

E AND R AMENDMENTS TO LB 398

Introduced by Larson, 40, Chairman Enrollment and Review

1           1. Strike the original sections and all amendments  
2 thereto and insert the following new sections:

3           Section 1. Section 23-1307, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           23-1307 All county clerks and election commissioners  
6 and their deputies shall have authority to administer oaths  
7 and affirmations in all cases where oaths and affirmations are  
8 required, and to take acknowledgments of deeds, mortgages, and all  
9 other instruments in writing, ~~and shall attest the same~~ attesting  
10 to such with the county seal.

11           Sec. 2. Section 64-101, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13           64-101 (1) The Secretary of State may appoint and  
14 commission such number of persons to the office of notary public as  
15 he or she deems necessary.

16           (2) There shall be one class of such appointments which  
17 shall be valid in the entire state and referred to as general  
18 notaries public.

19           (3) The term effective date, as used with reference to  
20 a commission of a notary public, shall mean the date of the  
21 commission unless the commission states when it goes into effect,  
22 in which event that date shall be the effective date.

23           (4) A general commission may refer to the office as

1 notary public and shall contain a provision showing that the person  
2 therein named is authorized to act as a notary public anywhere  
3 within the State of Nebraska or, in lieu thereof, may contain the  
4 word general or refer to the office as general notary public.

5 (5) No person shall be appointed a notary public unless  
6 he or she has taken and passed a written examination on the  
7 duties and obligations of a notary public as provided in section  
8 64-101.01.

9 (6) No appointment shall be made if such applicant has  
10 been convicted of (a) a felony or ~~either~~ (b) a crime involving fraud  
11 or dishonesty within the previous five years.

12 (7) No appointment shall be made until such applicant  
13 has attained the age of nineteen years nor unless such applicant  
14 certifies to the Secretary of State under oath that he or she has  
15 carefully read and understands the laws relating to the duties of  
16 notaries public and will, if commissioned, faithfully discharge the  
17 duties pertaining to the office and keep records according to law.

18 (8) No person shall be appointed a notary public unless  
19 he or she resides in the State of Nebraska, except that the  
20 Secretary of State may appoint and commission a person as a  
21 notary public who resides in a state that borders the State of  
22 Nebraska if such person is employed in or has a regular place  
23 of work or business in this state and the Secretary of State has  
24 obtained evidence of an address of the physical location of such  
25 employment or place of work or business prior to such appointment  
26 and commission.

27 ~~(8)~~ (9) Each person appointed a notary public shall hold

1 office for a term of four years from the effective date of his or  
2 her commission unless sooner removed.

3 Sec. 3. Section 64-104, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5 64-104 Commissions for general notaries public may be  
6 renewed within thirty days prior to the date of expiration by  
7 filing a renewal application along with the payment of the fee  
8 prescribed in section 33-102 and a new bond with the Secretary of  
9 State. The bond required for a renewal of such commission shall  
10 be in the same manner and form as provided in section 64-102. The  
11 renewal application shall be in the manner and form as prescribed  
12 by the Secretary of State. ~~Such renewal application made prior to~~  
13 ~~the date of the expiration of any general notary public commission~~  
14 ~~need not be accompanied by any petition.~~ Any renewal application  
15 for such commission made after the date of expiration of the  
16 commission shall be made in the same manner as a new application  
17 for such commission as a general notary public.

18 Sec. 4. Section 64-105.01, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 64-105.01 A notary public is disqualified from performing  
21 a notarial act as authorized by Chapter 64, articles 1 and 2, if  
22 the notary:

23 (1) Is is a spouse, ancestor, descendant, or sibling of  
24 the principal, including in-law, step, or half relatives;

25 (2) Except in the performance of duties pursuant to  
26 sections 64-211 to 64-215, has a financial or beneficial interest  
27 in the transaction other than receipt of the ordinary notarial fee

1 or is individually named as a party to the transaction; or

2 (3) Does not understand the acknowledgment or notarial  
3 certificate used to certify the performance of his or her duties.

4 Sec. 5. Section 64-107, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6 64-107 A notary public is authorized and empowered,  
7 within the state: (1) To administer oaths and affirmations in  
8 all cases; (2) to take depositions, acknowledgments, and proofs  
9 of the execution of deeds, mortgages, powers of attorney, and  
10 other instruments in writing, to be used or recorded in this  
11 or another state; and (3) ~~to demand acceptance or payment of~~  
12 ~~any foreign, inland, domestic bill of exchange, promissory note~~  
13 ~~or other obligation in writing, and to protest the same for~~  
14 ~~nonacceptance or nonpayment, as the case may be, and give notice~~  
15 ~~to endorsers, makers, drawers or acceptors of such demand or~~  
16 ~~nonacceptance or nonpayment, and~~ (4) ~~to exercise and perform such~~  
17 other powers and duties as authorized by the laws of this state.  
18 ~~by the law of nations, and according to commercial usage, or~~  
19 ~~by the laws of the United States, or of any other state or~~  
20 ~~territory of the United States, or of any other government or~~  
21 ~~country, may be exercised and performed by notaries public. Over~~  
22 his or her signature and official seal, he or she shall certify  
23 the performance of such duties so exercised and performed under  
24 ~~the provisions of this section. Such~~ which certificate shall be  
25 received in all courts of this state as presumptive evidence of the  
26 facts therein certified to.

27 Sec. 6. Section 64-113, Revised Statutes Supplement,

1 2011, is amended to read:

2           64-113 (1) Whenever charges of malfeasance in office are  
3 preferred to the Secretary of State against any notary public in  
4 this state, or whenever the Secretary of State has reasonable cause  
5 to believe any notary public in this state is guilty of acts  
6 of malfeasance in office, the Secretary of State may appoint any  
7 disinterested person, not related by consanguinity to either the  
8 notary public or person preferring the charges, and authorized by  
9 law to take testimony of witnesses by deposition, to notify such  
10 notary public to appear before him or her on a day and at an  
11 hour certain, after at least ten days from the day of service of  
12 such notice. ~~Such appointee may summon witnesses, in the manner~~  
13 ~~provided by section 64-108, to appear at the time specified in the~~  
14 ~~notice, and he or she may take the testimony of such witnesses~~  
15 ~~in writing, in the same manner as is by law provided for taking~~  
16 ~~depositions, and certify the same to the Secretary of State. At~~  
17 ~~such appearance, the notary public may show cause as to why his~~  
18 ~~or her commission should not be canceled or temporarily revoked.~~  
19 ~~The appointee may issue subpoenas to require the attendance and~~  
20 ~~testimony of witnesses and the production of any pertinent records,~~  
21 ~~papers, or documents, may administer oaths, and may accept any~~  
22 ~~evidence he or she deems pertinent to a proper determination of the~~  
23 ~~charge.~~ The notary public may appear, at such time and place, and  
24 cross-examine witnesses and produce witnesses in his or her behalf.  
25 ~~, which cross-examination and testimony shall be likewise certified~~  
26 ~~to the Secretary of State.~~ Upon the receipt of such examination,  
27 duly certified in the manner prescribed for taking depositions

1 to be used in suits in the district courts of this state, the  
2 Secretary of State shall examine the same, and if therefrom he or  
3 she ~~is satisfied that the charges are substantially proved,~~ finds  
4 that the notary public is guilty of acts of malfeasance in office,  
5 he or she may remove the person charged from the office of notary  
6 public or temporarily revoke such person's commission. Within  
7 fifteen days after such removal or revocation and notice thereof,  
8 such notary public shall deposit, with the Secretary of State, the  
9 commission as notary public and notarial seal. The commission shall  
10 be canceled or temporarily revoked by the Secretary of State. A  
11 person so removed from office shall be forever disqualified from  
12 holding the office of notary public. A person whose commission  
13 is temporarily revoked shall be returned his or her commission  
14 and seal upon completion of the revocation period and passing the  
15 examination described in section 64-101.01. The fees for taking  
16 such testimony shall be paid by the state at the same rate as  
17 fees for taking depositions by notaries public. The failure of the  
18 notary public to deposit his or her commission and seal with the  
19 Secretary of State as required by this section shall subject him or  
20 her to a penalty of one thousand dollars, to be recovered in the  
21 name of the state.

22 (2) For purposes of this section, malfeasance in office  
23 means, while serving as a notary public, (a) failure to follow  
24 the requirements and procedures for notarial acts provided for in  
25 Chapter 64, articles 1 and 2, (b) violating the confidentiality  
26 provisions of section 71-6911, or (c) being convicted of a felony  
27 or other crime involving fraud or dishonesty.

1           Sec. 7. The Secretary of State may adopt and promulgate  
2 rules and regulations relating to the administration of, but not  
3 inconsistent with, the provisions of sections 64-101 to 64-118.

4           Sec. 8. The Revisor of Statutes shall assign section 7 of  
5 this act within Chapter 64, article 1.

6           Sec. 9. Original sections 23-1307, 64-101, 64-104,  
7 64-105.01, and 64-107, Reissue Revised Statutes of Nebraska, and  
8 section 64-113, Revised Statutes Supplement, 2011, are repealed.

9           2. On page 1, strike beginning with "notaries" in line 1  
10 through line 9 and insert "attestations; to amend sections 23-1307,  
11 64-101, 64-104, 64-105.01, and 64-107, Reissue Revised Statutes of  
12 Nebraska, and section 64-113, Revised Statutes Supplement, 2011;  
13 to provide powers for election commissioners; to change provisions  
14 relating to eligibility for appointment, renewal of a commission,  
15 and powers and duties of a notary public; to change removal  
16 provisions for a commission issued to a notary public; to provide  
17 for rules and regulations; to provide a duty for the Revisor of  
18 Statutes; and to repeal the original sections."