a more widely used and more current definition (AS 01.10.055) than current statute (AS 44.50.020).
- Notary public must reside legally in the U.S.
- 10 years between felony conviction/incarceration and ability to apply as notary.

Section 9. Sets out the application requirements for notary public commission whether notary public without limitation or limited governmental notary public.

Restates the current \$40 fee per application along with the current requirement that State limited governmental notaries public are exempt from the fee.

Restates current bonding requirement of \$1,000 with term of four years for notaries public without limitation.

Requires Lieutenant Governor to keep the bond for two years following the notary's term of commission.

Provides opportunities for Lieutenant Governor to deny applications if:

- a) application is incomplete
- b) applicant has been convicted of or incarcerated for a felony less than 10 years previous to application
- c) applicant's commission has been revoked

Clarifies current law as to when a new commission begins.

Section 10. Much of AS 44.50.060 is antiquated language. The changes here acknowledge that the duties of a notary public can be encompassed in the broader language of administering oaths and affirmations, taking acknowledgment of or proof of instruments of writing and giving notarial certificates. (H) JUD added language from this section on which removes impediments to providing electronic notarizations. The language is broad enough to allow for necessary flexibility in what is rapidly changing technology.

Section 11. Defines scope of practice and makes clear that a notary public who is not an attorney may not perform functions that require the practice of law.

Also, sets out what a notary public cannot do (Sec. 44.50.062), the specifications of the official seal, and its care and keeping, what constitutes a "seal impression", changes in notary status and disciplinary actions. It also specifies at (5) (A) – (C) the elements that must be present for a notary public to notarize a document:

- Person must appear and sign the document before the notary public.
- Person must produce identification unless personally known to the notary public.
- The notary must sign in his/her own handwriting the name on his/her commission certificate.
- Notary cannot notarize documents which benefit the notary

This section reorders and clarifies current law defining the notary's seal, and defining the seal impression. The \$5 name change fee is not in addition to the cost of a new certificate under Sec. 44.19.024.

New section 44.50.068 gives the Lieutenant Governor the latitude to suspend or revoke a notary public's commission or to reprimand a notary public for good cause. The Lieutenant Governor may delegate his authority. With regard to a complaint, the Lieutenant Governor may find no merit to the complaint or may refer the complaint to the office of administrative hearings for a formal disciplinary hearing which could end with revocation of the notary public's commission. In all instances the notary public may appeal the Lieutenant Governor's decision to the office of administrative hearings (rewritten by (H) FIN).

Section 12. Describes the information gathered from notaries public on the application which will be public information. House State Affairs Committee added language allowing the Lt. Governor to publish a summary of this chapter and regulations that can be distributed by electronic means. Provides for the Lieutenant Governor to adopt regulations.

Section 13. Defines terms used in this Chapter.

Section 14. Repealers:

- AS 44.50.030 (Term of office, now covered in new 44.50.010)
- AS 44.50.040 (Fees, now covered in new 44.50.033)
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- AS 44.50.100 (Return of papers. There are no papers to return. Repealed and not replaced)
- AS 44.50.110 (APA procedure for disciplinary actions, replaced by more comprehensive 44.50.068)
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- AS 44.50.140 (Disposition of bond, now covered in new 44.50.034)
- AS 44.50.170 (State employees as notaries, now covered in 44.50.010, 44.50.031 (c) and 44.50.039)
- AS 44.50.180(c) (Federal law prohibits postmasters from charging fees. Alaska law is inconsistent and this subsection must be repealed)
- AS 44.50.190 (Savings clause, a transitional measure from 1961 that is no longer necessary and can be repealed).

Section 15. Applicability

- Current commissions continue in effect until term of office expires, except if the commissioned is a felon and 10 years have not elapsed since conviction or incarceration.
- Bonds, seals, liabilities in effect continue through the notary public's term of office.
- All notaries with current commissions or who are commissioned following the effective date of the legislation must follow the notarial procedures encompassed in the legislation.
- When commissions expire, notaries public will apply for new commissions under the new AS 44.50.032 (Section 9).

Sections 16 and 17. Transition

Allows the Lieutenant Governor to immediately proceed to adopt regulations with an effective date following the effective date of the legislation.

Section 18. Effective Date

Effective date is July 1, 2005 to allow time for revision of website, online handbook and forms.

AMENDMENT

#1

OFFERED IN THE SENATE
TO: CSHB97 (FIN)

BY SENATOR THERRIault

Page 8, line 17-19:

Delete "may not, within 10 years before the commission takes effect, have committed acts for which a notary public commission may be denied or revoked under this chapter; and"

Insert "may not, within 10 years before the commission takes effect,

(i) have had the person's notary public commission revoked under AS 44.50.068(a)(2) or (3) or under the notaries public laws of another state;

or

(ii) have been disciplined under AS 44.50.068 or under the notaries public laws of another state if the disciplinary action prohibits the person from holding a notary public commission when the person applies for a commission; and"

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Notary Commission Revocation Amendment

Senate State Affairs Committee

TO: CSHB97(FIN): OATHS; NOTARIES PUBLIC; STATE SEAL

PURPOSE OF THE AMENDMENT:

- Notary commissions can be revoked for violation of or non-compliance with notary law, for incompetence or malfeasance in carrying out their duties, or for minor technical reasons (simply moving out of state for example.) The current bill does not consider all possible reasons for revoking a notary commission and treats all revocations as if they were the result of serious offenses.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1 **CORRECTED**
 Bill Version: HB 97
 (H) Publish Date: 1/26/05

Revision Date/Time (Note if correction): _____ Dept Affected: OOG
 Title: An Act relating to oaths, RDU: Office of the Lt Governor
affirmations, and acknowledgements " Component: Office of the Lt Governor
 Sponsor: Governor
 Requester: Rules Component No: 11

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	8.7	8.7	8.7	8.7	8.7	8.7
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The proposed fee changes for certificates from \$2 to \$ as set out in Section 6 of the bill will generate anticipated 8.7 in additional unrestricted revenues

Prepared by: Linda J Perez, Director Phone: 465-3876
 Division: Administrative Services Date/Time: 1/24/05 3:41 PM
 Approved by: Lt Governor Loren Leman Date: 1/24/2005
 Agency: Office of the Lt Governor

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Section 18. Effective Date

Effective date is July 1, 2005 to allow time for revision of website, online handbook and forms.

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 97(JUD)

1 Page 8, lines 12 - 13:

2 Delete "may not have been incarcerated in a correctional facility for a felony
3 conviction within 10 years before the commission takes effect"

4 Insert "may not, within 10 years before the commission takes effect, have been
5 convicted of a felony or incarcerated in a correctional facility for a felony conviction"

6

7 Page 8, line 15, following "jurisdiction":

8 Insert "within 10 years before the commission takes effect"

9

10 Page 8, line 16, following "may not":

11 Insert ",within 10 years before the commission takes effect,"

12

13 Page 10, lines 17 - 18:

14 Delete "applicant has been incarcerated in a correctional facility for a felony
15 conviction within 10 years before the commission is to take effect"

16 Insert "applicant has within 10 years before the commission is to take effect, been
17 convicted of a felony or incarcerated in a correctional facility for a felony conviction"

18

19 Page 10, line 19, following "revoked":

20 Insert ",within 10 years before the commission is to take effect,"

21

22 Page 18, line 12, following "(1)":

23 Insert "convicted" or "conviction" means that the person has entered a plea of guilty,

1 guilty but mentally ill or nolo contendere, or has been found guilty or guilty but mentally ill
2 by a court or jury;

3 (2)"

4

5 Page 18, line 15:

6 Delete "(2)"

7 Insert "(3)"

8

9 Page 18, lines 30, through page 19, line 1:

10 Delete "has been incarcerated in a correctional facility for a felony conviction within
11 10 years before the notary public's term of office expires under former AS 44.50.030"

12 Insert "has been, within 10 years before the notary public's term of office expires
13 under former AS 44.50.030, convicted of a felony or incarcerated in a correctional facility for
14 a felony conviction"

15

16 Page 19, line 2, following "public.":

17 Insert "In this subsection, "convicted" and "conviction" have the meanings given in
18 AS 44.50.200."

AMENDMENT

OFFERED IN THE HOUSE
TO: CSHB 97(STA)

BY REPRESENTATIVE GRUENBERG

1 Page 11, line 22, following "handwriting":

2 Insert "or by electronic means as authorized by regulations adopted by the
3 lieutenant governor"

4

5 Page 13, lines 14 - 15:

6 Delete "; a notary public may not sign through the use of a facsimile stamp or an
7 electronic or graphic printing method"

8 Insert ", or sign an electronic document by electronic means as authorized by
9 regulations adopted by the lieutenant governor"

10

11 Page 13, line 19:

12 Following "official":

13 Insert "handwritten"

14 Following "signature":

15 Insert "and information regarding the notary public's electronic signature"

16

17 Page 13, following line 19:

18 Insert a new subsection to read:

19 "(c) Within 10 days after the security of a notary public's electronic signature
20 has been compromised, the notary public shall provide the lieutenant governor with
21 written notification that the signature has been compromised. After the notary public
22 has provided the lieutenant governor with the notification, the notary public shall
23 provide the lieutenant governor with any additional information that the lieutenant

1 governor requests about the compromise of the signature."

2

3 Page 13, line 28:

4 Delete "or"

5 Insert ", "

6

7 Page 13, line 30, following "length":

8 Insert ", or may be an electronic form as authorized by regulations adopted by the
9 lieutenant governor"

10

11 Page 13, line 31, through page 14, line 1:

12 Delete "in a secure area"

13 Insert "secure and"

14

15 Page 14, line 2, following "lost,":

16 Insert "or the security of the notary public's official electronic seal is compromised,"

17

18 Page 14, line 4:

19 Delete "or"

20 Insert ", "

21 Following "loss":

22 Insert ", or compromised security. After the notary public has provided the
23 lieutenant governor with the notification, the notary public shall provide the lieutenant
24 governor with any additional information that the lieutenant governor requests about
25 the compromise of the seal"

26

27 Page 14, line 12:

28 Delete "A"

29 Insert "With regard to each paper document being notarized, a"

30

31 Page 14, line 15:

1 Delete "of each paper document notarized,"

2

3 Page 14, line 18:

4 Delete "Illegible"

5 Insert "For a notarized paper document, illegible"

6

7 Page 14, following line 23:

8 Insert a new subsection to read:

9 "(d) A notary public may use a seal in electronic form on electronic
10 documents notarized by the notary public as authorized by regulations adopted by the
11 lieutenant governor. The seal shall be affixed only at the time the notarial act is
12 performed."

13

14 Page 15, line 14, following "signature":

15 Insert "and information regarding the notary public's electronic signature"

Notary Statute Comparison – CSHB 97(FIN)

	Current	Proposed
Qualifications		
	<p>Applicants must be a resident of the state at least 19 years of age.</p> <p>Resident defined to mean a person who maintains a permanent place of abode in the state, and is in fact living in the state.</p>	<p>Minimum age lowered to 18 years.</p> <p>Residency requirements made consistent with general residency statute AS 01.10.055, rather than separate definition.</p> <p>Applicant must reside legally in the United States.</p> <p>Applicants may not, within 10 years before the commission takes effect, have been convicted of a felony or incarcerated for a felony conviction.</p>
Term	Current	Proposed
	<p>Four years.</p> <p>Automatic revocation of commissions of State employee notaries who terminate employment prior to the commission expiration date.</p>	<p>Notaries Public will continue to serve a term of four years.</p> <p>Limited Governmental Notaries Public commissions will be open-ended with automatic revocation upon termination of government employment.</p>
Fees	Current	Proposed
	<p>\$40 application fee for non-state employee notaries.</p> <p>\$2 per Lieutenant Governor certificate.</p>	<p>\$40 application fee for non-state employee notaries (No change).</p> <p>\$5 per Lieutenant Governor certificate (\$3 increase).</p>
Bond	Current	Proposed
	<p>\$1,000 Notary Bond is required of all applicants.</p>	<p>\$1,000 Notary Bond required of all applicants except Limited Governmental Notaries. Lt. Gov. required to keep for 2 years.</p>

Commission Types	Current	Proposed
	Notaries Public who serve four-year commissions. Limited Governmental Notaries Public commissions available for State employees only.	Notaries Public who serve four-year commissions. Limited Governmental Notaries Public commissions – Expanded to include Municipal and Federal employees in addition to State employees.
Commission Revocation	Current	Proposed
	Via Administrative Procedure Act. Act must be invoked to review all complaints against notaries, no matter how trivial.	By Lieutenant Governor for good cause via a formal disciplinary procedure using administrative hearing office.
Notary Data	Current	Proposed
	Each notary's name, mailing address, surety information and commission dates are available to the public.	The notary information currently available remains unchanged. The notary's name, mailing address, surety information and commission dates continue to be publicly available. To facilitate training and communication the Lieutenant Governor may collect additional information from applicants and notaries that will not be available to the public.
Non-Commissioned Notaries	Current	Proposed
	Justices, Judges, Magistrates, Clerks or Deputy Clerks of Court, United States Postmasters, and Commissioned Military Officers are authorized to take oaths, affirmations or acknowledgments.	No change.
Electronic Notarization	Current	Proposed
	Does not address this issue.	Removes impediments for notarizations by electronic means.



NATIONAL NOTARY ASSOCIATION

March 18, 2005

The Honorable Loren Leman
Lieutenant Governor, State of Alaska
P.O. Box 110015
Juneau, AK 99811-0015

RE: Support for SB 72 and HB 97

Dear Lieutenant Governor Leman:

On behalf of the National Notary Association, an educational organization serving the 4.5 million Notaries of the United States, and the approximately 12,000 Notaries of Alaska, I would like to express the NNA's strong support for Alaska Senate Bill 72 and House Bill 97.

Both bills constitute a long-needed first step in modernizing Alaska's Notary laws. Notably, the bills provide important rules to guide Notaries "in the field" in performing notarial acts and to help the Lieutenant Governor's office more efficiently keep track of the Notaries it oversees.

Additionally, the bills in their present form recognize and accommodate the federal "E-Sign" law (i.e., Electronic Signatures in Global and National Commerce Act) that now authorizes every state-commissioned Notary in the United States to use electronic signatures in performing official acts.

Accordingly, our Association strongly endorses SB 72 and HB 97 as much-needed updates to Alaska Notary law.

Sincerely,

A handwritten signature in cursive script that reads "Charles N. Faerber".

Charles N. Faerber
Vice President of Notary Affairs



United States
NOTARY
Association

March 11, 2005

The Honorable Loren Leman
Office of the Lieutenant Governor
P.O. Box 110015
Juneau, AK 99811-0015

RE: CSHB 97 (FIN) 2005

Dear Lt. Governor Leman:

On behalf of the members of the United States Notary Association (USNA), I congratulate you and Governor Murkowski on your legislative initiative to amend House Bill 97, which is intended to revise the chapter of the Alaska Statutes that governs Alaska notaries public: Title 44, Chapter 50 [Alaska Stat. §44.50]. USNA is strongly in favor of the original notarial legislation and the e-notarization amendment that has been added.


The amendment is a logical next step that will authorize you to regulate electronic notarizations and enable notaries to participate in the 21st Century.


Because Alaska has adopted the Uniform Electronic Transactions Act (UETA), it should be permissible for notaries to serve their customers by following the guidelines set forth in Alaska Stat. §09.080.010, et seq. We understand that the amendment will not bring about a complete e-notarization system to your state. However, it does address most aspects of electronic notarization, except for which particular electronic signature and seal methods Alaska notaries will eventually use.

Since Alaska Stat. §44.50 has not been comprehensively revised since being enacted in 1961, USNA gives its full support to HB 97 and the e-notarization amendment because this bill intends to repeal obsolete provisions, update antiquated language, and add new provisions where they are needed.

USNA urges the Alaska Legislature to take prompt and favorable action. If I can be of help to you in supporting this bill, please contact me at 800-587-2588 or usna@enotary.org. I look forward to reporting on the successful passage of HB 97 in an upcoming issue of *Notary Review*.

For the Association,


Marc L. Aronson
President


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Pittsburgh, Pennsylvania
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P.O. Box 110015
Juneau, AK 99811-0015

RE: Support for SB 72 and HB 97

Dear Lieutenant Governor Leman:

On behalf of the National Notary Association, an educational organization serving the 4.5 million Notaries of the United States, and the approximately 12,000 Notaries of Alaska, I would like to express the NNA's strong support for Alaska Senate Bill 72 and House Bill 97.

Both bills constitute a long-needed first step in modernizing Alaska's Notary laws. Notably, the bills provide important rules to guide Notaries "in the field" in performing notarial acts and to help the Lieutenant Governor's office more efficiently keep track of the Notaries it oversees.

Additionally, the bills in their present form recognize and accommodate the federal "E-Sign" law (i.e., Electronic Signatures in Global and National Commerce Act) that now authorizes every state-commissioned Notary in the United States to use electronic signatures in performing official acts.

Accordingly, our Association strongly endorses SB 72 and HB 97 as much-needed updates to Alaska Notary law.

Sincerely,

A handwritten signature in cursive script that reads "Charles N. Faerber".

Charles N. Faerber
Vice President of Notary Affairs

Searching For Some E-Initiative

By Charles N. Faerber
cfaerber@nationalnotary.org

It is indeed the law of the land, but no state seems to be in a hurry to implement every one of its provisions.

The federal "E-Sign" statute, otherwise known as the Electronic Signatures in Global and National Commerce Act, was signed into law in the fall of 2000 by President Bill Clinton using, appropriately, an electronic signature – appropriate because the main purpose of the law is to give electronic signatures the same legal status as pen and ink.

Since then, however, the following provision of E-Sign has been all but ignored:

SECTION 101(g). NOTARIZATION AND ACKNOWLEDGMENT.
If a statute, regulation, or other rule of law requires a signature or record relating to a transaction in or affecting interstate or foreign commerce to be notarized, acknowledged, verified, or made under oath, that requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable statute, regulation, or rule of law, is attached to or logically associated with the signature or record.

The above E-Sign provision gives state-commissioned Notaries authority to use electronic signatures in

notarizing other electronic signatures.

While no state legislature has authority to strip any Notary of this new federally bestowed power to notarize electronically, most states are effectively doing so by not moving to legislate or administratively prescribe rules for eNotarization. (It doesn't count that Arizona has mislabeled and adopted "electronic notarization" rules that involve a digital process without commissioned Notaries screening signers for identity, willingness and awareness.)

Though a number of forward-looking state Notary administrators are planning legislation to set guidelines for eNotarization, an almost-equal number are not. Some in the latter camp seem apathetic and a few even hostile to the prospect of such change. A preference for comfortable inertia rather than outright "Luddite-ism" seems to be the reason; indeed, anyone looking for proof of the axiom that government is the least fertile ground for human initiative and innovation might look no further.

Fortunately, initiative and innovation abound in the private sector and consumer demands for a faster, simpler and less expensive mortgage loan process are increasing pressure on government officials for electronic notarization and electronic recording solutions.

It has been widely predicted that the first state to put in place a workable, reliable and understandable-to-the-layman eNotarization system will soon have 49 imitators.

Before too long, we're going to see whether that prediction proves true.

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February 24, 2005
The Alaska State Legislature
Juneau, Alaska

Dear Honorable Senators and Representatives:

I appreciate the opportunity to briefly share our support for Senate Bill 72 that is before you, particularly as it addresses the subject of electronic notarizations. Our company is a notary law training source and we have been training Alaska notaries across the state since 1991. We have no special or economic interest in SB 72. Our desire is to provide a modest bit of our experience and expertise on the subject of electronic notarizations resulting from our conducting notary law research and training nationwide for 14 years.

A great many states have in recent years enacted enabling legislation authorizing the establishment of electronic notarizations in their states. In no state has electronic notarizing successfully proven itself commercially. Moreover, a few states even now speak of repealing their statutory electronic notarization provisions as embarrassing failures.

I was a studious eye witness to the advent of the electronic notarization concept. It was a concept not born out of necessity, but out of commercial entrepreneurship. Promoted by commercial special interests, many states jumped on the band wagon and adopted electronic notarization "model legislation" promulgated by these special interests, while little analysis concerning economic viability and cost-benefits was conducted. In the end, these states enacted laws and procedures intended to "fit" specific information technologies that were too expensive to purchase, and too quick to become outdated.

Information technology is a rapidly moving target around which government cannot reasonably legislate. The lesson learned from the other states' experience is that too much was enacted too quickly with too little understanding. Therefore, it is my view that electronic notarizations will best be realized through more analytical, deliberative and flexible administrative procedures, rather than through rigid statutory standards.

SB 72 authorizes the Lt. Governor to study and promulgate administrative rules to establish the implementation of electronic notarizations in Alaska. This is what the other states should have done, rather than blindly ram-rod the idea at the urging of special interests.

Under administrative rule making authority, the Lt. Governor can nurture the electronic notarization concept through the numerous obstacles that ever-changing technology and economic expectations create. This will allow the process to invoke and consider the brightest thinking of the best experts as strategies and users' needs are articulated and analyzed.

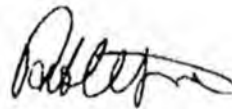
Moreover, by enacting SB 72, the study and development of electronic notarization systems will be conducted outside the influence and pressures of special interests. There is no justification for an electronic notarization system if it is not economically sensible, functionally "user friendly", and legally secure for its users.

Electronic notarizations will be part of our future. It may appeal only to a narrow sector of the Alaskan economy at first, but it will eventually find its way into widespread use as long as the rules and procedures regulating it are readily modified and adaptable.

As an outsider looking in, I would urge your favorable enactment of SB 72.

If you wish to discuss my comments with me further, please do not hesitate to let me know. I only desire to be helpful.

Sincerely,



Peter Van Alstyne, J.D.
President, Notary Law Institute