

Amendment No. 798

Senate Amendment to Assembly Bill No. 148	(BDR 19-756)
Proposed by: Senate Committee on Government Affairs	
Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

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.

HAC



Date: 5/21/2017

A.B. No. 148—Increases the penalty for notaries public and document preparation services that fraudulently provide legal services or advice.
(BDR 19-756)



ASSEMBLY BILL NO. 148—ASSEMBLYMAN FLORES

PREFILED FEBRUARY 13, 2017

Referred to Committee on Judiciary

SUMMARY—Increases the ~~penalty~~ **penalties** for **certain willful violations of provisions relating to** notaries public and document preparation services. ~~that fraudulently provide legal services or advice.~~ (BDR 19-756)

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.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to public affairs; increasing the ~~penalty~~ **penalties** for **willful violations of certain provisions relating to** notaries public and document preparation services; ~~that fraudulently provide legal services or advice;~~ and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law ~~authorizes the Secretary of State to appoint~~ **authorizes various civil and criminal penalties for violations of certain provisions relating to** notaries public. (NRS 240.010) ~~In addition, existing law that makes it unlawful for a person to, among other things, (1) represent himself or herself as a notary public if the person has not been appointed by the Secretary of State; (2) 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, use the term "notario," "notario publico" or "licenciado" 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)~~

Existing law provides that a notary public who violates the restrictions and prohibitions placed on advertising his or her services is guilty of a gross misdemeanor. (NRS 240.010-240.169) **Section 1 of this bill increases the criminal penalty to, provides that a person who willfully violates such provisions is guilty of a category D felony for any notary public who violates the restrictions or prohibitions for a second or subsequent offense that causes irreparable harm, if the offense results in irreparable harm to a person.**

Existing law provides that a person who **willfully** violates the provisions governing document preparation services is guilty of a ~~gross~~ misdemeanor. **for a first offense and a gross misdemeanor for a second or subsequent offense. (NRS 240A.290) Section 3 of this bill makes a second willful violation of any provision governing document preparation services a gross misdemeanor, unless category D felony if the offense results in irreparable harm to a client, in which case the violation is a category D felony. Section 2 of this bill makes a conforming change.**

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 a new section to read as follows:

A person who willfully violates a provision of NRS 240.001 to 240.169, inclusive, or a regulation or order adopted or issued pursuant thereto is guilty of a category D felony and shall be punished as provided in NRS 193.130 if the offense results in irreparable harm to a person.

Sec. 1.2. NRS 240.001 is hereby amended to read as follows:

240.001 As used in NRS 240.001 to 240.206, inclusive, **and section 1 of this act,** unless the context otherwise requires, the words and terms defined in NRS 240.002 to 240.0067, inclusive, have the meanings ascribed to them in those sections.

~~Section 1.1.~~ **Sec. 1.3. 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,” “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.

(c) Assess a civil penalty of not more than \$2,000 for each violation.

4. ~~1.1.~~ **Unless a greater penalty is provided pursuant to section 1 of this act,** a notary public who is found guilty in a criminal prosecution of violating subsection 1 or 2 ~~is guilty of a category D felony and~~ shall be punished **by a fine of not more than \$2,000, [as provided in NRS 193.130.]**

5. An employer of a notary public shall not:

(a) Prohibit the notary public from meeting the requirements set forth in subsection 1; or

(b) Advertise using the term “notario,” “notario publico,” “licenciado” or any other equivalent non-English term in any form of communication that advertises notary public services, including, without limitation, a business card, stationery, notice and sign, unless the notary public under his or her employment is an attorney licensed to practice law in this State.

6. If the Secretary of State finds the employer of a notary public guilty of violating a provision of subsection 5, the Secretary of State shall:

(a) Notify the employer in writing of the violation and order the immediate removal of such language.

(b) Assess a civil penalty of not more than \$2,000 for each violation.

7. ~~That~~ Unless a greater penalty is provided pursuant to section 1 of this act, the employer of a notary public who is found guilty in a criminal prosecution of violating a provision of subsection 5 shall be punished by a fine of not more than \$2,000.

Sec. 1.6. NRS 240.145 is hereby amended to read as follows:

240.145 1. It is unlawful for any person to:

(a) Photocopy or otherwise reproduce a completed notarial certificate with a notary's statement and signature if that certificate is reproduced for use in a mailing to endorse, promote or sell any product, service or offering; or

(b) Include a photocopy or other reproduction of a completed notarial certificate with a notary's statement and signature in a mailing to endorse, promote or sell any product, service or offering.

2. ~~Any~~ Unless a greater penalty is provided pursuant to section 1 of this act, any person who violates any of the provisions of subsection 1 is guilty of a gross misdemeanor.

Sec. 1.9. NRS 240.155 is hereby amended to read as follows:

240.155 1. A notary public who is appointed pursuant to this chapter shall not willfully notarize the signature of a person unless the person is in the presence of the notary public and:

(a) Is known to the notary public; or

(b) If unknown to the notary public, provides a credible witness or documentary evidence of identification to the notary public.

2. ~~Any~~ Unless a greater penalty is provided pursuant to section 1 of this act, a person who:

(a) Violates the provisions of subsection 1; or

(b) Aids and abets a notary public to commit a violation of subsection 1, is guilty of a gross misdemeanor.

Sec. 2. 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 or hold a valid Employment Authorization Document issued by the United States Citizenship and Immigration Services of the Department of Homeland Security, and be 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 in this State or another state has previously been revoked for cause;

(c) Who has previously been convicted of, or entered a plea of guilty, guilty but mentally ill or nolo contendere to, a gross misdemeanor or a category D felony 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, or entered a plea of guilty, guilty but mentally ill or nolo contendere to, a crime involving theft, fraud or dishonesty;

(2) Convicted of, or entered a plea of guilty, guilty but mentally ill or nolo contendere to, 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 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.

6. An application for registration as a document preparation service that is not completed within 6 months after the date on which the application was submitted must be denied.

Sec. 3. NRS 240A.290 is hereby amended to read as follows:

240A.290 1. ~~1-1~~ Except as otherwise provided in subsection 2, a person who willfully violates a provision of this chapter or a regulation or order adopted or issued pursuant thereto:

(a) For the first offense within the immediately preceding 5 years, is guilty of a misdemeanor.

(b) For a second or subsequent offense within the immediately preceding 5 years ~~is~~ is

~~(1) If the offense results in irreparable harm to the client, is guilty of a category D felony and shall be punished as provided in NRS 193.130; or~~

~~(2) If the offense does not result in irreparable harm to the client, is~~ guilty of a gross misdemeanor and shall be punished by imprisonment in the county jail for not more than 1 year, or by a fine of not more than \$10,000, or by both fine and imprisonment.

2. A person who willfully violates a provision of this chapter or a regulation or order adopted or issued pursuant thereto is guilty of a category D felony and shall be punished as provided in NRS 193.130 if the offense results in irreparable harm to the client.

3. In addition to the penalties prescribed by subsection ~~1-1~~ 1 or 2, the court may order a person described in ~~that~~ subsection 1 or 2 to pay restitution to any person who has suffered a pecuniary loss as a result of the violation.

~~1-2~~ 4. For the purposes of subsections 1, ~~and~~ 2, ~~1-1~~ and 3, evidence that a person has been served with an order by the Secretary of State pursuant to NRS 240A.260 before the date of the alleged violation is evidence that the alleged violation is intentional if it involves a repetition or a continuation of conduct of the kind described in the order.