

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 1835

S.P. 653

April 5, 2007

An Act To Amend the Laws Relating to Notaries Public

Submitted by the Secretary of State pursuant to Joint Rule 204.
Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator HOBBS of York.
Cosponsored by Representative SIMPSON of Auburn and Senators: MILLS of Somerset,
PLOWMAN of Penobscot, Representatives: ADAMS of Portland, DILL of Cape Elizabeth,
JOY of Crystal, MILLS of Farmington, PATRICK of Rumford, PINGREE of North Haven.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA §82**, as amended by PL 1997, c. 712, §3, is repealed and the
3 following enacted in its place:

4 **§82. Appointment of notaries public; term of appointment; additional requirements**
5 **for resident of adjoining state; term renewal of commissions**

6 **1. Appointment and renewal.** The Secretary of State may appoint and renew a
7 commission of a notary public who:

8 A. Is 18 years of age or older at the time of appointment;

9 B. Is a resident of this State at the time of appointment or is a resident of an adjacent
10 state, is regularly employed or carries on a trade or business in this State at the time
11 of appointment and submits an affidavit as described in subsection 2;

12 C. Demonstrates proficiency in the English language at the time of appointment;

13 D. Has not had a notary commission revoked or suspended for official misconduct in
14 this State or any other jurisdiction during the 5-year period preceding the date of
15 application;

16 E. Has not been convicted of a crime punishable by imprisonment for one year or
17 more, or of a lesser offense incompatible with the duties of a notary public as defined
18 by rule by the Secretary of State during the 10-year period preceding the date of
19 application for a new or renewed commission; and

20 F. Has satisfactorily completed a written examination prescribed by the Secretary of
21 State to determine the fitness of the person to exercise the functions of the office of
22 notary public.

23 **2. Affidavit.** An applicant for appointment as a notary public who resides in an
24 adjoining state must submit to the Secretary of State with the application an affidavit as
25 follows:

26 A. If the applicant is not self-employed, an affidavit from the applicant's employer
27 stating that:

28 (1) The employer is licensed, authorized or registered to do business in this
29 State; and

30 (2) The employer regularly employs the applicant at an office, business or
31 facility that is located in this State; or

32 B. If the applicant is self-employed, an affidavit from the applicant stating that:

33 (1) The applicant is licensed, authorized or registered to do business in this State;
34 and

35 (2) The applicant has an office, business or facility that is located in this State.

36 The affidavit required by this subsection must be in a form and format as defined by rule
37 by the Secretary of State.

1 **3. Written examination.** The Secretary of State shall:

2 A. Make the written examination required by subsection 1 a part of the application
3 for a new commission or the renewal of a commission; and

4 B. Furnish study materials relating to the written examination to an applicant without
5 charge upon request of the applicant.

6 **4. Term.** A person appointed as a notary public serves the following term of office:

7 A. For a resident of this State, a term of 7 years; or

8 B. For a resident of an adjacent state, a term of 4 years.

9 **5. Power extends to all counties.** A person appointed as a notary public may
10 exercise that person's power and duties in any and all counties in this State.

11 **6. Rules.** The Secretary of State shall adopt rules relating to the appointment and
12 renewal of commissions of notaries public. The rules must include criteria and a
13 procedure to be applied by the Secretary of State in appointment and renewal. The
14 Secretary of State may not refuse to appoint or renew solely because the applicant lives or
15 works in a specific geographic area or because of political party affiliation. Rules
16 adopted pursuant to this subsection are routine technical rules as defined in chapter 375,
17 subchapter 2-A.

18 **7. Notice of expiration of commission.** The Secretary of State shall provide notice
19 of the expiration of a commission to a notary public 30 days prior to the expiration date.
20 The notice must be in a form or format as determined by rule by the Secretary of State.
21 Failure to receive a notice does not affect the expiration date of a commission.

22 **8. Investigation of complaints.** The Secretary of State shall investigate or cause to
23 be investigated all complaints concerning improper or illegal notarial acts performed by
24 notaries public made on the Secretary of State's own motion or on written complaint filed
25 with the Secretary of State.

26 **Sec. 2. 5 MRSA §82-B** is enacted to read:

27 **§82-B. Notary Public Review Board**

28 **1. Board created.** The Notary Public Review Board, as established by Title 5,
29 section 12004-G, subsection 31-C and referred to in this section as "the board," is created
30 to review violations of law by notaries public and complaints concerning notaries public
31 made pursuant to section 82, subsection 8.

32 **2. Membership.** The board consists of 5 members as follows:

33 A. Two members selected from a list of members provided by the board of directors
34 of a statewide group dedicated to the education of notaries in this State appointed by
35 the Governor;

36 B. One member who has been a notary public for less than 7 years, appointed by the
37 Governor;

1 C. One member who has been a notary public for more than 7 years, appointed by
2 the Governor; and

3 D. One member who has knowledge of notarial law and practices who is employed
4 by the Secretary of State, appointed by the Secretary of State.

5 **3. Chair.** The member of the board appointed by the Secretary of State is the chair
6 of the board. The chair shall:

7 A. Act as the presiding officer in all matters that come before the board;

8 B. Make preliminary rulings on discovery and other questions;

9 C. Participate fully in board deliberations; and

10 D. Vote on the merits of complaints that come before the board.

11 **4. Terms.** Except for the member appointed by the Secretary of State, members of
12 the board serve 3-year terms. The member appointed by the Secretary of State serves at
13 the pleasure of the Secretary of State.

14 **5. Vacancy.** Any vacancy on the board must be filled pursuant to subsection 2.

15 **6. Reimbursement for expenses.** Members of the board may be reimbursed by the
16 Secretary of State for reasonable and necessary expenses incurred in carrying out their
17 duties.

18 **7. Review of complaints.** The board shall review complaints against notaries public
19 pursuant to section 82, subsection 8. The board may hold a hearing as part of its review
20 to determine whether grounds exist for denial of commission, suspension of commission,
21 revocation of commission or renewal of commission or other action necessary to the
22 fulfillment of the Secretary of State's responsibility under the laws of this State. The
23 board may recommend to the Secretary of State that a notary public's commission be
24 denied, suspended, revoked or not renewed or any other action that the board determines
25 to be appropriate.

26 **8. Rules.** The board has the power reasonably necessary to perform the duties
27 required of the Secretary of State by this section, including the power to make rules not
28 inconsistent with this section. Rules adopted pursuant to this subsection are routine
29 technical rules as defined in chapter 375, subchapter 2-A.

30 **Sec. 3. 5 MRSA §12004-G, sub-§31-C** is enacted to read:

31 **31-C.**

32 <u>Secretary of</u>	<u>Notary Public</u>	<u>Expenses Only</u>	<u>5 MRSA §82-B</u>
33 <u>State</u>	<u>Review Board</u>		

34 **Sec. 4. Initial appointments to Notary Public Review Board; staggered**
35 **terms.** Notwithstanding the Maine Revised Statutes, Title 5, section 82-B, subsection 4,

1 for the initial appointments made by the Governor to the Notary Public Review Board,
2 the Governor shall appoint 2 members for 3-year terms, one member for a 2-year term
3 and one member for a 1-year term.

4

SUMMARY

5 This bill repeals and replaces the current law governing the appointment and renewal
6 of commissions of notaries public. It includes a comprehensive process and criteria to
7 evaluate a candidate for the office of notary public. It establishes a process for a resident
8 of an adjoining state to be considered for the office of notary public.

9 The bill creates a review board to review a violation of notary law or a complaint
10 concerning a notary public and provides a mechanism to deal with a violation or
11 complaint.