

SENATE BILL NO. 306

INTRODUCED BY E. ARNTZEN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT UPDATING AND REVISING NOTARIAL LAWS; PROVIDING FOR
5 RECIPROCITY WITH NOTARIAL ACTS IN OTHER JURISDICTIONS; ALLOWING FOR ATTESTATIONS OF
6 ELECTRONIC RECORDS; DESCRIBING THE MAINTENANCE AND USE OF A NOTARY PUBLIC'S JOURNAL;
7 DESCRIBING PROHIBITED ACTS; AUTHORIZING THE SECRETARY OF STATE TO PROVIDE RULES;
8 AMENDING SECTIONS 1-5-601, 1-5-602, 1-5-603, 1-5-604, 1-5-605, 1-5-606, 1-5-607, 1-5-608, 1-5-609,
9 1-5-610, AND 1-5-611, MCA; REPEALING SECTIONS 1-5-401, 1-5-402, 1-5-403, 1-5-404, 1-5-405, 1-5-406,
10 1-5-407, 1-5-408, 1-5-409, 1-5-415, 1-5-416, 1-5-417, 1-5-418, 1-5-419, AND 1-5-420, MCA; AND PROVIDING
11 AN APPLICABILITY DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
15 **Section 1.** Section 1-5-601, MCA, is amended to read:

16 **"1-5-601. Short title.** This part may be cited as the "Revised Uniform Law on Notarial Acts"."

17
18 **Section 2.** Section 1-5-602, MCA, is amended to read:

19 **"1-5-602. Definitions.** As used in this part, the following definitions apply:

20 (1) "Acknowledgment" means a declaration by ~~a person~~ an individual before a notarial officer that the
21 ~~person~~ individual has ~~executed an instrument~~ willingly signed a record for the purposes stated in the ~~instrument~~
22 record and, if the ~~instrument~~ record is ~~executed~~ signed in a representative capacity, that the ~~person~~ individual
23 signed the ~~instrument~~ record with proper authority and ~~executed it~~ signed the record as the act of the ~~person~~
24 individual or entity ~~represented and identified in the instrument record~~.

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

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

29 ~~(2)~~(4) "In a representative capacity" means acting as:

30 (a) ~~for and on behalf of a corporation, partnership, trust, or other entity as an authorized officer, agent,~~

1 partner, trustee, or other representative for a person other than an individual;

2 (b) ~~as a public officer, personal representative, guardian, or other representative,~~ in the capacity ~~recited~~
3 stated in the instrument a record;

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

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

6 ~~(3)(5)~~ "Notarial act" means any an act, whether performed with respect to a tangible or electronic record,
7 ~~that a notary public of this state is authorized to~~ notarial officer may perform under the law of this state. The term
8 ~~and~~ includes taking an acknowledgment, administering an oath or affirmation, taking a verification upon on oath
9 or affirmation, witnessing or attesting a signature, certifying or attesting a copy, certifying or attesting a transcript
10 of an affidavit or deposition, and noting a protest of a negotiable instrument.

11 ~~(4)(6)~~ "Notarial officer" means a notary public or other officer individual authorized to perform notarial
12 acts.

13 (7) "Notary public" means an individual commissioned to perform a notarial act by the secretary of state.

14 (8) "Official stamp" means a physical image affixed to or embossed on a tangible record or an electronic
15 image attached to or logically associated with an electronic record.

16 (9) "Person" means an individual, corporation, business trust, statutory trust, estate, trust, partnership,
17 limited liability company, association, joint venture, public corporation, government or governmental subdivision,
18 agency, or instrumentality, or any other legal or commercial entity.

19 (10) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic
20 or other medium and is retrievable in perceivable form.

21 (11) "Sign" means, with present intent to authenticate or adopt a record:

22 (a) to execute or adopt a tangible symbol; or

23 (b) to attach to or logically associate with the record an electronic symbol, sound, or process.

24 (12) "Signature" means a tangible symbol or an electronic signature that evidences the signing of a
25 record.

26 (13) "Stamping device" means:

27 (a) a physical device capable of affixing to or embossing on a tangible record an official stamp; or

28 (b) an electronic device or process capable of attaching to or logically associating an official stamp with
29 an electronic record. The notarial official stamp, whether applied to the record physically or electronically, is
30 considered to be a seal for the purposes of admitting a document in court.

1 (14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States
 2 Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

3 ~~(5)(15) "Verification upon on oath or affirmation" means a declaration, made by an individual on oath or~~
 4 affirmation before a notarial officer, that a statement in a record is true ~~made by a person upon oath or~~
 5 affirmation."

6
 7 **Section 3.** Section 1-5-603, MCA, is amended to read:

8 **"1-5-603. Notarial Requirements for certain notarial acts -- personal appearance -- identification**
 9 **methods.** (1) ~~In taking an acknowledgment, the A~~ notarial officer who takes an acknowledgment of a record shall
 10 determine, ~~either from personal knowledge or from satisfactory evidence, that the person appearing of the identity~~
 11 of the individual, that the individual appearing before the notarial officer and making the acknowledgment has the
 12 identity claimed and that the signature on the record is the signature of the individual and making the
 13 acknowledgment is the person whose true signature is on the instrument.

14 (2) ~~In taking A notarial officer who takes a verification upon on oath or affirmation of a statement, the~~
 15 ~~notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person of~~
 16 the identity of the individual, that the individual appearing before the notarial officer and making the verification
 17 is the person whose true has the identity claimed and that the signature is on the statement verified is the
 18 signature of the individual.

19 (3) ~~In witnessing or attesting a signature, the A~~ notarial officer who witnesses or attests to a signature
 20 shall determine, ~~either from personal knowledge or from satisfactory evidence of the identity of the individual,~~ that
 21 the signature is that of the person individual appearing before the notarial officer and named in the instrument
 22 signing the record has the identity claimed.

23 (4) ~~In certifying or attesting a copy of a document or other item, the A~~ notarial officer who certifies or
 24 attests a copy of a record or an item that was copied shall determine that the ~~proffered~~ copy is a full, true, and
 25 accurate transcription or reproduction of ~~that which was copied~~ the record or the item.

26 (5) ~~(a) In making or noting a protest of a negotiable instrument, the A~~ notarial officer who makes or notes
 27 a protest of a negotiable instrument shall determine the matters set forth in 30-3-510(b) shall identify the
 28 instrument and certify either:

29 ~~—— (i) that due presentment has been made; or~~
 30 ~~—— (ii) the reason why it is excused and that the instrument has been dishonored by nonacceptance or~~

1 nonpayment.

2 ~~(b) The protest may also certify that notice of dishonor has been given to all parties or to specified~~
3 ~~parties.~~

4 (6) A notarial officer who administers an oath in conjunction with taking a deposition and certifies or
5 attests to the transcript of the deposition shall certify to the matters set forth by this part, other laws, or the court
6 of jurisdiction.

7 (7) (a) If a notarial act relates to a statement made in or a signature executed on a record, the individual
8 making the statement or executing the signature shall appear physically before the notarial officer or by real-time,
9 two-way video and audio communication technology as authorized in [section 12] and [section 25].

10 (b) Except as provided in subsection (7)(c), subsection (7)(a) modifies, limits, and supersedes the
11 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq.

12 (c) Subsection (7)(a) does not modify, limit, or supersede 15 U.S.C. 7001(c) or authorize electronic
13 delivery of any of the notices described in 15 U.S.C. 7003(b).

14 (8) A notarial officer has personal knowledge of the identity of an individual appearing before the notarial
15 officer if the individual is personally known to the notarial officer through dealings sufficient to provide reasonable
16 certainty that the individual has the identity claimed.

17 (9) A notarial officer has satisfactory evidence that a person is the person whose true signature is on a
18 document if that person is of the identity of an individual appearing before the notarial officer if the notarial officer
19 can identify the individual:

20 ~~(a) personally known to the notarial officer;~~

21 (a) by means of:

22 (i) a passport, driver's license, or government-issued nondriver identification card, which may be current
23 or expired, and if expired may not be expired for more than 3 years before the performance of the notarial act;
24 or

25 (ii) another form of government identification issued to an individual, which:

26 (A) may be current or expired, and if expired may not be expired for more than 3 years before the
27 performance of the notarial act;

28 (B) must contain the signature or a photograph of the individual; and

29 (C) must be satisfactory to the notarial officer; or

30 (b) ~~identified upon~~ by verification on the oath or affirmation of a credible witness personally appearing

1 before the notarial officer and known to the notarial officer; or

2 ~~(c) identified whom the notarial officer can identify on the basis of a current identification document or~~
 3 ~~documents that show a photograph and signature of the person passport, driver's license, or government-issued~~
 4 ~~nondriver identification card, which is current or expired, and if expired may not be expired for more than 3 years~~
 5 ~~before the performance of the notarial act.~~

6 (10) A notarial officer may require an individual to provide additional information or identification
 7 credentials necessary to assure the notarial officer of the identity of the individual."

8

9 **Section 4.** Section 1-5-604, MCA, is amended to read:

10 **"1-5-604. Notarial acts in this state -- authority to perform notarial act.** (1) A notarial act may be
 11 performed ~~within in~~ this state by ~~the following persons:~~

12 (a) a notary public of this state;

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

14 (c) any other ~~person~~ individual authorized to perform the specific act by the law of this state.

15 ~~(2) Notarial acts performed within this state under federal authority as provided in 1-5-607 have the same~~
 16 ~~effect as if performed by a notarial officer of this state.~~

17 ~~—— (3) Subject to the provisions of 1-5-605, notarial acts performed within Montana by notarial officers of~~
 18 ~~bordering states have the same effect as if performed by a notarial officer of Montana.~~

19 ~~(4)(2)~~ (2) The signature and title of a ~~person~~ an individual performing a notarial act in this state are prima
 20 facie evidence that the signature is genuine and that the ~~person~~ individual holds the designated title.

21 (3) A notarial officer may perform a notarial act authorized by this part or by law of this state other than
 22 this part.

23 (4) The notarial acts of certifying or attesting a transcript of an affidavit or deposition and noting a protest
 24 of a negotiable instrument may be performed only by notarial officers who are knowledgeable of the applicable
 25 legal requirements.

26 (5) The signature and title of a notarial officer described in subsection (1) conclusively establish the
 27 authority of the notarial officer to perform the notarial act."

28

29 **Section 5.** Section 1-5-605, MCA, is amended to read:

30 **"1-5-605. Reciprocity of notarial acts Notarial act in another state -- reciprocity -- notary public**

1 ~~**authority.** (1) A Montana notarial officer may perform a notarial act in a bordering performed in another state if~~
 2 ~~the state recognizes the officer's authority within the state.~~

3 ~~———(2) A notarial act performed in Montana by a notarial officer of a bordering state has the same effect~~
 4 ~~under Montana the law of this state as if the notarial act were performed by a Montana notarial officer, provided~~
 5 ~~that the bordering state grants Montana's notarial officers similar authority within the bordering of this state if the~~
 6 ~~notarial act performed in the other state is performed by:~~

7 ~~(a) a notary public of that state;~~

8 ~~(b) a judge, clerk, or deputy clerk of a court of that state; or~~

9 ~~(c) any other individual authorized by the law of that state to perform the notarial act.~~

10 ~~(2) The signature and title of an individual performing a notarial act in another state are prima facie~~
 11 ~~evidence that the signature is genuine and that the individual holds the designated title.~~

12 ~~(3) The signature and title of a notarial officer described in subsection (1) conclusively establish the~~
 13 ~~authority of the officer to perform the notarial act.~~

14 ~~(4) A commission to act as a notary public authorizes the notary public, as provided in [section 16], to~~
 15 ~~perform notarial acts in any county in the state or in any bordering state if the border state recognizes the notary's~~
 16 ~~authority within that state. The commission does not provide the notary public any immunity or benefit conferred~~
 17 ~~by the laws of this state on public officials or employees."~~

18

19 **Section 6.** Section 1-5-606, MCA, is amended to read:

20 **"1-5-606. Notarial acts in other jurisdictions of the United States under authority of federally**
 21 **recognized Indian tribes.** (1) A notarial act ~~has the same effect under the law of this state as if performed under~~
 22 ~~the authority and in the jurisdiction of a federally recognized Indian tribe has the same effect as if performed by~~
 23 ~~a notarial officer of this state if it is the notarial act performed in another state, commonwealth, territory, district,~~
 24 ~~or possession of the United States by any of the following persons the jurisdiction of the tribe is performed by:~~

25 ~~(a) a notary public of that jurisdiction the tribe;~~

26 ~~(b) a judge, clerk, or deputy clerk of a court of that jurisdiction the tribe; or~~

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

28 ~~(2) Notarial acts performed in other jurisdictions of the United States under federal authority as provided~~
 29 ~~in 1-5-607 have the same effect as if performed by a notarial officer of this state.~~

30 ~~(3)(2) The signature and title of a person an individual performing a notarial act under the authority of~~

1 and in the jurisdiction of a federally recognized Indian tribe are prima facie evidence that the signature is genuine
 2 and that the ~~person~~ individual holds the designated title.

3 ~~(4)(3)~~ The signature and ~~indicated~~ title of ~~an~~ a notarial officer ~~listed~~ described in subsection (1)~~(a)~~ ~~or~~
 4 ~~(4)(b)~~ conclusively establish the authority of ~~a holder of that title~~ the notarial officer to perform a notarial act."

5

6 **Section 7.** Section 1-5-607, MCA, is amended to read:

7 **"1-5-607. Notarial acts under federal authority.** (1) A notarial act performed under federal law has the
 8 same effect under the law of this state as if performed by a notarial officer of this state if ~~it is~~ the notarial act
 9 ~~performed anywhere by any of the following persons under authority granted by the law of the United States~~
 10 under federal law is performed by:

11 (a) a judge, clerk, or deputy clerk of a court;

12 (b) ~~a commissioned officer on active duty~~ an individual in the military service of the United States ~~or~~
 13 performing duties under the authority of the military service if authorized to perform notarial acts under federal
 14 law;

15 (c) an individual designated as a notarizing officer of the foreign service or consular officer of ~~by~~ the
 16 United States department of state for performing notarial acts overseas; or

17 (d) any other ~~person~~ individual authorized by federal law to perform notarial acts.

18 (2) The signature and title of ~~a person~~ an individual acting under federal authority and performing a
 19 notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

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

22

23 **Section 8.** Section 1-5-608, MCA, is amended to read:

24 **"1-5-608. Foreign notarial acts.** (1) A notarial act performed under the authority of and in the jurisdiction
 25 of a foreign state or a constituent unit of the foreign state or under the authority of a multinational or international
 26 governmental organization has the same effect under the law of this state as if performed by a notarial officer of
 27 this state if it is ~~performed within the jurisdiction of and under authority of a foreign nation or its constituent units~~
 28 ~~or a multinational or international organization by any of the following persons:~~

29 ~~— (a) a notary public or notary;~~

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

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

2 (2) An "apostille" in the form prescribed by the Hague Convention of October 5, 1961, and issued by a
3 foreign state that is a party to the Hague Convention conclusively establishes that the signature of the notarial
4 officer is genuine and that the notarial officer holds the indicated office.

5 (3) ~~A certificate by a foreign service or consular officer of authentication issued by an individual~~
6 designated by the United States stationed in the nation under the jurisdiction of which the notarial act was
7 performed or a certificate by a foreign service or consular officer of that nation stationed in the United States
8 conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the
9 certificate department of state as a notarizing officer for performing notarial acts overseas and attached to the
10 record with respect to which notarial act is performed conclusively establishes that the signature of the notarial
11 officer is genuine and that the notarial officer holds the indicated office.

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

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

16 (6)(4) If the title of office and indication of authority to perform notarial acts in a foreign state appears
17 either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an
18 officer with that title to perform notarial acts is conclusively established.

19 (5) The signature and official stamp of an individual holding an office described in subsection (4) are
20 prima facie evidence that the signature is genuine and the individual holds the designated title.

21 (6) For the purposes of this section, "foreign state" means a government other than the United States,
22 a state, or a federally recognized Indian tribe."

23

24 **Section 9.** Section 1-5-609, MCA, is amended to read:

25 **"1-5-609. Certificate of notarial acts.** (1) A notarial act must be evidenced by a certificate signed and
26 dated by a notarial officer. The certificate must:

27 ~~include identification of the jurisdiction in which the notarial act is performed, the date on which the~~
28 ~~notarial act is performed, the type of notarial act being performed, and~~

29 (a) be executed contemporaneously with the performance of the notarial act;

30 (b) be signed and dated by the notarial officer. If the notarial officer is a notary public, the certificate must

1 be signed in the same manner as on file with the secretary of state.

2 (c) identify the jurisdiction in which the notarial act is performed;

3 (d) contain the title of the office of the notarial officer; and must include the official seal of office. If

4 (e) if the notarial officer is a Montana notary public, the certificate must also indicate the place of the
 5 notarial officer's residence and the date of expiration, if any, of the notarial officer's commission of office, but
 6 omission of that place or date may subsequently be corrected. If the officer is a commissioned officer on active
 7 duty in the military service of the United States, it must also include the officer's rank.

8 (2) (a) If a notarial act regarding a tangible record is performed by:

9 (i) a notary public, the notary public shall affix an official stamp to or emboss on the certificate. The
 10 certificate must be part of or securely affixed to the record.

11 (ii) a notarial officer other than a notary public and the certificate contains the information specified in
 12 subsections (1)(b) through (1)(d), the notarial officer may affix to or emboss an official stamp on the certificate.

13 (b) If a notarial act regarding an electronic record is performed by a notarial officer and the certificate
 14 contains the information specified in subsections (1)(b) through (1)(d), the certificate and official stamp must be
 15 attached to or logically associated with the record.

16 ~~(2)(3)~~ A certificate of a notarial act is sufficient if it the certificate meets the requirements of ~~subsection~~
 17 subsections (1) and ~~it~~ (2) and this subsection:

18 (a) is in the short form set forth in 1-5-610;

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

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

22 (d) sets forth the actions of the notarial officer, and ~~those~~ the actions are sufficient to meet the
 23 requirements of the ~~designated~~ notarial act as provided in 1-5-610, [section 13], and this section or of the laws
 24 of this state other than specified in this part.

25 ~~(3) By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the~~
 26 ~~determinations required by 1-5-603.~~

27 (4) A notarial officer may subsequently correct any information included on or omitted from a certificate
 28 executed by that notarial officer. A change or correction may not be made to the impression of a notarial seal or
 29 the notarial stamp."

30

1 **Section 10.** Section 1-5-610, MCA, is amended to read:

2 **"1-5-610. Short forms.** The following short-form certificates of notarial acts are sufficient for the
3 purposes indicated if they are completed with the information required by ~~1-5-416(1)(e) and (1)(f) and 1-5-609(1)~~
4 1-5-609(1) and (2):

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

6 State of.....

7 ~~(County)~~ County of.....

8 This instrument record was acknowledged before me on (date) by (name(s) of ~~person(s)~~ individual(s)

9

10

11 (Signature of notarial officer)

12 ~~(Seal, if any)~~ Official Stamp

13

14 (Name - typed, stamped, or printed)

15

16 Title ~~(and Rank)~~ of officer (if not shown in stamp)

17

18 ~~(Residing at)~~

19 ~~[My commission expires:]~~

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

21 State of.....

22 ~~(County)~~ County of.....

23 This instrument record was acknowledged before me on (date) by (name(s) of ~~person(s)~~ individual(s)

24 as (type of authority, e.g., officer, trustee, etc.) of or for (name of party on behalf of whom instrument the record

25 was executed).

26

27 (Signature of notarial officer)

28 ~~(Seal, if any)~~ Official stamp

29

30 (Name - typed, stamped, or printed)



1
2

Title ~~(and Rank)~~ of officer (if not shown in stamp)

3
4

(Residing at)

5 [My commission expires:]
6

(3) For a verification ~~upon~~ on oath or affirmation:

7 State of.....

8 ~~(County)~~ County of.....

9 ~~Signed~~ This record was signed and sworn to (or affirmed) before me on (date) by (name(s) of person(s)
10 individual(s) making statement)

11

12
13

(Signature of notarial officer)

14 ~~(Seal, if any)~~ Official stamp

15
16

(Name - typed, stamped, or printed)

17
18

Title ~~(and Rank)~~ of officer (if not shown in stamp)

19
20

(Residing at)

21 [My commission expires:]
22

(4) For witnessing or attesting a signature:

23 State of.....

24 ~~(County)~~ County of.....

25 ~~Signed or attested~~ The record was signed before me on (date) by (name(s) of person(s) individual(s)
26

27
28

(Signature of notarial officer)

29 ~~(Seal, if any)~~ Official stamp

30
.....



1 _____ (Name - typed, stamped, or printed)

2

3 Title (and Rank) of officer (if not shown in stamp)

4

5 _____ (Residing at)

6 _____ [My commission expires:]

7 (5) For attestation of certifying a copy of a document record:

8 State of.....

9 (County) County of.....

10 I certify that this is a true and correct copy of a document (identification of record) in the possession of,
11 or issued by, (custodian or issuer) and made by me on (date)

12

13 Dated

14

15 (Signature of notarial officer)

16 (Seal, if any Official stamp)

17

18 _____ (Name - typed, stamped, or printed)

19

20 Title (and Rank) of officer (if not shown in stamp)

21

22 _____ (Residing at)

23 _____ [My commission expires:]

24 (6) For certifying a transcript or a deposition or affidavit:

25 State of.....

26 County of.....

27 I hereby certify and state the following:

28 That I have sworn in the deponent;

29 that the deposition was taken before me and this is a true and accurate transcription of the testimony.

30 that I am not a relative, agent, or employee of the deponent or the attorney or counsel of any of the



1 parties;
 2 that I am not an interested party to the matter.
 3 A review of this transcript (was / was not) requested.
 4 Dated this day of, 20...

.....
 (Signature of notarial officer)

7 (Official stamp)

.....
 Title of officer (if not shown in stamp)."

11 **Section 11.** Section 1-5-611, MCA, is amended to read:

12 **"1-5-611. Uniformity of application and construction.** ~~This~~ Consideration must be given in applying
 13 and construing this part must be applied and construed to effectuate the need to promote the uniformity of the
 14 general purpose to make uniform the law with respect to the subject of this part among other enacting states
 15 enacting it."

17 NEW SECTION. **Section 12. Notification regarding performance of notarial act on electronic**
 18 **record -- selection of technology.** (1) (a) A notary public may select one or more tamper-evident technologies

19 to perform notarial acts with respect to electronic records.

20 (b) A person may not require a notary public to perform a notarial act with respect to an electronic record
 21 with a technology that the notary public has not selected.

22 (2) Before a notary public performs the notary public's initial notarial act with respect to an electronic
 23 record, a notary public shall:

24 (a) notify the secretary of state that the notary public will be performing notarial acts with respect to
 25 electronic records; and

26 (b) identify the technology the notary public intends to use. If the secretary of state has established by
 27 rule the standards for the technology used by the notary public, the technology must comply with the standards.
 28 If the technology complies with the standards, the secretary of state shall approve the use of the technology.

29 (3) A notary public in this state may perform acknowledgments or verifications on oath or affirmation by
 30 means of a real-time, two-way audio-video communication, according to the rules and standards established by



1 the secretary of state, if:

2 (a) the signer is personally known to the notary or identified by a credible witness and, except for a
3 transaction described in subsection (3)(b)(iv), is a legal resident of this state; and

4 (b) the transaction:

5 (i) involves real property located in this state;

6 (ii) involves personal property titled in this state;

7 (iii) is under the jurisdiction of any court in this state; or

8 (iv) is pursuant to a proxy marriage under 40-1-213 or 40-1-301.

9

10 **NEW SECTION. Section 13. Official stamp.** The official stamp of a notary public must:

11 (1) include the notary public's name, title, city of residence, commission expiration date, or other
12 information required by the secretary of state;

13 (2) if a physical image, be in blue or black ink in a format prescribed by the secretary of state; or

14 (3) be capable of being copied together with the record to which the official stamp is affixed or attached
15 or with which the official stamp is logically associated.

16

17 **NEW SECTION. Section 14. Stamping device.** (1) A notary public is responsible for the security of
18 the notary public's stamping device and may not allow another individual to use the stamping device to perform
19 a notarial act.

20 (2) (a) On resignation from or the revocation or expiration of the notary public's commission or on the
21 expiration of the date set forth in the stamping device, the notary public shall disable the stamping device by
22 destroying, defacing, damaging, erasing, or securing the stamping device against use in a manner that renders
23 the stamping device unusable.

24 (b) On the death or adjudication of incompetency of a notary public, the notary public's personal
25 representative or guardian or any other person knowingly in possession of the stamping device shall render the
26 stamping device unusable by destroying, defacing, damaging, erasing, or securing the stamping device against
27 use in a manner that renders the stamping device unusable.

28 (3) The notary public or the notary public's personal representative or guardian shall promptly notify the
29 secretary of state's office on discovering that the stamping device is lost or stolen.

30

1 **NEW SECTION. Section 15. Notary public journal -- retention.** (1) A notary public shall maintain one
2 or more journals in which the notary public chronicles all notarial acts that the notary public performs. Unless the
3 provisions of subsection (7) apply, the notary public shall retain the journal for 10 years after the performance of
4 the last notarial act chronicled in the journal.

5 (2) A journal may be created on a tangible medium or in an electronic format to chronicle all notarial acts,
6 whether those notarial acts are performed regarding tangible or electronic records. The format of a journal
7 maintained on a tangible medium must be a permanent, bound register designed to deter fraud. A journal
8 maintained in an electronic format must be in a permanent, tamper-evident electronic format that complies with
9 the rules adopted by the secretary of state.

10 (3) An entry in a journal must be made contemporaneously with performance of the notarial act and
11 contain:

12 (a) the date and time of the notarial act;

13 (b) a description of the record, if any, and the type of notarial act;

14 (c) the full name and address of each individual for whom the notarial act is performed;

15 (d) the signature of each individual for whom the notarial act is performed, except that transcripts of
16 depositions and certified copies do not require the signature of the individual for whom the notarial act is
17 performed;

18 (e) if the identity of the individual for whom the notarial act is performed is based on personal knowledge,
19 a statement to that effect;

20 (f) if the identity of the individual for whom the notarial act is performed is based on satisfactory evidence,
21 a brief description of the method of identification and the identification credential presented, if any, including the
22 date of issuance or expiration of any identification credential; and

23 (g) the fee, if any, charged by the notary public.

24 (4) If in performing the notarial act the notary public uses audio-video communication technology, as
25 provided in [section 12] and by rule, the notary public shall keep a copy of the recording of the entire
26 communication and a notation of the identification used for a period of 10 years from the date of the notarization.
27 The provisions of subsection (7) apply to this subsection.

28 (5) A notary public shall promptly notify the secretary of state on discovering that the notary public's
29 journal is lost or stolen.

30 (6) A notary public shall retain the notary public's journal as provided in subsection (1) or (7) and notify

1 the secretary of state of the journal's location upon resignation of a commission or if the notary public's
2 commission has been revoked or suspended.

3 (7) A current or former notary public may, instead of retaining a journal as provided in subsection (1),
4 (4), or (6), transmit the journal to the repository approved by the secretary of state.

5 (8) On the death or adjudication of incompetency of a current or former notary public, the notary public's
6 personal representative or guardian or any other person knowingly in possession of the notary public's journal
7 or journals shall transmit all journals to the secretary of state.

8
9 **NEW SECTION. Section 16. Notary public qualifications -- commission -- renewals.** (1) An
10 applicant for a commission as a notary public must:

- 11 (a) be at least 18 years old;
- 12 (b) be a citizen or permanent legal resident of the United States;
- 13 (c) be a resident of or have a place of employment or practice in this state;
- 14 (d) be able to read and write English; and
- 15 (e) be eligible to receive a commission as provided in subsection (2).

16 (2) To be eligible for a commission, an applicant shall pass an examination as provided in [section 17]
17 and may not have been disqualified as provided in [section 18].

18 (3) An individual qualified under subsections (1) and (2) may apply to the secretary of state for a
19 commission as a notary public.

- 20 (4) An applicant for a commission, including an applicant to renew an existing commission, shall:
- 21 (a) complete an application and provide information required by rule by the secretary of state;
- 22 (b) pay a filing fee set by rule;
- 23 (c) execute an oath of office and comply with requirements adopted by rule by the secretary of state;
- 24 (d) obtain an assurance in the form of a surety bond or its functional equivalent in the amount of \$10,000.

25 The assurance must be issued by a surety or other entity licensed or authorized to do business in this state. The
26 assurance must cover acts performed during the term of the notary public's commission and must be in the form
27 prescribed by the secretary of state. The surety or issuing entity is liable under the assurance if a notary public
28 violates a law with respect to notaries public in this state. The surety or issuing entity shall give 30 days' notice
29 to the secretary of state before canceling the assurance. The surety or issuing entity shall notify the secretary of
30 state not later than 30 days after making a payment to a claimant under the assurance. A notary public may

1 perform notarial acts in this state only during the period that a valid assurance is on file with the secretary of state.

2 (e) submit the application, bond, and nonrefundable filing fee to the secretary of state within 30 days
3 before or after the effective date of the surety bond or the expiration of the previous commission.

4 (5) The secretary of state shall issue a commission for a 4-year term as a notary public to an applicant
5 for a new or a renewed commission who has complied with this section.

6 (6) An individual may not have more than one Montana notary public commission in effect at the same
7 time.

8
9 **NEW SECTION. Section 17. Examination of notary public.** (1) An applicant for a commission as a
10 notary public who does not hold a commission in this state shall pass an examination administered by the
11 secretary of state or by an entity approved by the secretary of state. The examination must be based on the
12 course of study described in subsection (2).

13 (2) The secretary of state or an entity approved by the secretary of state shall offer regularly a course
14 of study to applicants who do not hold commissions as notaries public in this state. The course must cover the
15 laws, rules, procedures, and ethics relevant to notarial acts.

16
17 **NEW SECTION. Section 18. Grounds to deny -- terms for refusing to renew, revoking,**
18 **suspending, or conditioning notary public commissions.** (1) The secretary of state may deny, refuse to
19 renew, revoke, suspend, or impose a condition on a commission as a notary public for any act or omission that
20 demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a notary public,
21 including:

22 (a) failure to comply with the provisions of this part;

23 (b) a fraudulent, dishonest, or deceitful misstatement or omission in the application submitted to the
24 secretary of state for a commission as a notary public;

25 (c) pending release from supervision, a conviction of the applicant or notary public of any felony or crime
26 involving fraud, dishonesty, or deceit, although conviction of a criminal offense is not a complete bar to receiving
27 a commission if the individual's full rights have been restored;

28 (d) admission by the applicant or notary public or a finding in any legal proceeding or disciplinary action
29 of the applicant's or notary public's fraud, dishonesty, or deceit;

30 (e) failure by the notary public to discharge any duty required of a notary public, whether the provisions

1 of this part, rules of the secretary of state, or any state or federal law;

2 (f) use of false or misleading advertising or representation by the notary public representing that the
3 notary public has a duty, right, or privilege that the notary does not have;

4 (g) violation by the notary public of a rule of the secretary of state regarding a notary public;

5 (h) denial, refusal to renew, revocation, suspension, or conditioning of a notary public commission in
6 another state; and

7 (i) failure of the notary public to maintain an assurance, as provided in [section 16].

8 (2) If the secretary of state denies, refuses to renew, revokes, suspends, or imposes conditions on a
9 commission as a notary public, the applicant or notary public is entitled to timely notice and hearing in accordance
10 with the Montana Administrative Procedure Act.

11 (3) The authority of the secretary of state to deny, refuse to renew, revoke, suspend, or impose
12 conditions on a commission as a notary public does not prevent an individual from seeking and obtaining other
13 criminal or civil remedies provided by law.

14

15 **NEW SECTION. Section 19. Authority to refuse to perform notarial act.** (1) A notarial officer may
16 refuse to perform a notarial act if the notarial officer is not satisfied that:

17 (a) the individual executing the record is competent or has the capacity to execute the record; or

18 (b) the individual executing the record is not signing knowingly or voluntarily.

19 (2) A notarial officer may refuse to perform a notarial act unless refusal is prohibited by a law other than
20 as provided in this part.

21

22 **NEW SECTION. Section 20. Signature if individual unable to sign.** If an individual intending to
23 execute a record is physically unable to sign a record, the individual may direct an individual other than the
24 notarial officer to sign the individual's name on the record. The notarial officer shall insert "Signature affixed by
25 (name of the other individual) at the direction of (name of individual intending to execute the record)" or words
26 with similar intent.

27

28 **NEW SECTION. Section 21. Validity of notarial acts.** Except as otherwise provided in 1-5-604(4), the
29 failure of a notarial officer to perform a duty or meet a requirement specified in this part does not invalidate a
30 notarial act performed by the notarial officer. The validity of a notarial act under this part does not prevent an

1 aggrieved person from seeking to invalidate the record or transaction that is the subject of the notarial act or from
2 seeking other remedies based on the laws of this state, other than this part, or the laws of the United States. This
3 section does not validate a purported notarial act performed by an individual who does not have the authority to
4 perform notarial acts.

5
6 **NEW SECTION. Section 22. Prohibited acts -- advertising requirements.** (1) A notary public may
7 not:

8 (a) notarize the notary's own signature;

9 (b) notarize a record in which the notary is individually named or from which the notary will directly benefit
10 by a transaction involving the record, including as provided in subsection (2);

11 (c) certify a copy of a record issued by a public entity, such as a birth, death, or marriage certificate, a
12 court record, or a school transcript unless the notary is employed by the entity issuing or holding the original
13 version of the record;

14 (d) engage in false or deceptive advertising;

15 (e) advertise or represent that the notary public, unless also licensed as an attorney in this state, is able
16 to assist persons in drafting legal records, give legal advice, or otherwise practice law. To meet the requirements
17 of this subsection (1)(e), advertising must include the statement provided in subsection (4).

18 (f) except as otherwise allowed by law, withhold access to or retain possession of an original record
19 provided by a person that seeks performance of a notarial act by the notary public; or

20 (g) unless the notary public is an attorney licensed to practice law in this state, use the term "notario"
21 or "notario publico".

22 (2) A notary public who is a partner, stockholder, director, officer, or employee of a partnership or
23 corporation and is individually named in the record or who signs a record as a representative of that partnership
24 or corporation may not notarize the signature of any individual on that record.

25 (3) A commission as a notary public does not authorize an individual to:

26 (a) assist persons in drafting legal records, giving legal advice, or otherwise practicing law;

27 (b) act as an immigration consultant or an expert on immigration matters;

28 (c) represent a person in a judicial or administrative proceeding relating to immigration to the United
29 States or United States citizenship or related matters; or

30 (d) receive compensation for performing any of the activities listed in this subsection (3).

1 (4) (a) A notary public who is not an attorney licensed to practice law in this state shall provide in
 2 advertising or other representations regarding an offering of notarial services, whether orally or written, used in
 3 broadcast media, print media, or on the internet a statement as provided in subsection (4)(b) or an alternate
 4 statement authorized or required by the secretary of state. The statement must be prominently displayed and in
 5 each language used in the advertisement or representation. If the form of advertisement or representation is not
 6 broadcast media, print media, or the internet and does not permit inclusion of the statement required by this
 7 subsection because of its size, the statement must be displayed prominently or provided at the place of
 8 performance of the notarial act before the notarial act is performed.

9 (b) To meet the requirements of subsection (4)(a), a notary public who is not an attorney licensed to
 10 practice law in this state shall use either an alternate statement authorized or required by the secretary of state
 11 or the following statement:

12 "I am not an attorney licensed to practice law in this state. I am not allowed to draft legal records, give
 13 advice on legal matters, including immigration, or charge a fee for those activities."
 14

15 **NEW SECTION. Section 23. Fees for notarial acts -- collection of fees.** (1) A notary public may
 16 charge a fee not to exceed \$10 for each notarial act:

- 17 (a) performing an acknowledgment;
- 18 (b) witnessing a signature;
- 19 (c) verifying on oath or affirmation;
- 20 (d) certifying a transcript; or
- 21 (e) certifying a copy.

22 (2) A notary public may charge an additional fee, as provided by rule, to travel to perform a notarial act
 23 if:

- 24 (a) the notary public explains to the person requesting the notarial act that the fee:
 - 25 (i) is in addition to a fee specified in subsection (1);
 - 26 (ii) is an amount not determined by law; and
 - 27 (iii) the person requesting the notarial act agrees in advance on the amount of the additional fee; or
- 28 (b) the fee charged is equal to or less than the standard mileage rates allowed by the internal revenue
 29 service.

30 (3) If a notary public charges fees under this section for performing notarial acts, the notary public shall

1 display in English a list of the fees the notary public will charge.

2 (4) A notary public who is employed by a private entity may enter into an agreement with the entity under
3 which fees collected by the notary public under this section are collected by and accrue to the entity.

4 (5) A public official may collect the fees described in this section for notarial acts performed in the course
5 of employment by notaries public who are employed by the public body.

6

7 **NEW SECTION. Section 24. Database of notaries public.** The secretary of state shall maintain an
8 electronic database of notaries public:

9 (1) through which a person may verify the authority of a notary public to perform notarial acts; and

10 (2) that indicates whether a notary public has notified the secretary of state that the notary public will be
11 performing notarial acts on electronic records.

12

13 **NEW SECTION. Section 25. Rulemaking.** (1) The secretary of state may adopt rules to implement this
14 part.

15 (2) Rules adopted regarding the performance of notarial acts with respect to electronic records or
16 two-way audio-video communications may not require or accord legal status or effect to the implementation or
17 application of a specific technology or technical specification.

18 (3) The rules may:

19 (a) prescribe the manner of performing notarial acts regarding tangible and electronic records;

20 (b) include provisions to ensure that any change to or tampering with a record bearing a certificate of
21 a notarial act is self-evident;

22 (c) include provisions to ensure integrity in the creation, transmittal, storage, or authentication of
23 electronic records or signatures;

24 (d) prescribe the process of granting, renewing, conditioning, denying, suspending, or revoking a notary
25 public commission and assuring the trustworthiness of an individual holding a commission as notary public;

26 (e) include provisions to prevent fraud or mistake in the performance of notarial acts;

27 (f) establish the process for approving and accepting surety bonds and other forms of assurance under
28 [section 16]; and

29 (g) provide for the administration of the examination under [section 17(1)] and the course of study under
30 [section 17(2)].

1 (4) In adopting, amending, or repealing rules about notarial acts with respect to electronic records, the
2 secretary of state shall consider, consistent with this act:

3 (a) the most recent standards regarding electronic records promulgated by national bodies, such as the
4 national association of secretaries of state;

5 (b) the standards, practices, and customs of other jurisdictions that substantially implement the
6 provisions of this part; and

7 (c) the views of governmental officials and entities as well as other interested persons.
8

9 **NEW SECTION. Section 26. Repealer.** The following sections of the Montana Code Annotated are
10 repealed:

- 11 1-5-401. Appointment.
12 1-5-402. Qualifications -- training -- residence.
13 1-5-403. Term of office -- limit on commissions.
14 1-5-404. Penalties -- revocation of commission -- prosecution for violation of law.
15 1-5-405. Bond and commission -- dates -- fees and documents.
16 1-5-406. Liabilities on official bond.
17 1-5-407. Certifying official character of notary.
18 1-5-408. Fees for filing or amending commission and issuing certificates.
19 1-5-409. Information to be filed -- amendments to commission.
20 1-5-415. Jurisdiction.
21 1-5-416. Powers and duties.
22 1-5-417. Authority of notaries who are stockholders, officers, or employees of banks or other corporations.
23 1-5-418. Maximum fees of notaries.
24 1-5-419. Transfer of records upon termination of office.
25 1-5-420. Powers and duties of secretary of state when records deposited.
26

27 **NEW SECTION. Section 27. Notification to tribal governments.** The secretary of state shall send
28 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
29 Chippewa tribe.
30

