

(Reprinted with amendments adopted on April 15, 2019)

FIRST REPRINT

A.B. 65

ASSEMBLY BILL NO. 65—COMMITTEE
ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE SECRETARY OF STATE)

PREFILED NOVEMBER 19, 2018

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to notaries public.
(BDR 19-472)

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 notaries public; revising provisions related to certain fees charged by a notary public and electronic notary; revising provisions related to the authentication of certain notarized documents by the Secretary of State; revising the requirements to register as an electronic notary; revising the certificate of acknowledgment of a notary public on the form required to request to nominate a court-appointed guardian; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires that an oath or affirmation administered by a notarial officer must be signed by the affiant in the presence of the notarial officer. (NRS 240.1655) **Sections 1 and 4** of this bill eliminate obsolete language that refers to fees that a notary public or an electronic notary may charge to administer an oath or affirmation without a signature. (NRS 240.100, 240.197)

Existing law requires the Secretary of State to authenticate the signature and office of a notarial officer on a document intended for use in the United States. (NRS 240.1657) **Section 2** of this bill eliminates this requirement and provides that the Secretary of State is only required to authenticate the signature and office of a notarial officer on a document intended for use in a foreign country.

Under existing law, a person must be a notarial officer in this State for not less than 4 years to register as an electronic notary public. (NRS 240.192) **Section 3** of this bill eliminates this requirement and authorizes the Secretary of State to establish a process for a person to submit an application to register as an electronic notary public simultaneously with an application for appointment as a notary public.



* A B 6 5 R 1 *

Under current law, a person may nominate another person to be his or her appointed guardian by completing a notarized form witnessed by two persons. (NRS 159.0753) **Section 5** of this bill eliminates the requirement that the certificate of acknowledgment of notary public used on this form include language indicating the notarial officer declares under penalty of perjury that the persons whose names are subscribed to the document appear to be of sound mind and under no duress, fraud or undue influence.

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

Section 1. NRS 240.100 is hereby amended to read as follows:

240.100 1. Except as otherwise provided in subsection 3, a notary public may charge the following fees and no more:

For taking an acknowledgment, for the first signature of each signer	\$5.00
For each additional signature of each signer	2.50
For administering an oath or affirmation [without a signature]	2.50
For a certified copy.....	2.50
For a jurat, for each signature on the affidavit	5.00
For performing a marriage ceremony	75.00

2. All fees prescribed in this section are payable in advance, if demanded.

3. A notary public may charge an additional fee for traveling to perform a notarial act if:

(a) The person requesting the notarial act asks the notary public to travel;

(b) The notary public explains to the person requesting the notarial act that the fee is in addition to the fee authorized in subsection 1 and is not required by law;

(c) The person requesting the notarial act agrees in advance upon the hourly rate that the notary public will charge for the additional fee; and

(d) The additional fee does not exceed:

(1) If the person requesting the notarial act asks the notary public to travel between the hours of 6 a.m. and 7 p.m., \$10 per hour.

(2) If the person requesting the notarial act asks the notary public to travel between the hours of 7 p.m. and 6 a.m., \$25 per hour.

➤ The notary public may charge a minimum of 2 hours for such travel and shall charge on a pro rata basis after the first 2 hours.



4. A notary public is entitled to charge the amount of the additional fee agreed to in advance by the person requesting the notarial act pursuant to subsection 3 if:

(a) The person requesting the notarial act cancels the request after the notary public begins his or her travel to perform the requested notarial act.

(b) The notary public is unable to perform the requested notarial act as a result of the actions of the person who requested the notarial act or any other person who is necessary for the performance of the notarial act.

5. For each additional fee that a notary public charges for traveling to perform a notarial act pursuant to subsection 3, the notary public shall enter in the journal that he or she keeps pursuant to NRS 240.120:

(a) The amount of the fee; and

(b) The date and time that the notary public began and ended such travel.

6. A person who employs a notary public may prohibit the notary public from charging a fee for a notarial act that the notary public performs within the scope of the employment. Such a person shall not require the notary public whom the person employs to surrender to the person all or part of a fee charged by the notary public for a notarial act performed outside the scope of the employment of the notary public.

Sec. 2. NRS 240.1657 is hereby amended to read as follows:

240.1657 1. Except as otherwise provided in subsection 2, the Secretary of State shall, upon request and payment of a fee of \$20, issue an authentication to verify that the signature of the notarial officer on a document *intended for use in a foreign country* is genuine and that the notarial officer holds the office indicated on the document. If the document:

(a) Is intended for use in a foreign country that is a participant in the Hague Convention of October 5, 1961, the Secretary of State must issue an apostille in the form prescribed by the Hague Convention of October 5, 1961.

(b) Is intended for use in ~~the United States or in~~ a foreign country that is not a participant in the Hague Convention of October 5, 1961, the Secretary of State must issue a certification.

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

(a) The document has not been notarized in accordance with the provisions of this chapter;

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

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

(b) The document has been used to:

(1) Harass a person; or

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

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

(a) Harass a person; or

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

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

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

Sec. 3. NRS 240.192 is hereby amended to read as follows:

240.192 1. ~~Each~~ *Except as otherwise provided in subsection 5, each* person registering as an electronic notary public must:

(a) At the time of registration, be a notarial officer in this State who has complied with the requirements pertaining to taking an oath and filing a bond set forth in NRS 240.030 and 240.033 ~~[-, have been a notarial officer in this State for not less than 4 years]~~ and have complied with all applicable notarial requirements set forth in this chapter;

(b) Register with the Secretary of State by submitting an electronic registration pursuant to subsection 2;

(c) Pay to the Secretary of State a registration fee of \$50, which is in addition to the application fee required pursuant to NRS 240.030 to be a notarial officer in this State; and

(d) Submit to the Secretary of State with the registration proof satisfactory to the Secretary of State that the registrant has:

(1) Successfully completed any required course of study on electronic notarization provided pursuant to NRS 240.195; and



(2) Complied with the requirements pertaining to taking an oath and filing a bond set forth in NRS 240.030 and 240.033.

2. Unless the Secretary of State establishes a different process for submitting a registration as an electronic notary public, the registration as an electronic notary public must be submitted as an electronic document by electronic mail to nvnotary@sos.nv.gov or, if another electronic mail address is designated by the Secretary of State, to such other designated electronic mail address, and must contain, without limitation, the following information:

(a) All information required to be included in an application for appointment as a notary public pursuant to NRS 240.030.

(b) A description of the technology or device that the registrant intends to use to create his or her electronic signature in performing electronic notarial acts.

(c) The electronic signature of the registrant.

(d) Any other information required pursuant to any rules or regulations adopted by the Secretary of State.

3. Unless the Secretary of State establishes a different process for the payment of the registration fee required pursuant to paragraph (c) of subsection 1, the registration fee must be paid by check or draft, made payable to the Secretary of State and transmitted to the Office of the Secretary of State.

4. ~~Registration~~ *Except as otherwise provided in subsection 5, registration* as an electronic notary public shall be deemed effective upon the payment of the registration fee required pursuant to paragraph (c) of subsection 1 if the registrant has satisfied all other applicable requirements.

5. The Secretary of State may establish a process for a person to simultaneously apply for appointment as a notary public and register as an electronic notary public. If the Secretary of State establishes such a process, registration as an electronic notary public shall be deemed effective upon the person complying with:

(a) The requirements pertaining to taking an oath and filing a bond set forth in NRS 240.030 and 240.033 and with all other applicable notarial requirements set forth in this chapter; and

(b) The requirements set forth in this section to register as an electronic notary.

Sec. 4. NRS 240.197 is hereby amended to read as follows:

240.197 1. Except as otherwise provided in this section:

(a) An electronic notary public may charge the following fees:

(1) For taking an acknowledgment, for each signature \$25

(2) For executing a jurat, for each signature..... \$25

(3) For administering an oath or affirmation ~~without a signature~~ \$25



(b) An electronic notary public shall not charge a fee to perform an electronic notarial act unless he or she is authorized to charge a fee for such an electronic notarial act pursuant to this section.

(c) All fees prescribed in this section are payable in advance, if demanded.

(d) An electronic notary public may charge an additional fee for traveling to perform an electronic notarial act if:

(1) The person requesting the electronic notarial act asks the electronic notary public to travel;

(2) The electronic notary public explains to the person requesting the electronic notarial act that the fee for travel is in addition to the fee authorized in paragraph (a) and is not required by law;

(3) The person requesting the electronic notarial act agrees in advance upon the hourly rate that the electronic notary public will charge for the additional fee for travel; and

(4) The additional fee for travel does not exceed:

(I) If the person requesting the electronic notarial act asks the electronic notary public to travel between the hours of 6 a.m. and 7 p.m., \$10 per hour.

(II) If the person requesting the electronic notarial act asks the electronic notary public to travel between the hours of 7 p.m. and 6 a.m., \$25 per hour.

➡ The electronic notary public may charge a minimum of 2 hours for such travel and shall charge on a pro rata basis after the first 2 hours.

(e) An electronic notary public is entitled to charge the amount of the additional fee for travel agreed to in advance by the person requesting the electronic notarial act pursuant to paragraph (d) if:

(1) The person requesting the electronic notarial act cancels the request after the electronic notary public begins traveling to perform the requested electronic notarial act.

(2) The electronic notary public is unable to perform the requested electronic notarial act as a result of the actions of the person who requested the electronic notarial act or any other person who is necessary for the performance of the electronic notarial act.

(f) For each additional fee for travel that an electronic notary public charges pursuant to paragraph (d), the electronic notary public shall enter in the electronic journal that he or she keeps pursuant to NRS 240.201:

(1) The amount of the fee; and

(2) The date and time that the electronic notary public began and ended such travel.

(g) An electronic notary public may charge a reasonable fee to recover any cost of providing a copy of an entry or a recording of an



audio-video communication in an electronic journal maintained pursuant to NRS 240.201.

2. A person who employs an electronic notary public may prohibit the electronic notary public from charging a fee for an electronic notarial act that the electronic notary public performs within the scope of the employment. Such a person shall not require the electronic notary public whom the person employs to surrender to the person all or part of a fee charged by the electronic notary public for an electronic notarial act performed outside the scope of the employment of the electronic notary public.

3. An electronic notary public who is an officer or employee of the State or a local government shall not charge a fee for an electronic notarial act that the electronic notary public performs within the scope of such employment.

4. This section does not apply to any compensation for services provided by an electronic notary public which do not constitute electronic notarial acts or comply with the other requirements of this chapter.

Sec. 5. NRS 159.0753 is hereby amended to read as follows:

159.0753 1. Any person who wishes to request to nominate another person to be appointed as his or her guardian may do so by completing a form requesting to nominate a guardian in accordance with this section.

2. A form requesting to nominate a guardian must be:

(a) Signed by the person requesting to nominate a guardian;

(b) Signed by two impartial adult witnesses who have no interest, financial or otherwise, in the estate of the person requesting to nominate a guardian and who attest that the person has the mental capacity to understand and execute the form; and

(c) Notarized.

3. A request to nominate a guardian may be in substantially the following form, and must be witnessed and executed in the same manner as the following form:

REQUEST TO NOMINATE GUARDIAN

I, (insert your name), residing at
(insert your address), am executing this notarized document as my written declaration and request for the person(s) designated below to be appointed as my guardian should it become necessary. I am advising the court and all persons and entities as follows:

1. As of the date I am executing this request to nominate a guardian, I have the mental capacity to understand and execute this request.



* A B 6 5 R 1 *

2. This request pertains to a (circle one): (guardian of the person)/(guardian of the estate)/(guardian of the person and estate).

3. Should the need arise, I request that the court give my preference to the person(s) designated below to serve as my appointed guardian.

4. I request that my (insert relation), (insert name), serve as my appointed guardian.

5. If (insert name) is unable or unwilling to serve as my appointed guardian, then I request that my (insert relation), (insert name), serve as my appointed guardian.

6. I do not, under any circumstances, desire to have any private, for-profit guardian serve as my appointed guardian.

(YOU MUST DATE AND SIGN THIS DOCUMENT)

I sign my name to this document on (date)

.....
(Signature)

(YOU MUST HAVE TWO QUALIFIED
ADULT WITNESSES DATE
AND SIGN THIS DOCUMENT)

I declare under penalty of perjury that the principal is personally known to me, that the principal signed this request to nominate a guardian in my presence, that the principal appears to be of sound mind, has the mental capacity to understand and execute this document and is under no duress, fraud or undue influence, and that I have no interest, financial or otherwise, in the estate of the principal.

.....
(Signature of first witness)

.....
(Print name)

.....
(Date)

.....
(Signature of second witness)

.....
(Print name)

.....
(Date)



* A B 6 5 R 1 *

CERTIFICATE OF ACKNOWLEDGMENT
OF NOTARY PUBLIC

State of Nevada }
County of }

On this day of, in the year, before me, (insert name of notary public), personally appeared (insert name of principal), (insert name of first witness) and (insert name of second witness), personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to this instrument, and acknowledged that they have signed this instrument. ~~I declare under penalty of perjury that the persons whose names are subscribed to this instrument appear to be of sound mind and under no duress, fraud or undue influence.~~

.....
(Signature of notarial officer)
(Seal, if any)

4. The Secretary of State shall make the form established in subsection 3 available on the Internet website of the Secretary of State.

5. The Secretary of State may adopt any regulations necessary to carry out the provisions of this section.

Sec. 6. The validity of a certificate of acknowledgment of a notary public that was included on a request to nominate a guardian on or before the passage and approval of this act is not affected by the amendatory provisions of section 5 of this act.

Sec. 7. 1. This section and sections 1, 2, 4, 5 and 6 of this act become effective upon passage and approval.

2. Section 3 of this act becomes effective:

(a) On the date that the Secretary of State has established a process by which a person may submit an application to register as an electronic notary public simultaneously with an application for appointment as a notary public; or

(b) On July 1, 2019,
➡ whichever is earlier.

