

By the Committees on Governmental Oversight and Accountability;  
Commerce; and Commerce

585-04244-10

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1                   A bill to be entitled  
2           An act relating to a review of the Department of State  
3           under the Florida Government Accountability Act;  
4           reenacting s. 20.10, F.S., relating to the  
5           establishment of the department; amending s. 117.01,  
6           F.S.; assigning various duties of the Executive Office  
7           of the Governor relating to notaries public to the  
8           department; revising the application requirements for  
9           notaries public; requiring notary public applicants to  
10          complete certain interactive or classroom instruction;  
11          authorizing certain persons or entities to offer  
12          courses for the required instruction; revising  
13          provisions for the deposit and use of funds from the  
14          notary public surcharge; providing penalties for  
15          applicants who submit applications containing certain  
16          statements; requiring the department to provide notice  
17          on notary application forms of criminal penalties for  
18          providing false information; providing for the filing  
19          and investigation of complaints against notaries  
20          public; requiring the department to submit  
21          investigative findings to the Executive Office of the  
22          Governor; deleting obsolete provisions relating to  
23          notary bonds; requiring entities issuing notary bonds  
24          to submit annual reports to the department; requiring  
25          the department to refuse bonding certificates from  
26          such entity that does not submit its annual report by  
27          a specified date; conforming provisions; amending ss.  
28          117.021, 117.05, and 117.103, F.S.; deleting an  
29          obsolete provision relating to notary public seals;

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30 conforming provisions; amending s. 117.107, F.S.;

31 prohibiting a notary public from using a signature

32 stamp except under certain circumstances; providing

33 penalties; specifying that notaries public are subject

34 to suspension under certain circumstances;

35 transferring the administration of certain provisions

36 relating to notaries public from the Executive Office

37 of the Governor to the department; amending s. 668.50,

38 F.S.; deleting requirements for certain interactive or

39 classroom instruction for notaries public, to conform;

40 providing an appropriation and authorizing additional

41 positions; providing an effective date.

42

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

44

45 Section 1. Section 20.10, Florida Statutes, is reenacted.

46 Section 2. Section 117.01, Florida Statutes, is amended to

47 read:

48 117.01 Appointment, application, suspension, ~~revocation,~~

49 application fee, bond, and oath.—

50 (1) The Governor may appoint as many notaries public as he

51 or she deems necessary, each of whom must ~~shall~~ be at least 18

52 years of age and a legal resident of the state. A permanent

53 resident alien may apply and be appointed and shall file with

54 his or her application a recorded declaration of domicile. The

55 residence required for appointment must be maintained throughout

56 the term of appointment.

57 (2) An applicant for appointment as a notary public,

58 including an original, renewal, or subsequent applicant, must

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59 submit proof that, within 1 year before application, he or she  
60 completed at least 3 hours of interactive or classroom  
61 instruction, including electronic notarization, covering the  
62 duties of the notary public. Courses satisfying this requirement  
63 may be offered by any public or private-sector person or entity  
64 registered with the Department of State and must include a core  
65 curriculum approved by the department.

66 (3) A notary ~~Notaries~~ public shall be appointed for a term  
67 of 4 years and shall use and exercise the office of notary  
68 public within the boundaries of this state. An applicant must be  
69 able to read, write, and understand the English language.

70 (4) ~~(2)~~ The application for appointment must shall be signed  
71 and sworn to or affirmed by the applicant, submitted to the  
72 Department of State, and shall be accompanied by a fee of \$25,  
73 together with the \$10 commission fee required by s. 113.01, and  
74 a surcharge of \$4. Of the surcharge, \$2.80 shall be deposited  
75 into the Grants and Donations Trust Fund of which \$4 is  
76 appropriated to the Executive Office of the Governor to be used  
77 to fund the issuance of notary commissions and the processing of  
78 suspensions, and the remaining \$1.20 shall be deposited into the  
79 Operating Trust Fund of the Department of State to be used to  
80 fund the processing of notary applications, education educate  
81 and assistance for assist notaries public, and the investigation  
82 of complaints against notaries public.

83 (a) The Department of State ~~Executive Office of the~~  
84 ~~Governor~~ may contract with private vendors to provide the  
85 services set forth in this section. However, a ~~ne~~ commission fee  
86 is not shall be required for the issuance of a commission as a  
87 notary public to a veteran, as defined in s. 1.01, who served

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88 during a period of wartime service, ~~as defined in s. 1.01(14),~~  
89 and who has been rated by the United States Government or the  
90 United States Department of Veterans Affairs or its predecessor  
91 to have a disability rating of 50 percent or more; such a  
92 disability is subject to verification by the Department  
93 Secretary of State, which ~~who~~ has authority to adopt reasonable  
94 procedures to implement this chapter ~~act~~.

95 (b) An application must be accompanied by the oath of  
96 office and the ~~notary~~ bond required by this section. An ~~shall~~  
97 ~~also accompany the application~~ must and shall be submitted in  
98 the format a form ~~prescribed by the Department of State and, at~~  
99 a minimum, must include ~~which shall require, but not be limited~~  
100 ~~to, the following information:~~

101 1. The applicant's legal ~~full~~ name.~~7~~

102 2. The applicant's residence address and telephone number.~~7~~

103 3. The applicant's business address and telephone number.~~7~~

104 4. The applicant's date of birth, race, gender, and  
105 citizenship status. ~~sex.~~~~7~~

106 5. The applicant's social security number.~~7~~ ~~citizenship~~  
107 ~~status.~~~~7~~

108 6. The applicant's driver's license number or the number of  
109 another ~~other~~ official state-issued identification.~~7~~ ~~affidavit~~  
110 ~~of good character from someone unrelated to the applicant who~~  
111 ~~has known the applicant for 1 year or more.~~~~7~~

112 7. A list of all professional licenses and commissions  
113 issued by the state to the applicant during the previous 10  
114 years and a statement as to whether ~~or not~~ the applicant has had  
115 such license or commission revoked or suspended.~~7~~ ~~and~~

116 8. A statement as to whether the applicant has previously

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117 been commissioned as a notary public in this state.

118 9. A statement as to whether ~~or not~~ the applicant has been  
119 convicted or found guilty of a felony~~7~~, and, if convicted or  
120 found guilty ~~there has been a conviction~~, a statement of the  
121 nature of the felony and restoration of civil rights. ~~The~~  
122 ~~applicant may not use a fictitious or assumed name other than a~~  
123 ~~nickname on an application for commission.~~

124 (c) The application shall be maintained by the Department  
125 of State for the full term of a notary commission. A notary  
126 public shall notify, in writing, the Department of State of any  
127 change in his or her business address or~~home~~ telephone number,  
128 residence address or ~~business~~ telephone number, ~~home address,~~ or  
129 criminal history ~~record~~ within 60 days after such change.

130 (d) The Department of State or Governor may require any  
131 other information ~~he or she deems~~ necessary for determining  
132 whether an applicant is eligible for a notary public commission.  
133 Each applicant must swear or affirm on the application that the  
134 information on the application is true and correct.

135 (e) An applicant who submits an application that he or she  
136 knows to contain any false, fictitious, or fraudulent statement  
137 violates s. 817.155.

138 (f) The Department of State shall conspicuously place on  
139 all notary public application forms the following statement:  
140 "Please note that any applicant who submits an application that  
141 he or she knows to contain any false, fictitious, or fraudulent  
142 statement commits a felony of the third degree pursuant to s.  
143 817.155, Florida Statutes."

144 (5)~~(3)~~ As part of the oath, the applicant must swear or  
145 affirm that he or she has read this chapter and knows the

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146 duties, responsibilities, limitations, and powers of a notary  
147 public.

148 (6) Any person may file a complaint with the Department of  
149 State alleging a violation of this chapter by a notary public.  
150 Upon receipt of a complaint, the department shall investigate  
151 the complaint and submit a summary of its investigative findings  
152 to the Executive Office of the Governor.

153 (7)-(4) The Governor may suspend a notary public for any of  
154 the grounds provided in s. 7, Art. IV of the State Constitution.  
155 Grounds constituting malfeasance, misfeasance, or neglect of  
156 duty include, but are not limited to, ~~the following:~~

157 (a) A material false statement on the application.

158 (b) A complaint found to have merit by the Governor.

159 (c) Failure to cooperate with or respond to an  
160 investigation by the Executive Office of the Governor ~~Governor's~~  
161 ~~office~~ or the Department of State regarding a complaint.

162 (d) Official misconduct as defined in s. 838.022.

163 (e) False or misleading advertising relating to notary  
164 public services.

165 (f) Unauthorized practice of law.

166 (g) Failure to report a change in business or residence  
167 ~~home~~ address or telephone number, or failure to submit  
168 documentation to request an amended commission after a lawful  
169 name change, within the specified period of time.

170 (h) Commission of fraud, misrepresentation, or any  
171 intentional violation of this chapter.

172 (i) Charging fees in excess of fees authorized by this  
173 chapter.

174 (j) Failure to maintain the bond required by this section.

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175        (8)~~(5)~~~~(a)~~ If a notary public receives notice from the  
176 Department of State that he or she ~~his or her office~~ has been  
177 suspended from office ~~declared vacant~~, the notary public shall  
178 forthwith mail or deliver ~~to the Secretary of State~~ his or her  
179 notary commission to the Department of State.

180        (9)~~(b)~~ A notary public who wishes to resign his or her  
181 commission, or a notary public who does not maintain legal  
182 residence in this state during the entire term of appointment,  
183 or a notary public whose resignation is required by the  
184 Governor, shall send a signed letter of resignation to the  
185 Governor and shall return his or her certificate of notary  
186 public commission. The resigning notary public shall destroy his  
187 or her official notary public seal of office, unless the  
188 Governor requests its return.

189        (10)~~(6)~~ A ~~No~~ person may not ~~be~~ automatically be reappointed  
190 as a notary public. The application process must be completed  
191 ~~regardless of~~ whether an applicant is requesting his or her  
192 initial ~~first~~ notary commission, a renewal of a commission, or  
193 any subsequent commission.

194        (11)~~(7)~~~~(a)~~ A notary public shall, before ~~prior to~~ executing  
195 the duties of the office and throughout the term of office, give  
196 bond, payable to any individual harmed as a result of a breach  
197 of duty by the notary public acting in his or her official  
198 capacity, in the amount of \$7,500, conditioned on ~~for~~ the due  
199 discharge of the office and shall take an oath that he or she  
200 will honestly, diligently, and faithfully discharge the duties  
201 of the notary public.

202        (a) The bond must ~~shall~~ be approved and filed with the  
203 Department of State and executed by a surety company for hire

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204 duly authorized to transact business in this state.

205 ~~(b) Any notary public whose term of appointment extends~~  
206 ~~beyond January 1, 1999, is required to increase the amount of~~  
207 ~~his or her bond to \$7,500 only upon reappointment on or after~~  
208 ~~January 1, 1999.~~

209 ~~(b)(e) Beginning July 1, 1996,~~ Surety companies for hire  
210 which process notary public applications, oaths, or affidavits  
211 ~~of character,~~ and bonds for submission to the Department of  
212 State must properly submit these documents in a software and  
213 hard copy format approved by the department ~~of State.~~

214 ~~(c)(8) An~~ Upon payment to any individual harmed as a result  
215 ~~of a breach of duty by the notary public,~~ the entity issuing  
216 bonds for one or more notaries public must submit an annual  
217 report to the Department of State by January 1 of each year  
218 which includes a statement of whether any bonds were paid and,  
219 if the bonds were paid, a summary of ~~who has issued the bond for~~  
220 ~~the notary public shall notify the Governor of the payment and~~  
221 ~~the circumstances that which led to the claim. If an entity~~  
222 issuing such bonds does not submit its annual report to the  
223 department by January 1, the department shall refuse to accept  
224 bonding certificates from the entity until the entity submits  
225 its annual report.

226 Section 3. Subsection (4) of section 117.021, Florida  
227 Statutes, is amended to read:

228 117.021 Electronic notarization.—

229 (4) Failure of a notary public to comply with any of the  
230 requirements of this section may constitute grounds for  
231 suspension of the notary public's commission by the ~~Executive~~  
232 ~~Office of the Governor.~~



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233 Section 4. Subsections (1), (3), and (9) of section 117.05,  
234 Florida Statutes, are amended to read:

235 117.05 Use of notary commission; unlawful use; notary fee;  
236 seal; duties; employer liability; name change; advertising;  
237 photocopies; penalties.—

238 (1) A ~~No~~ person may not ~~shall~~ obtain or use a notary public  
239 commission in other than his or her legal name or, ~~and it is~~  
240 ~~unlawful for a notary public to~~ notarize his or her own  
241 signature. Any person applying for a notary public commission  
242 must submit proof of identity to the Department of State if ~~so~~  
243 requested. Any person who violates ~~the provisions of this~~  
244 subsection commits ~~is guilty of~~ a felony of the third degree,  
245 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

246 (3) ~~(a)~~ A notary public seal shall be affixed to all  
247 notarized paper documents and shall be of the rubber stamp type  
248 and ~~shall~~ include the words "Notary Public-State of Florida."  
249 The seal must ~~shall~~ also include the name of the notary public,  
250 the date of expiration of the commission of the notary public,  
251 and the commission number. The rubber stamp seal must be affixed  
252 to the notarized paper document in photographically reproducible  
253 black ink. Every notary public shall print, type, or stamp below  
254 his or her signature on a paper document his or her name exactly  
255 as commissioned. An impression-type seal may be used in addition  
256 to the rubber stamp seal, but the rubber stamp seal is ~~shall be~~  
257 the official seal for use on a paper document, and the  
258 impression-type seal may not be substituted therefor.

259 ~~(b) Any notary public whose term of appointment extends~~  
260 ~~beyond January 1, 1992, is required to use a rubber stamp type~~  
261 ~~notary public seal on paper documents only upon reappointment on~~

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262 ~~or after January 1, 1992.~~

263 (a)~~(e)~~ The notary public official seal and the certificate  
264 of notary public commission are the exclusive property of the  
265 notary public and must be kept under the direct and exclusive  
266 control of the notary public. The seal and certificate of  
267 commission may ~~must~~ not be surrendered to an employer upon  
268 termination of employment, regardless of whether the employer  
269 paid for the seal or for the commission.

270 (b)~~(d)~~ A notary public whose official seal is lost, stolen,  
271 or believed to be in the possession of another person shall  
272 immediately notify the Department of State ~~or the Governor~~ in  
273 writing.

274 (c)~~(e)~~ Any person who unlawfully possesses a notary public  
275 official seal or any papers or copies relating to notarial acts  
276 commits ~~is guilty of~~ a misdemeanor of the second degree,  
277 punishable as provided in s. 775.082 or s. 775.083.

278 (9) Any notary public who lawfully changes his or her name  
279 must ~~shall~~, within 60 days after such change, request an amended  
280 commission from the Department ~~Secretary~~ of State and ~~shall~~ send  
281 \$25, his or her current commission, and a notice of change form,  
282 obtained from the department ~~Secretary of State~~, which shall  
283 include the new name and contain a specimen of his or her  
284 official signature. The department ~~Secretary of State~~ shall  
285 issue an amended commission to the notary public in the new  
286 name. A rider to the notary public's bond must accompany the  
287 notice of change form. After submitting the required notice of  
288 change form and rider to the department ~~Secretary of State~~, the  
289 notary public may continue to perform notarial acts in his or  
290 her former name for 60 days or until receipt of the amended

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291 commission, whichever occurs first ~~date is earlier~~.

292 Section 5. Section 117.103, Florida Statutes, is amended to  
293 read:

294 117.103 Certification of notary's authority ~~by Secretary of~~  
295 ~~State~~.—A notary public is not required to record his or her  
296 notary public commission in an office of a clerk of the circuit  
297 court. If certification of the notary public's commission is  
298 required, it must be obtained from the Department ~~Secretary~~ of  
299 State. Upon ~~the~~ receipt of a written request and a fee of \$10  
300 payable to the Department ~~Secretary~~ of State, the department  
301 ~~Secretary of State~~ shall issue a certificate of notarial  
302 authority, in a form prescribed by the department ~~Secretary of~~  
303 ~~State~~, which includes ~~shall include~~ a statement explaining the  
304 legal qualifications and authority of a notary public in this  
305 state.

306 Section 6. Subsections (2) and (9) of section 117.107,  
307 Florida Statutes, are amended to read:

308 117.107 Prohibited acts.—

309 (2) A notary public may not sign notarial certificates  
310 using a ~~facsimile~~ signature stamp unless the notary public has a  
311 physical disability that limits or prohibits his or her ability  
312 to make a written signature and unless the notary public has  
313 first submitted written notice to the Department of State with  
314 an exemplar of the ~~facsimile~~ signature stamp.

315 (9) A notary public may not notarize a signature on a  
316 document if the person whose signature ~~is~~ being notarized is not  
317 in the presence of the notary public at the time the signature  
318 is notarized. A ~~Any~~ notary public who violates this subsection  
319 commits ~~is guilty of~~ a civil infraction, punishable by penalty

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320 not exceeding \$5,000, and such violation constitutes malfeasance  
321 and misfeasance in the conduct of official duties. It is not a  
322 ~~ne~~ defense to the civil infraction ~~specified in this subsection~~  
323 that the notary public acted without intent to defraud. A notary  
324 public who violates this subsection with the intent to defraud  
325 violates is guilty of violating s. 117.105 and is subject to  
326 suspension pursuant to s. 117.01(7).

327 Section 7. All powers, duties, functions, rules, records,  
328 personnel, and property; unexpended balances of appropriations,  
329 allocations, or other funds; administrative authority; pending  
330 issues; and existing contracts of the Executive Office of the  
331 Governor relating to notaries public or the administration of  
332 chapter 117, Florida Statutes, except for the issuance of notary  
333 commissions and the suspension of notaries public, are  
334 transferred by a type two transfer, as defined in s. 20.06(2),  
335 Florida Statutes, from the Executive Office of the Governor to  
336 the Department of State.

337 Section 8. Subsection (11) of section 668.50, Florida  
338 Statutes, is amended to read:

339 668.50 Uniform Electronic Transaction Act.—

340 (11) NOTARIZATION AND ACKNOWLEDGMENT.—

341 ~~(a)~~ If a law requires a signature or record to be  
342 notarized, acknowledged, verified, or made under oath, the  
343 requirement is satisfied if the electronic signature of the  
344 person authorized by applicable law to perform those acts,  
345 together with all other information required to be included by  
346 other applicable law, is attached to or logically associated  
347 with the signature or record. Neither a rubber stamp nor an  
348 impression type seal is required for an electronic notarization.

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349       ~~(b) A first-time applicant for a notary commission must~~  
350 ~~submit proof that the applicant has, within 1 year prior to the~~  
351 ~~application, completed at least 3 hours of interactive or~~  
352 ~~classroom instruction, including electronic notarization, and~~  
353 ~~covering the duties of the notary public. Courses satisfying~~  
354 ~~this section may be offered by any public or private sector~~  
355 ~~person or entity registered with the Executive Office of the~~  
356 ~~Governor and must include a core curriculum approved by that~~  
357 ~~office.~~

358       Section 9. The sum of \$120,000 in recurring funds from the  
359 Operating Trust Fund is appropriated to the Department of State  
360 and one full-time equivalent position, with associated salary  
361 rate of 38,652 is authorized, for the 2010-2011 fiscal year for  
362 the purpose of carrying out the provisions of this act related  
363 to notaries public.

364       Section 10. This act shall take effect July 1, 2010.