

# FLORIDA HOUSE OF REPRESENTATIVES

## BILL ANALYSIS

*This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.*

**BILL #:** [CS/HB 915](#)

**TITLE:** Notary Public Fraud

**SPONSOR(S):** López, J., Woodson

**COMPANION BILL:** [CS/SB 846](#) (Polsky)

**LINKED BILLS:** None

**RELATED BILLS:** [CS/SB 846](#) (Polsky)

### Committee References

[Civil Justice & Claims](#)

14 Y, 0 N, As CS



[Judiciary](#)

16 Y, 0 N

## SUMMARY

### Effect of the Bill:

CS/HB 915 prohibits a notary public who is not authorized to represent a person in an immigration matter from, when advertising his or her notary public services, using specified terms, such as “notario público,” or any designation or title, in any language, which conveys or implies that he or she possesses professional legal skills in immigration law. The bill creates a civil cause of action for a person aggrieved by a violation of this prohibition, or the requirement in current law that a notary public advertising his or her notary public services in a language other than English must include a specified disclaimer in his or her advertisement.

The bill also requires a person offering immigration services who is not authorized to practice law or otherwise to represent others in a federal immigration matter to post a specified disclaimer about his or her limited authority on its main website and at his or her place of business in English and in every other language in which the person provides immigration services. The bill creates a civil cause of action for a violation of this requirement.

### Fiscal or Economic Impact:

The bill may have a fiscal impact on the state court system and an economic impact on the private sector.

[JUMP TO](#)

[SUMMARY](#)

[ANALYSIS](#)

[RELEVANT INFORMATION](#)

[BILL HISTORY](#)

## ANALYSIS

### EFFECT OF THE BILL:

#### Notaries Public

The bill amends [s. 117.05, F.S.](#), to prohibit a notary public who is not [authorized](#) to represent someone in an immigration matter from, when advertising his or her notary public services, using the term “notario público,” “notario,” “immigration assistant,” “immigration consultant,” “immigration specialist,” or any other designation or title, in any language, which conveys or implies that he or she possesses professional legal skills in immigration law. (Section [1](#)) The bill also creates [s. 117.051, F.S.](#), to establish a civil cause of action for a person aggrieved by a violation of this prohibition, or the requirement in current law that a notary public advertising his or her notary public services in a language other than English must include a specified [disclaimer](#) in his or her advertisement. Specifically, under the bill, such a person has a civil cause of action against the person or entity violating such provisions for, where appropriate:

- Declaratory or injunctive relief.
- Actual damages.
- Reasonable attorney fees and costs.

Such a civil action would be in addition to the authority of the Governor to [suspend](#) a notary public for such conduct as provided in current law. (Section [2](#))

### Required Disclosure for Immigration Services

**STORAGE NAME:** h0915b.JDC

**DATE:** 4/17/2025

The bill creates [s. 501.1391, F.S.](#), to provide that a person or business offering immigration services, other than those persons holding active [licenses to practice law](#) in Florida or who are otherwise permitted to practice law or represent others under federal law in an immigration matter, must post conspicuous notices on its main website and at its place of business in English and in every other language in which the person or business provides or offers immigration services. Under the bill, such notices must contain the following statement:

I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL  
ADVICE OR ACCEPT FEES FOR LEGAL ADVICE. I AM NOT ACCREDITED TO  
REPRESENT YOU IN IMMIGRATION MATTERS.

The bill also provides that a person aggrieved by a violation of the disclosure requirement has a civil cause of action against the person or business violating such provision for, where appropriate:

- Declaratory or injunctive relief.
- Actual damages.
- Reasonable attorney fees and costs. (Section [3](#))

### Effective Date

The bill provides an effective date of July 1, 2025. (Section [4](#))

## **FISCAL OR ECONOMIC IMPACT:**

### STATE GOVERNMENT:

The bill may have an indeterminate fiscal impact on the state court system. Whether such a fiscal impact is positive, negative, or neutral depends upon whether the changes made by the bill increases the number of civil actions filed in the state court system.

### PRIVATE SECTOR:

The bill may have an indeterminate economic impact on the private sector. The bill may have a positive economic impact to the extent that it prevents a person seeking legal counsel for immigration or other matters from hiring a notary public or other person unqualified or otherwise unauthorized to provide such counsel, and therefore prevents financial loss and other related economic harms. The bill may, however, have a negative economic impact on any person sued under a civil action created by the bill who is then subject to the payment of actual damages or attorney fees and costs.

## **RELEVANT INFORMATION**

### **SUBJECT OVERVIEW:**

#### [Notaries Public](#)

[Chapter 117, F.S.](#), governs notaries public in Florida. Part I of that chapter provides general provisions applicable to all notaries public, while Part II of that chapter pertains to notaries public registering or registered as online notaries public.

#### *Appointment*

The Governor may appoint as many notaries public as he deems necessary, each of whom must be at least 18 years of age and a legal Florida resident; further, an applicant must be able to read, write, and understand the English language.<sup>1</sup> A notary public is appointed for four years, and, during his or her appointment, may only act as notary public if he or she is within the boundaries of Florida.<sup>2</sup>

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<sup>1</sup> S. [117.01, F.S.](#)

<sup>2</sup> [Id.](#)

## *Online Notary Registration*

A notary public may register as an online notary public with the Department of State by doing all of the following:

- Holding a current notary public commission and submitting his or her commission number;
- Certifying that he or she has completed a course covering the duties, obligations, and technology requirements for online notary public service;
- Paying a notary public registration fee;
- Submitting a registration, signed and sworn to by the registrant;
- Identifying the RON service provider whose audio-video communication technology and processes for credential analysis and identity-proofing technologies the registrant intends to use for online notarizations.
- Providing satisfactory evidence that the registrant has obtained the requisite bond; and
- Providing satisfactory evidence that the registrant acting in his or her capacity as an online notary public is covered by an errors and omissions insurance policy from an insurer authorized to transact business in this state, in the minimum amount of \$25,000 and on such terms as are specified by rule by the Department of State as reasonably necessary to protect the public.<sup>3</sup>

## *Authority*

A notary public may administer an oath and make a certificate thereof when it is necessary for the execution of any writing or document to be published under the seal of a notary public.<sup>4</sup> A notary public may also take the acknowledgments of deeds and other instruments of writing for record, and solemnize marriages.<sup>5</sup>

Where a notary public is registered as an online notary public, he or she may perform any of these functions, except solemnizing marriages, as an online notarization by complying with the requirements of [Part II of ch. 117, F.S.](#), and any rules adopted by the Department of State.<sup>6</sup> If a notarial act requires a principal to appear before or in the presence of the online notary public, the principal may appear before the online notary public by means of audio-video communication technology that meets specified requirements.<sup>7</sup>

## *Bond*

A notary public must, before executing the duties of the office and throughout the term of office, give bond, payable to any individual harmed as a result of a breach of duty by the notary public acting in his or her official capacity, in the amount of \$7,500.<sup>8</sup> Further, a notary public registering as an online notary public must obtain a bond in the amount of \$25,000, payable to any individual harmed as a result of a breach of duty by the registrant acting in his or her official capacity as an online notary public, conditioned for the due discharge of the office, and on such terms as are specified in rule by the Department of State as reasonably necessary to protect the public.<sup>9</sup> Such bonds must be approved and filed with the Department of State and executed by a surety company duly authorized to transact business in this state.<sup>10</sup>

## *Notary Conduct*

[Ch. 117, F.S.](#), establishes several provisions governing a notary public's conduct. Significantly, under this chapter:

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<sup>3</sup> S. [117.225, F.S.](#)

<sup>4</sup> S. [771.03, F.S.](#)

<sup>5</sup> S. [117.04](#) and [117.045, F.S.](#)

<sup>6</sup> S. [117.209, F.S.](#)

<sup>7</sup> *Id.*

<sup>8</sup> S. [117.01, F.S.](#)

<sup>9</sup> [117.225, F.S.](#)

<sup>10</sup> *Id.*; S. [117.01, F.S.](#)

- A notary public may not take the acknowledgment of a person who does not speak or understand the English language, unless the nature and effect of the instrument to be notarized is translated into a language which the person does understand.<sup>11</sup>
- A notary public who is not an attorney and who advertises notary public services in a language other than English must post or otherwise include with the advertisement a [disclaimer](#) in English and in the language used for the advertisement. The disclaimer must be of a conspicuous size, if in writing, and state: “I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF FLORIDA, AND I MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.” If the advertisement is by radio or television, the statement may be modified but must include substantially the same message.<sup>12</sup>
- Literal translation of the phrase “notary public” into a language other than English is prohibited in an advertisement for notarial services.<sup>13</sup>
- The employer of a notary public is liable for all damages proximately caused by the notary’s official misconduct, if the notary public was acting within the scope of his or her employment at the time the notary engaged in the official misconduct.<sup>14</sup>

### [Suspension](#)

The Governor may suspend a notary public for any of the grounds provided in [s. 7, Art. IV of the State Constitution](#), that is, malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony.<sup>15</sup> Grounds constituting malfeasance, misfeasance, or neglect of duty include:

- Unauthorized practice of law.
- False or misleading advertising relating to notary public services.
- Commission of fraud, misrepresentation, or any intentional violation of [ch. 117, F.S.](#)
- 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.<sup>16</sup>

### [“Notario Público”](#)

In some Latin American countries, a “notario público,” or “notario,” is a highly-trained and qualified legal professional who is authorized to perform a wide range of legal tasks, such as preparing and filing legal documents, giving legal advice, and representing clients in court.<sup>17</sup> As the role of a “notario público” is much broader than that of a notary public, substituting the phrase “notary public” for “notario público” in a Spanish-language advertisement for notary public services could create confusion about the scope of the notary public’s authority and might mislead persons looking for assistance in legal matters who are not familiar with the notary public/attorney distinction in the United States.

### [Unlicensed Practice of Law](#)

The State Constitution gives the Florida Supreme Court the power to regulate the practice of law in Florida, which it does through a regulatory arm known as the Florida Bar.<sup>18</sup> Through this constitutional grant of authority, the Florida Supreme Court also has the inherent authority to regulate and prevent the unlicensed practice of law in Florida.<sup>19</sup> In order to determine whether an activity constitutes the unlicensed practice of law, a two-part analysis must be made:

<sup>11</sup> S. [117.07, F.S.](#)

<sup>12</sup> S. [117.05, F.S.](#)

<sup>13</sup> [Id.](#)

<sup>14</sup> [Id.](#)

<sup>15</sup> S. [117.01, F.S.](#)

<sup>16</sup> [Id.](#)

<sup>17</sup> Notary Public Underwriters, Inc., *What Is the Difference Between a Notary Public and a Notario Publico?*,

[https://notarypublicunderwriters.com/national-notary-blog/1259-what-is-the-difference-between-a-notary-public-and-a-notario-public?srsltid=AfmBOoosMN2QIYSS\\_QSXAeidlSwKjOMB1srA\\_2vBa73gVZsVlynaWrEe](https://notarypublicunderwriters.com/national-notary-blog/1259-what-is-the-difference-between-a-notary-public-and-a-notario-public?srsltid=AfmBOoosMN2QIYSS_QSXAeidlSwKjOMB1srA_2vBa73gVZsVlynaWrEe) (last visited Apr. 17, 2025).

<sup>18</sup> [Art. V, s. 15, Fla. Const.](#)

<sup>19</sup> *The Florida Bar v. Sperry*, 140 So. 2d 587, 588 (Fla. 1962), judg. vacated on other grounds, 373 U.S. 379 (1963).

- First, it must be determined whether the activity is the practice of law; and
- Second, it must be determined whether such practice of law is authorized.<sup>20</sup>

### *Practice of Law*

In determining whether an activity is the practice of law, the Florida Supreme Court has found that setting out a broad definition of the activity is “nigh onto impossible.”<sup>21</sup> Instead, the Court developed the following test to determine whether something is or is not the practice of law:

... if the giving of [the] advice and performance of [the] services affect important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess legal skill and a knowledge of the law greater than that possessed by the average citizen, then the giving of such advice and the performance of such services by one for another as a course of conduct constitute the practice of law.<sup>22</sup>

When applying this test, noted the Court, “the single most important concern...is the protection of the public from incompetent, unethical, or irresponsible representation.”<sup>23</sup>

### *Authorization*

Generally speaking, where something is the practice of law, an attorney licensed by a state other than Florida may appear in a Florida court as the representative of a party if the attorney first receives authorization to appear *pro hac vice*.<sup>24</sup> Further, a person must generally be a Florida Bar member in order to represent an individual in federal courts and before federal administrative agencies within Florida; however, if there is a federal rule or regulation authorizing an attorney licensed to practice law in another state or a non-lawyer to appear before a federal agency, Florida cannot enjoin the activity as the unlicensed practice of law.<sup>25</sup>

One such federal rule can be found in [Title 8 C.F.R. §292](#), which rule authorizes an attorney admitted in another state to represent individuals in certain immigration matters before the Department of Homeland Security (“DHS”). This authorization does not generally extend to non-lawyers; however, the rule provides very limited circumstances in which a non-lawyer may represent someone before DHS (such as on a one-case basis for no fee). While the activity contemplated by the rule is the practice of law, it is authorized by federal regulation, and, thus, Florida cannot generally enjoin the activity as the unlicensed practice of law.

### *Penalties*

The Florida Bar maintains Unlicensed Practice of Law (“UPL”) Committees to investigate unlicensed practice of law complaints; each judicial circuit in the state has at least one such Committee, made up of volunteers, of which one-third are not lawyers.<sup>26</sup> Where a UPL Committee determines that a complaint is founded, the Committee may attempt to convince the offender to sign a cease and desist affidavit in which he or she agrees to stop practicing law; however, where such efforts are unsuccessful, the Florida Bar may file a civil action with the Florida Supreme Court, after which a trial may be held before judges (called “referees”), appointed by the Court.<sup>27</sup> Where the Florida Bar prevails in such trial, the Court may issue a civil injunction to stop the offender from practicing law, and the

<sup>20</sup> *Id.* at 591.

<sup>21</sup> *Id.*

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

<sup>23</sup> *The Florida Bar v. Moses*, 380 So. 2d 412, 417 (Fla. 1980).

<sup>24</sup> [Fla. R. Jud. Admin. 2.510](#).

<sup>25</sup> *The Florida Bar*, 140 So. 2d at 591.

<sup>26</sup> The Florida Bar, *Consumer Information: Filing an Unlicensed Practice of Law Complaint*, <https://www.floridabar.org/public/consumer/pamphlet012/#::~:~:text=The%20Florida%20Bar%20cases%20are,practicing%20law%20with%20a%20license> (last visited Apr. 17, 2025).

<sup>27</sup> *Id.*

Florida Bar may, in certain cases, also bring an action before the Florida Supreme Court for indirect criminal contempt.<sup>28</sup>

Florida law also provides that any person not licensed or otherwise authorized to practice law in Florida who practices law in Florida or holds himself or herself out to the public as qualified to practice law in this state, or who willfully pretends to be, or willfully takes or uses any name, title, addition, or description implying that he or she is qualified, or recognized by law as qualified, to practice law in Florida, commits a third-degree felony.<sup>29</sup> For this reason, the State Attorney in a given judicial circuit may bring criminal charges against an individual for the unlicensed practice of law, which charges may be in addition to any civil remedies awarded.

BILL HISTORY				
COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
<a href="#">Civil Justice &amp; Claims Subcommittee</a>	14 Y, 0 N, As CS	4/3/2025	Jones	Mawn
THE CHANGES ADOPTED BY THE COMMITTEE:	Updated the bill's fraud protection and prohibited notary conduct concepts; removed certain provisions from the bill; and relocated to different sections of law the remaining concepts put forward in the original bill.			
<a href="#">Judiciary Committee</a>	16 Y, 0 N	4/17/2025	Kramer	Mawn

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**THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.**  
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<sup>28</sup> Indirect criminal contempt involves conduct occurring outside the judge's presence that constitutes a clear and present danger to the orderly administration of justice, and is prosecuted under [Florida Rule of Criminal Procedure 3.840](#). *Id.*

<sup>29</sup> S. [454.23, F.S.](#)