

CHAPTER 811

S.B. No. 681

An Act relating to powers, duties, and qualifications of and fees charged by notaries public and to regulation and commissioning of notaries public by the secretary of state and the use of seals; providing penalties; amending Articles 3945, 5954, and 5960; Sections 2, 4, and 10 of Article 5949; Subsections (a) and (e) of Section 5 of Article 5949; and Subsections (a), (b), and (d) of Section 6 of Article 5949, Revised Statutes, as amended, and Section 17.08, Business & Commerce Code.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Article 3945, Revised Statutes, as amended, is amended to read as follows:

“Article 3945. NOTARY PUBLIC. Notaries public may charge ~~shall receive~~ the following fees:

Protesting a bill or note for non-acceptance or non-payment, register and seal	\$3.00	
Each notice of protest50	
Protesting in all other cases, for each 100 words50	
Certificate and seal to such protest.....	3.00	[-50]
Taking the acknowledgement or proof of any deed or other instrument in writing, for registration, including certificate and seal: [.....		.50]
(1) for the first signature.....	3.00	
(2) for each additional signature.	1.00	
[Taking an acknowledgment of a married woman to any deed or other instrument of writing authorized to be executed by her, including certificate and seal.....		.50]
Administering an oath or affirmation with certificate and seal.....	3.00	[-50]
All certificates under seal not otherwise provided for.....	3.00	[-50]
Copies of all records and papers in their office, for each page [including certificate and seal, if less than 200 words].....	.50	

[If more than 200 words, for each 100 words in excess of 200 words; in addition to the fee of fifty cents25]
All notarial acts not provided for	3.00	[-.50]
Taking the depositions of witnesses, for each 100 words.....	.50	[-.15]
Swearing a witness to depositions, making certificate therefor with seal, and all other business connected with taking such deposition.....	3.00	[-.50]"

SECTION 2. Section 2, Article 5949, Revised Statutes, as amended, is amended to read as follows:

"2. To be eligible for appointment as a Notary Public, a person *must* [shall] be a resident [citizen] of the United States and of this state *who is* [and] at least eighteen (18) years of age. [Nothing herein shall invalidate any commission as Notary Public which has been issued and is outstanding at the time this Act becomes effective.]"

SECTION 3. Subsection (e), Section 5, Article 5949, Revised Statutes, as amended, is amended to read as follows:

"(e) The Secretary of State may, for good cause, reject any application, *or suspend* or revoke the commission of any Notary Public, but such action shall be taken subject to the right of notice, hearing and adjudication, and the right of appeal therefrom. Such appeal shall be made to the District Court of Travis County, Texas, but upon such appeal the Secretary of State shall have the burden of proof and such trial shall be conducted de novo."

SECTION 4. Section 4, Article 5949, Revised Statutes, as amended, is amended to read as follows:

"4. FEES. At the time of such qualification the applicant shall forward to the Secretary of State:

"(1) a fee [in the amount] of Four (\$4.00) Dollars for approving and filing the bond of such Notary Public; [; together with]

"(2) the fee allowed by law to the Secretary of State for issuing a commission to such Notary Public; and

"(3) a fee of Fifty (50¢) Cents to be appropriated to and used by the Secretary of State for the exclusive purposes of hiring an investigator and for preparing and distributing the materials required to be supplied under Section 5 of this article."

SECTION 5. Subsection (a), Section 5, Article 5949, Revised Statutes, as amended, is amended to read as follows:

"(a) Immediately after the qualification of any Notary Public, and the receipt of the fees due the Secretary of State, the Secretary of State shall cause a commission to be issued to such Notary Public, which commission shall be effective as of the date of qualification. *The Secretary of State, at the time the commission is issued, shall supply each Notary Public with materials that outline the powers, duties, and responsibilities of the office, a list of prohibited acts, and sample forms for an acknowledgment, a jurat, a verification, and the administering of an oath, protest, and deposition.* Nothing herein shall prevent any qualified Notary Public from performing the duties of his office from and after his qualification and before the receipt of his commission."

SECTION 6. Subsections (a), (b), and (d), Section 6, Article 5949, Revised Statutes, as amended, are amended to read as follows:

"(a) Any qualified Notary Public whose term is expiring may make an application for appointment in the [same] manner [as] provided in Subsection (b) [(a) of Section 3] of this Section [Article]. [The Secretary of State shall notify all Notaries Public whose terms are expiring at least ninety (90) days prior to expiration.]

"(b) *The Secretary of State shall send an application for reappointment, a notary bond, and an oath of office to each qualified Notary Public whose term is expiring at least ninety (90) days prior to expiration. Upon receiving the properly executed application for reappointment, notary bond, oath of office, and statutory fees, the Secretary of State shall issue a commission to the Notary Public for another term of office provided that the Notary Public has not been convicted of a felony or crime involving moral turpitude during the term of office. Any Notary Public who is not reappointed before the expiration date of the term the Notary Public is serving must make application for appointment in the same manner as provided in Subsection (a) of Section 3 of this Article. [Upon receiving notice of appointment made by the Secretary of State for another term of office, the applicant must qualify not later than the expiration date of the term for which he is serving, which qualifying shall become effective on the expiration date of his term and shall not be effective prior thereto. The appointment for another term of office of any person who fails to qualify on or before the expiration date of the term he is serving shall be void, and if the person later desires to qualify, his name must be resubmitted in the same manner as provided in Section 3 of this Article.]*"

"(d) If a Notary Public removes his residence from this state, his office is automatically vacated. [If a Notary Public who qualified before January 1, 1980, removes his residence or his principal place of business or employment to another county in this state, so that he maintains neither his residence nor his principal place of business or employment in the county in which he was appointed his office is automatically vacated, and if he desires to continue to act as a Notary Public, he must surrender his commission to the Secretary of State and make application for appointment in the same manner as for an initial appointment.]"

SECTION 7. Section 10, Article 5949, Revised Statutes, is amended to read as follows:

"10. The Secretary of State shall [may] make regulations necessary for the administration and enforcement of this title [Act] consistent with all of its provisions. The Secretary of State may employ an investigator to aid in the enforcement of this title. The Secretary of State may provide for appointment of County Clerks as deputy custodians for the limited authentication of Notary Public records deposited in the clerks' offices."

SECTION 8. Article 5954, Revised Statutes, as amended, is amended to read as follows:

"Article 5954. AUTHORITY OF NOTARY [; PRINTING OR STAMPING OF NAME UNDER SIGNATURE]. (a) A Notary [Notaries] Public has [shall have] the same authority to take acknowledgments or proofs of written instruments, protest instruments permitted by law to be protested, administer oaths, [and] take depositions, and certify copies of documents not recordable in the public records, as is now or may hereafter be conferred by law upon County Clerks. A Notary [; and provided that all Notaries] Public shall sign the name under which he is commissioned [print or stamp their names and the expiration dates of their commissions under their signatures] on all such written instruments [; protest instruments, oaths, or depositions; provided further that failure to so print or stamp their names and expiration dates of their commissions under their signatures shall not invalidate such acknowledgment]."

"(b) A Notary Public may not issue any type of identification card. A Notary Public who is not licensed to practice law in this state may not give legal advice or accept fees for legal advice."

"(c) A Notary Public may charge a fee only for an acknowledgment or an official act of a Notary Public as provided by Article 3945, Revised Statutes, and the fee charged may not exceed that fee provided by Article 3945, Revised Statutes."

SECTION 9. Article 5960, Revised Statutes, as amended, is amended to read as follows:

"Article 5960. SEAL. (a) Each notary public shall provide a seal of office that will clearly show, when embossed, stamped, or printed on a document, [whereon shall be engraved in the center a star of five points, and] the words, 'Notary Public, State of Texas,' around a star of five points, the notary public's name, and the date the notary public's commission expires. The notary public [the margin and he] shall authenticate all his official acts with the seal of office [therewith]."

"(b) The seal may be a circular form that is not more than two inches in diameter or may be a rectangular form that is not more than one inch in width and two and one-half inches in length, in either case with a serrated or milled edge border."

"(c) The seal shall be affixed by a seal press or stamp that will emboss or print a seal that legibly reproduces the required elements of the seal under photographic methods. A notary public must use an indelible ink pad for affixing by a stamp the impression of a seal on an instrument to authenticate the notary public's official act."

"(d) The use by a qualified notary public of a seal that contains the words 'Notary Public, State of Texas' or 'Notary Public' and the name of the county, but does not also contain the name of the notary public and the expiration date of his commission, does not invalidate an acknowledgment or a notary public's official act. If a seal is used that does not contain the notary public's name and the expiration date of his commission, the notary public shall print or stamp his name and the expiration date of his commission under his signature. The failure to print or stamp the name or expiration date does not invalidate an acknowledgment or a notary public's official act, but does subject a notary public to the possible suspension or revocation of his commission. [The use of a seal with the name of a county, when used by a qualified notary public, will not invalidate the acknowledgment.]"

SECTION 10. Section 17.08, Business & Commerce Code, is amended to read as follows:

"Section 17.08. PRIVATE USE [USING REPRESENTATION] OF GREAT SEAL OF TEXAS [IN ADVERTISING]. (a) In this section:

"(1) 'Commercial purpose' means a purpose that is intended to result in a profit or other tangible benefit but does not include an official use in a state function or the use of the Great Seal of Texas or a representation of the Great Seal of Texas for a political purpose by an elected official of this state;

"(2) 'Representation of the Great Seal of Texas' includes a nonexact representation that the secretary of state determines is deceptively similar to the Great Seal of Texas;

"(3) 'Official use' means the use of the Great Seal of Texas by an officer or employee of this state in performing a state function;

"(4) 'State function' means a state governmental activity authorized or required by law.

"(b) Except as otherwise provided by this section, a ~~no~~ person may not use a representation of the Great Seal of Texas:

"(1) to advertise or publicize tangible personal property or a commercial undertaking; or

"(2) for another [a] commercial purpose. ~~[(54th Legis., Ch. 350, Sec. 1, sen. 1-)]~~

"(c) A person may use a representation of the Great Seal of Texas for a commercial purpose if the person obtains a license from the secretary of state for that use. The secretary of state, under the authority vested in the secretary as custodian of the seal under Article IV, Section 19, of the Texas Constitution, shall issue a license to a person who applies for a license on a form provided by the secretary of state and who pays the fees required under this section if the secretary of state determines that the use is in the best interests of the state and not detrimental to the image of the state. A license issued under this section expires one year after the date of issuance and may be renewed.

"(d) The secretary of state shall adopt rules relating to the use of the Great Seal of Texas by a person licensed under this section. The secretary of state shall adopt the rules in the manner provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

"(e) The application fee for a license under this section is \$35. The license fee for an original or renewal license is \$250. In addition to those fees, each licensee shall pay an amount equal to three percent of the licensee's annual gross receipts related to the licensed use in excess of \$5,000 to the state as a royalty fee.

"(f) A person licensed under this section shall maintain records relating to the licensee's use of the Great Seal of Texas in the manner required by the rules of the secretary of state. The secretary of state may examine the records during reasonable business hours to determine the licensee's compliance with this section. Each licensee shall display the license in a conspicuous manner in the licensee's office or place of business.

"(g) The secretary of state may suspend or revoke a license issued under this section for failure to comply with this section or the rules adopted under this section. The secretary of state may bring a civil action to enjoin a violation of this section or the rules adopted under this section.

"(h) ~~[(b)]~~ A person who reproduces an official document bearing the Great Seal of Texas does not violate Subsection ~~(b)~~ ~~[(a)]~~ of this section if the document is:

"(1) reproduced in complete form; and

"(2) used for a purpose related to the purpose for which the document was issued by the state. ~~[(54th Legis., Ch. 350, Sec. 1, sen. 2-)]~~

"(i) ~~[(e)]~~ A person who violates a provision of Subsection ~~(b)~~ ~~[(a)]~~ of this section commits an offense. An offense under this section is a Class C [is guilty of a] misdemeanor [and upon conviction is punishable by a fine of not less than \$50 nor more than \$100]. ~~[(54th Legis., Ch. 350, Sec. 1, sen. 2 (part-))]~~

"(j) ~~[(d)]~~ A person who violates Subsection ~~(b)~~ ~~[(a)]~~ of this section commits a separate offense each day that the person [he] violates a provision of that subsection. ~~[(54th Legis., Ch. 350, Sec. 1, sen. 2 (part-))]~~

SECTION 11. (a) This Act takes effect September 1, 1985.

(b) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 12. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 10, 1985, by a viva-voce vote; Senate concurred in House amendment on May 25, 1985, by a viva-voce vote; passed the House, with amendment, on May 23, 1985, by a non-record vote.

Approved: June 15, 1985

Effective: September 1, 1985