

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 398**

Final Reading

Introduced by Lathrop, 12.

Read first time January 13, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to attestations; to amend sections 23-1307,  
2 64-101, 64-104, 64-105.01, and 64-107, Reissue Revised  
3 Statutes of Nebraska, and section 64-113, Revised  
4 Statutes Supplement, 2011; to provide powers for election  
5 commissioners; to change provisions relating to  
6 eligibility for appointment, renewal of a commission, and  
7 powers and duties of a notary public; to change removal  
8 provisions for a commission issued to a notary public; to  
9 provide for rules and regulations; to provide a duty for  
10 the Revisor of Statutes; and to repeal the original  
11 sections.

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

1           Section 1. Section 23-1307, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           23-1307 All county clerks and election commissioners and  
4 their deputies shall have authority to administer oaths and  
5 affirmations in all cases where oaths and affirmations are required,  
6 and to take acknowledgments of deeds, mortgages, and all other  
7 instruments in writing, ~~and shall attest the same~~ attesting to such  
8 with the county seal.

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

11           64-101 (1) The Secretary of State may appoint and  
12 commission such number of persons to the office of notary public as  
13 he or she deems necessary.

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

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

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

1           (5) No person shall be appointed a notary public unless  
2 he or she has taken and passed a written examination on the duties  
3 and obligations of a notary public as provided in section 64-101.01.

4           (6) No appointment shall be made if such applicant has  
5 been convicted of (a) a felony or ~~either~~ (b) a crime involving fraud  
6 or dishonesty within the previous five years.

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

13           (8) No person shall be appointed a notary public unless  
14 he or she resides in the State of Nebraska, except that the Secretary  
15 of State may appoint and commission a person as a notary public who  
16 resides in a state that borders the State of Nebraska if such person  
17 is employed in or has a regular place of work or business in this  
18 state and the Secretary of State has obtained evidence of an address  
19 of the physical location of such employment or place of work or  
20 business prior to such appointment and commission.

21           ~~(8)-(9)~~ Each person appointed a notary public shall hold  
22 office for a term of four years from the effective date of his or her  
23 commission unless sooner removed.

24           Sec. 3. Section 64-104, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

1           64-104 Commissions for general notaries public may be  
2 renewed within thirty days prior to the date of expiration by filing  
3 a renewal application along with the payment of the fee prescribed in  
4 section 33-102 and a new bond with the Secretary of State. The bond  
5 required for a renewal of such commission shall be in the same manner  
6 and form as provided in section 64-102. The renewal application shall  
7 be in the manner and form as prescribed by the Secretary of State.  
8 ~~Such renewal application made prior to the date of the expiration of~~  
9 ~~any general notary public commission need not be accompanied by any~~  
10 ~~petition.~~ Any renewal application for such commission made after the  
11 date of expiration of the commission shall be made in the same manner  
12 as a new application for such commission as a general notary public.

13           Sec. 4. Section 64-105.01, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15           64-105.01 A notary public is disqualified from performing  
16 a notarial act as authorized by Chapter 64, articles 1 and 2, if the  
17 notary:

18           (1) Is is a spouse, ancestor, descendant, or sibling of  
19 the principal, including in-law, step, or half relatives; -

20           (2) Except in the performance of duties pursuant to  
21 sections 64-211 to 64-215, has a financial or beneficial interest in  
22 the transaction other than receipt of the ordinary notarial fee or is  
23 individually named as a party to the transaction; or

24           (3) Does not understand the acknowledgment or notarial  
25 certificate used to certify the performance of his or her duties.

1           Sec. 5. Section 64-107, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           64-107 A notary public is authorized and empowered,  
4 within the state: (1) To administer oaths and affirmations in all  
5 cases; (2) to take depositions, acknowledgments, and proofs of the  
6 execution of deeds, mortgages, powers of attorney, and other  
7 instruments in writing, to be used or recorded in this or another  
8 state; and (3) ~~to demand acceptance or payment of any foreign,~~  
9 ~~inland, domestic bill of exchange, promissory note or other~~  
10 ~~obligation in writing, and to protest the same for nonacceptance or~~  
11 ~~nonpayment, as the case may be, and give notice to endorsers, makers,~~  
12 ~~drawers or acceptors of such demand or nonacceptance or nonpayment;~~  
13 ~~and~~ (4) to exercise and perform such other powers and duties as  
14 authorized by the laws of this state. ~~by the law of nations, and~~  
15 ~~according to commercial usage, or by the laws of the United States,~~  
16 ~~or of any other state or territory of the United States, or of any~~  
17 ~~other government or country, may be exercised and performed by~~  
18 ~~notaries public.~~ Over his or her signature and official seal, he or  
19 she shall certify the performance of such duties so exercised and  
20 performed under ~~the provisions of this section.~~ Such, ~~which~~  
21 certificate shall be received in all courts of this state as  
22 presumptive evidence of the facts therein certified to.

23           Sec. 6. Section 64-113, Revised Statutes Supplement,  
24 2011, is amended to read:

25           64-113 (1) Whenever charges of malfeasance in office are

1 preferred to the Secretary of State against any notary public in this  
2 state, or whenever the Secretary of State has reasonable cause to  
3 believe any notary public in this state is guilty of acts of  
4 malfeasance in office, the Secretary of State may appoint any  
5 disinterested person, not related by consanguinity to either the  
6 notary public or person preferring the charges, and authorized by law  
7 to take testimony of witnesses by deposition, to notify such notary  
8 public to appear before him or her on a day and at an hour certain,  
9 after at least ten days from the day of service of such notice. ~~Such~~  
10 ~~appointee may summon witnesses, in the manner provided by section~~  
11 ~~64-108, to appear at the time specified in the notice, and he or she~~  
12 ~~may take the testimony of such witnesses in writing, in the same~~  
13 ~~manner as is by law provided for taking depositions, and certify the~~  
14 ~~same to the Secretary of State. At such appearance, the notary public~~  
15 ~~may show cause as to why his or her commission should not be canceled~~  
16 ~~or temporarily revoked. The appointee may issue subpoenas to require~~  
17 ~~the attendance and testimony of witnesses and the production of any~~  
18 ~~pertinent records, papers, or documents, may administer oaths, and~~  
19 ~~may accept any evidence he or she deems pertinent to a proper~~  
20 ~~determination of the charge.~~ The notary public may appear, at such  
21 time and place, and cross-examine witnesses and produce witnesses in  
22 his or her behalf., ~~which cross-examination and testimony shall be~~  
23 ~~likewise certified to the Secretary of State.~~ Upon the receipt of  
24 such examination, duly certified in the manner prescribed for taking  
25 depositions to be used in suits in the district courts of this state,

1 the Secretary of State shall examine the same, and if therefrom he or  
2 she ~~is satisfied that the charges are substantially proved,~~ finds  
3 that the notary public is guilty of acts of malfeasance in office, he  
4 or she may remove the person charged from the office of notary public  
5 or temporarily revoke such person's commission. Within fifteen days  
6 after such removal or revocation and notice thereof, such notary  
7 public shall deposit, with the Secretary of State, the commission as  
8 notary public and notarial seal. The commission shall be canceled or  
9 temporarily revoked by the Secretary of State. A person so removed  
10 from office shall be forever disqualified from holding the office of  
11 notary public. A person whose commission is temporarily revoked shall  
12 be returned his or her commission and seal upon completion of the  
13 revocation period and passing the examination described in section  
14 64-101.01. The fees for taking such testimony shall be paid by the  
15 state at the same rate as fees for taking depositions by notaries  
16 public. The failure of the notary public to deposit his or her  
17 commission and seal with the Secretary of State as required by this  
18 section shall subject him or her to a penalty of one thousand  
19 dollars, to be recovered in the name of the state.

20 (2) For purposes of this section, malfeasance in office  
21 means, while serving as a notary public, (a) failure to follow the  
22 requirements and procedures for notarial acts provided for in Chapter  
23 64, articles 1 and 2, (b) violating the confidentiality provisions of  
24 section 71-6911, or (c) being convicted of a felony or other crime  
25 involving fraud or dishonesty.

1           Sec. 7. The Secretary of State may adopt and promulgate  
2 rules and regulations relating to the administration of, but not  
3 inconsistent with, the provisions of sections 64-101 to 64-118.

4           Sec. 8. The Revisor of Statutes shall assign section 7 of  
5 this act within Chapter 64, article 1.

6           Sec. 9. Original sections 23-1307, 64-101, 64-104,  
7 64-105.01, and 64-107, Reissue Revised Statutes of Nebraska, and  
8 section 64-113, Revised Statutes Supplement, 2011, are repealed.