

## Amendment No. 17

Senate Amendment to Senate Bill No. 77 (BDR 19-404)

**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. 77 (§ 2).

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 underlining* is newly added transitory language.

SJA/HAC



Date: 4/4/2011

S.B. No. 77—Revises provisions relating to notaries public. (BDR 19-404)



## SENATE BILL NO. 77—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE SECRETARY OF STATE)

PREFILED DECEMBER 15, 2010

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to notaries public. (BDR 19-404)

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 notaries public; subjecting a person to punishment for a category C felony if the person knowingly submits an application for appointment as a notary public that contains a substantial and material misstatement or omission of fact; revising provisions relating to the requirements for appointment as a notary public, storage of the stamp and journal of a notary public, documentation of notarial acts, and liability and penalties for certain misconduct and violations of law by a notary public or an employer of a notary public; prohibiting a notary public from performing a notarial act on certain documents or from making or noting a protest of a negotiable instrument under certain circumstances; authorizing the Secretary of State to impose a civil penalty for certain violations; providing a penalty; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Notaries public are appointed by and subject to the authority of the Secretary of State pursuant to the provisions of chapter 240 of NRS. **Section 1** of this bill makes it a category C felony for a person applying for appointment as a notary public to knowingly submit an application that contains a substantial and material misstatement or omission of fact. **Section 2** of this bill requires, if required by the Secretary of State, a person applying for appointment as a notary public to submit with the application a complete set of his or her fingerprints and a fee. **Sections 3 and 5** of this bill require a notary public to keep his or her stamp and journal in a secure ~~(and locked)~~ location when not using the stamp or journal. **Section 5 also revises provisions relating to the documentation of notarial acts performed: (1) at the same time and for the same person; or (2) for a person for whom a notary public has performed a notarial act within the previous 6 months.** **Section 4** of this bill prohibits a notary public from performing a notarial act on a document that is not completely filled out and signed and prohibits the notary public from making or noting a protest of a negotiable instrument under certain circumstances. **Section 6** of this bill amends provisions relating to penalties for violations of law by notaries public and employers of notaries public.

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

**Section 1.** NRS 240.010 is hereby amended to read as follows:

240.010 1. The Secretary of State may appoint notaries public in this State.

2. The Secretary of State shall not appoint as a notary public a person:

(a) Who submits an application containing a substantial and material misstatement or omission of fact.

(b) Whose previous appointment as a notary public in this State has been revoked.

(c) Who, except as otherwise provided in subsection 3, has been convicted of:

(1) A crime involving moral turpitude; or

(2) Burglary, conversion, embezzlement, extortion, forgery, fraud, identity theft, larceny, obtaining money under false pretenses, robbery or any other crime involving misappropriation of the identity or property of another person or entity, if the Secretary of State is aware of such a conviction before the Secretary of State makes the appointment.

(d) Against whom a complaint that alleges a violation of a provision of this chapter is pending.

(e) Who has not submitted to the Secretary of State proof satisfactory to the Secretary of State that the person has enrolled in and successfully completed a course of study provided pursuant to NRS 240.018.

3. A person who has been convicted of a crime involving moral turpitude may apply for appointment as a notary public if the person provides proof satisfactory to the Secretary of State that:

(a) More than 10 years have elapsed since the date of the person's release from confinement or the expiration of the period of his or her parole, probation or sentence, whichever is later;

(b) The person has made complete restitution for his or her crime involving moral turpitude, if applicable;

(c) The person possesses his or her civil rights; and

(d) The crime for which the person was convicted is not one of the crimes enumerated in subparagraph (2) of paragraph (c) of subsection 2.

4. A notary public may cancel his or her appointment by submitting a written notice to the Secretary of State.

5. It is unlawful for a person to:

(a) Represent himself or herself as a notary public appointed pursuant to this section if the person has not received a certificate of appointment from the Secretary of State pursuant to this chapter.

(b) Submit an application for appointment as a notary public that contains a substantial and material misstatement or omission of fact.

6. The Secretary of State may request that the Attorney General bring an action to enjoin any violation of paragraph (a) of subsection 5.

**7. A person who knowingly violates the provisions of paragraph (b) of subsection 5 is guilty of a category C felony and shall be punished as provided in NRS 193.130.**

**Sec. 2.** NRS 240.030 is hereby amended to read as follows:

240.030 1. Each person applying for appointment as a notary public must:

(a) At the time the applicant submits his or her application, pay to the Secretary of State \$35.

(b) Take and subscribe to the oath set forth in Section 2 of Article 15 of the Constitution of the State of Nevada as if the applicant were a public officer.

(c) Submit to the Secretary of State proof satisfactory to the Secretary of State that the applicant has enrolled in and successfully completed a course of study provided pursuant to NRS 240.018.

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

*(e) If required by the Secretary of State, submit:*

*(1) A complete set of the fingerprints of the applicant and written permission authorizing the Secretary of State to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report; and*

*(2) A fee established by regulation of the Secretary of State which must not exceed the sum of the amounts charged by the Central Repository for Nevada Records of Criminal History and the Federal Bureau of Investigation for processing the fingerprints.*

2. In addition to the requirements set forth in subsection 1, an applicant for appointment as a notary public who resides in an adjoining state must submit to the Secretary of State with the application:

(a) An affidavit setting forth the adjoining state in which the applicant resides, the applicant's mailing address and the address of the applicant's place of business or employment that is located within the State of Nevada;

(b) A copy of the applicant's state business license issued pursuant to chapter 76 of NRS and any business license required by the local government where the business is located, if the applicant is self-employed; and

(c) Unless the applicant is self-employed, a copy of the state business license of the applicant's employer, a copy of any business license of the applicant's employer that is required by the local government where the business is located and an affidavit from the applicant's employer setting forth the facts which show that the employer regularly employs the applicant at an office, business or facility which is located within the State of Nevada.

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

4. The bond, together with the oath, must be filed and recorded in the office of the county clerk of the county in which the applicant resides when the applicant applies for the appointment or, if the applicant is a resident of an adjoining state, with the clerk of the county in this State in which the applicant maintains a place of business or is employed. On a form provided by the Secretary of State, the county clerk shall immediately certify to the Secretary of State that the required bond and oath have been filed and recorded. Upon receipt of the application, fee and certification that the required bond and oath have been filed and recorded, the Secretary of State shall issue a certificate of appointment as a notary public to the applicant.

5. The term of a notary public commences on the effective date of the bond required pursuant to paragraph (d) of subsection 1. A notary public shall not perform a notarial act after the effective date of the bond unless the notary public has been issued a certificate of appointment.

6. Except as otherwise provided in this subsection, the Secretary of State shall charge a fee of \$10 for each duplicate or amended certificate of appointment which

1 is issued to a notary. If the notary public does not receive an original certificate of  
2 appointment, the Secretary of State shall provide a duplicate certificate of  
3 appointment without charge if the notary public requests such a duplicate within 60  
4 days after the date on which the original certificate was issued.

5 **Sec. 3.** NRS 240.040 is hereby amended to read as follows:

6 240.040 1. The statement required by paragraph (d) of subsection 1 of NRS  
7 240.1655 must:

8 (a) Be imprinted in indelible, photographically reproducible ink with a rubber  
9 or other mechanical stamp; and

10 (b) Set forth:

11 (1) The name of the notary public;

12 (2) The phrase "Notary Public, State of Nevada";

13 (3) The date on which the appointment of the notary public expires;

14 (4) The number of the certificate of appointment of the notary public;

15 (5) If the notary public so desires, the Great Seal of the State of Nevada;

16 and

17 (6) If the notary public is a resident of an adjoining state, the word  
18 "nonresident."

19 2. After July 1, 1965, an embossed notarial seal is not required on notarized  
20 documents.

21 3. The stamp required pursuant to subsection 1 must:

22 (a) Be a rectangle, not larger than 1 inch by 2 1/2 inches, and may contain a  
23 border design; and

24 (b) Produce a legible imprint.

25 4. A notary public shall not affix his or her stamp over printed material.

26 5. *A notary public shall keep his or her stamp in a secure ~~(and locked)~~*  
27 *location during any period in which the notary public is not using the stamp to*  
28 *perform a notarial act.*

29 6. As used in this section, "mechanical stamp" includes an imprint made by a  
30 computer or other similar technology.

31 **Sec. 4.** NRS 240.075 is hereby amended to read as follows:

32 240.075 A notary public shall not:

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

35 2. Certify an instrument containing a statement known by the notary public to  
36 be false.

37 3. Perform any act as a notary public with intent to deceive or defraud,  
38 including, without limitation, altering the journal that the notary public is required  
39 to keep pursuant to NRS 240.120.

40 4. Endorse or promote any product, service or offering if his or her  
41 appointment as a notary public is used in the endorsement or promotional  
42 statement.

43 5. Certify photocopies of a certificate of birth, death or marriage or a divorce  
44 decree.

45 6. Allow any other person to use his or her notary's stamp.

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

47 8. Perform a notarial act on a document that contains only a signature.

48 9. *Perform a notarial act on a document, including a form that requires the*  
49 *signer to provide information within blank spaces, unless the document has been*  
50 *filled out completely and has been signed.*

51 10. *Make or note a protest of a negotiable instrument unless the notary*  
52 *public is employed by a depository institution and the protest is made or noted*

1 *within the scope of that employment. As used in this subsection, "depository*  
2 *institution" has the meaning ascribed to it in NRS 657.037.*

3 **Sec. 5.** NRS 240.120 is hereby amended to read as follows:

4 240.120 1. ~~Each~~ Except as otherwise provided in subsection 2, each  
5 notary public shall keep a journal in his or her office in which the notary public  
6 shall enter for each notarial act performed, at the time the act is performed:

7 (a) The fees charged, if any;

8 (b) The title of the document;

9 (c) The date on which the notary public performed the service;

10 (d) ~~The~~ Except as otherwise provided in subsection 3, the name and  
11 signature of the person whose signature is being notarized;

12 (e) ~~A~~ Subject to the provisions of subsection 4, a description of the evidence  
13 used by the notary public to verify the identification of the person whose signature  
14 is being notarized;

15 (f) An indication of whether the notary public administered an oath; and

16 (g) The type of certificate used to evidence the notarial act, as required  
17 pursuant to NRS 240.1655.

18 2. A notary public may make one entry in the journal which documents  
19 more than one notarial act if the notarial acts documented are performed:

20 (a) For the same person and at the same time; and

21 (b) On one document or on similar documents.

22 3. When taking an acknowledgment for a person, a notary public need not  
23 require the person to sign the journal if the notary public has performed a  
24 notarial act for the person within the previous 6 months and the notary public  
25 has personal knowledge of the identity of the person.

26 4. If, pursuant to subsection 3, a notary public does not require a person to  
27 sign the journal, the notary public shall enter "known personally" as the  
28 description required to be entered into the journal pursuant to paragraph (e) of  
29 subsection 1.

30 5. If the notary verifies the identification of the person whose signature is  
31 being notarized on the basis of a credible witness, the notary public shall:

32 (a) Require the witness to sign the journal in the space provided for the  
33 description of the evidence used; and

34 (b) Make a notation in the journal that the witness is a credible witness.

35 ~~2.~~ 6. The journal must:

36 ~~(a)~~ Be open to public inspection.

37 ~~(b)~~ Be in a bound volume with preprinted page numbers.

38 ~~4.~~ 7. A notary public shall, upon request and payment of the fee set forth in  
39 NRS 240.100, provide a certified copy of an entry in his or her journal.

40 ~~5.~~ 8. A notary public shall keep his or her journal in a secure ~~and~~  
41 locked location during any period in which the notary public is not making an  
42 entry or notation in the journal pursuant to this section.

43 ~~6.~~ 9. A notary public shall retain each journal that the notary public has  
44 kept pursuant to this section until 7 years after the date on which he or she ceases to  
45 be a notary public.

46 ~~6.~~ ~~7.~~ 10. A notary public shall file a report with the Secretary of State and  
47 the appropriate law enforcement agency if the journal of the notary public is lost or  
48 stolen.

49 ~~7.~~ ~~8.~~ 11. The provisions of this section do not apply to a person who is  
50 authorized to perform a notarial act pursuant to paragraph (b), (c) or (d) of  
51 subsection 1 of NRS 240.1635.

1       **Sec. 6.** NRS 240.150 is hereby amended to read as follows:

2       240.150 1. For misconduct or neglect in a case in which a notary public  
3 appointed pursuant to the authority of this State may act, either by the law of this  
4 State or of another state, territory or country, or by the law of nations, or by  
5 commercial usage, the notary public is liable on his or her official bond to the  
6 parties injured thereby, for all the damages sustained.

7       2. The employer of a notary public *may be assessed a civil penalty by the*  
8 *Secretary of State of not more than \$2,000 for each violation specified in*  
9 *subsection 4 committed by the notary public, and the employer* is liable for any  
10 damages proximately caused by the misconduct of the notary public, if:

11       (a) The notary public was acting within the scope of his or her employment at  
12 the time the notary public engaged in the misconduct; and

13       (b) The employer of the notary public consented to the misconduct of the  
14 notary public.

15       3. The Secretary of State may refuse to appoint or may suspend or revoke the  
16 appointment of a notary public who fails to provide to the Secretary of State, within  
17 a reasonable time, information that the Secretary of State requests from the notary  
18 public in connection with a complaint which alleges a violation of this chapter.

19       4. Except as otherwise provided in this chapter, for any willful violation or  
20 neglect of duty or other violation of this chapter, or upon proof that ~~the~~ a notary  
21 public has been convicted of a crime ~~involving moral turpitude;~~

22 ~~—(a) A notary public or other person who violates a provision of this chapter~~  
23 ~~may be fined not more than \$2000 for each violation;~~

24 ~~—(b) described in paragraph (c) of subsection 2 of NRS 240.010;~~

25       (a) The appointment of the notary public may be suspended for a period  
26 determined by the Secretary of State, but not exceeding the time remaining on the  
27 appointment;

28 ~~—(c) (b) The appointment of the notary public may be revoked~~ ~~or~~  
29 ~~—(d) after a hearing; or~~

30       (c) The notary public may be ~~fined and his or her appointment may be:~~

31 ~~—(1) Revoked; or~~

32 ~~—(2) Suspended for a period determined by the Secretary of State; assessed~~  
33 *a civil penalty of not more than \$2,000 for each violation.*

34       5. If the Secretary of State revokes or suspends the appointment of a notary  
35 public pursuant to this section, the Secretary of State shall:

36       (a) Notify the notary public in writing of the revocation or suspension; and

37       (b) Cause notice of the revocation or suspension to be published ~~in a~~  
38 ~~newspaper of general circulation in the county in which the notary public resides or~~  
39 ~~works.~~ *on the website of the Secretary of State.*

40       6. Except as otherwise provided by law, the Secretary of State may ~~impose~~  
41 ~~the fine~~ *assess the civil penalty* that is authorized pursuant to this section upon a  
42 notary public whose appointment has expired if the notary public committed the  
43 violation that justifies the ~~fine~~ *civil penalty* before his or her appointment expired.

44       7. *The appointment of a notary public may be suspended or revoked by the*  
45 *Secretary of State pending a hearing if the Secretary of State believes it is in the*  
46 *public interest or is necessary to protect the public.*

47       **Sec. 6.5.** NRS 240.201 is hereby amended to read as follows:

48       240.201 1. An electronic notary public shall keep a journal of each  
49 electronic notarial act which includes, without limitation, the requirements of  
50 subsections 1 and ~~2~~ *3* of NRS 240.120.

51       2. The Secretary of State may suspend the appointment of an electronic  
52 notary public who fails to produce any journal entry within 10 days after receipt of  
53 a request from the Secretary of State.

1           3. Upon resignation, revocation or expiration of an appointment as an  
2 electronic notary public, all notarial records required pursuant to NRS 240.001 to  
3 240.206, inclusive, must be delivered to the Secretary of State.

4           **Sec. 7.** This act becomes effective upon passage and approval for the purpose  
5 of adopting regulations by the Secretary of State pursuant to the amendatory  
6 provisions of section 2 of this act and on January 1, 2012, for all other purposes.