

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: SB 298

SPONSOR: Senator Lynn

SUBJECT: Notaries Public

DATE: January 11, 2005 REVISED: 1/25/05 02/10/05 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cibula</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

This bill allows a notary to charge \$10 per person instead of \$10 per notarial act. Additionally, the bill prohibits a notary public from charging a fee for notarization on behalf of a military veteran, firefighter, or law enforcement officer applying for a pension or other benefit in connection with his or her public service. Lastly, the bill requires notaries to maintain a journal of their notarial acts.

This bill substantially amends section 117.05, Florida Statutes. This bill also creates section 117.055, Florida Statutes.

II. Present Situation:

Under the s. 5, Art., II, State Const., notaries public are public officers. Notaries public are governed by ch. 117, F.S. The last major reorganization to that chapter occurred in 1998. *See* ch. 98-246, L.O.F. The Governor is authorized by statute to appoint as many notaries public as needed. A notary public must be at least 18 years of age, maintain legal residence in the state throughout the commission, and possess the ability to read, write, and understand English.

Whether a person is applying for a new commission or re-applying for a renewal or subsequent commission, an application is required. The Department of State prescribes the form to be used.

The applicant or re-applicant must pay a \$25 fee plus a \$10 commission fee¹ and a \$4 surcharge. The \$4 surcharge is appropriated to the Executive Office of the Governor, which is responsible for the education and assistance of notaries public. The applicant for notary public must also swear that he or she has read ch. 117, F.S., and knows the attendant duties and powers of a notary public. Since 2000, first-time applicants for notary public are also required to complete at least a three-hour interactive or classroom instruction, including electronic notarization, and covering the duties of the notary public. Section 668.50(11)(b), F.S.

Once appointed, a notary public serves a four-year term. A notary public must post and maintain a \$10,000 bond. The bond is to be payable to any individual harmed as a result of a breach of duty by the notary acting in his or her official capacity. The bond must be approved and filed with the Department of State and executed by a surety company that is authorized to transact business in Florida. If a surety company has to pay an individual harmed by the notary public for breach of duty, the company must notify the Governor of the payment and the underlying circumstances leading to the claim.

A notary public must notify the Department of State of any change of address, telephone number, or criminal record within 60 days after such change. Within 60 days of a name change, the notary public must amend the commission. The notary can continue to act for 60 days or until receipt of the amended commission, whichever is earlier.

Duties of a Notary

Duties of a notary can be found primarily in ch. 117, F.S., although other statutory provisions implicate the duties of a notary public.² A notary can administer an oath or solemnize a marriage (but not via electronic solemnization) or notarize a document. A notary public must certify in the certificate of acknowledgment or jurat the type of identification, either based on personal knowledge or other form of identification, upon which the notary public is relying. A notary public must reasonably accommodate persons with disabilities and read an entire instrument to a person who is blind prior to notarizing it. A notary can also notarize the signature of a person who signs with a mark under specified circumstances. A notary cannot notarize a signature on a document if it appears that the person is mentally incapable of understanding the nature and effect of the document at the time of notarization. A notary public cannot notarize a signature on a document unless he or she personally knows, or has satisfactory evidence, that the person whose signature is to be notarized is the individual who is described in and who is executing the instrument. Section 117.107, F.S., sets out additional prohibited acts. Only one such prohibited act rises to the level of malfeasance and may result in a maximum civil penalty of \$5,000 and a

¹ See s. 113.01, F.S., relating to fees for commissions issued by the Governor.

² See, e.g., ss. 116.35, 116.36, 116.37, 116.38, and 320.04 (government employees as notaries public); 92.50, 92.52, 695.03, and 92.525 (oaths); 92.51 and 695.031 (administration of oaths by armed forces officers); 695.25 (notarial certificates relating to real property); 741.07 and 741.08 (solemnization of marriages); 319.23 (verification of VIN); 655.94 (certification of safe-deposit box content); 668.50 (electronic notarization); 943.10 and 316.640 (oaths by law enforcement officers); 732.503 (notarizing a self-proof will); 425.26 (notary services for rural electric cooperatives); 695.26 (recording requirements); 838.022 (official misconduct); 831.01 and 831.02 (forgery); 775.082 and 775.083 (penalties under the law); 454.23 (penalties for unauthorized practice of law); 721.96, 721.97, and 721.98, F.S. (timeshare commissioner of deeds). List extracted from *Governor's Reference Manual for Notaries*.

third-degree felony offense if a notary public notarizes a signature of a person not in the notary's presence.

A notary is required to notify the Department of State if a seal is lost, stolen, or believed to be in the possession of another person. The official seal and the certificate of notary public commission are the exclusive property of the notary public, even if the employer paid for the commission. Any person who unlawfully possesses a notary public official seal or any papers or copies relating to notarial acts is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S.

With the exception of solemnizing a marriage, a notary public cannot charge more than \$10 for each notarial act. No fee can be assessed for witnessing an absentee ballot.

Suspension of a Notary

As a public officer, a notary public can be suspended by the Governor for any of the grounds provided in s. 7, Art. 4, State Const. Grounds of malfeasance, misfeasance, or neglect of duty are further specified in section 117.01(4), F.S., to include, but not be limited to:

- A material false statement on the application;
- A complaint found to have merit by the Governor;
- Failure to cooperate or respond to an investigation by the Governor's Office or the Department of State regarding a complaint;
- Official misconduct as defined in s. 838.022, F.S.;
- False or misleading advertising relating to notary public services;
- Unauthorized practice of law;
- Failure to report a change in address or telephone number within the required time;
- Commission of fraud, misrepresentation, or any intentional violation of ch. 117, F.S.;
- Charging fees in excess of fees authorized by law; or
- Failure to maintain the required bond.

Once the Department of State notifies a notary that his or her office is vacant, the notary must mail or deliver to the Secretary of State his or her notary commission. Notaries are expressly prohibited from surrendering these items to his or her employer upon termination, even if the employer paid for the commission.

In 1998, the Legislature enacted a law that required all electronic notarizations to be logged in a journal.³ *See* ch. 98-246, L.O.F.; s. 117.20, F.S., (1998 Supp.). Each notarial act memorialized in the journal had to include certain information. The journal had to be kept at least 5 years. If the journal was lost or stolen, the notary had to notify the Governor's Office or the Department of State. The notary public had to let the Governor's Office or the Department of State inspect the journal at any time it requested. In 1999, the law was repealed. *See* s. 165, ch. 99-251, L.O.F. No legislative history, however, has been found that explains why the Legislature repealed laws related to electronic notarizations, including the journal requirement for electronic notarizations.

³ The provision hailed back to a recommendation that was rejected by the Legislature when first proposed by the Governor's Task Force on Notaries Public in 1989.

Although Florida law does not currently require the use of a notary journal, the *Governor's Reference Manual for Notaries* (State of Florida, November 2001 ed.) recommends that notaries voluntarily maintain a journal.

Public Records Laws

Under s. 119.07(1)(a), F.S.:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

As used in s. 119.07, F.S., the term:

“Public records” means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. Section 119.011(11), F.S.

As used in s. 119.07, F.S. the term:

“Agency” means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency. Section 119.011(2), F.S.

Because a notary public is a public officer under the State Constitution, records made in connection with their official duties are likely available under ch. 119, F.S., for inspection and copying.

III. Effect of Proposed Changes:

This bill allows a notary to charge \$10 per person instead of \$10 per notarial act. The bill also prohibits notaries from charging fees for services to a U.S. military veteran, firefighter, or law enforcement officer applying for a pension or other benefit resulting from public service.

Additionally, the bill requires notaries to make a record of their notarial acts which must be maintained by a notary or the notary's estate for at least 5 years. The record must include the date, time, and type of notarial act; the date and type, title, or description of the document or proceeding; the name of the signer; and a description of the evidence used by the notary to identify the signer. However, the notarial act of a notary that fails to keep a record of the act

remains valid. The records must be recorded “in a permanently bound book with numbered pages or in electronic form.”

Although the bill does not indicate who or under what conditions a person may have access to the records of a notary, access is likely determined by ch. 119, F.S.

The bill takes effect January 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

See discussion of notary fees below.

B. Private Sector Impact:

This bill allows a notary to increase his or her fees to \$10 per person from \$10 per notarial act. However, veterans, firefighters, and law enforcement officers will receive free notarizations under certain circumstances. Additionally, notaries will have to make a record of all their notarial acts. Notaries may also have to purchase a special journal to record their notarial acts.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

Barcode 982114 by Judiciary:

Removes the provisions from the underlying bill which would have required notaries to keep a journal of notarial acts. The amendment also provides that the bill takes effect upon becoming a law instead of January 1, 2006. (WITH TITLE AMENDMENT)

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