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SENATE BILL 75

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Short Title: Notary Public Rewrite.

(Public)

Sponsors:

Referred to:

January 30, 1989

A BILL TO BE ENTITLED

AN ACT TO REWRITE CHAPTER 10 OF THE GENERAL STATUTES
CONCERNING NOTARIES PUBLIC.

The General Assembly of North Carolina enacts:

Section 1. Chapter 10 of the General Statutes is repealed in its entirety.

Sec. 2. The General Statutes are amended by adding a new Chapter to read as

follows:

“CHAPTER 10A.
"NOTARIES.

"§ 10A-1. Title.

This act may be cited as the Notary Public Act.

"§ 10A-2. Purposes.

This act shall be construed and applied to advance its underlying purposes, which are:

(1) To promote, serve, and protect the public interests; and

(2) To simplify, clarify, and modernize the law governing notaries.

"§ 10A-3. Definitions.

Unless the context otherwise requires, the following definitions apply throughout this Chapter:

(1) ‘Acknowledgement’ means a notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or

1 proven on the basis of satisfactory evidence, had admitted, in the
2 notary's presence, having signed a document voluntarily.

3 (2) 'Commission' means the written authority to perform notarial acts.

4 (3) 'Notary act and notarization' mean any act that a notary is empowered
5 to perform under G.S. 10A-9.

6 (4) 'Notarial certificate and certificate' mean the part of or attachment to a
7 notarized document for completion by the notary and bearing the
8 notary's signature, seal or stamp and expiration date.

9 (5) 'Notary public and notary' mean any person commissioned to perform
10 notarial acts under this act.

11 (6) 'Oath or affirmation' means a notarial act or part thereof in which a
12 notary certifies that a person made a vow or affirmation in the
13 presence of the notary, with reference made to a Supreme Being for an
14 oath, and without such reference for affirmation.

15 (7) 'Official misconduct' means (i) a notary's performance of a prohibited
16 act or failure to perform a mandated act set forth in this Chapter or any
17 other law in connection with notarization; or (ii) a notary's
18 performance of a notarial act in a manner found by the Secretary of
19 State to be negligent or against the public interest.

20 (8) 'Personal knowledge of identity' means familiarity with an individual
21 resulting from interactions with that individual over a period of time
22 sufficient to eliminate every reasonable doubt that the individual has
23 the identity claimed.

24 (9) 'Satisfactory evidence of identity' means identification of an individual
25 based on (i) at least two current documents, one issued by a federal or
26 state government with the individual's photograph, signature, and
27 physical description, and the other by an institution, business entity, or
28 federal or state government with at least the individual's signature or
29 (ii) the oath or affirmation of a credible person who is personally
30 known to the notary and who personally knows the individual.

31 (10) 'Verification or Proof' means a notarial act in which a notary certifies
32 that a signer, whose identity is personally known to the notary or
33 proven on the basis of satisfactory evidence, has made, in the notary's
34 presence, a voluntary signature and taken an oath or affirmation
35 vouching for the truthfulness of the signed document.

36 **"§ 10A-4. Commissioning.**

37 (a) Except as provided in subsection (c) of this section, the Secretary of State
38 shall commission as a notary any qualified person who submits an application in
39 accordance with this Chapter.

40 (b) A person qualified for a notarial commission must:

41 (1) Be at least 18 years of age;

42 (2) Reside or work in this State;

43 (3) Possess a high school diploma or its equivalent and be able to read and
44 write English;

- 1 (4) Satisfactorily complete a course of study approved by the Secretary of
2 State which shall consist of not less than three hours nor more than six
3 hours of classroom instruction and achieve a score of 80 or above on a
4 written test also approved by the Secretary of State, except for licensed
5 members of the Bar of this State;
- 6 (5) Purchase a manual approved by the Secretary of State that describes
7 the duties, authority and ethical responsibilities of notaries public;
- 8 (6) Submit an application containing no significant misstatement or
9 omission of fact. The application form shall be provided by the
10 Secretary of State and be available at the register of deeds office of
11 each county. Every application shall bear the signature of the
12 applicant written with pen and ink, and said signature shall be
13 acknowledged by the applicant before a person authorized to
14 administer oaths. The applicant shall also obtain the recommendation
15 of one publicly elected official in North Carolina whose
16 recommendation shall be contained on the application.
- 17 (c) The Secretary of State may deny an application if:
- 18 (1) The applicant has been convicted of a crime involving dishonesty or
19 moral turpitude;
- 20 (2) The applicant has had a notarial commission or professional license
21 revoked, suspended, or restricted by this or any other state; or
- 22 (3) The applicant has engaged in official misconduct as defined in G.S.
23 10A-3(7), whether or not disciplinary action resulted.

24 **"§ 10A-5. Length of term and jurisdiction.**

25 A person commissioned under this Chapter may perform notarial acts in any part of
26 this State for a term of five years, unless the commission is revoked under G.S. 10A-
27 14(d) or resigned under G.S. 10A-14(c).

28 **"§ 10A-6. Recommissioning.**

29 An applicant for recommissioning as a notary shall submit a new application and
30 comply anew with the provisions of G.S. 10A-4.

31 **"§ 10A-7. Fee with commission application.**

32 Every applicant for a notarial commission shall pay to this State a nonfundable fee
33 of twenty-five dollars (\$25.00). Every applicant for recommissioning shall pay to this
34 State a non-refundable fee of twenty-five dollars (\$25.00).

35 **"§ 10A-8. Oath of office.**

36 If granted, the commission shall be sent to the register of deeds of the county where
37 the appointee lives or works and a copy of the letter of transmittal sent to the appointee.
38 The appointee shall appear before the register of deeds to which the commission was
39 delivered within 90 days of commissioning and shall be duly qualified by taking the
40 general oath of office prescribed by G.S. 11-11 and the oath prescribed for officers in
41 G.S. 11-7. The notary shall then place his signature, and work and residence telephone
42 numbers if any, in a book designated as 'The Record of Notaries Public.' This record
43 shall contain the name, signature, residence and mailing addresses, and work and
44 residence telephone numbers if any, of the notary, the effective date and expiration date

1 of the commission, the date the oath was administered, and the date of revocation or
2 resignation if such event occurs. The Record shall constitute the official record of the
3 qualification of notaries public, and the register of deeds shall deliver the commission to
4 the notary following his completion of the requirements of this section and so notify the
5 Secretary of State. If the appointee does not appear before the register of deeds within
6 90 days, he or she must reapply for commissioning. If such reapplication occurs within
7 one year of the granting of the commission the Secretary of State may waive the
8 requirements of G.S. 10A-4(b), (4) and (5).

9 **"§ 10A-9. Powers and limitations.**

10 (a) A notary is empowered to perform the following notarial acts:

- 11 (1) Acknowledgments;
12 (2) Oaths and affirmations; and
13 (3) Verifications or proofs.

14 (b) A notary is disqualified from performing a notarial act if the notary:

- 15 (1) Is a signer of or named in the document that is to be notarized;
16 (2) Will receive directly from a transaction connected with the notarial act
17 any commission, fee, advantage, right, title, interest, cash, property, or
18 other consideration exceeding in value the fees specified in G.S. 10A-
19 10, except for fees paid for services rendered by a licensed attorney; or
20 (3) Is related to the person whose signature is to be notarized as a spouse,
21 sibling, or lineal ascendant or descendant.

22 (c) A notary may not influence a person to enter into or not enter into a lawful
23 transaction involving a notarial act by the notary.

24 (d) Any act within the scope of subsection (a) performed in another jurisdiction
25 by a notary public of that jurisdiction has the same force and effect in this State as fully
26 as if such act were performed in this State by a notary commissioned under the laws of
27 this State.

28 (e) Commissioned officers on active duty in the United States armed forces who
29 are authorized under 10 U.S.C. § 936 to exercise powers of a notary public, may
30 perform such acts of a notary public pursuant to the laws of this State, for persons
31 serving in or with the United States armed forces, their spouses and dependents.

32 (f) The Secretary of State and register of deeds in the county in which the notary
33 qualified may certify to the official authority of such notary.

34 **"§ 10A-10. Fees of notaries.**

35 The maximum fees that may be charged by a notary for notarial acts are:

- 36 (1) For acknowledgements, two dollars (\$2.00) per signature;
37 (2) For oaths or affirmations without a signature, two dollars (\$2.00) per
38 person; and
39 (3) For verifications, two dollars (\$2.00) per signature.

40 **"§ 10A-11. Requirements for official acts of notaries.**

41 Official acts of notaries public in the State of North Carolina shall be attested:

- 42 (1) By their signature exactly as shown on their commission;
43 (2) By the readable appearance of their names, either from their signatures
44 or otherwise;

- 1 (3) By the clear and legible appearance of their notarial stamps or seals;
2 and
3 (4) By a statement of the date of expiration of their commission.

4 **"§ 10A-12. Notarial stamp or seal.**

5 A notary public shall provide and keep an official stamp or seal which shall clearly
6 show and legibly reproduce under photographic methods, when embossed, stamped,
7 impressed or affixed to a document, the name of the notary exactly as it appears on the
8 commission, the name of the county in which appointed and qualified, the words 'North
9 Carolina' or an abbreviation thereof, and the words 'Notary Public.' It shall be the duty
10 of a notary public to replace a seal which has become so worn that it can no longer
11 clearly show or legibly reproduce under photographic methods the information required
12 by this section. Upon resignation, revocation or recommissioning under a new name,
13 the notary shall immediately surrender their stamp or seal to the Secretary of State. The
14 stamp or seal is the property and responsibility of the commissioned notary whose name
15 appears on the instrument.

16 **"§ 10A-13. Penalties.**

17 (a) Any person holding himself out to the public as a notary or who performs
18 notarial acts and is not commissioned shall be guilty of a misdemeanor punishable by a
19 fine, imprisonment, or both, in the discretion of the court.

20 (b) Any notary who takes an acknowledgment or performs a verification of a
21 signature of a person without personal knowledge of identity or who fails to require
22 proper identification from that person is guilty of a misdemeanor punishable by a fine
23 not to exceed five hundred dollars (\$500.00), imprisonment not to exceed 60 days, or
24 both.

25 (c) Any notary who takes an acknowledgment or performs a verification
26 knowing the same to be false or fraudulent shall be guilty of a Class J felony.

27 (d) Any person who knowingly solicits, coerces, or in any way influences a
28 notary to commit official misconduct is guilty of a misdemeanor punishable by a fine,
29 imprisonment, or both, in the discretion of the court.

30 **"§ 10A-14. Change of status.**

31 (a) Within 30 days after the change of a notary's residence address, the notary
32 shall notify the Secretary of State, by certified or registered mail, and provide a signed
33 notice of the change, giving both the old and new addresses.

34 (b) A notary with a change of name shall notify the Secretary of State within 30
35 days after the change of name and shall pay a fee of ten dollars (\$10.00). The Secretary
36 of State shall issue an acknowledgement of the name change authorizing and directing
37 the notary to appear before the register of deeds for correction of the Record of Notaries
38 Public.

39 (c) A notary who resigns a commission shall deliver to the Secretary of State, by
40 certified or registered mail, a notice indicating the effective date of resignation.
41 Notaries who neither reside nor work in the State shall resign their commission.

42 (d) The Secretary of State may revoke a notarial commission on any ground for
43 which an application for a commission may be denied under G.S. 10A-4(c).

44 **"§ 10A-15. Clerks Notaries Ex Officio; may certify own seals.**

1 The clerks of the superior court and their assistants and deputies may act as notaries
2 public, in their several counties, by virtue of their offices as clerks, and may certify their
3 notarial act under the seals of their respective courts.

4 "**§ 10A-16. Register of Deeds notary ex officio with respect to certain instruments;**
5 **to use seal of office.**

6 With respect to instruments offered for registration in their county, the register of
7 deeds and his assistants and deputies may act as notaries public by virtue of their office,
8 and may certify their notarial acts under the seal of the office of the register of deeds."

9 Sec. 3. G.S. 47-8 is repealed.

10 Sec. 4. This act shall become effective on January 1, 1990, except for Section
11 3, and applies to all original applications and recommission applications made on or
12 after that date, but shall not affect the validity of notarial acts performed prior to that
13 date. Section 3 of this act is effective upon ratification.