

By the Committee on Judiciary and Senator Grant

308-1887-99

1 A bill to be entitled
2 An act relating to notaries public and
3 civil-law notaries; amending s. 117.103, F.S.;
4 providing for the issuance of certified copies
5 of certificates of commission; amending s.
6 118.10, F.S.; clarifying the definition and
7 purposes of authentic acts; providing for a
8 presumption of correctness; expanding and
9 clarifying the Secretary of State's rulemaking
10 powers with regard to authentic acts;
11 acknowledgments, oaths, solemnizations of
12 marriage, and discipline, testing, bonding, and
13 insurance requirements for civil-law notaries;
14 creating s. 118.12, F.S.; authorizing the
15 issuance of certificates of notarial authority
16 and Apostilles to civil-law notaries; providing
17 an effective date.

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19 Be It Enacted by the Legislature of the State of Florida:

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21 Section 1. Section 117.103, Florida Statutes, 1998
22 Supplement, is amended to read:

23 117.103 Certification of notary's authority by
24 Secretary of State.--A notary public is not required to record
25 his or her notary public commission in an office of a clerk of
26 the circuit court. If certification of the notary public's
27 commission is required, it must be obtained from the Secretary
28 of State. Upon the receipt of a written request, the notarized
29 document, and a fee of \$10 payable to the Secretary of State,
30 the Secretary of State shall provide a certified copy of the
31 notary public's original certificate of commission, which

1 shall be legally sufficient to establish the notary public's
2 authority to provide the services specifically authorized for
3 a notary public by the Florida Statutes and which may be used
4 in support of domestic transactions ~~certificate of notarial~~
5 ~~authority. Documents destined for countries participating in~~
6 ~~an International Treaty called the Hague Convention require an~~
7 ~~Apostille, and that requirement shall be determined by the~~
8 ~~Secretary of State.~~

9 Section 2. Section 118.10, Florida Statutes, 1998
10 Supplement, is amended to read:

11 118.10 Civil-law notary.--

12 (1) As used in this section, the term:

13 (a) "Authentic act" means an instrument executed by a
14 civil-law notary referencing this section, which includes the
15 particulars and capacities to act of the transacting party or
16 parties, a confirmation of the full text of the instrument,
17 the signatures of the party or parties or legal equivalent
18 thereof, and the signature and seal of a civil-law notary as
19 prescribed by the Florida Secretary of State.

20 (b) "Civil-law notary" means a person who is a member
21 in good standing of The Florida Bar, who has practiced law for
22 at least 5 years, and who is appointed by the Secretary of
23 State as a civil-law notary.

24 (c) "Protocol" means a registry maintained by a
25 civil-law notary in which the acts of the civil-law notary are
26 archived.

27 (2) The Secretary of State shall have the power to
28 appoint civil-law notaries and administer this section.

29 (3) A civil-law notary is authorized to issue
30 authentic acts and thereby may authenticate or certify any
31 document, transaction, event, condition, or occurrence. The

1 contents of an authentic act and matters incorporated therein
2 shall be presumed correct. A civil-law notary may also
3 administer an oath and make a certificate thereof when it is
4 necessary for execution of any writing or document to be
5 attested, protested, or published under the seal of a notary
6 public. A civil-law notary may also take acknowledgements of
7 deeds and other instruments of writing for record, and
8 solemnize the rites of matrimony, as fully as other officers
9 of this state. A civil-law notary is not authorized to issue
10 authentic acts for use in a jurisdiction if the United States
11 Department of State has determined that the jurisdiction does
12 not have diplomatic relations with the United States or is a
13 terrorist country, or if trade with the jurisdiction is
14 prohibited under the Trading With the Enemy Act of 1917, as
15 amended, 50 U.S.C. ss. 1, et seq.

16 (4) The authentic acts, oaths and acknowledgements,
17 and solemnizations of a civil-law notary shall be recorded in
18 the civil-law notary's protocol in a manner prescribed by the
19 Secretary of State.

20 (5) The Secretary of State may adopt rules
21 prescribing:

22 (a) The form and content of authentic acts, oaths,
23 acknowledgements, solemnizations, and signatures and seals or
24 their legal equivalents ~~for authentic acts~~;

25 (b) Procedures for the permanent archiving of
26 authentic acts, maintaining records of acknowledgments, oaths
27 and solemnizations, and procedures for the administration of
28 oaths and taking of acknowledgments and for solemnizations;

29 (c) The charging of reasonable fees to be retained by
30 the Secretary of State for the purpose of administering this
31 section;

1 (d) Educational requirements and procedures for
2 testing applicants' knowledge of all matters relevant to the
3 appointment, authority, duties or legal or ethical
4 responsibilities of a civil-law notary ~~the effects and~~
5 ~~consequences associated with authentic acts;~~

6 (e) Procedures for the disciplining of civil-law
7 notaries, including, but not limited to, the suspension and
8 revocation of appointments for failure to comply with the
9 requirements of chapter 118 or the rules of the Department of
10 State, or for misrepresentation or fraud regarding the
11 civil-law notary's authority, the effect of the civil-law
12 notary's authentic acts, or the identities or acts of the
13 parties to a transaction; ~~and~~

14 (f) Bonding or errors and omissions insurance
15 requirements, or both, for civil-law notaries; and

16 (g) ~~(f)~~ Other matters necessary for administering this
17 section.

18 (6) The Secretary of State shall not regulate,
19 discipline, or attempt to discipline, ~~or establish any~~
20 ~~educational requirements for~~ any civil-law notary for, or with
21 regard to, any action or conduct that would constitute the
22 practice of law in this state, except by agreement with The
23 Florida Bar. The Secretary of State shall not establish as a
24 prerequisite to the appointment of a civil-law notary any test
25 containing any question that inquires of the applicant's
26 knowledge regarding the practice of law in the United States,
27 unless such test is offered in conjunction with an educational
28 program approved by The Florida Bar for continuing legal
29 education credit ~~except by agreement with The Florida Bar.~~

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1 (7) The powers of civil-law notaries include, but are
2 not limited to, all of the powers of a notary public under any
3 law of this state.

4 (8) This section shall not be construed as abrogating
5 the provisions of any other act relating to notaries public,
6 attorneys, or the practice of law in this state.

7 Section 3. Section 118.12, Florida Statutes, is
8 created to read:

9 118.12 Certification of civil-law notary's authority;
10 Apostilles.--If certification of a civil-law notary's
11 authority is necessary for a particular document or
12 transaction, it must be obtained from the Secretary of State.
13 Upon the receipt of a written request from a civil-law notary,
14 a copy of the document, and a fee of \$10 payable to the
15 Secretary of State, the Secretary of State shall provide a
16 certification of the civil-law notary's authority which may be
17 used in support of the document submitted and any related
18 transaction. Documents destined for countries participating in
19 an International Treaty called the Hague Convention may
20 require an Apostille, and the Secretary of State shall, upon
21 receiving a written request from a civil-law notary, a copy of
22 the document, and a fee of \$10 payable to the Secretary of
23 State, provide an Apostille conforming to the requirements of
24 the Hague Convention and including such other matters as the
25 Secretary of State establishes by rule.

26 Section 4. This act shall take effect September 1,
27 1999.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
SB 2242

Amends s. 117.103, F.S., to require the Secretary of State to issue, upon written request and payment, a certified copy of a notary public's certificate of commission to establish the notary public's authority under the chapter.

Amends s. 118.10, F.S.:

To authorize civil-law notaries to authenticate any document, transaction, event, condition or occurrence;

To provide a presumption of correctness regarding the authentic act;

To clarify and expand the Secretary of State's authority to adopt rules relating to form and content of certain acts, civil-law notary educational requirements, disciplinary grounds, and requirements for bond or insurance.

Creates s. 118.12, F.S., to authorize the Secretary of State to provide, upon written request and payment, a certification of civil-law notary's authority, and to provide an Apostille as required under the Hague Convention, for certain documents to be authenticated.