

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:

- 1 Existing law authorizes the Secretary of State to appoint notaries public. (NRS
- 2 240.010) In addition, existing law provides that it is unlawful for a person: (1) to
- 3 represent themselves as a notary public if they have not been appointed by the
- 4 Secretary of State; (2) to submit an application for appointment as a notary public
- 5 that contains a material misrepresentation or omission of fact; and (3) if the person
- 6 is a notary public, to use the term “notario” or “notario publico” on any



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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 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.

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.*

Sec. 3. *"Consumer protection association" means a nonprofit, unincorporated association formed pursuant to section 6 of this act.*

Sec. 4. *"Governmental entity" has the meaning ascribed to it in NRS 239.005.*

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.

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.



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.

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



1 and successfully completed a course of study provided pursuant to
2 NRS 240.018.

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

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

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

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

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

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

17 5. It is unlawful for a person to:

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

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

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

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

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

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

34 240.030 1. Each person applying for appointment as a notary
35 public must:

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

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

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

44 (d) Enter into a bond to the State of Nevada in the sum of
45 \$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 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) 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



1 telephone number on any such document which will become
2 available to the public.

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


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

20 6. Except as otherwise provided in this subsection, the
21 Secretary of State shall charge a fee of \$10 for each duplicate or
22 amended certificate of appointment which is issued to a notary. If
23 the notary public does not receive an original certificate of
24 appointment, the Secretary of State shall provide a duplicate
25 certificate of appointment without charge if the notary public
26 requests such a duplicate within 60 days after the date on which the
27 original certificate was issued.

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

29 240.085 1. Every notary public who is not an attorney
30 licensed to practice law in this State and who advertises his or her
31 services as a notary public in a language other than English by any
32 form of communication, except a single plaque on his or her desk,
33 shall post or otherwise include with the advertisement a notice in the
34 language in which the advertisement appears. The notice must be of
35 a conspicuous size, if in writing, and must appear in substantially
36 the following form:

37
38 I AM NOT AN ATTORNEY IN THE STATE OF
39 NEVADA. I AM NOT LICENSED TO GIVE LEGAL
40 ADVICE. I MAY NOT ACCEPT FEES FOR GIVING
41 LEGAL ADVICE.
42

43 2. A notary public who is not an attorney licensed to practice
44 law in this State shall not use the term "notario," "notario publico
45 , "licenciado" or any other equivalent non-English term in any



1 form of communication that advertises his or her services as a
2 notary public, including, without limitation, a business card,
3 stationery, notice and sign.

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

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

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

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

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

15 240A.100 1. A person who wishes to engage in the business
16 of a document preparation service must be registered by the
17 Secretary of State pursuant to this chapter. An applicant for
18 registration must be a citizen or legal resident of the United States
19 and at least 18 years of age.

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

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

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

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

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

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

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

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

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

41 4. *An applicant for registration must submit to the Secretary*
42 *of State:*

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



(b) A notarized affidavit 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 in 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



1 the selection of documents or strategies, except that a registrant may
2 provide to a client published factual information, written or
3 approved by an attorney, relating to legal procedures, rights or
4 obligations.

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

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

8 240A.260 1. If the Secretary of State obtains information that
9 a provision of this chapter or a regulation or order adopted or issued
10 pursuant thereto has been violated by a registrant or another person,
11 the Secretary of State may conduct or cause to be conducted an
12 investigation of the alleged violation.

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

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

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

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

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

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

32 **3. *Any person who is aware of a violation of this chapter by a***
33 ***document preparation service, or person applying for registration***
34 ***as a document preparation service, may file a complaint with the***
35 ***Secretary of State setting forth the details of the violation that are***
36 ***known by the person who is filing the complaint.***

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

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

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

