

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 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, 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:

- 1 Notaries public are appointed by and subject to the authority of the Secretary of
- 2 State pursuant to the provisions of chapter 240 of NRS. **Section 1** of this bill makes
- 3 it a category C felony for a person applying for appointment as a notary public to
- 4 submit an application that contains a substantial and material misstatement or
- 5 omission of fact. **Section 2** of this bill requires, if required by the Secretary of
- 6 State, a person applying for appointment as a notary public to submit with the
- 7 application a complete set of his or her fingerprints and a fee. **Sections 3 and 5** of
- 8 this bill require a notary public to keep his or her stamp and journal in a secure and
- 9 locked location when not using the stamp or journal. **Section 4** of this bill prohibits



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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.



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

3 5. It is unlawful for a person to:

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

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

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

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

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

16 240.030 1. Each person applying for appointment as a notary
17 public must:

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

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

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

26 (d) Enter into a bond to the State of Nevada in the sum of
27 \$10,000, to be filed with the clerk of the county in which the
28 applicant resides or, if the applicant is a resident of an adjoining
29 state, with the clerk of the county in this State in which the applicant
30 maintains a place of business or is employed. The applicant must
31 submit to the Secretary of State a certificate issued by the
32 appropriate county clerk which indicates that the applicant filed the
33 bond required pursuant to this paragraph.

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

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

40 *(2) A fee established by regulation of the Secretary of State*
41 *which must not exceed the sum of the amounts charged by the*
42 *Central Repository for Nevada Records of Criminal History and*
43 *the Federal Bureau of Investigation for processing the*
44 *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 is issued to a notary. If the notary public does not receive an original certificate of



1 appointment, the Secretary of State shall provide a duplicate
2 certificate of appointment without charge if the notary public
3 requests such a duplicate within 60 days after the date on which the
4 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
7 subsection 1 of NRS 240.1655 must:

8 (a) Be imprinted in indelible, photographically reproducible ink
9 with a rubber 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
14 expires;

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

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

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

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

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

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

26 (b) Produce a legible imprint.

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

29 5. *A notary public shall keep his or her stamp in a secure and*
30 *locked location during any period in which the notary public is not*
31 *using the stamp to perform a notarial act.*

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

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

35 240.075 A notary public shall not:

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

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

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

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



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

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

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

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

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

10. Make or note a protest of a negotiable instrument unless the notary public is employed by a depository institution and the protest is made or noted within the scope of that employment. As used in this subsection, "depository institution" has the meaning ascribed to it in NRS 657.037.

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

240.120 1. Each notary public shall keep a journal in his or her office in which the notary public shall enter for each notarial act performed, at the time the act is performed:

(a) The fees charged, if any;

(b) The title of the document;

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

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

(e) A description of the evidence used by the notary public to verify the identification of the person whose signature is being notarized;

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

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

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

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

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

3. The journal must:

(a) Be open to public inspection.

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 ~~[(e)]~~ (b) The appointment of the notary public may be revoked
2 ~~[- or~~

3 ~~-(d)] after a hearing; or~~

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

6 ~~—— (1) Revoked; or~~

7 ~~—— (2) Suspended for a period determined by the Secretary of~~
8 ~~State.] assessed a civil penalty of not more than \$2,000 for each~~
9 ~~violation.~~

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

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

15 (b) Cause notice of the revocation or suspension to be published
16 ~~[in a newspaper of general circulation in the county in which the~~
17 ~~notary public resides or works.] on the website of the Secretary of~~
18 ~~State.~~

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

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

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

