

SB

72

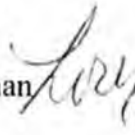
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907.269.7460 269.0263 FAX
Lt_Governor@gov.state.ak.us

Lieutenant Governor Loren Leman

MEMO

TO: Senator Gene Therriault, Chairman
Senate State Affairs Committee

FROM: Lieutenant Governor Loren Leman 

DATE: February 3, 2005

RE: Senate State Affairs Committee hearing on
SB 72: Oaths, Notaries Public, State Seal

Please schedule a hearing on Senate Bill 72 at your earliest possible convenience. SB 72 updates the notary statutes. These statutes have not been comprehensively revised since 1961. Notarial practices and terms have changed in the interim. The bill also increases the fee from \$2 per folio to \$5 per certificate.

Attached are a copy of Governor Murkowski's transmittal letter, a sectional analysis and some additional backup material to assist your review of this legislation.

Please contact my Chief of Staff, Annette Kreitzer at extension 4081 if you have further questions or need additional information beyond the attached material.

AMENDMENT

OFFERED IN THE SENATE STATE
AFFAIRS COMMITTEE
TO: SB 72

BY _____

1 Page 11, line 16, following "handwriting":

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

4

5 Page 13, lines 8 - 9:

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 by electronic means as authorized by regulations adopted by the
9 lieutenant governor"

10

11 Page 13, line 13:

12 Following "official":

13 Insert "handwritten"

14 Following "signature":

15 Insert "and information regarding the notary public's electronic signature
16 authorized by regulations adopted by the lieutenant governor"

17

18 Page 13, following line 13:

19 Insert the following new material:

20 "(c) Within 10 days after the security of a notary public's electronic signature has
21 been compromised, the notary public shall provide the lieutenant governor with written

1 notification and after that shall provide additional information regarding the incident
2 upon request of the lieutenant governor."

3

4 Page 13, line 22, following "diameter":

5 Delete "or"

6 Insert ",."

7

8 Page 13, line 24, following "length":

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

11

12 Page 13, line 27, following "lost,":

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

14

15 Page 13, line 29:

16 Following "heft":

17 Delete "or"

18 Insert ",."

19 Following "loss":

20 Insert ", or compromised security, and after that shall provide additional
21 information regarding the incident upon request of the lieutenant governor"

22

23 Page 14, following line 17:

24 Insert the following new material:

25 "(d) A seal in electronic form as authorized by regulations adopted by the
26 lieutenant governor may be used on electronic documents notarized by the notary public."

27

28 Page 15, line 8, following "signature":

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

Scott Clark
Notary Administrator

Office of Assistant Governor Loren Leman

State Capitol, Third Floor Juneau, Alaska 99801
907-465-3509 465-5400 www.ligov.state.ak.us
notary@gov.state.ak.us

The Governor's transmittal letter dated January 20, 2005, follows:

"Dear Speaker Harris:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the authority to take oaths, affirmations, and acknowledgments in the state, to notarizations, verifications, and acknowledgements, to notaries public, and to fees for issuing certificates with the seal of the state affixed.

The primary purpose of the bill is to comprehensively update AS 44.50, the chapter that governs notaries public, which includes among its provisions the qualifications to become a notary public, duties of notaries public, and liability in the event of misconduct or neglect. AS 44.50 has not been comprehensively revised since it was enacted in 1961. These changes will allow the Lieutenant Governor to: focus attention on web-based education for notaries, allow businesses which employ large groups of notaries to keep track of their terms of office, lay a foundation for e-signatures for the future, and continue to provide information to notaries without internet access. Sections 7-14 of the bill would repeal obsolete provisions in AS 44.50, update antiquated language, and add new provisions as needed.

Sections 1-5 of the bill would update statutes in AS 09, the Alaska civil code, relating to the taking of oaths, affirmations, and acknowledgements and to notaries' responsibilities when notarizing, verifying, and acknowledging signed instruments. Section 6 of the bill would change the fee for the lieutenant governor's issuance of a certificate with the seal of the state affixed. Sections 15 and 16 of the bill contain applicability and transition provisions, respectively.

A more detailed description of the bill is found in a sectional analysis of the bill available from the office of the lieutenant governor.

I urge your prompt and favorable action on this measure.

Sincerely yours,
/s/
Frank H. Murkowski
Governor"



United States
NOTARY
Association

February 3, 2005

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

RE: 2005 Alaska House Bill 97

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 comprehensively 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 this notarial legislation because it will give notaries clearer and unambiguous direction for the performance of their official duties. This direction will protect both the notary and the public from the serious consequences of unintended error.

However, in reading the bill's text, we find no mention of the possibility of an Alaskan notary using any device other than paper and pen to act in his or her capacity as a notary. 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 encourage the Alaska House of Representatives to include language in this bill that will enable notaries to participate in the 21st Century.

Again, since Alaska Stat. §44.50 has not been comprehensively revised since being enacted in 1961, USNA gives its full support to House Bill 97 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 House Bill 97 in an upcoming issue of *Notary Review*.

For the Association,


Marc L. Aronson
President

About the United States Notary Association
USNA is a membership organization dedicated to the professional development of notaries public in all 50 states and the District of Columbia.


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Alaska Bankers Association
Anchorage, Alaska 99510-0600

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OFFICE OF THE
FEB 11 2005
LIEUTENANT GOVERNOR

February 9, 2005

The Honorable Loren Leman
Lieutenant Governor, State of Alaska
State Capitol, Third Floor
Juneau, Alaska 99811

Re: HB 97 and SB 72

Dear Lt. Governor Leman:

The members of the Alaska Bankers Association reviewed HB 97 and SB 72 which addresses the responsibilities of notaries public in the State of Alaska. We have no opposition to the proposed changes to existing law and are in support of the legislation.

We appreciate the opportunity to review and comment on any proposed legislation that may impact the financial services industry.

Sincerely,



Lisa J. Corrigan
President
Alaska Bankers Association



United States
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February 3, 2005

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Office of the Lieutenant Governor
P.O. Box 110015
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United States
NOTARY
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USNA's goal is to provide notaries with accurate, reliable information and high quality products and services.

Notaries join USNA to learn about proper notarial procedures and the laws, current events, and common issues affecting notaries in their states and nationwide. Members can call USNA's telephone support or E-mail their questions. Members also receive a subscription to *Notary Review*, our bi-monthly publication, containing news briefs, educational articles and other information of interest to notaries.



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February 9, 2005

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State Capitol, Third Floor
Juneau, Alaska 99811

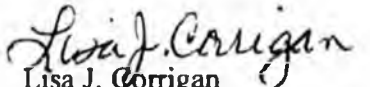
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We appreciate the opportunity to review and comment on any proposed legislation that may impact the financial services industry.

Sincerely,


Lisa J. Corrigan
President
Alaska Bankers Association

SECTIONAL ANALYSIS SB 72

Notary Legislation

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 officers 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.

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.

Provides opportunities for Lieutenant Governor to deny applications if:

- a) application is incomplete
- b) applicant has been convicted of and 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.

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 (see Page 12, Lines 19-25).CHECK THIS ON FINAL VERSION OF BILL WHEN INTRODUCED.

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 sections (Secs. 44.50.068-.069) give 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.

Section 12. Describes the information gathered from notaries public on the application which will be public information. 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)
- AS 44.50.070 (Presence and ID, now covered in new 44.50.061)
- AS 44.50.080 (Seal, now covered in new 44.50.063)
- AS 44.50.090 (Protest of bill or note. Notaries don't do this, antiquated language, repealed and not replaced)
- 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 44.50.067)
- AS 44.50.120 (Bond requirements, now covered in new 44.50.034)
- AS 44.50.130 (Filing oath and bond, now covered in new 44.50.035)
- 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, 44.50.131 (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 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.

Notary Statute Comparison – SB 72

	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 be convicted/incarcerated felons within 10 years of application.</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
	<p>Notaries Public who serve four-year commissions.</p> <p>Limited Governmental Notaries Public commissions available for State employees only.</p>	<p>Notaries Public who serve four-year commissions.</p> <p>Limited Governmental Notaries Public commissions – Expanded to include Municipal and Federal employees in addition to State employees.</p>
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.	<p>The notary information currently available remains unchanged. The notary's name, mailing address, surety information and commission dates continue to be publicly available.</p> <p>To facilitate training and communication the Lieutenant Governor may collect additional information from applicants and notaries that will not be available to the public.</p>
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.

Frequently Asked Questions – SB 72

Q: Why is this bill necessary?

A: There has not been a comprehensive update to the notary statutes since 1961.

Q: What changes are being proposed?

A: The bill:

- Lowers the minimum age requirement from 19 to 18 years of age.
- Prohibits felons from applying as notaries public until 10 years post incarceration.
- Establishes disciplinary procedures for commission suspensions and revocations.
- Separates publicly available notary information from private notary information.
- Updates and expands the current State Employee notary commission system to include Municipal and Federal government employees.

Q: I'm a notary now, how does this bill affect me?

A: This bill will not impact current notaries unless they are felons.

Q: What is not changing?

A:

- The notary information that is currently publicly available remains publicly available.
- Notary testing remains voluntary.
- The notary bond amount remains unchanged.
- The application fee remains unchanged.

Q: What about fees?

A: The \$40.00 application fee for notary commissions will remain unchanged. The fee for certificates is being raised from \$2.00 to \$5.00.

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. John Coghill
Rep. Nancy Dahlstrom
Rep. Pete Kott
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: February 16, 2005
Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 24-GH1008\F, HB 97, incorporating the attached three amendments. The bill was passed out of committee today.

If you have any questions, please call me at 4990.
Thank you!

The information attached to this memo is **CONFIDENTIAL**, and/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 28, 2005

SUBJECT: CSHB 97(STA) relating to notaries public and other related matters (Work Order No. 24-GH1008\G)

TO: Representative Paul Seaton
Chair of the House State Affairs Committee
Attn: Louie

FROM: *TB*
Theresa Bannister
Legislative Counsel

This memo accompanies a draft of the bill described above.

*conceptual
A#1
by Rep.
Gruenberg
PASSED*

① Changes. Semicolons replace commas in sec. 44.50.032(b)(2) and (c)(2) to make the paragraphs clearer to read. An addition ("; delegation") has been made to the catchline of sec. 44.50.069. In sec. 44.50.069(e), the parentheses have been removed and "created under" added. In the definition of "notary public" in sec. 44.50.200(), the language accompanying the cross-referenced sections has been rewritten to be more precise.

*A#2
by Rep.
Gruenberg
PASSED*

② Suggested change. The introductory language to sec. 44.50.060 (notary public duties) uses the mandatory word, "shall." I suggest replacing "shall" with "may" since a notary public, even though commissioned to act as a notary public, is not required to exercise the duties of a notary public.

If I may be of further assistance, please advise.

TLB:med
05-063.med

Enclosure

AMENDMENT #3 - PASSED

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"