

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 446

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO NOTARIES PUBLIC; AMENDING SECTION 51-117, IDAHO CODE, AS ENACTED
2 BY SECTION 6, CHAPTER 192, LAWS OF 2017, TO ADD A REQUIREMENT FOR A NO-
3 TARY PUBLIC'S OFFICIAL STAMP; AMENDING SECTION 51-118, IDAHO CODE, AS
4 ENACTED BY SECTION 7, CHAPTER 192, LAWS OF 2017, TO PROVIDE REQUIREMENTS
5 FOR STAMPING DEVICES FOR ELECTRONIC RECORDS; AMENDING SECTION 51-121,
6 IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE APPLICATION FOR A NO-
7 TARY PUBLIC COMMISSION; AMENDING SECTION 51-123, IDAHO CODE, TO REMOVE
8 REFERENCE TO REFUSALS TO RENEW A NOTARY PUBLIC COMMISSION; AMENDING
9 SECTION 51-127, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; AND PROVID-
10 ING EFFECTIVE DATES.
11

12 Be It Enacted by the Legislature of the State of Idaho:

13 SECTION 1. That Section 51-117, Idaho Code, as enacted by Section 6,
14 Chapter 192, Laws of 2017, be, and the same is hereby amended to read as fol-
15 lows:

16 51-117. OFFICIAL STAMP. The official stamp of a notary public:

17 (1) Must include the notary public's name, the words "Notary Public,"
18 the words "State of Idaho," and the notary's state-issued commission number;

19 (2) Must include a serrated or milled-edge border in a rectangular or
20 circular form;

21 (3) May include the words "my commission expires:" followed by the no-
22 tary's current commission expiration date;

23 (34) Must be capable of being copied together with the record to which
24 it is affixed or attached or with which it is logically associated; and

25 (45) May not include anything more than that which is allowed in subsec-
26 tions (1) and through (23) of this section.

27 SECTION 2. That Section 51-118, Idaho Code, as enacted by Section 7,
28 Chapter 192, Laws of 2017, be, and the same is hereby amended to read as fol-
29 lows:

30 51-118. STAMPING DEVICE. (1) The stamping device for tangible records
31 must be an inked stamp which that provides an image of the notary's official
32 stamp that meets the requirements of section 51-117, Idaho Code, and that is
33 readily visible upon copying. The stamp shall not exceed two and one-fourth
34 (2.25) inches by one (1) inch if rectangular or one and three-fourths (1.75)
35 inches in diameter if circular.

36 (2) The stamping device for electronic records must be an electronic
37 device or process that provides an image of the notary's official stamp that
38 meets the requirements of section 51-117, Idaho Code, and that is readily
39 visible upon copying.

1 (3) A notary public is responsible for the security of the notary pub-
 2 lic's stamping device and may not allow another individual to use the device
 3 to perform a notarial act. On resignation from, or the revocation or expi-
 4 ration of, the notary public's commission, the notary public shall disable
 5 the stamping device by destroying, defacing, damaging, erasing or securing
 6 it against use in a manner that renders it unusable. On the death or adjudi-
 7 cation of incompetency of a notary public, the notary public's personal rep-
 8 resentative or guardian or any other person knowingly in possession of the
 9 stamping device shall render it unusable by destroying, defacing, damaging,
 10 erasing or securing it against use in a manner that renders it unusable.

11 (34) If a notary public's stamping device is lost or stolen, the no-
 12 tary public or the notary public's personal representative or guardian shall
 13 promptly notify the commissioning officer or agency on discovering that the
 14 device is lost or stolen.

15 SECTION 3. That Section 51-121, Idaho Code, be, and the same is hereby
 16 amended to read as follows:

17 51-121. COMMISSION AS NOTARY PUBLIC -- QUALIFICATIONS -- NO IMMUNITY
 18 OR BENEFIT -- REAPPOINTMENT. (1) An individual qualified under subsection
 19 (2) of this section may ~~apply~~ make application to the secretary of state for a
 20 commission as a notary public. The application shall be in a form and manner
 21 prescribed by the secretary of state and shall include an oath of office to be
 22 taken by the applicant. The applicant shall comply with and provide the in-
 23 formation required by the secretary of state and pay any application fee.

24 (2) An applicant for a commission as a notary public must:

25 (a) Be at least eighteen (18) years of age;

26 (b) Be a citizen or permanent legal resident of the United States;

27 (c) Be a resident of or have a place of employment or place of practice
 28 in this state; and

29 (d) Be able to read and write; ~~and~~

30 ~~(e) Not be disqualified to receive a commission under section 51-123,~~
 31 ~~Idaho Code.~~

32 ~~(3) Before issuance of a commission as a notary public, an applicant for~~
 33 ~~the commission shall execute an oath of office and submit it to the secretary~~
 34 ~~of state.~~

35 ~~(4) Before issuance of a commission as a notary public~~ At the time of
 36 submitting the application, the applicant for a commission shall submit to
 37 the secretary of state an assurance in the form of a surety bond or its func-
 38 tional equivalent in the amount of ten thousand dollars (\$10,000).

39 (a) The assurance must be issued by:

40 (i) A surety or other entity licensed or authorized to do business
 41 in this state; or

42 (ii) The risk management office in the department of administra-
 43 tion for the state of Idaho if the applicant is regularly employed
 44 by the state and the commission is required in the scope of that em-
 45 ployment.

46 (b) The assurance must cover acts performed during the term of the
 47 notary public's commission and must be in the form prescribed by the
 48 secretary of state. If a notary public violates law with respect to
 49 notaries public in this state, the surety or issuing entity is liable

1 under the assurance. The surety or issuing entity shall give thirty
 2 (30) days' notice to the secretary of state before canceling the assur-
 3 ance. The surety or issuing entity shall notify the secretary of state
 4 no later than thirty (30) days after making a payment to a claimant under
 5 the assurance. A notary public may perform notarial acts in this state
 6 only during the period that a valid assurance is on file with the secre-
 7 tary of state.

8 ~~(54)~~ On compliance with this section, the secretary of state shall
 9 review and may issue a commission as a notary public to an applicant for a
 10 term of six (6) years or may deny the application pursuant to section 51-123,
 11 Idaho Code.

12 ~~(65)~~ A commission to act as a notary public authorizes the notary public
 13 to perform notarial acts. The commission does not provide the notary public
 14 any immunity or benefit conferred by law of this state on public officials or
 15 employees.

16 (6) A notary public may be reappointed upon submission of a new applica-
 17 tion no earlier than ninety (90) days prior to the expiration of his term.

18 SECTION 4. That Section 51-123, Idaho Code, be, and the same is hereby
 19 amended to read as follows:

20 51-123. GROUNDS TO DENY, ~~REFUSE TO RENEW~~, REVOKE, SUSPEND OR CONDITION
 21 COMMISSION OF NOTARY PUBLIC. (1) The secretary of state may deny, ~~refuse to~~
 22 ~~renew~~, revoke, suspend or impose a condition on a commission as notary public
 23 for any act or omission that demonstrates the individual lacks the honesty,
 24 integrity, competence or reliability to act as a notary public, including:

25 (a) Failure to comply with the provisions of this chapter;

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

29 (c) A conviction of the applicant or notary public of any felony or a
 30 crime involving fraud, dishonesty or deceit;

31 (d) A finding against, or admission of liability by, the applicant or
 32 notary public in any legal proceeding or disciplinary action based on
 33 the applicant's or notary public's fraud, dishonesty or deceit;

34 (e) Failure by the notary public to discharge any duty required of a no-
 35 tary public, whether by this chapter, rules of the secretary of state or
 36 any federal or state law;

37 (f) Use of false or misleading advertising or representation by the no-
 38 tary public representing that the notary has a duty, right or privilege
 39 that the notary does not have;

40 (g) Violation by the notary public of a rule of the secretary of state
 41 regarding a notary public;

42 (h) Denial, ~~refusal to renew~~, revocation, ~~or~~ suspension of, or placing
 43 a condition on, a notary public commission in another state; or

44 (i) Failure of the notary public to maintain an assurance as provided in
 45 section 51-121(4), Idaho Code.

46 (2) If the secretary of state denies, ~~refuses to renew~~, revokes, sus-
 47 pends or imposes conditions on a commission as a notary public, the applicant
 48 or notary public is entitled to timely notice and hearing in accordance with
 49 chapter 52, title 67, Idaho Code.

1 (3) The authority of the secretary of state to deny, ~~refuse to renew,~~
2 suspend, revoke or impose conditions on a commission as a notary public does
3 not prevent a person from seeking and obtaining other criminal or civil reme-
4 dies provided by law.

5 SECTION 5. That Section 51-127, Idaho Code, be, and the same is hereby
6 amended to read as follows:

7 51-127. RULES. (1) The secretary of state may adopt rules to implement
8 this chapter. Rules adopted regarding the performance of notarial acts with
9 respect to electronic records may not require, or accord greater legal sta-
10 tus or effect to, the implementation or application of a specific technology
11 or technical specification. The rules may include but are not limited to the
12 following:

13 (a) Prescribing the manner of performing notarial acts regarding tan-
14 gible and electronic records;

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

17 (c) Including provisions to ensure integrity in the creation, trans-
18 mittal, storage or authentication of electronic records or signatures;

19 (d) Prescribing the process of granting, renewing, conditioning, deny-
20 ing, suspending or revoking a notary public commission and assuring the
21 trustworthiness of an individual holding a commission as notary public;

22 (e) Including provisions to prevent fraud or mistake in the performance
23 of notarial acts;

24 (f) Establishing the process for approving and accepting surety bonds
25 and other forms of assurance under section 51-121(4), Idaho Code; and

26 (g) Providing for the course of study under section 51-122, Idaho Code.

27 (2) In adopting, amending or repealing rules about notarial acts with
28 respect to electronic records, the secretary of state may consider, as far as
29 is consistent with the provisions of this chapter:

30 (a) The most recent standards regarding electronic records promulgated
31 by national bodies, such as the national association of secretaries of
32 state;

33 (b) Standards, practices and customs of other jurisdictions that sub-
34 stantially enact this chapter; and

35 (c) The views of governmental officials and entities and other inter-
36 ested persons.

37 SECTION 6. Sections 1 and 2 of this act shall be in full force and effect
38 on and after October 1, 2018. Sections 3, 4 and 5 of this act shall be in full
39 force and effect on and after July 1, 2018.