

SENATE BILL 207

IN THE SENATE

January 23, 1979

Introduced and referred to
Committee on Judiciary.

February 8, 1979

Committee recommend, do not
pass.

1 *Senate* BILL NO. *207*
 2 INTRODUCED BY *Hoffman*

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT THE UNIFORM
 5 RECOGNITION OF ACKNOWLEDGMENTS ACT AND TO CONFORM OTHER
 6 STATUTORY PROVISIONS THERETO; AMENDING SECTIONS 1-5-102 AND
 7 1-5-104, MCA; AND REPEALING SECTIONS 1-5-103 AND 1-5-501
 8 THROUGH 1-5-507, MCA."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 NEW SECTION. Section 1. Short title. [Sections 1
 12 through 9] may be cited as the "Uniform Recognition of
 13 Acknowledgments Act".

14 NEW SECTION. Section 2. Uniformity of interpretation.
 15 [Sections 1 through 9] shall be so interpreted as to make
 16 uniform the laws of those states which enact it.

17 NEW SECTION. Section 3. Definitions. For the purposes
 18 of [sections 1 through 9], the following definitions apply:

19 (1) "Notarial acts" means acts which the laws and
 20 regulations of this state authorize notaries public of this
 21 state to perform, including the administering of oaths and
 22 affirmations, the taking of proof of execution and
 23 acknowledgments of instruments, and the attesting of
 24 documents.

25 (2) The term "acknowledged before me" means that:

- 1 (a) the person acknowledging appeared before the
- 2 person taking the acknowledgment;
- 3 (b) he acknowledged he executed the instrument;
- 4 (c) in the case of:
- 5 (i) a natural person, he executed the instrument for
- 6 the purposes therein stated;
- 7 (ii) a corporation, the officer or agent acknowledged
- 8 he held the position or title set forth in the instrument
- 9 and certificate, he signed the instrument on behalf of the
- 10 corporation by proper authority, and the instrument was the
- 11 act of the corporation for the purpose therein stated;
- 12 (iii) a partnership, the partner or agent acknowledged
- 13 he signed the instrument on behalf of the partnership by
- 14 proper authority and he executed the instrument as the act
- 15 of the partnership for the purposes therein stated;
- 16 (iv) a person acknowledging as a principal by an
- 17 attorney in fact, he executed the instrument by proper
- 18 authority as the act of the principal for the purposes
- 19 therein stated;
- 20 (v) a person acknowledging as a public officer,
- 21 trustee, administrator, guardian, or other representative,
- 22 he signed the instrument by proper authority and he executed
- 23 the instrument in the capacity and for the purposes therein
- 24 stated; and
- 25 (d) the person taking the acknowledgment either knew

1 or had satisfactory evidence that the person acknowledging
2 was the person named in the instrument or certificate.

3 NEW SECTION. Section 4. Recognition of notarial acts
4 performed outside this state. Notarial acts may be performed
5 outside this state for use in this state with the same
6 effect as if performed by a notary public of this state by
7 the following persons authorized pursuant to the laws and
8 regulations of other governments in addition to any other
9 person authorized by the laws and regulations of this state:

10 (1) a notary public authorized to perform notarial
11 acts in the place in which the act is performed;

12 (2) a judge, clerk, or deputy clerk of any court of
13 record in the place in which the notarial act is performed;

14 (3) an officer of the foreign service of the United
15 States, a consular agent, or any other person authorized by
16 a regulation of the United States department of state to
17 perform notarial acts in the place in which the act is
18 performed;

19 (4) a commissioned officer in active service with the
20 armed forces of the United States and any other person
21 authorized by a regulation of the armed forces to perform
22 notarial acts if the notarial act is performed for one of
23 the following or his dependents:

- 24 (a) a merchant seaman of the United States;
- 25 (b) a member of the armed forces of the United States;

1 or

2 (c) any other person serving with or accompanying the
3 armed forces of the United States; and

4 (5) any other person authorized to perform notarial
5 acts in the place in which the act is performed.

6 NEW SECTION. Section 5. Authentication of authority
7 of officer. (1) If the notarial act is performed by a person
8 described in subsection (1), (2), (3), or (4) of [section 4]
9 other than a person authorized to perform notarial acts by
10 the laws or regulations of a foreign country, the signature,
11 rank or title, and serial number, if any, of the person are
12 sufficient proof of the authority of a holder of that rank
13 or title to perform the act. Further proof of his authority
14 is not required.

15 (2) If the notarial act is performed by a person
16 authorized by the laws or regulations of a foreign country
17 to perform the act, there is sufficient proof of the
18 authority of that person to act if:

19 (a) either a foreign service officer of the United
20 States resident in the country in which the act is performed
21 or a diplomatic or consular officer of the foreign country
22 resident in the United States certifies that a person
23 holding that office is authorized to perform the act;

24 (b) the official seal of the person performing the
25 notarial act is affixed to the document; or

1 (c) the title and indication of authority to perform
2 notarial acts of the person appears either in a digest of
3 foreign law or in a list customarily used as a source of
4 such information.

5 (3) If the notarial act is performed by a person other
6 than those described in subsections (1) and (2), there is
7 sufficient proof of the authority of that person to act if
8 the clerk of a court of record in the place in which the
9 notarial act is performed certifies to the official
10 character of that person and to his authority to perform the
11 notarial act.

12 (4) The signature and title of the person performing
13 the act are prima facie evidence that he is a person with
14 the designated title and that the signature is genuine.

15 NEW SECTION. Section 6. Certificate of person taking
16 acknowledgment -- contents. The person taking an
17 acknowledgment shall certify that:

18 (1) the person acknowledging appeared before him and
19 acknowledged he executed the instrument; and

20 (2) the person acknowledging was known to the person
21 taking the acknowledgment or the person taking the
22 acknowledgment had satisfactory evidence that the person
23 acknowledging was the person described in and who executed
24 the instrument.

25 NEW SECTION. Section 7. Form of certificate of

1 acknowledgment. The form of a certificate of acknowledgment
2 used by a person whose authority is recognized under
3 [section 4] shall be accepted in this state if:

4 (1) the certificate is in a form prescribed by the
5 laws or regulations of this state;

6 (2) the certificate is in a form prescribed by the
7 laws or regulations applicable in the place in which the
8 acknowledgment was taken; or

9 (3) the certificate contains the words "acknowledged
10 before me" or their substantial equivalent.

11 NEW SECTION. Section 8. Short forms of
12 acknowledgment. The forms of acknowledgment set forth in
13 this section may be used and are sufficient for their
14 respective purposes under any law of this state. The forms
15 shall be known as "Statutory Short Forms of Acknowledgment"
16 and may be referred to by that name. The authorization of
17 the forms in this section does not preclude the use of other
18 forms. The forms appear as follows:

19 (1) for an individual acting in his own right:
20 State of.....
21 County of.....

22 The foregoing instrument was acknowledged before me
23 this (date) by (name of person acknowledging.)
24 (signature of person taking
25 acknowledgment)

1 (title or rank)
 2 (serial number, if any)
 3 (2) for a corporation:
 4 State of.....
 5 County of.....
 6 The foregoing instrument was acknowledged before me
 7 this (date) by (name of officer or agent, title of officer
 8 or agent) of (name of corporation acknowledging) a (state or
 9 place of incorporation) corporation, on behalf of the
 10 corporation.
 11 (signature of person taking
 12 acknowledgment)
 13 (title or rank)
 14 (serial number, if any)
 15 (3) for a partnership:
 16 State of.....
 17 County of.....
 18 The foregoing instrument was acknowledged before me
 19 this (date) by (name of acknowledging partner or agent),
 20 partner (or agent), on behalf of (name of partnership), a
 21 partnership.
 22 (signature of person taking
 23 acknowledgment)
 24 (title or rank)
 25 (serial number, if any)

1 (4) for an individual acting as principal by an
 2 attorney in fact:
 3 State of.....
 4 County of.....
 5 The foregoing instrument was acknowledged before me
 6 this (date) by (name of attorney in fact) as attorney in
 7 fact on behalf of (name of principal).
 8 (signature of person taking
 9 acknowledgment)
 10 (title or rank)
 11 (serial number, if any)
 12 (5) by any public officer, trustee, or personal
 13 representative;
 14 State of.....
 15 County of.....
 16 The foregoing instrument was acknowledged before me
 17 this (date) by (name and title of position).
 18 (signature of person taking
 19 acknowledgment)
 20 (title or rank)
 21 (serial number, if any)
 22 **NEW SECTION.** Section 9. Recognition accorded by other
 23 laws unaffected. [Sections 1 through 9] provides an
 24 additional method of proving notarial acts. Nothing in
 25 [sections 1 through 9] diminishes or invalidates the

1 recognition accorded to notarial acts by other laws or
2 regulations of this state.

3 Section 10. Section 1-5-102, MCA, is amended to read:

4 "1-5-102. Acknowledgments Proofs and acknowledgments
5 taken outside this state. The proof of ~~or~~ acknowledgment of
6 an instrument may be made without outside this state but is
7 either within or outside the United States ~~and within the~~
8 ~~jurisdiction of the officers before either:~~

9 {1} ~~a justice, judge or clerk of any court of record~~
10 ~~of the United States;~~

11 {2} ~~a justice, judge or clerk of any court of record~~
12 ~~of any state or territory;~~

13 {3} ~~a commissioner appointed by the governor of this~~
14 ~~state for that purpose;~~

15 {4} ~~a notary public; or~~

16 {5} ~~any other officer of the state or territory where~~
17 ~~the acknowledgment is made, authorized by its laws to take~~
18 ~~such proof or acknowledgment, as provided in [sections 1~~
19 ~~through 9]."~~

20 Section 11. Section 1-5-104, MCA, is amended to read:

21 "1-5-104. Proofs and acknowledgments by deputy
22 officers. When any ~~of the officers mentioned in 1-5-102~~
23 ~~through 1-5-103 are~~ officer authorized by [sections 1
24 through 9] to take proofs and acknowledgments for use in
25 this state is authorized by law to appoint a deputy, the

1 acknowledgment or proof may be taken by such deputy in the
2 name of his principal."

3 NEW SECTION. Section 12. Acknowledgments not affected
4 by this act. A notarial act performed prior to the effective
5 date of this act is not affected by this act.

6 Section 13. Repealer. Sections 1-5-103 and 1-5-501
7 through 1-5-507, MCA, are repealed.

-End-

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