

SENATE BILL NO. 84
INTRODUCED BY HALLIGAN

IN THE SENATE

JANUARY 6, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION.
	FIRST READING.
JANUARY 14, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 15, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
JANUARY 16, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 47; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 18, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION.
	FIRST READING.
MARCH 5, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 8, 1993	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
MARCH 9, 1993	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 11, 1993	THIRD READING, CONCURRED IN. AYES, 98; NOES, 1.
MARCH 12, 1993	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 16, 1993	RECEIVED FROM HOUSE.
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MARCH 17, 1993

SECOND READING, AMENDMENTS
CONCURRED IN.

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

Senate BILL NO. 84

INTRODUCED BY Holligan

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW RELATING TO THE NOTARIZATION OF DOCUMENTS; ADOPTING THE UNIFORM LAW ON NOTARIAL ACTS; AMENDING SECTIONS 70-21-101 AND 70-21-203, MCA; REPEALING SECTIONS 1-5-101, 1-5-102, 1-5-103, 1-5-104, 1-5-105, 1-5-106, 1-5-107, 1-5-108, 1-5-109, 1-5-110, 1-5-201, 1-5-202, 1-5-203, 1-5-204, 1-5-205, 1-5-206, 1-5-207, 1-5-208, 70-20-106, AND 70-20-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Short title. [Sections 1 through 10] may be cited as the Uniform Law on Notarial Acts.

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 10], the following definitions apply:

(1) "Acknowledgment" means a declaration by a person that the person has executed an instrument for the purposes stated in the instrument and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified in the instrument.

(2) "In a representative capacity" means:

(a) for and on behalf of a corporation, partnership, trust, or other entity as an authorized officer, agent, partner, trustee, or other representative;

(b) as a public officer, personal representative, guardian, or other representative in the capacity recited in the instrument;

(c) as an attorney in fact for a principal; or

(d) in any other capacity as an authorized representative of another.

(3) "Notarial act" means any act that a notary public of this state is authorized to perform and includes taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

(4) "Notarial officer" means a notary public or other officer authorized to perform notarial acts.

(5) "Verification upon oath or affirmation" means a declaration that a statement is true made by a person upon oath or affirmation.

NEW SECTION. Section 3. Notarial acts. (1) In taking an acknowledgment, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and

1 making the acknowledgment is the person whose true signature
2 is on the instrument.

3 (2) In taking a verification upon oath or affirmation,
4 the notarial officer shall determine, either from personal
5 knowledge or from satisfactory evidence, that the person
6 appearing before the officer and making the verification is
7 the person whose true signature is on the statement
8 verified.

9 (3) In witnessing or attesting a signature, the
10 notarial officer shall determine, either from personal
11 knowledge or from satisfactory evidence, that the signature
12 is that of the person appearing before the officer and named
13 in the instrument.

14 (4) In certifying or attesting a copy of a document or
15 other item, the notarial officer shall determine that the
16 proffered copy is a full, true, and accurate transcription
17 or reproduction of that which was copied.

18 (5) (a) In making or noting a protest of a negotiable
19 instrument, the notarial officer shall identify the
20 instrument and certify either:

21 (i) that due presentment has been made; or

22 (ii) the reason why it is excused and that the
23 instrument has been dishonored by nonacceptance or
24 nonpayment.

25 (b) The protest may also certify that notice of

1 dishonor has been given to all parties or to specified
2 parties.

3 (6) A notarial officer has satisfactory evidence that a
4 person is the person whose true signature is on a document
5 if that person is:

6 (a) personally known to the notarial officer;

7 (b) identified upon the oath or affirmation of a
8 credible witness personally known to the notarial officer;
9 or

10 (c) identified on the basis of identification
11 documents.

12 **NEW SECTION. Section 4. Notarial acts in this state.**

13 (1) A notarial act may be performed within this state by the
14 following persons:

15 (a) a notary public of this state;

16 (b) a judge, clerk, or deputy clerk of any court of
17 this state; or

18 (c) any other person authorized to perform the specific
19 act by the law of this state.

20 (2) Notarial acts performed within this state under
21 federal authority as provided in [section 6] have the same
22 effect as if performed by a notarial officer of this state.

23 (3) The signature and title of a person performing a
24 notarial act are prima facie evidence that the signature is
25 genuine and that the person holds the designated title.

NEW SECTION. Section 5. Notarial acts in other jurisdictions of the United States. (1) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if it is performed in another state, commonwealth, territory, district, or possession of the United States by any of the following persons:

- (a) a notary public of that jurisdiction;
 - (b) a judge, clerk, or deputy clerk of a court of that jurisdiction; or
 - (c) any other person authorized by the law of that jurisdiction to perform notarial acts.
- (2) Notarial acts performed in other jurisdictions of the United States under federal authority as provided in [section 6] have the same effect as if performed by a notarial officer of this state.
- (3) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.
- (4) The signature and indicated title of an officer listed in subsection (1)(a) or (1)(b) conclusively establish the authority of a holder of that title to perform a notarial act.

NEW SECTION. Section 6. Notarial acts under federal authority. (1) A notarial act has the same effect under the

law of this state as if performed by a notarial officer of this state if it is performed anywhere by any of the following persons under authority granted by the law of the United States:

- (a) a judge, clerk, or deputy clerk of a court;
 - (b) a commissioned officer on active duty in the military service of the United States;
 - (c) an officer of the foreign service or consular officer of the United States; or
 - (d) any other person authorized by federal law to perform notarial acts.
- (2) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.
- (3) The signature and indicated title of an officer listed in subsection (1)(a), (1)(b), or (1)(c) conclusively establish the authority of a holder of that title to perform a notarial act.

NEW SECTION. Section 7. Foreign notarial acts. (1) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if it is performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multinational or international organization by any of the following persons:

(a) a notary public or notary;

(b) a judge, clerk, or deputy clerk of a court of record; or

(c) any other person authorized by the law of that jurisdiction to perform notarial acts.

(2) An "apostille" in the form prescribed by the Hague Convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(3) A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed or a certificate by a foreign service or consular officer of that nation stationed in the United States conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate.

(4) An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the indicated title.

(5) An official stamp or seal of an officer listed in subsection (1)(a) or (1)(b) is prima facie evidence that a person with the indicated title has authority to perform notarial acts.

(6) If the title of office and indication of authority to perform notarial acts appears either in a digest of

foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

NEW SECTION. Section 8. Certificate of notarial acts.

(1) A notarial act must be evidenced by a certificate signed and dated by a notarial officer. The certificate must include identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer and may include the official stamp or seal of office. If the officer is a notary public, the certificate must also indicate the date of expiration, if any, of the commission of office, but omission of that information may subsequently be corrected. If the officer is a commissioned officer on active duty in the military service of the United States, it must also include the officer's rank.

(2) A certificate of a notarial act is sufficient if it meets the requirements of subsection (1) and it:

(a) is in the short form set forth in [section 9];

(b) is in a form otherwise prescribed by the law of this state;

(c) is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or

(d) sets forth the actions of the notarial officer and

those are sufficient to meet the requirements of the designated notarial act.

(3) By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determinations required by [section 3].

NEW SECTION. Section 9. Short forms. The following short-form certificates of notarial acts are sufficient for the purposes indicated if they are completed with the information required by [section 8(1)]:

(1) For an acknowledgment in an individual capacity:

State of _____

(County) of _____

(date)

This instrument was acknowledged before me on _____ by

(name(s) of person(s))

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)

[My commission expires: _____]

(2) For an acknowledgment in a representative capacity:

State of _____

(County) of _____

This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed).

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)

[My commission expires: _____]

(3) For a verification upon oath or affirmation:

State of _____

(County) of _____

(date)

Signed and sworn to (or affirmed) before me on _____ by

(name(s) of person(s) making statement).

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)

[My commission expires: _____]

(4) For witnessing or attesting a signature:

State of _____

(County) of _____
 _____ (date)
 Signed or attested before me on _____ by
 (name(s) of person(s)).

 (Signature of notarial officer)
 (Seal, if any)

 Title (and Rank)
 [My commission expires: _____]

(5) For attestation of a copy of a document:

State of _____
 (County) of _____

I certify that this is a true and correct copy of a
 document in the possession of _____.

Dated _____

 (Signature of notarial officer)
 (Seal, if any)

 Title (and Rank)
 [My commission expires: _____]

**NEW SECTION. Section 10. Uniformity of application and
 construction. [Sections 1 through 9] must be applied and**

construed to effectuate the general purpose to make uniform
 the law with respect to the subject of Sections 1 through
 9] among states enacting it.

Section 11. Section 70-21-101, MCA, is amended to read:

"70-21-101. Instrument defined -- abstract. For the
 purposes of Title 1, chapter 5, ~~parts 1 through 3~~; part 2 of
 this chapter; and 70-21-310, the word instrument ~~shall~~
~~include~~ includes an abstract of an instrument ~~which shall~~
~~that must~~ be executed and acknowledged or proved by all
 parties executing the abstracted document and contains:

(1) the names and addresses of the parties ~~thereto to~~
the instrument;

(2) a description of the real property affected;

(3) a statement that this is an abstract of another
 document;

(4) a short statement of the effect of the document
 abstracted;

(5) the name and address of the person who will provide
 a full and complete copy of the document abstracted, without
 cost, upon request of any person."

Section 12. Section 70-21-203, MCA, is amended to read:

"70-21-203. Acknowledgment of instruments required --
 exceptions. Before an instrument can be recorded, unless it
 belongs to the class provided for in either ~~1-5-1007~~
~~1-5-1097~~ 70-21-2057 or 70-21-207, its execution must be:

(1) acknowledged by the person executing it or, if executed by a corporation, by its president, ~~vice-president~~ vice president, secretary or assistant secretary, or other person duly authorized by resolution by such the corporation executing the ~~same~~ instrument on behalf of the corporation; or

(2) proved by:

(a) a subscribing witness; or

(b) as provided in 1-5-302 and 1-5-303; and

(c) the acknowledgment or proof certified in the manner prescribed by Title 1, chapter 57-~~parts-1-through-3~~."

NEW SECTION. Section 13. Repealer. Sections 1-5-101, 1-5-102, 1-5-103, 1-5-104, 1-5-105, 1-5-106, 1-5-107, 1-5-108, 1-5-109, 1-5-110, 1-5-201, 1-5-202, 1-5-203, 1-5-204, 1-5-206, 1-5-207, 1-5-208, 70-20-106, and 70-20-107, MCA, are repealed.

NEW SECTION. Section 14. Applicability. [This act] applies to notarial acts performed on or after [the effective date of this act].

NEW SECTION. Section 15. Effective date. [This act] is effective on passage and approval.

-End-

APPROVED BY COMMITTEE
ON STATE ADMINISTRATION

SENATE BILL NO. 84

INTRODUCED BY HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW
RELATING TO COMMISSIONING OF NOTARIES AND TO THE
NOTARIZATION OF DOCUMENTS; ADOPTING THE UNIFORM LAW ON
NOTARIAL ACTS; AMENDING SECTIONS 1-5-401, 1-5-402, 1-5-403,
1-5-404, 1-5-405, 1-5-408, 1-5-417, 70-21-101, AND
70-21-203, MCA; AND REPEALING SECTIONS 1-5-101, 1-5-102,
1-5-103, 1-5-104, 1-5-105, 1-5-106, 1-5-107, 1-5-108,
1-5-109, 1-5-110, 1-5-201, 1-5-202, 1-5-203, 1-5-204,
1-5-205, 1-5-206, 1-5-207, 1-5-208, 70-20-106, AND
70-20-107, MCA; ~~AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"

STATEMENT OF INTENT

IT IS THE INTENT OF THE LEGISLATURE THAT THE SECRETARY
OF STATE ADOPT RULES ESTABLISHING FEES COMMENSURATE WITH THE
COSTS OF REVIEWING THE APPLICATIONS FOR AND BONDS OF THOSE
PERSONS SUBMITTING APPLICATIONS TO BECOME NOTARIES PUBLIC
AND WITH THE COSTS OF PREPARING THEIR CERTIFICATES OF
COMMISSION. THE FEES ADOPTED BY THE SECRETARY OF STATE
SHOULD REFLECT THE COST OF MAINTAINING OR UPGRADING THE
RECORDKEEPING SYSTEM USED IN THE FILING OF THE COMMISSIONS.

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

NEW SECTION. Section 1. Short title. [Sections 1
through 10] may be cited as the Uniform Law on Notarial
Acts.

NEW SECTION. Section 2. Definitions. As used in
[sections 1 through 10], the following definitions apply:

(1) "Acknowledgment" means a declaration by a person
that the person has executed an instrument for the purposes
stated in the instrument and, if the instrument is executed
in a representative capacity, that the person signed the
instrument with proper authority and executed it as the act
of the person or entity represented and identified in the
instrument.

(2) "In a representative capacity" means:

(a) for and on behalf of a corporation, partnership,
trust, or other entity as an authorized officer, agent,
partner, trustee, or other representative;

(b) as a public officer, personal representative,
guardian, or other representative in the capacity recited in
the instrument;

(c) as an attorney in fact for a principal; or

(d) in any other capacity as an authorized
representative of another.

(3) "Notarial act" means any act that a notary public
of this state is authorized to perform and includes taking
an acknowledgment, administering an oath or affirmation,

1 taking a verification upon oath or affirmation, witnessing
 2 or attesting a signature, certifying or attesting a copy,
 3 and noting a protest of a negotiable instrument.

4 (4) "Notarial officer" means a notary public or other
 5 officer authorized to perform notarial acts.

6 (5) "Verification upon oath or affirmation" means a
 7 declaration that a statement is true made by a person upon
 8 oath or affirmation.

9 **NEW SECTION. Section 3.** Notarial acts. (1) In taking
 10 an acknowledgment, the notarial officer shall determine,
 11 either from personal knowledge or from satisfactory
 12 evidence, that the person appearing before the officer and
 13 making the acknowledgment is the person whose true signature
 14 is on the instrument.

15 (2) In taking a verification upon oath or affirmation,
 16 the notarial officer shall determine, either from personal
 17 knowledge or from satisfactory evidence, that the person
 18 appearing before the officer and making the verification is
 19 the person whose true signature is on the statement
 20 verified.

21 (3) In witnessing or attesting a signature, the
 22 notarial officer shall determine, either from personal
 23 knowledge or from satisfactory evidence, that the signature
 24 is that of the person appearing before the officer and named
 25 in the instrument.

1 (4) In certifying or attesting a copy of a document or
 2 other item, the notarial officer shall determine that the
 3 proffered copy is a full, true, and accurate transcription
 4 or reproduction of that which was copied.

5 (5) (a) In making or noting a protest of a negotiable
 6 instrument, the notarial officer shall identify the
 7 instrument and certify either:

8 (i) that due presentment has been made; or

9 (ii) the reason why it is excused and that the
 10 instrument has been dishonored by nonacceptance or
 11 nonpayment.

12 (b) The protest may also certify that notice of
 13 dishonor has been given to all parties or to specified
 14 parties.

15 (6) A notarial officer has satisfactory evidence that a
 16 person is the person whose true signature is on a document
 17 if that person is:

18 (a) personally known to the notarial officer;

19 (b) identified upon the oath or affirmation of a
 20 credible witness personally known to the notarial officer;
 21 or

22 (c) identified on the basis of identification
 23 documents.

24 **NEW SECTION. Section 4.** Notarial acts in this state.

25 (1) A notarial act may be performed within this state by the

1 following persons:

- 2 (a) a notary public of this state;
- 3 (b) a judge, clerk, or deputy clerk of any court of
- 4 this state; or
- 5 (c) any other person authorized to perform the specific
- 6 act by the law of this state.

7 (2) Notarial acts performed within this state under
8 federal authority as provided in [section 6] have the same
9 effect as if performed by a notarial officer of this state.

10 (3) The signature and title of a person performing a
11 notarial act are prima facie evidence that the signature is
12 genuine and that the person holds the designated title.

13 NEW SECTION. Section 5. Notarial acts in other
14 jurisdictions of the United States. (1) A notarial act has
15 the same effect under the law of this state as if performed
16 by a notarial officer of this state if it is performed in
17 another state, commonwealth, territory, district, or
18 possession of the United States by any of the following
19 persons:

- 20 (a) a notary public of that jurisdiction;
- 21 (b) a judge, clerk, or deputy clerk of a court of that
- 22 jurisdiction; or
- 23 (c) any other person authorized by the law of that
- 24 jurisdiction to perform notarial acts.
- 25 (2) Notarial acts performed in other jurisdictions of

1 the United States under federal authority as provided in
2 [section 6] have the same effect as if performed by a
3 notarial officer of this state.

4 (3) The signature and title of a person performing a
5 notarial act are prima facie evidence that the signature is
6 genuine and that the person holds the designated title.

7 (4) The signature and indicated title of an officer
8 listed in subsection (1)(a) or (1)(b) conclusively establish
9 the authority of a holder of that title to perform a
10 notarial act.

11 NEW SECTION. Section 6. Notarial acts under federal
12 authority. (1) A notarial act has the same effect under the
13 law of this state as if performed by a notarial officer of
14 this state if it is performed anywhere by any of the
15 following persons under authority granted by the law of the
16 United States:

- 17 (a) a judge, clerk, or deputy clerk of a court;
- 18 (b) a commissioned officer on active duty in the
- 19 military service of the United States;
- 20 (c) an officer of the foreign service or consular
- 21 officer of the United States; or
- 22 (d) any other person authorized by federal law to
- 23 perform notarial acts.

24 (2) The signature and title of a person performing a
25 notarial act are prima facie evidence that the signature is

genuine and that the person holds the designated title.

(3) The signature and indicated title of an officer listed in subsection (1)(a), (1)(b), or (1)(c) conclusively establish the authority of a holder of that title to perform a notarial act.

NEW SECTION. Section 7. Foreign notarial acts. (1) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if it is performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multinational or international organization by any of the following persons:

- (a) a notary public or notary;
- (b) a judge, clerk, or deputy clerk of a court of record; or
- (c) any other person authorized by the law of that jurisdiction to perform notarial acts.

(2) An "apostille" in the form prescribed by the Hague Convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(3) A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed or a certificate by a foreign service or consular officer of

that nation stationed in the United States conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate.

(4) An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the indicated title.

(5) An official stamp or seal of an officer listed in subsection (1)(a) or (1)(b) is prima facie evidence that a person with the indicated title has authority to perform notarial acts.

(6) If the title of office and indication of authority to perform notarial acts appears either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

NEW SECTION. Section 8. Certificate of notarial acts.

(1) A notarial act must be evidenced by a certificate signed and dated by a notarial officer. The certificate must include identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer and may include the official stamp or seal of office. If the officer is a notary public, the certificate must also indicate the date of expiration, if any, of the commission of office, but omission of that information may subsequently be corrected. If the officer is

1 a commissioned officer on active duty in the military
2 service of the United States, it must also include the
3 officer's rank.

4 (2) A certificate of a notarial act is sufficient if it
5 meets the requirements of subsection (1) and it:

6 (a) is in the short form set forth in [section 9];

7 (b) is in a form otherwise prescribed by the law of
8 this state;

9 (c) is in a form prescribed by the laws or regulations
10 applicable in the place in which the notarial act was
11 performed; or

12 (d) sets forth the actions of the notarial officer and
13 those are sufficient to meet the requirements of the
14 designated notarial act.

15 (3) By executing a certificate of a notarial act, the
16 notarial officer certifies that the officer has made the
17 determinations required by [section 3].

18 **NEW SECTION. Section 9. Short forms.** The following
19 short-form certificates of notarial acts are sufficient for
20 the purposes indicated if they are completed with the
21 information required by [section 8(1)]:

22 (1) For an acknowledgment in an individual capacity:

23 State of _____

24 (County) of _____

25 _____ (date)

1 This instrument was acknowledged before me on _____ by
2 (name(s) of person(s))

3 _____

4 _____

5 (Signature of notarial officer)

6 (Seal, if any)

7 _____

8 Title (and Rank)

9 [My commission expires: _____]

10 (2) For an acknowledgment in a representative capacity:

11 State of _____

12 (County) of _____

13 This instrument was acknowledged before me on (date) by
14 (name(s) of person(s)) as (type of authority, e.g., officer,
15 trustee, etc.) of (name of party on behalf of whom
16 instrument was executed).

17 _____

18 (Signature of notarial officer)

19 (Seal, if any)

20 _____

21 Title (and Rank)

22 [My commission expires: _____]

23 (3) For a verification upon oath or affirmation:

24 State of _____

25 (County) of _____

1 (date)
 2 Signed and sworn to (or affirmed) before me on _____ by
 3 (name(s) of person(s) making statement).
 4 _____
 5 _____
 6 (Signature of notarial officer)
 7 (Seal, if any)
 8 _____
 9 Title (and Rank)
 10 [My commission expires: _____]
 11 (4) For witnessing or attesting a signature:
 12 State of _____
 13 (County) of _____
 14 (date)
 15 Signed or attested before me on _____ by
 16 (name(s) of person(s)).
 17 _____
 18 _____
 19 (Signature of notarial officer)
 20 (Seal, if any)
 21 _____
 22 Title (and Rank)
 23 [My commission expires: _____]
 24 (5) For attestation of a copy of a document:
 25 State of _____

1 (County) of _____
 2 I certify that this is a true and correct copy of a
 3 document in the possession of _____.
 4 Dated _____
 5 _____
 6 (Signature of notarial officer)
 7 (Seal, if any)
 8 _____
 9 Title (and Rank)
 10 [My commission expires: _____]
 11 **NEW SECTION. Section 10. Uniformity of application and**
 12 **construction.** [Sections 1 through 9] must be applied and
 13 construed to effectuate the general purpose to make uniform
 14 the law with respect to the subject of [sections 1 through
 15 9] among states enacting it.
 16 **SECTION 11. SECTION 1-5-401, MCA, IS AMENDED TO READ:**
 17 "1-5-401. Appointment. The governor secretary of state
 18 may appoint and commission as many notaries public for the
 19 state of Montana as in his the secretary of state's judgment
 20 may be deemed best."
 21 **SECTION 12. SECTION 1-5-402, MCA, IS AMENDED TO READ:**
 22 "1-5-402. Qualifications -- residence. Every person
 23 appointed as notary public must may not, at the time of his
 24 appointment, be a convicted felon, must be a citizen of the
 25 United States and of the state of Montana for at least 1

1 year preceding his appointment, and must continue to reside
2 within the state of Montana. Removal from the state or
3 conviction of a felony vacates his the office and is
4 equivalent to resignation."

5 **SECTION 13. SECTION 1-5-403, MCA, IS AMENDED TO READ:**

6 "1-5-403. Term of office. The term of office of a
7 notary public is 3 4 years from and after the date of his
8 commission commissioning."

9 **SECTION 14. SECTION 1-5-404, MCA, IS AMENDED TO READ:**

10 "1-5-404. Revocation of commission. Upon 10 days'
11 notice, the governor secretary of state may revoke the
12 commission of any notary public for any just cause he--may
13 deem-sufficient."

14 **SECTION 15. SECTION 1-5-405, MCA, IS AMENDED TO READ:**

15 "1-5-405. Bond and commission. Each notary public must
16 shall submit an application and give an official bond in the
17 sum of \$5,000. The bond must be approved by the secretary of
18 state. Upon the approval of the bond, the payment of fees,
19 and the filing in the office of the secretary of state of
20 the official oath of such the notary public, the governor
21 secretary of state may issue a commission."

22 **SECTION 16. SECTION 1-5-408, MCA, IS AMENDED TO READ:**

23 "1-5-408. Fees for filing commission and issuing
24 certificates. The secretary of state shall receive-for--each
25 certificate---of---official---character---issued,--with--seal

1 attached,--\$2 set by rule the fees for filing or issuing
2 certificates. The fees must be commensurate with costs. The
3 secretary of state shall use application forms soliciting
4 the information required by this part. The county clerk of
5 any county in this state shall receive a fee as provided in
6 7-4-2631 for filing a copy of the commission and certifying
7 to the official character."

8 **SECTION 17. SECTION 1-5-417, MCA, IS AMENDED TO READ:**

9 "1-5-417. Authority of notaries who are stockholders,
10 officers, or employees of corporations. It shall be lawful
11 for any notary public who is a stockholder, director,
12 officer, or employee of a bank or other corporation to take
13 the acknowledgment of any party to any written instrument
14 executed to or by such corporation, to administer an oath to
15 any other stockholder, director, officer, employee, or agent
16 of such corporation, or to protest for nonacceptance or
17 nonpayment bills of exchange, drafts, checks, notes, and
18 other negotiable instruments which may be owned or held for
19 collection by such bank or other corporation; provided, it
20 shall be unlawful for any notary public to take the
21 acknowledgment of an instrument by or to a bank or other
22 corporation of which he is a stockholder, director, officer,
23 or employee where such notary is a party individually to
24 such instrument,--either--individually or signs the instrument
25 as a representative of such bank or other corporation, or to

1 protest any negotiable instrument owned or held for
2 collection by such bank or other corporation where such
3 notary is individually a party to such instrument."

4 **Section 18.** Section 70-21-101, MCA, is amended to read:

5 "70-21-101. Instrument defined -- abstract. For the
6 purposes of Title 1, chapter 5, ~~parts 1 through 3~~; part 2 of
7 this chapter; and 70-21-310, the word instrument ~~shall~~
8 ~~include~~ includes an abstract of an instrument ~~which shall~~
9 ~~that must~~ be executed and acknowledged or proved by all
10 parties executing the abstracted document and contains:

11 (1) the names and addresses of the parties ~~thereto~~ to
12 the instrument;

13 (2) a description of the real property affected;

14 (3) a statement that this is an abstract of another
15 document;

16 (4) a short statement of the effect of the document
17 abstracted;

18 (5) the name and address of the person who will provide
19 a full and complete copy of the document abstracted, without
20 cost, upon request of any person."

21 **Section 19.** Section 70-21-203, MCA, is amended to read:

22 "70-21-203. Acknowledgment of instruments required --
23 exceptions. Before an instrument can be recorded, unless it
24 belongs to the class provided for in either ~~1-5-100~~,
25 ~~1-5-109~~, 70-21-205, or 70-21-207, its execution must be:

1 (1) acknowledged by the person executing it or, if
2 executed by a corporation, by its president, ~~vice-president~~
3 vice president, secretary or assistant secretary, or other
4 person duly authorized by resolution by ~~such~~ the corporation
5 executing the ~~same~~ instrument on behalf of the corporation;
6 or

7 (2) proved by:

8 (a) a subscribing witness; or

9 (b) as provided in 1-5-302 and 1-5-303; and

10 (c) the acknowledgment or proof certified in the manner
11 prescribed by Title 1, chapter 5, ~~parts 1 through 3~~."

12 **NEW SECTION. Section 20.** Repealer. Sections 1-5-101,
13 1-5-102, 1-5-103, 1-5-104, 1-5-105, 1-5-106, 1-5-107,
14 1-5-108, 1-5-109, 1-5-110, 1-5-201, 1-5-202, 1-5-203,
15 1-5-204, 1-5-206, 1-5-207, 1-5-208, 70-20-106, and
16 70-20-107, MCA, are repealed.

17 **NEW SECTION. Section 21.** Applicability. [This act]
18 applies to notarial acts performed on or after [the
19 effective date of this act].

20 ~~NEW SECTION. Section 15. Effective date. [This act] is~~
21 ~~effective on passage and approval.~~

-End-

SENATE BILL NO. 84

INTRODUCED BY HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW RELATING TO COMMISSIONING OF NOTARIES AND TO THE NOTARIZATION OF DOCUMENTS; ADOPTING THE UNIFORM LAW ON NOTARIAL ACTS; AMENDING SECTIONS 1-5-401, 1-5-402, 1-5-403, 1-5-404, 1-5-405, 1-5-408, 1-5-417, 70-21-101, AND 70-21-203, MCA; AND REPEALING SECTIONS 1-5-101, 1-5-102, 1-5-103, 1-5-104, 1-5-105, 1-5-106, 1-5-107, 1-5-108, 1-5-109, 1-5-110, 1-5-201, 1-5-202, 1-5-203, 1-5-204, 1-5-205, 1-5-206, 1-5-207, 1-5-208, 70-20-106, AND 70-20-107, MCA; ~~AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"

STATEMENT OF INTENT

IT IS THE INTENT OF THE LEGISLATURE THAT THE SECRETARY OF STATE ADOPT RULES ESTABLISHING FEES COMMENSURATE WITH THE COSTS OF REVIEWING THE APPLICATIONS FOR AND BONDS OF THOSE PERSONS SUBMITTING APPLICATIONS TO BECOME NOTARIES PUBLIC AND WITH THE COSTS OF PREPARING THEIR CERTIFICATES OF COMMISSION. THE FEES ADOPTED BY THE SECRETARY OF STATE SHOULD REFLECT THE COST OF MAINTAINING OR UPGRADING THE RECORDKEEPING SYSTEM USED IN THE FILING OF THE COMMISSIONS.

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

NEW SECTION. Section 1. Short title. [Sections 1 through 10] may be cited as the Uniform Law on Notarial Acts.

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 10], the following definitions apply:

(1) "Acknowledgment" means a declaration by a person that the person has executed an instrument for the purposes stated in the instrument and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified in the instrument.

(2) "In a representative capacity" means:

(a) for and on behalf of a corporation, partnership, trust, or other entity as an authorized officer, agent, partner, trustee, or other representative;

(b) as a public officer, personal representative, guardian, or other representative in the capacity recited in the instrument;

(c) as an attorney in fact for a principal; or

(d) in any other capacity as an authorized representative of another.

(3) "Notarial act" means any act that a notary public of this state is authorized to perform and includes taking an acknowledgment, administering an oath or affirmation,

1 taking a verification upon oath or affirmation, witnessing
2 or attesting a signature, certifying or attesting a copy,
3 and noting a protest of a negotiable instrument.

4 (4) "Notarial officer" means a notary public or other
5 officer authorized to perform notarial acts.

6 (5) "Verification upon oath or affirmation" means a
7 declaration that a statement is true made by a person upon
8 oath or affirmation.

9 NEW SECTION. Section 3. Notarial acts. (1) In taking
10 an acknowledgment, the notarial officer shall determine,
11 either from personal knowledge or from satisfactory
12 evidence, that the person appearing before the officer and
13 making the acknowledgment is the person whose true signature
14 is on the instrument.

15 (2) In taking a verification upon oath or affirmation,
16 the notarial officer shall determine, either from personal
17 knowledge or from satisfactory evidence, that the person
18 appearing before the officer and making the verification is
19 the person whose true signature is on the statement
20 verified.

21 (3) In witnessing or attesting a signature, the
22 notarial officer shall determine, either from personal
23 knowledge or from satisfactory evidence, that the signature
24 is that of the person appearing before the officer and named
25 in the instrument.

1 (4) In certifying or attesting a copy of a document or
2 other item, the notarial officer shall determine that the
3 proffered copy is a full, true, and accurate transcription
4 or reproduction of that which was copied.

5 (5) (a) In making or noting a protest of a negotiable
6 instrument, the notarial officer shall identify the
7 instrument and certify either:

8 (i) that due presentment has been made; or

9 (ii) the reason why it is excused and that the
10 instrument has been dishonored by nonacceptance or
11 nonpayment.

12 (b) The protest may also certify that notice of
13 dishonor has been given to all parties or to specified
14 parties.

15 (6) A notarial officer has satisfactory evidence that a
16 person is the person whose true signature is on a document
17 if that person is:

18 (a) personally known to the notarial officer;

19 (b) identified upon the oath or affirmation of a
20 credible witness personally known to the notarial officer;
21 or

22 (c) identified on the basis of identification
23 documents.

24 NEW SECTION. Section 4. Notarial acts in this state.

25 (1) A notarial act may be performed within this state by the

1 following persons:

- 2 (a) a notary public of this state;
- 3 (b) a judge, clerk, or deputy clerk of any court of
- 4 this state; or
- 5 (c) any other person authorized to perform the specific
- 6 act by the law of this state.

7 (2) Notarial acts performed within this state under
8 federal authority as provided in [section 6] have the same
9 effect as if performed by a notarial officer of this state.

10 (3) The signature and title of a person performing a
11 notarial act are prima facie evidence that the signature is
12 genuine and that the person holds the designated title.

13 NEW SECTION. Section 5. Notarial acts in other
14 jurisdictions of the United States. (1) A notarial act has
15 the same effect under the law of this state as if performed
16 by a notarial officer of this state if it is performed in
17 another state, commonwealth, territory, district, or
18 possession of the United States by any of the following
19 persons:

- 20 (a) a notary public of that jurisdiction;
- 21 (b) a judge, clerk, or deputy clerk of a court of that
- 22 jurisdiction; or
- 23 (c) any other person authorized by the law of that
- 24 jurisdiction to perform notarial acts.
- 25 (2) Notarial acts performed in other jurisdictions of

1 the United States under federal authority as provided in
2 [section 6] have the same effect as if performed by a
3 notarial officer of this state.

4 (3) The signature and title of a person performing a
5 notarial act are prima facie evidence that the signature is
6 genuine and that the person holds the designated title.

7 (4) The signature and indicated title of an officer
8 listed in subsection (1)(a) or (1)(b) conclusively establish
9 the authority of a holder of that title to perform a
10 notarial act.

11 NEW SECTION. Section 6. Notarial acts under federal
12 authority. (1) A notarial act has the same effect under the
13 law of this state as if performed by a notarial officer of
14 this state if it is performed anywhere by any of the
15 following persons under authority granted by the law of the
16 United States:

- 17 (a) a judge, clerk, or deputy clerk of a court;
- 18 (b) a commissioned officer on active duty in the
- 19 military service of the United States;
- 20 (c) an officer of the foreign service or consular
- 21 officer of the United States; or
- 22 (d) any other person authorized by federal law to
- 23 perform notarial acts.

24 (2) The signature and title of a person performing a
25 notarial act are prima facie evidence that the signature is

genuine and that the person holds the designated title.

(3) The signature and indicated title of an officer listed in subsection (1)(a), (1)(b), or (1)(c) conclusively establish the authority of a holder of that title to perform a notarial act.

NEW SECTION. Section 7. Foreign notarial acts. (1) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if it is performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multinational or international organization by any of the following persons:

- (a) a notary public or notary;
- (b) a judge, clerk, or deputy clerk of a court of record; or
- (c) any other person authorized by the law of that jurisdiction to perform notarial acts.

(2) An "apostille" in the form prescribed by the Hague Convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(3) A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed or a certificate by a foreign service or consular officer of

that nation stationed in the United States conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate.

(4) An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the indicated title.

(5) An official stamp or seal of an officer listed in subsection (1)(a) or (1)(b) is prima facie evidence that a person with the indicated title has authority to perform notarial acts.

(6) If the title of office and indication of authority to perform notarial acts appears either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

NEW SECTION. Section 8. Certificate of notarial acts. (1) A notarial act must be evidenced by a certificate signed and dated by a notarial officer. The certificate must include identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer and may include the official stamp or seal of office. If the officer is a notary public, the certificate must also indicate the date of expiration, if any, of the commission of office, but omission of that information may subsequently be corrected. If the officer is

1 a commissioned officer on active duty in the military
2 service of the United States, it must also include the
3 officer's rank.

4 (2) A certificate of a notarial act is sufficient if it
5 meets the requirements of subsection (1) and it:

6 (a) is in the short form set forth in [section 9];

7 (b) is in a form otherwise prescribed by the law of
8 this state;

9 (c) is in a form prescribed by the laws or regulations
10 applicable in the place in which the notarial act was
11 performed; or

12 (d) sets forth the actions of the notarial officer and
13 those are sufficient to meet the requirements of the
14 designated notarial act.

15 (3) By executing a certificate of a notarial act, the
16 notarial officer certifies that the officer has made the
17 determinations required by [section 3].

18 **NEW SECTION. Section 9. Short forms.** The following
19 short-form certificates of notarial acts are sufficient for
20 the purposes indicated if they are completed with the
21 information required by [section 8(1)]:

22 (1) For an acknowledgment in an individual capacity:

23 State of _____

24 (County) of _____

25 _____ (date)

1 This instrument was acknowledged before me on _____ by
2 (name(s) of person(s))

3 _____

4

5 _____
(Signature of notarial officer)

6 (Seal, if any)

7

8 _____
Title (and Rank)

9

[My commission expires: _____]

10 (2) For an acknowledgment in a representative capacity:

11 State of _____

12 (County) of _____

13

This instrument was acknowledged before me on (date) by
14 (name(s) of person(s)) as (type of authority, e.g., officer,
15 trustee, etc.) of (name of party on behalf of whom
16 instrument was executed).

17

18 _____
(Signature of notarial officer)

19 (Seal, if any)

20

21 _____
Title (and Rank)

22

[My commission expires: _____]

23 (3) For a verification upon oath or affirmation:

24 State of _____

25 (County) of _____

1 (date)
 2 Signed and sworn to (or affirmed) before me on _____ by
 3 (name(s) of person(s) making statement).
 4 _____
 5 _____
 6 (Signature of notarial officer)
 7 (Seal, if any)
 8 _____
 9 Title (and Rank)
 10 [My commission expires: _____]
 11 (4) For witnessing or attesting a signature:
 12 State of _____
 13 (County) of _____
 14 (date)
 15 Signed or attested before me on _____ by
 16 (name(s) of person(s)).
 17 _____
 18 _____
 19 (Signature of notarial officer)
 20 (Seal, if any)
 21 _____
 22 Title (and Rank)
 23 [My commission expires: _____]
 24 (5) For attestation of a copy of a document:
 25 State of _____

1 (County) of _____
 2 I certify that this is a true and correct copy of a
 3 document in the possession of _____.
 4 Dated _____
 5 _____
 6 (Signature of notarial officer)
 7 (Seal, if any)
 8 _____
 9 Title (and Rank)
 10 [My commission expires: _____]
 11 **NEW SECTION. Section 10. Uniformity of application and**
 12 **construction. (Sections 1 through 9) must be applied and**
 13 **construed to effectuate the general purpose to make uniform**
 14 **the law with respect to the subject of [sections 1 through**
 15 **9] among states enacting it.**
 16 **SECTION 11. SECTION 1-5-401, MCA, IS AMENDED TO READ:**
 17 **"1-5-401. Appointment. The governor secretary of state**
 18 **may appoint and commission as many notaries public for the**
 19 **state of Montana as in his the secretary of state's judgment**
 20 **may be deemed best."**
 21 **SECTION 12. SECTION 1-5-402, MCA, IS AMENDED TO READ:**
 22 **"1-5-402. Qualifications -- residence. Every person**
 23 **appointed as notary public must may not, at the time of his**
 24 **appointment, be a convicted felon, must be a citizen of the**
 25 **United States and of the state of Montana for at least 1**

year preceding his appointment, and must continue to reside within the state of Montana. Removal from the state or conviction of a felony vacates his the office and is equivalent to resignation."

SECTION 13. SECTION 1-5-403, MCA, IS AMENDED TO READ:

"1-5-403. Term of office. The term of office of a notary public is 3 4 years from and after the date of his commission commissioning."

SECTION 14. SECTION 1-5-404, MCA, IS AMENDED TO READ:

"1-5-404. Revocation of commission. Upon 10 days' notice, the governor secretary of state may revoke the commission of any notary public for any just cause he--may deem-sufficient."

SECTION 15. SECTION 1-5-405, MCA, IS AMENDED TO READ:

"1-5-405. Bond and commission. Each notary public must shall submit an application and give an official bond in the sum of \$5,000. The bond must be approved by the secretary of state. Upon the approval of the bond, the payment of fees, and the filing in the office of the secretary of state of the official oath of such the notary public, the governor secretary of state may issue a commission."

SECTION 16. SECTION 1-5-408, MCA, IS AMENDED TO READ:

"1-5-408. Fees for filing commission and issuing certificates. The secretary of state shall receive-for--each certificate---of---official---character---issued,--with--sent

attached,--\$2 set by rule the fees for filing or issuing certificates. The fees must be commensurate with costs. The secretary of state shall use application forms soliciting the information required by this part. The county clerk of any county in this state shall receive a fee as provided in 7-4-2631 for filing a copy of the commission and certifying to the official character."

SECTION 17. SECTION 1-5-417, MCA, IS AMENDED TO READ:

"1-5-417. Authority of notaries who are stockholders, officers, or employees of corporations. It shall be lawful for any notary public who is a stockholder, director, officer, or employee of a bank or other corporation to take the acknowledgment of any party to any written instrument executed to or by such corporation, to administer an oath to any other stockholder, director, officer, employee, or agent of such corporation, or to protest for nonacceptance or nonpayment bills of exchange, drafts, checks, notes, and other negotiable instruments which may be owned or held for collection by such bank or other corporation; provided, it shall be unlawful for any notary public to take the acknowledgment of an instrument by or to a bank or other corporation of which he is a stockholder, director, officer, or employee where such notary is a party individually to such instrument,--either-individually or signs the instrument as a representative of such bank or other corporation, or to

1 protest any negotiable instrument owned or held for
2 collection by such bank or other corporation where such
3 notary is individually a party to such instrument."

4 **Section 18.** Section 70-21-101, MCA, is amended to read:

5 "70-21-101. Instrument defined -- abstract. For the
6 purposes of Title 1, chapter 5, ~~parts 1 through 3~~; part 2 of
7 this chapter; and 70-21-310, the word instrument ~~shall~~
8 include ~~includes~~ an abstract of an instrument ~~which shall~~
9 that must be executed and acknowledged or proved by all
10 parties executing the abstracted document and contains:

11 (1) the names and addresses of the parties thereto to
12 the instrument;

13 (2) a description of the real property affected;

14 (3) a statement that this is an abstract of another
15 document;

16 (4) a short statement of the effect of the document
17 abstracted;

18 (5) the name and address of the person who will provide
19 a full and complete copy of the document abstracted, without
20 cost, upon request of any person."

21 **Section 19.** Section 70-21-203, MCA, is amended to read:

22 "70-21-203. Acknowledgment of instruments required --
23 exceptions. Before an instrument can be recorded, unless it
24 belongs to the class provided for in either ~~1-5-108~~,
25 ~~1-5-109~~, 70-21-205, or 70-21-207, its execution must be:

1 (1) acknowledged by the person executing it or, if
2 executed by a corporation, by its president, ~~vice-president~~
3 vice president, secretary or assistant secretary, or other
4 person duly authorized by resolution by ~~such~~ the corporation
5 executing the ~~same~~ instrument on behalf of the corporation;
6 or

7 (2) proved by:

8 (a) a subscribing witness; or

9 (b) as provided in 1-5-302 and 1-5-303; and

10 (c) the acknowledgment or proof certified in the manner
11 prescribed by Title 1, chapter 5, ~~parts 1 through 3~~."

12 **NEW SECTION. Section 20. Repealer.** Sections 1-5-101,
13 1-5-102, 1-5-103, 1-5-104, 1-5-105, 1-5-106, 1-5-107,
14 1-5-108, 1-5-109, 1-5-110, 1-5-201, 1-5-202, 1-5-203,
15 1-5-204, 1-5-206, 1-5-207, 1-5-208, 70-20-106, and
16 70-20-107, MCA, are repealed.

17 **NEW SECTION. Section 21. Applicability.** [This act]
18 applies to notarial acts performed on or after [the
19 effective date of this act].

20 ~~NEW SECTION. Section 15. Effective date. [This act] is~~
21 ~~effective on passage and approval.~~

-End-

HOUSE STANDING COMMITTEE REPORT

March 4, 1993
Page 2 of 2

March 4, 1993
Page 1 of 2

Mr. Speaker: We, the committee on State Administration report that Senate Bill 84 (third reading copy -- blue) be concurred in as amended.

Signed: *Dick Simpkins*
Dick Simpkins, Chair

And, that such amendments read:

Carried by: Rep. Spring

1. Title, line 5.
Following: "TO"
Insert: "THE JURISDICTION AND"
2. Title, line 8.
Following: "1-5-408,"
Insert: "1-5-415,"
3. Page 2, line 2.
Strike: "10"
Insert: "11"
4. Page 2, line 5.
Strike: "10"
Insert: "11"
5. Page 5, line 8.
Strike: "6"
Insert: "7"
6. Page 5.
Following: line 9
Insert: "(3) Subject to the provisions of [section 5], notarial acts performed within Montana by notarial officers of bordering states have the same effect as if performed by a notarial officer of Montana."
Renumber: subsequent subsection
7. Page 5.
Following: line 12
Insert:
"NEW SECTION. Section 5. Reciprocity of notarial acts. (1)

Committee Vote:
Yes 16, No 0.

491541SC.Hpf

A Montana notarial officer may perform a notarial act in a bordering state if the state recognizes the officer's authority within the state.

(2) A notarial act performed in Montana by a notarial officer of a bordering state has the same effect under Montana law as if the act were performed by a Montana notarial officer, provided that the bordering state grants Montana's notarial officers similar authority within the bordering state."
Renumber: subsequent sections

8. Page 6, line 2.
Strike: "6"
Insert: "7"

9. Page 9, line 6.
Strike: "9"
Insert: "10"

10. Page 9, line 21.
Strike: "8(1)"
Insert: "9(1)"

11. Page 12, line 12.
Strike: "9"
Insert: "10"

12. Page 12, line 15.
Strike: "9"
Insert: "10"

13. Page 14.
Following: line 7
Insert:

"Section 18. Section 1-5-415, MCA, is amended to read:
"1-5-415. ~~Statewide jurisdiction Jurisdiction. The jurisdiction of notaries public shall be coextensive with the boundaries of the state, irrespective of their place of residence within the state. Every~~ A person receiving a commission as notary public ~~shall have has~~ jurisdiction to perform ~~his~~ the person's official duties and acts in every county of the state of Montana irrespective of the person's place of residence within the state. A notary public may perform notarial acts outside Montana pursuant to [section 5]."
Renumber: subsequent sections

-END-

HOUSE

SB 84

491541SC.Hpf

1 SENATE BILL NO. 84
2 INTRODUCED BY HALLIGAN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW
5 RELATING TO THE JURISDICTION AND COMMISSIONING OF NOTARIES
6 AND TO THE NOTARIZATION OF DOCUMENTS; ADOPTING THE UNIFORM
7 LAW ON NOTARIAL ACTS; AMENDING SECTIONS 1-5-401, 1-5-402,
8 1-5-403, 1-5-404, 1-5-405, 1-5-408, 1-5-415, 1-5-417,
9 70-21-101, AND 70-21-203, MCA; AND REPEALING SECTIONS
10 1-5-101, 1-5-102, 1-5-103, 1-5-104, 1-5-105, 1-5-106,
11 1-5-107, 1-5-108, 1-5-109, 1-5-110, 1-5-201, 1-5-202,
12 1-5-203, 1-5-204, 1-5-205, 1-5-206, 1-5-207, 1-5-208,
13 70-20-106, AND 70-20-107, MCA;--AND-PROVIDING-AN-IMMEDIATE
14 EFFECTIVE-DATE."

15
16 STATEMENT OF INTENT

17 IT IS THE INTENT OF THE LEGISLATURE THAT THE SECRETARY
18 OF STATE ADOPT RULES ESTABLISHING FEES COMMENSURATE WITH THE
19 COSTS OF REVIEWING THE APPLICATIONS FOR AND BONDS OF THOSE
20 PERSONS SUBMITTING APPLICATIONS TO BECOME NOTARIES PUBLIC
21 AND WITH THE COSTS OF PREPARING THEIR CERTIFICATES OF
22 COMMISSION. THE FEES ADOPTED BY THE SECRETARY OF STATE
23 SHOULD REFLECT THE COST OF MAINTAINING OR UPGRADING THE
24 RECORDKEEPING SYSTEM USED IN THE FILING OF THE COMMISSIONS.

1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

2 NEW SECTION. Section 1. Short title. [Sections 1
3 through ±0 11] may be cited as the Uniform Law on Notarial
4 Acts.

5 NEW SECTION. Section 2. Definitions. As used in
6 [sections 1 through ±0 11], the following definitions apply:

7 (1) "Acknowledgment" means a declaration by a person
8 that the person has executed an instrument for the purposes
9 stated in the instrument and, if the instrument is executed
10 in a representative capacity, that the person signed the
11 instrument with proper authority and executed it as the act
12 of the person or entity represented and identified in the
13 instrument.

14 (2) "In a representative capacity" means:

15 (a) for and on behalf of a corporation, partnership,
16 trust, or other entity as an authorized officer, agent,
17 partner, trustee, or other representative;

18 (b) as a public officer, personal representative,
19 guardian, or other representative in the capacity recited in
20 the instrument;

21 (c) as an attorney in fact for a principal; or

22 (d) in any other capacity as an authorized
23 representative of another.

24 (3) "Notarial act" means any act that a notary public
25 of this state is authorized to perform and includes taking

1 an acknowledgment, administering an oath or affirmation,
2 taking a verification upon oath or affirmation, witnessing
3 or attesting a signature, certifying or attesting a copy,
4 and noting a protest of a negotiable instrument.

5 (4) "Notarial officer" means a notary public or other
6 officer authorized to perform notarial acts.

7 (5) "Verification upon oath or affirmation" means a
8 declaration that a statement is true made by a person upon
9 oath or affirmation.

10 NEW SECTION. Section 3. Notarial acts. (1) In taking
11 an acknowledgment, the notarial officer shall determine,
12 either from personal knowledge or from satisfactory
13 evidence, that the person appearing before the officer and
14 making the acknowledgment is the person whose true signature
15 is on the instrument.

16 (2) In taking a verification upon oath or affirmation,
17 the notarial officer shall determine, either from personal
18 knowledge or from satisfactory evidence, that the person
19 appearing before the officer and making the verification is
20 the person whose true signature is on the statement
21 verified.

22 (3) In witnessing or attesting a signature, the
23 notarial officer shall determine, either from personal
24 knowledge or from satisfactory evidence, that the signature
25 is that of the person appearing before the officer and named

1 in the instrument.

2 (4) In certifying or attesting a copy of a document or
3 other item, the notarial officer shall determine that the
4 proffered copy is a full, true, and accurate transcription
5 or reproduction of that which was copied.

6 (5) (a) In making or noting a protest of a negotiable
7 instrument, the notarial officer shall identify the
8 instrument and certify either:

9 (i) that due presentment has been made; or

10 (ii) the reason why it is excused and that the
11 instrument has been dishonored by nonacceptance or
12 nonpayment.

13 (b) The protest may also certify that notice of
14 dishonor has been given to all parties or to specified
15 parties.

16 (6) A notarial officer has satisfactory evidence that a
17 person is the person whose true signature is on a document
18 if that person is:

19 (a) personally known to the notarial officer;

20 (b) identified upon the oath or affirmation of a
21 credible witness personally known to the notarial officer;
22 or

23 (c) identified on the basis of identification
24 documents.

25 NEW SECTION. Section 4. Notarial acts in this state.

(1) A notarial act may be performed within this state by the following persons:

- (a) a notary public of this state;
- (b) a judge, clerk, or deputy clerk of any court of this state; or
- (c) any other person authorized to perform the specific act by the law of this state.

(2) Notarial acts performed within this state under federal authority as provided in [section 6 7] have the same effect as if performed by a notarial officer of this state.

(3) SUBJECT TO THE PROVISIONS OF [SECTION 5], NOTARIAL ACTS PERFORMED WITHIN MONTANA BY NOTARIAL OFFICERS OF BORDERING STATES HAVE THE SAME EFFECT AS IF PERFORMED BY A NOTARIAL OFFICER OF MONTANA.

~~†3†~~(4) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

NEW SECTION. SECTION 5. RECIPROCITY OF NOTARIAL ACTS.

(1) A MONTANA NOTARIAL OFFICER MAY PERFORM A NOTARIAL ACT IN A BORDERING STATE IF THE STATE RECOGNIZES THE OFFICER'S AUTHORITY WITHIN THE STATE.

(2) A NOTARIAL ACT PERFORMED IN MONTANA BY A NOTARIAL OFFICER OF A BORDERING STATE HAS THE SAME EFFECT UNDER MONTANA LAW AS IF THE ACT WERE PERFORMED BY A MONTANA NOTARIAL OFFICER, PROVIDED THAT THE BORDERING STATE GRANTS

MONTANA'S NOTARIAL OFFICERS SIMILAR AUTHORITY WITHIN THE BORDERING STATE.

NEW SECTION. Section 6. Notarial acts in other jurisdictions of the United States. (1) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if it is performed in another state, commonwealth, territory, district, or possession of the United States by any of the following persons:

- (a) a notary public of that jurisdiction;
- (b) a judge, clerk, or deputy clerk of a court of that jurisdiction; or
- (c) any other person authorized by the law of that jurisdiction to perform notarial acts.

(2) Notarial acts performed in other jurisdictions of the United States under federal authority as provided in [section 6 7] have the same effect as if performed by a notarial officer of this state.

(3) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(4) The signature and indicated title of an officer listed in subsection (1)(a) or (1)(b) conclusively establish the authority of a holder of that title to perform a notarial act.

1 **NEW SECTION. Section 7. Notarial acts under federal**
 2 **authority.** (1) A notarial act has the same effect under the
 3 law of this state as if performed by a notarial officer of
 4 this state if it is performed anywhere by any of the
 5 following persons under authority granted by the law of the
 6 United States:
 7 (a) a judge, clerk, or deputy clerk of a court;
 8 (b) a commissioned officer on active duty in the
 9 military service of the United States;
 10 (c) an officer of the foreign service or consular
 11 officer of the United States; or
 12 (d) any other person authorized by federal law to
 13 perform notarial acts.
 14 (2) The signature and title of a person performing a
 15 notarial act are prima facie evidence that the signature is
 16 genuine and that the person holds the designated title.
 17 (3) The signature and indicated title of an officer
 18 listed in subsection (1)(a), (1)(b), or (1)(c) conclusively
 19 establish the authority of a holder of that title to perform
 20 a notarial act.

21 **NEW SECTION. Section 8. Foreign notarial acts.** (1) A
 22 notarial act has the same effect under the law of this state
 23 as if performed by a notarial officer of this state if it is
 24 performed within the jurisdiction of and under authority of
 25 a foreign nation or its constituent units or a multinational

1 or international organization by any of the following
 2 persons:

- 3 (a) a notary public or notary;
 4 (b) a judge, clerk, or deputy clerk of a court of
 5 record; or
 6 (c) any other person authorized by the law of that
 7 jurisdiction to perform notarial acts.
 8 (2) An "apostille" in the form prescribed by the Hague
 9 Convention of October 5, 1961, conclusively establishes that
 10 the signature of the notarial officer is genuine and that
 11 the officer holds the indicated office.
 12 (3) A certificate by a foreign service or consular
 13 officer of the United States stationed in the nation under
 14 the jurisdiction of which the notarial act was performed or
 15 a certificate by a foreign service or consular officer of
 16 that nation stationed in the United States conclusively
 17 establishes any matter relating to the authenticity or
 18 validity of the notarial act set forth in the certificate.
 19 (4) An official stamp or seal of the person performing
 20 the notarial act is prima facie evidence that the signature
 21 is genuine and that the person holds the indicated title.
 22 (5) An official stamp or seal of an officer listed in
 23 subsection (1)(a) or (1)(b) is prima facie evidence that a
 24 person with the indicated title has authority to perform
 25 notarial acts.

(6) If the title of office and indication of authority to perform notarial acts appears either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

NEW SECTION. Section 9. Certificate of notarial acts.

(1) A notarial act must be evidenced by a certificate signed and dated by a notarial officer. The certificate must include identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer and ~~may~~ **MUST** include the official stamp or seal of office. If the officer is a notary public, the certificate must also indicate the date of expiration, if any, of the commission of office, but omission of that information may subsequently be corrected. If the officer is a commissioned officer on active duty in the military service of the United States, it must also include the officer's rank.

(2) A certificate of a notarial act is sufficient if it meets the requirements of subsection (1) and it:

- (a) is in the short form set forth in [section 9 10];
- (b) is in a form otherwise prescribed by the law of this state;
- (c) is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was

performed; or

(d) sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

(3) By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determinations required by [section 3].

NEW SECTION. Section 10. Short forms. The following short-form certificates of notarial acts are sufficient for the purposes indicated if they are completed with the information required by [section ~~8(1)~~ 9(1)]:

(1) For an acknowledgment in an individual capacity:

State of _____

(County) of _____

(date)

This instrument was acknowledged before me on _____ by
(name(s) of person(s))

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)

[My commission expires: _____]

(2) For an acknowledgment in a representative capacity:

1 State of _____
 2 (County) of _____
 3 This instrument was acknowledged before me on (date) by
 4 (name(s) of person(s)) as (type of authority, e.g., officer,
 5 trustee, etc.) of (name of party on behalf of whom
 6 instrument was executed).
 7 _____
 8 (Signature of notarial officer)
 9 (Seal, if any) _____
 10 _____
 11 Title (and Rank)
 12 [My commission expires: _____]
 13 (3) For a verification upon oath or affirmation:
 14 State of _____
 15 (County) of _____
 16 (date)
 17 Signed and sworn to (or affirmed) before me on _____ by
 18 (name(s) of person(s) making statement).
 19 _____
 20 _____
 21 (Signature of notarial officer)
 22 (Seal, if any) _____
 23 _____
 24 Title (and Rank)
 25 [My commission expires: _____]

1 (4) For witnessing or attesting a signature:
 2 State of _____
 3 (County) of _____
 4 (date)
 5 Signed or attested before me on _____ by
 6 (name(s) of person(s)).
 7 _____
 8 _____
 9 (Signature of notarial officer)
 10 (Seal, if any) _____
 11 _____
 12 Title (and Rank)
 13 [My commission expires: _____]
 14 (5) For attestation of a copy of a document:
 15 State of _____
 16 (County) of _____
 17 I certify that this is a true and correct copy of a
 18 document in the possession of _____.
 19 Dated _____
 20 _____
 21 (Signature of notarial officer)
 22 (Seal, if any) _____
 23 _____
 24 Title (and Rank)
 25 [My commission expires: _____]

1 NEW SECTION. Section 11. Uniformity of application and
 2 construction. [Sections 1 through 9 10] must be applied and
 3 construed to effectuate the general purpose to make uniform
 4 the law with respect to the subject of [sections 1 through 9
 5 10] among states enacting it.

6 SECTION 12. SECTION 1-5-401, MCA, IS AMENDED TO READ:

7 "1-5-401. Appointment. The governor secretary of state
 8 may appoint and commission as many notaries public for the
 9 state of Montana as in his the secretary of state's judgment
 10 may be deemed best."

11 SECTION 13. SECTION 1-5-402, MCA, IS AMENDED TO READ:

12 "1-5-402. Qualifications -- residence. Every A person
 13 appointed as notary public must may not, at the time of his
 14 appointment, be a convicted felony. EACH PERSON APPOINTED AS
 15 A NOTARY PUBLIC must be a citizen of the United States and
 16 of the state of Montana for at least 1 year preceding his
 17 appointment, and must continue to reside within the state of
 18 Montana. Removal from the state or conviction of a felony
 19 vacates his the office and is equivalent to resignation."

20 SECTION 14. SECTION 1-5-403, MCA, IS AMENDED TO READ:

21 "1-5-403. Term of office. The term of office of a
 22 notary public is 3 4 years from and after the date of his
 23 commission commissioning."

24 SECTION 15. SECTION 1-5-404, MCA, IS AMENDED TO READ:

25 "1-5-404. Revocation of commission. Upon 10 days'

1 notice, the governor secretary of state may revoke the
 2 commission of any notary public for any just cause he-may
 3 deem-sufficient."

4 SECTION 16. SECTION 1-5-405, MCA, IS AMENDED TO READ:

5 "1-5-405. Bond and commission. Each notary public must
 6 shall submit an application and give an official bond in the
 7 sum of \$5,000. The bond must be approved by the secretary of
 8 state. Upon the approval of the bond, the payment of fees,
 9 and the filing in the office of the secretary of state of
 10 the official oath of such the notary public, the governor
 11 secretary of state may issue a commission."

12 SECTION 17. SECTION 1-5-408, MCA, IS AMENDED TO READ:

13 "1-5-408. Fees for filing commission and issuing
 14 certificates. The secretary of state shall receive-for-each
 15 certificate--of--official--character---issued,---with---seal
 16 attached,--\$2 set by rule the fees for filing or issuing
 17 certificates. The fees must be commensurate with costs. The
 18 secretary of state shall use application forms soliciting
 19 the information required by this part. The county clerk of
 20 any county in this state shall receive a fee as provided in
 21 7-4-2631 for filing a copy of the commission and certifying
 22 to the official character."

23 SECTION 18. SECTION 1-5-415, MCA, IS AMENDED TO READ:

24 "1-5-415. Statewide---jurisdiction Jurisdiction. The
 25 jurisdiction-of-notaries-public-shall-be--coextensive--with

1 ~~the--boundaries-of-the-state,irrespective-of-their-place-of~~
 2 ~~residence-within-the--state--~~Every A person receiving a
 3 commission as notary public ~~shall-have~~ has jurisdiction to
 4 perform his the person's official duties and acts in every
 5 county of the state of Montana irrespective of the person's
 6 place of residence within the state. A notary public may
 7 perform notarial acts outside Montana pursuant to [section
 8 5]."

9 **SECTION 19. SECTION 1-5-417, MCA, IS AMENDED TO READ:**

10 "1-5-417. Authority of notaries who are stockholders,
 11 officers, or employees of corporations. It shall be lawful
 12 for any notary public who is a stockholder, director,
 13 officer, or employee of a bank or other corporation to take
 14 the acknowledgment of any party to any written instrument
 15 executed to or by such corporation, to administer an oath to
 16 any other stockholder, director, officer, employee, or agent
 17 of such corporation, or to protest for nonacceptance or
 18 nonpayment bills of exchange, drafts, checks, notes, and
 19 other negotiable instruments which may be owned or held for
 20 collection by such bank or other corporation; provided, it
 21 shall be unlawful for any notary public to take the
 22 acknowledgment of an instrument by or to a bank or other
 23 corporation of which he is a stockholder, director, officer,
 24 or employee where such notary is a party individually to
 25 such instrument,~~either-individually~~ or signs the instrument

1 as a representative of such bank or other corporation, or to
 2 protest any negotiable instrument owned or held for
 3 collection by such bank or other corporation where such
 4 notary is individually a party to such instrument."

5 **Section 20. Section 70-21-101, MCA, is amended to read:**

6 "70-21-101. Instrument defined -- abstract. For the
 7 purposes of Title 1, chapter 5,~~parts-1-through-3~~; part 2 of
 8 this chapter; and 70-21-310, the word instrument ~~shall~~
 9 ~~include~~ includes an abstract of an instrument ~~which-shall~~
 10 ~~that must~~ be executed and acknowledged or proved by all
 11 parties executing the abstracted document and contains:

- 12 (1) the names and addresses of the parties ~~thereto to~~
 13 ~~the instrument~~;
- 14 (2) a description of the real property affected;
- 15 (3) a statement that this is an abstract of another
 16 document;
- 17 (4) a short statement of the effect of the document
 18 abstracted;
- 19 (5) the name and address of the person who will provide
 20 a full and complete copy of the document abstracted, without
 21 cost, upon request of any person."

22 **Section 21. Section 70-21-203, MCA, is amended to read:**

23 "70-21-203. Acknowledgment of instruments required --
 24 exceptions. Before an instrument can be recorded, unless it
 25 belongs to the class provided for in either ~~1-5-1007~~

1 1-5-109, 70-21-205, or 70-21-207, its execution must be:
2 (1) acknowledged by the person executing it or, if
3 executed by a corporation, by its president, ~~vice-president~~
4 vice president, secretary or assistant secretary, or other
5 person duly authorized by resolution by ~~such~~ the corporation
6 executing the ~~same~~ instrument on behalf of the corporation;
7 or

8 (2) proved by:

9 (a) a subscribing witness; or

10 (b) as provided in 1-5-302 and 1-5-303; and

11 (c) the acknowledgment or proof certified in the manner
12 prescribed by Title 1, chapter 5, ~~parts 1 through 3.~~"

13 NEW SECTION. Section 22. Repealer. Sections 1-5-101,
14 1-5-102, 1-5-103, 1-5-104, 1-5-105, 1-5-106, 1-5-107,
15 1-5-108, 1-5-109, 1-5-110, 1-5-201, 1-5-202, 1-5-203,
16 1-5-204, 1-5-206, 1-5-207, 1-5-208, 70-20-106, and
17 70-20-107, MCA, are repealed.

18 NEW SECTION. Section 23. Applicability. [This act]
19 applies to notarial acts performed on or after [the
20 effective date of this act].

21 ~~NEW SECTION. --Section 15. --Effective date-- [This act] is~~
22 ~~effective on passage and approval.~~

-End-