

E & R AMENDMENTS TO LB 315

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 "Section 1. Section 33-133, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 33-133. Except as otherwise provided in this section,
6 notaries public may charge and collect fees as follows: For each
7 protest, one dollar; for recording the same, two dollars; for each
8 notice of protest, two dollars; for taking affidavits and seal, two
9 dollars; for administering oath or affirmation, two dollars; ~~for~~
10 ~~taking deposition, for each one hundred words contained in such~~
11 ~~deposition and in the certificate, one dollar and no more,~~ for each
12 certificate and seal, five dollars; for taking acknowledgment of
13 deed or other instrument, five dollars; and for each mile traveled
14 in serving notice, mileage at the rate provided in section 81-1176.
15 An employee of the state or its political subdivisions may not
16 charge the fees prescribed in this section if his or her
17 governmental employer paid the commission and bonding fees required
18 of notaries public.

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

21 64-101. (1) The ~~Governor is hereby authorized to~~
22 Secretary of State may appoint and commission such number of
23 persons to the office of notary public as he ~~shall deem~~ or she
24 deems necessary.

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

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

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

13 (5) No person shall be appointed a notary public unless
14 ~~his or her application is accompanied by the petition of at least~~
15 ~~twenty-five legal voters of the county in which he or she resides.~~
16 he or she has taken and passed a written examination on the duties
17 and obligations of a notary public as provided in section 3 of this
18 act.

19 (6) No appointment shall be made if such applicant has
20 been convicted of a felony or other crime involving fraud or
21 dishonesty.

22 (7) No appointment shall be made until such applicant
23 ~~shall have~~ has attained the age of nineteen years nor unless such
24 applicant ~~shall certify~~ certifies to the ~~Governor~~ Secretary of
25 State under oath that he or she has carefully read and understands
26 the laws relating to the duties of notaries public and will, if
27 commissioned, faithfully discharge the duties pertaining to ~~said~~

1 the office and keep records according to law.

2 ~~(7)~~ (8) Each person appointed a notary public shall hold
3 office for a term of four years from the effective date of his or
4 her commission unless sooner removed.

5 Sec. 3. The written examination required by section
6 64-101 shall be developed and administered by the Secretary of
7 State and shall consist of questions relating to laws, procedures,
8 and ethics for notaries public. All applicants for commission as a
9 notary public on and after the effective date of this act shall be
10 required to take and pass the examination prior to being
11 commissioned.

12 Sec. 4. Section 64-102, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 64-102. Any person may apply for a commission
15 authorizing the applicant to act as a notary public anywhere in the
16 State of Nebraska, and thereupon the ~~Governor~~ Secretary of State
17 may, at his or her discretion, issue a commission authorizing such
18 notary public to act as such anywhere in the State of Nebraska. A
19 general commission shall not authorize the holder thereof to act as
20 a notary public anywhere in the State of Nebraska until a bond in
21 the sum of ~~ten~~ fifteen thousand dollars, with an incorporated
22 surety company as surety, has been executed and approved by and
23 filed in the office of the Secretary of State. Upon the filing of
24 such bond with the Secretary of State and the issuance of such
25 commission, such notary public shall be authorized and empowered to
26 perform any and all the duties of a notary public in any and all
27 the counties in the State of Nebraska. Such bond shall be

1 conditioned for the faithful performance of the duties of such
2 office. Such person so appointed to the office of notary public
3 shall make oath or affirmation, to be endorsed on such bond, and
4 subscribed by him or her before some officer authorized by law to
5 administer oaths, and by him or her certified thereon, that he or
6 she will support the Constitution of the United States and the
7 Constitution of ~~the State of~~ Nebraska, and will faithfully and
8 impartially discharge and perform the duties of the office of
9 notary public.

10 Sec. 5. Section 64-103, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 64-103. When any person is appointed to the office of
13 notary public, the ~~Governor~~ Secretary of State shall cause his or
14 her signature or a facsimile thereof to be affixed to the
15 commission and ~~deliver the same to the Secretary of State.~~ Upon
16 ~~the receipt of the commission by the secretary,~~ he or she shall
17 affix thereto the great seal of the state. Upon the filing and
18 approval of the bond, as provided for in section 64-102, the
19 Secretary of State shall mail or deliver the commission to the
20 applicant. The form and format of the commission shall be
21 prescribed by the Secretary of State. ~~on behalf of the Governor.~~

22 Sec. 6. (1) A notary public shall not perform any
23 notarial act as authorized by Chapter 64, articles 1 and 2, if the
24 principal:

25 (a) Is not in the presence of the notary public at the
26 time of the notarial act; and

27 (b) Is not personally known to the notary public or

1 identified by the notary public through satisfactory evidence.

2 (2) For purposes of this section:

3 (a) Identified by the notary public through satisfactory
4 evidence means identification of an individual based on:

5 (i) At least one document issued by a government agency
6 that is current and that bears the photographic image of the
7 individual's face and signature and a physical description of the
8 individual, except that a properly stamped passport without a
9 physical description is satisfactory evidence; or

10 (ii) The oath or affirmation of one credible witness
11 unaffected by the document or transaction to be notarized who is
12 personally known to the notary public and who personally knows the
13 individual, or the oaths or affirmations of two credible witnesses
14 unaffected by the document or transaction to be notarized who each
15 personally knows the individual and shows to the notary public
16 documentary identification as described in subdivision (a)(i) of
17 this subsection; and

18 (b) Personal knowledge of identity or personally known
19 means familiarity with an individual resulting from interactions
20 with that individual over a period of time sufficient to dispel any
21 reasonable uncertainty that the individual has the identity
22 claimed.

23 Sec. 7. A notary public is disqualified from performing
24 a notarial act as authorized by Chapter 64, articles 1 and 2, if
25 the notary:

26 (1) Will receive as a direct or indirect result any
27 commission, fee, advantage, right, title, interest, cash, property,

1 or other consideration exceeding in value the fees specified in
2 section 33-133, except that licensed real estate agents and brokers
3 and employees of licensed and regulated professional organizations,
4 sole proprietorships, or other business organizations, including,
5 but not limited to, attorneys, financial institutions, and
6 accounting firms, shall be exempt from this subdivision; or

7 (2) Is a spouse, ancestor, descendant, or sibling of the
8 principal, including in-law, step, or half relatives.

9 Sec. 8. (1) A notary public may certify the affixation
10 of a signature by mark on a document presented for notarization if:

11 (a) The mark is affixed in the presence of the notary
12 public and of two witnesses unaffected by the document;

13 (b) Both witnesses sign their own names beside the mark;

14 (c) The notary public writes below the mark: "Mark
15 affixed by (name of signer by mark) in presence of (names and
16 addresses of witnesses) and undersigned notary public"; and

17 (d) The notary public notarizes the signature by mark
18 through an acknowledgment, jurat, or signature witnessing.

19 (2) A notary public may sign the name of a person
20 physically unable to sign or make a mark on a document presented
21 for notarization if:

22 (a) The person directs the notary public to do so in the
23 presence of two witnesses unaffected by the document;

24 (b) The notary public signs the person's name in the
25 presence of the person and the witnesses;

26 (c) Both witnesses sign their own names beside the
27 signature;

1 (d) The notary public writes below the signature:
2 "Signature affixed by notary public in the presence of (names and
3 addresses of person and two witnesses)"; and

4 (e) The notary public notarizes the signature through an
5 acknowledgment, jurat, or signature witnessing.

6 Sec. 9. (1) A notary public who is not an attorney shall
7 not engage in the unauthorized practice of law as provided in this
8 section.

9 (2) If notarial certificate wording is not provided or
10 indicated for a document, a notary public who is not an attorney
11 shall not determine the type of notarial act or certificate to be
12 used.

13 (3) A notary public who is not an attorney shall not
14 assist another person in drafting, completing, selecting, or
15 understanding a document or transaction requiring a notarial act.

16 (4) A notary public who is not an attorney shall not
17 claim to have powers, qualifications, rights, or privileges that
18 the office of notary public does not provide, including the power
19 to counsel on immigration matters.

20 (5) A notary public who is not an attorney and who
21 advertises notarial services in a language other than English shall
22 include in any advertisement, notice, letterhead, or sign a
23 statement prominently displayed in the same language as follows:
24 "I am not an attorney and have no authority to give advice on
25 immigration or other legal matters".

26 (6) A notary public who is not an attorney may not use
27 the term notario publico or any equivalent non-English term in any

1 business card, advertisement, notice, or sign.

2 (7) This section does not preclude a notary public who is
3 duly qualified, trained, or experienced in a particular industry or
4 professional field from selecting, drafting, completing, or
5 advising on a document or certificate related to a matter within
6 that industry or field.

7 (8) A violation of any of the provisions of this section
8 shall be considered the unauthorized practice of law and subject to
9 the penalties provided in section 7-101.

10 Sec. 10. A notary public shall notify the Secretary of
11 State of any change of his or her residence no later than
12 forty-five days after such change. Information provided on the
13 change-of-address form shall include the notary public's name as it
14 appears on his or her commission, the date the commission expires,
15 and the notary public's new address. The Secretary of State shall
16 prescribe forms consistent with the requirements of this section.

17 Sec. 11. Section 64-113, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 64-113. (1) Whenever charges of malfeasance in office
20 shall be are preferred to the ~~Governor~~ Secretary of State against
21 any notary public in this state, or whenever the ~~Governor~~ shall
22 have Secretary of State has reasonable cause to believe any notary
23 public in this state is guilty of acts of malfeasance in office, he
24 the Secretary of State may appoint any disinterested person, not
25 related by consanguinity to either the notary public or person
26 preferring the charges, and authorized by law to take testimony of
27 witnesses by deposition, to notify such notary public to appear

1 before him or her on a day and at an hour certain, after at least
2 ten days from the day of service of such notice. ~~He~~ Such appointee
3 may summon witnesses, in the manner provided by section 64-108, to
4 appear ~~before him~~ at the time specified in ~~said~~ the notice, and he
5 or she may take the testimony of such witnesses in writing, in the
6 same manner as is by law provided for taking depositions, and
7 certify the same to the ~~Governor~~ Secretary of State. The notary
8 public may appear, at such time and place, and cross-examine
9 witnesses, and produce witnesses in his or her behalf, which
10 cross-examination and testimony shall be likewise certified to the
11 ~~Governor~~ Secretary of State. Upon the receipt of such examination,
12 duly certified in the manner prescribed for taking depositions to
13 be used in suits in the district courts of this state, the ~~Governor~~
14 Secretary of State shall examine the same, and if therefrom he or
15 she is ~~shall be~~ satisfied that the charges are substantially
16 proved, he or she may remove the person charged from the office of
17 notary public or temporarily revoke such person's commission.
18 Within ~~thirty~~ fifteen days ~~from~~ after such removal or revocation
19 and notice thereof, such notary public shall deposit, with the
20 Secretary of State, ~~his~~ the commission as notary public and
21 notarial seal. The commission shall be canceled or temporarily
22 revoked by the Secretary of State. ~~Thereafter such~~ A person so
23 removed from office shall be forever disqualified from holding the
24 office of notary public. A person whose commission is temporarily
25 revoked shall be returned his or her commission and seal upon
26 completion of the revocation period and passing the examination
27 described in section 3 of this act. The fees for taking such

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

7 (2) For purposes of this section, malfeasance in office
8 means, while serving as a notary public, (a) failure to follow the
9 requirements and procedures for notarial acts provided for in
10 Chapter 64, articles 1 and 2, or (b) being convicted of a felony or
11 other crime involving fraud or dishonesty.

12 Sec. 12. Section 64-210, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 64-210. (1) Each notary public, before performing any
15 duties of his or her office, shall provide himself or herself with
16 an official seal on which shall appear the words State of Nebraska,
17 General Notary or State of Nebraska, General Notarial, and his or
18 her name, and in addition, at his or her option, the date of
19 expiration of his or her commission. ~~A + PROVIDED,~~ a notary public
20 may use the initial letters of his or her first name and middle
21 name. A notary public shall authenticate all his or her official
22 acts with such seal. Under his or her official signature, on all
23 certificates of authentication made by him or her, ~~he~~ a notary
24 public shall write, stamp, or otherwise show the date when his or
25 her term of office as such notary public will expire if such date
26 of expiration is not engraved on the seal.

27 (2) The official seal of a notary public shall be ~~may be~~

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1 ~~either an engraved or ink stamp seal with which he or she shall~~
2 ~~authenticate all of his or her official acts. + PROVIDED, that~~
3 ~~every notary who receives a commission, either new or renewal, on~~
4 ~~or after January 1, 1972, shall use an ink stamp seal to~~
5 ~~authenticate any instrument.~~

6 Sec. 13. The Revisor of Statutes shall assign sections 3
7 and 6 to 10 of this act to Chapter 64, article 1.

8 Sec. 14. Original sections 33-133, 64-101 to 64-103,
9 64-113, and 64-210, Reissue Revised Statutes of Nebraska, are
10 repealed."

11 2. On page 1, line 2, strike ", 64-102" and insert "to
12 64-103"; and in line 4 after "to" insert "fees,".