

ASSEMBLY BILL NO. 476—COMMITTEE
ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE SECRETARY OF STATE)

MARCH 27, 2017

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to notaries public.
(BDR 19-1163)

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; making various changes to the provisions governing electronic notaries public; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes the Secretary of State to appoint electronic notaries public and provides for the performance of notarial acts on electronic records by electronic notaries public. (NRS 240.181-240.206) **Section 1** of this bill clarifies that an appointment as an electronic notary public does not authorize the electronic notary public to perform notarial acts in another state. **Sections 3 and 7** of this bill authorize an electronic notary public to certify a true and correct copy.

Under existing law, to become an electronic notary public, a person is required to: (1) already be a notarial officer in Nevada; (2) successfully complete a course of study on electronic notarization; (3) enter into a bond; (4) pay an application fee; and (5) take an oath. (NRS 240.192) Under existing law a notary public is required to take an oath and file a bond. (NRS 240.033) **Section 4** of this bill removes the requirement for an electronic notary public to file an additional bond and take an additional oath. However, **section 2** of this bill requires that the bond filed by a person who is also an electronic notary public provide indemnification to a person determined to have suffered damage as a result of the electronic notary public’s violation of the statutes governing electronic notaries public, in addition to those statutes governing notaries public generally.

Under existing law, the term of an appointment as an electronic notary public is 4 years and commences on the effective date of the bond filed by the notary public. (NRS 240.020, 240.030) Under existing law, the initial term of an electronic notary public is 2 years and then 4 years thereafter. (NRS 240.194) **Section 5** of this bill makes a person’s term of an appointment as an electronic notary public



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coterminous with that person's term of appointment as a traditional notary public. **Section 5** requires a person's appointment as an electronic notary public to be renewed at the same time as the renewal of his or her appointment as a traditional notary public.

Existing law requires a person to take a course that includes at least 3 hours of instruction to become an electronic notary public. (NRS 240.195) **Section 6** of this bill limits the course to only online and decreases the length of the course to not longer than 3 hours, including the time necessary to take the required examination at the end of the course.

Existing law requires a person, upon resignation, revocation or expiration of an appointment as an electronic notary public, to provide certain notarial records to the Secretary of State. (NRS 240.201) **Section 8** of this bill instead requires a person to keep such records for a period of 7 years following the termination of his or her appointment as an electronic notary public.

Section 9 of this bill requires an electronic notary public to notify the entity from which he or she obtained an electronic signature or electronic seal within 10 days if the signature or seal has been stolen, lost, damaged or otherwise rendered incapable of affixing a legible image.

Existing law requires the Secretary of State to issue, upon request and the payment of certain fees, an authentication to verify that: (1) the electronic signature of the electronic notary public on a document is valid; and (2) the electronic notary public holds the office indicated on the document. (NRS 240.205) **Section 10** of this bill requires a request for authentication to include a statement signed under penalty of perjury that the document will not be used to: (1) harass a person; or (2) accomplish any fraudulent, criminal or other unlawful purpose. **Section 10** also prohibits the bringing of a civil action against the Secretary of State on the basis that: (1) the Secretary of State has issued such an authentication; and (2) the document has been used to harass a person or accomplish any fraudulent, criminal or other unlawful purpose. Additionally, **section 10** provides that a person who uses a document for which an authentication has been issued for such unlawful purposes is guilty of a category C felony.

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

Section 1. NRS 240.020 is hereby amended to read as follows:
240.020 A person appointed as a notary public pursuant to this chapter may perform notarial acts in any part of this state for a term of 4 years, unless sooner removed. Such an appointment *or an appointment as an electronic notary public pursuant to NRS 240.192* does not authorize the person to perform notarial acts in another state.

Sec. 2. NRS 240.033 is hereby amended to read as follows:
240.033 1. The bond required to be filed pursuant to NRS 240.030 must be executed by the person applying to become a notary public as principal and by a surety company qualified and authorized to do business in this State. The bond must be made payable to the State of Nevada and be conditioned to provide indemnification to a person determined to have suffered damage as a result of an act by the notary public which violates a provision of



1 NRS 240.001 to 240.169, inclusive ~~H~~ *or, if applicable, an act by*
2 *the electronic notary public which violates a provision of NRS*
3 *240.001 to 240.206, inclusive.* The surety company shall pay a final,
4 nonappealable judgment of a court of this State that has jurisdiction,
5 upon receipt of written notice of final judgment. The bond may be
6 continuous but, regardless of the duration of the bond, the aggregate
7 liability of the surety does not exceed the penal sum of the bond.

8 2. If the penal sum of the bond is exhausted, the surety
9 company shall notify the Secretary of State in writing within 30
10 days after its exhaustion.

11 3. The surety bond must cover the period of the appointment of
12 the notary public, except when a surety is released.

13 4. A surety on a bond filed pursuant to NRS 240.030 may be
14 released after the surety gives 30 days' written notice to the
15 Secretary of State and notary public, but the release does not
16 discharge or otherwise affect a claim filed by a person for damage
17 resulting from an act of the notary public which is alleged to have
18 occurred while the bond was in effect.

19 5. The appointment of a notary public is suspended by
20 operation of law when the notary public is no longer covered by a
21 surety bond as required by this section and NRS 240.030 or the
22 penal sum of the bond is exhausted. If the Secretary of State
23 receives notice pursuant to subsection 4 that the bond will be
24 released or pursuant to subsection 2 that the penal sum of the bond
25 is exhausted, the Secretary of State shall immediately notify the
26 notary public in writing that his or her appointment will be
27 suspended by operation of law until another surety bond is filed in
28 the same manner and amount as the bond being terminated.

29 6. The Secretary of State may reinstate the appointment of a
30 notary public whose appointment has been suspended pursuant to
31 subsection 5, if the notary public, before his or her current term of
32 appointment expires:

33 (a) Submits to the Secretary of State:

34 (1) An application for an amended certificate of appointment
35 as a notary public; and

36 (2) A certificate issued by the clerk of the county in which
37 the applicant resides or, if the applicant is a resident of an adjoining
38 state, the county in this State in which the applicant maintains a
39 place of business or is employed, which indicates that the applicant
40 filed a new surety bond with the clerk.

41 (b) Pays to the Secretary of State a fee of \$10.

42 **Sec. 3.** NRS 240.185 is hereby amended to read as follows:

43 240.185 "Electronic notarial act" means an act that an
44 electronic notary public of this State is authorized to perform. The
45 term includes:



- 1 1. Taking an acknowledgment;
- 2 2. Administering an oath or affirmation;
- 3 3. Executing a jurat; ~~and~~
- 4 4. *Certifying a true and correct copy; and*
- 5 5. Performing such other duties as may be prescribed by a
- 6 specific statute.

7 **Sec. 4.** NRS 240.192 is hereby amended to read as follows:

8 240.192 1. Each person applying for appointment as an

9 electronic notary public must:

10 (a) At the time of application, be a notarial officer in this State

11 *who has complied with the requirements pertaining to taking an*

12 *oath and filing a bond set forth in NRS 240.030* and ~~have~~ *has*

13 been a notarial officer in this State for not less than 4 years;

14 (b) Submit to the Secretary of State an electronic application

15 pursuant to subsection 2;

16 (c) Pay to the Secretary of State an application fee of \$50; *and*

17 (d) ~~Take and subscribe to the oath set forth in Section 2 of~~

18 ~~Article 15 of the Constitution of the State of Nevada as if the~~

19 ~~applicant were a public officer;~~

20 ~~—(e)—~~ Submit to the Secretary of State proof satisfactory to the

21 Secretary of State that the applicant has ~~successfully~~ :

22 (1) *Successfully* completed a course of study provided

23 pursuant to NRS 240.195; and

24 ~~[(f) Enter into a bond to the State of Nevada in the sum of~~

25 ~~\$10,000, to be filed with the clerk of the county in which the~~

26 ~~applicant resides or, if the applicant is a resident of an adjoining~~

27 ~~state, with the clerk of the county in this State in which the applicant~~

28 ~~maintains a place of business or is employed. The applicant must~~

29 ~~submit to the Secretary of State a certificate issued by the~~

30 ~~appropriate county clerk which indicates that the applicant filed the~~

31 ~~bond required pursuant to this paragraph.]~~

32 (2) *Complied with the requirements pertaining to taking an*

33 *oath and filing a bond set forth in NRS 240.030.*

34 2. The application for an appointment as an electronic notary

35 public must be submitted as an electronic document and must

36 contain, without limitation, the following information:

37 (a) The applicant's full legal name, and the name to be used for

38 appointment, if different.

39 (b) The county in which the applicant resides.

40 (c) The electronic mail address of the applicant.

41 (d) ~~IA description of the technology or device, approved by the~~

42 ~~Secretary of State, that the applicant intends to use to create his or~~

43 ~~her electronic signature in performing electronic notarial acts.—~~

44 ~~—(e)—~~ The electronic signature of the applicant.



~~1~~ ~~(f)~~ (e) Any other information requested by the Secretary of
2 State.

3 3. An applicant for appointment as an electronic notary public
4 who resides in an adjoining state, in addition to the requirements set
5 forth in subsections 1 and 2, must submit to the Secretary of State
6 with the application:

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

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

15 (c) Unless the applicant is self-employed, a copy of the state
16 business registration of the applicant's employer issued pursuant to
17 chapter 76 of NRS, a copy of any business license of the applicant's
18 employer that is required by the local government where the
19 business is located and an affidavit from the applicant's employer
20 setting forth the facts which show that the employer regularly
21 employs the applicant at an office, business or facility which is
22 located within the State of Nevada.

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

28 5. ~~{The bond, together with the oath, must be filed and~~
29 ~~recorded in the office of the county clerk of the county in which the~~
30 ~~applicant resides when the applicant applies for appointment or, if~~
31 ~~the applicant is a resident of an adjoining state, with the clerk of the~~
32 ~~county in this State in which the applicant maintains a place of~~
33 ~~business or is employed. On a form provided by the Secretary~~
34 ~~of State, the county clerk shall immediately certify to the Secretary~~
35 ~~of State that the required bond and oath have been filed and~~
36 ~~recorded.}~~ Upon receipt of the application, fee and ~~{certification}~~
37 *proof* that the ~~{required}~~ bond and oath *required by NRS 240.030*
38 have been filed and recorded, the Secretary of State shall issue a
39 certificate of appointment as an electronic notary public to the
40 applicant.

41 6. The term of an electronic notary public commences on the
42 ~~{effective}~~ date ~~{of the bond required pursuant to paragraph (f) of~~
43 ~~subsection 1.}~~ *on which the certificate of appointment is issued to*
44 *the electronic notary public pursuant to subsection 5.* An
45 electronic notary public shall not perform an electronic notarial act



~~after the effective date of the bond~~ unless the electronic notary public has been issued a certificate of appointment pursuant to subsection 5.

7. 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 an electronic notary public. If the electronic 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 electronic notary public requests such a duplicate within 60 days after the date on which the original certificate was issued.

Sec. 5. NRS 240.194 is hereby amended to read as follows:

240.194 1. The ~~initial~~ term of appointment ~~as~~ of an electronic notary public is ~~2 years. Each~~ *coterminous with his or her* term of appointment as ~~an electronic~~ a notary public ~~subsequent to the initial term is 4 years.~~ *pursuant to NRS 240.010. An appointment as an electronic notary public must be renewed at the same time a person renews his or her appointment as a notary public.*

2. The appointment of an electronic notary public is suspended by operation of law when the electronic notary public is no longer appointed as a notary public in this State. If the appointment of an electronic notary public has expired or been revoked or suspended, the Secretary of State shall immediately notify the electronic notary public in writing that his or her appointment as an electronic notary public will be suspended by operation of law until he or she is appointed as a notary public in this State.

3. If, at any time during his or her appointment, an electronic notary public changes his or her electronic mail address, county of residence, name, electronic signature or the technology or device used to create his or her electronic signature, the electronic notary public shall, within 10 days after making the change, submit to the Secretary of State:

(a) An electronic document, signed with the electronic signature submitted by the electronic notary public pursuant to subsection 2 of NRS 240.192, that includes the change of information; and

(b) A fee of \$10.

Sec. 6. NRS 240.195 is hereby amended to read as follows:

240.195 1. Except as otherwise provided in subsection 2, an applicant for appointment as an electronic notary public must successfully:

(a) Complete a course of study that is in accordance with the requirements of subsection 5; and

(b) Pass an examination at the completion of the course.



2. The following persons are required to enroll in and successfully complete a course of study as required pursuant to subsection 1:

(a) A person applying for his or her first appointment as an electronic notary public;

(b) A person renewing his or her appointment as an electronic notary public; and

(c) A person who has committed a violation of this chapter or whose appointment as an electronic notary public has been suspended, and who has been required by the Secretary of State to enroll in a course of study provided pursuant to this section.

3. A course of study required to be completed pursuant to subsection 1 must:

(a) ~~Include at least~~ *Be taken online and be of a duration of not more than* 3 hours ~~of instruction;~~, *including instruction and completion of an examination of the course content;*

(b) Provide instruction in electronic notarization, including, without limitation, notarial law and ethics, technology and procedures;

(c) ~~Include an examination of the course content;~~

~~(d)~~ Comply with the regulations adopted pursuant to NRS 240.206; and

~~(e)~~ (d) Be approved by the Secretary of State.

4. The Secretary of State may, with respect to a course of study required to be completed pursuant to subsection 1 ~~:-~~

~~(a) Provide such a course of study; and~~

~~(b) Charge~~, *charge* a reasonable fee to each person who enrolls in such a course of study.

5. A course of study provided pursuant to this section:

(a) Must satisfy the criteria set forth in subsection 3 and comply with the requirements set forth in the regulations adopted pursuant to NRS 240.206.

(b) May be provided ~~in person or online~~ by the Secretary of State or a vendor approved by the Secretary of State.

6. The Secretary of State shall deposit the fees collected pursuant to ~~paragraph (b) of~~ subsection 4 in the Notary Public Training Account created pursuant to NRS 240.018.

Sec. 7. NRS 240.196 is hereby amended to read as follows:

240.196 A person appointed as an electronic notary public pursuant to NRS 240.181 to 240.206, inclusive, may, during normal business hours, perform the following electronic notarial acts for a person who requests the electronic notarial act and tenders the appropriate fee:

1. Taking an acknowledgment;

2. Executing a jurat; ~~and~~



3. Administering an oath or affirmation ~~H~~; and

4. *Certifying a true and correct copy.*

Sec. 8. NRS 240.201 is hereby amended to read as follows:

240.201 1. An electronic notary public shall keep a journal of each electronic notarial act which includes, without limitation, the requirements of subsections 1 and 5 of NRS 240.120.

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

3. Upon resignation, revocation or expiration of an appointment as an electronic notary public, all notarial records required pursuant to NRS 240.001 to 240.206, inclusive, must be ~~delivered to the Secretary of State.~~ *kept for a period of 7 years after the termination of the appointment as an electronic notary public.*

Sec. 9. NRS 240.202 is hereby amended to read as follows:

240.202 1. The electronic signature and electronic seal of an electronic notary public must be used only for the purposes of performing electronic notarial acts.

2. An electronic notary public shall safeguard his or her electronic signature, the electronic seal and all notarial records maintained by the electronic notary public as follows:

(a) When not in use, the electronic notary public shall keep the electronic signature, electronic seal and all notarial records secure, under the exclusive control of the electronic notary public and protected by a password where applicable.

(b) An electronic notary public shall not permit his or her electronic signature or electronic seal to be used by any other person.

(c) An electronic notary public shall not surrender or destroy his or her notarial records except as otherwise required by the order of a court or as allowed pursuant to NRS 240.001 to 240.206, inclusive, or any regulations adopted pursuant thereto.

(d) Except as otherwise provided in subsection 3, an electronic notary public, within 10 days after discovering that his or her electronic signature or electronic seal has been stolen, lost, damaged or otherwise rendered incapable of affixing a legible image, shall:

(1) Inform the appropriate law enforcement agency in the case of theft or vandalism; and

(2) Notify the Secretary of State *and the entity from which the electronic notary public obtained the electronic signature or electronic seal* in writing, including, without limitation, a signature using the name on the certificate of appointment issued pursuant to subsection 5 of NRS 240.192.



3. An electronic notary public shall take reasonable steps to maintain the technology or device used to create his or her electronic signature, and to ensure that the technology or device has not been recalled, revoked, terminated or otherwise rendered ineffective or unsecure by the entity that created the technology or device. Upon learning that the technology or device used to create his or her electronic signature has been rendered ineffective or unsecure, an electronic notary public shall cease performing electronic notarial acts until:

(a) A new technology or device is acquired; and

(b) The electronic notary public sends an electronic notice to the Secretary of State that includes ~~the~~ ~~information~~ *electronic signature of the electronic notary public* required pursuant to ~~paragraphs (d) and~~ *paragraph* (e) of subsection 2 of NRS 240.192 . ~~relating to the new technology or device.~~

Sec. 10. NRS 240.205 is hereby amended to read as follows:

240.205 1. Except as otherwise provided in subsection 2, the Secretary of State shall, upon request, issue an authentication to verify that the electronic signature of the electronic notary public on an electronic document is genuine and that the electronic notary public holds the office indicated on the electronic document. The authentication must be:

(a) Signed by the Secretary of State; and

(b) In conformance with any relevant international treaties, agreements and conventions subscribed to by the Government of the United States, including, without limitation, the Hague Convention of October 5, 1961.

2. The Secretary of State shall not issue an authentication pursuant to subsection 1 if:

(a) The electronic document has not been electronically notarized in accordance with the provisions of NRS 240.001 to 240.206, inclusive; ~~for~~

(b) The Secretary of State has reasonable cause to believe that the electronic document may be used to accomplish any fraudulent, criminal or unlawful purpose ~~for~~; or

(c) The request to issue an authentication does not include a statement, in the form prescribed by the Secretary of State and signed under penalty of perjury, that the document for which the authentication is requested will not be used to:

(1) Harass a person; or

(2) Accomplish any fraudulent, criminal or other unlawful purpose.

3. No civil action may be brought against the Secretary of State on the basis that:



1 (a) *The Secretary of State has issued an authentication*
2 *pursuant to subsection 1; and*

3 (b) *The document has been used to:*

4 (1) *Harass a person; or*

5 (2) *Accomplish any fraudulent, criminal or other unlawful*
6 *purpose.*

7 4. *A person who uses a document for which an*
8 *authentication has been issued pursuant to subsection 1 to:*

9 (a) *Harass a person; or*

10 (b) *Accomplish any fraudulent, criminal or other unlawful*
11 *purpose,*

12 *is guilty of a category C felony and shall be punished by*
13 *imprisonment in the state prison for a minimum term of not less*
14 *than 1 year and a maximum term of not more than 5 years, and*
15 *may be further punished by a fine of not more than \$5,000.*

16 5. *The Secretary of State may adopt regulations to carry out*
17 *the provisions of this section.*

18 **Sec. 11.** NRS 240.193 is hereby repealed.

19 **Sec. 12.** This act becomes effective on July 1, 2017.

TEXT OF REPEALED SECTION

240.193 Requirements for bond; notification of exhaustion of penal sum; release of surety; suspension of appointment; reinstatement of appointment.

1. The bond required to be filed pursuant to NRS 240.192 must be executed by the person applying to become an electronic notary public as principal and by a surety company qualified and authorized to do business in this State. The bond must be made payable to the State of Nevada and be conditioned to provide indemnification to a person determined to have suffered damage as a result of an act by the electronic notary public which violates a provision of NRS 240.001 to 240.206, inclusive. The surety company shall pay a final, nonappealable judgment of a court of this State that has jurisdiction, upon receipt of written notice of final judgment. The bond may be continuous, but regardless of the duration of the bond, the aggregate liability of the surety does not exceed the penal sum of the bond.

2. If the penal sum of the bond is exhausted, the surety company shall notify the Secretary of State in writing within 30 days after its exhaustion.



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3. The surety bond must cover the period of the appointment of the electronic notary public, except when a surety is released.

4. A surety on a bond filed pursuant to NRS 240.192 may be released after the surety gives 30 days' written notice to the Secretary of State and the electronic notary public, but the release does not discharge or otherwise affect a claim filed by a person for damage resulting from an act of the electronic notary public which is alleged to have occurred while the bond was in effect.

5. The appointment of an electronic notary public is suspended by operation of law when the electronic notary public is no longer covered by a surety bond as required by this section and NRS 240.192 or the penal sum of the bond is exhausted. If the Secretary of State receives notice pursuant to subsection 4 that the bond will be released or pursuant to subsection 2 that the penal sum of the bond is exhausted, the Secretary of State shall immediately notify the electronic notary public in writing that his or her appointment will be suspended by operation of law until another surety bond is filed in the same manner and amount as the bond being terminated.

6. The Secretary of State may reinstate the appointment of an electronic notary public whose appointment has been suspended pursuant to subsection 5 if the electronic notary public, before his or her current term of appointment expires:

(a) Submits to the Secretary of State:

(1) An application for an amended certificate of appointment as an electronic notary public; and

(2) A certificate issued by the clerk of the county in which the applicant resides or, if the applicant is a resident of an adjoining state, the county in this State in which the applicant maintains a place of business or is employed, which indicates that the applicant filed a new surety bond with the clerk; and

(b) Pays to the Secretary of State a fee of \$10.

