

Amendment No. 733

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

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.

MSM/WLK



Date: 5/14/2015

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 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 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.

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

Section 1. (Deleted by amendment.)

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 4. (Deleted by amendment.)

Sec. 5. (Deleted by amendment.)

Sec. 6. (Deleted by amendment.)

Sec. 7. (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.

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

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

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

9 **Sec. 9.** NRS 240.030 is hereby amended to read as follows:

10 240.030 1. Each person applying for appointment as a notary public must:

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

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

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

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

24 (e) *Submit to the Secretary of State a declaration under penalty of perjury*
25 *stating that the applicant has not had an appointment as a notary public revoked*
26 *or suspended in this State or any other state or territory of the United States.*

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

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

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

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

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

42 (b) A copy of the applicant's state business license issued pursuant to chapter
43 76 of NRS and any business license required by the local government where the
44 business is located, if the applicant is self-employed; and

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

51 3. In completing an application, bond, oath or other document necessary to
52 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 appointment, the Secretary of State shall provide a duplicate certificate of appointment without charge if the notary public requests such a duplicate within 60 days after the date on which the original certificate was issued.

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

240.085 1. Every notary public who is not an attorney licensed to practice law in this State and who advertises his or her services as a notary public in a language other than English by any form of communication, except a single plaque 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” ~~“H,”~~ “*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:

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

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

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

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

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

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

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

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

18 4. *An applicant for registration must submit to the Secretary of State a*
19 *declaration under penalty of perjury stating that the applicant has not had a*
20 *certificate or license as a document preparation service revoked or suspended in*
21 *this State or any other state or territory of the United States.*

22 5. After the investigation of the history of the applicant is completed, the
23 Secretary of State shall issue a certificate of registration if the applicant is qualified
24 for registration and has complied with the requirements of this section. Each
25 certificate of registration must bear the name of the registrant and a registration
26 number unique to that registrant. The Secretary of State shall maintain a record of
27 the name and registration number of each registrant.

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

29 240A.240 A registrant shall not:

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

32 2. Make, orally or in writing:

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

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

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

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

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

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

49 4. Negotiate with another person concerning the rights or responsibilities of a
50 client, communicate the position of a client to another person or convey the position
51 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.

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

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

3. Any person who is aware of a violation of this chapter by a document preparation service, or person applying for registration as a document preparation service, 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.

Sec. 14. 1. This ~~act becomes~~ section and sections 1 to 9, inclusive, 11 and 13 of this act become effective.

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

2. ~~On January 1, 2016,~~ Sections 10 and 12 of this act become effective on October 1, 2015.