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State of Minnesota

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HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. **910**

February 16, 2009

Authored by Hortman, Newton and Lanning

The bill was read for the first time and referred to the Committee on State and Local Government Operations Reform,
Technology and Elections

February 18, 2010

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Civil Justice

March 22, 2010

Committee Recommendation and Adoption of Report:

To Pass as Amended

Read Second Time

1.1 A bill for an act
1.2 relating to notaries public; modifying fees; regulating commissions and notarial
1.3 stamps and seals; providing clarifications; providing for the accommodations
1.4 of physical limitations; amending Minnesota Statutes 2008, sections 358.028;
1.5 358.09; 358.15; 358.47; 358.48; 359.01, subdivision 2; 359.02; 359.03,
1.6 subdivisions 1, 2, 3, 4; 359.061; 359.12; Minnesota Statutes 2009 Supplement,
1.7 sections 357.021, subdivision 2; 359.01, subdivision 3; proposing coding for new
1.8 law in Minnesota Statutes, chapter 359; repealing Minnesota Statutes 2008,
1.9 section 359.05.

1.10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.11 Section 1. Minnesota Statutes 2009 Supplement, section 357.021, subdivision 2,
1.12 is amended to read:

1.13 Subd. 2. **Fee amounts.** The fees to be charged and collected by the court
1.14 administrator shall be as follows:

1.15 (1) In every civil action or proceeding in said court, including any case arising
1.16 under the tax laws of the state that could be transferred or appealed to the Tax Court, the
1.17 plaintiff, petitioner, or other moving party shall pay, when the first paper is filed for that
1.18 party in said action, a fee of \$310, except in marriage dissolution actions the fee is \$340.

1.19 The defendant or other adverse or intervening party, or any one or more of several
1.20 defendants or other adverse or intervening parties appearing separately from the others,
1.21 shall pay, when the first paper is filed for that party in said action, a fee of \$310, except in
1.22 marriage dissolution actions the fee is \$340.

1.23 The party requesting a trial by jury shall pay \$100.

1.24 The fees above stated shall be the full trial fee chargeable to said parties irrespective
1.25 of whether trial be to the court alone, to the court and jury, or disposed of without trial,
1.26 and shall include the entry of judgment in the action, but does not include copies or

2.1 certified copies of any papers so filed or proceedings under chapter 103E, except the
2.2 provisions therein as to appeals.

2.3 (2) Certified copy of any instrument from a civil or criminal proceeding, \$14, and \$8
2.4 for an uncertified copy.

2.5 (3) Issuing a subpoena, \$16 for each name.

2.6 (4) Filing a motion or response to a motion in civil, family, excluding child support,
2.7 and guardianship cases, \$100.

2.8 (5) Issuing an execution and filing the return thereof; issuing a writ of attachment,
2.9 injunction, habeas corpus, mandamus, quo warranto, certiorari, or other writs not
2.10 specifically mentioned, \$55.

2.11 (6) Issuing a transcript of judgment, or for filing and docketing a transcript of
2.12 judgment from another court, \$40.

2.13 (7) Filing and entering a satisfaction of judgment, partial satisfaction, or assignment
2.14 of judgment, \$5.

2.15 (8) Certificate as to existence or nonexistence of judgments docketed, \$5 for each
2.16 name certified to.

2.17 (9) Filing and indexing trade name; or recording basic science certificate;
2.18 or recording certificate of physicians, osteopaths, chiropractors, veterinarians, or
2.19 optometrists, \$5.

2.20 (10) For the filing of each partial, final, or annual account in all trusteeships, \$55.

2.21 (11) For the deposit of a will, \$27.

2.22 (12) For recording notary commission, ~~\$100, of which, notwithstanding subdivision~~
2.23 ~~1a, paragraph (b), \$80 must be forwarded to the commissioner of management and budget~~
2.24 ~~to be deposited in the state treasury and credited to the general fund \$20.~~

2.25 (13) Filing a motion or response to a motion for modification of child support,
2.26 a fee of \$100.

2.27 (14) All other services required by law for which no fee is provided, such fee
2.28 as compares favorably with those herein provided, or such as may be fixed by rule or
2.29 order of the court.

2.30 (15) In addition to any other filing fees under this chapter, a surcharge in the
2.31 amount of \$75 must be assessed in accordance with section 259.52, subdivision 14, for
2.32 each adoption petition filed in district court to fund the fathers' adoption registry under
2.33 section 259.52.

2.34 The fees in clauses (3) and (5) need not be paid by a public authority or the party
2.35 the public authority represents.

3.1 Sec. 2. Minnesota Statutes 2008, section 358.028, is amended to read:

3.2 **358.028 LEGISLATORS, OFFICIAL SEALS.**

3.3 Every member of the legislature, while in office and residing in the district from
3.4 which elected, may have an official ~~seal~~ notarial stamp, in the form provided in section
3.5 358.03, with which to authenticate official acts provided for in section 358.15.

3.6 Sec. 3. Minnesota Statutes 2008, section 358.09, is amended to read:

3.7 **358.09 BY WHOM AND HOW ADMINISTERED.**

3.8 Any officer authorized by this chapter to take and certify acknowledgments may
3.9 administer an oath, and, if the same be in writing, may certify the same under the officer's
3.10 signature, and ~~the seal of office, if there be one~~ an official notarial stamp, in the following
3.11 form: "Subscribed and sworn to before me this day of," The mode
3.12 of administering an oath commonly practiced in the place where it is taken shall be
3.13 followed, including, in this state, the ceremony of uplifting the hand.

3.14 Sec. 4. Minnesota Statutes 2008, section 358.15, is amended to read:

3.15 **358.15 EX OFFICIO NOTARY PUBLIC.**

3.16 (a) The following officers have the powers of a notary public within the state:

3.17 (1) every member of the legislature, while still a resident in the district from which
3.18 elected; but no fee or compensation may be received for exercising these powers. The
3.19 form of the official signature in these cases is: "A.B., Representative (or Senator),
3.20 District, Minnesota, ex officio notary public. My term expires
3.21 January 1,"

3.22 (2) the clerks or recorders of towns, and cities. The form of the official signature in
3.23 these cases is: "A.B. (official title), County, Minnesota, ex officio notary public. My
3.24 term expires (or where applicable) my term is indeterminate."

3.25 (3) court commissioners, county recorders, and county auditors, and their several
3.26 deputies, and county commissioners, all within their respective counties. The form of the
3.27 official signature in these cases: "A.B. (official title), County, Minnesota, ex officio
3.28 notary public. My term expires (or where applicable) my term is indeterminate."; and

3.29 (4) peace officers licensed under section 626.845 for the purpose of administering
3.30 oaths upon information submitted to establish probable cause to any judge or judicial
3.31 officer under the Rules of Criminal Procedure. The form of the official signature in these
3.32 cases is "A.B., Peace Officer License Number, County, Minnesota. My license
3.33 expires June 30,"

4.1 (b) An officer using the powers of a notary public within the state pursuant to clauses
4.2 (1) to (3) shall obtain an official stamp as specified under section 359.03, subdivisions 1,
4.3 3, and 4, with which to authenticate official acts.

4.4 (c) The county auditor and county recorder, and their deputies, and the clerk or
4.5 recorder of a town or city with ex officio powers under this section may authenticate
4.6 official acts related to the statutory duties of their respective offices without using the
4.7 official stamp for 90 days after initially assuming the office, or until the officer acquires an
4.8 official stamp, whichever is earlier.

4.9 **EFFECTIVE DATE; APPLICABILITY.** This section is effective August 1, 2010,
4.10 except that an officer with ex officio powers subject to paragraph (c) may authenticate
4.11 official acts related to the officer's statutory duties without using the official stamp for up
4.12 to 90 days after the effective date of this section, or until the officer acquires an official
4.13 stamp, whichever is earlier.

4.14 Sec. 5. Minnesota Statutes 2008, section 358.47, is amended to read:

4.15 **358.47 CERTIFICATE OF NOTARIAL ACTS.**

4.16 (a) A notarial act must be evidenced by a certificate physically or electronically
4.17 signed and dated by a notarial officer in a manner that attributes such signature to the
4.18 notary public ~~identified on the commission.~~ The notary's name as it appears on the
4.19 official notarial stamp and on any jurat or certificate of acknowledgment and in the
4.20 notary's commission must be identical. The certificate must include identification of the
4.21 jurisdiction in which the notarial act is performed and the title of the office of the notarial
4.22 officer and ~~may must~~ include the official notarial stamp or seal of office affixed in black
4.23 ink, or the notary's electronic seal pursuant to section 359.03. ~~If the officer is a notary~~
4.24 public, the certificate must also indicate the date of expiration, if any, of the commission
4.25 of office, but omission of that information may subsequently be corrected. If the officer
4.26 is a commissioned officer on active duty in the military service of the United States, it
4.27 must also include the officer's rank.

4.28 (b) A certificate of a notarial act is sufficient if it is in English and meets the
4.29 requirements of subsection (a) and it:

4.30 (1) is in the short form set forth in section 358.48;

4.31 (2) is in a form otherwise prescribed by the law of this state;

4.32 (3) is in a form prescribed by the laws or regulations applicable in the place in
4.33 which the notarial act was performed; or

5.1 (4) sets forth the actions of the notarial officer and those are sufficient to meet the
5.2 requirements of the designated notarial act.

5.3 (c) By executing a certificate of a notarial act, the notarial officer certifies that the
5.4 officer has made the determinations required by section 358.42.

5.5 Sec. 6. Minnesota Statutes 2008, section 358.48, is amended to read:

5.6 **358.48 SHORT FORMS.**

5.7 The following short form certificates of notarial acts are sufficient for the purposes
5.8 indicated, if completed with the information required by section 358.47, subsection (a):

5.9 (1) For an acknowledgment in an individual capacity;

5.10 State of

5.11 County of

5.12 This instrument was acknowledged before me on(date) by

5.13(name(s) of person(s)).

5.14

5.15 (Signature of notarial officer)

5.16 (~~Seal, if any~~ Stamp)

5.17

5.18 Title (and Rank)

5.19 My commission expires:

5.20 (2) For an acknowledgment in a representative capacity:

5.21 State of

5.22 County of

5.23 This instrument was acknowledged before me on(date) by

5.24(name(s) of person(s)) as(type of authority, e.g.,

5.25 officer, trustee, etc.) of(name of party on behalf of whom

5.26 the instrument was executed).

5.27

5.28 (Signature of notarial officer)

5.29 (~~Seal, if any~~ Stamp)

5.30

5.31 Title (and Rank)

5.32 My commission expires:

5.33 (3) For a verification upon oath or affirmation:

5.34 State of

5.35 County of

6.1 Signed and sworn to (or affirmed) before me on(date) by(name(s))
6.2 of person(s) making statement).

6.3
6.4 (Signature of notarial officer)

6.5 (~~Seal, if any~~ Stamp)

6.6
6.7 Title (and Rank)

6.8 My commission expires:

6.9 (4) For witnessing or attesting a signature:

6.10 State of

6.11 County of

6.12 Signed or attested before me on(date) by(name(s) of person(s)).

6.13
6.14 (Signature of notarial officer)

6.15 (~~Seal, if any~~ Stamp)

6.16
6.17 Title (and Rank)

6.18 My commission expires:

6.19 (5) For attestation of a copy of a document:

6.20 State of

6.21 County of

6.22 I certify that this is a true and correct copy of a document in the possession of

6.23

6.24 Dated:

6.25
6.26 (Signature of notarial officer)

6.27 (~~Seal, if any~~ Stamp)

6.28
6.29 Title (and Rank)

6.30 My commission expires:

6.31 Sec. 7. Minnesota Statutes 2008, section 359.01, subdivision 2, is amended to read:

6.32 Subd. 2. **Nonresident notaries.** (a) The governor, by and with the advice and
6.33 consent of the senate, may appoint as notary public a person who is not a resident of
6.34 this state if:

6.35 (1) the person is a resident of Wisconsin, Iowa, North Dakota, or South Dakota, ~~and~~
6.36 ~~of a county that shares a boundary with this state;~~

7.1 (2) the person designates the secretary of state as agent for the service of process
7.2 for all purposes relating to notarial acts and for receipt of all correspondence relating to
7.3 notarial acts; and

7.4 (3) the person designates the Minnesota county in which the person's notary
7.5 commission will be recorded pursuant to section 359.061.

7.6 (b) The secretary of state shall receive applications for nonresident notary
7.7 appointments and commissions, shall keep a register of those persons appointed and
7.8 commissioned as notaries public by the governor with the advice and consent of the
7.9 senate, shall update that register when informed of a change in name and address by
7.10 a notary public, shall process applications by a notary public for reappointment, shall
7.11 receive fees for the performance of these functions to be deposited into the general fund,
7.12 and shall perform those clerical and administrative duties associated with these functions.
7.13 The governor may also receive such applications directly.

7.14 Sec. 8. Minnesota Statutes 2009 Supplement, section 359.01, subdivision 3, is
7.15 amended to read:

7.16 Subd. 3. **Fees.** (a) When making application for a commission the applicant must
7.17 submit, along with the information required by the secretary of state, a nonrefundable fee
7.18 of ~~\$40~~ \$120, which shall be forwarded by the secretary of state to the commissioner of
7.19 management and budget to be deposited in the state treasury and credited to the general
7.20 fund.

7.21 (b) Except as otherwise provided in paragraph (a), all fees shall be retained by the
7.22 secretary of state and are nonreturnable, except for an overpayment of a fee.

7.23 Sec. 9. Minnesota Statutes 2008, section 359.02, is amended to read:

7.24 **359.02 TERM.**

7.25 A notary commissioned under section 359.01 holds office ~~for five years~~ until January
7.26 31 of the fifth year following the year the commission was issued, unless sooner removed
7.27 by the governor or the district court, or by action of the commissioner of commerce.
7.28 ~~Within 60 days~~ Six months before the expiration of the commission, a notary may ~~apply~~
7.29 ~~for reappointment~~ renew the notary's commission for a new term to commence and to be
7.30 designated in the new commission as beginning upon the day immediately following the
7.31 date of the expiration. A notary whose commission expires ~~on January 1, 2005,~~ may
7.32 apply for reappointment ~~six months before~~ after the expiration date. The reappointment
7.33 or renewal takes effect and is valid although the appointing governor may not be in the
7.34 Office of Governor on the effective day.

8.1 ~~All notary commissions expire on January 31 of the fifth year following the year~~
8.2 ~~of issue.~~

8.3 Sec. 10. Minnesota Statutes 2008, section 359.03, subdivision 1, is amended to read:

8.4 Subdivision 1. **Requirement.** Every notary, including an ex officio notary under
8.5 section 358.15, shall get obtain an official seal notarial stamp as specified in subdivision 3,
8.6 with which to authenticate official acts, and upon which shall be engraved the arms of
8.7 this state, the words "notarial seal." The seal, with official notarial stamp, and the notary's
8.8 official register, is journal, are the personal property of the notary and are exempt from
8.9 execution, and, on death or removal from office, the register must be deposited with the
8.10 court administrator of the district court of the notary's county.

8.11 Sec. 11. Minnesota Statutes 2008, section 359.03, subdivision 2, is amended to read:

8.12 Subd. 2. **Validation and legalization of certain instruments.** (a) All instruments
8.13 heretofore duly made and executed which have been acknowledged before a notary
8.14 public as provided by law, but the seal or stamp used thereon has engraved on it "notary
8.15 public," are hereby validated and legalized, and in case such instruments are recorded,
8.16 the recording is hereby validated and legalized, and all such instruments are validated to
8.17 the same extent as though properly sealed at the time of their acknowledgment. This
8.18 subdivision shall not affect any action now pending in any of the courts of this state.

8.19 (b) The official notarial stamp required by this section, whether applied to the record
8.20 physically or electronically, is deemed to be a "seal" for purposes of the admission of a
8.21 document in court.

8.22 Sec. 12. Minnesota Statutes 2008, section 359.03, subdivision 3, is amended to read:

8.23 Subd. 3. **Specifications.** ~~The seal of every notary public may be affixed by a~~
8.24 ~~stamp that will print a seal which legibly reproduces under photographic methods~~ The
8.25 official notarial stamp consists of the seal of the state of Minnesota, the name of the
8.26 notary as it appears on the commission or the name of the ex officio notary, the words
8.27 "Notary Public," or "Notarial Officer" in the case of an ex officio notary, and the words
8.28 "My commission expires (or where applicable) My term is indeterminate," with
8.29 the expiration date shown thereon or may be an electronic form on it and must be able to
8.30 be reproduced in any legibly reproducible manner. A physical seal used to authenticate a
8.31 paper document The official notarial stamp shall be a rectangular form of not more than
8.32 three-fourths of an inch vertically by 2-1/2 inches horizontally, with a serrated or milled
8.33 edge border, and shall contain the information required by this subdivision.

9.1 Sec. 13. Minnesota Statutes 2008, section 359.03, subdivision 4, is amended to read:

9.2 Subd. 4. ~~Electronic seal~~ **Notarial stamp may be affixed electronically.** ~~A notary's~~
9.3 ~~electronic seal shall contain the notary's name, jurisdiction, and commission expiration~~
9.4 ~~date, and shall be logically and securely affixed to or associated with the electronic record~~
9.5 ~~being notarized.~~ The information required by this section may be affixed electronically
9.6 and shall be logically and securely affixed or associated with the electronic record being
9.7 notarized.

9.8 Sec. 14. Minnesota Statutes 2008, section 359.061, is amended to read:

9.9 **359.061 RECORD OF COMMISSION; CERTIFICATE.**

9.10 Subdivision 1. Resident notaries. The commission of every notary commissioned
9.11 under section 359.01, together with: (1) a signature that matches the first, middle, and
9.12 last name as listed on the notary's commission and shown on the notarial stamp, and (2) a
9.13 sample signature in the style in which the notary will actually execute notarial acts, shall
9.14 be recorded in the office of the court administrator of the district court of the notary's
9.15 county of residence or in the county department to which duties relating to notaries public
9.16 have been assigned under section 485.27, in a record kept for that purpose.

9.17 Subd. 2. Nonresident notaries. The commission of a nonresident notary must
9.18 be recorded in the Minnesota county the notary designates pursuant to section 359.01,
9.19 subdivision 2, clause (3), in the office of the court administrator of the district court of the
9.20 Minnesota county that borders the county in which the nonresident notary resides of that
9.21 county or in the county department to which duties relating to notaries public have been
9.22 assigned under section 485.27.

9.23 Subd. 3. Certificate of court administrator. The court administrator, when
9.24 requested, shall certify to official acts in the manner and for the fees prescribed by statute
9.25 or court rule.

9.26 Subd. 4. County notary certificate. The county department, to which duties
9.27 relating to notaries public have been assigned under section 485.27, shall certify to official
9.28 acts under this section for the fee of \$5 and in the form of:

9.29 State of Minnesota
9.30 County

9.31 "I the undersigned, in and for said county and state, do
9.32 hereby certify that, whose name is subscribed to on the attached
9.33 document held the office of notary public in said county and state at the date of said
9.34 subscription and was authorized under the laws of this state to take acknowledgments,
9.35 to administer oaths, take depositions, acknowledgments of deeds, and other written

10.1 instruments, and exercise all such powers and duties authorized by the laws of Minnesota
10.2 as notary public. I further certify that I have compared the subscribed signature to the
10.3 signature on file in this office and believe them to be the same.

10.4 Signed this date in the county of,
10.5 state of Minnesota."

10.6 Signature

10.7 Title

10.8 **Sec. 15. [359.091] ACCOMMODATION OF PHYSICAL LIMITATIONS.**

10.9 (a) A notary public may certify as to the subscription or signature of an individual
10.10 when it appears that the individual has a physical limitation that restricts the individual's
10.11 ability to sign by writing or making a mark, pursuant to the following:

10.12 (1) the name of an individual may be signed, or attached electronically in the case of
10.13 an electronic record, by another individual other than the notary public at the direction and
10.14 in the presence of the individual whose name is to be signed and in the presence of the
10.15 notary public. The signature may be made by a rubber stamp facsimile of the person's
10.16 actual signature, mark, or a signature of the person's name or mark made by another and
10.17 adopted for all purposes of signature by the person with a physical limitation; and

10.18 (2) the words "Signature written by" or "Signature attached by" in the case of
10.19 an electronic record, "(name of individual directed to sign or directed to attach) at the
10.20 direction and in the presence of (name as signed) on whose behalf the signature was
10.21 written" or "attached electronically" in the case of an electronic record, or words of
10.22 substantially similar effect must appear under or near the signature.

10.23 (b) A notary public may use signals or electronic or mechanical means to take an
10.24 acknowledgment from, administer an oath or affirmation to, or otherwise communicate
10.25 with any individual in the presence of such notary public when it appears that the
10.26 individual is unable to communicate verbally or in writing.

10.27 **Sec. 16. Minnesota Statutes 2008, section 359.12, is amended to read:**

10.28 **359.12 ADMINISTRATIVE ACTIONS AND PENALTIES.**

10.29 Every notary who shall charge or receive a fee or reward for any act or service
10.30 done or rendered as a notary greater than the amount allowed by law, or who dishonestly
10.31 or unfaithfully discharges duties as notary, or who has pleaded guilty, with or without
10.32 explicitly admitting guilt, plead nolo contendere, or been convicted of a felony, gross
10.33 misdemeanor, or misdemeanor involving moral turpitude, is subject to the penalties
10.34 imposed pursuant to section 45.027, ~~except that~~. A notary may be removed from office

11.1 only by the governor ~~or~~, the district court, or the commissioner of commerce. The
11.2 commissioner of commerce has all the powers provided by section 45.027 and shall
11.3 proceed in the manner provided by that section in actions against notaries.

11.4 Notwithstanding section 359.03, subdivision 1, upon removal from office by the
11.5 commissioner of commerce, a notary public shall deliver the notary's official notarial
11.6 stamp to the commissioner of commerce.

11.7 Sec. 17. **REPEALER.**

11.8 Minnesota Statutes 2008, section 359.05, is repealed.

359.05 DATE OF EXPIRATION OF COMMISSION AND NAME TO BE ENDORSED.

Every notary public, except in cases provided in section 359.03, subdivision 3, taking an acknowledgment of an instrument, taking a deposition, administering an oath, or making a notarial protest, shall, immediately following the notary's physical or electronic signature to the jurat or certificate of acknowledgment, endorse the date of the expiration of the commission; such endorsement may be legibly written, stamped, printed upon the instrument, but must be disconnected from the seal, and shall be substantially in the following form: "My commission expires," Except in cases provided in section 359.03, subdivision 3, every notary public, in addition to signing the jurat or certificate of acknowledgment, shall, immediately following the signature and immediately preceding the official description, endorse thereon the notary's name with a typewriter, print the same legibly with a stamp, with pen and ink, or affix by electronic means; provided that the failure so to endorse or print the name shall not invalidate any jurat or certificate of acknowledgment.