

Amendment No. 11

Senate Amendment to Senate Bill No. 53 (BDR 18-415)

Proposed by: Senate Committee on Government Affairs**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will MAINTAIN the 2/3s majority vote requirement for final passage of S.B. 53 (§ 13).

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold dashed underlining* is newly added transitory language.

DLJ/BJE



Date: 4/1/2009

S.B. No. 53—Makes various changes relating to the Office of the Secretary of State. (BDR 18-415)



SENATE BILL NO. 53—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE SECRETARY OF STATE)

PREFILED DECEMBER 5, 2008

Referred to Committee on Government Affairs

SUMMARY—Makes various changes relating to the Office of the Secretary of State. (BDR 18-415)

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

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

AN ACT relating to the Office of the Secretary of State; ~~requiring~~ **authorizing** the establishment of an electronic registry for the storage of wills and other documents; revising provisions regarding fees collected for certain services; revising the job classification of the Administrator of the Securities Division within the Office; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires that the Secretary of State maintain the Registry of Advance Directives for Health Care, in which a person can post a digital copy of an advance directive concerning his health care. (NRS 449.900-449.965) **Section 8** of this bill ~~requires that~~ **authorizes** the Secretary of State **to** create and maintain the Nevada Lockbox, a secure on-line registry which allows a person to post an electronic copy of a will or other document and retrieve that document when needed. **Section 9** of this bill establishes the procedures that a person must follow to register a document in the Nevada Lockbox **if established**. **Sections 10 and 11** of this bill set forth how, and to whom, access to a document registered in the Nevada Lockbox **if established**, is to be granted. **Section 12** of this bill provides that the Secretary of State is not required to verify the accuracy or validity of any document before that document is submitted for registration in the Nevada Lockbox **if established**. **Section 12** also: (1) clarifies that registration of a document in the Nevada Lockbox **if established**, does not affect the validity of the document; and (2) provides further that failure by an attorney to register the will of a client in the Nevada Lockbox **if established**, does not impose on the attorney liability for malpractice. **Section 13** of this bill authorizes the Secretary of State to charge fees and accept contributions to establish and maintain the Nevada Lockbox.

Section 14 of this bill restricts the use of money that the Secretary of State receives for the purpose of establishing and maintaining the Nevada Lockbox. **Section 15** of this bill provides that if the Secretary of State, his deputies, employees and attorneys act in good faith, they have civil and criminal immunity regarding any act or omission associated with the establishment and maintenance of the Nevada Lockbox. **Section 16** of this bill authorizes the Secretary of State to adopt such regulations as he determines to be necessary or advisable to provide for the establishment and maintenance of the Nevada Lockbox.

Under existing law, all fees collected by the Secretary of State are required to be deposited with the State Treasurer for credit to the State General Fund unless otherwise

specifically provided by law. (NRS 225.150) Currently, one-half of the fees collected by the Office of the Secretary of State for the provision of certain special services are required to be deposited into the State General Fund, and one-half, into the Account for Special Services of the Secretary of State in the State General Fund, which may only be used for certain purposes by the Secretary of State. (NRS 225.140) **Section 17** of this bill eliminates the Account for Special Services, and therefore, all the fees collected for the provision of special services will be deposited into the State General Fund.

Section 18 of this bill moves the position of the Administrator of the Securities Division in the Office of the Secretary of State from the classified service to the unclassified service of the State. (NRS 225.170)

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

Section 1. Chapter 225 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 16, inclusive, of this act.

Sec. 2. *As used in sections 2 to 16, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 7, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Lockbox” means an electronic file, including, without limitation, any will or other document stored electronically in the file, that is established in the Nevada Lockbox and registered to a person pursuant to section 9 of this act.*

Sec. 4. *“Nevada Lockbox” means the registry authorized to be established by the Secretary of State pursuant to section 8 of this act.*

Sec. 5. *“Other document” means a document registered with the Secretary of State pursuant to section 9 of this act and may include, without limitation, a passport, a birth certificate or a marriage license.*

Sec. 6. *“Registrant” means a person whose will or other document is registered with the Secretary of State pursuant to section 9 of this act.*

Sec. 7. *“Will” has the meaning ascribed to it in NRS 132.370.*

Sec. 8. *The Secretary of State ~~shall~~ may establish and maintain on his Internet website a registry to be known as the Nevada Lockbox. The registry must include, without limitation, in a secure portion of the website, an electronic reproduction of each will or other document filed by a registrant. The electronic reproduction must be capable of being viewed on the registry and downloaded, printed or otherwise retrieved by a person pursuant to section 9 of this act.*

Sec. 9. *If the Nevada Lockbox is established pursuant to section 8 of this act:*

1. A person who wishes to establish a lockbox and thereby register a will or other document in the Nevada Lockbox must submit to the Secretary of State:

(a) An application in the form prescribed by the Secretary of State;

(b) A copy of the will or other document to be registered; and

(c) The fee, if any, established by the Secretary of State pursuant to section 13 of this act.

2. If the person satisfies the requirements of subsection 1, the Secretary of State shall:

(a) Make an electronic reproduction of the will or other document and post it within the registrant’s lockbox;

(b) Assign to the registrant a registration number and access code for the lockbox; and

(c) Provide to the registrant a registration card that includes, without limitation:

(1) The name of the registrant;
(2) The registration number assigned to the registrant pursuant to paragraph (b); and

(3) The access code assigned to the registrant pursuant to paragraph (b).

3. The Secretary of State shall establish procedures for, without limitation:

(a) The registration of a will or other document which replaces a will or other document that has been registered previously and posted within the Nevada Lockbox;

(b) The removal from the Nevada Lockbox of a will or other document that has been revoked at the request of the registrant; and

(c) The issuance of a duplicate registration card or the provision of other access by a registrant to his registration number and access code if a registration card issued pursuant to this section is lost, stolen, mutilated, destroyed or otherwise unavailable.

Sec. 10. If the Nevada Lockbox is established pursuant to section 8 of this act;

1. Except as otherwise provided in this section, the Secretary of State shall not provide access to the lockbox of a registrant unless:

(a) The person requesting access provides the registration number and access code of the registrant;

(b) The Secretary of State determines that providing access to the lockbox is in the best interest of the registrant;

(c) Access to the lockbox is required pursuant to the lawful order of a court of competent jurisdiction; or

(d) Access to the lockbox is requested by the registrant or his personal representative.

2. A registrant or his personal representative may access the lockbox of the registrant for any purpose.

Sec. 11. ~~The~~ If the Nevada Lockbox is established pursuant to section 8 of this act, the Secretary of State may remove from the Nevada Lockbox the contents of the lockbox of a deceased registrant only:

1. Upon the request of the registrant's personal representative;

2. Upon receiving confirmation that probate of the estate of the registrant is completed; or

3. Pursuant to the lawful order of a court of competent jurisdiction.

Sec. 12. If the Nevada Lockbox is established pursuant to section 8 of this act;

1. The provisions of sections 2 to 16, inclusive, of this act do not require that the Secretary of State determine whether the contents of a will or other document submitted for registration are accurate or whether the execution or issuance of the will or other document complies with the requirements necessary to make the will or other document valid.

2. The registration of a will or other document does not establish or create a presumption that the contents thereof are accurate or that the execution or issuance of the will or other document complies with the requirements necessary to make the will or other document valid.

3. The registration of or the failure to register a will or other document does not otherwise affect the validity of the will or other document.

4. Failure to notify the Secretary of State of the revocation of a will or other document does not affect the validity of the will or other document.

5. The existence or nonexistence of the registration of a will must not be considered an evidentiary fact in a proceeding relating to the will.

6. The failure to register a document related to a will must not be considered in determining the validity of the will.

7. An attorney is not subject to liability for malpractice for failing to register a will, or any document related to the will, of a client.

Sec. 13. ~~File~~ If the Nevada Lockbox is established pursuant to section 8 of this act, the Secretary of State may charge and collect fees for the registration of a will or other document pursuant to section 9 of this act. The Secretary of State may accept gifts, grants, bequests and other contributions from any source for the purpose of carrying out the provisions of sections 2 to 16, inclusive, of this act.

Sec. 14. 1. All money received by the Secretary of State pursuant to sections 2 to 16, inclusive, of this act must be:

(a) Deposited in the State Treasury and accounted for separately in the State General Fund; and

(b) Used only for the purpose of carrying out the provisions of sections 2 to 16, inclusive, of this act.

2. The Secretary of State shall administer the account. The interest and income earned on the money in the account, after deducting any applicable charges, must be credited to the account.

3. The money in the account does not lapse to the State General Fund at the end of a fiscal year.

4. Claims against the account must be paid as other claims against the State are paid.

Sec. 15. The Secretary of State and the deputies, employees and attorneys of the Secretary of State are not liable for any action or omission made in good faith by the Secretary of State, deputy, employee or attorney in carrying out the provisions of sections 2 to 16, inclusive, of this act.

Sec. 16. The Secretary of State may adopt such regulations as he determines to be necessary or advisable to carry out the provisions of sections 2 to 16, inclusive, of this act.

Sec. 17. NRS 225.140 is hereby amended to read as follows:

225.140 1. Except as otherwise provided in subsection 2, in addition to other fees authorized by law, the Secretary of State shall charge and collect the following fees:

For certifying to a copy of any law, joint resolution, transcript of record or other paper on file or of record with the Secretary of State, including, but not limited to, a document required to be filed pursuant to title 24 of NRS, and use of the State Seal, for each impression.....\$20

For each passport or other document signed by the Governor and attested by the Secretary of State 10

2. The Secretary of State:

(a) Shall charge a reasonable fee for searching records and documents kept in his office, including, but not limited to, records and documents that are stored on a computer database.

(b) May charge or collect any filing or other fees for services rendered by him to the State of Nevada, any local governmental agency or agency of the Federal Government, or any officer thereof in his official capacity or respecting his office or official duties.

(c) May not charge or collect a filing or other fee for:

(1) Attesting extradition papers or executive warrants for other states.

(2) Any commission or appointment issued or made by the Governor, either for the use of the State Seal or otherwise.

(d) May charge a reasonable fee, not to exceed:

(1) One thousand dollars, for providing service within 1 hour after the time service is requested;

(2) Five hundred dollars, for providing service more than 1 hour but within 2 hours after the time the service is requested; and

(3) One hundred twenty-five dollars, for providing any other special service, including, but not limited to, providing service more than 2 hours but within 24 hours after the time the service is requested, accepting documents filed by facsimile machine and other use of new technology.

(e) Shall charge a person, for each check or other negotiable instrument returned to the Office of the Secretary of State because the person had insufficient money or credit with the drawee to pay the check or other instrument or because the person stopped payment on the check or other instrument:

(1) A fee of \$25; and

(2) If the check or other instrument that was returned had been presented for the payment of a filing fee for more than one entity, an additional fee in an amount equal to the actual cost incurred by the Office of the Secretary of State to perform the following actions as a result of the returned check or instrument:

(I) Reversing the status of the entities in the records of the Office of the Secretary of State; and

(II) Recouping any fees charged for services rendered by the Office of the Secretary of State to the entities, including, without limitation, fees charged for providing service pursuant to paragraph (d), providing copies or issuing certificates.

➤ The Secretary of State shall, by regulation, establish procedures for the imposition of the fees authorized by this paragraph and the manner in which a fee authorized by subparagraph (2) will be calculated.

(f) May charge a reasonable fee for searching for and cancelling or removing, if requested, any filing that has been submitted to him but not yet processed.

3. ~~[From each fee collected pursuant to paragraph (d) of subsection 2:~~

~~— (a) One half of the fee collected must be deposited with the State Treasurer for credit to the Account for Special Services of the Secretary of State in the State General Fund. Any amount remaining in the Account at the end of a fiscal year in excess of \$2,000,000 must be transferred to the State General Fund. Money in the Account may be transferred to the Secretary of State's Operating General Fund Budget Account and must only be used to create and maintain the capability of the Office of the Secretary of State to provide special services, including, but not limited to, providing service;~~

~~— (1) On the day it is requested or within 24 hours; or~~

~~— (2) Necessary to increase or maintain the efficiency of the Office;~~

➤ ~~Any transfer of money from the Account for expenditure by the Secretary of State must be approved by the Interim Finance Committee;~~

~~— (b) After deducting the amount required pursuant to paragraph (a), the remainder must be deposited with the State Treasurer for credit to the State General Fund;~~

~~— 4.]~~ The Secretary of State shall post a schedule of the fees authorized to be charged pursuant to this section in a conspicuous place at each office at which such fees are collected.

Sec. 18. NRS 225.170 is hereby amended to read as follows:

225.170 1. There is hereby created within the Office of the Secretary of State a Securities Division. The Secretary of State shall appoint an Administrator of

1 the Division. The Administrator of the Division is in the ~~classified~~ *unclassified*
2 service of the State.

3 2. The Secretary of State may, alternatively:

4 (a) Use the services of an assigned deputy attorney general as legal counsel for
5 the Division.

6 (b) Appoint an attorney as legal counsel for the Division. If appointed, he is in
7 the unclassified service of the State.

8 (c) Contract for services to be rendered by such other legal counsel as are
9 needed for assistance in administering chapter 90 of NRS.

10 3. Each of the legal counsel must be an attorney admitted to practice law in
11 Nevada.

12 **Sec. 19.** 1. This section and sections 1 to 16, inclusive, of this act become
13 effective:

14 (a) Upon passage and approval for the purpose of adopting regulations and
15 performing any other preparatory administrative tasks that are necessary to carry
16 out the provisions of sections 2 to 16, inclusive, of this act; and

17 (b) On July 1, 2009, for all other purposes.

18 2. Sections 17 and 18 of this act become effective on July 1, 2009.