

CHAPTER 337

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 04-1300

BY REPRESENTATIVE(S) Garcia, Carroll, Borodkin, Coleman, Madden, McGihon, Romanoff, Stengel, and Williams S.;
also SENATOR(S) Sandoval, Evans, Kester, and Lamborn.

AN ACT

**CONCERNING THE REGULATION OF NOTARIES PUBLIC, AND, IN CONNECTION THEREWITH,
MODERNIZING THE OFFICE OF NOTARY PUBLIC, AND MAKING AN APPROPRIATION.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 12-55-104 (1) and (2), Colorado Revised Statutes, are amended, and the said 12-55-104 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

12-55-104. Application. (1) Every applicant for appointment and commission as a notary public shall complete an application form furnished by the secretary of state to be filed with the secretary of state, stating:

(a) ~~If he is a citizen of the United States, that he is a qualified elector of this state at the time of his appointment~~ THAT THE APPLICANT IS A RESIDENT OF COLORADO WHO IS AT LEAST EIGHTEEN YEARS OF AGE;

(b) That ~~he~~ THE APPLICANT is able to read and write the English language;

(c) The addresses and telephone numbers of ~~his~~ THE APPLICANT'S business and residence in this state;

(d) That ~~his~~ THE APPLICANT'S commission as a notary public has never been revoked;

(e) That ~~he~~ THE APPLICANT has not been convicted of a felony OR, IN THE PRIOR FIVE YEARS, A MISDEMEANOR THAT DISQUALIFIES HIM OR HER FROM BEING A NOTARY PUBLIC PURSUANT TO SECTION 12-55-107 (1) (b).

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(2) The application shall include a handwritten sample of the applicant's official signature, ~~which contains~~ the applicant's TYPED legal name, and the affirmation as provided in section 12-55-105. THE APPLICATION MAY ALSO CONTAIN THE APPLICANT'S ELECTRONIC SIGNATURE IF THE APPLICANT IS ISSUED A JOURNAL.

(3) SUBJECT TO SUBSECTION (2) OF THIS SECTION, THE SECRETARY OF STATE SHALL ENSURE, AT THE EARLIEST PRACTICABLE TIME, THAT AN APPLICATION PURSUANT TO THIS ARTICLE MAY BE DELIVERED ELECTRONICALLY. ALL SUCH APPLICATIONS SHALL BE STORED BY THE SECRETARY OF STATE IN A MEDIUM THAT IS RETRIEVABLE BY THE SECRETARY OF STATE IN PERCEIVABLE FORM.

SECTION 2. The introductory portion to 12-55-107 (1) and 12-55-107 (1) (b) and (4), Colorado Revised Statutes, are amended to read:

12-55-107. Revocation of commission. (1) The secretary of state or the secretary of state's designee ~~may~~ SHALL deny the application of any person for appointment or reappointment, or revoke the commission of any notary public during such notary's term of appointment, if the notary public:

(b) Is convicted of official misconduct under ~~the provisions of~~ this part 1 or any felony OR, IN THE PRIOR FIVE YEARS, A MISDEMEANOR INVOLVING DISHONESTY;

(4) A person whose notary commission has been revoked pursuant to ~~the provisions of~~ this part 1 may ~~subsequently~~ NOT apply for OR RECEIVE A commission and appointment as a notary. ~~after seven years have elapsed from the date of such revocation.~~

SECTION 3. 12-55-106.5 (1), Colorado Revised Statutes, is amended to read:

12-55-106.5. Notary's electronic signature - secretary of state. (1) In every instance, the electronic signature of a notary public shall contain OR BE ACCOMPANIED BY the following elements, all of which shall be immediately perceptible and reproducible in the electronic record to which the notary's electronic signature is attached: The notary's name; the words "NOTARY PUBLIC" and "STATE OF COLORADO"; A DOCUMENT AUTHENTICATION NUMBER ISSUED BY THE SECRETARY OF STATE; and the words "my commission expires" followed by the expiration date of the notary's commission. A notary's electronic signature shall conform to any standards promulgated by the secretary of state.

SECTION 4. 12-55-102, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-55-102. Definitions. As used in this part 1, unless the context otherwise requires:

(1.4) "MISDEMEANOR INVOLVING DISHONESTY" MEANS A VIOLATION OF, OR A CONSPIRACY TO VIOLATE, A CIVIL OR CRIMINAL LAW INVOLVING FRAUD, DISHONESTY, BRIBERY, PERJURY, LARCENY, THEFT, ROBBERY, EXTORTION, FORGERY, COUNTERFEITING, EMBEZZLEMENT, MISAPPROPRIATION OF PROPERTY, OR ANY OTHER OFFENSE ADVERSELY AFFECTING SUCH PERSON'S FITNESS TO SERVE AS A NOTARY PUBLIC.

SECTION 5. 12-55-111 (2)(e.5), Colorado Revised Statutes, is amended, and the said 12-55-111 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

12-55-111. Journal. (2) For each notarial act, a notary's journal may contain the following information:

~~(e.5) A certificate of authentication of each notarized electronic signature by the provider of the electronic signature or each person whose oath, affirmation, acknowledgment, affidavit, declaration, deposition, protest, verification, or other statement is taken;~~

(4) EXCEPT AS OTHERWISE EXEMPTED BY PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION OR BY ANOTHER LAW OF THIS STATE, FOR EACH ELECTRONIC RECORD OR DOCUMENT SIGNED BY THE NOTARY PUBLIC, THE NOTARY PUBLIC SHALL RECORD THE DOCUMENT AUTHENTICATION NUMBER ISSUED BY THE SECRETARY OF STATE FOR EACH DOCUMENT AUTHENTICATED IN THE JOURNAL PURSUANT TO THIS SECTION.

SECTION 6. 12-55-112 (4.5), Colorado Revised Statutes, is amended to read:

12-55-112. Official signature - rubber stamp seal - seal embosser - notary's electronic signature. (4.5) In the case of notarization of an electronic record, the application of a notary's electronic signature in lieu of a handwritten signature and rubber stamp seal or seal embosser is sufficient. A NOTARY SHALL NOT USE AN ELECTRONIC SIGNATURE UNLESS:

(a) THE NOTARY USES A JOURNAL IF MAINTAINING SUCH JOURNAL IS REQUIRED BY SECTION 12-55-111; AND

(b) THE NOTARY ATTACHES TO THE DOCUMENT A DOCUMENT AUTHENTICATION NUMBER ISSUED BY THE SECRETARY OF STATE.

SECTION 7. 12-55-121, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-55-121. Fees. (2) IN LIEU OF THE FEE AUTHORIZED IN SUBSECTION (1) OF THIS SECTION, A NOTARY PUBLIC MAY CHARGE A FEE, NOT TO EXCEED TEN DOLLARS, FOR THE NOTARY'S ELECTRONIC SIGNATURE.

SECTION 8. 38-35-106, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

38-35-106. Deeds - acknowledgment, absent or defective - notice - deemed proper, when. (3) A DOCUMENT REQUIRED OR PERMITTED TO BE ACKNOWLEDGED AFFECTING TITLE TO REAL PROPERTY THAT IS SIGNED IN A PERSON'S OFFICIAL CAPACITY BY A PUBLIC TRUSTEE, COUNTY TREASURER, COUNTY SHERIFF, OR A DEPUTY OF SUCH AN OFFICIAL ACTING FOR THAT OFFICIAL THAT CONTAINS THE SEAL OF SUCH AN OFFICIAL SHALL BE DEEMED TO HAVE BEEN PROPERLY ACKNOWLEDGED.

SECTION 9. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the notary administration cash fund created

pursuant to section 12-55-102.5 (1), Colorado Revised Statutes, not otherwise appropriated, to the department of state for the fiscal year beginning July 1, 2004, the sum of forty-seven thousand seven hundred forty-six dollars (\$47,746) and 0.3 FTE, or so much thereof as may be necessary, for the implementation of this act.

SECTION 10. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 28, 2004