

Amendment No. 474

Senate Amendment to Senate Bill No. 401	(BDR 19-895)
Proposed by: Senate Committee on Government Affairs	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

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) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.

DHR/MSM



Date: 4/15/2015

S.B. No. 401—Revises provisions relating to notaries public and document preparation services. (BDR 19-895)



SENATE BILL NO. 401—SENATORS DENIS,
FORD, KIHUEN; AND SEGERBLOM

MARCH 17, 2015

JOINT SPONSORS: ASSEMBLYMEN FLORES, DIAZ; BUSTAMANTE ADAMS, CARLTON,
CARRILLO AND THOMPSON

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to notaries public and document preparation services. (BDR 19-895)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
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 public affairs; ~~authorizing the Secretary of State to adopt regulations and accept applications for the formation of consumer protection associations; authorizing the Secretary of State to enter into certain cooperative agreements with other governmental entities;~~ authorizing certain persons to file complaints relating to notaries public or document preparation services with the Secretary of State; revising provisions relating to the requirements for an application for appointment as a notary public or document preparation service; revising provisions relating to the advertising of services as a notary public or document preparation service; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the Secretary of State to appoint notaries public. (NRS 240.010) In addition, existing law provides that it is unlawful for a person: (1) to represent themselves as a notary public if they have not been appointed by the Secretary of State; (2) to submit an application for appointment as a notary public that contains a material misrepresentation or omission of fact; and (3) if the person is a notary public, to use the term “notario” or “notario publico” on any advertisement if the person is not also an attorney licensed in this State. (NRS 240.010, 240.085) Existing law sets forth similar prohibitions with respect to a document preparation service. (NRS 240A.100, 240A.240, 240A.260)

Sections 8 and 13 of this bill authorize any person who is aware of a violation of existing law governing notaries public and document preparation services to file a complaint with the Secretary of State. **Sections 9 and 11** of this bill require an applicant for appointment as a notary public or registration as a document preparation service to provide with his or her

application ~~(any address where the applicant has resided during the previous 5 years and an affidavit)~~ a declaration under penalty of perjury stating that the applicant has never had an appointment as a notary public, or certificate or license as a document preparation service, as applicable, revoked or suspended in this State or any other state or territory. **Section 10** of this bill adds the term "licenciado" to the list of terms prohibited to be used in an advertisement if a notary public is not also an attorney licensed in this State. **Section 12** of this bill similarly prohibits document preparation services from using terms that may mislead a consumer into believing that a document preparation service is a licensed attorney, if such is not the case.

~~Sections 2-6 of this bill authorize the Secretary of State to adopt regulations and accept applications for the formation of consumer protection associations to assist with the reporting of violations of existing law governing notaries public and document preparation services. Section 7 of this bill authorizes the Secretary of State to enter into cooperative agreements with other governmental entities for the purpose of managing the activities of a consumer protection association.~~

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

Section 1. ~~[Chapter 240 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this act.]~~ (Deleted by amendment.)

Sec. 2. ~~[As used in sections 2 to 7, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this act have the meanings ascribed to them in those sections.]~~ (Deleted by amendment.)

Sec. 3. ~~["Consumer protection association" means a nonprofit, unincorporated association formed pursuant to section 6 of this act.]~~ (Deleted by amendment.)

Sec. 4. ~~["Governmental entity" has the meaning ascribed to it in NRS 239.005.]~~ (Deleted by amendment.)

Sec. 5. ~~[The Secretary of State shall adopt regulations relating to consumer protection associations in this State, including, without limitation, regulations which~~

~~1. Establish the requirements for the formation of a consumer protection association;~~

~~2. Provide for the governance and management of a consumer protection association;~~

~~3. Define the activities that a consumer protection association may undertake;~~

~~4. Establish education or training requirements for the members of a consumer protection association;~~

~~5. Establish minimum liability insurance requirements for a consumer protection association;~~

~~6. Govern the types, amounts and uses of money that a consumer protection association may receive to pay for the activities of the association; and~~

~~7. Establish the minimum financial requirements necessary for the formation and operation of a consumer protection association.]~~ (Deleted by amendment.)

Sec. 6. ~~[1. A consumer protection association may be formed by submitting a written application to the Secretary of State, on a form and in a manner prescribed by the Secretary of State. The written application must include, without limitation, all information required pursuant to the regulations adopted by the Secretary of State.~~

~~2. The application required by subsection 1 may be filed by~~

~~(a) A business entity or nonprofit cooperative corporation located in this State if the entity or corporation has never had a business license or professional registration revoked in this State or in any other state or territory; or~~

~~(b) Any two or more natural persons who reside within this State and who:~~

~~(1) Are not notaries public appointed pursuant to NRS 240.010 or document preparation services registered pursuant to NRS 240A.100; and~~

~~(2) Have never had a an appointment as a notary public or registration as a document preparation service revoked in this State or any other state or territory.~~

~~3. The Secretary of State may approve an application to establish a consumer protection association if the petitioners:~~

~~(a) Meet the requirement of subsection 2;~~

~~(b) Meet the requirements established by the Secretary of State relating to the formation, operation and financing of a consumer protection association set forth in the regulations adopted by the Secretary of State; and~~

~~(c) Complete all education or training required by the regulations adopted by the Secretary of State.~~

~~4. A consumer protection association formed pursuant to this section shall:~~

~~(a) Report to the Secretary of State any violations of this chapter or chapter 240A of NRS known to or discovered by the association; and~~

~~(b) Perform such other functions as determined by the Secretary of State.]~~
(Deleted by amendment.)

Sec. 7. ~~1. The Secretary of State may enter into a cooperative agreement with a governmental entity for the purpose of overseeing and managing the activities of a consumer protection association. The cooperative agreement must provide for an annual evaluation of the consumer protection association, including, without limitation:~~

~~(a) The governance and management structure of the association;~~

~~(b) The adequacy of any policy of liability insurance of the association;~~

~~(c) The management of money received by the association; and~~

~~(d) The training and qualifications of each member of the association.~~

2. A governmental entity which is a party to a cooperative agreement with the Secretary of State pursuant to subsection 1 shall, to the extent practicable, assist the consumer protection association with:

~~(a) Procuring money to pay for the activities of the association;~~

~~(b) Carrying out the activities of the association; and~~

~~(c) Training the members of the association.]~~ **(Deleted by amendment.)**

Sec. 8. 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.

(c) Violate any provision of this chapter, including, without limitation, the provisions of NRS 240.085.

6. Any person who is aware of a violation of this chapter by a notary public or a person applying for appointment as a notary public may file a complaint with the Secretary of State setting forth the details of the violation that are known by the person who is filing the complaint.

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

Sec. 9. 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) ~~Submit to the Secretary of State~~

~~(1) All addresses at which the applicant has resided for any length of time during the 5 years immediately preceding the submission of the application; and~~

~~(2) A notarized affidavit~~ a declaration under penalty of perjury stating that the applicant has not had an appointment as a notary public revoked or suspended in this State or any other state or territory of the United States.

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

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

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

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

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

15 (b) A copy of the applicant's state business license issued pursuant to chapter
16 76 of NRS and any business license required by the local government where the
17 business is located, if the applicant is self-employed; and

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

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

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

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

42 6. Except as otherwise provided in this subsection, the Secretary of State shall
43 charge a fee of \$10 for each duplicate or amended certificate of appointment which
44 is issued to a notary. If the notary public does not receive an original certificate of
45 appointment, the Secretary of State shall provide a duplicate certificate of
46 appointment without charge if the notary public requests such a duplicate within 60
47 days after the date on which the original certificate was issued.

48 **Sec. 10.** NRS 240.085 is hereby amended to read as follows:

49 240.085 1. Every notary public who is not an attorney licensed to practice
50 law in this State and who advertises his or her services as a notary public in a
51 language other than English by any form of communication, except a single plaque
52 on his or her desk, shall post or otherwise include with the advertisement a notice in

the language in which the advertisement appears. The notice must be of a conspicuous size, if in writing, and must appear in substantially the following form:

I AM NOT AN ATTORNEY IN THE STATE OF NEVADA. I AM NOT LICENSED TO GIVE LEGAL ADVICE. I MAY NOT ACCEPT FEES FOR GIVING LEGAL ADVICE.

2. A notary public who is not an attorney licensed to practice law in this State shall not use the term “notario,” “notario publico” ~~“notario”~~, “*licenciado*” or any other equivalent non-English term in any form of communication that advertises his or her services as a notary public, including, without limitation, a business card, stationery, notice and sign.

3. If the Secretary of State finds a notary public guilty of violating the provisions of subsection 1 or 2, the Secretary of State shall:

(a) Suspend the appointment of the notary public for not less than 1 year.

(b) Revoke the appointment of the notary public for a third or subsequent offense.

4. A notary public who is found guilty in a criminal prosecution of violating subsection 1 or 2 shall be punished by a fine of not more than \$2,000.

Sec. 11. NRS 240A.100 is hereby amended to read as follows:

240A.100 1. A person who wishes to engage in the business of a document preparation service must be registered by the Secretary of State pursuant to this chapter. An applicant for registration must be a citizen or legal resident of the United States and at least 18 years of age.

2. The Secretary of State shall not register as a document preparation service any person:

(a) Who is suspended or has previously been disbarred from the practice of law in any jurisdiction;

(b) Whose registration as a document preparation service has previously been revoked by the Secretary of State;

(c) Who has previously been convicted of a gross misdemeanor pursuant to paragraph (b) of subsection 1 of NRS 240A.290; or

(d) Who has, within the 10 years immediately preceding the date of the application for registration as a document preparation service, been:

(1) Convicted of a crime involving theft, fraud or dishonesty;

(2) Convicted of the unauthorized practice of law pursuant to NRS 7.285 or the corresponding statute of any other jurisdiction; or

(3) Adjudged by the final judgment of any court to have committed an act involving theft, fraud or dishonesty.

3. An application for registration as a document preparation service must be made under penalty of perjury on a form prescribed by regulation of the Secretary of State and must be accompanied by a cash bond or surety bond meeting the requirements of NRS 240A.120.

4. *An applicant for registration must submit to the Secretary of State ~~the~~*

~~(a) All addresses at which the applicant has resided for any length of time during the 5 years immediately preceding the submission of the application; and~~

~~(b) A notarized affidavit~~ *a declaration under penalty of perjury stating that the applicant has not had a certificate or license as a document preparation service revoked or suspended in this State or any other state or territory of the United States.*

5. After the investigation of the history of the applicant is completed, the Secretary of State shall issue a certificate of registration if the applicant is qualified for registration and has complied with the requirements of this section. Each

certificate of registration must bear the name of the registrant and a registration number unique to that registrant. The Secretary of State shall maintain a record of the name and registration number of each registrant.

Sec. 12. NRS 240A.240 is hereby amended to read as follows:

240A.240 A registrant shall not:

1. After the date of the last service performed for a client, retain any fees or costs for services not performed or costs not incurred.

2. Make, orally or in writing:

(a) A promise of the result to be obtained by the filing or submission of any document, unless the registrant has some basis in fact for making the promise;

(b) A statement that the registrant has some special influence with or is able to obtain special treatment from the court or agency with which a document is to be filed or submitted; or

(c) A false or misleading statement to a client if the registrant knows that the statement is false or misleading or knows that the registrant lacks a sufficient basis for making the statement.

3. In any advertisement or written description of the registrant or the services provided by the registrant, or on any letterhead or business card of the registrant, use the term "legal aid," "legal services," "law office," "*notario*," "*notario publico*," "notary public," "notary," "licensed," "*licenciado*," "attorney," "lawyer" or any similar term, in English, *Spanish* or ~~any~~ any other language, which implies that the registrant:

(a) Offers services without charge if the registrant does not do so; or

(b) Is an attorney authorized to practice law in this State.

4. Negotiate with another person concerning the rights or responsibilities of a client, communicate the position of a client to another person or convey the position of another person to a client.

5. Appear on behalf of a client in a court proceeding or other formal adjudicative proceeding, unless the registrant is ordered to appear by the court or presiding officer.

6. Provide any advice, explanation, opinion or recommendation to a client about possible legal rights, remedies, defenses, options or the selection of documents or strategies, except that a registrant may provide to a client published factual information, written or approved by an attorney, relating to legal procedures, rights or obligations.

7. Seek or obtain from a client a waiver of any provision of this chapter. Any such waiver is contrary to public policy and void.

Sec. 13. NRS 240A.260 is hereby amended to read as follows:

240A.260 1. If the Secretary of State obtains information that a provision of this chapter or a regulation or order adopted or issued pursuant thereto has been violated by a registrant or another person, the Secretary of State may conduct or cause to be conducted an investigation of the alleged violation.

2. If, after investigation, the Secretary of State determines that a violation has occurred, the Secretary of State may:

(a) Serve, by certified mail addressed to the person who has committed the violation, a written order directing the person to cease and desist from the conduct constituting the violation. The order must notify the person that any willful violation of the order may subject the person to prosecution and criminal penalties pursuant to NRS 240A.290.

(b) If a registrant has committed the violation, begin proceedings pursuant to NRS 240A.270 to revoke or suspend the registration of the registrant.

(c) Refer the alleged violation to the Attorney General or a district attorney for commencement of a civil action against the person pursuant to NRS 240A.280.

1 (d) Refer the alleged violation to the Attorney General or a district attorney for
2 prosecution of the person pursuant to NRS 240A.290.

3 (e) Take any combination of the actions described in this subsection.

4 *3. Any person who is aware of a violation of this chapter by a document*
5 *preparation service, or person applying for registration as a document*
6 *preparation service, may file a complaint with the Secretary of State setting forth*
7 *the details of the violation that are known by the person who is filing the*
8 *complaint.*

9 **Sec. 14.** This act becomes effective:

10 1. Upon passage and approval for the purpose of adopting any regulations and
11 performing any other preparatory administrative tasks necessary to carry out the
12 provisions of this act; and

13 2. On January 1, 2016, for all other purposes.