

## Title 31

### PROFESSIONS

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#### Chapter 01

### ATTORNEYS AND PRACTITIONERS

#### Sections:

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#### **31.0101 Examination-Rules and regulations-Appointment of committees.**

The Chief Justice of the High Court of American Samoa has the power to:

- (1) examine, admit and reinstate attorneys and practitioners to practice law in American Samoa;
- (2) adopt reasonable rules and regulations to make effective the provisions of this chapter; and
- (3) appoint such committees as he deems necessary to effect the purposes of this chapter.

**History:**1962, PL 7-36, 1969, PL 11-54; 1970, PL 11-111.

#### **Case Notes:**

Chief Justice of the High Court has the ultimate authority to decide who may practice law in the Territory. A.S.C.A. § 31.0101(a). *Siofele v. Hall*, 12 A.S.R.2d 9 (1989).

#### **31.0102 Rules of professional conduct.**

The Chief Justice shall formulate rules of professional conduct and has the power to enforce the same. Such rules are binding on all persons admitted to practice before the court.

**History:**1962, PL 7-36; 1970, PL 11-111.

#### **31.0103 Disbarment, suspension, and reprimand.**

The Chief Justice has authority to disbar, suspend or reprimand any attorney or practitioner admitted to practice before the court.

**History:**1970, PL 11-111.

**31.0104 Unauthorized practice of law- Penalty.**

(a) It is unlawful for any person, association, firm or corporation to engage in or attempt to engage in the practice of law, or to do, attempt to do or offer to do any act constituting the practice of law, except to the extent such person, firm or association is licensed or authorized by the Chief Justice. Nothing in this section authorizes licensing of a corporation to practice law.

(b) A person, association, firm or corporation who violates this section is guilty of a class A misdemeanor.

**History:** 1970, PL II-111, amd 1980, PL 16-90 § 84.

**Amendments:** 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

**Case Notes:**

One who is not licensed to practice law but who attempts to represent another person in court, by taking a pro forma assignment of an interest in the subject matter giving rise to litigation and appearing as a pro se plaintiff, thereby engages in the unauthorized practice of law. A.S.C.A. § 31.0104. Parisi v. Parisi, 10 A.S.R.2d 106 (1989).

Attorney licensed in another jurisdiction, who in the course of providing legal services to a client took a pro forma assignment of a judgment belonging to the client and entered a court appearance in the guise of a pro se plaintiff without applying for admission pro hac vice, engaged in unauthorized practice of law. A.S.C.A. § 31.0104; H.C.R. 145. Parisi v. Parisi, 10 A.S.R.2d 106 (1989).

While "practice of law" is a general term, it is sufficiently definite that its employment in a criminal statute satisfies the demands of due process. A.S.C.A. § 31.0104. Pene v. American Samoa Government, 12 A.S.R.2d 43 (1989).

"Practice of law" includes legal representation of another in court or in settlement negotiations with opposing attorneys. A.S.C.A. § 31.0104. Pene v. American Samoa Government, 12 A.S.R.2d 43 (1989).

Evidence was sufficient to convict defendant of unauthorized practice of law where it was established that appellant filed a memorandum in a criminal case containing legal argument offered on behalf of the defendant. A.S.C.A. § 31.0104. Pene v. American Samoa Government, 12 A.S.R.2d 43 (1989).

Evidence was sufficient to convict defendant of unauthorized practice of law where appellant had written letters on behalf of a convicted prisoner stating that defendant was prepared to bring a civil action on behalf of the prisoner "pro se," and proposing a settlement which defendant termed "my personal offer and compromise." A.S.C.A. § 31.0104. Pene v. American Samoa Government, 12 A.S.R.2d 43 (1989).

**31.0110 Bar Association.**

There is created the American Samoa Bar Association. The purposes of the Bar Association shall be to improve administration of justice. All persons admitted to the practice of law on a regular basis before any division of the High Court of American Samoa shall be members of the Bar Association.

**History:**1970, PL 11-111.

**Chapter 02**

**PUBLIC ACCOUNTANCY**

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**31.0201 Short title.**

This chapter may be cited as the "Public Accountancy Law of 1978".

**History:**1978, PL 15-75.

**31.0202 Purpose.**

It is the policy of this Territory, and the purpose of this chapter to promote the dependability of information which is used for guidance in financial transactions or for accounting for or assessing the status or performance of commercial and noncommercial enterprises, whether public or private. The public interest requires that persons attesting as experts in accountancy to the reliability or fairness of presentation of such information be qualified in fact to do so; that a public authority competent to prescribe and assess the qualifications of public accountants be established and continued; and that the attestation of financial information by persons professing special knowledge in accountancy be reserved to persons who demonstrate their ability and fitness to observe and apply the standards of the accounting profession.

**History:**1978, PL 15-75.

**31.0203 Definitions.**

When used in this chapter:

(a) "Board" means the Territorial Board of Public Accountancy established in 31.0204.

(b) "State" includes any State, Territory, or Insular Possession of the United States, and the District of Columbia.

**History:**1978, PL 15-75.

### **31.0204 Board-Members.**

There is a Board of Public Accountancy to be known as the Territorial Board of Public Accountancy, which consists of 3 members appointed by the Governor. All members of the Board must be citizens or nationals of the United States and residents of this territory. Two members thereof shall be Certified Public Accountants in active practice holding current certificates as such and current permits to practice public accountancy issued under this chapter. The remaining member shall be a public accountant in active practice holding current registration as such and current permits to practice public accountancy under this chapter.

**History:**1978, PL 15-75; amd 1978, PL 15-94 § 1.

**Amendments:** 1978 Raised number of members which shall be certified public accountants from 1 to 2, and lowered number of members which shall be public accountants from 2 to 1.

### **31.0205 Board-Removal.**

The Governor shall remove or suspend any member of the Board for cause including any member thereof:

- (1) who ceases to engage in active practice as a Certified Public Accountant or as a public accountant, as the case may be; or
- (2) whose certificate of Certified Public Accountant or registration of public accountant, as the case may be, or whose permit to practice public accountancy
  - (A) has been cancelled, revoked or suspended;
  - (B) has expired without renewal; or
  - (C) has otherwise become invalid.

**History:**1978, PL 15-75.

### **31.0206 Board-Organization.**

The Board shall elect annually a chairman and a secretary-treasurer from its members. The Board shall conduct its meetings and keep records of its proceedings.

**History:**1978, PL 15-75.

### **31.0207 Board-Compensation and expenses.**

Members of the Board of Accountants may not receive any compensation for performance of the duties imposed upon them by this chapter.

**History:**1978, PL 15-75.

### **31.0208 Board-Powers.**

The Board may:

- (1) conduct investigations and hearings, either upon complaint or on its own motion on any matter involving the conduct of Certified Public Accountants or public accountants or the violation of any of the provisions of this chapter; and
- (2) adopt, amend, and repeal rules with the approval of the Governor and issue decisions, orders, and declaratory rulings for the orderly conduct of its affairs and for the administration of this chapter including but not limited to rules governing professional qualifications, continuing education and professional conduct, and the affiliations of individuals, partnerships, and

corporations, for the practice of public accountancy, as it deems appropriate to establish and maintain high standards of competence and integrity in the practice of public accountancy.

**History:** 1978, PL 15-75.

### **31.0209 Board-Annual report.**

The Board shall prepare and present an annual report to the Governor which shall include a statement of the Board's activities and its receipts and expenditures during the preceding year together with such recommendations as the Board shall determine to be appropriate.

**History:** 1978, PL 15-75.

### **31.0210 Certificate-CPA-Issuance.**

(a) A Certificate of "Certified Public Accountant", upon application to the Board, must be issued to a person:

- (1) who has attained 18 years of age, or more;
- (2) who is of good moral character; and
- (3) who meets the educational and examination requirements provided in 31.0211 through 31.0216.

(b) The Board shall maintain a list of all persons to whom those certificates are issued. The certificates are effective for a period not exceeding 2 years and shall be renewable biennially upon application to the Board.

**History:** 1978, PL 15-75.

### **31.0211 Certificate-Educational requirements.**

A person applying for a certificate of certified public accountant:

- (1) before 1 January 1979, shall be required to have obtained a baccalaureate degree conferred by a college or university recognized by the Board; and
- (2) after 31 December 1988, shall be required to have obtained a baccalaureate degree conferred by a college or university recognized by the Board and shall be required to have completed not less than 30 semester hours of additional study at such a college or university, the educational program to have included an accounting concentration and those related subjects as the Board shall determine to be appropriate.

**History:** 1978, PL 15-75; amd 1978, PL 15-94 § 2.

**Amendment:** 1978 Subsection (b)(2): substituted 1988 for 1978.

### **31.0212 Certificate-Exemption from educational requirements.**

A person who holds and has continued to hold a valid Certificate of Certified Public Accountant of another state for a period of not less than 10 years preceding the date of his application under 31.0210, and who is and continues to be in the active practice of public accountant in that other state for a period of not less than 5 years preceding the date of his application under 31.0210, if, upon examination of the credentials of that person, the Board is satisfied that he is as well qualified for the practice of public accountancy as if he met the applicable educational requirements specified in 31.0211 and any continuing education requirements established by regulation of the Board, is, upon application to the Board, exempt from the educational requirements specified in 31.0211 and any continuing education requirements established by regulation of the Board.

**History:**1978, PL 15-75.

**31.0213 Certificate-Examination requirements.**

A person applying for a Certificate of Certified Public Accountant is required to have satisfactorily completed an examination in accounting, auditing, and other related subjects as the Board determines to be appropriate. The examination shall be held by the Board and shall take place as often as the Board determines to be desirable, but not less frequently than once each year.

**History:**1978, PL 15-75.

**31.0214 Certificate-Admission to examination.**

- (a) A person shall, upon application to the Board, be admitted to the examination who:
- (1) has met the applicable educational requirements prescribed in 31.0211; or
  - (2) expects to meet the educational requirements within 120 days following the examination prescribed in 31.0213; or
  - (3) is exempted from the educational requirements by 31.0212.
- (b) In the case of an applicant admitted to the examination on the expectation that he will complete the educational requirements within 120 days, no Certificate of Certified Public Accountant may be issued, and no credit for the examination or any part of it may be given, unless the educational requirement is, in fact, completed within that time or within the time as the Board determines to be appropriate.

**History:**1978, PL 15-75.

**31.0215 Certificate-Reexamination.**

The Board may by rule prescribe the terms and conditions under which an applicant who has taken the examination described in 31.0213, but who has not satisfactorily completed that examination, may be given credit for any part thereof he has satisfactorily completed. The Board may also provide by regulation for a reasonable waiting period of an applicant to apply to reexamination.

**History:**1978, PL 15-75.

**31.0216 Certificate-Exemption from examination requirements.**

- A person shall, upon application to the Board, be exempt from the examination requirements specified in 31.0213, who is the holder of:
- (1) a valid certificate of certified public accountant issued under the laws of another state; or
  - (2) a valid certificate, license, or degree in a foreign country determined by the Board to be:
    - (A) a recognized qualification for the practice of public accountancy in that other country;
    - (B) comparable to a certificate of certified public accountant of this Territory; and
    - (C) issued to that person on the basis of an examination comparable to the examination described in 31.0213.

**History:**1978, PL 15-75.

**31.0217 Certificate of public accountant- Issuance.**

A person shall be issued a Certificate of Public Accountant who:

- (1) has attained 18 years of age, or more;
- (2) is of good moral character; and
- (3) meets other requirements as the Board may from time to time prescribe by rule.

**History:** 1978, PL 15-94 § 3.

### **31.0218 Existing registrations.**

A person who, on 1 January 1978, holds registration of public accountant under the laws of this territory theretofore existing; or who holds a valid Certificate of Certified Public Accountant issued under the laws of another state; and who holds a registration to practice public accountancy under the laws of this territory theretofore existing, may not be required to register again under this chapter, but shall otherwise be subject to all the provisions of this chapter. Such previous registration must, for all purposes, be considered registration under this chapter and subject to the provisions of this chapter.

**History:** 1978, PL 15-75; amd 1978, PL 15-94 § 4.

**Amendments:** 1978 Substituted "Territory" for "State" at beginning of section, and added reference to persons holding a valid certificate of public accountant from another state and a registration to practice under the laws of American Samoa.

### **31.0219 Permits to practice.**

(1) A person must, upon application to the Board, be issued a permit to practice public accountancy in this Territory, who:

(A) is holding a current Certificate of Certified Public Accountant or a current registration as a public accountant;

(B) has had at least 1 year's experience in any state of the United States with a person or firm in the practice of public accounting; and

(C) has complied with continuing education requirements established by regulation of the Board.

(2) The experience requirement set forth in subparagraph (1) (B) does not apply after 31 December 1978, or to any person who has met the educational requirements set forth in 31.0210 through 31.0216.

(3) The permit to practice shall be effective for a period not exceeding 2 years.

(1) A person shall, upon application to the Board, be issued a temporary practice permit who:

(A) has attained 18 years of age, or more;

(B) is of good moral character;

(C) holds a valid Certificate of Certified Public Accountant or a valid registration as a public accountant issued under the laws of another state, or who holds a valid certificate, license, or degree of a foreign country determined by the Board to be a recognized qualification for the practice of public accountancy in that country; and

(D) incidental to his practice in that other state, or country, desires to practice public accountancy in this Territory on a temporary basis.

(2) The permit shall be effective for a period not exceeding 3 months, and shall specify the nature and extent of the practice so permitted.

**History:** 1978, PL 15-75.

### **31.0220 Fees.**

(a) An applicant for admission to the examination described in 31.0213 shall pay a fee with the application for admission in the amount as the Board shall prescribe by rule. The Board may

also prescribe by rule the terms and conditions upon which an applicant who is unable to attend the examination may receive a credit in the amount of the fee paid toward a subsequent examination.

(b) An applicant for the issuance of a Certificate of Certified Public Accountant under 31.0210 or a Certificate of Public Accountant under 31.0217 shall pay a fee with the application in the amount as the Board shall prescribe by rule.

(c) An applicant for the renewal of a current Certificate of Certified Public Accountant under 31.0210 or for the renewal of a registration of public accountant under 31.0217 shall pay a fee of \$30 biennially in each odd-numbered year on or before 31 December. An applicant for the renewal of a Certificate of Certified Public Accountant or for the renewal of a registration of public accountant which is not current under the provisions of this chapter shall pay a fee with the application for renewal in an amount equal to twice the amount of the fees which the applicant would have paid had he timely renewed the certificate or registration since the date it was last current.

(d) An applicant for the issuance of a biennial permit to practice under 31.0210 or 31.0217 who is in the practice of public accountancy in his own name as a sole proprietor, or as a partner of a partnership in the practice of public accountancy, or as a shareholder of a corporation in the practice of public accountancy, shall pay a fee with the application in the amount of \$30. All other applicants for the issuance of a biennial permit to practice shall pay a fee of \$10.

(e) An applicant for the issuance of a temporary permit to practice under subsection (b) of 31.0219 shall pay a fee with the application in the amount of \$30.

**History:** 1978, PL 15-75; amd 1978, 15-94 § 5.

**Amendments:** 1978 Added references to documents held under 31.0217.

### **31.0221 Disciplinary action-Reinstatement.**

(a) The Board may:

(1) cancel, revoke, suspend for a period not exceeding 2 years, or refuse to renew any Certificate of Certified Public Accountant, registration of public accountant or permit to practice issued under this chapter; or it may

(2) censure a person holding any such certificate, registration or permit, for any 1 or a combination of the following causes:

(A) dishonesty, deceit, or fraud in obtaining any certificate, registration, or permit to practice issued under the provisions of this chapter;

(B) dishonesty, deceit, fraud, or gross negligence in the practice of public accountancy;

(C) violation of any of the provisions of 31.0222 through 31.0224 or of any rule of the Board relating to professional conduct.

(b) Upon application of any person against whom disciplinary action has been taken under the provisions of subsection (a) of this section, the Board may reinstate the person and reissue any certificate, registration, or permit to practice which was affected by the disciplinary action.

**History:** 1978, PL 15-75.

### **31.0222 Prohibited use of titles.**

(a) No person may assume or use the title or designation "Certified Public Accountant" or the abbreviation "CPA" or any other title, designation, words, letters, sign, card, or device likely to be confused with "Certified Public Accountant" or "CPA" or tending to indicate that the person is a Certified Public Accountant unless the person holds a current Certificate of Certified Public

Accountant issued under this chapter and a current permit to practice as such issued under this chapter.

(b) No partnership or corporation may assume or use the title or designation “Certified Public Accountant” or the abbreviation “CPA” or any other title, designation, words, letters, abbreviation, sign, card, or device likely to be confused with “Certified Public Accountant” or “CPA” or tending to indicate that the partnership or corporation is composed of Certified Public Accountants unless each of the partners of the partnership who are in the practice of public accountancy in this territory or each of the shareholders of the corporation who are in the practice of public accountancy in this territory holds a current Certificate of Certified Public Accountant issued under this chapter and a current permit to practice as such issued under this chapter.

(c) No person may assume or use the title or designation “Certified Public Accountant” or the abbreviation “CPA” or any other title, designation, words, letters, abbreviation, sign, card, or device likely to be confused with “certified public accountant” or “CPA”, in conjunction with names indicating or implying that there is a partnership or corporation, or in conjunction with the designation “and Company” or “and Co.” or a similar designation if, in any such case, there is in fact no bona fide partnership or corporation existing under the laws of this territory.

(d) No person may assume or use the title or designation “public accountant” or the abbreviation “PA” or any other title, designation, words, letters, sign, card, or device likely to be confused with “public accountant” or “PA” or tending to indicate that such person is a public accountant unless such person holds a current registration of public accountant issued under this chapter and a current permit to practice as such issued under this chapter.

(e) No partnership or corporation may assume or use the title or designation “Public Accountant” or the abbreviation “PA” or any other title, designation, words, letters, abbreviation, sign, card, or device likely to be confused with “Public Accountant” or “PA” or tending to indicate that the partnership or corporation is composed of Public Accountants unless each of the partners of the partnership who are in the practice of Public Accountancy in this Territory or each of the shareholders of the corporation who are in the practice of Public Accountancy in this Territory holds a current registration of Public Accountant issued under this chapter and a current permit to practice as such issued under this chapter.

(f) No person may assume or use the title or designation “Public Accountant” or the abbreviation “PA” or any other title, designation, words, letters, abbreviation, sign, card, or device likely to be confused with “Public Accountant” or “PA”, in conjunction with names indicating or implying that there is a partnership or corporation, or in conjunction with the designation “and Company” or “and Co.” or a similar designation if, in any such case, there is in fact no bona fide partnership or corporation existing under the laws of this territory.

**History:** 1978, PL 15-75.

### **31.0223 Prohibited acts-Special knowledge.**

(a) A person may not sign or affix his name or any trade assumed name used by him in his profession or business with any wording indicating, suggesting, or implying that he is an accountant or auditor, or with any wording indicating, suggesting, or implying that he has special knowledge in accounting or auditing, to any opinion or certificate attesting in any way to the reliability of any representation or estimate in regard to any person or organization embracing:

(1) financial information; or

(2) facts respecting compliance with conditions established by law or contract, including but not limited to statutes, ordinances, regulations, grants, loans, and appropriations unless that person holds a current certificate or registration and a current permit to practice issued under this chapter.

(b) A person may not sign or affix a partnership or corporate name with any wording indicating, suggesting, or implying that it is a partnership or corporation composed of accountants or auditors or persons having special knowledge of accounting or auditing, to any opinion or certificate attesting in any way to the reliability of any representation or estimate in regard to any person or organization embracing:

(1) financial information; or

(2) facts respecting compliance with conditions established by law or contract, including but not limited to statutes, ordinances, regulations, grants, loans, and appropriations unless each of the partners of the partnership who are in the practice of public accountancy in this Territory or each of the shareholders of the corporation who are in the practice of public accountancy in this territory holds a current certificate of certified public accountant or a current registration of public accountant issued under this chapter and a current permit to practice issued under this chapter.

**History:** 1978, PL 15-75.

### **31.0224 Exceptions.**

Nothing contained in this chapter prohibits any person:

(1) who holds a current Certificate of Certified Public Accountant issued under this chapter from assuming and using the title and designation "Certified Public Accountant" or "CPA" provided, that if that person does not also hold a current permit to practice issued under this chapter, he shall clearly indicate in assuming and using the title that he does not hold himself out to be in the practice of public accountancy;

(2) who holds a current Registration of Public Accountant issued under this chapter from assuming and using the title and designation "Public Account" or "PA"; provided, that if that person does not also hold a current permit to practice issued under this chapter, he shall clearly indicate in assuming and using the title that he does not hold himself out to be in the practice of public accountancy;

(3) who holds a temporary practice permit issued under this chapter from using the title and designation under which he is generally known in the state or country from which he received his certificate, registration, license, or degree for the practice of public accountancy;

(4) who is not a Certified Public Accountant or Public Accountant from serving as an employee of, or an assistant to, a Certified Public Accountant or Public Accountant; provided, that employee or assistant works under the control and supervision of a person who holds a current Certificate of Certified Public Accountant or a current Registration of Public Accountant and a current permit to practice as such issued under this chapter; and provided further, that the employee or assistant does not issue any statement or report over his name except the office reports to his employer as are customary, and that the employee or assistant is not in any manner held out to the public as a certified public accountant or public accountant;

(5) who is an officer, employee, partner, or principal of any organization from signing or affixing his name to any statement or report in reference to the affairs of that organization; provided, that in so signing or affixing his name he shall clearly indicate that he is an officer, employee, partner or principal of the organization, and the position, title or office which he holds therein;

(6) who is a public employee from the performance of his duties as such;

(7) who is an attorney at law from engaging in practice as such.

**History:** 1978, PL 15-75.

### **31.0230 Injunctions.**

Whenever the Board has reason to believe that any person has engaged, or is about to engage, in any act or practice which constitutes, or will constitute, a violation of 31.0222 through 31.0224, the Board may certify the facts underlying that belief to the Attorney General of this Territory, who shall make application to the appropriate court for an order enjoining that act or practice, an injunction, restraining order or any other order as may be appropriate shall be granted by the court without bond.

**History:**1978, PL 15-75.

### **31.0231 Criminal penalties.**

Any person who violates any provision of 31.0222 through 31.0224 is guilty of a class B misdemeanor. Whenever the Board has reason to believe that any person is liable to punishment under this section, it may certify the facts underlying that belief to the Attorney General who shall cause appropriate proceedings to be brought.

**History:**1978, PL 15-75, amd 1980, PL 16-90 § 88.

**Amendments:** 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

### **31.0232 Evidence of practice.**

The display or uttering by a person of a card, sign, advertisement, or other printed, engraved or written instrument or device bearing a person's name in conjunction with the words "Certified Public Accountant" or any abbreviation thereof, of the words "Public Accountant" or any abbreviation thereof, is prima facie evidence in any action brought under 31.0230 or 31.0231 that the person whose name is so displayed caused or procured the display or uttering of such card, advertisement or other printed, engraved or written instrument or device and that such person is holding himself out to be a Certified Public Accountant or Public Accountant holding a current permit to practice issued under 31.0219. In any such action, evidence of the commission of a single act prohibited in 31.0222 through 31.0224 is sufficient to justify an injunction or a conviction without evidence of a general course of conduct.

**History:**1978, PL 15-75.

### **31.0233 Ownership of accountant's working papers.**

All statements, records, schedules, working papers, and memoranda made by a Certified Public Accountant or Public Accountant incident to or in the course of professional service to clients by that accountant, except reports submitted by a Certified Public Accountant or Public Accountant to a client, shall be and remain the property of the accountant in the absence of an express agreement between the accountant and the client to the contrary. No statement, record, schedule, working paper, or memorandum shall be sold, transferred or bequeathed, without the consent of the client or his personal representative or assignee, to anyone other than 1 or more surviving partners or new partners of that account or to his corporation.

**History:**1978, PL 15-75.

## **NOTARY PUBLIC**

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- 31.0342 General acknowledgment.**
- 31.0343 Jurat.**
- 31.0344 Signature witnessing.**
- 31.0345 Signer by mark and person unable to sign.**
- 31.0346 Certified copy.**
- 31.0347 Forms of evidence.**
- 31.0348 Certificate of authority.**
- 31.0349 Apostille.**
- 31.0350 Fees.**

## **Part V: Change of Status, Sanctions and Liability**

### **Sections:**

- 31.0351 Change of address.**
- 31.0352 Change of name.**
- 31.0353 Resignation.**
- 31.0354 Disposition of seal and journal.**
- 31.0355 Death of notary.**
- 31.0356 Liability of notary and employer.**
- 31.0357 Proximate cause.**
- 31.0358 Revocation.**
- 31.0359 Other remedial actions for misconduct.**
- 31.0360 Publication of sanctions and remedial actions.**
- 31.0361 Criminal sanctions.**
- 31.0362 Additional remedies and sanctions not precluded.**
- 31.0363 Impersonation.**
- 31.0364 Wrongful possession.**
- 31.0365 Improper influence.**
- 31.0366 Repealed.**

## **Part I: General Provisions and Definitions**

### **31.0301 Short Title.**

This Act may be cited as the Notary Act of 2007.

**History:** 2008, PL 30-18.

### **31.0302 Purposes.**

This Act shall be construed and applied to advance its underlying purposes, which are:

- (1) to promote, serve, and protect the public interest;
- (2) to simplify, clarify, and modernize the law governing notaries;

- (3) to foster ethical conduct among notaries;
- (4) to enhance cross-border recognition of notarial acts;
- (5) to integrate procedures for traditional notarial acts; and
- (6) to unify Territorial and state notarial laws.

**History:** 2008, PL 30-18.

### **31.0303 Interpretation.**

In this Act, unless the context otherwise requires, words in the singular include the plural, and words in the plural include the singular.

**History:** 2008, PL 30-18.

### **31.0304 Prospective effect.**

The existing seal, length of commission term, and liability of current notaries commissioned before this Act's effective date may not be invalidated, modified, or terminated by this Act, but those notaries shall comply with this Act in performing notarizations and in applying for new commissions.

**History:** 2008, PL 30-18.

### **31.0305 Severability clause.**

If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

**History:** 2008, PL 30-18.

### **31.0306 Effective date.**

This Act shall take effect 180 days from the day it is signed by the Governor.

**History:** 2008, PL 30-18.

### **31.0307 Definitions.**

For purposes of this title:

(a) "Acknowledgment" means a notarial act in which an individual at a single time and place:

- (1) appears in person before the notary and presents a document;
- (2) is personally known to the notary or identified by the notary through satisfactory evidence; and

(3) indicates to the notary that the signature on the document was voluntarily affixed by the individual for purposes stated within the document and, if applicable, that the individual had due authority to sign in a particular representative capacity.

(b) "Affirmation" means a notarial act, or part thereof, which is legally equivalent to an oath and in which an individual at a single time and place:

- (1) appears in person before the notary;
- (2) is personally known to the notary or identified by the notary through satisfactory evidence; and

(3) makes a vow of truthfulness or fidelity on penalty of perjury, based on personal honor and without invoking a deity or using any form of the word “swear”.

(c) “Commission” means both to empower to perform notarial acts and the written evidence of authority to perform those acts.

(d) “Copy certification” means a notarial act in which a notary:

(1) is presented with a document that is neither a vital record, a public record, nor publicly recordable;

(2) copies or supervises the copying of the document using a photographic or electronic copying process;

(3) compares the document to the copy; and

(4) determines that the copy is accurate and complete.

(e) “Credible witness” an honest, reliable, and impartial person who personally knows an individual appearing before a notary and takes an oath or affirmation from the notary to vouch for that individual’s identity.

(f) “Journal of notarial acts” and “journal” means a device for creating and preserving a chronological record of notarizations performed by a notary.

(g) “Jurat” means a notarial act in which an individual at a single time and place:

(1) appears in person before the notary and presents a document;

(2) is personally known to the notary or identified by the notary through satisfactory evidence;

(3) signs the document in the presence of notary; and

(4) takes an oath or affirmation from the notary vouching for the truthfulness or accuracy of the signed document.

(h) “Notarial act” and “notarization” means any act that a notary is empowered to perform under this Act.

(i) “Notarial certificate” and “certificate” means the part of, or attachment to, a notarized document that is completed by the notary, bears the notary’s signature and seal, and states the facts attested by the notary in a particular notarization.

(j) “Notary public” and “notary” means any person commissioned to perform official acts under this Act.

(k) “Oath” means a notarial act, or part thereof, which is legally equivalent to an affirmation and in which an individual at a single time and place:

(1) appears in person before the notary;

(2) is personally known to the notary or identified by the notary through satisfactory evidence; and

(3) makes a vow of truthfulness or fidelity on penalty of perjury while invoking a deity or using any form of the word “swear”.

(l) “Official misconduct” means:

(1) a notary’s performance of any act prohibited, or failure to perform any act mandated, by this Act or by any other law in connection with a notarial act by the notary; or

(2) a notary’s performance of an official act in a manner found by the Secretary of American Samoa to be negligent or against the public interest.

(m) “Appears in person before the notary” means that the principal and the notary are physically close enough to see, hear, communicate with, and give identification documents to each other.

(n) “Personal knowledge of identity” and “personally knows” mean familiarity with an individual resulting from interactions with that individual over a period of time

sufficient to dispel any reasonable uncertainty that the individual has the identity claimed.

(o) “Principal” means:

(1) a person whose signature is notarized; or

(2) a person, other than a credible witness, taking an oath or affirmation from the notary.

(p) “Regular place of work or business” means a stationary office or workplace where one spends all or some of one’s working or business hours.

(q) “Satisfactory evidence of identity” means identification of an individual based on:

(1) at least one current document issued by a federal, state, territorial, or tribal government agency bearing the photographic image of the individual’s face and signature and a physical description of the individual, though a properly stamped passport without a physical description is acceptable; or

(2) the oath or affirmation of one credible witness unaffected by the document or transaction who is personally known to the notary and who personally knows the individual, or of 2 credible witnesses unaffected by the document or transaction who each personally knows the individual and shows to the notary documentary identification as described in subparagraph (a) of this subsection.

(r) “Seal” means a device for affixing on a paper document an image containing a notary’s name, jurisdiction, commission expiration date, and other information related to the notary’s commission.

(s) “Secretary” means the Secretary of American Samoa.

(t) “Signature witnessing” means a notarial act in which an individual at a single time and place.

(1) appears in person before the notary and presents a document;

(2) is personally known to the notary or identified by the notary through satisfactory evidence; and

(3) signs the document in the presence of the notary.

(u) “United States National” means anyone born in the Territory of American Samoa, or a citizen of the United States, and owes permanent allegiance to the United States.

(v) “Verification of fact” means a notarial act in which a notary reviews public or vital records to ascertain or confirm any of the following facts regarding a person:

(1) date of birth or death;

(2) name of parent, offspring, or sibling;

(3) date of marriage or divorce; or

(4) name of marital partner.

**History:** 2008, PL 30-18.

### **31.0308 Authority to adopt rules.**

The Secretary shall adopt administrative rules pursuant to A.S.C.A. 4.1001 et seq. to implement the provisions of this title.

**History:** 2008, PL 30-18.

## Part II: Notary Public

### 31.0309 Qualifications.

(a) Except as provided in subsection (c), the Secretary shall issue a notary commission to any qualified person who submits an application in accordance with this article.

(b) A person qualified for a notary commission shall:

- (1) be at least 18 years of age;
  - (2) have a regular place of work or business in the Territory of American Samoa, as defined in section 31.0307(p);
  - (3) reside legally in the Territory of American Samoa;
  - (4) read and write English;
  - (5) pass a course of instruction requiring a written examination under section 31.0316;
- and

(6) submit fingerprints to allow a criminal background check.

(c) The Secretary may deny an application based on:

- (1) submission of an official application containing material misstatement or omission of fact;
- (2) revocation, suspension, restriction, or denial of a notarial commission or professional license by this or any other state or territory or nation, but in no case may a commission be issued to the applicant within 5 years after such disciplinary action; or
- (3) an official finding that the applicant had engaged in official misconduct as defined in section 31.0307(l), whether or not disciplinary action resulted.

(d) The Secretary shall deny an application based on:

- (1) the applicant's conviction or plea of admission or nolo contendere for any felony;
- (2) the applicant's conviction or plea of admission or nolo contendere for any misdemeanor involving dishonesty or moral turpitude;
- (3) a finding or admission of liability against the applicant in a civil lawsuit based on the applicant's deceit;

(e) Denial of an application may be appealed by filing in proper form with the Office of the Administrative Law Judge within 30 days after denial, except that an applicant may not appeal when the Secretary within 5 years prior to the application has:

- (1) denied or revoked for disciplinary reasons any previous application, commission, or license of the applicant; or
- (2) made a finding under section 31.0358(d) that grounds for revocation of the applicant's commission existed.

**History:** 2008, PL 30-18.

### 31.0310 Jurisdiction and term.

A person commissioned as a notary may perform notarial acts within the Territory of American Samoa for a term of 2 years, unless the commission is earlier revoked under section 31.0358 or resigned under section 31.0353.

**History:** 2008, PL 30-18.

### 31.0311 Bond.

(a) A notary commission shall not be issued until a bond of \$500 has been deposited

with the Office of the Secretary who shall hold it in a special trust account, separate from that account which is provided for in section 31.0318(b), with payment of said bond funds to any person conditioned upon the notary's misconduct as defined in section 31.0307(1).

(b) If a notary bond has been exhausted by claims paid out, the Secretary shall suspend the notary's commission until:

- (1) a new bond is obtained by the notary; and
- (2) the notary's fitness to serve the remainder of the commission term is determined by the Secretary.

**History:** 2008, PL 30-18.

### **31.0312 Commissioning documents.**

Upon issuing a notary commission, the Secretary shall provide to the notary:

- (1) a commission document stating the commission serial number and starting and ending dates; and
- (2) a Certificate of Authorization to Purchase a Notary Seal stating the commission serial number.

**History:** 2008, PL 30-18.

### **31.0313 Recommissioning.**

A current or former notary applying for a new notary commission shall submit a new completed application and comply anew with all of the provisions of section 31.0309 to 31.0319.

**History:** 2008, PL 30-18.

### **31.0314 Application materials.**

Every application for a notary commission shall be made on paper forms determined by the Secretary and include:

- (1) a statement of the applicant's personal qualifications, as described in Section 31.0315;
- (2) a certificate evidencing successful completion of a course of instruction, as described in section 31.0316;
- (3) a notarized declaration of the applicant, as described in section 31.0317;
- (4) a full set of fingerprints of the applicant;
- (5) such other information as the Secretary may deem appropriate; and
- (6) an application fee, as specified in section 31.0318.

**History:** 2008, PL 30-18.

### **31.0315 Statement of personal qualifications.**

The application for a notary commission shall state or include, at least:

- (1) the applicant's date of birth;
- (2) the applicant's residence address and telephone number;
- (3) the applicant's business and telephone number, the business mailing address, if different, and the name of the applicant's employer, if any;
- (4) a declaration that the applicant is a citizen or national of the United States or proof of the applicant's legal residency in the Territory of American Samoa;

- (5) a declaration that the applicant can read and write English;
- (6) all issuance, denials, revocations, suspensions, restrictions, and resignations of a notarial commission, professional license or public office involving the applicant in this or any other territory, state or nation;
- (7) all criminal convictions of the applicant, including any pleas of admission or nolo contendere, in this or any other territory or state or nation; and
- (8) all claims pending or disposed against a notary bond held by the applicant, and all civil findings or admissions of fault or liability regarding the applicant's activities as a notary, in this or any other territory, state or nation.

**History:** 2008, PL 30-18.

**31.0316 Course and examination.**

- (a) Every applicant for a notary commission shall take, within the 3 months preceding the application, a course of instruction of at least 3 hours approved by the Secretary, and pass a written examination of this course.
- (b) The content of the course and the basis for the written examination shall be notarial laws, procedures, and ethics.

**History:** 2008, PL 30-18.

**31.0317 Notarized declaration.**

Every applicant for a notary commission shall sign the following declaration in the presence of a notary of this Territory:

“Declaration of Applicant

I, \_\_\_\_\_(name of applicant), solemnly swear or affirm under penalty of perjury that the personal information in this application is true, complete, and correct; that I understand the official duties and responsibilities of a notary public in the Territory of American Samoa, as explained in the course of instruction I have taken; and that I will perform, to the best of my ability, all notarial acts in accordance with the law.

\_\_\_\_\_(signature of applicant)  
(notarial certificate as specified in section 31.0343)

**History:** 2008, PL 30-18.

**31.0318 Application fee—Funds to be utilized by the Secretary.**

- (a) Every applicant for a notary commission shall pay to the American Samoa Government a non-refundable application fee of \$100.00.
- (b) All funds collected from application fees, vendor permit fees as provided for in section 31.0341, and such other fees as the Secretary may promulgate rules when necessary, but not including those fees allowable under section 31.0330, shall be placed in a special account to be utilized by the Secretary for purposes related to the training, testing and commissioning of notaries public, as provided for in this chapter. All funds not expended at the end of each financial year shall be deposited in the Government's general fund and subject to further appropriation by the Legislature.

(c) The Secretary shall keep a detailed accounting record regarding the use of such funds and shall submit a report to the Treasurer of American Samoa at the end of each financial year.

**History:** 2008, PL 30-18.

### **31.0319 Confidentiality.**

Information required by section 31.0315(7) shall be used by the Secretary and designated government employees only for the purpose of performing official duties under this Act and shall not be disclosed to any person other than a government agent acting in an official capacity and duly authorized to obtain such information, a person authorized by court order, or to the applicant or such individual's duly authorized agent.

**History:** 2008, PL 30-18.

### **31.0320 Powers and prohibitions.**

(a) A notary who is a United States National is empowered to perform the following notarial acts:

- (1) acknowledgments;
- (2) oaths and affirmations;
- (3) jurats;
- (4) signature witnessings;
- (5) copy certifications;

(b) A notary who is not a United States National is empowered only to perform the following notarial acts:

- (1) acknowledgments;
- (2) signature witnessing; and
- (3) copy certifications.

(c) A notary shall not perform a notarial act if the principal:

- (1) is not in the notary's presence at the time of notarization;
- (2) is not personally known to the notary or identified by the notary through satisfactory evidence;

(3) shows a demeanor which causes the notary to have a compelling doubt about whether the principal knows the consequences of the transaction requiring a notarial act; or

(4) in the notary's judgment, is not acting of his or her own free will.

(d) A notary may certify the affixation of a signature by mark on a document presented for notarization if:

(1) the mark is affixed in the presence of the notary and of 2 witnesses unaffected by the document;

(2) both witnesses sign their own names beside the mark;

(3) the notary writes below the mark: "Mark affixed by (name of signer of mark) in presence of (names and addresses of witnesses) and undersigned notary under section 31.0320(d) of the Notarial Act of 2007"; and

(4) the notary notarizes the signature by mark through an acknowledgment, jurat, or signature witnessing.

(e) A notary may sign the name of a person physically unable to sign or make a mark on a document presented for notarization if:

- (1) the person directs the notary to do so in the presence of 2 witnesses unaffected by the document;
- (2) the notary signs the person's name in the presence of the person and the witnesses;
- (3) both witnesses sign their own names beside the signature;
- (4) the notary writes below the signature: "Signature affixed by notary in the presence of (names and addresses of person and 2 witnesses) under section 31.0320(e) of the Notarial Act of 2007"; and
- (5) the notary notarizes the signature through an acknowledgment, jurat, or signature witnessing.

**History:** 2008, PL 30-18.

### **31.0321 Disqualifications.**

(a) A notary is disqualified from performing a notarial act if the notary:

- (1) is a party to or named in the document that is to be notarized;
- (2) will receive as a direct or indirect result any commission, fee, advantage, right, title, interest, cash, property, or other consideration exceeding in value the fees specified in section 31.0330(a);
- (3) is a spouse, domestic partner, ancestor, descendant, or sibling of the principal, including in-law, step, or half relatives; or
- (4) is an attorney who has prepared, explained, or recommended to the principal the document that is to be notarized.

(b) Notwithstanding subsection (a)(2), a notary may collect a fee for an assignment as a signing agent if payment of that fee is not contingent upon the signing of any document.

**History:** 2008, PL 30-18.

### **31.0322 Refusal to notarize.**

(a) A notary shall not refuse to perform a notarial act based on the principal's race, advanced age, gender, sexual orientation, religion, national origin, health or disability, or status as a non-client or non-customer of the notary or the notary's employer.

(b) A notary shall perform any notarial act described in section 31.0320(a) or (b) of this chapter for any person requesting such an act who tenders the appropriate fee specified in section 31.0330(a), unless:

- (1) the notary knows or has good reason to believe that the notarial act or the associated transaction is unlawful;
  - (2) the act is prohibited under section 31.0320(c);
  - (3) the number of notarial acts requested practicably precludes completion of all acts at once, in which case the notary shall arrange for later completion of the remaining acts;
- or

(c) A notary may but is not required to perform a notarial act outside the notary's regular workplace or business hours.

**History:** 2008, PL 30-18.

### **31.0323 Avoidance of influence.**

(a) A notary shall not influence a person either to enter into or avoid a transaction involving a notarial act by the notary, except that the notary may advise against a transaction if section 31.0322(b)(1) applies.

(b) A notary has neither the duty nor the authority to investigate, ascertain, or attest the lawfulness, propriety, accuracy, or truthfulness of a document or transaction involving a notarial act.

**History:** 2008, PL 30-18.

**31.0324 False certificate.**

(a) A notary shall not execute a certificate containing information known or believed by the notary to be false.

(b) A notary shall not affix an official signature or seal on a notarial certificate that is incomplete.

(c) A notary shall not provide or send a signed or sealed notarial certificate to another person with the understanding that it will be completed or attached to a document outside of the notary's presence.

**History:** 2008, PL 30-18.

**31.0325 Improper documents.**

(a) A notary shall not notarize a signature:

(1) on a blank or incomplete document; or

(2) on a document without notarial certificate wording.

(b) A notary shall neither certify nor authenticate a photograph.

**History:** 2008, PL 30-18.

**31.0326 Intent to deceive.**

A notary shall not perform any official action with the intent to deceive or defraud.

**History:** 2008, PL 30-18.

**31.0327 Testimonials.**

A notary shall not use the official notary title or seal to endorse, promote, denounce, or oppose any product, service, contest, candidate, or other offering.

**History:** 2008, PL 30-18.

**31.0328 Unauthorized practice of law.**

(a) If notarial certificate wording is not provided or indicated for a document, a non-attorney notary shall not determine the type of notarial act or certificate to be used.

(b) A non-attorney notary shall not assist another person in drafting, completing, selecting, or understanding a document or transaction requiring a notarial act.

(c) This section does not preclude a notary who is duly qualified, trained, or experienced in a particular industry or professional field from selecting, drafting, completing, or advising on a document or certificate related to a matter within that industry or field.

(d) A notary shall not claim to have powers, qualifications, rights, or privileges that the office of a notary does not provide, including the power to counsel on immigration matters.

(e) A non-attorney notary who advertises notarial services in a language other than English shall include in the advertisement, notice, letterhead, or sign the following, prominently displayed in the same language:

(1) the statement: “I am not an attorney and have no authority to give advice on immigration or other legal matters”; and

(2) the fees for notarial acts specified in section 31.0330(a).

(f) A notary may not use the term “notario publico” or any equivalent non-English term in any business card, advertisement, notice, or sign.

**History:** 2008, PL 30-18.

### **Part III: Fees and Notary Journal**

#### **31.0329 Imposition and waiver of fees.**

(a) For performing a notarial act, a notary may charge the maximum fee specified in section 31.0330, charge less than the maximum fee, or waive the fee.

(b) A notary shall not discriminatorily condition the fee for a notarial act on the attributes of the principal as delineated section 31.0322(a) though a notary may waive or reduce fees for humanitarian or charitable reasons.

**History:** 2008, PL 30-18.

#### **31.0330 Fees for notarial acts.**

(a) The maximum fees that may be charged by a notary for notarial acts are:

(1) for acknowledgments, \$10.00 per signature;

(2) for oaths or affirmations without a signature, \$20.00 per person;

(3) for jurats, \$10.00 per signature;

(4) for signature witnessings, \$10.00 per signature;

(5) for certified copies, \$5.00 per page certified with a minimum total charge of \$10.00;

(b) A notary may charge a travel fee when traveling to perform a notarial act if:

(1) the notary and the person requesting the notarial act agree upon the travel fee in advance of the travel; and

(2) the notary explains to the person requesting the notarial act that the travel fee is both separate from the notarial fee in subsection (a) and neither specified nor mandated by law.

**History:** 2008, PL 30-18.

#### **31.0331 Payment prior to act.**

(a) A notary may require payment of any fees specified in section 31.0330 prior to performance of a notarial act.

(b) Any fees paid to a notary prior to performance of a notarial act are non-refundable if:

(1) the act was completed; or

(2) in the case of travel fees paid in compliance with section 31.0330(b), the act was not completed for reasons stated in section 31.0322(b)(1) or (2) after the notary had traveled to meet the principal.

**History:** 2008, PL 30-18.

**31.0332 Fees of employee notary.**

(a) An employer may prohibit an employee who is a notary from charging for notarial acts performed on the employer's time, but shall not condition imposition of a fee on attributes of the principal as described in section 31.0322(a).

(b) A private employer shall not require an employee who is a notary to surrender or share fees charged for any notarial acts.

(c) A governmental employer who has absorbed an employee's costs in becoming or operating as a notary shall require any fees collected for notarial acts performed on the employer's time either to be waived or surrendered to the employer to support public programs.

**History:** 2008, PL 30-18.

**31.0333 Notice of fees.**

Notaries who charge for their notarial services shall conspicuously display in their places of business, or present to each principal outside their places of business, an English-language or Samoan-language schedule of fees for notarial acts, as specified in section 31.0330(a). No part of any notarial fee schedule shall be printed in smaller than 10-point type.

**History:** 2008, PL 30-18.

**31.0334 Format.**

(a) A notary shall keep, maintain, protect, and provide for lawful inspection a chronological official journal of notarial acts that is a permanently bound book with numbered pages.

(b) A notary shall keep no more than one active journal at the same time.

**History:** 2008, PL 30-18.

**31.0335 Entries.**

(a) For every notarial act, the notary shall record in the journal at the time of notarization at least the following:

(1) the date and time of day of the notarial act;

(2) the type of notarial act;

(3) the type, title, or a description of the document or proceeding;

(4) the signature, printed name, and address of each principal;

(5) the evidence of identity of each principal, in the form of either: a statement that the person is "personally known" to the notary; a notation of the type of identification document, its issuing agency, its serial or identification number, and its date of issuance or expiration; or the signature, printed name and address of each credible witness swearing or affirming to the person's identity, and, for credible witness swearing or

affirming to the person's identity, and, for credible witnesses who are not personally known to the notary, a description of identification documents relied on by the notary;

(6) the fee, if any, charged for the notarial act.

(b) A notary shall not record a social security or credit card number in the journal, unless such number is used as a serial or identification number for a identification document relied upon by the notary for identification purposes.

(c) A notary shall record in the journal the circumstances for not completing a notarial act.

(d) As required in section 31.0337(a), a notary shall record in the journal the circumstances of any request to inspect or copy an entry in the journal, including the requester's name, address, signature, and evidence of identity. The reasons for refusal to allow inspection or copying of a journal entry shall also be recorded.

**History:** 2008, PL 30-18.

### **31.0336 Signatures.**

At the time of notarization, the notary's journal must be signed, as applicable, by each:

(1) principal;

(2) credible witness swearing or affirming to the identity of a principal; and

(3) witness to a signature by mark or to a signing by the notary on behalf of a person physically unable to sign.

**History:** 2008, PL 30-18.

### **31.0337 Inspection, copying, and disposal.**

(a) In the notary's presence, any person may inspect an entry in the official journal of notarial acts during regular business hours, but only if:

(1) the person's identity is personally known to the notary or proven through satisfactory evidence;

(2) the person affixes a signature in the journal in a separate, dated entry;

(3) the person specifies the month, year, type of document, and name of the principal for the notarial act or acts sought; and

(4) the person is shown only the entry or entries specified.

(b) If the notary has a reasonable and explainable belief that a person bears a criminal or harmful intent in requesting information from the notary's journal, the notary may deny access to any entry or entries.

(c) The journal may be examined without restriction by a law enforcement officer in the course of an official investigation, subpoenaed by court order, or surrendered at the direction of the Secretary.

(d) Upon complying with a request under subsection (a), the notary shall provide a copy of a specified entry or entries in the journal at a cost of not more than \$2.00 per copy; other entries on the same page shall be masked. If a certified copy of an entry in a bound book is requested, the additional cost is as specified in section 31.0330.

(e) A notary shall safeguard the journal and all other notarial records and surrender or destroy them only by rule of law, by court order, or at the direction of the Secretary.

(f) When not in use, the journal shall be kept in a secure area under the exclusive control of the notary, and shall not be used by any other notary nor surrendered to an employer upon termination of employment.

(g) Within 10 days after the journal is stolen, lost, destroyed, damaged, or otherwise rendered unusable or unreadable as a record of notarial acts, the notary, after informing the appropriate law enforcement agency in the case of theft or vandalism, shall notify the Secretary by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, and also provide a copy or number of any pertinent police report.

(h) Upon resignation, revocation, or expiration of a notary commission, or death of the notary, the journal and notarial records shall be delivered to the Office of the Secretary of American Samoa in accordance with sections 31.0351 to 31.0355.

**History:** 2008, PL 30-18, 2008, PL 30-21.

#### **Part IV: Evidence of Authenticity**

##### **31.0338 Official signature.**

In notarizing a paper document, a notary shall:

- (1) sign by hand on the notarial certificate exactly and only the name indicated on the notary's commission;
- (2) not sign using a facsimile stamp or an electronic or other printing method; and
- (3) affix the official signature only at the time the notarial act is performed.

**History:** 2008, PL 30-18.

##### **31.0339 Official seal.**

(a) A notary shall keep an official seal that is the exclusive property of the notary. The seal shall not be possessed or used by any other person, nor surrendered to an employer upon termination of employment.

(b) An image of the official seal shall be affixed by the notary on every paper document notarized.

(c) An image of the seal shall be affixed only at the time the notarial act is performed.

(d) When not in use, the seal shall be kept secure and accessible only to the notary.

(e) Any seal image affixed by an adhesive label shall bear a preprinted sequential number which shall be recorded in the journal of notarial acts for its respective notarization.

(f) Within 10 days after the seal of a notary is stolen, lost, damaged, or otherwise rendered incapable of affixing a legible image, the notary, after informing the appropriate law enforcement agency in the case of theft or vandalism, shall notify the Secretary by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, and also provide a copy or number of any pertinent police report. Upon receipt of such notice the Secretary shall issue to the notary a new Certificate of Authorization to Purchase a Notary Seal, which shall be presented to a seal vendor in accordance with section 31.0341.

(g) As soon as reasonably practicable after resignation, revocation, or expiration of a notary commission, or death of the notary, the seal shall be destroyed or defaced so that it may not be misused.

**History:** 2008, PL 30-18.

**31.0340 Seal image.**

(a) Near the notary's official signature on the notarial certificate of a paper document, the notary shall affix a sharp, legible, permanent, and photographically reproducible image of the official seal that shall include the following elements:

- (1) the notary's name exactly as indicated on the commission;
- (2) the serial number of the notary's commission;
- (3) the words "Notary Public" and "Territory of American Samoa" and "My commission expires (commission expiration date)";
- (4) the notary's business address; and
- (5) a border in a rectangular shape no larger than 1 inch by 2 inches, surrounding the required words.

(b) Illegible information within a seal impression may be typed or printed legibly by the notary adjacent to but not within the impression.

(c) An embossed seal impression that is not photographically reproducible may be used in addition to but not in lieu of the seal described in subsection (a).

**History:** 2008, PL 30-18.

**31.0341 Obtaining and providing a seal.**

(a) In order to sell or manufacture notary seals, a vendor or manufacturer shall apply for a permit from the Secretary, who shall charge \$50.00 for issuance of this permit and maintain a controlled-access telephone number or internet site to allow vendors and manufacturers to confirm the business mailing address of any notary in American Samoa.

(b) A vendor or manufacturer shall not provide a notary seal to a purchaser claiming to be a notary, unless the purchaser presents a photocopy of his or her notary commission and a Certificate of Authorization to Purchase a Notary Seal from the Secretary, the purchaser appears in person, and the vendor or manufacturer identifies this individual as the person named in the commission and the Certificate of Authorization, through either personal knowledge or satisfactory evidence of identity.

(c) A vendor or manufacturer shall release a notary seal only to the purchaser, having appeared in person, presenting a photocopy of her notary commission, her Certificate of Authorization to Purchase a Notary Seal from the Secretary, and satisfactory evidence of identity.

(d) For each Certificate of Authorization to Purchase a Notary Seal, a vendor or manufacturer shall make or sell one and only one seal, plus, if requested by the person presenting the certificate, one and only one embossing seal.

(e) After manufacturing or providing a notary seal or seals, the vendor shall affix an image of all seals on the Certificate of Authorization to Purchase a Notary Seal and send the completed certificate to the Secretary, retaining a copy of the certificate and the commission for two years.

(f) A notary obtaining a seal or seals as a result of a name or business address change shall present a copy of the Confirmation of Notary's Name or Address Change from the Secretary in accordance with sections 31.0351 and 31.0352.

(g) A vendor or manufacturer who fails to comply with this section is guilty of a class B misdemeanor, punishable upon conviction by imprisonment of not more than six months and/or a fine not exceeding \$500.00. Such conviction shall not preclude the civil liability of the vendor to parties injured by the vendor's failure to comply with this section.

**History:** 2008, PL 30-18.

**31.0342 General acknowledgment.**

A notary shall use a certificate in substantially the following form in notarizing the signature or mark of persons acknowledging for themselves or as partners, corporate officers, attorneys in fact, or in other representative capacities:

**Territory of American Samoa**

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned notary, personally appeared \_\_\_\_\_ (name of document signer),

(personally known to me)

(proved to me through identification documents allowed by law, which were \_\_\_\_\_,)

(proved to me on the oath or affirmation of \_\_\_\_\_, who is personally known to me and stated to me that (he) (she) personally knows the document signer and is unaffected by the document,)

(proved to me on the oath or affirmation of \_\_\_\_\_ and \_\_\_\_\_, whose identities have been proven to me through documents allowed by law and who have stated to me that they personally know the document signer and are unaffected by the document,)

to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose(.

(as partner for \_\_\_\_\_, a partnership.)

(as \_\_\_\_\_ for \_\_\_\_\_, a corporation)

(as attorney in fact for \_\_\_\_\_, the principal.)

(as \_\_\_\_\_ for \_\_\_\_\_, (a)(the) \_\_\_\_\_.)

\_\_\_\_\_  
(official signature and seal of notary)

**History:** 2008, PL 30-18.

**31.0343 Jurat.**

A notary shall use a jurat certificate in substantially the following form in notarizing a signature or mark on an affidavit or other sworn or affirmed written declaration:

**Territory of American Samoa**

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me, the undersigned notary, personally appeared \_\_\_\_\_ (name of document signer), (personally known to me) (proved to me through identification documents allowed by law, which were \_\_\_\_\_,) (proved to me on the oath or affirmation of \_\_\_\_\_, who is personally known to me and stated to me that (he) (she) personally knows the document signer and is unaffected by the document,) (proved to me on the oath or affirmation of \_\_\_\_\_ and \_\_\_\_\_, whose identities have been proved to me through documents allowed by law and who have stated to me that they personally know the document signer and are unaffected by the document,) to be the person who signed the preceding or attached document in my presence and who swore or affirmed to me that the contents of the document are truthful and accurate to be best of (his)(her) knowledge and belief.

\_\_\_\_\_  
(official signature and seal of notary)

**History:** 2008, PL 30-18.

**31.0344 Signature witnessing.**

A notary shall use a certificate in substantially the following form in notarizing a signature or mark to confirm that it was affixed in the notary's presence without administration of an oath or affirmation:

Territory of American Samoa  
County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me, the undersigned notary, personally appeared \_\_\_\_\_ (name of document signer), (personally known to me) (proved to me through identification documents allowed by law, which were \_\_\_\_\_,) (proved to me on the oath or affirmation of \_\_\_\_\_, who is personally known to me and stated to me that (he)(she) personally knows the document signer and is unaffected by the document,) (proved to me on the oath or affirmation of \_\_\_\_\_ and \_\_\_\_\_, whose identities have been proven to me through documents allowed by law and who have stated to me that they personally know the document signer and are unaffected by the document,) to be the person who signed the preceding or attached document in my presence.

\_\_\_\_\_  
(official signature and seal of notary)

**History:** 2008, PL 30-18.

**31.0345 Signer by mark and person unable to sign.**

On paper documents, certificates in sections 31.0342, 31.0343 and 31.0344 of this chapter may be used for signers by mark or persons physically unable to sign or make a mark if:

(1) for a signer by mark, the notary and 2 witnesses unaffected by the document observe the affixation of the mark, both witnesses sign their own names beside the mark, and the notary writes below the mark: "Mark affixed by (name of signer by mark) in presence of (names and addresses of 2 witnesses) and undersigned notary under section 31.0320(d) of the Notarial Act of 2007"; or

(2) for a person physically unable to sign or make a mark, the person directs the notary to sign on his or her behalf in the presence of the person and 2 witnesses unaffected by the document, both witnesses sign their own names beside the signature, and the notary writes below the signature: "Signature affixed by notary in presence of (names and addresses of person and 2 witnesses) under section 31.0320(e) of the Notarial Act of 2007".

**History:** 2008, PL 30-18.

**31.0346 Certified copy.**

A notary shall use a certificate in substantially the following form in notarizing a certified copy:

**Territory of American Samoa**

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, I certify that the (preceding) (following) (attached) document is a true, exact, complete, and unaltered copy made by me of \_\_\_\_\_ (description of document),

(presented to me by the documents custodian, \_\_\_\_\_,)

(held in my custody as a notarial record,)

and that, to the best of my knowledge, the copied document is neither a vital record, a public record nor a publicly recordable document, certified copies of which may be available from an official source other than a notary.

\_\_\_\_\_  
(official signature and seal of notary)

**History:** 2008, PL 30-18.

**31.0347 Forms of evidence.**

On a notarized document sent to another state or nation, evidence of the authenticity of the official seal and signature of a notary of this Territory, if required, shall be in the form of:

(1) a certificate of authority from the Secretary authenticated as necessary by additional certificates from United States and/or foreign government agencies; or

(2) in the case of a notarized document to be used in a nation that has signed and ratified the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents of October 5, 1961, an Apostille from the Secretary of American Samoa in the form prescribed by the Convention, with no additional authenticating certificates required.

**History:** 2008, PL 30-18.

**31.0348 Certificate of authority.**

(a) A certificate of authority evidencing the authenticity of the official seal and signature of a notary of this Territory shall be substantially in the following form:

**Certificate of Authority for a Notarial Act**

I, \_\_\_\_\_ Secretary of American Samoa, certify that \_\_\_\_\_ (name of notary), the person named in the seal and signature on the attached document, was a Notary Public for the Territory of American Samoa, and authorized to act as such at the time of the document's notarization.

To verify this Certificate of Authority for a Notarial Act, I have affixed below my signature and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(signature and seal of Secretary of American Samoa)

**History:** 2008, PL 30-18.

**31.0349 Apostille.**

An Apostille prescribed by the Hague Convention, as cited in 28 U.S.C.A. in the annotations to Rule 44 of the Rules of Civil Procedure, shall be in the form of a square with sides at least 9 centimeters long and contain exactly the following wording:

**APOSTILLE**  
(Convention de la Haye du 5 octobre 1961)

- 1. Country: \_\_\_\_\_
- This public document
- 2. has been
- signed by \_\_\_\_\_
- 3. acting in
- the capacity of \_\_\_\_\_
- 4. bears the seal/stamp of \_\_\_\_\_

**CERTIFIED**

- 5. at \_\_\_\_\_ 6. the \_\_\_\_\_
- 7. by \_\_\_\_\_
- 8. No. \_\_\_\_\_
- 9. Seal/Stamp                      10. Signature:

\_\_\_\_\_

**History:** 2008, PL 30-18.

**31.0350 Fees.**

The Secretary may charge:

- (1) for issuing a certificate of authority, \$25.00; and
- (2) for issuing an Apostille, \$25.00.

**History:** 2008, PL 30-18.

## **Part V: Change of Status, Sanctions and Liability**

### **31.0351 Change of address.**

(a) Within 10 days after the change of a notary's residence, business, or mailing address, the notary shall send to the Secretary by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, a signed notice of the change, giving both old and new addresses.

(b) If the business address is changed, the notary shall not notarize until:

(1) the notice described in subsection (a) has been delivered or transmitted;

(2) a Confirmation of Notary's Name or Address Change has been received from the Secretary; and

(3) a new seal bearing the new business address has been obtained.

**History:** 2008, PL 30-18.

### **31.0352 Change of name.**

(a) Within 10 days after the change of notary's name by court order or marriage, the notary shall send to the Secretary by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, a signed notice of the change, giving both former and new names, with a copy of any official authorization for such change.

(b) A notary with a new name shall continue to use the former name in performing notarial acts until the following steps have been completed, at which point the notary shall use the new name:

(1) the notice described in subsection (a) has been delivered or transmitted;

(2) a Confirmation of Notary's Name or Address Change has been received from the Secretary; and

(3) a new seal bearing the new name exactly as in the Confirmation has been obtained.

**History:** 2008, PL 30-18.

### **31.0353 Resignation.**

(a) A notary who resigns his or her commission shall send to the Secretary by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, a signed notice indicating the effective date of resignation.

(b) Notaries who cease to reside in or to maintain a regular place of work or business in this Territory, or who become permanently unable to perform their notarial duties, shall resign their commissions.

**History:** 2008, PL 30-18.

### **31.0354 Disposition of seal and journal.**

(a) Except as provided in subsection (b), when a notary commission expires or is resigned or revoked, the notary shall:

(1) as soon as reasonably practicable, destroy or deface all notary seals so that they may not be misused; and

(2) within 30 days after the effective date of resignation, revocation, or expiration, send to the Office of the Secretary of American Samoa by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, the notarial journal and records, in accordance with the requirements of the same office.

(b) A former notary who intends to apply for a new commission and whose previous commission or application was not revoked or denied by this Territory, need not deliver the journal and records within 30 days after commission expiration, but must do so within 3 months after expiration unless recommissioned within that period.

**History:** 2008, PL 30-18.

### **31.0355 Death of notary.**

If a notary dies during the term of commission or before fulfilling the obligations stipulated in Section 31.0354, the notary's personal representative shall:

(1) notify the Secretary of the death in writing;

(2) as soon as reasonably practicable, destroy or deface all notary seals so that they may not be misused; and

(3) within 30 days after death, send to the Office of the Secretary of American Samoa, care of the Office of the Governor by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, the notary's journal of notarial acts and any other notarial records, in accordance with requirements of the same office.

**History:** 2008, PL 30-18.

### **31.0356 Liability of notary and employer.**

(a) A notary is liable to any person for all damages proximately cause that person by the notary's negligence, intentional violation of law, or official misconduct in relation to a notarization.

(b) An employer of a notary is liable to any person for all damages proximately caused that person by the notary's negligence, intentional violation of law, or official misconduct in performing a notarization during the course of employment, if the employer directed, expected, encouraged, approved, or tolerated the notary's negligence, violation of law, or official misconduct either in the particular transaction or, impliedly, by the employer's previous action in at least one similar transaction involving any notary employed by the employer.

(c) An employer of a notary is liable to the notary for all damages recovered from the notary as a result of any violation of law by the notary that was coerced by threat of the employer, if the threat, such as of demotion or dismissal, was made in reference to the particular notarization or, impliedly, by the employer's previous action in at least one similar transaction involving any notary employed by the employer. In addition, the employer is liable to the notary for damages caused the notary by demotion, dismissal, or other action resulting from the notary's refusal to engage in violation of law or official misconduct.

(d) Notwithstanding any other provision of this Act, for the purposes of this section "negligence" shall not include any good-faith determination made by the notary pursuant to the obligations imposed by Section 31.0320(c)(3) or (4).

**History:** 2008, PL 30-18.

**31.0357 Proximate cause.**

Recovery of damages against a notary or employer does not require that the notary's negligence, violation of law, or official misconduct be either the sole or principal proximate cause of the damages.

**History:** 2008, PL 30-18.

**31.0358 Revocation.**

(a) The Secretary may revoke a notary commission for any ground on which an application for a commission may be denied under Section 31.0309(c) and (d).

(b) The Secretary shall revoke the commission of any notary who fails:

(1) to maintain a residence or a regular place of work or business in the Territory of American Samoa; and

(2) to maintain status as a legal resident of American Samoa.

(c) Prior to revocation of a notary commission, the Secretary shall inform the notary of the basis for the revocation and that the revocation takes effect on a particular date unless a proper appeal is filed with the Administrative Law Judge before that date.

(d) Resignation or expiration of a notary commission does not terminate or preclude an investigation into the notary's conduct by the Secretary, who may pursue the investigation to a conclusion, whereupon it shall be made a matter of public record whether or not the finding would have been grounds for revocation.

**History:** 2008, PL 30-18.

**31.0359 Other remedial actions for misconduct.**

(a) The Secretary may deliver a written Official Warning to Cease Misconduct to any notary whose actions are judged to be official misconduct under Section 31.0307(1).

(b) The Secretary may seek a court injunction to prevent a person from violating any provision of this Act.

**History:** 2008, PL 30-18.

**31.0360 Publications of sanctions and remedial actions.**

The Secretary shall regularly publish a list of persons whose commissions have been revoked by the Secretary or whose actions as a notary were the subject of a court injunction or Official Warning to Cease Misconduct.

**History:** 2008, PL 30-18.

**31.0361 Criminal sanctions.**

(a) In performing a notarial act, a notary is guilty of a class D felony, punishable upon conviction by a fine not exceeding \$5,000 or imprisonment of up to five years, or both, for knowingly:

(1) failing to require the presence of a principal at the time of the notarial act;

(2) failing to identify a principal through personal knowledge or satisfactory evidence; or

(3) executing a false notarial certificate under Section 31.0324.

(b) A notary who knowingly performs or fails to perform any other act prohibited or mandated respectively by this Act may be guilty of a class A misdemeanor, punishable upon conviction by a fine not exceeding \$1,000 or imprisonment of up to one year, or both.

**History:** 2008, PL 30-18.

**31.0362 Additional remedies and sanctions not precluded.**

The remedies and sanctions of this chapter do not preclude other remedies and sanctions provided by law.

**History:** 2008, PL 30-18.

**31.0363 Impersonation.**

Any person not a notary who knowingly acts as or otherwise impersonates a notary is guilty of a Class D felony, punishable upon conviction by a fine of not more than \$5,000, or imprisonment for not more than five years, or both.

**History:** 2008, PL 30-18.

**31.0364 Wrongful possession.**

Any person who knowingly obtains, conceals, defaces, or destroys the seal, journal, or official records of a notary is guilty of a Class D felony, punishable upon conviction by a fine of not more than \$5,000, or imprisonment for not more than five years, or both.

**History:** 2008, PL 30-18.

**31.0365 Improper influence.**

Any person who knowingly solicits, coerces, or in any way influences a notary to commit official misconduct is guilty of a Class D felony, punishable upon conviction by a fine of not more than \$5,000, or imprisonment for not more than five years, or both.

**History:** 2008, PL 30-18.

**31.0366 Additional sanctions not precluded.**

**History:** 2008, PL 30-18.

**Reviser's Comment:** Repealed by PL 30-21, 2008.

**Chapters 04**

**(RESERVED)**

**Chapter 05**

**CONTRACTORS**

**Sections:**

- 31.0501 Definitions.**
- 31.0502 Contractors' license Board-Terms-Vacancy.**
- 31.0503 Contractors' license Board-Powers.**
- 31.0504 Contractors' license administrator-Established.**
- 31.0505 Contractors' license administrator-Powers.**
- 31.0506 License-Required-Penalty for violation.**
- 31.0507 License-Classification.**
- 31.0508 General engineering contractor's license.**
- 31.0509 General building contractor's license.**
- 31.0510 Specialty contractor's license.**
- 31.0511 License application-Contents-Issuance or refusal.**
- 31.0512 Right to license or renewal.**
- 31.0513 Grounds for refusal, revocation, suspension, modification, or limitation of license.**
- 31.0514 Expiration and renewal of license.**
- 31.0515 Right to copy of adverse decision by administrator.**
- 31.0516 Right to hearing before Board- Request-Decision.**
- 31.0517 Right to copy of adverse decision by Board.**
- 31.0518 Petition to appellate division of High Court.**
- 31.0519 Attorney General to serve as counsel.**
- 31.0520 Liability of administrator and Board.**
- 31.0521 Exceptions to chapter.**

**31.0501 Definitions.**

When used in this chapter:

- (a) "Administrator" means the Contractors' License administrator.
- (b) "Board" means the Contractors' License Board of American Samoa.
- (c) "Contractor" means any person, firm, copartnership, corporation, association, or other organization, or any combination of any thereof, who for a fixed sum, price fee, percentage or other compensation other than wages, undertakes with another for the construction, alteration, repair, addition to, or improvement of any building, highway, road, excavation, or other structure, project, development or improvement, other than personality, or any part thereof. The term includes anyone who builds more than 1 structure on his own property during any 1 year for the purpose of sale and also any subcontractor, but does not include anyone who merely furnished materials or supplies without making the same into that which is to be constructed or using the same in the performance of the work of the contractor. The term also includes any person who by advertising, or otherwise, holds himself out as a contractor, but does not include persons regularly engaged as maintenance personnel to do casual, isolated, or incidental repairs.

**History:**1969, PL 11-38.

**31.0502 Contractors license Board-Terms-Vacancy.**

(a) There is established the Contractors' License Board of American Samoa, consisting of a chairman and 4 members, each to be nominated by the Governor and confirmed by concurrent resolution of the Senate and the House of Representatives.

(b) The chairman and members shall serve for terms of 4 years, except that the Governor shall designate 2 members of the original Board who shall serve for 2 years.

(c) If a vacancy on the Board occurs while the Legislature is not in session, the Governor may appoint an interim chairman or member to serve only until the adjournment of the next regular or special session of the Legislature.

**History:**1969, PL 11-38.

**31.0503 Contractors' license Board-Powers.**

The Board has power, subject to the provisions of this chapter, to:

- (1) promulgate any regulations necessary for the maintenance of professional competence and ethical standards among contractors;
- (2) prescribe by regulation the qualifications, requirements and limitations for the classes of contractors provided for in this chapter;
- (3) upon review of action by the Administrator, issue or renew, limit, modify, suspend or revoke any license provided for in this chapter;
- (4) hold hearings, compel the attendance and testimony of witnesses, order the production of documents and other tangible evidence, administer oaths, and cite for contempt.

**History:**1969, PL 11-38.

**31.0504 Contractors' License Administrator-Established.**

There is established the position of Contractors' License Administrator. The Administrator shall be a staff member of the Department of Public Works and designated by the Governor.

**History:**1969, PL 11-38.

**31.0505 Contractors' license administrator- Powers.**

The Administrator has power, subject to the provisions of this chapter, to:

- (1) investigate the qualifications and business operations of applicants for licenses under this chapter or of any licensee, and use any examination designed to test the qualifications and competence of applicants or licensees;
- (2) issue, renew, refuse to issue, or renew, limit, modify, suspend, or revoke any license provided for in this chapter;
- (3) prescribe forms and examinations to be used in the administration of this chapter and establish fees for licenses provided for in this chapter;
- (4) recommend regulations to the Board and make any other recommendations to the Board concerning the administration of this chapter.

**History:**1969, PL 11-38.

**31.0506 License-Required-Penalty for violation.**

No person, firm, copartnership, corporation, association, or combination thereof may engage in the business or act in the capacity of a contractor without having a contractor's license issued by the Board or the Administrator. Any person who violates this section shall be fined not more than \$1,000, or imprisoned for not more than 6 months, or both.

**History:** 1969, PL 11-38.

**31.0507 License-Classification.**

There shall be the following 3 classifications of contractors' licenses:

- (1) general engineering contractor's license;
- (2) general building contractor's license;
- (3) specialty contractor's license.

**History:**1969, PL 11-38.

### **31.0508 General engineering contractor's license.**

A general engineering contractor's license shall authorize the licensee to engage principally in the contracting business in connection with fixed works for irrigation, drainage, water power, water supply, flood control, inland waterways, harbors, railroads, highways, tunnels, airports, airways, sewers, and bridges.

**History:**1969, PL 11-38.

### **31.0509 General building contractor's license.**

A general building contractor's license shall authorize the licensee to engage principally in the building or superintendence of the building of any structure for support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind. A licensee shall be competent in at least 3 unrelated and generally recognized building trades, all of which shall be specified in the license.

**History:**1969, PL 11-38.

### **31.0510 Specialty contractor's license.**

A specialty contractor's license may be issued authorizing the licensee to engage in contracting for one or more unrelated and generally recognized building trades for which he is competent, each of which shall be specified in the license. A specialty contractor's license may also be issued authorizing the licensee to engage in contracting for the building of specific types of structures or fixtures for which he is competent, each of which shall be specified in the license.

**History:**1969, PL 11-38.

### **31.0511 License application-Contents- Issuance or refusal.**

(a) Applications for new licenses must be filed with the Administrator, who shall investigate the qualifications of the applicant.

(b) The applicant is required to show sufficient experience, financial responsibility, and a general knowledge of the building, safety, and health laws of American Samoa and of rudimentary principles of the contracting business. In addition, the applicant is required to show substantial compliance with any other relevant qualifications or requirements in this chapter or any regulations promulgated hereunder.

(c) Within 30 days after an application has been filed, the administrator shall issue the license applied for, issue a modified or limited license, or refuse to issue a license.

**History:**1969, PL 11-38.

### **31.0512 Right to license or renewal.**

An applicant or licensee is entitled to the license or renewal applied for if the applicant or licensee substantially complies with the relevant qualifications and requirements in this chapter

and any regulations promulgated under this chapter, and if the applicant or licensee has not engaged in any of the grounds for refusal, revocation, suspension, modification, or limitation of license in 31.0513.

**History:**1969, PL 11-38.

**31.0513 Grounds for refusal, revocation, suspension, modification, or limitation of license.**

(a) A license may be refused, revoked, suspended, modified, or limited for any 1 or combination of the following grounds:

- (1) abandonment of any contract without legal excuse;
- (2) diversion of funds or property received under agreement for the prosecution or completion of a specific contract, or for a specific purpose in the prosecution or completion of any contract, and the application or use thereof for any other contract, obligation, or purpose;
- (3) fraudulent departure from or disregard of plans or specifications in any material respect without consent of the owner; or any fraudulent act which substantially injures another;
- (4) willful and deliberate violation of any applicable building code requirement or safety law;
- (5) failure to substantially comply with any qualification or requirement in this chapter or in any regulation promulgated under this chapter.

(b) On his own motion, or on the complaint of any person, the Administrator may, after investigation, modify, limit, suspend, or revoke any license issued under this chapter for any 1 or combination of the grounds in (a) of this section.

**History:**1969, PL 11-38.

**31.0514 Expiration and renewal of license.**

- (a) All licenses issued under this chapter expire on 31 December of each year.
- (b) When an application for renewal has been filed with the Administrator, he shall, within 30 days thereafter, either renew the license, with or without modification, or refuse to renew the license.
- (c) If an application for renewal is filed prior to the expiration of a license, the license remains valid after expiration until it is finally renewed, modified, limited, or refused by the Administrator or, in case a hearing is requested, by the Board.
- (d) If an application for renewal is not filed within 6 months after expiration of a license, the licensee is required to apply for a new license.

**History:**1969, PL 11-38.

**31.0515 Right to copy of adverse decision by Administrator.**

Any applicant or licensee whose license is refused, revoked, suspended, modified, or limited by the Administrator, or who is otherwise adversely affected by any action by the Administrator, is entitled to a written copy of the Administrator's decision setting forth the facts and reasons on which the refusal, revocation, suspension, modification, limitation, or other adverse action is based. The decision must also advise the applicant or licensee of his right to a hearing before the Board as provided in this chapter.

**History:**1969, PL 11-38.

**31.0516 Right to hearings before Board-Request-Decision.**

(a) Any applicant or licensee adversely affected by an action by the Administrator is entitled to a hearing before the Board if he files a written request for a hearing within 10 days after receiving a copy of the Administrator's decision.

(b) A request for a hearing must state which specific findings of fact and reasons of the Administrator are contested, and the hearing must be confined to the issues raised by the request.

(c) If no timely request is filed, the Administrator's decision is final and effective and the case may not thereafter be heard by the Board or reviewed by the High Court.

(d) After a hearing has been held, the Board shall dispose of the case on the basis of the evidence adduced.

**History:**1969, PL 11-38.

### **31.0517 Right to copy of adverse decision by Board.**

(a) Any applicant or licensee whose license is modified, limited, refused, suspended, or revoked by the Board, or who is otherwise adversely affected by any action by the Board, is entitled to a written copy of the Board's decision setting forth the facts and reasons on which the modification, limitation, refusal, suspension, revocation, or other adverse action is based.

(b) The decision must also contain a summary of the evidence on which the Board's findings of fact are based.

(c) The Board's decision, together with the decision of the administrator and any application or other papers filed by the applicant or licensee, constitute the record of proceedings before the Board. The Board may, in its discretion, include in the record any other material properly received at the hearing.

**History:**1969, PL 11-38.

### **31.0518 Petition to appellate division of High Court.**

(a) Any applicant or licensee aggrieved by a decision of the Board may petition the appellate division of the High Court of American Samoa to review the decision. A copy of the petition must be served on the Board.

(b) Within 30 days after service of the petition, the Board must file the record of proceedings with the court. The review by the court is confined to the record. Upon request by any party, the court must receive briefs and hear oral argument. On motion of any party, the court may, in its discretion, receive any evidence necessary to supplement the record.

(c) A petition for review may be filed not later than 10 days after a copy of the Board's decision has been served on the applicant or licensee.

(d) The filing of a petition does not stay the action of the Board, but the Board may grant or the court may order a stay on appropriate terms.

**History:**1969, PL 11-38.

### **31.0519 Attorney General to serve as counsel.**

(a) The Attorney General serves as legal counsel to the Administrator. In such capacity he may not counsel or advise the Board or any member of the Board.

(b) After the Board has reached a decision in a case, the Attorney General shall serve as counsel to the Board in any judicial review of that decision.

**History:**1969, PL 11-38.

**31.0520 Liability of administrator and Board.**

(a) The Administrator, the members of the Board, and employees and agents of the Administrator or the Board, acting in good faith and without malice in the discharge of their duties under this chapter, may not be personally liable, and are relieved of all personal liability, for any damage which may accrue to persons or property as a result of any act required by, or by reason of any act or omission in, the discharge of such duties.

(b) Any suit brought against a person relieved of liability under this section because of an act or omission from which he is relieved of liability under this section shall be defended by the Attorney General.

**History:**1969, PL 11-38.

**31.0521 Exceptions to chapter.**

This chapter does not apply to:

(1) authorized representatives of the Government of the United States or the Government of American Samoa, or of any political subdivision or political or municipal corporation of either government;

(2) officers of a court acting in their official capacity;

(3) regulated public utilities performing construction work incidental to their business;

(4) persons building structures for their own use.

**History:**1969, PL 11-38.

**Chapter 06**

**PROFESSIONAL SURVEYORS**

**Sections:**

**31.0601 Board-Established-Membership-Term-Quorum.**

**31.0602 Board-Powers and duties.**

**31.0603 Regulations.**

**31.0604 Schedule of fees.**

**31.0605 Disposition of fees.**

**31.0606 Unauthorized practices.**

**31.0607 Violation-Penalty.**

**31.0601 Board-Established-Membership-Term-Quorum.**

(a) The Board of Registration for Professional Surveyors is created. The Board membership shall consist of the Director of Public Works who shall serve as chairman, and 4 members appointed by the Governor with the approval of the Senate.

(b) The term of the appointed members shall be 3 years. No member may be reappointed to the Board for 2 years after the expiration of his term.

(c) If possible, the members appointed by the Governor should be familiar with land surveying either by profession, related occupations or a demonstrated interest in land surveying.

(d) Three members of the Board shall constitute a quorum and a majority vote of those present is sufficient to decide any issue.

(e) No member of the Board who is an employee of the government may offer to perform land surveying services for pay except as may be specifically approved by the Board in each in-

stance.

**History:**1963, PL 8-12; amd 1974, PL 12-57; amd 1979, PL 16-17 § 2.

**Amendments:** 1974 Amended section generally.  
1979 deleted Attorney General as ex officio member.

### **31.0602 Board-Powers and duties.**

The Board shall:

- (1) qualify all persons who shall practice the profession of land surveying;
- (2) receive applications for certificates of registration and issue such certificates to those who meet its qualifications;
- (3) maintain a list of certified professional surveyors;
- (4) upon the presentation of information justifying the action, revoke certifications where such action is considered by it to be appropriate;
- (5) perform any actions necessary in carrying out its functions.

**History:** 1963, PL 8-12.

### **31.0603 Regulations.**

The Board shall, from time to time, prescribe and publish such regulations as may be necessary to carry out its functions and responsibilities in accordance with this chapter.

**History:**1963, PL 8-12.

### **31.0604 Schedule of fees.**

The following schedule of fees is established:

- (1) with an application for a certificate of registration, \$2;
- (2) for issuance of a certificate of registration, \$25;
- (3) for a duplicate of a certificate of registration, \$10;
- (4) for annual renewal of certificate of registration, \$2;
- (5) for a temporary permit, \$10;
- (6) for issuance of a renewal certificate of registration, in the event of a delinquency of not more than 1 year in annual renewal, \$2.

**History:**1963, PL 8-12.

### **31.0605 Disposition of fees.**

All fees collected pursuant to this chapter shall be deposited in a special fund which shall be available for the payment of any expenses incurred in the administration of this chapter. Any sums in excess of those necessary to pay such expenses shall be dispensed as otherwise provided by law.

**History:**1963, PL 8-12.

### **31.0606 Unauthorized practices.**

Persons may not practice the profession of land surveying unless those persons are certified by the Board in accordance with the provisions of this chapter.

**History:**1977, PL 15-51 § 1.

**31.0607 Violation-Penalty.**

A violation of provisions of this chapter, or rules adopted under it by the Board is a class A misdemeanor.

**History:**1977, PL 15-51 § 2; amd 1980, PL I6-90 § 89.

**Amendments:** 1980 Amended so conform with penalties provided for in Title 46, Criminal Justice.

**Chapter 07**

**TRADESMEN**

**Sections:**

- 31.0701 Definitions.**
- 31.0702 Board-Members-Quorum and vote.**
- 31.0703 Board-Meetings-Office.**
- 31.0704 Board-Powers.**
- 31.0705 Persons and trades covered by chapter.**
- 31.0706 Certificates.**
- 31.0706.1 Budget.**
- 31.0707 Fees.**
- 31.0708 Refusal, revocation, suspension, modification, and limitation of certificates.**
- 31.0709 Administrative and judicial procedure.**
- 31.0710 Unlawful to practice without certificate.**
- 31.0711 Unlawful to employ uncertified tradesman.**
- 31.0712 Violation-Penalty.**

**31.0701 Definitions.**

When used in this chapter:

- (a) “Board” means the Board of Tradesmen Examiners of American Samoa.
- (b) “Person” includes any person, firm, copartnership, corporation, association, or other organization or any combination thereof.

**History:**1971, PL 12-21 § 2.

**31.0702 Board-Members-Quorum and vote.**

(a) There is established the Board of Tradesmen Examiners of American Samoa, consisting of a chairman and 4 members, each to be appointed by the Governor of American Samoa for a 2-year term. Members must be chosen from both the public and private sectors of the community.

(b) All members of the Board serve without compensation.

(c) At least 3 members of the Board are necessary to constitute a quorum for the transaction of business, and a majority vote of those present is sufficient to decide any issue.

**History:**1971, PL, 12-21 § 3.

**31.0703 Board-Meetings-Office.**

(a) The Board must meet at least 4 times each calendar year in permanent office space provided by the government for the purpose of transacting business, and such required meetings must be held during the months of January, April, July, and October. A full-time office secretary

shall staff the office.

(b) Special meetings of the Board may be called by the Board secretary upon written request of 2 members.

(c) The Board secretary shall give each member of the Board 5 days written notice of the time and place of all meetings request of 2 members.

(d) The Board secretary shall give each member of the Board 5 days written notice of the time and place of all meetings.

**History:**1971, PL 12-21 § 4; amd 1987, PL 20-20 § 1.

**Amendments:** 1987 Added language to provide for permanent office space and a full-time Board secretary.

### **31.0704 Board-Powers.**

The Board shall have power, subject to the provisions of this chapter, to:

(1) promulgate all rules necessary for the maintenance of professional competence and ethical standards among tradesmen;

(2) prescribe by rule, qualifications, requirements and limitations for tradesmen as provided in this chapter;

(3) issue, renew, refuse, limit, modify, suspend, or revoke any certificate provided for in this chapter;

(4) hold hearings, compel the attendance and testimony of witnesses, order the production of documents and other tangible evidence, administer oaths and cite for contempt.

**History:**1971, PL 12-21 § 5.

### **31.0705 Persons and trades covered by chapter.**

(a) This chapter shall pertain to all individuals desiring to obtain certificates as carpenters, plumbers, painters, electricians, masons, millwrights, welders, tinsmiths, tile setters, cabinetmakers, radio/tv repairmen, refrigeration air conditioning repairmen, draftsmen, auto mechanics, sheet-metal men and such other trades as the Board may, by rule or regulation, from time to time determine should be within the purview of this chapter. This chapter applies to those tradesmen who wish to perform services for hire on an hourly, daily or other basis, including a contractual agreement, but does not apply to laborers working under the supervision of qualified tradesmen or tradesmen contractors.

(b) All specialty contractors or general contractors shall perform only services as are permitted by the certificates of the tradesmen in their employ.

(c) This chapter shall apply to tradesmen in the employ of the Government of American Samoa.

**History:**1971, PL, 12-21 § 6.

### **31.0706 Certificates.**

All certificates issued pursuant to this chapter must bear the date of issue, expire on 31 December next following the date of issue, and may be renewed from year to year.

**History:**1971, PL, 12-21 § 7.

#### **31.0706.1 Budget.**

Each year the Board shall submit to the budget office for inclusion in the annual budget act its annual budget for its office expenses, rental fees, salary, supplies and material.

**History:** 1987, PL, 20-20 § 2.

**31.0707 Fees.**

The Board shall set reasonable fees for applications, examinations, certificates, duplicate certificates and renewals, in amounts not to exceed the cost of preparing, administering, and issuing the documents.

**History:** 1971, PL 12-21 § 8.

**31.0708 Refusal, revocation, suspension, modification, and limitation of certificates.**

A certificate provided for in this chapter may be refused, revoked, suspended, modified, or limited for any one or combination of the following grounds:

- (1) conviction of a crime in connection with the trade practiced by tradesmen licensed under this chapter; the record of conviction or certified copy thereof by the clerk of the court or judge in whose court the conviction is obtained shall be conclusive evidence of the conviction;
- (2) willful and deliberate violation of applicable law or duly promulgated rules and regulations of the Board concerning practice of a trade;
- (3) fraud or misrepresentation in obtaining a certificate under this chapter;
- (4) aiding and abetting the practice of any trade by any person not authorized to practice the trade under the provisions of this chapter;
- (5) negligence or incompetence demonstrated in the practice of a trade or occupation subject to the provisions of this chapter.

**History:** 1971, PL, 12-21 § 9.

**31.0709 Administrative and judicial procedure.**

All procedures and proceedings of the Board, and judicial review thereof, must be in accordance with the provisions of the Administrative Procedures Act set forth in 4.1001 et seq.

**History:** 1971, PL 12-21 § 10.

**31.0710 Unlawful to practice without certificate.**

It is unlawful for any person to practice as a tradesman in American Samoa without a certificate, or to advertise or put out any sign, card, or other device which indicates to the public that he is a certified tradesman or that he is qualified to engage in the practice of the trades enumerated in this chapter unless he is duly certified as such under the terms of this chapter.

**History:** 1971, PL 12-21 § 12.

**31.0711 Unlawful to employ uncertified tradesman.**

It is unlawful for any person to willfully and knowingly employ another person as a tradesman unless the other person is certified as a tradesman under the provisions of this chapter.

**History:** 1971, PL 12-21 § 12.

**31.0712 Violation-Penalty.**

- (a) Any person who is convicted of any violation of this chapter, or any rule duly promulgated under this chapter, is guilty of a class C misdemeanor.
- (b) Each day of violation of this chapter shall constitute a separate offense.

**History:** 1971, PL 12-21 § 12; amd 1980, PL 16-90 § 85.

**Amendments:** 1980 Amended so conform with penalties provided for in Title 46, Criminal Justice.

## **Chapters 08-09**

**(RESERVED)**

## **Chapter 10**

### **HEALTH SERVICES**

#### **Sections:**

- 31.1001 License required.**
- 31.1002 Health Services Regulatory Board-Created-Purpose.**
- 31.1003 Health Services Regulatory Board-Composition-Quorum and vote-Terms.**
- 31.1004 Health Services Regulatory Board-Committees.**
- 31.1005 Health Services Regulatory Board-Powers and duties.**
- 31.1006 Administrative and judicial procedure.**
- 31.1007 Licenses-Record.**
- 31.1008 Licenses-Duration.**
- 31.1009 Licenses-Refusal, revocation, suspension, modification and limitation.**
- 31.1010 Violation-Penalty.**
- 31.1011 Violation-Single act sufficient evidence.**

#### **31.1001 License required.**

No person may practice medicine or dentistry, or give treatment for the prevention of disease, unless that person is licensed in accordance with the provisions of this chapter.

**History:**1972, PL 12-61.

#### **31.1002 Health Services Regulatory Board- Created-Purpose.**

(a) There is created a Health Services Regulatory Board, referred to in this chapter as the Board.

(b) The purpose of the Board shall be to regulate health services in American Samoa.

(c) Health services include any practice of medicine, dentistry, or nursing, including treating the sick or injured or treatment in the prevention of diseases and all training and education therefor.

**History:**1972, PL 12-61; amd 1978, PL 15-106 § 2.

**Amendments:** 1978 Subsection (a): added "hereinafter referred to as the Board", subsection Cc): added reference to nursing.

#### **31.1003 Health Services Regulatory Board-Composition-Quorum and votes-Term.**

(a) The Board is composed of the Director of Health, who shall act as chairman, and, in addition, the Governor shall appoint to the Board 1 physician, the public health officer, the Director of Nursing Services, a medical officer, a dentist, a licensed practical nurse, and a representative from the American Samoa Community College nursing program. At least 50% of the Board, excluding the chairman, must be American Samoans.

(b) The presence of 4/5 of all members of the Board is necessary to constitute a quorum for

the transaction of any business, and a majority vote of those present is necessary to determine any issue.

(c) Appointments made by the Governor may not exceed 3 years and must be staggered in order to insure continuity of the Board.

**History:**1972, PL 12-61; amd 1978, PL 15-106 § 3.

**Amendments:** 1978 Subsection (i): changed composition of Board.

### **31.1004 Health Services Regulatory Board-Committees.**

The Board may carry out its functions through the use of committees, which shall specialize in particular areas of health services, such as nursing, medicine and pharmacy; provided, that those powers and duties exclusively reserved for exercise by the Board may be exercised only by the Board.

**History:**1972, PL 12-61.

### **31.1005 Health Services Regulatory Board-Powers and duties.**

(a) The exclusive powers and duties of the Board are to:

(1) require committees to establish licensing regulations necessary for the maintenance of professional competence and ethical standards among persons involved in the particular area of health services in which the committee has expertise;

(2) issue or renew, refuse, limit, modify, suspend, or revoke any license issued by the Board;

(3) appoint committee members, provided that 1 member of the Board shall serve on each committee;

(4) upon matters referred by committees or any Board member, hold hearings, compel the attendance and testimony of witnesses; order production of documents and other tangible evidence and administer oaths;

(5) administer or cause to be administered examinations required by committees for licensing;

(6) set fees for examinations and licensing reasonably related to the cost thereof;

(7) adopt regulations promulgated by committees which pertain to a committee's area of expertise and do not conflict with other regulations adopted by the Board.

(b) All powers and duties relating to the purpose of the Board not expressly reserved to the Board may be exercised by committees, or in the absence of a functioning committee, by the Board; provided, that where the Board and a committee are in disagreement on a particular matter the decision of the Board shall prevail.

**History:**1972, PL 12-61.

### **31.1006 Administrative and judicial procedure.**

All proceedings respecting the promulgation of rules and the refusal, suspension, revocation, or modification of a license issued by the Board, and judicial review thereof, must be in accordance with the provisions of the Administrative Procedures Act set forth in 4.1001 et seq.

**History:**1972, PL 12-61.

### **31.1007 Licenses-Record.**

The Board shall maintain a record of all licenses issued which shall include the date of issuance, date of any revocation, suspension, or modification and the reason therefor.

**History:**1972, PL 12-61.

**31.1008 Licenses-Duration.**

All licenses issued by the Board shall be of unlimited duration unless otherwise limited, revoked, or suspended by the Board pursuant to this chapter or the regulations of the Board.

**History:** 1972, PL 12-61.

**31.1009 Licenses-Refusal, revocation, suspension, modification and limitation.**

A license may be refused, revoked, suspended, modified, or limited for any 1 or combination of the following grounds:

- (1) conviction of felony or misdemeanor involving moral turpitude; a copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence;
- (2) habitual or excessive use of intoxicants or drugs;
- (3) fraud or misrepresentation in applying for or procuring a license to practice in American Samoa or in any hearings before the Board;
- (4) making false or misleading statements regarding one's skill or the efficacy or value of the medicine, treatment or remedy prescribed or administered by one or at one's direction in the treatment of any disease or other condition of the human body or mind;
- (5) aiding or abetting the practice of an unlicensed person in the field of health services;
- (6) mental illness as evidenced by an adjudication or by voluntary commitment to an institution for treatment of mental illness, or as determined by an examination conducted by an impartial psychiatrist retained by the Board;
- (7) gross negligence in the practice of a profession or occupation licensed by the Board;
- (8) the suspension or revocation by another state of a license for a profession or occupation licensed by the health services regulatory Board of American Samoa; a certified copy of the suspension or revocation of the state making such suspension or revocation is conclusive evidence thereof;
- (9) unprofessional or dishonorable conduct in light of the standards of the profession or occupation licensed.

**History:** 1972, PL 12-61.

**31.1010 Violation-Penalty.**

Violation of any provision of this chapter or duly promulgated rules and regulations of the health services regulatory Board relating thereto is a class A misdemeanor.

**History:** 1972, PL 12-61, amd 1980, PL 16-90 § 86.

**Amendments:** 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

**31.1011 Violation-Single act sufficient evidence.**

In any prosecution under 31.1010, or any decision made by the Board relative to licensing, it shall be sufficient to sustain such conviction or decision to show a single violative act of conduct, and it shall not be necessary to show a general course of such conduct.

**History:** 1972, PL 12-61.

**(RESERVED)**

**Chapter 15**

**BEAUTY CULTURE**

**Sections:**

- 31.1501 Short title.**
- 31.1502 Definitions.**
- 31.1502.1 Board-Appointment.**
- 31.1502.2 Board-Powers and duties.**
- 31.1502.3 Licensing-Requirement.**
- 31.1503 Licensing.**
- 31.1504 Licensure of operators.**
- 31.1505 Licensure of beauty salons.**
- 31.1506 (Repealed).**
- 31.1507 Grounds for refusal, revocation, or suspension of certificate.**
- 31.1508 Right to hearing-Procedure.**
- 31.1509 Investigation of violations.**
- 31.1510 Prosecution of violations.**
- 31.1511 Violation-Penalty.**

**31.1501 Short title.**

This chapter will be known as the “Beauty Culture Act of 1983.”

**History:**1973, PL 13-5; amd 1983, PL 18-5 § 1.

**Amendments:** 1983 Title amended to include the year.

**31.1502 Definitions.**

As used in this chapter unless the context clearly requires otherwise:

(a) “Beauty shop or salon” means any premises upon or within which is practiced either of the classified occupations.

(b) “Board” means the American Samoa Board of Cosmetology.

(c) “Classified occupations” means the occupation of hairdresser and cosmetician.

(d) “Cosmetician” means any operator or person who, with hands or mechanical or electrical apparatus or appliances, or by use of cosmetic preparations, antiseptics, tonics, lotions, or creams, engages for compensation in any one or any combination of the following practices: massaging, cleansing, stimulating, manipulating, exercising, beautifying, or doing similar work upon the scalp, the face, neck, arms, bust, or upper part of the body, or manicuring the nails, or removing of superfluous hair, by the use of electricity or otherwise, about the body of any person.

(e) “Hairdresser” means any person who for compensation engages in any one or any combination of the following practices: arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work upon the hair of another person.

(f) “Operator” means a hairdresser or cosmetician.

(g) “Apprentice cosmetician” means any person who, working under the supervision of a U.S. licensed cosmetician, and who, with hands or mechanical or electrical apparatus or appliances, or by use of cosmetic preparations, antiseptics, tonics, lotions, or creams, engages for compensation

in any one or any combination of the following practices; massaging, cleansing, stimulating, manipulating, exercising, beautifying, or doing similar work upon the scalp, the face, neck, arms, or upper part of the body, or manicuring the removing of superfluous hair.

(h) “Apprentice hairdresser” means any person who, working under the supervision of a U.S. licensed hairdresser, and who for compensation engages in any one or any combination of the following practices: arranging, dressing, curling, waving, cleansing, cutting, bleaching, coloring, or similar work upon the hair of another person.

(i) “Applicant” means any person who files an application to obtain an apprentice hairdresser or apprentice cosmetician’s or cosmetician or operator’s license.

(j) “U.S.” refers to the United States or any state or territory of the United States.

**History:**1973, PL 13-5; amd 1983, PL 18-5 § 2; amd 2006, PL 29-17.

**Amendments:** 1983 Section amended generally.

### **31.1502.1 Board-Appointment.**

There is established an American Samoa Board of Cosmetology consisting of 5 members appointed by the Governor for staggered, 3 years terms. At least 2 members must be operators licensed to practice in the Territory. The Board elects a chairman from its members and meets quarterly or more frequently at the call of the chairman. The Office of Economic Development and Planning provides administrative and staff services for the Board. The Department of Legal Affairs provides legal assistance to the Board.

**History:**1983, PL 18-5 § 3; amd 1983, PL 18-14 § 1.

**Amendments:** 1983 Amended to increase number of Board members from 3 to 5.

### **31.1502.2 Board-Powers and duties.**

(a) The Board shall:

(1) adopt administrative rules pursuant to 4.1001 et seq. to implement this chapter; and

(2) periodically recommend to the Legislature changes in this chapter to reflect the new developments in the practice of operators; and

(3) provide for written examinations as required by this chapter; and

(4) establish reasonable license fees and deposit those fees in the general fund.

(b) The Board may:

(1) provide by rule for the continuing education of persons licensed under this chapter.

**History:**1983, PL 18-5 § 4.

### **31.1502.3 Licensing-Requirement.**

(a) A person may not practice a classified occupation without a license issued in accordance with this chapter.

(b) A person may not maintain a beauty shop or salon without a license issued in accordance with this chapter.

**History:**1983, PL 18-14 § 2.

### **31.1503 Licensing.**

(a) The Board shall issue a license for an operator or apprentice hairdresser or apprentice cosmetician to each person who furnishes the required certification that is a U.S. license or the certification is equivalent to a U.S. license, pays the proper fee, and meets all of the other requirements of this chapter.

(b) The certificate shall state specifically the occupation for which the person is licensed, be signed by the chairman of the Board, and be posted above the station of each person licensed.

(c) The Board shall establish reasonable license fees, not to exceed \$25 a year, for operators, apprentice hairdressers, and apprentice cosmeticians.

(d) Licenses issued under this section expire each December 31st, but may be renewed upon application to and approval by the Board.

**History:** 1973, PL 13-5; amd 1983, PL 18-5 § 5; amd 2006, PL, 29-17.

**Amendments:** 1983 Added subsections (c) and (d) and changed “certificate” to “license” and “Office of the Governor” to “Board”.

### **31.1504 Licensure of operators.**

The Board shall determine the sufficiency of the preliminary qualifications of applicants for licensure. The following qualifications are sufficient:

(a) An operator may be licensed as a hairdresser and cosmetician provided the person is of good moral character; and

(1) is currently licensed to practice hairdressing and cosmetology in any state of the United States and has practiced as an operator for 3 out of the 5 years immediately preceding the application for licensure; or

(2) is licensed under paragraphs (1) and has successfully completed a Board approved refresher course at an accredited school within one year preceding application to the Board.

(3) Any amendment to this section shall not apply to or effect licenses issued prior to the effective date of any amendment or to the renewal of said licenses.

(b) A person may be licensed as an apprentice hairdresser or apprentice cosmetician if the Board determines an applicant has satisfied the following:

(1) a completed current application;

(2) a valid current license or certification from the United States or any country whose licensing standards are equivalent to that of the United States;

(3) a letter by a licensed operator of a salon, confirming the operator will sponsor the applicant, that the applicant person has been offered employment by a licensed operator, and the applicant will be working under the supervision of the operator; and

(4) two reference letters from residents of the Territory stating that applicant is of good moral character.

(c) The Board may conditionally license persons as operators who substantially comply with the qualifications under subsection (a).

**History:** 1973, PL 13-5; amd 1983, PL 18-5 § 6, amd 1999, PL 26-8; amd 2006, PL 29-17.

**Amendments:** 1983 Subsection (c) deleted and “registration” changed to “licensure” and “Office of the Governor” changed to “Board.”

### **31.1505 Licensure of beauty salons.**

(a) A license for a beauty salon may be secured by filing an application with the Board and fulfilling the following requirements:

(1) that the salon meets the standards of sanitation required by the rules of the Department of Health, as certified by the Director of Medical Services;

(2) that there is a Board licensed operator working full time in the salon; and

(3) that it is adequately equipped for the practices in which it engages as certified by the Board.

(b) All licenses for salons expire on 31 December next following the date of issue, but may be

renewed on the date of expiration.

(c) The annual license fee for salons is \$25.

**History:** 1973, PL 13-5; amd 1983, PL 18-5 § 7.

**Amendments:** 1983 Subsection (c) added and “certificate” changed to “license” and “Office of the Governor” changed to “Board.”

### **31.1506 Teaching by operators.**

Repealed by PL 18-5 § 13.

### **31.1507 Grounds for refusal, revocation, or suspension of certificate.**

(a) The Board may refuse to grant, renew, reinstate, or restore any license required under this chapter, whether covering the licensure of an operator or beauty salon, apprentice hairdresser, or apprentice cosmetician, for any cause which could be grounds for revocation of a license under this section. The Board may, nevertheless, renew, reinstate, or restore any license when it determines that action is just and may be done consistently with the accomplishment of the purposes of this chapter.

(b) The Board may revoke or suspend any license, whether operator or beauty salon for any of the following causes:

- (1) professional misconduct, gross carelessness, or manifest incapacity;
- (2) conviction of a crime involving moral turpitude;
- (3) violation of any of the provisions of this chapter or the rules promulgated pursuant thereto or any other law which applies to him in the occupation covered by the license;
- (4) making any false representation or promise, through advertising or otherwise, or in any manner dealing fraudulently or dishonestly in the occupation covered by the license;
- (5) habitual intemperance in use of alcoholic beverages or addiction to the use of narcotic drugs;
- (6) failing to display the license as provided in this chapter.

**History:** 1973, PL 13-5; amd 1983, PL 18-5 § 8; amd 2006, PL 29-17.

**Amendments:** 1983 Amended to delete former paragraph (6) and to change “certificate” to “license” and “Office of the Governor” to “Board.”

### **31.1508 Right to hearing-Procedure.**

(a) In every case where it is proposed to refuse to grant, renew, reinstate, or restore a license or to revoke or suspend the exercise of one for any of the causes enumerated in 31.1507, the person affected by that action must be given notice and opportunity for hearing in conformity with 4.1001 et seq.

(b) At the hearing the Board has the power to administer oaths, compel the attendance of witnesses and the production of documentary evidence, examine witnesses and make decisions regarding evidence offered.

(c) In the event any person disobeys any order of the Board, or of any subpoena issued by the Board, or the refusal of any witness to testify to any matter regarding which he may lawfully be questioned, the Board may apply to the High Court of American Samoa, which shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by the High Court of American Samoa, or a refusal to testify therein; provided, however, that such order was not arbitrary, capricious or unreasonable.

**History:** 1973, PL 13-5, amd 1983, PL 18-5 § 9.

**Case Notes:**

Because in most cases licensing will be a straightforward process, quasi-judicial evidentiary hearing in all licensing proceedings would needlessly increase government expenditures and such hearings are required only where the proposed action on a license application will be final. Am. Sam. Const. Art. I § 2., A.S.C.A. § 31.1508. *Ferstle v. American Samoa Government*, 7 A.S.R.2d 26 (1988).

**Amendments:** 1983 Amended to change “Office of the Governor” to “Board.”

**31.1509 Investigation of violations.**

- (a) The Board may investigate any violation or suspected violation of this chapter.
- (b) The Board may administer oaths in connection with the investigation.

**History:**1973, PL 13-5, amd 1983, PL 18-5 § 10.

**Amendments:** 1983 Amended to change “Office of the Governor” to “Board.”

**31.1510 Prosecution of violations.**

The Board shall assist in the prosecution of persons charged with violations of this chapter.

**History:**1973, PL 13-5; amd 1983, PL 18-5 § 11.

**Amendments:** 1983 Amended to change “Office of the Governor” to “Board.”

**31.1511 Violation-Penalty.**

(a) In addition to provisions contained in this chapter relating to powers of the Board, any person who practices any of the occupations, maintains a beauty salon, or acts in any capacity wherein a license is required, without a license as provided in this chapter, commits a crime punishable as a class B misdemeanor.

- (b) Each day of violation shall be construed a separate offense.

**History:**1973, PL 13-5; amd 1980, PL 16-90 § 87; amd 1983, PL 18-5 § 12.

**Amendments:** 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice. 1983 Amended to change “certificate” to “license” and “Office of the Governor” to “Board.”