

ASSEMBLY BILL NO. 215—ASSEMBLYMEN KRAMER; EDWARDS,
HAFEN, LEAVITT, ROBERTS, SPIEGEL AND TOLLES

FEBRUARY 18, 2019

JOINT SPONSORS: SENATORS PARKS; AND SETTELMAYER

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to document preparation services. (BDR 19-666)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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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 document preparation services; exempting certain persons from the definition of a “document preparation service”; excluding certain persons who are registered as a document preparation service from the requirement to obtain a cash or surety bond; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law establishes requirements for the registration and practice of a person who provides a document preparation service, which includes: (1) defining a “document preparation service”; (2) requiring persons who provide a document preparation service to register with the Secretary of State; (3) exempting certain persons from registering as a document preparation service; and (4) prohibiting a person who provides a document preparation service from committing certain acts. (Chapter 240A of NRS) **Section 2** of this bill revises the definition of “document preparation service” to exempt enrolled agents who are authorized to practice before the Internal Revenue Service.

Existing law requires a person registered as a document preparation service to file with the Secretary of State a cash or surety bond. (NRS 240A.100-240A.120) **Section 1** of this bill excludes a registrant from such a requirement if the registrant: (1) is a tax return preparer; and (2) holds a current record of completion issued by the Internal Revenue Service.

Existing law prohibits a registrant from: (1) negotiating with another person concerning the rights or responsibilities of a client, communicating the position of a client to another person or conveying the position of another person to a client; (2) appearing on behalf of a client in a court proceeding or other formal adjudicative



proceeding; (3) providing certain advice, explanations, opinions or recommendations to a client; or (4) selecting documents or strategies to assist a client. (NRS 240A.240) **Section 6** of this bill clarifies that these prohibitions do not apply to a registrant to the extent that it would violate federal law. **Sections 3-5** of this bill make conforming changes.

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

Section 1. Chapter 240A of NRS is hereby amended by adding thereto a new section to read as follows:

A registrant is not required to file a cash bond or surety bond that meets the requirements of NRS 240A.120 if the registrant:

- 1. Is a tax return preparer; and***
- 2. Holds a current record of completion issued by the Internal Revenue Service.***

Sec. 2. NRS 240A.030 is hereby amended to read as follows:

240A.030 1. "Document preparation service" means a person who:

(a) For compensation and at the direction of a client, provides assistance to the client in a legal matter, including, without limitation:

(1) Preparing or completing any pleading, application or other document for the client;

(2) Translating an answer to a question posed in such a document;

(3) Securing any supporting document, such as a birth certificate, required in connection with the legal matter;

(4) Submitting a completed document on behalf of the client to a court or administrative agency; or

(5) Preparing or assisting in the preparation of all or substantially all of a federal or state tax return or claim for a tax refund; or

(b) Holds himself or herself out as a person who provides such services.

2. The term includes, without limitation:

(a) A paralegal who performs one or more of the actions described in subsection 1 unless the paralegal works under the direction and supervision of an attorney authorized to practice law in this State;

(b) A bankruptcy petition preparer as defined by section 110 of the United States Bankruptcy Code, 11 U.S.C. § 110; and

(c) ~~[An enrolled agent authorized to practice before]~~ ***A tax return preparer who holds a current record of completion issued by the Internal Revenue Service.***



3. The term does not include:

(a) A person who provides only secretarial or receptionist services.

(b) An attorney:

(1) Authorized to practice law in this State, or an employee of such an attorney who is paid directly by the attorney or law firm with whom the attorney is associated and who is acting in the course and scope of that employment.

(2) Authorized to practice law in any other state or the District of Columbia who provides services related to the legal matters described in subsection 2 of NRS 240A.040.

(c) A law student certified by the State Bar of Nevada for training in the practice of law.

(d) A governmental entity or an employee of such an entity who is acting in the course and scope of that employment.

(e) A nonprofit organization formed pursuant to title 7 of NRS which the Secretary of the Treasury has determined is a tax-exempt organization pursuant to 26 U.S.C. § 501(c) and which provides legal services to persons free of charge, or an employee of such an organization who is acting in the course and scope of that employment.

(f) A legal aid office or lawyer referral service operated, sponsored or approved by a duly accredited law school, a governmental entity, the State Bar of Nevada or any other bar association which is representative of the general bar of the geographical area in which the bar association exists, or an employee of such an office or service who is acting in the course and scope of that employment.

(g) A military legal assistance office or a person assigned to such an office who is acting in the course and scope of that assignment.

(h) Except as otherwise provided in paragraphs (b) and (c) of subsection 2, a person licensed by or registered with an agency or entity of the United States Government acting within the scope of his or her license or registration, including, without limitation, an accredited immigration representative ***and an enrolled agent authorized to practice before the Internal Revenue Service.***

(i) A corporation, limited-liability company or other entity representing or acting for itself through an officer, manager, member or employee of the entity, or any such officer, manager, member or employee who is acting in the course and scope of that employment.

(j) A commercial wedding chapel.

(k) A person who provides legal forms or computer programs that enable another person to create legal documents.



(l) A commercial registered agent.

(m) A person who holds a license, permit, certificate, registration or any other type of authorization required by chapter 645 or 692A of NRS, or any regulation adopted pursuant thereto, and is acting within the scope of that authorization.

(n) A collection agency that is licensed pursuant to chapter 649 of NRS.

(o) A certified public accountant pursuant to the provisions of chapter 628 of NRS or a financial planner that is subject to the requirements of chapter 628A of NRS who is acting within the scope of the license or requirements, as applicable, to prepare or assist in preparing a federal or state tax return or claim for a tax refund for another person.

4. As used in this section:

(a) "Commercial registered agent" has the meaning ascribed to it in NRS 77.040.

(b) "Commercial wedding chapel" means a permanently affixed structure which operates a business principally for the performance of weddings and which is licensed for that purpose.

Sec. 3. 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 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



1 pursuant to NRS 7.285 or the corresponding statute of any other
2 jurisdiction; or

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

5 3. An application for registration as a document preparation
6 service must be made under penalty of perjury on a form prescribed
7 by regulation of the Secretary of State and must be accompanied by:

8 (a) A nonrefundable application fee of \$50; and

9 (b) ~~IA~~ *Except as otherwise provided in section 1 of this act, a*
10 cash bond or surety bond meeting the requirements of
11 NRS 240A.120.

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

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

25 6. An application for registration as a document preparation
26 service that is not completed within 120 days after the date on which
27 the application was submitted must be denied. If an application is
28 denied pursuant to this subsection, the applicant may submit a new
29 application.

30 **Sec. 4.** NRS 240A.110 is hereby amended to read as follows:

31 240A.110 1. The registration of a document preparation
32 service is valid for 1 year after the date of issuance of the certificate
33 of registration, unless the registration is suspended or revoked.
34 Except as otherwise provided in this section, the registration may be
35 renewed subject to the same conditions as the initial registration. An
36 application for renewal must be made under penalty of perjury on a
37 form prescribed by regulation of the Secretary of State and must be
38 accompanied by:

39 (a) A renewal fee of \$25; and

40 (b) ~~IA~~ *Except as otherwise provided in section 1 of this act, a*
41 cash bond or surety bond meeting the requirements of NRS
42 240A.120, unless the bond previously filed by the registrant remains
43 on file and in effect.

44 2. The registration of a registrant who holds a valid
45 Employment Authorization Document issued by the United States



Citizenship and Immigration Services of the Department of Homeland Security must expire on the date on which that person's employment authorization expires.

3. The Secretary of State may:

(a) Conduct any investigation of a registrant that the Secretary of State deems appropriate.

(b) Require a registrant to submit a complete set of fingerprints 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.

4. After any investigation of the history of a registrant is completed, unless the Secretary of State elects or is required to deny renewal pursuant to this section or NRS 240A.270, the Secretary of State shall renew the registration if the registrant is qualified for registration and has complied with the requirements of this section.

Sec. 5. NRS 240A.120 is hereby amended to read as follows:

240A.120 1. ~~[A]~~ *Except as otherwise provided in section 1 of this act, a* registrant shall file with the Secretary of State a cash bond or surety bond in the penal sum of \$50,000 which is approved as to form by the Attorney General and conditioned to provide:

(a) Indemnification to a client or any other person who is determined in an action or proceeding to have suffered damage as a result of:

(1) An act or omission of the registrant, or an agent or employee of the registrant, which violates a provision of this chapter or a regulation or order adopted or issued pursuant thereto;

(2) A wrongful failure or refusal by the registrant, or an agent or employee of the registrant, to provide services in accordance with a contract entered into pursuant to NRS 240A.190;

(3) The fraud, dishonesty, negligence or other wrongful conduct of the registrant or an agent or employee of the registrant; or

(4) An act or omission of the registrant in violation of any other federal or state law for which the return of fees, an award of damages or the imposition of sanctions have been awarded by a court of competent jurisdiction in this State; or

(b) Payment to the Secretary of State for any civil penalty or award of attorney's fees or costs of suit owing and unpaid by the registrant to the Secretary of State pursuant to this chapter.

2. No part of the bond may be withdrawn while the registration of the registrant remains in effect, or while a proceeding to suspend or revoke the registration is pending.

3. If a surety bond is filed pursuant to subsection 1:



(a) The bond must be executed by the registrant as principal and by a surety company qualified and authorized to do business in this State.

(b) The bond must cover the period of the registration of the registrant, except when the surety is released in accordance with this section.

(c) The surety shall pay any final, nonappealable judgment of a court of this State that has jurisdiction, upon receipt of written notice that the judgment is final.

(d) 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.

(e) If the penal sum of the bond is exhausted, the surety shall give written notice to the Secretary of State and the registrant within 30 days after its exhaustion.

(f) The surety may be released after giving 30 days' written notice to the Secretary of State and the registrant, but the release does not discharge or otherwise affect any claim resulting from an act or omission which is alleged to have occurred while the bond was in effect.

4. Except as otherwise provided in this subsection, if a cash bond is filed pursuant to subsection 1, the Secretary of State may retain the bond until the expiration of 3 years after the date the registrant has ceased to do business, or 3 years after the date of the expiration or revocation of the registration, to ensure that there are no outstanding claims against the bond. A court of competent jurisdiction may order the return of the bond, or any part of the bond, at an earlier date upon evidence satisfactory to the court that there are no outstanding claims against the bond or that the part of the bond retained by the Secretary of State is sufficient to satisfy any outstanding claims. Interest on a cash bond filed pursuant to subsection 1 must accrue to the account of the depositor.

5. The registration of a registrant is suspended by operation of law when the registrant is no longer covered by a bond or the penal sum of the bond is exhausted. If the Secretary of State receives notice pursuant to subsection 3 that the penal sum of a surety bond is exhausted or that the surety is being released, the Secretary of State shall immediately notify the registrant in writing that his or her registration is suspended by operation of law until another bond is filed in the same manner and amount as the former bond.

6. The Secretary of State may reinstate the registration of a registrant whose registration has been suspended pursuant to subsection 5 if, before the current term of the registration expires, the registrant files with the Secretary of State a new bond meeting the requirements of this section.



7. Except as specifically authorized or required by this chapter, a registrant shall not make or cause to be made any oral or written reference to the registrant's compliance with the requirements of this section.

Sec. 6. NRS 240A.240 is hereby amended to read as follows:

240A.240 1. A registrant shall not:

~~1.1~~ (a) After the date of the last service performed for a client, retain any fees or costs for services not performed or costs not incurred.

~~1.2~~ (b) Make, orally or in writing:

~~1.2.1~~ (1) 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;

~~1.2.2~~ (2) 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

~~1.2.3~~ (3) 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.

~~1.3~~ (c) 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," "paralegal," "legal assistant," "licensed," "licenciado," "attorney," "lawyer" or any similar term, in English, Spanish or any other language, which implies that the registrant:

~~1.3.1~~ (1) Offers services without charge if the registrant does not do so;

~~1.3.2~~ (2) Is an attorney authorized to practice law in this State; or

~~1.3.3~~ (3) Is acting under the direction and supervision of an attorney.

~~1.4~~ (d) Represent himself or herself, orally or in writing, as a paralegal or legal assistant which implies that the registrant is acting under the direction and supervision of an attorney licensed to practice law in this State.

~~1.5.—Negotiate~~

(e) *Except as otherwise provided in subsection 2, 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.

~~1.6.—Appear~~

(f) *Except as otherwise provided in subsection 2, 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.

~~{7. Provide}~~

(g) Except as otherwise provided in subsection 2, 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.

~~{8.}~~ *(h)* Seek or obtain from a client a waiver of any provision of this chapter. Any such waiver is contrary to public policy and void.

2. The provisions of paragraphs (e), (f) and (g) of subsection 1 do not apply to a registrant to the extent that compliance with such provisions would violate federal law.

Sec. 7. This act becomes effective upon passage and approval.

