

ASSEMBLY BILL NO. 266—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF SECRETARY OF STATE)

MARCH 1, 2001

Referred to Committee on Government Affairs

SUMMARY—Makes various changes regarding notaries public. (BDR 19-648)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to notaries public; prescribing a certificate sufficient for administering an oath or affirmation of office; authorizing the secretary of state to provide and charge a reasonable fee for courses of study for the voluntary training of notaries public; establishing the notary public training fund; prescribing the date of the commencement of an appointment as a notary public; prohibiting a notary public from committing certain acts; requiring a notary public to enter in his journal the type of certificate used to evidence a notarial act; authorizing the secretary of state to refuse to issue an apostille in certain circumstances; repealing the provisions relating to commissioners of deeds; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 240 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 and 3 of this act.

3 **Sec. 2.** *The following certificate is sufficient for administering an*
4 *oath or affirmation of office:*

5
6 *State of*

7 *County of*
8

9 *I,(name of person taking oath or affirmation of office).....,*
10 *do solemnly swear (or affirm) that I will support, protect and defend the*
11 *Constitution and Government of the United States and the constitution*
12 *and government of the State of Nevada against all enemies, whether*
13 *domestic or foreign, and that I will bear true faith, allegiance and loyalty*
14 *to the same, any ordinance, resolution or law of any state*
15 *notwithstanding, and that I will well and faithfully perform all the duties*



* A B 2 6 6 *

1 of the office of(title of office)....., on which I am about to enter; (if
2 an oath) so help me God; (if an affirmation) under the pains and
3 penalties of perjury.

4
5
6 (Signature of person taking oath
7 or affirmation of office)
8

9 Signed and sworn to (or affirmed) before me on(date)..... by
10(name of person taking oath or affirmation of office).....
11

12
13 (Signature of notarial officer)

14 (Seal, if any)

15
16 (Title and rank (optional))

17 **Sec. 3. 1. The secretary of state may:**

18 (a) Provide courses of study for the voluntary training of notaries
19 public at such times and for such duration as he determines appropriate;
20 and

21 (b) Charge a reasonable fee to each person who enrolls in a course of
22 study for the voluntary training of notaries public.

23 2. A course of study provided pursuant to this section must comply
24 with the regulations adopted pursuant to subsection 1 of NRS 240.017.

25 3. The secretary of state shall deposit the fees collected pursuant to
26 paragraph (b) of subsection 1 in the notary public training fund which is
27 hereby created as a special revenue fund in the state treasury. The fund
28 must be administered by the secretary of state. Any interest and income
29 earned on the money in the fund, after deducting any applicable charges,
30 must be credited to the fund. Any money remaining in the fund at the end
31 of a fiscal year does not revert to the state general fund and the balance
32 in the fund must be carried forward. All claims against the fund must be
33 paid as other claims against the state are paid. The money in the fund
34 may be expended only to pay for expenses related to providing courses of
35 study for the voluntary training of notaries public, including, without
36 limitation, the rental of rooms and other facilities, advertising, travel and
37 the printing and preparation of course materials.

38 **Sec. 4.** NRS 240.001 is hereby amended to read as follows:

39 240.001 As used in NRS 240.001 to 240.169, inclusive, **and section 3**
40 **of this act**, unless the context otherwise requires, the words and terms
41 defined in NRS 240.002 to 240.006, inclusive, have the meanings ascribed
42 to them in those sections.

43 **Sec. 5.** NRS 240.017 is hereby amended to read as follows:

44 240.017 The secretary of state:

45 1. May adopt regulations ~~prescribing~~ :

46 (a) **Prescribing** the procedure for the appointment and voluntary
47 training of a notary public.

48 (b) **Establishing procedures for the notarization of digital or**
electronic signatures.



* A B 2 6 6 *

1 2. Shall adopt regulations prescribing the form of each affidavit
2 required pursuant to subsection 2 of NRS 240.030.

3 **Sec. 6.** NRS 240.030 is hereby amended to read as follows:

4 240.030 1. Except as otherwise provided in subsection 4, each
5 person applying for appointment as a notary public must:

6 (a) At the time he submits his application, pay to the secretary of state
7 \$35.

8 (b) Take and subscribe to the oath set forth in section 2 of article 15 of
9 the constitution of the State of Nevada as if he were a public officer.

10 (c) Enter into a bond to the State of Nevada in the sum of \$10,000, to be
11 filed with the clerk of the county in which the applicant resides or, if the
12 applicant is a resident of an adjoining state, with the clerk of the county in
13 this state in which the applicant maintains a place of business or is
14 employed. The applicant shall submit to the secretary of state a certificate
15 issued by the appropriate county clerk which indicates that the applicant
16 filed the bond required pursuant to this paragraph.

17 2. In addition to the requirements set forth in subsection 1, an applicant
18 for appointment as a notary public, including, without limitation, a court
19 reporter, who resides in an adjoining state must submit to the secretary of
20 state with his application:

21 (a) An affidavit setting forth the adjoining state in which he resides, his
22 mailing address and the address of his place of business or employment
23 that is located within the State of Nevada; and

24 (b) Unless the applicant is self-employed, an affidavit from his
25 employer setting forth the facts that show:

26 (1) The employer is licensed to do business in the State of Nevada;
27 and

28 (2) The employer regularly employs the applicant at an office,
29 business or facility which is located within the State of Nevada.

30 3. In completing an application, bond, oath or other document
31 necessary to apply for appointment as a notary public, an applicant must
32 not be required to disclose his residential address or telephone number on
33 any such document which will become available to the public.

34 4. A court reporter who has received a certificate of registration
35 pursuant to NRS 656.180 may apply for appointment as a notary public
36 with limited powers. Such an applicant is not required to enter into a bond
37 to obtain the limited power of a notary public to administer oaths or
38 affirmations.

39 5. If required, the bond, together with the oath, must be filed and
40 recorded in the office of the county clerk of the county in which the
41 applicant resides when he applies for his appointment or, if the applicant is
42 a resident of an adjoining state, with the clerk of the county in this state in
43 which the applicant maintains a place of business or is employed. On a
44 form provided by the secretary of state, the county clerk shall immediately
45 certify to the secretary of state that the required bond and oath have been
46 filed and recorded. Upon receipt of the application, fee and certification
47 that the required bond and oath have been filed and recorded, the secretary
48 of state shall issue a certificate of appointment as a notary public to the
49 applicant.



* A B 2 6 6 *

1 6. *Except as otherwise provided in subsection 7, the term of a notary*
2 *public commences on the effective date of the bond required pursuant to*
3 *paragraph (c) of subsection 1. A notary public shall not perform a*
4 *notarial act after the effective date of the bond unless he has been issued*
5 *a certificate of appointment.*

6 7. *The term of a notary public with limited powers commences on the*
7 *date set forth in his certificate of appointment.*

8 8. Except as otherwise provided in this subsection, the secretary of
9 state shall charge a fee of \$10 for each duplicate or amended certificate of
10 appointment which is issued to a notary. If the notary public does not
11 receive an original certificate of appointment, the secretary of state shall
12 provide a duplicate certificate of appointment without charge if the notary
13 public requests such a duplicate within 60 days after the date on which the
14 original certificate was issued.

15 **Sec. 7.** NRS 240.069 is hereby amended to read as follows:

16 240.069 A certified court reporter who receives a certificate of
17 appointment as a notary public with limited powers pursuant to subsection
18 ~~4~~ of NRS 240.030, may only administer oaths and affirmations and may
19 not perform the other powers, and is not required to perform the other
20 duties, of a notary public specified in NRS 240.040, 240.060 and 240.120.

21 **Sec. 8.** NRS 240.075 is hereby amended to read as follows:

22 240.075 A notary public shall not:

23 1. Influence a person to enter or not enter into a lawful transaction
24 involving a notarial act performed by the notary public.

25 2. Certify an instrument containing a statement known by him to be
26 false.

27 3. Perform any act as a notary public with intent to deceive or defraud
28 ~~4~~, *including, without limitation, altering the journal that he is required*
29 *to keep pursuant to NRS 240.120.*

30 4. Endorse or promote any product, service or offering if his
31 appointment as a notary public is used in the endorsement or promotional
32 statement.

33 5. Certify photocopies of a certificate of birth, death or marriage or a
34 divorce decree.

35 6. Allow any other person to use his notary's stamp.

36 7. Allow any other person to sign the notary's name in a notarial
37 capacity.

38 8. *Perform a notarial act on a document that contains only a*
39 *signature.*

40 **Sec. 9.** NRS 240.120 is hereby amended to read as follows:

41 240.120 1. Except as otherwise provided in NRS 240.069, each
42 notary public shall keep a journal in his office in which he shall enter for
43 each notarial act performed, at the time the act is performed:

44 (a) The fees charged, if any;

45 (b) The title of the ~~matter;~~ *document;*

46 (c) The date on which he performed the service;

47 (d) The name and signature of the person whose signature is being
48 notarized;



* A B Z 6 6 *

- 1 (e) A description of the evidence used by the notary public to verify the
2 identification of the person whose signature is being notarized; ~~and~~
3 (f) An indication of whether he administered an oath ~~and~~ ; and
4 (g) *The type of certificate used to evidence the notarial act, as*
5 *required pursuant to NRS 240.1655.*
6 2. If the notary verifies the identification of the person whose signature
7 is being notarized on the basis of a credible witness, the notary public shall:
8 (a) Require the witness to sign the journal in the space provided for the
9 description of the evidence used; and
10 (b) Make a notation in the journal that the witness is a credible witness.
11 3. The journal must:
12 (a) Be open to public inspection.
13 (b) Be in a bound volume with preprinted page numbers.
14 4. A notary public shall, upon request and payment of the fee set forth
15 in NRS 240.100, provide a certified copy of an entry in his journal.
16 5. A notary public shall retain each journal that he has kept pursuant to
17 this section until 7 years after the date on which he ceases to be a notary
18 public.
19 6. A notary public shall file a report with the secretary of state and the
20 appropriate law enforcement agency if his journal is lost or stolen.
21 7. The provisions of this section do not apply to a person who is
22 authorized to perform a notarial act pursuant to paragraph (b), (c) or (d) of
23 subsection 1 of NRS 240.1635.
24 **Sec. 10.** NRS 240.165 is hereby amended to read as follows:
25 240.165 1. A notarial act has the same effect under the law of this
26 state as if performed by a notarial officer of this state if performed within
27 the jurisdiction of and under authority of a foreign nation or its constituent
28 units or a multinational or international organization by the following
29 persons:
30 (a) A notary public;
31 (b) A judge, clerk or deputy clerk of a court of record; or
32 (c) A person authorized by the law of that jurisdiction to perform
33 notarial acts.
34 2. An "apostille" in the form prescribed by the Hague Convention of
35 October 5, 1961, conclusively establishes that the signature of the notarial
36 officer is genuine and that the officer holds the indicated office. The
37 secretary of state shall, upon request and payment of a fee of \$20, issue an
38 apostille to verify a signature of a notarial officer on a document that is
39 kept in the records of the secretary of state ~~and~~ *unless the document had not*
40 *been notarized in accordance with the provisions of this chapter.*
41 3. A certificate by an officer of the foreign service or consular officer
42 of the United States stationed in the nation under the jurisdiction of which
43 the notarial act was performed, or a certificate by an officer of the foreign
44 service or consular officer of that nation stationed in the United States,
45 conclusively establishes a matter relating to the authenticity or validity of
46 the notarial act set forth in the certificate.
47 4. An official stamp or seal of the person performing the notarial act is
48 prima facie evidence that the signature is genuine and that the person holds
49 the indicated title.



* A B 2 6 6 *

1 5. An official stamp or seal of an officer listed in paragraph (a) or (b)
2 of subsection 1 is prima facie evidence that a person with the indicated title
3 has authority to perform notarial acts.

4 6. If the title of office and indication of authority to perform notarial
5 acts appears either in a digest of foreign law or in a list customarily used as
6 a source for that information, the authority of an officer with that title to
7 perform notarial acts is conclusively established.

8 **Sec. 11.** NRS 240.1655 is hereby amended to read as follows:

9 240.1655 1. A notarial act must be evidenced by a certificate signed
10 and dated by a notarial officer. The certificate must include identification
11 of the jurisdiction in which the notarial act is performed and the title of the
12 office of the notarial officer and may include the official stamp or seal of
13 office. ~~If the officer is a notary public, the certificate must also indicate~~
14 ~~the date of expiration, if any, of the commission of office, but omission of~~
15 ~~that information may subsequently be corrected.~~ If the officer is a
16 commissioned officer on active duty in the military service of the United
17 States, it must also include the officer's rank.

18 2. A certificate of a notarial act is sufficient if it meets the
19 requirements of subsection 1 and it:

20 (a) Is in the short form set forth in NRS 240.166 to 240.169, inclusive
21 ~~§~~, and section 2 of this act;

22 (b) Is in a form otherwise prescribed by the law of this state;

23 (c) Is in a form prescribed by the laws or regulations applicable in the
24 place in which the notarial act was performed; or

25 (d) Sets forth the actions of the notarial officer and those are sufficient
26 to meet the requirements of the designated notarial act.

27 3. By executing a certificate of a notarial act, the notarial officer
28 certifies that the officer has made the determinations required by NRS
29 240.163.

30 **Sec. 12.** NRS 240.166 is hereby amended to read as follows:

31 240.166 The following certificate is sufficient for an acknowledgment
32 in an individual capacity:

33 State of

34 County of.....

35 This instrument was acknowledged before me on(date)..... by
36(name(s) of person(s)).....

37
38 (Signature of notarial officer)

39 (Seal, if any)

40
41 (Title and rank (optional))

42 ~~{(My commission expires (optional): -----)}~~

43 **Sec. 13.** NRS 240.1665 is hereby amended to read as follows:

44 240.1665 The following certificate is sufficient for an
45 acknowledgment in a representative capacity:



1 State of
2 County of.....
3

4 This instrument was acknowledged before me on(date)..... by
5(name(s) of person(s))..... as(type of
6 authority, e.g., officer, trustee, etc.)..... of(name of
7 party on behalf of whom instrument was executed).....
8

9
(Signature of notarial officer)

10 (Seal, if any)

11
(Title and rank (optional))

12 ~~My commission expires (optional):~~

13 **Sec. 14.** NRS 240.1667 is hereby amended to read as follows:
14 240.1667 The following certificate is sufficient for an
15 acknowledgment that contains a power of attorney:
16
17

18 State of
19 County of

20
21 This instrument was acknowledged before me on(date).....
22 by.....(name of person ~~receiving~~ **holding** power of
23 attorney)..... as attorney in fact for.....(name of principal/person
24 whose name is in the document).....
25

26
(Signature of notarial officer)

27 (Seal, if any)

28
(Title and rank (optional))

29 ~~My commission expires (optional):~~

30 **Sec. 15.** NRS 240.167 is hereby amended to read as follows:
31 240.167 The following certificate is sufficient for a verification upon
32 oath or affirmation:
33
34

35 State of
36 County of.....

37
38 Signed and sworn to (or affirmed) before me on(date)..... by
39(name(s) of person(s) making statement).....
40

41
(Signature of notarial officer)

42 (Seal, if any)

43
(Title and rank (optional))

44 ~~My commission expires (optional):~~

45 **Sec. 16.** NRS 240.168 is hereby amended to read as follows:
46 240.168 The following certificate is sufficient for attesting a copy of a
47 document:
48



1 State of
2 County of.....
3

4 I certify that this is a true and correct copy of a document in the
5 possession of.....(name of person who presents the
6 document).....

7 Dated

8
9 (Signature of notarial officer)

10 (Seal, if any)

11
12 (Title and rank (optional))

13 ~~My commission expires (optional):~~

14 **Sec. 17.** NRS 281.010 is hereby amended to read as follows:

15 281.010 1. The following officers must be elected:

- 16 (a) A governor.
17 (b) A lieutenant governor.
18 (c) Two United States Senators.
19 (d) The number of members of the House of Representatives of the
20 United States to which this state may be entitled.
21 (e) The number of presidential electors to which this state may be
22 entitled.
23 (f) Justices of the supreme court.
24 (g) District judges.
25 (h) Senators and members of the assembly.
26 (i) A secretary of state.
27 (j) A state treasurer.
28 (k) A state controller.
29 (l) An attorney general.
30 (m) Other officers whose elections are provided for by law.
31 (n) For each county, and the equivalent officers for Carson City:
32 (1) One county clerk, who is ex officio clerk of the board of county
33 commissioners and clerk of the district court of his county.
34 (2) One sheriff.
35 (3) One district attorney.
36 (4) One public administrator, except where otherwise provided by
37 law.
38 (5) One county assessor, except where otherwise provided by law.
39 (6) One county treasurer, except where otherwise provided by law.
40 (7) The number of county commissioners as provided by law.
41 (8) One county recorder, who is ex officio county auditor of his
42 county if a county comptroller has not been appointed in his county.
43 (9) Justices of the peace.
44 (10) Constables, except where otherwise provided by law.

45 2. ~~The following officers must be appointed:~~

46 ~~(a) Commissioners of deeds for the respective states and territories of~~
47 ~~the United States and foreign countries.~~

48 ~~—(b)—~~ All officers who are not elected ~~—~~ **must be appointed.**



Sec. 18. NRS 281.010 is hereby amended to read as follows:

281.010 1. The following officers must be elected:

- (a) A governor.
- (b) A lieutenant governor.
- (c) Two United States Senators.
- (d) The number of members of the House of Representatives of the United States to which this state may be entitled.
- (e) The number of presidential electors to which this state may be entitled.
- (f) Five justices of the supreme court.
- (g) District judges.
- (h) Senators and members of the assembly.
- (i) A secretary of state.
- (j) A state treasurer.
- (k) A state controller.
- (l) An attorney general.
- (m) Other officers whose elections are provided for by law.
- (n) For each county, and the equivalent officers for Carson City:
 - (1) One county clerk, who is ex officio clerk of the board of county commissioners and clerk of the district court of his county.
 - (2) One sheriff.
 - (3) One district attorney.
 - (4) One public administrator, except where otherwise provided by law.
 - (5) One county assessor, except where otherwise provided by law.
 - (6) One county treasurer, except where otherwise provided by law.
 - (7) The number of county commissioners as provided by law.
 - (8) One county recorder, who is ex officio county auditor in counties in which a county comptroller has not been appointed.
 - (9) Justices of the peace.
 - (10) Constables, except where otherwise provided by law.

2. ~~The following officers must be appointed:~~

~~(a) Commissioners of deeds for the respective states and territories of the United States and foreign countries.~~

~~(b)~~ All officers who are not elected ~~+~~ **must be appointed.**

Sec. 19. NRS 281.4365 is hereby amended to read as follows:

281.4365 1. "Public officer" means a person elected or appointed to a position which is established by the constitution of the State of Nevada, a statute of this state or an ordinance of any of its counties or incorporated cities and which involves the exercise of a public power, trust or duty. As used in this section, "the exercise of a public power, trust or duty" includes:

(a) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of public policy;

(b) The expenditure of public money; and

(c) The enforcement of laws and rules of the state, a county or a city.

2. "Public officer" does not include:

(a) Any justice, judge or other officer of the court system;



* A B Z 6 6 *

- 1 (b) ~~(A) commissioner of deeds;~~
2 ~~(e)~~ Any member of a board, commission or other body whose function
3 is advisory;
4 ~~(d)~~ (c) Any member of a board of trustees for a general improvement
5 district or special district whose official duties do not include the
6 formulation of a budget for the district or the authorization of the
7 expenditure of the district's money; or
8 ~~(e)~~ (d) A county health officer appointed pursuant to NRS 439.290.
9 **Sec. 20.** NRS 240.170, 240.180, 240.190, 240.200, 240.210, 240.220
10 and 240.230 are hereby repealed.
11 **Sec. 21.** 1. This section and sections 1 to 17, inclusive, 19 and 20 of
12 this act become effective on October 1, 2001.
13 2. Section 17 of this act expires by limitation on the date on which the
14 qualified electors of this state approve a constitutional amendment that
15 establishes an intermediate court of appeals within the State of Nevada.
16 3. Section 18 of this act becomes effective on the date on which the
17 qualified electors of this state approve a constitutional amendment that
18 establishes an intermediate court of appeals within the State of Nevada.

LEADLINES OF REPEALED SECTIONS

240.170 Appointment and term.
240.180 Fee for commission.
240.190 Oath of office.
240.200 Commission and copy of law transmitted to appointee.
240.210 Powers.
240.220 Legality of acts of commissioner.
**240.230 Compensation of commissioner acting in this state;
penalties.**

