

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 172

INTRODUCER: Commerce and Tourism Committee and Senator Soto

SUBJECT: Notaries Public

DATE: March 18, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Malcolm</u>	<u>Hrdlicka</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Niles</u>	<u>Imhof</u>	<u>RI</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 172 creates s. 117.055, F.S., which requires a notary public (notary or notaries) to maintain a paper or electronic notarial journal to record certain information at the time of a notarial act. The journal must be kept in a locked and secured area, and in the case of an electronic journal, must be password-protected. Additionally, the journal must be kept for at least 5 years, and the notary must notify the Department of State (DOS) immediately if the journal is lost, stolen, misplaced, destroyed, rendered unusable, or otherwise inaccessible.

Failure to comply to this section is grounds for suspension or nonrenewal of the notary's commission and grounds for the denial of a subsequent commission by the Governor. Law enforcement and correctional officers are exempt from the journal requirement.

The bill provides an effective date July 1, 2014.

II. Present Situation:

Notary Public Administration

Notaries are referenced in the State Constitution as public officers, which are appointed and commissioned by the Governor.¹ Their role it is to attest and certify documents by signature and

¹ See Fla. Const. art. II, s. 5, and art. IV, s. 1.; s. 117.01(1), F.S. Notaries differ from other types of public officers (e.g., legislators, law enforcement, clerks of court). For example, notaries are not eligible for the same types of benefits and protections provided for public officers, such as those provided under chapters 111 and 112, F.S.

official seal in order to give them credit and authenticity.² The notary does this by verifying the identities of individuals involved in the transactions, therefore preventing fraud in those transactions. Functions that a notary performs include administering oaths and acknowledging deeds and other instruments.³

Chapter 117, F.S., provides for the appointment, commissioning, activities, and disciplinary procedures of notaries. The Department of State and the Executive Office of the Governor administer and oversee notaries. The Division of Corporations, Notary Commissions and Certifications Section (NCCS) of the Department of State has a strictly ministerial function in receiving and processing applications, responding to requests for commissions and certificates, and recording the results of actions taken by the Executive Office of the Governor.⁴ The NCCS also maintains the online, free-of-charge Notary Education Course as well as records of actively commissioned Florida notaries public in its public computer database, Notary Search.⁵ The Notary Section of the Executive Office of the Governor is housed within the Office of the General Counsel because Florida notaries are public officers appointed and commissioned by the Governor.⁶ Its primary function is to provide educational materials and assistance to Florida notaries public.⁷ The Office of the General Counsel oversees investigations by the Notary Section based upon complaints of notary misconduct reported by the public, and recommends disciplinary action to be taken when appropriate.⁸

Legal Qualifications for Florida Notaries Public

Prior to being commissioned by the Governor, a notary public applicant is required to be eighteen years of age, be able to read, write, and understand the English language, and be a legal resident of the state and maintain residency throughout the term of the commission.⁹ An applicant must also:

- Submit an affidavit of good character from an unrelated third-party;
- Submit a statement as to whether the applicant has been convicted of a felony;
- Obtain a bond for \$7,500, payable to any individual harmed as a result of a breach of duty by the notary;
- Provide any other information the Governor deems necessary,¹⁰ and
- Pay a required:
 - \$25 application fee;
 - \$10 commission fee; and

² 66 C.J.S. Notaries s. 1 (2013); *see also Commercial Union Ins. Co. of New York v. Burt Thomas-Aitken Const. Co.*, 230 A.2d 498, 499 (N.J. 1967). The dictionary defines a notary public as a “person authorized by a state to administer oaths, certify documents, attest to the authenticity of signatures, and perform official acts in commercial matters, such as protesting negotiable instruments.” Black’s Law Dictionary (9th ed. 2009).

³ Sections 117.03-.04, F.S.

⁴ Secretary of State of Florida, Notary Commissions and Certifications/ Apostilles, *available at* <http://notaries.dos.state.fl.us/notary.html> Last visited March 18, 2014).

⁵ Office of the Governor, Notary Introduction, *available at* http://www.flgov.com/notary_intro/ (Last visited March 18, 2014).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Section 117.01(1), F.S.

¹⁰ Section 117.01, F.S.

- \$4 fee, which is used to educate and assist notaries.

A notary is appointed for a four-year term and no person may be automatically reappointed,¹¹ so the application process must be completed even for renewal applicants or subsequent commissions.¹²

First-time notary applicants must also submit proof that they have completed at least three hours of interactive or classroom instruction within one year of the application.¹³

Certain types of law enforcement, correctional, and investigative officers are authorized to administer oaths when engaged in the performance of official duties, and as such, are exempt from a number of ch. 117, F.S., provisions.

Notary Misconduct

Under s. 117.01, F.S., the Governor is responsible for disciplining notaries. The Governor may suspend a notary for any of the grounds provided in Article IV, section 7 of the Florida Constitution.¹⁴ Acts of malfeasance, misfeasance, or neglect of duty that may result in suspension include:

- A material false statement on an application;
- A complaint determined by the Governor to have merit;
- Failure to cooperate or respond to an investigation regarding a complaint;
- Official misconduct as defined in s. 838.022, F.S.;
- False or misleading advertising;
- Unauthorized practice of law;
- Failure to report a change in address or telephone number, or failure to submit documentation to request an amended commission after a lawful name change;
- Commission of fraud, misrepresentation, or any intentional violation of ch. 117, F.S.;
- Charging fees in excess of fees authorized by state law; and
- Failure to maintain the required surety bond.

Additional examples of notary misconduct include forgery of signatures, notarization of signatures of persons not present before the notary, and notarization of blank documents that are later drafted with fraudulent terms.¹⁵ Notary misconduct is punishable as a third-degree felony or second-degree misdemeanor.¹⁶

The National Notary Association reports that in Florida, notary misconduct is especially prevalent in fraudulent real estate transactions where the elderly and those who speak English

¹¹ *Id.* at (1), (6), F.S.

¹² *Id.* at (6), F.S.

¹³ Section 668.50(11)(b), F.S.

¹⁴ The grounds for suspension under article IV, section 7 are malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony.

¹⁵ See Lilly, Joanna, *The Unlawful Notary*, available at <http://www.lastwordedits.com/unlawfulnotary.pdf> (Last visited March 5, 2014).

¹⁶ See ss. 117.05(1), (3)(e), (7), and (8), and 117.105, F.S.

poorly are targeted.¹⁷ According to DOS, there were 400,432 notaries registered in the state as of January 14, 2014.¹⁸ In 2013, the Governor removed 12 notaries from office and suspended 46 others.¹⁹ As of March 5, 2014, 28 notaries have been suspended, two have been publicly censured, and none have been removed from office during 2014.²⁰

Notarial Journals

Florida notaries are not required to keep a journal of notarial acts, although, the Governor's Task Force on Notaries Public in 1989 recommended the mandatory use of journals.²¹ The Governor's Reference Manual for Notaries advises notaries that documenting notarial acts in a journal, record book, or log is the best way to protect themselves from liability.²² Currently, fourteen states and the District of Columbia require notarial journals.²³

The Governor's Reference Manual recommends a notarial journal be bound and have consecutively numbered pages, so that a page cannot be removed without being detected. It recommends the journal record:

- The date of the notarial act;
- The type of notarial act;
- The name or brief description of the document;
- The party's printed name, address, and signature;
- The type of identification relied upon in identifying the party;
- The fee charged; and
- Any additional comments the notary considers important.²⁴

It recommends storing completed journals for at least 5 years.²⁵

III. Effect of Proposed Changes:

Section 1 creates s. 117.055, F.S., to require a notary to keep a bound, sequentially numbered paper journal, or to keep an electronic journal that creates sequential and non-modifiable record of each notarial act. The journal must include:

- The date and time of the notarial act;

¹⁷ National Notary Association, *The Growing Real Estate Problem in Florida: How Requiring a Thumbprint in a Notary Recordbook Can Significantly Diminish Real Property Scams in the State*, 4, March 2003, available at http://cdn.nationalnotary.org/News_and_Resources/Library/reFraudfla.pdf (Last visited March 5, 2014).

¹⁸ DOS, Division of Corporations, *Yearly Statistics, Total Active Registrations & Notaries*, available at http://sunbiz.org/corp_stat.html (Last visited March 5, 2014).

¹⁹ Executive Orders issued by Governor Rick Scott, Executive orders issued in 2013, available at <http://www.flgov.com/2013-executive-orders> (Last visited March 5, 2014).

²⁰ Executive Orders issued by Governor Rick Scott, Executive orders issued in 2014, available at <http://www.flgov.com/2014-executive-orders> (Last visited March 5, 2014).

²¹ *Governor's Reference Manual for Notaries*, 42 (Dec. 1, 1999 ed.) available at http://www.flgov.com/wp-content/uploads/notary/notary_manual.pdf (Last visited March 5, 2014).

²² *Id.*

²³ *Notary Recordbook Requirements*, American Society of Notaries, available at <http://www.notaries.org/notaryrecordbookrequirements.html> (Last visited March 5, 2014).

²⁴ *Governor's Reference Manual* at 42.

²⁵ *Id.* at 43.

- The type of notarial act;
- The type, title, name, or description of the document, proceeding, or transaction;
- The signer's printed name, signature, or, in the case of an electronic journal, the signer's name and electronic signature pursuant to s. 668.50(2)(h), F.S., and his or her address;
- An indication that the signer is personally known to the notary or presented a satisfactory form of identification.²⁶ The notary must record the type, last four digits of the unique identification number, and expiration date of any identification presented; and
- The names of any witnesses.

The journal is the exclusive property of the notary and must be kept in a locked and secure area, under the direct and exclusive control of the notary. Access to an electronic journal must be protected by a password or other secure means of authentication. The journal must be retained for at least five years following the date of the last entry in the journal.²⁷ If a journal is lost, stolen, misplaced, destroyed, erased, compromised, rendered unusable, or otherwise inaccessible, the notary must immediately notify Department of State in writing of the circumstances of the incident.

A notary's failure to comply with these requirements constitutes grounds for suspension or nonrenewal of the notary's commission and grounds for the denial of any subsequent commission by the Governor.

Section 2 amends s. 117.10, F.S., to provide that certain types of law enforcement, correctional, and investigative officers are exempt from the journal requirement.

Section 3 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁶ Acceptable forms of identification include a state-issued identification card or driver's license, an identification card or driver's license issued by Canada or Mexico, and a military-issued identification card. Section 117.05(5)(b)2., F.S.

²⁷ Due to the nature of electronic journals, it is unclear what would constitute the last entry in such a journal for the purposes of triggering the 5-year retention period requirement in the bill.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Notaries in Florida will be required to purchase, accurately maintain, and retain for at least 5 years a notarial journal.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 117.10 of the Florida Statutes.

This bill creates section 117.055 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on March 10, 2014:

The committee substitute:

- Requires the journal to be either a bound sequential paper journal or an electronic journal that creates sequential and non-modifiable records;
- Provides that an electronic journal must include the signer's name and electronic signature pursuant to s. 688.50(2)(h), F.S.;
- Requires notaries to record only the last four digits of the unique identification number of the identification document presented;
- Requires notaries to include the names of any witnesses in the journal;
- Clarifies under what conditions a notary is required to inform DOS when a journal becomes inaccessible;
- Provides that the journal is the property of the notary and must be kept in a locked and secured area, or in the case of an electronic journal, must be password-protected;
- Exempts certain law enforcement, correctional, and investigative officers from the bill; and

- Removes rule-making authority provided to the DOS to implement the act.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
