

LEGISLATIVE BILL 398

Approved by the Governor April 10, 2012

Introduced by Lathrop, 12.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

of expiration of the commission shall be made in the same manner as a new application for such commission as a general notary public.

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

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

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

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

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

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

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

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

64-113 (1) Whenever charges of malfeasance in office are preferred to the Secretary of State against any notary public in this state, or whenever the Secretary of State has reasonable cause to believe any notary public in this state is guilty of acts of malfeasance in office, the Secretary of State may appoint any disinterested person, not related by consanguinity to either the notary public or person preferring the charges, and authorized by law to take testimony of witnesses by deposition, to notify such notary public to appear before him or her on a day and at an hour certain, after at least ten days from the day of service of such notice. Such appointee may summon witnesses, in the manner provided by section 64-108, to appear at the time specified in the notice, and he or she may take the testimony of such witnesses in writing, in the same manner as is by law provided for taking depositions, and certify the same to the Secretary of State. At such appearance, the notary public may show cause as to why his or her commission should not be canceled or temporarily revoked. The appointee may issue subpoenas to require the attendance and testimony of witnesses and the production of any pertinent records, papers, or documents, may administer oaths, and may accept any evidence he or she deems pertinent to a proper determination of the charge. The notary public may appear, at such time and place, and cross-examine witnesses and produce witnesses in his or her behalf, ~~which cross-examination and testimony shall be likewise certified to the Secretary of State.~~ Upon the receipt of such examination, duly certified in the manner prescribed for taking depositions to be used in suits in the district courts of this state, the Secretary of State shall examine the same, and if therefrom he or she ~~is satisfied that the charges are substantially proved,~~ finds that the notary public is guilty of acts of malfeasance in office, he or she may remove the person charged from the office of notary public or temporarily revoke such person's commission. Within fifteen days after such removal or revocation and notice thereof, such notary public shall deposit, with the Secretary of State, the commission as notary public and notarial seal. The commission shall be canceled or temporarily revoked by the Secretary of State. A person so removed from office shall be forever disqualified from holding the office of notary public. A person whose commission is temporarily revoked shall be returned his or her commission and seal upon completion of the revocation period and passing the examination described in section 64-101.01. The fees for taking such testimony shall be

paid by the state at the same rate as fees for taking depositions by notaries public. The failure of the notary public to deposit his or her commission and seal with the Secretary of State as required by this section shall subject him or her to a penalty of one thousand dollars, to be recovered in the name of the state.

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

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

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

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