

**Legal Notice
Notice of Rule Making
Hearing Secretary of State**

Notice is hereby given that the Secretary of State will hold a rulemaking hearing on May 26, 2021, at 1:00 P.M. at Center on N, 1221 N St, 2nd Floor Conference Room, Lincoln, Nebraska, to receive public testimony on proposed regulations relating to Notaries Public. The purpose is to amend regulations regarding Notaries Public.

Copies of the proposed rules and regulations, and the description, including an estimated quantification , of the fiscal impact on state agencies, political subdivisions, and persons being regulated are available at the Office of the Secretary of State, 1201 N. Street, Suite 120, Lincoln, Nebraska, 68509.

All interested persons are invited to attend and testify at the hearing. Interested persons may also submit written comments prior to the hearing, which shall be made a part of the hearing record at the time of the hearing. Written comments should be directed to David L. Wilson Jr, Associate General Counsel, Secretary of State's Office, 1201 N. Street, Suite 120, Lincoln, Nebraska, 68509, FAX (402) 471-2530, email david.wilson@nebraska.gov. Comments may also be posted on-line through the Secretary of State's website. To view a copy of the proposed rule or to comment on- line, go to: <http://www.sos.ne.gov/rules-and-regs/regtrack/index.cgi>.

If auxiliary aids or reasonable accommodations are needed for attendance at the hearing, please call the Secretary of State's Office at (402) 471-4071. For persons with hearing/speech impairments, please call the Nebraska Relay System at (800) 833-7352 (TDD) or (800) 833-0320 (voice). Advance notice of at least seven days is needed when requesting an interpreter.

This notice is provided pursuant to the Administrative Procedure Act.

FISCAL IMPACT STATEMENT

AGENCY: Nebraska Secretary of State PREPARED BY: David L. Wilson Jr.
TITLE: 433 DATE: April 16, 2021
CHAPTER: 6 TELEPHONE: 402-471-4071
SUBJECT: Notaries Public

<u>TYPE OF FISCAL IMPACT</u>			
	STATE AGENCY	POLITICAL SUBDIVISION	REGULATED PUBLIC
NO FISCAL IMPACT		X	
INCREASED COSTS			
DECREASED COSTS			
INCREASED REVENUE			
DECREASED REVENUE			
INDETERMINABLE	X		X

DESCRIPTION OF IMPACT

STATE AGENCY:

The fiscal impact on the Secretary of State's Office is indeterminable.

The office may receive more fees for applications if applicants fail the exam and wish to reapply. However, for reasons stated below, there may be fewer applicants applying and the failure rate may decrease.

There are not statistics on the number of exam-takers who take the test and fail one or more times. Therefore, it is unknown what, if any, additional fees this regulation would generate.

However, it is possible the regulation could decrease the number of applicants. As the current process allows potential applicants to take the exam before paying the fee, the barrier to entry for the exam is low. This office mails out more exams than it receives back and not all exams that are returned are used for an application. If the exam is no longer as readily available to take and disregard, fewer people may apply for a commission overall.

Additionally, the exam is open book, untimed, and is taken at home by the applicant. If the applicant must pay a fee for each exam, this may incentivize applicants to take the open book, take home exam more seriously and failure rates could decrease.

Because of these immeasurable factors, the fiscal impact on the Agency is indeterminable.

POLITICAL SUBDIVISION:

No fiscal impact.

REGULATED PUBLIC:

The fiscal impact on the regulated public is indeterminable. This rule change would require a first-time notary public commission applicant to reapply and pay a \$30 fee if they fail the open book notary public exam given to all applicants. Currently, an applicant may request and take the exam up to three times before applying for their commission but only pay the \$30 fee once.

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ROBERT B. EVNEN
Secretary of State

JODIE WILLIAMS
Deputy Secretary of State

April 16, 2021

EXPLANATORY STATEMENT

TITLE: 433

CHAPTER: 6

SUBJECT: Notary Public

ACTION: Amend Regulations Pursuant to Neb. Rev. Stat. §§ 64-101 to 64-119

PREPARED BY: David L. Wilson Jr., Associate General Counsel

DATE: April 16, 2021

The Secretary of State is proposing to amend Notary Public regulations as provided by law, and hereby submits this explanatory statement to accompany the regulations and describe their purpose.

I. Summary:

The following statutes provide that the Secretary of State shall adopt and promulgate rules and regulations relating to the administration of, but not inconsistent with, the provisions of the following acts: Neb. Rev. Stat. § 64-119.

II. Overview of Purposes and Changes Made:

Chapter 6, Notaries Public

Changes were made in this chapter to harmonize these rules with the Electronic Notary Public and Online Notary Public rules and to implement the fee changes adopted in LB 910 (2020).

TITLE 433 – SECRETARY OF STATE

CHAPTER 6 –NOTARIES PUBLIC

001. DEFINITIONS.

For purposes of Chapter 6 of these regulations:

001.01 Act means Neb. Rev. Stat. §§64-101 through 64-118.

001.02 Applicant means a person who has submitted any of the documents listed in Section 3.

001.03 Application means both the initial and renewal application for Notary Public.

001.04 Form means and include an application submitted on paper or an application submitted electronically in a digital format approved by the Secretary.

001.05 Malfeasance in office occurs when a Notary Public (1) fails to follow the requirements and procedures for Notarial acts provided for in statute under Chapter 64, Articles 1 and 2, and this administrative code, (2) fails to respond to written communications or requests from the Secretary, or (3) being convicted of a felony or other crime involving fraud or dishonesty within the last five (5) years.

001.06 Nebraska employer means an entity with an office or regular place of business within the physical boundaries of Nebraska. The Secretary will use a US Postal Service address to determine the physical location of the business.

001.07 Notarial act means an act which the law and regulations of this State authorize Notaries Public of this State to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents.

001.08 Notarial certificate or acknowledgement means the section at the end of a document where a Notary Public verifies by notarization that the signor of the document presented satisfactory evidence of identity, appeared in the Notary's presence, and that he or she actually signed the document.

001.09 "Notary Public" means a person commissioned as a notary public under the Act and Neb. Rev. Stat. § 64-119.

001.10 Regular place of work or business in Nebraska means any place where any person is to work, is working, or customarily works, for gain or reward within the physical boundaries of Nebraska.

001.11 Resident means that the applicant considers Nebraska his or her permanent home, or the place to which he or she intends to return after a period of absence. To meet the residency requirement the applicant must live in Nebraska for more than six (6) months out of the year.

001.12 Secretary means the Secretary of State and his or her designated staff.

Citation: Neb. Rev. Stat. §§64-101 through 64-118.

002. NOTARIAL ACTS.

002.01 Document.

002.01(A) The Notarial certificate or acknowledgement must be completed in its entirety including dates, state and county of notarial act.

002.01(B) Blank or incomplete documents should not be notarized.

002.01(C) Notaries Public may not post-date or pre-date a document.

002.02 Seal.

002.02(A) Notaries Public must affix a clear and legible impression of his or her stamp to a document. The seal and signature may not be affixed over printed material or other signatures on the document.

002.02(B) Notaries Public must obtain a new seal each time the commission is renewed which includes the new commission dates.

002.02(C) Notary commissions are issued to an individual regardless of whether or not another business or entity paid the notary application fee, bond, or seal.

002.02(D) The seal should be secured and only accessible by the Notary Public.

002.03 Signature.

002.03(A) The signature on the most recent application, whether on an Initial Application for Notary Public Commission, Renewal Application for Notary Public Commission or Notary Public Request to Change Record, will be used for verification; therefore the

Notary Public should always sign consistently with his or her application signature.

002.04 Notaries Public must be aware of the condition of the signor. Special attention should be given when asked to notarize the signature of a minor child or persons that might not have the capability of understanding the document that they are signing. If the Notary Public reasonably believes the signor does not understand the document they should refuse to notarize.

002.05 Notaries Public cannot refuse to provide services on the basis of race, color, national origin, religion, sex (including pregnancy), disability, or marital status.

Citation: Neb. Rev. Stat. §§64-101 through 64-118.

003. APPLICATIONS AND OTHER FORMS.

003.01 The following forms are required to obtain and maintain a Notary Public commission under the Act:

003.01(A) Initial Application for Notary Public Commission;

003.01(B) U.S. Citizenship Attestation Form;

003.01(C) Bond Form;

003.01(D) Renewal Application for Notary Public Commission;

003.01(E) Evidence of Employment in Nebraska;

003.01(F) Notary Public Request to Change Record; and

003.01(G) Bond Rider.

003.02 A \$15,000 surety bond is required and must be concurrent with the Notary Public commission term.

003.03 The forms listed in this section will be made available to all applicants on the Secretary of State's website or upon request.

Citation: Neb. Rev. Stat. §64-102 and §64-109.

004. COMMISSION REQUIREMENTS.

004.01 Before being considered by the Secretary, every application for a Notary Public commission must include the following information and meet the following requirements:

004.01(A) All questions on the application form(s) must be answered;

004.01(B) A fee of \$30 must be submitted;

004.01(C) A passing examination score;

004.01(D) Submission of a license surety bond for \$15,000;

004.01(E) U.S. Citizenship Attestation Form; and

004.01(F) Non-resident Evidence of Employment Form.

004.02 Renewal applications must be received no later than the date the commission expires. If the commission expiration date falls on a weekend or holiday the renewal must be received prior to that expiration date. If received after the expiration date the renewal will be considered an initial application. A renewal application must include the following:

004.02(A) Notary Public Commission Renewal Form;

004.02(B) A fee of \$30;

004.02(C) A bond form or bond rider that updates the initial bond;

004.02(D) U.S. Citizenship Attestation Form; and

004.02(E) Non-resident Evidence of Employment Form.

004.03 No appointment will be made if the applicant has been convicted of a felony unless a full pardon has been granted by the Nebraska Board of Pardons.

004.04 No appointment will be made if the applicant has been convicted of a crime involving fraud or dishonesty within the last five (5) years unless a full pardon has been granted by the Nebraska Board of Pardons.

004.04(A) A “crime involving fraud or 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.

004.04B “Conviction within the last five (5) years” means being convicted by a court of law within the last five (5) years from the date the application is received.

004.05 An applicant must be a resident of the State of Nebraska or (1) reside in one of the following states: Colorado, Iowa, Kansas, Missouri, South Dakota, or Wyoming and (2) maintain a regular place of work or business in Nebraska.

004.05(A) Non-resident applicants will be required to submit the form titled "Evidence of Employment in Nebraska" listed under Section 003.01(E).

004.05(B) If an applicant is self-employed a written explanation must be attached to the "Evidence of Employment in Nebraska" form noted above.

Citation: Neb. Rev. Stat. §§64-101 through 64-104.

005. CHANGES TO NOTARY PUBLIC COMMISSION INFORMATION.

005.01 Name Change.

005.01(A) A Notary Public may continue to use his or her current Notary Commission as it was issued until the expiration or termination of such commission. The Notary Public must continue to sign his or her name using the name as listed on the commission certificate.

005.01(B) A Notary Public who has changed his or her name during his or her commission, may apply for a new commission under his or her new name by following the procedures set forth in subsection 005.04

005.02 Address Change.

005.02(A) A Notary Public must update his or her address when moving by filling out and submitting the "Notary Public Request to Change Record" form within 45 days of moving.

005.02(B) No fee will be assessed for updating address information.

005.03 Employment Change.

005.03(A) If a non-resident Notary Public is terminated from a regular place of work or business in Nebraska, he or she must relinquish his or her Notary Public commission by returning the commission certificate and seal to the Secretary.

005.04 Signature or Name Change Process.

005.04(A) A Notary Public who has changed his or her signature or name may be issued a new commission with the updated signature or name by submitting a "Change of Signature

or Name Application for a Notary Public” form to the Secretary. If the name or signature change occurs within thirty days prior to the expiration of the Notary Public’s commission, the Notary Public does not need to submit the “Change of Signature or Name Application for a Notary Public” form but should instead include the name or signature change on his or her renewal application.

005.04(B) A “Change of Signature or Name Application for A Notary Public” application will be considered a new application and the Notary Public must meet all the requirements and qualifications for a Notary Public commission, except that the Notary Public will not be required to take the written examination.

005.05 Criminal Conviction Reporting.

005.05(A) A Notary Public who is convicted of a felony or crime involving fraud or dishonesty during his or her commission term must notify the Secretary of this conviction to the Secretary in writing within forty-five (45) days after the conviction occurs.

Citation: Neb. Rev. Stat. §64-101, §64-105.04, and §64-114.

006. NOTARY PUBLIC EXAMINATION.

006.01 The Notary Public Examination will consist of questions aimed at determining whether the applicant has the reasonably necessary knowledge, experience, and competency to engage in and perform the duties of a Notary Public. An applicant must score 85% or better to pass the exam.

006.01(A) Knowledge of the Notary Public Act and laws related to or affecting notarial work, including but not limited to:

006.01(A)(1) Provisions of Neb. Rev. Stat. §§ 64-101 through 64-118;

006.01(A)(2) Uniform Recognition of Acknowledgements Act Neb. Rev. Stat §§64-209 through 64-215, and any other relevant statutes; and

006.01(A)(3) These Rules and Regulations.

006.02 The written examination will be an open resources test sent to the applicant upon receipt of the \$30.00 fee and a completed application.

~~006.03 Applicants will have three attempts at passing the Notary Public Examination. If the applicant does not pass the exam he or she may be required to wait thirty (30) days before re-taking the exam. If the applicant does not pass the test after three attempts the applicant will~~

~~be considered incompetent to receive a Notary Public commission in the State of Nebraska, and will not be eligible to take the exam again.~~

006.03 If an Applicant fails the examination, the application will be denied. An Applicant who fails the examination may reapply after waiting thirty (30) days, including submitting a new application, paying the application fee, and passing the exam. An Applicant who fails the examination three (3) times will be considered incompetent to be receive a Notary Public commission in the State of Nebraska, and will not be eligible to take the exam again.

006.03(A) A passing exam score will be valid for 2 years from the date of examination.

006.03(B) If a passing exam score is not used within 2 years the applicant only has the remainder of prior opportunities to retake the exam.

006.04 The examination may be completed electronically if authorized by the Secretary.

Citation: Neb. Rev. Stat. §64-101.01.

007. ALLEGED MALFEASANCE AGAINST NOTARIES PUBLIC.

007.01 In investigating an alleged malfeasance by a Notary Public, the Secretary must consider the totality of the offense, facts, and circumstances in each individual case.

007.02 Factors Considered.

007.02(A) While evaluating an alleged malfeasance to determine if it should be set for hearing or recommend to a stipulation process, the Secretary may consider a variety of factors, including, but not limited to, the following:

007.02(A)(1) Nature and severity of the act, offense, or crime under consideration;

007.02(A)(2) Number and/or variety of current violations;

007.02(A)(3) Evidence pertaining to the requisite honesty, credibility, truthfulness, and integrity of the Notary Public;

007.02(A)(4) Actual or potential harm to the general public, group, individual, or customer;

007.02(A)(5) History of complaints received by the Secretary; and

007.02(A)(6) Prior disciplinary record or warning from the Secretary.

007.03 Discipline.

007.03(A) Stipulations are a voluntary agreement between the Secretary and Notary Public. A stipulation will be sought in lieu of setting a hearing to simplify the discipline process and provide cost savings to the Secretary.

007.03(A)(1) Stipulations will include the following: (i) statement of facts, (ii) acknowledgment of malfeasance, and (iii) a penalty.

007.03(A)(2) Stipulations must be in writing and signed by the Secretary and Notary Public.

007.03(B) Total Revocation means the Notary Public commission is revoked and cannot ever be reinstated.

007.03(B)(1) The following, nonexclusive list of acts of malfeasance will likely result in the total revocation of a Notary Public commission:

007.03(B)(1)(a) The signor was not in the physical presence of the Notary Public at the time of the Notarial act;

007.03(B)(1)(b) The signor was not personally known to the Notary Public or identified by the Notary Public through satisfactory evidence during the Notarial act;

007.03(B)(1)(c) A Notary Public engaged in the unauthorized practice of law. This would include using the term "notario publico" or any non-English equivalent term in a manner which misrepresents the authority of the Notary Public;

007.03(B)(1)(d) A Notary Public permitting another person to use the Notary Public's official seal or official seal embosser;

007.03(B)(1)(e) A Notary Public being convicted of a felony or crime involving fraud or dishonesty while commissioned; and

007.03(B)(1)(f) A Notary Public fails to respond to written communications or requests from the Secretary within thirty (30) days from the date the written communication or request was sent.

007.03(B)(2) If revoked the Notary Public commission and seal must be returned to the Secretary's office.

007.03(C) Temporary Revocation means a revocation of the Notary Public commission for as little as one month or as long as 4 years.

007.03(C)(1) The following, nonexclusive list of acts of malfeasance will likely result

in the temporary revocation of a Notary Public commission:

007.03(C)(1)(a) Notarizing a document in which the Notary Public has a personal interest;

007.03(C)(1)(b) A Notary Public making a materially false statement on the application; and

007.03(C)(1)(c) Failure of the Notary Public to maintain the required bond.

007.03(C)(2) During the revocation the Notary commission and seal must be returned to the Secretary's office.

007.03(D) An Admonishment will be issued to a Notary Public and notated in his or her paper and electronic file when the Secretary feels that the alleged malfeasance rises to the level of warning but not revocation.

007.03(D)(1) The following, nonexclusive list of acts of malfeasance will likely result in an official warning to the Notary Public:

007.03(D)(1)(a) A Notary Public overlooks changing the County or State of the Notarial document; and

1b 007.03(D)(1)(b) A Notary Public Notarizes a document with blanks.

007.03(D)(2) An official admonishment will not hinder the Notary Public from performing his or her duties.

Citation: Neb. Rev. Stat. §§ 64-105, 64-105.01, and 64-113.

008. FEES.

008.01 The application fee is \$30.00. ~~which includes affixing the State Seal to the commission and approving the bond for the Notary Public.~~

~~008.01(A) A refund of the application fee will only be issued if requested by the applicant upon failure of the third examination and within two (2) years of initial payment.~~

008.02 The fee to change the name on a commission is \$30.00.

008.03 Duplicate commissions will be provided at a cost of \$15.00.

008.04 Notaries Public may charge the following fees for his or her services:

008.04(A) For each protest: \$1.00; For recording the same, \$2.00;

008.04(B) For each notice of protest: \$2.00;

008.04(C) For taking affidavits and seal: \$2.00;

008.04(D) For administering oath or affirmation: \$2.00;

008.04(E) For each certificate and seal: \$5.00; and

008.04(F) For each mile traveled in serving notice based on the rate established by the Department of Administrative Services

Citation: Neb. Rev. Stat. §33-102 and 33-133.