

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill by striking out the title and substituting the following:

'An Act To Authorize Certain County Jail Employees To Perform Certain Ministerial and Notary Functions for Inmates'

Further amend the bill by striking out all of the emergency preamble and inserting in its place the following:

'Emergency preamble. Whereas, acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, authorizing certain county jail employees to perform ministerial functions related to preparing personal recognizance or an unsecured appearance bond and providing notary services has been the practice of several jails and has been of benefit to both the jails and their inmates; and

Whereas, the provision of these ministerial functions and notary services has unintentionally been in violation of the Maine Revised Statutes, Title 30-A, section 353; and

Whereas, enacting a permissible process for these ministerial functions and notary services will continue to benefit the jails and the inmates; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,'

Further amend the bill by inserting after section 1 the following:

'Sec. 2. 30-A MRSA §353, as amended by PL 1989, c. 104, Pt. A, §8 and Pt. C, §§8 and 10, is further amended to read:

§ 353. Officer not to act as attorney or draw papers; employee of jailer not to act as judge or attorney

~~No~~An officer may not appear before any court as attorney or adviser of any party in an action or draw any writ, complaint, declaration, citation, process or plea for any other person; all such acts are void. ~~No~~A person employed by the keeper of a jail in any capacity may not exercise any power or duty of a judicial officer ~~or notary public~~ or act as attorney for any person confined in the jail; all such acts are void. Beginning April 15, 2006, if commissioned as a notary public and authorized to do so by the sheriff, an employee of a jail, other than a part-time or full-time corrections officer or a deputy sheriff, may, without fee, exercise any power or duty of a notary public for any person confined in the jail.

Sec. 3. Retroactivity. That section of this Act that amends the Maine Revised Statutes, Title 30-A, section 353 applies retroactively to February 28, 1989.'

SUMMARY

Beginning April 15, 2006, this amendment authorizes county jail employees, other than corrections officers or deputy sheriffs, who have a commission as a notary public to provide notary public services

for inmates if authorized to do so by the sheriff. Inmates frequently require access to notary public services and unless county jail employees are allowed to perform them, there is no practical way for inmates to obtain such access. On February 28, 1989, "judicial officer or notary public" was substituted for "magistrate" in this provision, apparently in the mistaken belief that a notary public performed judicial functions. However, as of 1988, this was no longer true and a notary public was restricted to performing only ministerial functions. Therefore, there is no legal impediment to or conflict of interest for a jail employee to also act as a notary public for inmates.

This amendment also changes the emergency preamble and adds a retroactivity clause. Due to ignorance of the law on the part of inmates and employees alike, since 1989 numerous county jail inmates have requested and been afforded notary public services from county jail employees, including notarizing documents such as affidavits, wills, living wills and powers of attorney and performing marriage ceremonies. Making this change retroactive validates the authority of a jail employee who provided notary services for an inmate at any time since 1989 to act as a notary.