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An Act

HOUSE BILL 12-1274

BY REPRESENTATIVE(S) Swerdfeger, Coram, Kerr J., Wilson, Barker, Bradford, Murray, Pace;
also SENATOR(S) Jahn, Lambert, Tochtrop.

CONCERNING THE REGULATION OF NOTARIES PUBLIC, AND, IN CONNECTION THEREWITH, MAKING AND REDUCING APPROPRIATIONS.

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

SECTION 1. In Colorado Revised Statutes, **amend** 12-55-102 as follows:

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

(1) "Attested" means subscribed, signed, acknowledged, sworn to, affirmed, certified, verified, or attested to and includes other words and phrases that have a substantially similar meaning.

~~(1.1)~~(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

~~(1.2)~~(3) "Electronic record" means a record containing information

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

that is created, generated, sent, communicated, received, or stored by electronic means.

(1.3) (4) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.

(5) "FACSIMILE" MEANS ANY COPY, PHOTOCOPY, FACSIMILE, REPLICA, OR OTHER REPRODUCTION OF A DOCUMENT.

(1.4) (6) "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.

(1.5) (7) "Notarial acts" means those acts that a notary public is empowered to perform pursuant to section 12-55-110 (1).

(2) (8) "Notarization" means the performance of a notarial act.

(3) (9) "Notary" or "notary public" means any individual appointed and commissioned to perform notarial acts.

SECTION 2. In Colorado Revised Statutes, **amend** 12-55-102.5 as follows:

12-55-102.5. Disposition of fees. (1) ~~All fees collected by the office of the secretary of state pursuant to this article shall be collected~~ THE SECRETARY OF STATE SHALL COLLECT ALL FEES PURSUANT TO THIS ARTICLE in the manner required by section 24-21-104 (3), C.R.S., and ~~transmitted~~ SHALL TRANSMIT THEM to the state treasurer, who shall credit the same to the ~~notary administration~~ DEPARTMENT OF STATE cash fund, ~~which fund is hereby created in the state treasury~~ CREATED IN SECTION 24-21-104 (3) (b), C.R.S.

(2) The general assembly shall make annual appropriations from the ~~notary administration~~ DEPARTMENT OF STATE cash fund for expenditures of the secretary of state incurred in the performance of the secretary of state's duties under this article.

~~(3) Pursuant to section 24-36-114, C.R.S., all interest derived from the deposit and investment of moneys in the notary administration cash fund shall be credited to the general fund.~~

~~(4) Notwithstanding any provision of this section to the contrary, on April 20, 2009, the state treasurer shall deduct five hundred seventy-five thousand dollars from the notary administration cash fund and transfer such sum to the general fund.~~

(5) ON THE EFFECTIVE DATE OF THIS SUBSECTION (5), THE STATE TREASURER SHALL TRANSFER THE UNEXPENDED AND UNENCUMBERED BALANCE OF THE NOTARY ADMINISTRATION CASH FUND TO THE DEPARTMENT OF STATE CASH FUND.

SECTION 3. In Colorado Revised Statutes, 12-55-104, **amend** (2); and **add** (5) and (6) as follows:

12-55-104. Application - rules. (2) The application shall include a ~~handwritten~~ sample of the applicant's official signature, 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.~~

(5) IN ACCORDANCE WITH SECTION 24-21-111 (1), C.R.S., THE SECRETARY OF STATE MAY REQUIRE, AT THE SECRETARY OF STATE'S DISCRETION, THE APPLICATION REQUIRED BY THIS SECTION, AND ANY RENEWAL OF THE APPLICATION, TO BE MADE BY ELECTRONIC MEANS DESIGNATED BY THE SECRETARY OF STATE. THE SECRETARY OF STATE MAY PROMULGATE RULES FOR USE OF THE ELECTRONIC FILING SYSTEM IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

(6) IN ACCORDANCE WITH SECTION 42-1-211, C.R.S., THE DEPARTMENT OF STATE AND THE DEPARTMENT OF REVENUE SHALL ALLOW FOR THE EXCHANGE OF INFORMATION BETWEEN THE SYSTEMS USED BY THE DEPARTMENTS TO COLLECT INFORMATION ON LEGAL NAMES AND SIGNATURES OF ALL APPLICANTS FOR DRIVER'S LICENSES OR STATE IDENTIFICATION CARDS.

SECTION 4. In Colorado Revised Statutes, 12-55-107, **amend** (1) introductory portion and (2); and **add** (1) (i), (1) (j), and (2.5) as follows:

12-55-107. Revocation of commission. (1) The secretary of state or the secretary of state's designee may deny the application of any person for appointment or reappointment ~~issue a letter of admonition, suspend a commission, or revoke the commission of any notary public during such notary's term of appointment,~~ OR TAKE DISCIPLINARY OR NONDISCIPLINARY ACTION AGAINST A NOTARY PUBLIC if the notary public:

(i) FAILS TO COMPLY WITH ANY TERM OF SUSPENSION IMPOSED UNDER THIS SECTION; OR

(j) PERFORMS ANY NOTARIAL ACT WHEN THE NOTARY PUBLIC'S COMMISSION IS SUSPENDED.

(2) ~~The secretary of state or the secretary of state's designee may revoke a notary's commission under the provisions of this part 1 only if action is taken pursuant to article 4 of title 24, C.R.S.~~ FOR THE PURPOSES OF THIS SECTION, DISCIPLINARY ACTION MAY INCLUDE THE FOLLOWING:

(a) REVOCATION OF THE NOTARY PUBLIC'S COMMISSION;

(b) SUSPENSION OF THE NOTARY PUBLIC'S COMMISSION FOR A SPECIFIED PERIOD OF TIME, OR UNTIL THE FULFILLMENT OF A CONDITION, SUCH AS NOTARY RETRAINING, OR BOTH.

(2.5) FOR THE PURPOSES OF THIS SECTION, NONDISCIPLINARY ACTION INCLUDES THE ISSUANCE OF A LETTER OF ADMONITION, WHICH MAY BE PLACED IN THE NOTARY PUBLIC'S FILE. THE SECRETARY OF STATE OR THE SECRETARY OF STATE'S DESIGNEE MAY ISSUE A LETTER OF ADMONITION TO A NOTARY PUBLIC WHEN A COMPLAINT OR INVESTIGATION RESULTS IN A FINDING OF MISCONDUCT THAT, IN THE SECRETARY OF STATE'S DISCRETION, DOES NOT WARRANT INITIATION OF A DISCIPLINARY PROCEEDING.

SECTION 5. In Colorado Revised Statutes, **amend** 12-55-108 as follows:

12-55-108. Reappointment - failure to be reappointed. Every notary public, before or at the expiration of ~~such~~ THE notary's commission, may submit an application for reappointment ~~by submitting the same~~ ALONG WITH ONLY THE information and ~~documents as required by~~ DOCUMENTATION NECESSARY TO REFLECT ANY CHANGES TO THE INFORMATION SUBMITTED IN

THE NOTARY'S ORIGINAL APPLICATION, FILED PURSUANT TO sections 12-55-104 and 12-55-105, for the initial application. The secretary of state shall then determine whether ~~the person shall be reappointed~~ OR NOT TO REAPPOINT THE PERSON as a notary public. If the secretary of state determines ~~such notary shall not be reappointed~~ NOT TO REAPPOINT THE APPLICANT, the applicant may appeal ~~such~~ THE determination pursuant to article 4 of title 24, C.R.S.

SECTION 6. In Colorado Revised Statutes, **amend** 12-55-109 as follows:

12-55-109. Certificate of appointment - recording. (1) IF A PERSON MEETS THE APPLICATION REQUIREMENTS OF SECTIONS 12-55-104 AND 12-55-105, the secretary of state ~~is authorized to~~ MAY issue a certificate of authority qualifying ~~said~~ THE person as a notary public. The certificate ~~shall also~~ MUST state the date of expiration of the commission and any other fact concerning ~~such~~ THE notary public ~~which~~ THAT is required by the laws of this state.

(2) A notary public may record his OR HER certificate of authority in any county of this state and, after ~~such~~ THE recording, the county clerk and recorder of ~~such~~ THE county may issue a certificate that ~~such~~ THE person is a notary public, the date of expiration of his OR HER commission, and any other fact concerning ~~such~~ THE notary public ~~which~~ THAT is required by the laws of this state.

(3) A notary public may exhibit to the judge or clerk of any court of record his OR HER certificate of authority, and the ~~said~~ judge or clerk may thereupon issue a certificate that ~~such~~ THE person is a notary public, the date of expiration of his OR HER commission, and any other fact concerning ~~such~~ THE notary ~~which~~ THAT is required by the laws of this state.

SECTION 7. In Colorado Revised Statutes, 12-55-111, **amend** (2) introductory portion as follows:

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

SECTION 8. In Colorado Revised Statutes, 12-55-112, **amend** (1), (2), (4), (4.5) introductory portion, (4.5) (a), and (6); **repeal** (3); and **add**

(2.5) as follows:

12-55-112. Official signature - rubber stamp seal - seal embosser - notary's electronic signature. (1) At the time of notarization, a notary public shall sign ~~such notary's~~ HIS OR HER official signature on every notary certificate or, in the case of an electronic record, a notary public shall affix his or her electronic signature.

(2) Under or near ~~such notary's~~ HIS OR HER official signature on every notary certificate, a notary public shall ~~rubber stamp or emboss~~ clearly and legibly ~~such notary's~~ STAMP HIS OR HER official seal. THE OFFICIAL NOTARY SEAL MUST BE RECTANGULAR. The official notary seal shall contain only the outline of the seal AND THE FOLLOWING INFORMATION CONTAINED WITHIN THE OUTLINE OF THE SEAL:

(a) The PRINTED LEGAL name of the notary; ~~exactly as such notary writes his or her official signature;~~

(b) THE NOTARY'S IDENTIFICATION NUMBER, THE NOTARY'S COMMISSION EXPIRATION DATE, the words "STATE OF COLORADO"; and

(c) The words "NOTARY PUBLIC".

(d) THE FACT THAT A NOTARY ATTESTS TO AN INSTRUMENT RELATING TO REAL PROPERTY BY AFFIXING A NOTARY SEAL THAT IS NOT IN COMPLIANCE WITH THIS SECTION DOES NOT RENDER THE INSTRUMENT OR THE ATTESTATION INVALID OR INEFFECTIVE, NOR DOES IT RENDER A TITLE UNMARKETABLE.

(2.5) A NOTARY WHO OBTAINED AN OFFICIAL SEAL BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (2.5) MAY CONTINUE TO USE HIS OR HER SEAL UNTIL RENEWAL OF HIS OR HER NOTARY COMMISSION.

~~(3) Under or near such notary's official signature on every notary certificate, a notary public shall write or stamp "my commission expires (commission expiration date)".~~

~~(4) Every notary public may provide, keep, and use a seal embosser engraved to show such notary's name and the words "NOTARY PUBLIC" and "STATE OF COLORADO". The indentations made by the seal~~

~~embosser shall not be applied on the document where the notary certificate appears in a manner that will render illegible or incapable of photographic reproduction any of the printed marks or writing~~ A NOTARY PUBLIC SHALL NOT PROVIDE, KEEP, OR USE A SEAL EMBOSSEER.

(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~~ THE journal is required by section 12-55-111; and

(6) For purposes of this section, "notary certificate" means a certificate or other statement of a notary relating to a notarial act performed by ~~such~~ THE notary.

SECTION 9. In Colorado Revised Statutes, **amend** 12-55-114 as follows:

12-55-114. Change of name or address. (1) Every notary public shall ~~send or have delivered notice to~~ NOTIFY the secretary of state within thirty days after ~~such notary~~ HE OR SHE changes ~~the~~ HIS OR HER NAME, BUSINESS ADDRESS, OR RESIDENTIAL address. ~~of such notary's business or residence in this state~~ IN THE CASE OF A NAME CHANGE, THE NOTARY PUBLIC SHALL INCLUDE A SAMPLE OF THE NOTARY'S HANDWRITTEN OFFICIAL SIGNATURE ON THE NOTICE. PURSUANT TO SECTION 24-21-104 (3), C.R.S., THE SECRETARY OF STATE SHALL DETERMINE THE AMOUNT OF, AND COLLECT, the fee, payable to the secretary of state, for recording notice of change of NAME OR address.

(2) ~~Every notary public shall send or have delivered notice to the secretary of state within thirty days after such notary changes such notary's name, including with the notification a sample of such notary's handwritten official signature that contains such notary's surname and at least the initial of such notary's first name. The fee payable to the secretary of state for recording notice of change of notary's name shall be determined and collected pursuant to section 24-21-104 (3), C.R.S.~~

SECTION 10. In Colorado Revised Statutes, 24-21-104, **amend** (3)

(b); and **repeal** (3) (i) as follows:

24-21-104. Fees of secretary of state. (3) (b) The department of state shall adjust its fees so that the revenue generated from the fees approximates its direct and indirect costs, including the cost of maintenance and improvements necessary for the distribution of electronic records; except that the department may reduce its fees to generate revenue in an amount less than costs if necessary pursuant to section 24-75-402 (3). Such costs shall not include the costs paid by the amounts appropriated by the general assembly from the general fund to the department of state for elections pursuant to section 24-21-104.5. Such fees shall remain in effect for the fiscal year following the adjustment. All fees collected by said department ~~except moneys collected pursuant to article 55 of title 12, C.R.S.,~~ shall be transmitted to the state treasurer, who shall credit the same to the department of state cash fund, which fund is hereby created. All moneys credited to the department of state cash fund shall be used as provided in this section and shall not be deposited in or transferred to the general fund of this state or any other fund. The moneys credited to the department of state cash fund shall be available for appropriation by the general assembly to the department of state in the general appropriation bill or pursuant to section 24-9-105 (2).

~~(i) All moneys collected by the office of the secretary of state pursuant to article 55 of title 12, C.R.S., shall be transmitted to the state treasurer and credited to the notary administration cash fund, created in section 12-55-102.5, C.R.S.~~

SECTION 11. In Colorado Revised Statutes, 42-1-211, **add** (1.9) as follows:

42-1-211. Colorado state titling and registration system. (1.9) (a) IN ACCORDANCE WITH SECTION 12-55-104 (6), C.R.S., THE DEPARTMENT OF REVENUE AND THE DEPARTMENT OF STATE SHALL ALLOW FOR THE EXCHANGE OF INFORMATION ON LEGAL NAMES AND SIGNATURES BETWEEN THE SYSTEMS USED BY THE DEPARTMENT OF REVENUE AND THE NOTARY PUBLIC FILING SYSTEM MAINTAINED BY THE DEPARTMENT OF STATE FOR THE PURPOSE OF ELECTRONIC FILING OF NOTARY APPLICATIONS AND RENEWALS.

(b) FOR PURPOSES OF THIS SUBSECTION (1.9), "SYSTEMS USED BY THE

DEPARTMENT OF REVENUE" MEANS, BUT IS NOT LIMITED TO, THE COLORADO STATE TITLING AND REGISTRATION SYSTEM, THE DRIVER'S LICENSE DATABASE, AND THE MOTOR VEHICLE REGISTRATION DATABASE.

SECTION 12. Appropriation - adjustments in 2012 long bill.

(1) For the implementation of this act, appropriations made in the annual general appropriation act to the department of state for the fiscal year beginning July 1, 2012, are adjusted as follows:

(a) The cash funds appropriation is decreased by \$209,592. Said sum is from the notary administration cash fund created in section 12-55-102.5 (1), Colorado Revised Statutes.

(b) The cash funds appropriation is increased by \$209,592. Said sum is from the department of state cash fund created in section 24-21-104 (3) (b), Colorado Revised Statutes.

SECTION 13. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the department of state cash fund created in section 24-21-104 (3) (b), Colorado Revised Statutes, not otherwise appropriated, to the department of state, for the fiscal year beginning July 1, 2012, the sum of \$22,400, or so much thereof as may be necessary, for allocation to information technology services for contract programming services related to the implementation of this act.

SECTION 14. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 8, 2012, if adjournment sine die is on May 9, 2012); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless

approved by the people at the general election to be held in November 2012 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Frank McNulty
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO