

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 821

6
7 S.P. 333

In Senate, February 28, 1985

8 Reference to the Committee on Legal Affairs suggested. On motion of
9 Senator Violette of Aroostook, referred to the Committee on Judiciary. Sent
down for concurrence and ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Chalmers of Knox.

11 Cosponsored by Senator Maybury of Penobscot, Representative Melendy
of Rockland and Representative Mayo of Thomaston.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT to Establish a State Uniform Law on
18 Notarial Acts.
19

20 Be it enacted by the People of the State of Maine as
21 follows:

22 Sec. 1. 4 MRSA c. 22, as amended, is repealed.

23 Sec. 2. 4 MRSA c. 22-A is enacted to read:

24 CHAPTER 22-A

25 UNIFORM LAW ON NOTARIAL ACTS

26 §1021. Short title

27 This chapter shall be known and may be cited as
28 the Uniform Law on Notarial Acts.

29 §1022. Definitions

1 As used in this chapter, unless the context oth-
2 erwise indicates, the following terms have the fol-
3 lowing meanings.

4 1. Acknowledgment. "Acknowledgment" means a
5 declaration by a person that the person has executed
6 an instrument for the purposes stated therein and, if
7 the instrument is executed in a representative capac-
8 ity, that the person signed the instrument with prop-
9 er authority and executed it as the act of the person
10 or entity represented and identified therein.

11 2. In a representative capacity. "In a repre-
12 sentative capacity" means:

13 A. For and on behalf of a corporation, partner-
14 ship, trust or other entity, as an authorized of-
15 ficer, agent, partner, trustee or other represen-
16 tative;

17 B. As a public officer, personal representative,
18 guardian or other representative, in the capacity
19 recited in the instrument;

20 C. As an attorney-in-fact for a principal; or

21 D. In any other capacity as an authorized repre-
22 sentative of another.

23 3. Notarial act. "Notarial act" means any act
24 that a notary public of this State is authorized to
25 perform, and includes taking an acknowledgment, ad-
26 ministering an oath or affirmation, taking a verifi-
27 cation upon oath or affirmation, witnessing or at-
28 testing a signature, certifying or attesting a copy
29 and noting a protest of a negotiable instrument.

30 4. Notarial officer. "Notarial officer" means a
31 notary public or other officer authorized to perform
32 notarial acts.

33 5. Verification upon oath or affirma-
34 tion. "Verification upon oath or affirmation" means
35 a declaration that a statement is true made by a per-
36 son upon oath or affirmation.

37 §1023. Notarial acts

1 1. Identity of person making acknowledgment. In
2 taking an acknowledgment, the notarial officer must
3 determine, either from personal knowledge or from
4 satisfactory evidence, that the person appearing be-
5 fore the officer and making the acknowledgment is the
6 person whose true signature is on the instrument.

7 2. Identity of person making verification. In
8 taking a verification upon oath or affirmation, the
9 notarial officer must determine, either from personal
10 knowledge or from satisfactory evidence, that the
11 person appearing before the officer and making the
12 verification is the person whose true signature is on
13 the statement verified.

14 3. Witnessing signature identity of person. In
15 witnessing or attesting a signature, the notarial of-
16 ficer must determine, either from personal knowledge
17 or from satisfactory evidence, that the signature is
18 that of the person appearing before the officer and
19 named therein.

20 4. Certifying copy. In certifying or attesting
21 a copy of a document or other item, the notarial of-
22 ficer must determine that the proffered copy is a
23 full, true and accurate transcription or reproduction
24 of that which was copied.

25 5. Protests of negotiable instruments. In mak-
26 ing or noting a protest of a negotiable instrument,
27 the notarial officer must determine the matters set
28 forth in the Uniform Commercial Code, Title 11, Sec-
29 tion 3-509.

30 6. Evidence of person's identity. A notarial
31 officer has satisfactory evidence that a person is
32 the person whose true signature is on a document if
33 that person:

34 A. Is personally known to the notarial officer;

35 B. Is identified upon the oath or affirmation of
36 a credible witness personally known to the notar-
37 ial officer; or

38 C. Is identified on the basis of identification
39 documents.

1 §1024. Notarial acts in this State

2 1. Who may perform a notarial act. A notarial
3 act may be performed within this State by the follow-
4 ing persons:

5 A. A notary public of this State;

6 B. A judge, clerk or deputy clerk of any court
7 of this State;

8 C. A person licensed to practice law in this
9 State; or

10 D. Any other person authorized to perform the
11 specific act by the law of this State.

12 2. Notarial acts performed under federal author-
13 ity. Notarial acts performed within this State under
14 federal authority, as provided in section 1025, have
15 the same effect as if performed by a notarial officer
16 of this State.

17 3. Signature; title as prima facie evidence of
18 authenticity. The signature and title of a person
19 performing a notarial act are prima facie evidence
20 that the signature is genuine and that the person
21 holds the designated title.

22 §1025. Notarial acts in other jurisdictions of the
23 United States

24 1. Persons performing act in another jurisdic-
25 tion. A notarial act has the same effect under the
26 law of this State as if performed by a notarial offi-
27 cer of this State, if performed in another state,
28 commonwealth, territory, district or possession of
29 the United States by any of the following persons:

30 A. A notary public of that jurisdiction;

31 B. A judge, clerk or deputy clerk of a court of
32 that jurisdiction; or

33 C. Any other person authorized by the law of
34 that jurisdiction to perform notarial acts.

1 2. Act performed under federal authority.
2 Notarial acts performed in other jurisdictions
3 of the United States under federal authority, as pro-
4 vided in section 1025, have the same effect as if
5 performed by a notarial officer of this State.

6 3. Signature and title as prima facie evidence
7 of authenticity. The signature and title of a person
8 performing a notarial act are prima facie evidence
9 that the signature is genuine and that the person
10 holds the designated title.

11 4. Signature and title of certain persons as
12 conclusive proof of authority. The signature and in-
13 dicated title of an officer listed in subsection 1,
14 paragraph A or subsection 1, paragraph B, conclusively
15 establish the authority of a holder of that title
16 to perform a notarial act.

17 §1026. Notarial acts under federal authority

18 1. Person performing act. A notarial act has
19 the same effect under the law of this State as if
20 performed by a notarial officer of this State if per-
21 formed anywhere by any of the following persons under
22 authority granted by the law of the United States:

23 A. A judge, clerk or deputy clerk of a court;

24 B. A commissioned officer on active duty in the
25 military service of the United States;

26 C. An officer of the foreign service or consular
27 officer of the United States; or

28 D. Any other person authorized by federal law to
29 perform notarial acts.

30 2. Signature and title as prima facie evidence
31 of authenticity. The signature and title of a person
32 performing a notarial act are prima facie evidence
33 that the signature is genuine and that the person
34 holds the designated title.

35 3. Signature and title of certain persons as
36 conclusive proof of authority. The signature and in-
37 dicated title of an officer listed in subsection 1,

1 paragraph A, subsection 1, paragraph B or subsection
2 1, paragraph C, conclusively establish the authority
3 of a holder of that title to perform a notarial act.

4 §1027. Foreign notarial acts

5 1. Persons performing act. A notarial act has
6 the same effect under the law of this State as if
7 performed by a notarial officer of this State if per-
8 formed within the jurisdiction of and under authority
9 of a foreign nation or its constituent units or a
10 multi-national or international organization by any
11 of the following persons:

12 A. A notary public or notary;

13 B. A judge, clerk or deputy clerk of a court of
14 record; or

15 C. Any other person authorized by the law of
16 that jurisdiction to perform notarial acts.

17 2. Apostille. An "Apostille" in the form pre-
18 scribed by the Hague Convention of October 5, 1961,
19 conclusively establishes that the signature of the
20 notarial officer is genuine and that the officer
21 holds the indicated office.

22 3. Certificate by a foreign service or consular
23 officer of the United States. A certificate by a
24 foreign service or consular officer of the United
25 States stationed in the nation under the jurisdiction
26 of which the notarial act was performed, or a certif-
27 icate by a foreign service or consular officer of
28 that nation stationed in the United States, conclu-
29 sively establishes any matter relating to the authen-
30 ticity or validity of the notarial act set forth in
31 the certificate.

32 4. Official stamp or seal; prima facie evi-
33 dence. An official stamp or seal of the person per-
34 forming the notarial act is prima facie evidence that
35 the signature is genuine and that the person holds
36 the indicated title.

37 5. Official stamp or seal of certain officers;
38 prima facie evidence. An official stamp or seal of

1 an officer listed in subsection 1, paragraph A or
2 subsection 1, paragraph B, is prima facie evidence
3 that a person with the indicated title has authority
4 to perform notarial acts.

5 6. Offices appearing in digests or common
6 list. If the title of office and indication of au-
7 thority to perform notarial acts appears either in a
8 digest of foreign law or in a list customarily used
9 as a source for that information, the authority of an
10 officer with that title to perform notarial acts is
11 conclusively established.

12 §1028. Certificate of notarial acts

13 1. Certificate. A notarial act must be evi-
14 denced by a certificate signed and dated by a notari-
15 al officer. The certificate must include identifica-
16 tion of the jurisdiction in which the notarial act is
17 performed and the title of the office of the notarial
18 officer and may include the official stamp or seal of
19 office. If the officer is a commissioned officer on
20 active duty in the military service of the United
21 States, it must also include the officer's rank.

22 2. Sufficiency. A certificate of a notarial act
23 is sufficient if it meets the requirements of subsec-
24 tion 1 and it:

25 A. Is in the short form set forth in section
26 1028;

27 B. Is in a form otherwise prescribed by the law
28 of this State;

29 C. Is in a form prescribed by the laws or regu-
30 lations applicable in the place in which the no-
31 tarial act was performed; or

32 D. Sets forth the actions of the notarial offi-
33 cer and those are sufficient to meet the require-
34 ments of the designated notarial act.

35 3. Certificate of determination. By executing a
36 certificate of a notarial act, the notarial officer
37 certifies that the officer has made the determina-
38 tions required by section 1022.

1 §1029. Short forms

2 The following short form certificates of notarial
3 acts are sufficient for the purposes indicated, if
4 completed with the information required by section
5 1027, subsection 1.

6 1. Acknowledgment in an individual capaci-
7 ty. For an acknowledgment in an individual capacity:

8 State of _____

9 This instrument was acknowledged before me on
10 (date) _____ by (name(s) of person(s))
11 _____

12
13 (Signature of notarial officer)

14 (Seal, if any)

15 (Title (and Rank))

16 2. Acknowledgment in a representative capacity:

17 State of _____

18 This instrument was acknowleged before me
19 on(date) _____ by (name(s) of person(s))
20 _____ as (type of authority, e.g., officer,
21 trustee, etc.) _____ of (name of party on be-
22 half of whom instrument was executed.)

23
24 (Signature of notarial officer)

25 (Seal , if any)

26 (Title (and Rank))

27 3. Verification upon oath or affirmation. For a
28 verification upon oath or affirmation:

29 State of _____

30 Signed and sworn to (or affirmed) before me on
31 (date) _____ by (name(s) of person(s) making
32 statement)

1
2 (Signature of notarial officer)
3 (Seal, if any) (Title (and Rank))
4
5 4. Witnessing or attesting a signature:
6 State of _____
7 Signed or attested before me on (date) _____
8 by (name(s) of person(s)). _____
9
10 (Signature of notarial officer)
11 (Seal, if any) (Title (and Rank))
12
13 5. For attestation of a copy of a document. For
14 attestation of a copy of a document: _____
15 State of _____
16 I certify that this is a true and correct copy of
17 a document in the possession of _____
18 Dated _____
19
20 (Signature of notarial officer)
21 (Seal, if any) (Title (and Rank))
22
23 §1030. Notarial acts affected by this chapter
24 This chapter applies to notarial acts performed
25 on or after its effective date.
26 §1031. Uniformity of application and construction
27 This chapter shall be applied and construed to
28 effectuate its general purpose to make uniform the
29 law with respect to the subject of this chapter among
30 states enacting it.

1 STATEMENT OF FACT

2 This bill repeals the Uniform Recognition of Ac-
3 knowledgments Act which was adopted in 1969 and has
4 remained basically unchanged. The National Confer-
5 ence of Commissioners on Uniform State Laws has rec-
6 ommended replacing the Uniform Recognition of
7 Acknowledgments Act with the Uniform Law on Notarial
8 Acts which this bill embodies.

9 This bill more clearly outlines the duties of a
10 notary or "notarial officer." It specifies who may
11 perform notarial acts in Maine and in other jurisdic-
12 tions. It also recognizes the use of the "Apostille"
13 which has been adopted for use by the United States.

14 This bill specifies various "short forms" for no-
15 tarial certificates. These sample forms include one
16 for taking an oath, which was not included in the
17 original legislation.

18 The proposed uniform act has been modified to ex-
19 clude the need for a notary to indicate the date of
20 expiration of his or her commission. The requirement
21 to list the county on a certificate has also been
22 eliminated. Neither of these items serve a useful
23 purpose in the administration of Maine's notary laws.

24 1406020985