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HOUSE BILL 612

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

W. Ken Martinez

AN ACT

RELATING TO NOTARIES PUBLIC; ENACTING THE NOTARY PUBLIC ACT;
REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Notary Public Act".

Section 2. DEFINITIONS.--As used in the Notary Public
Act:

A. "acknowledgment" means a notarial act in which a
person at a single time and place:

(1) appears in person before the notary public
and presents a document;

(2) is personally known to the notary public
or identified by the notary public through satisfactory
evidence; and

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1 (3) indicates to the notary public that the
2 signature on the document was voluntarily affixed by the person
3 for the purposes stated within the document and, if applicable,
4 that the person had due authority to sign in a particular
5 representative capacity;

6 B. "affirmation" means a notarial act that is
7 legally equivalent to an oath and in which a person at a single
8 time and place:

9 (1) appears in person before the notary
10 public;

11 (2) is personally known to the notary public
12 or identified by the notary public through satisfactory
13 evidence; and

14 (3) makes a vow of truthfulness or fidelity on
15 penalty of perjury, based on personal honor and without
16 invoking a deity or using any form of the word "swear";

17 C. "commission" means both to empower to perform
18 notarial acts and the written evidence of authority to perform
19 those acts;

20 D. "copy certification" means a notarial act in
21 which a notary public:

22 (1) is presented with a document that is
23 neither a vital record, a public record nor publicly
24 recordable;

25 (2) copies or supervises the copying of the

1 document using a photographic or electronic copying process;

2 (3) compares the document to the copy; and

3 (4) determines that the copy is accurate and
4 complete;

5 E. "credible witness" means an honest, reliable and
6 impartial person who personally knows the person appearing
7 before a notary public and takes an oath or affirmation from
8 the notary to vouch for that person's identity;

9 F. "jurat" means a notarial act in which a person
10 at a single time and place:

11 (1) appears in person before the notary public
12 and presents a document;

13 (2) is personally known to the notary public
14 or identified by the notary public through satisfactory
15 evidence;

16 (3) signs the document in the presence of the
17 notary public; and

18 (4) takes an oath or affirmation from the
19 notary public that the person is voluntarily affixing his
20 signature and vouching for the truthfulness or accuracy of the
21 signed document;

22 G. "notarial act" means any act that a notary
23 public or other person is empowered to perform pursuant to the
24 Notary Public Act or the Uniform Law on Notarial Acts;

25 H. "notarial certificate" means the part of, or

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1 attachment to, a notarized document that is completed by the
2 notary public, bears the notary public's signature and seal and
3 states the facts attested by the notary public in a particular
4 notarization;

5 I. "notary public" mean any person commissioned by
6 the governor to perform official acts pursuant to the Notary
7 Public Act;

8 J. "oath" means a notarial act that is legally
9 equivalent to an affirmation and in which a person at a single
10 time and place:

11 (1) appears in person before the notary
12 public;

13 (2) is personally known to the notary public
14 or identified by the notary public through satisfactory
15 evidence; and

16 (3) makes a vow of truthfulness or fidelity on
17 penalty of perjury while invoking a deity or using any form of
18 the word "swear";

19 K. "official misconduct" means:

20 (1) a notary public's performance of an act
21 prohibited, or failure to perform an act mandated, by the
22 Notary Public Act or by any other law in connection with a
23 notarial act by the notary public; or

24 (2) a notary public's performance of an
25 official act in a manner found by the governor to be negligent

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1 or against the public interest;

2 L. "personal appearance" means that the principal
3 and the notary public are physically close enough to see, hear,
4 communicate with and give identification documents to each
5 other;

6 M "personally known" means familiarity with a
7 person resulting from interactions with that person over a
8 period of time sufficient to dispel any reasonable uncertainty
9 that the person has the identity claimed;

10 N. "principal" means:

11 (1) a person whose signature is notarized; or

12 (2) a person, other than a credible witness,
13 taking an oath or affirmation from the notary public;

14 O. "satisfactory evidence of identity" means
15 identification of a person based on:

16 (1) at least one current document issued by a
17 federal, state or tribal government agency bearing the
18 photographic image of the person's face and signature and a
19 physical description of the person, though a properly stamped
20 passport without a physical description is acceptable; or

21 (2) the oath or affirmation of one credible
22 witness unaffected by the document or transaction who is
23 personally known to the notary public and who personally knows
24 the person, or of two credible witnesses unaffected by the
25 document or transaction who each personally knows the person

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1 and shows to the notary public documentary identification as
2 described in Paragraph (1) of this subsection; and

3 P. "seal" means a device, including a rubber stamp,
4 for affixing on a paper document an image containing the notary
5 public's name, the words "State of New Mexico" and, in the case
6 of a rubber stamp, the commission expiration date.

7 Section 3. QUALIFICATIONS. --A notary public shall:

8 A. be a resident of New Mexico;

9 B. be at least eighteen years of age;

10 C. be able to read and write the English language;

11 D. not have pleaded guilty or nolo contendere to a
12 felony or been convicted of a felony; and

13 E. not have had a notary public commission revoked
14 during the past five years.

15 Section 4. APPLICATION. --An applicant for appointment as
16 a notary public shall submit to the secretary of state:

17 A. an application for appointment on a form
18 prescribed by the secretary of state that includes a statement
19 by the applicant certifying that the applicant is qualified,
20 contains evidence of the applicant's good moral character as
21 shown by signatures of two residents of this state and the oath
22 prescribed by the constitution of New Mexico for state
23 officers;

24 B. a bond in the amount of ten thousand dollars
25 (\$10,000) executed by a licensed surety for a term of four

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1 years commencing on the commission's effective date and
2 terminating on its expiration date;

3 C. an application that is signed by the applicant
4 using the applicant's surname and one given name, plus an
5 initial or additional name if the applicant so desires, or
6 surname and at least two initials; and

7 D. an application fee in the amount of twenty
8 dollars (\$20.00).

9 Section 5. APPOINTMENT--TERM --Upon receipt of the
10 completed application for appointment and the application fee,
11 and upon approval of the applicant's bond, the secretary of
12 state shall notify the governor, who shall appoint the
13 applicant as a notary public for a term of four years from the
14 date of appointment unless sooner removed by the governor. The
15 secretary of state shall issue a certificate of appointment to
16 each notary public commissioned by the governor. A certificate
17 of appointment shall not be possessed or used by any other
18 person or surrendered to an employer upon termination of
19 employment.

20 Section 6. REAPPOINTMENT.--At least thirty days before
21 expiration of each notary public term, the secretary of state
22 shall mail a notice of expiration to the notary public's
23 mailing address of record. A notary public may be reappointed
24 upon making application in the same manner as required for an
25 original application.

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1 Section 7. POWERS AND PROHIBITIONS. --

2 A. A notary public is empowered to perform the
3 following notarial acts:

- 4 (1) acknowledgments;
- 5 (2) oaths and affirmations;
- 6 (3) jurats;
- 7 (4) copy certifications; and
- 8 (5) any other act so authorized by the law of
9 this state.

10 B. A notary public shall not perform a notarial act
11 if the principal:

12 (1) is not in the notary public's presence at
13 the time of notarization;

14 (2) is not personally known to the notary
15 public or identified by the notary public through satisfactory
16 evidence of identity;

17 (3) shows a demeanor that causes the notary
18 public to have a compelling doubt about whether the principal
19 knows the consequences of the transaction requiring a notarial
20 act; or

21 (4) in the notary public's judgment, is not
22 acting of his own free will.

23 C. A notary public may certify the affixation of a
24 signature by mark on a document presented for notarization if:

- 25 (1) the mark is affixed in the presence of the

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1 notary public and of two credible witnesses unaffected by the
2 document;

3 (2) both witnesses sign their own names beside
4 the mark;

5 (3) the notary public writes below the mark:
6 "Mark affixed by (name of signer by mark) in presence of (names
7 of witnesses) and undersigned notary public pursuant to
8 Subsection C of Section 7 of the Notary Public Act"; and

9 (4) the notary public notarizes the signature
10 by mark through an acknowledgment or jurat.

11 D. A notary public may sign the name of a person
12 physically unable to sign or make a mark on a document
13 presented for notarization if:

14 (1) the person directs the notary public to do
15 so in the presence of two credible witnesses unaffected by the
16 document;

17 (2) the notary public signs the person's name
18 in the presence of the person and the witnesses;

19 (3) both witnesses sign their own names beside
20 the signature;

21 (4) the notary public writes below the
22 signature: "Signature affixed by notary public in the presence
23 of (names and addresses of person and two witnesses) pursuant
24 to Subsection D of Section 7 of the Notary Public Act"; and

25 (5) the notary public notarizes the signature

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1 through an acknowledgment or jurat.

2 Section 8. REFUSAL TO NOTARIZE. --

3 A. A notary public shall not refuse to perform a
4 notarial act based on a principal's race, age, gender, sexual
5 orientation, religion, national origin, health or disability or
6 status as a non-client or non-customer of the notary public or
7 the notary public's employer.

8 B. A notary public shall perform a notarial act for
9 a person requesting such an act who tenders the appropriate
10 fee, unless:

11 (1) the notary public knows or has good reason
12 to believe that the notarial act or the associated transaction
13 is unlawful;

14 (2) the act is prohibited; or

15 (3) the number of notarial acts requested
16 practicably precludes completion of all acts at once, in which
17 case the notary public shall arrange for later completion of
18 the remaining acts.

19 Section 9. SURETY BOND AND DUTIES OF SURETY. --

20 A. A commission shall not be issued until an oath
21 of office and a ten-thousand-dollar (\$10,000) bond have been
22 provided on the application for appointment and approved by the
23 secretary of state. The bond shall be executed by a licensed
24 surety, for a term of four years commencing on the commission's
25 effective date and terminating on its expiration date, with

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1 payment of bond funds to any person conditioned upon the notary
2 public's misconduct.

3 B. A person damaged by an unlawful act, negligence
4 or misconduct of a notary public in his official capacity may
5 bring a civil action on the notary public's official bond.

6 C. The surety for a notary public bond shall report
7 all claims against the bond to the secretary of state.

8 D. If a notary public bond has been exhausted by
9 claims paid out by the surety, the governor shall suspend the
10 notary public's commission until:

11 (1) a new bond in the amount of ten thousand
12 dollars (\$10,000) is obtained by the notary public; and

13 (2) the notary public's fitness to serve the
14 remainder of the commission is determined by the governor.

15 E. In the event of a suspension of a notary
16 public's commission by the governor, the notary public shall
17 not perform any notarial acts until the requirements of
18 Subsection D of this section have been fulfilled and the
19 governor removes the notary public's suspension.

20 Section 10. AVOIDANCE OF INFLUENCE. --

21 A. A notary public shall not influence a person
22 either to enter into or avoid a transaction involving a
23 notarial act by the notary public, except that the notary
24 public may advise against a transaction if the notary public
25 knows or has good reason to believe that the notarial act or

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1 the associated transaction is unlawful.

2 B. A notary public has neither the duty nor the
3 authority to investigate, ascertain or attest to the
4 lawfulness, propriety, accuracy or truthfulness of a document
5 or transaction involving a notarial act.

6 Section 11. FALSE OR INCOMPLETE CERTIFICATE,
7 AUTHENTICATING DOCUMENTS IN ABSENCE OF PRINCIPAL. --

8 A. If a notary public or any other officer
9 authorized by law to make or give a certificate or other
10 writing makes or delivers as true a certificate or writing
11 containing statements that he knows to be false, or appends his
12 official signature to acknowledgments or other documents when
13 the principals executing the documents have not appeared in
14 person before him, is guilty of a misdemeanor and upon
15 conviction shall be punished by a fine not exceeding one
16 thousand dollars (\$1,000), or by imprisonment for a period not
17 exceeding six months, or both.

18 B. A notary public shall not affix an official
19 signature or seal on a notarial certificate that is incomplete.

20 C. A notary public shall not provide or send a
21 signed or sealed notarial certificate to another person with
22 the understanding that it will be completed or attached to a
23 document outside of the notary public's presence.

24 Section 12. IMPROPER DOCUMENTS. --

25 A. A notary public shall not notarize a signature:

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- 1 (1) on a blank or incomplete document; or
- 2 (2) on a document without notarial certificate
- 3 wording.

4 B. A notary public shall neither certify nor

5 authenticate a photograph.

6 Section 13. INTENT TO DECEIVE. --A notary public shall not

7 perform any official action with the intent to deceive or

8 defraud.

9 Section 14. TESTIMONIALS. --A notary public shall not use

10 the official notary public title or seal to endorse, promote,

11 denounce or oppose any product, service, contest, candidate or

12 other offering.

13 Section 15. UNAUTHORIZED PRACTICE OF LAW. --

14 A. If notarial certificate wording is not provided

15 or indicated for a document, a non-attorney notary public shall

16 not determine the type of notarial act or certificate to be

17 used.

18 B. A non-attorney notary public shall not assist

19 another person in drafting, completing, selecting or

20 understanding a document or transaction requiring a notarial

21 act.

22 C. This section does not preclude a notary public

23 who is duly qualified, trained or experienced in a particular

24 industry or professional field from selecting, drafting,

25 completing or advising on a document or certificate related to

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1 a matter within that industry or field.

2 D. A notary public shall not claim to have powers,
3 qualifications, rights or privileges that the office of notary
4 public does not provide, including the power to counsel on
5 immigration matters.

6 E. A notary public shall not use the term "notario
7 publico" or any equivalent non-English term in any business
8 card, advertisement, notice or sign.

9 Section 16. FEES. --

10 A. For performing a notarial act, a notary public
11 may charge the maximum fee specified in this section, charge
12 less than the maximum fee or waive the fee.

13 B. A notary public shall not discriminate by
14 conditioning the fee for a notarial act on the attributes of
15 the principal.

16 C. An employer shall not establish fees for
17 notarial services that are in excess of those specified in this
18 section nor on the attributes of the principal as delineated.

19 D. The maximum fees that may be charged by a notary
20 public for notarial acts are:

21 (1) for acknowledgments, five dollars (\$5.00)
22 per acknowledgment;

23 (2) for oaths or affirmations without a
24 signature, five dollars (\$5.00) per person;

25 (3) for jurats, five dollars (\$5.00) per

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1 jurat; and

2 (4) for copy certifications, fifty cents
3 (\$.50) per page with a minimum total charge of five dollars
4 (\$5.00).

5 E. A notary public may charge a travel fee not to
6 exceed thirty cents (\$.30) per mile when traveling to perform a
7 notarial act if:

8 (1) the notary public and the person
9 requesting the notarial act agree upon the travel fee in
10 advance of the travel; and

11 (2) the notary public explains to the person
12 requesting the notarial act that the travel fee is separate
13 from the notarial fees and not mandated by law.

14 Section 17. OFFICIAL SIGNATURE.--In notarizing a paper
15 document, a notary public shall:

16 A. sign by hand on the notarial certificate exactly
17 and only the name indicated on the notary public's seal or
18 stamp;

19 B. not sign using a facsimile stamp or an
20 electronic or other printing method; and

21 C. affix the official signature only at the time
22 the notarial act is performed.

23 Section 18. OFFICIAL SEAL OR STAMP.--

24 A. A notary public shall keep an official seal or
25 stamp that is the exclusive property of the notary public. The

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1 seal or stamp shall not be possessed or used by any other
2 person or surrendered to an employer upon termination of
3 employment.

4 B. A notarial seal or stamp shall contain the exact
5 name of the notary public as it appears on the application for
6 appointment and the words "NOTARY PUBLIC - STATE OF NEW MEXICO"
7 and shall authenticate official acts with the seal or stamp.

8 C. Each notary public shall authenticate official
9 acts with a notarial seal or stamp that, if a seal, shall
10 contain the notary public's name and the words "NOTARY PUBLIC -
11 STATE OF NEW MEXICO" and that if a stamp, shall be in
12 substantially the following form:

13 "SEAL
14 STATE OF
15 NEW MEXICO

16 Official Seal

17 _____
18 (name of notary public printed)".

19 D. An impression or image of the seal or stamp
20 shall be affixed only at the time the notarial act is
21 performed.

22 E. When not in use, the seal or stamp shall be kept
23 secure and accessible only to the notary public.

24 F. Within ten days after the seal or stamp of a
25 notary public is stolen, lost, damaged or otherwise rendered

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1 incapable of affixing a legible impression or image, the notary
2 public, after informing the appropriate law enforcement agency
3 in the case of theft or vandalism, shall notify the secretary
4 of state by any means providing a tangible receipt or
5 acknowledgment, including certified mail and electronic
6 transmission, and also provide a copy of any pertinent police
7 report.

8 G. As soon as reasonably practicable after
9 resignation, revocation, change of name, expiration of a
10 commission or death of the notary public, the seal or stamp
11 shall be destroyed or defaced so that it may not be misused.

12 Section 19. ENDORSING DATE OF COMMISSION. -- Upon
13 performance of any notarial act, the notary public shall,
14 immediately opposite or following the notary public's
15 signature, endorse the date of the expiration of commission.
16 The endorsement may be legibly written, stamped or printed upon
17 the instrument and shall be substantially in the following
18 form:

19 "My commission expires (stating date of expiration of
20 commission)".

21 Section 20. CHANGE OF NAME. --

22 A. Upon any change of a notary public's name, the
23 notary public shall, within ten days of such change, make
24 application to the secretary of state for issuance of a
25 corrected commission. The application shall be on a form

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1 prescribed by the secretary of state and shall contain an
2 impression or image of the new seal or stamp bearing the new
3 name of the notary public exactly as it appears on the
4 application. Upon receipt of the completed application, the
5 secretary of state shall issue a corrected certificate of
6 appointment showing the notary public's new name. The
7 commission on the corrected certificate of appointment expires
8 on the same date as the commission on the certificate of
9 appointment it replaces.

10 B. The notary public shall notify the surety for
11 the notary public's bond in writing within ten days of a change
12 of name and provide the surety with the new name of the notary
13 public exactly as it was provided to the secretary of state.
14 Within ten days of the notice from the notary public, the
15 surety shall issue a rider to the notary public's bond and
16 distribute a copy of the rider to the notary public and the
17 secretary of state.

18 Section 21. CHANGE OF ADDRESS. --

19 A. A notary public shall notify the secretary of
20 state in writing of a change of the notary public's residence,
21 business or mailing address within ten days after such change.

22 B. A notary public shall notify the surety for the
23 notary public's bond in writing within ten days of a change of
24 residence, business or mailing address.

25 Section 22. CERTIFICATION. -- Upon request, the secretary

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1 of state shall certify to a notary public's commission.

2 Section 23. RESIGNATION. --

3 A. A notary public who resigns his commission shall
4 send to the secretary of state by any means providing a
5 tangible receipt or acknowledgment, including certified mail
6 and electronic transmission, a signed notice indicating the
7 effective date of resignation.

8 B. A notary public who ceases to reside in New
9 Mexico, or who becomes permanently unable to perform notarial
10 duties, shall resign his commission.

11 Section 24. DISPOSITION OF THE SEAL AND STAMP. --

12 A. When a notary public commission expires or is
13 resigned or revoked, the notary public shall, as soon as
14 reasonably practicable, destroy or deface all notary seals and
15 stamps so that they may not be misused.

16 B. If a notary public dies during the term of
17 commission or before fulfilling the requirement stipulated in
18 Subsection A of this section, the notary public's personal
19 representative shall notify the secretary of state of the death
20 in writing and, as soon as reasonably practicable, destroy or
21 deface all notary seals and stamps so that they may not be
22 misused.

23 Section 25. DISQUALIFIED NOTARY PUBLIC EXERCISING
24 POWERS. -- Any notary public who exercises the duties of his
25 office with the knowledge that his commission has expired or

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1 that he is otherwise disqualified is guilty of a misdemeanor
2 and upon conviction shall be punished by a fine of five hundred
3 dollars (\$500) and shall be removed from office by the
4 governor.

5 Section 26. REMOVAL FROM OFFICE. --

6 A. The governor may revoke the commission of any
7 notary public who:

8 (1) submits an application for appointment as
9 a notary public that contains a false statement;

10 (2) is or has pleaded guilty or nolo
11 contendere to a felony or been convicted of a felony or of a
12 misdemeanor arising out of a notarial act performed by him;

13 (3) engages in the unauthorized practice of
14 law;

15 (4) ceases to be a New Mexico resident; or

16 (5) commits a malfeasance in office.

17 B. A commission may be revoked pursuant to the
18 provisions of this section only if action is taken subject to
19 the rights of the notary public to notice, hearing,
20 adjudication and appeal.

21 C. Resignation or expiration of a commission does
22 not terminate or preclude an investigation into the notary
23 public's conduct by the governor or by the attorney general, a
24 district attorney or any law enforcement agency of this state,
25 who may pursue the investigation to a conclusion, whereupon it

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1 shall be made a matter of public record whether or not the
2 finding would have been grounds for revocation.

3 D. In lieu of revocation, the governor may deliver
4 a written official warning to cease misconduct to any notary
5 public whose actions are judged to be official misconduct.

6 Section 27. REPEAL. -- Sections 14-12-1 through 14-12-20
7 NMSA 1978 (being Laws 1969, Chapter 168, Sections 1 through 5,
8 Laws 1977, Chapter 106, Section 1, Laws 1969, Chapter 168,
9 Sections 6 through 8, Laws 1909, Chapter 55, Sections 8 through
10 10, Laws 1969, Chapter 168, Sections 9 through 11, Laws 1909,
11 Chapter 55, Sections 18 and 20 through 22 and Laws 1921,
12 Chapter 82, Section 1, as amended) are repealed.

13 Section 28. EFFECTIVE DATE. -- The effective date of the
14 provisions of this act is July 1, 2003.

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