

## No. 2002-151

## AN ACT

## HB 851

Amending the act of August 21, 1953 (P.L.1323, No.373), entitled "An act concerning notaries public; and amending, revising, consolidating and changing the law relating thereto," further providing for appointment of notaries, for eligibility, for applications to become a notary public, for application for reappointment, for resignation and for change of residence, for oath of office, bond and recording, for registration of notary's signature and fees, for notarial seal, for electronic notarization, for register and copier of records, for power to administer oaths, affirmations, certain writings relating to commerce, depositions, affidavits and certain writings relating to land, for fees of notaries public, for rejection of application and for surrender of seal; providing for revocation of commission for certain personal checks and for regulations; making repeals; and making editorial changes.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 2 of the act of August 21, 1953 (P.L.1323, No.373), known as The Notary Public Law, is amended to read:

Section 2. Appointment of Notaries.—The Secretary of the Commonwealth is hereby authorized to appoint and commission, for a term of four years from the date of appointment, as many notaries public as, in [his] *the secretary's* judgment, the interest of the public may require, whose jurisdiction shall be co-extensive with the boundaries of the Commonwealth[, irrespective of their place of residence within the Commonwealth].

Section 2. Section 3 of the act, amended June 9, 1978 (P.L.462, No.61), is amended to read:

Section 3. Eligibility.—[Any citizen of Pennsylvania, being eighteen (18) years of age or over, of known character, integrity and ability, shall be eligible to the office of notary public, if he shall have resided within this Commonwealth for at least one (1) year immediately preceding the date of his appointment, and if he shall be a registered elector in the Commonwealth.] *(a) Any person who is eighteen (18) years of age or over, who resides or is employed within this Commonwealth and who is of good character, integrity and ability shall be eligible for the office of notary public.*

*(b) Any person who is a notary public and who resides outside this Commonwealth shall be deemed to have irrevocably appointed the Secretary of the Commonwealth as the person's agent upon whom may be served any summons, subpoena, order or other process.*

Section 3. Section 5 of the act, amended June 30, 1988 (P.L.462, No.78), is amended to read:

Section 5. Application to Become a Notary Public.—*(a) Applications for appointment to the office of notary public shall be made to the Secretary of*

the Commonwealth, on forms prescribed and furnished by [him] *the secretary*, and shall be accompanied by a non-refundable filing fee [of twenty-five dollars (\$25), payable to the order of "State Treasurer," by money order, check, or draft. Each] *as set forth in section 618-A of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," payable to the order of the "Commonwealth of Pennsylvania."* Each application shall bear the endorsement of the Senator of the district in which the applicant resides [, or, in] *or, if the applicant does not reside in this Commonwealth, the endorsement of the Senator of the district in which the applicant is employed.* In the case of a vacancy in that senatorial district, *the application* shall be endorsed by the Senator of an adjacent district.

(b) Before issuing to any applicant a commission as notary public, the Secretary of the Commonwealth shall [satisfy himself] *be satisfied* that the applicant is of good moral character, and is familiar with the duties and responsibilities of a notary public. [Such qualifying requirements may be waived in the case of reappointment or appointments of persons making application within six (6) months after the expiration of a previous term as notary public, or appointments of persons who were prevented from applying for reappointment or from applying for appointment, within the six (6) month extension period mentioned above, by reason of their induction or enlistment in the armed forces of the United States, if application is made within one (1) year after military discharge of the applicant, under conditions other than dishonorable.] *The application must contain no material misstatement or omission of fact, and the applicant shall not:*

(1) *have been convicted of or pled guilty or nolo contendere to a felony or a lesser offense incompatible with the duties of a notary public during the five (5) year period preceding the date of the application; or*

(2) *have had a prior notary public commission revoked by the Commonwealth or any other state during the five (5) year period preceding the date of the application.*

*The Secretary of the Commonwealth may, for good cause, reject any application of any notary public subject to the right of notice, hearing and adjudication and the right of appeal therefrom in accordance with 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action), known as the Administrative Agency Law.*

(c) *As a condition for the Secretary of the Commonwealth's issuance of a notary commission to an applicant not appointed to the office of notary public as of the effective date of this subsection, a notary applicant must complete at least three (3) hours of approved notary education within the six (6) month period immediately preceding their application.*

**(d) Notary education may either be interactive or classroom instruction. All education programs shall be preapproved by the Secretary of the Commonwealth with a core curriculum that includes the duties and responsibilities of the notary office and electronic notarization.**

Section 4. Sections 6, 7 and 8 of the act are amended to read:

Section 6. Application for Reappointment.—Applications for reappointment to the office of notary public shall be filed at least **[one month] two months** prior to the expiration of the commission under which the notary is acting. **Persons seeking reappointment must continue to meet the requirements set forth in section 5 in order to be reappointed.**

Section 7. Vacation of Office; Change of Residence.—**(a) In the event of any change of address within the Commonwealth, notice in writing or electronically shall be given to the Secretary of the Commonwealth and the recorder of deeds of the county of original appointment by a notary public within five (5) days of such change. For the purpose of this [section] subsection, “address” means office address. A notary public vacates his office by removing the notary’s residence and business address from the Commonwealth, and such removal shall constitute a resignation from the office of notary public as of the date of removal.**

**(b) If a notary public neither resides nor works in the Commonwealth, that notary public shall be deemed to have resigned from the office of notary public as of the date the residency ceases or employment within the Commonwealth terminates. A notary public who resigns that notary’s commission in accordance with this subsection shall notify the Secretary of the Commonwealth in writing of the effective date of the resignation.**

Section 8. Oath of Office; Bond; Recording.—Every notary, **[on his appointment and before he enters] upon appointment and prior to entering** upon the duties of the office of notary public, shall take and subscribe the constitutional oath of office, and shall give a surety bond, payable to the Commonwealth of Pennsylvania, in **[such amount as shall be fixed by the Secretary of the Commonwealth] the amount of ten thousand dollars (\$10,000)**, which bond shall, after being recorded, be approved by and filed with the Secretary of the Commonwealth. Every such bond shall have as surety a duly authorized surety company or two sufficient individual sureties, to be approved by the Secretary of the Commonwealth, conditioned for the faithful performance of the duties of the office of notary public and for the delivery of **[his register and all other public papers into] the notary’s register and seal** to the office of the recorder of deeds of the proper county in case of **[his] the death, resignation[, disqualification, or removal] or disqualification of the notary within thirty (30) days of such event.** Such bond, as well as **[his] the commission and oath of office,** shall be recorded in the office of the recorder of deeds of the county in which **[he] the notary** maintains an office at the time of appointment or reappointment. The commission of any notary hereafter appointed who shall, for **[the space of thirty (30)] forty-five (45)** days after the beginning

of [his] *the* term, neglect to give bond and cause the [same] *bond* and [his] *the* commission and oath to be recorded, as above directed, shall be null and void.

Section 5. Section 9 of the act, amended July 22, 1965 (P.L.222, No.122), is amended to read:

Section 9. Registration of Notary's Signature; Fee.—(a) The official signature of each notary public shall be registered, in the "Notary Register" provided for such purpose in the prothonotary's office of the county wherein [he] *the notary* maintains an office, within [thirty (30)] *forty-five (45)* days after appointment or reappointment, and in any county to which [he] *the notary* may subsequently move [his office, within ten (10)] *the notary's office, within thirty (30)* days thereafter. In counties of the second class, such signature shall also be registered in the clerk of courts' office within said period.

(b) The fee to be charged by the prothonotary for recording a notary's signature shall be fifty (\$.50) cents.

(c) *In acting as a notary public, a notary shall sign the notary's name exactly and only as it appears on the commission or otherwise execute the notary's electronic signature in a manner that attributes such signature to the notary public identified on the commission.*

(d) *A county may permit notaries to register their electronic signatures.*

Section 6. Section 12 of the act amended June 30, 1988 (P.L.462, No.78), is amended to read:

Section 12. Notarial Seal.—(a) A notary public shall provide and keep an official seal which shall be used to authenticate all the acts, instruments and attestations of the notary. The seal shall be a rubber stamp and shall show clearly in the following order: the words "Notarial Seal"; the name and surname of the notary and the words "Notary Public"; the name of the [political subdivision] *municipality* and county in which the notary maintains an office; and the date the notary's commission expires.

(b) The seal shall have a maximum height of one (1) inch and width of three and one-half (3 1/2) inches, with a plain border. It shall be stamped in a prominent place on the official notarial [act] *certificate* near the notary's signature in such a manner as to be capable of photographic reproduction.

[(c) In addition to the official seal required in subsection (a), a notary public shall also use and keep an embosser upon which shall be engraved the words "Notary Public, Commonwealth of Pennsylvania," and the name and surname of the notary. All documents executed shall bear a legibly embossed impression.]

(d) *The notary public seal is the exclusive property of the notary to whom it is issued, and a notary shall be responsible at all times for maintaining custody and control of the seal. No notary public shall permit the use of the seal by another person.*

**(e) The use of a notary public seal by a person who is not the notary public named on the seal shall be deemed an impersonation of a notary public under and shall be subject to the penalties set forth in 18 Pa.C.S. § 4913 (relating to impersonating a notary public).**

**(f) Notwithstanding other provisions of this section, in accordance with the act of December 16, 1999 (P.L.971, No.69), known as the "Electronic Transactions Act," a notary public is not required to use an electronic seal for the notarization, acknowledgment or verification of electronic records and electronic signatures, provided that, in any event, the following information is attached to or logically associated with the electronic signature or electronic record being notarized, acknowledged or verified:**

**(1) The full name of the notary along with the words "Notary Public."**

**(2) The name of the municipality and the county in which the notary maintains an office.**

**(3) The date the notary's commission is due to expire.**

Section 7. The act is amended by adding a section to read:

**Section 12.1. Determining Identity of Person Appearing.—(a) The officer notarizing the instrument shall know through personal knowledge or have satisfactory evidence that the person appearing before the notary is the person described in and who is executing the instrument. For the purposes of this act and section 5 of the act of July 24, 1941 (P.L.490, No.188), known as the "Uniform Acknowledgment Act," "personal knowledge" means having an acquaintance, derived from association with the individual in relation to other people and based upon a chain of circumstances surrounding the individual, which establishes the individual's identity, and "satisfactory evidence" means the reliance on the presentation of a current, government-issued identification card bearing a photograph, signature or physical description and serial or identification number, or the oath or affirmation of a credible witness who is personally known to the notary and who personally knows the individual.**

**(b) In certifying a copy of a document or other item, a notary public shall determine that the proffered copy is a full, true and accurate transcription or reproduction of that which was copied.**

Section 8. Sections 15 and 16 of the act are amended to read:

**Section 15. Register; Copies of Records.—(a) Every notary public shall keep [an accurate] and maintain custody and control of an accurate chronological register of all official acts by [him] that notary done by virtue of [his] that notary's office, and shall, when thereunto required, give a certified copy of [any record in his] the register in the notary's office to any person applying for same. [Said] Each register shall contain the date of the act, the character of the act, and the date and parties to the instrument, and the amount of fee collected for the service. Each notarization shall be indicated separately.**

(b) The register and other public [papers] *records* of such notary shall not in any case be liable to be [sized] *seized*, attached or taken in execution for debt or for any demand whatsoever.

(c) *A notary public register is the exclusive property of the notary public, may not be used by any other person and may not be surrendered to any employer of the notary upon termination of employment.*

(d) *Upon a notary public's resignation, death or disqualification or upon the revocation or expiration of a commission, unless the notary public applies for a commission within thirty (30) days of the expiration of the prior commission, the notary public's register shall be delivered to the office of the recorder of deeds of the proper county within thirty (30) days of such event.*

Section 16. Power to Administer Oaths and Affirmations.—(a) Notaries shall have power to administer oaths and affirmations, *certify copies and take depositions, affidavits, verifications, upon oath or affirmation and acknowledgments* according to law, in all matters belonging or incident to the exercise of their notarial office.

(b) Any person who shall be convicted of having wilfully and knowingly made or taken a false oath [or affirmation], *affirmation, deposition, affidavit, certification or acknowledgment* before any notary in any matters within their official duties shall be guilty of perjury *under* and shall be subject to the penalties [in such case made and provided] *set forth in 18 Pa.C.S. § 4902 (relating to perjury).*

Section 9. Sections 17 and 18 of the act are repealed.

Section 10. Sections 19, 21 and 22 of the act are amended to read:

Section 19. Limitation on Powers; Fees.—(a) **No director or officer in any bank, banking institution or trust company, holding at the same time the office of notary public, shall do or perform any act or duty as notary public for any bank, banking institution or trust company in which he is a director or officer. Any act or duty performed by any such notary public for any such bank, banking institution or trust company is hereby declared invalid.**

(b) **No clerk in any bank, banking institution or trust company, holding at the same time the office of notary public, shall be authorized to protest checks, notes, drafts, bill of exchange, or any commercial paper, for any bank, banking institution or trust company in which he is employed.**

(c) **The fees of any such notary for other services rendered shall be the property of such notary and in no case belong to or be received by the corporation of which he is a director or clerk.]**

(d) **No [justice of the peace, magistrate or alderman,] *district justice*, holding at the same time the office of notary public, shall have jurisdiction in cases arising on papers or documents containing acts by him done in the office of notary public.**

(e) No notary public may act as such in any transaction in which he is a party directly or pecuniarily interested. *For the purpose of this section, none of the following shall constitute a direct or pecuniary interest:*

*(1) being a shareholder in a publicly traded company that is a party to the notarized transaction;*

*(2) being an officer, director or employe of a company that is a party to the notarized transaction, unless the director, officer or employe personally benefits from the transaction other than as provided in clause (3); or*

*(3) receiving a fee that is not contingent upon the completion of the notarized transaction.*

Section 21. Fees of Notaries Public.—(a) The fees of notaries public shall be fixed by the Secretary of the Commonwealth with the approval of the Attorney General.

*(b) A notary public shall not charge, attempt to charge or receive a notary public fee that is in excess of the fees fixed by the Secretary of the Commonwealth.*

*(c) The fees of notaries public shall be displayed in a conspicuous location in the notary's place of business or be provided upon request to any person utilizing the services of the notary. The fees of the notary shall be separately stated. A notary public may waive the right to charge a fee, in which case the requirements of this subsection regarding the display or provision of fees shall not apply.*

*(d) The fee for any notary public employed by a bank, banking institution or trust company shall be the property of the notary and in no case belong to or be received by the corporation for whom the notary is employed.*

Section 22. Rejection of Application; Removal.—(a) The Secretary of the Commonwealth may, for good cause, reject any application, *issue a written reprimand, suspend* or revoke the commission of any notary public[, but such action shall be taken].

*(b) The Secretary of the Commonwealth may, for good cause, impose a civil penalty not to exceed five hundred dollars (\$500) for each act or omission which constitutes a violation of this act.*

*(c) The Secretary of the Commonwealth may, for good cause, order a notary to attend education courses for an act or omission which constitutes a violation of this act.*

*(d) Any action taken under this section shall be subject to the right of notice, hearing and adjudication, and the right of appeal therefrom, in accordance with [the provisions of the Administrative Agency Law, approved the fourth day of June, one thousand nine hundred forty-five (Pamphlet Laws 1388), or any amendment or reenactment thereof, relating to adjudication procedure.] 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A*

*(relating to judicial review of Commonwealth agency action), known as the Administrative Agency Law.*

Section 11. Section 22.1 of the act, added June 9, 1978 (P.L.462, No.61), is amended to read:

Section 22.1. Surrender of Seal.—(a) Should an application or renewal be rejected, or should a commission be revoked or recalled for any reason, *or should a notary public resign*, the applicant or notary shall deliver the seal of office to the Department of State within ten (10) days after notice from the department[.] *or from the date of resignation, as the case may be. Any person who violates the provisions of this subsection shall be guilty of a summary offense and upon conviction thereof shall be sentenced to pay a fine not exceeding three hundred dollars (\$300) or to imprisonment not exceeding ninety (90) days, or both.*

(b) *Upon the death of a notary public, the notary's personal representative shall deliver the seal of office to the Department of State within ninety (90) days of the date of the notary's death.*

[Any person who violates the provisions of this section shall be guilty of a summary offense and upon conviction thereof shall be sentenced to pay a fine not exceeding three hundred dollars (\$300) or to imprisonment not exceeding ninety (90) days, or both.]

Section 12. The act is amended by adding sections to read:

**Section 22.2. Revocation of Commission for Certain Personal Checks.**—(a) *The Secretary of the Commonwealth may revoke the notary public commission of a notary public who issues to the order of any State agency or the Commonwealth a personal check without sufficient funds on deposit.*

(b) *Any action taken by the Secretary of the Commonwealth under this section shall be subject to the right of notice, hearing and adjudication and right of appeal therefrom in accordance with 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action), known as the Administrative Agency Law.*

**Section 22.3. Regulations.**—*The Secretary of the Commonwealth shall have the authority to promulgate such rules and regulations as are necessary to administer and enforce this act.*

Section 13. Section 24 of the act is amended to read:

Section 24. [General Repeal.—All other] **Repeals.**—(a) *The following acts and parts of acts are repealed [in so far as they are inconsistent with the provisions of this act.]:*

*The act of April 14, 1828 (P.L.447, No.188), entitled "An act to authorize the appointment of commissioners to take the acknowledgement of deeds and instruments of writing under seal."*

*The act of March 13, 1839 (P.L.92, No.44), entitled "A supplement to an act entitled 'An act to authorize the appointment of commissioners to take the acknowledgment of deeds and instruments of writing under seal,'*



*approved on the fourteenth day of April, one thousand eight hundred and twenty-eight.”*

*The act of April 6, 1843 (P.L.175, No.83), entitled “A supplement to an act entitled ‘An Act to authorize the appointment of Commissioners to take the acknowledgment of deeds and instruments of writing under seal.’”*

*Section 15 of the act of April 9, 1849 (P.L.524, No.354), entitled “A supplement to an act relative to the venders of mineral waters; and an act relative to the Washington coal company; to sheriffs’ sales of real estate; to the substitution of executors and trustees when plaintiffs; to partition in the courts of common pleas, and for other purposes.”*

*(b) All other acts and parts of acts are repealed insofar as they are inconsistent with this act.*

Section 14. This act shall take effect July 1, 2003.

APPROVED—The 9th day of December, A.D. 2002.

MARK S. SCHWEIKER