



HOUSE OF REPRESENTATIVES
FOURTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE
ELEVENTH SPECIAL SESSION, 2004

PUBLIC LAW NO. 14-52
H. B. No. 14-135, SD1

AN ACT

To repeal and reenact 4 CMC §§ 3311-3326, the Notaries Public Act, and to amend the 4 CMC § 5105 of the Consumer Protection Act to add a new subsection (hh); and for other purposes.

**BE IT ENACTED BY THE FOURTEENTH NORTHERN MARIANAS COMMONWEALTH
LEGISLATURE:**

Section 1. Findings. The Notaries Public Act (the “Act”) was originally enacted during the Trust Territory period and it has not been revised since. As a result, many of the provisions are outdated with the current needs of the Commonwealth. For instance, the Act sets the fees notaries may charge for their services. These fees have never been increased and now are insufficient to cover the cost of performing notarial services and complying with the Act.

The changes will also provide greater protection to consumers. Currently, there exists inconsistency between the responsibilities of the Attorney General and the Commonwealth Superior Court and insufficient mechanisms to enforce the Act. For example, the notaries must file information regarding their activities with the Superior Court and not with the Attorney General, yet the Attorney General is charged with enforcing the Act. Under the revised Act, information will be filed with the Attorney General’s Office.

In addition, the Attorney General’s ability to enforce the Act without expending valuable resources from its criminal division has been limited and unclear. The changes will allow the Attorney General greater opportunity to enforce the Act through administrative hearings, which can only impose civil penalties, instead of having to bring criminal charges. These changes are likely to bring increased enforcement and greater protection to consumers.

Finally, the United States District Court for the Northern Mariana Islands has ruled that the current Section 3313(a) is unconstitutional and unenforceable. This section addresses the qualifications to be a notary. The changes to this section are made so that it conforms to the court's ruling and the requirements of the N.M.I. and United States Constitutions.

Section 2. Repealer and Reenactment. 4 CMC §§ 3311-3326 are hereby repealed and reenacted as follows:

“Notaries Public.

Article 1. General Provisions.

§ 3311. Appointment; Term; Removal; Reporting Change of Status.

§ 3312. Rules and Regulations.

§ 3313. Application; Qualifications; Oath.

§ 3314. Filing and Certification of Commission, Seal and Signature.

§ 3315. Official Bond; Appointment of Agent for Service of Process.

§ 3316. Liabilities of Notary and Surety on Bond.

§ 3317. Compliance with Chapter Required; Penalties.

§ 3311. Appointment; Term; Removal; Reporting Change of Status.

(a) The Attorney General may appoint and commission such numbers of notaries public for the Commonwealth as the Attorney General deems necessary for the public good and convenience.

(b) The term of office of a notary public is two years from the date of commission, unless sooner removed by the Attorney General made on findings of cause after due hearing; provided, that after due hearing, the commission may be revoked by the Attorney General in any case where any change occurs in the notary's office, occupation or employment which in the judgment of the Attorney General renders the holding of such commission no longer necessary for the public good and convenience.

(c) Upon any change in office, occupation or employment, a notary shall forthwith report the change to the Attorney General.

§ 3312. Rules and Regulations.

(a) The Attorney General may prescribe such rules and regulations as the Attorney General may deem advisable concerning the appointment and duties of notaries public and the administration of this chapter.

(b) The Attorney General shall file a copy of such rules and regulations with the clerk of the Commonwealth Superior Court.

§ 3313. Application; Qualifications; Oath.

(a) Except as otherwise provided in this chapter, application for a commission as notary public for the Commonwealth shall be submitted to the Attorney General and must be accompanied by two letters of recommendation and an application fee in an amount set by regulation by the Attorney General. Every person appointed a notary public must be, at the time of appointment, (1) of good character, (2) at least 18 years of age, and (3)(i) a resident of the Commonwealth or (ii) a United States citizen who is resident in the Commonwealth and employed by the United States government in the Commonwealth or (iii) a United States citizen who is resident in the Commonwealth and employed by a contractor engaged in work for the United States government in the Commonwealth. Every person appointed a notary must also be able to perform all the acts required of a notary.

(b) Every person appointed as notary public shall, before acting in that capacity, take and subscribe to an oath for the faithful discharge of his or her duties. The oath may be taken before the Attorney General, a judge, a clerk of courts, or other official authorized to administer oaths. This oath shall be executed in duplicate. The original shall be filed in the office of the Attorney General and a duplicate original filed in the office of the clerk of court for the Commonwealth Superior Court.

§ 3314. Filing and Certification of Commission, Seal and Signature.

(a) Each person appointed and commissioned a notary public shall forthwith file a literal or photostatic copy of his or her commission, an

impression of his or her seal and a specimen of his official signature with the clerk of the Commonwealth Superior Court and the Attorney General. Thereafter, the Attorney General, when so requested, shall certify to the official character and acts of any notary public whose commission, impression of seal and specimen of official signature is filed in the Office of the Attorney General.

(b) The Office of the Attorney General shall charge a fee of fifty dollars for filing each certificate of authentication. The clerk of the Superior Court shall charge a fee of one dollar for filing a copy of a commission.

§ 3315. Official Bond; Appointment of Agent for Service of Process.

(a) Before entering upon the duties of office, a notary public may, at the discretion of the Attorney General, be required to execute at his or her own expense, an official surety bond for not more than \$1,000.

(b) The obligee of each bond shall be the Commonwealth and the condition contained in it shall be that the notary public will well, truly and faithfully perform all the duties of office which are then and may thereafter be required, prescribed or defined by law or by any rule or regulation made pursuant to any Commonwealth law, and all duties and acts are undertaken, assumed or performed by the notary public by virtue or color of his or her office. The surety on any bond shall be a surety company approved by the Attorney General. The notary public by accepting a commission, and the surety company by issuing the bond, thereby agree and appoint the mayor of any island in which the notary public performs any official act as his or her agent to accept service of process on the notary's behalf for any purpose. After approval, the bond shall be deposited and kept in the office of the Attorney General, who will certify that the bond has been accepted and filed in proper form.

§ 3316. Liabilities of Notary and Surety on Bond.

For the official misconduct of a notary public or breach of any of the conditions of the official bond, the notary public and the surety on the official bond are liable to the party injured thereby for all damages sustained. The party shall have a right of action in his or her own name upon the bond and may prosecute it to final judgment and execution.

§ 3317. Compliance with Chapter Required; Penalties.

(a) No person may act as a notary public or enter upon any duties of that office, or offer or assume to perform any such duties until he or she has fully complied with the requirements of this chapter.

(b) Any person willfully violating any provision of this chapter is guilty of a misdemeanor and, upon conviction, may be punished by a fine of not more than \$500, or by imprisonment for not more than one year, or both. Nothing in this section shall be construed to restrict or to do away with any liability for civil damages.

(c) All remedies, penalties and authority granted to the Attorney General by the Consumer Protection Act, 4 CMC §§ 5101-5123, as now or hereafter amended, shall be available to them for the enforcement of this Act and for any violation of it. In any action brought by the Attorney General to enforce this Act, the court may order that persons who incurred actual damages be awarded the amount of actual damages assessed. In addition, for violations of Section 3325, the Attorney General may, on findings of guilt based on a preponderance of the evidence and after a hearing, impose a fine not to exceed \$500, plus the amount of the overcharge.

(d) For violations of this chapter, in lieu of filing an action in court, the Attorney General may impose penalties under Subsection (c) after making findings of guilt based on a preponderance of the evidence at a hearing.

(e) Moneys paid under Subsections (c) or (d) or collected by the Office of the Attorney General under this chapter shall be deposited into the

Attorney General Notary Compliance Payment Projects Fund (the “Fund”), which is created as a special fund administered by the Department of Finance. The Attorney General is the expenditure authority of the Fund. Moneys in the Fund, plus all interest and earnings accrued, shall be used for the performance of any function pertaining to the exercise of the duties of the Attorney General, including but not limited to enforcement of any law of the Commonwealth and conducting public education programs; however, any moneys in the Fund that are required to refund individuals overcharged for notary services shall be used for that purpose unless individuals cannot be located to pay such refunds within a year of the money being deposited in the Fund. In such circumstances, the moneys can be used for the enforcement or education purposes authorized by this section. This fund shall not be commingled in any manner with other funds of the Commonwealth or any of its other departments, agencies, or instrumentalities and will not revert to the General Fund.

Article 2. Powers and Duties.

- § 3321. Generally.
- § 3322. Seal.
- § 3323. Records; Form and Effect of Granted Copies or Certificates.
- § 3324. Disposition of Records.
- § 3325. Fees: Schedule.
- § 3326. Fees: Notaries Not Entitled to Fees.

§ 3321. Generally.

A notary public may administer oaths and affirmations, receive proof and acknowledgment of writings, and present and protest commercial paper. Upon compliance with 4 CMC § 3314, a notary public may act officially anywhere in the Commonwealth.

§ 3322. Seal.

(a) Every notary public shall keep a seal of office, which may be a rubber stamp or impression seal, engraved with his or her name, and the words “Notary Public” and “Commonwealth of the Northern Mariana Islands.” The notary public shall authenticate all of his official acts, attestations, certificates and instruments therewith.

(b) Upon resignation, death, expiration of term of office, removal from or abandonment of office, or change in residence from the Commonwealth, the notary public shall immediately deliver his or her seal to the Attorney General, who shall deface or destroy it. By failing for 60 days to comply with the above requirement, the notary public, or the notary’s executor or administrator, shall forfeit to the Commonwealth not more than \$500, in the discretion of the court, to be recovered in an action to be brought by the Attorney General on behalf of the Commonwealth.

§ 3323. Records; Form and Effect of Granted Copies or Certificates.

Every notary public shall record in a book of records all acts, protests, depositions, and other things noted or done in his or her official capacity. All copies or certificates granted by the notary public shall be under the notary’s hand and seal, and shall be received as evidence of the transactions.

§ 3324. Disposition of Records.

(a) The records of each notary public shall be deposited with the Attorney General each year on June 30 and upon the resignation, death, expiration of term of office, removal from or abandonment of office, or change of residence from the Commonwealth.

(b) By a failure for 60 days to comply with this section, the notary public or his or her executor or administrator shall forfeit to the Commonwealth not less than \$100 nor more than \$500, in the discretion of the court, in an action brought therefore by the Attorney General on behalf of the Commonwealth.

§ 3325. Fees; Schedule.

Except as provided in 4 CMC § 3326, every notary public is entitled to demand and receive the following fees:

- (a) Noting the protest of mercantile paper, \$2;
- (b) Each notice and certified copy of protest of mercantile paper, \$2;
- (c) Noting protest other than of mercantile paper, \$4;
- (d) Each notice and certified copy of protest other than of mercantile paper, \$4;
- (e) Each deposition, or official certificate, \$2;
- (f) Administration of oath, including the certificate of such oath, \$2;
- (g) Affixing the certificate of such oath to each duplicate original instrument, \$1;
- (h) Taking any acknowledgment, \$2 for each party signing; and
- (i) Affixing to each duplicate original, beyond one of any instrument acknowledged before him, his certificate of acknowledgment, \$2 for each person making such acknowledgment.

§ 3326. Fees: Notaries Not Entitled to Fees.

A notary public who is also a paid employee of the United States, or the Commonwealth government who is permitted to perform services as a notary public during working hours may not demand or receive any fees for services performed as a notary public during such hours, or for such services performed at any other time which are in connection with or in aid of his or her regular employment.”

Section 3. Amendment. 4 CMC § 5105 is hereby amended to add the following section:

“(hh) Any violation of the Notaries Public Act, 4 CMC § 3311-3326.”

Section 4. Severability. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent

jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 5. Savings Clause. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation, or order adopted under the statutes. Repealers contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence at the date this Act, becomes effective.

Section 6. Effective Date. This Act shall take effect upon its approval by the Governor or upon becoming law without such approval.

CERTIFIED BY:

/s/

BENIGNO R. FITIAL
SPEAKER OF THE HOUSE

ATTESTED TO BY:

/s/

EVELYN C. FLEMING
HOUSE CLERK

APPROVED on this 17th day of JANUARY 2005

/s/

DIEGO T. BENAVENTE
ACTING GOVERNOR
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS