

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 440

INTRODUCER: Military and Veterans Affairs, Space, and Domestic Security Committee and Senator Gibson and others

SUBJECT: Notaries Public

DATE: March 28, 2017

REVISED: \_\_\_\_\_

|    | ANALYST        | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|----------------|----------------|-----------|--------------------|
| 1. | <u>Ryon</u>    | <u>Ryon</u>    | <u>MS</u> | <u>Fav/CS</u>      |
| 2. | <u>Harmsen</u> | <u>McKay</u>   | <u>CM</u> | <u>Favorable</u>   |
| 3. | <u>Ryon</u>    | <u>Phelps</u>  | <u>RC</u> | <u>Pre-meeting</u> |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 440 expands the list of forms of identification that a notary public may rely on in notarizing a signature on a document to include a veteran health identification card issued by the U.S. Department of Veterans Affairs.

**II. Present Situation:**

**Notaries Public**

A notary public is a public officer appointed and commissioned by the Governor whose function is to administer oaths or affirmations; to take acknowledgements; to attest to the trueness of photocopies of certain documents; and to perform other duties specified by Florida law.<sup>1</sup>

Chapter 117, F.S., provides requirements and guidelines for notaries and authorizes the Governor to appoint as many notaries as necessary. A notary 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.<sup>2</sup> The application for appointment must include a \$25 fee, a \$10 commission

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<sup>1</sup> Florida Executive Office of the Governor, Notary Section, *Governor's Reference Manual for Notaries Public; State of Florida*, 6 (December 13, 2016), available at: [http://www.flgov.com/wp-content/uploads/Notary\\_Reference\\_Manual\\_12.13.16.pdf](http://www.flgov.com/wp-content/uploads/Notary_Reference_Manual_12.13.16.pdf) (last visited Mar. 1, 2017).

<sup>2</sup> Section 117.01(1), F.S.

fee required by s. 113.01, F.S., and a \$4 surcharge, appropriated to the Executive Office of the Governor to be used for notary education and assistance.<sup>3</sup>

Once appointed, a notary serves a four-year term.<sup>4</sup> During the term of office, a notary must post and maintain a \$7,500 bond payable to any individual harmed as a result of a notary's breach of duty. The bond must be approved and filed with the Department of State and executed by a surety company that is authorized to transact business within the state. If a surety company pays an individual harmed by the notary for breach of duty, the company must notify the Governor of the payment and the underlying circumstances.<sup>5</sup> No person may be automatically reappointed as a notary. The application process must be completed regardless of whether an applicant has previously served as a notary.<sup>6</sup>

A notary is authorized by law to perform six functions:

- Administer oaths or affirmations;<sup>7</sup>
- Take acknowledgements of deeds and other instruments of writing for record;<sup>8</sup>
- Attest to photocopies of certain documents;<sup>9</sup>
- Solemnize marriage;<sup>10</sup>
- Verify vehicle identification numbers;<sup>11</sup> and
- Certify the contents of a safe-deposit box.<sup>12</sup>

When notarizing a signature a notary either takes an acknowledgement<sup>13</sup> from or administers an oath<sup>14</sup> or affirmation<sup>15</sup> to the document signer. A notary public may not 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 described in and who is executing the instrument.<sup>16</sup>

“Satisfactory evidence” means the absence of any information, evidence, or other circumstances that would lead a reasonable person to believe that the person whose signature is to be notarized is not the person he or she claims, and may be any one of the following:<sup>17</sup>

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<sup>3</sup> Section 117.01(2), F.S.

<sup>4</sup> Section 117.01(1), F.S.

<sup>5</sup> Section 117.01(8), F.S.

<sup>6</sup> Section 117.01(6), F.S.

<sup>7</sup> Section 117.03, F.S.

<sup>8</sup> Section 117.04, F.S.

<sup>9</sup> Section 117.05(12)(a), F.S.

<sup>10</sup> Section 117.045, F.S.

<sup>11</sup> Section 319.23(3)(a)2., F.S.

<sup>12</sup> Section 655.94(1), F.S.

<sup>13</sup> An acknowledgement is a formal declaration before an authorized official by a person signing an instrument that such execution is his or her free act and deed. *See* Kelle Clarke, *Notary Essentials: The Difference Between Acknowledgments and Jurats* (Jan. 25, 2016), National Notary Association, available at: <https://www.nationalnotary.org/notary-bulletin/blog/2015/04/key-differences-acknowledgment-jurat-certificates> (last visited Mar. 1, 2017).

<sup>14</sup> An oath is any form of attestation or pledge by which a person signifies that he or she is bound in conscience and out of a sense of responsibility to a Supreme Being to the truthfulness for some statement. Willfully swearing to untrue statements constitutes perjury. *Id.*

<sup>15</sup> An affirmation is a solemn, formal declaration under the penalty of perjury that certain statements are true.

<sup>16</sup> Section 117.05(5), F.S.

<sup>17</sup> Section 117.05(5)(b)., F.S.

- The sworn written statement of one credible witness personally known to the notary public or the sworn written statement of two credible witnesses whose identities are proven to the notary public upon the presentation of satisfactory evidence that each of the following is true:
  - That the person whose signature is to be notarized is the person named in the document;
  - That the person whose signature is to be notarized is personally known to the witnesses;
  - That it is the reasonable belief of the witnesses that the circumstances of the person whose signature is to be notarized are such that it would be very difficult or impossible for that person to obtain another acceptable form of identification;
  - That it is the reasonable belief of the witnesses that the person whose signature is to be notarized does not possess any of the identification documents specified below; and
  - That the witnesses do not have a financial interest in nor are parties to the underlying transaction; or
- Reasonable reliance on the presentation to the notary public of any one of the following forms of identification, if the document is current or has been issued within the past 5 years and bears a serial or other identifying number:
  - A Florida ID card or driver license issued by the public agency authorized to issue driver licenses;
  - A passport issued by the U.S. Department of State;
  - A passport issued by a foreign government if the document is stamped by the U.S. Bureau of Citizenship and Immigration Services;
  - A driver license or an ID card issued by a public agency authorized to issue driver licenses in a state other than Florida, a territory of the U.S., Canada or Mexico;
  - An ID card issued by any branch of the U.S. armed forces;
  - An inmate ID card issued on or after January 1, 1991, by the Florida Department of Corrections for an inmate who is in its custody;
  - An inmate ID card issued by the U.S. Department of Justice, Bureau of Prisons, for an inmate who is in its custody;
  - A sworn, written statement from a sworn law enforcement officer that the forms of ID for an inmate in an institution of confinement were confiscated upon confinement and that the person named in the document is the person whose signature is to be notarized; or
  - An ID card issued by the U.S. Bureau of Citizenship and Immigration Services.

When notarizing a signature, a notary public must complete a notarial certificate.<sup>18</sup> Among other required elements, a notary must specify on the notarial certificate the specific type of identification the notary public relied upon in identifying the signer, based either on personal knowledge or the satisfactory evidence specified in s. 117.05(5), F.S.<sup>19</sup>

### **Veteran Health Identification Card**

The Veteran Health Identification Card (VHIC) is issued by the U.S. Department of Veterans Affairs (USDVA) to veterans who are enrolled in the USDVA health care system for identification and check-in at USDVA appointments.<sup>20</sup> In order to receive a VHIC, the veteran must apply for enrollment in the USDVA health care system and provide a primary and

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<sup>18</sup> A notarial certificate is a written statement made by the notary public certifying specific facts of the notarial act performed.

<sup>19</sup> Section 117.05(4), F.S.

<sup>20</sup> U.S. Department of Veterans Affairs, *Health Benefits: Veterans Health Identification Card*, available at <http://www.va.gov/healthbenefits/vhic/index.asp> (last visited Mar. 1, 2017).

secondary form of identification.<sup>21</sup> Once the veteran's enrollment is verified, he or she must have their picture taken at the local USDVA medical center for inclusion on the VHIC.<sup>22</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 117.05, F.S., to expand the list of forms of identification that a notary public may rely on in notarizing a signature on a document to include a veteran health identification card issued by the U.S. Department of Veterans Affairs.

The bill takes effect on July 1, 2017.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

None.

#### **C. Government Sector Impact:**

None.

### **VI. Technical Deficiencies:**

None.

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<sup>21</sup> *Id.* Primary identification options include: a state-issued driver's license, an unexpired U.S. passport or foreign passport with Form I-94 or Form I-94 A; a U.S. military card; a permanent resident card or alien registration receipt card; a picture school ID; or a federal, state, or local issued photo ID. Secondary identification options include: a social security card; an original or certified birth certificate or other official form of documentation of birth; a voter registration card; a U.S. citizen ID card or Native American tribal document; an employment authorization document issued by the U.S. Department of Homeland Security; or a Canadian driver's license.

<sup>22</sup> *Id.*

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 117.05 of the Florida Statutes.

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

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

**CS by Military and Veterans Affairs, Space, and Domestic Security on February 21, 2017:**

The CS corrects a typo in the title and places the Veterans Health Identification Card in its own subparagraph.

**B. Amendments:**

None.