

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: March 11, 1998 Revised: 3/12/98 _____

Subject: Notaries

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Rhea	Wilson	GO	Fav/1 amendment
2.	_____	_____	BI	_____
3.	_____	_____	WM	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill clarifies and reorganizes ch. 117, F.S., which relates to notaries public. As well, the bill requires submission of a letter of resignation from notaries which do not maintain legal residence in the state during their commission period or when the Governor requests their resignation. The bill places solemnization of marriage authority in a newly-created section of law. The bill also modifies and makes uniform notary forms throughout the Florida Statutes. The bill increases the amount of the notary bond.

This bill amends the following sections of the Florida Statutes: 117.01, 117.03, 117.04, 117.05, 117.10, 117.103, 117.107, 117.20, 11.03, 475.180, 713.08, 713.135, 713.245, 727.104, 732.503, and 747.051.

This bill creates section 117.045, Florida Statutes.

II. Present Situation:

A. Legal Qualifications for Notaries

Chapter 117, F.S., provides for the regulation of Florida notaries. The Governor is authorized by statute to appoint as many notaries public as he or she deems necessary.¹ In order to qualify as a notary public, a person must be at least 18 years of age and be a legal resident of Florida.²

¹Section 117.01(1), F.S.

²A permanent resident alien may apply and be appointed and must file with his or her application a recorded Declaration of Domicile, pursuant to s. 117.01(1), F.S.

Notaries are appointed for 4-year terms, and they must remain legal residents of Florida throughout the term of appointment. Section 117.01(6), F.S., prohibits automatic reappointment of a notary. The application process must be completed regardless of whether an applicant is requesting his or her first notary commission, a renewal of a commission, or any subsequent commission.

B. Notary Application Process and Bond

An application process for appointment as a notary public is provided in law. An application must be signed and sworn to by the applicant and must be accompanied by a fee of \$25, together with a surcharge of \$4.³ An applicant must swear an oath that he or she has read ch. 117, F.S., and that he or she knows the duties, responsibilities, limitations, and powers of a notary public. The oath of office and notary bond must accompany the application and must be in a form prescribed by the Department of State.⁴ 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.

Prior to executing the duties of the office and throughout the term of the office, a notary public is required to give bond in the amount of \$5,000.⁵ 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.⁶ Upon payment to any individual harmed as a result of a breach of duty by the notary, the entity who has issued the bond for the notary must notify the Governor of the payment and the circumstances which led to the claim.

C. Duties of a Notary

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 who is described in and who is executing the instrument.⁷ A notary public must certify in the certificate

³The \$4 surcharge is appropriated to the Executive Office of the Governor to be used to educate and assist notaries public.

⁴Section 117.01(2), F.S., authorizes the form to contain the following minimum information: (a) full name; (b) residence address and telephone number; (c) business address and telephone number; (d) date of birth; (e) race; (f) sex; (g) social security number; (h) citizenship status; (i) driver's license number; (j) affidavit of good character from someone unrelated to the applicant who has known the applicant for 1 year or more; (k) a list of all professional licenses and commissions issued by the state during the previous 10 years; (l) a statement as to whether or not the applicant has been convicted of a felony.

⁵Section 117.01(7)(a), F.S.

⁶Any notary public whose term of appointment extends beyond January 1, 1992, is required to increase the amount of his or her bond to \$5,000 only upon reappointment on or after January 1, 1992.

⁷Section 117.05(5), F.S.

of acknowledgment or jurat⁸ the type of identification, either based on personal knowledge or other form of identification, upon which the notary public is relying.

D. Suspension of a Notary

The Governor may suspend a notary public for any of the grounds provided in Art. IV, sec. 7, of the State Constitution.⁹ Section 117.01(4), F.S., provides that grounds constituting malfeasance, misfeasance, or neglect of duty include, but are not 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. 839.25, F.S.;¹⁰
- ◆ 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.

When a notary receives notice from the Department of State that his or her office has been declared vacant, the notary is required to mail or deliver to the Secretary of State his or her notary commission.

III. Effect of Proposed Changes:

Section 1. Section 117.01(1), F.S., is amended by the bill to add new language specifying that a notary public may perform official duties only in Florida. The bill also requires that applicants must be able to read, write, and understand the English language.

⁸A "jurat" is defined by Black's Law Dictionary to mean a "... [c]ertificate of officer or person before whom writing was sworn to. In common use term is employed to designate certificate of competent administering officer that writing was sworn to by person who signed it."

⁹Art. IV, sec. 7, of the State Constitution, provides that the Governor, by executive order filed with the Secretary of State, may suspend from office any state officer not subject to impeachment, any officer of the militia not in the active service of the United States, or any court officer, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform his official duties, or commission of a felony, and may fill the office by appointment for the period of suspension.

¹⁰Chapter 839, F.S., provides offenses by public officers and employees. Section 839.25(1), F.S., defines the term "official misconduct" to mean the commission of the following act by a public servant, with corrupt intent to obtain a benefit for himself or another or to cause unlawful harm to another: knowingly falsifying, or causing another to falsify, any official record or official document. Section 839.25(2), F.S., defines the term "corrupt" to mean done with knowledge that the act is wrongful and with improper motives. Official misconduct is a felony of the third degree punishable as provided in ss. 775.082, 775.083, or 775.083, F.S.

Subsection (2) of the section is amended to make a cross-reference to the \$10 commission fee that is currently required by s. 113.01, F.S., and to clarify that an applicant may affirm, instead of swear to, the truthfulness of the information in his or her application.

Subsection (4) is amended to add in paragraph (g) that failure to request an amended commission after a name change is a ground for suspension from office, along with the current grounds of failure to report a change in address or telephone number.

Subsection (5) is amended to provide instructions on how to resign a notary commission. A signed letter of resignation must be sent to the Governor and the certificate of notary public commission must be returned. The official notary public seal of office must be destroyed unless the Governor requests its return.

Subsection (7) is amended to increase the amount of the notary bond from \$5,000 to \$10,000. This bond increase is effective only upon reappointment on or after January 1, 1999.

Section 2. The bill removes from s. 117.03, F.S., outdated language relating to documents that are “attested to” or “protested.”

Sections 3. and 4. The bill removes from s. 117.04, F.S., language that authorizes notaries to solemnize marriage and places authorization in a newly-created s. 117.045, F.S. The authority to solemnize marriages is removed to a new section because of changes made by the Electronic Signature Act¹¹ and to avoid electronic solemnization of marriage.

Section 5. The bill amends a cross-reference to s. 117.04, F.S., in s. 117.05(2), F.S., to the new s. 117.045, F.S.

The bill amends s. 117.05(3), F.S., to clarify that the official seal and the certificate of notary public commission are the exclusive property of the notary public. Notaries are expressly prohibited from surrendering these items to his or her employer upon termination, even if the employer paid for the commission.

The bill also amends subsection (3) to require a notary to notify the Department of State if a seal is lost, stolen, or believed to be in the possession of another person.

The bill moves to subsection (3) from subsection (9) the provision that 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.¹²

¹¹Section 282.70, F.S.

¹²Section 775.082(4)(b), F.S., provides for a definite term of imprisonment not exceeding 60 days. Section 775.083(1)(e), F.S., provides for a fine not to exceed \$500.

The bill also specifies the elements of a notarial certificate in a newly-created subsection (4). There are no new requirements, but current requirements are dispersed throughout the act. The amendment brings all requirements into one place.

As well, the bill reorganizes s. 117.05(5), F.S., and makes the requirements for the statements of one and two credible witnesses the same. Subsection (5) is also amended to specify some of the types of identification permitted. As well, two forms of identification are added to accommodate inmates in federal prisons and in other institutions of confinement.

Subsection (6) is deleted as many of its requirements have been removed to subsection (3) of the section and to s. 117.07, F.S. Subsequent subsections are renumbered.

Subsection (9) is amended to change the required time period for amending a notary's commission after a name change from "forthwith" to 60 days, to be consistent with that of updating a change of address. It permits a notary to continue to act as a notary for 60 days or until receipt of the amended commission, whichever is earlier.

Subsection (12) is amended to clarify that a notary is prohibited from attesting to a photocopy of a public record or a vital record (whether within or outside Florida), if a copy can be made by the custodian. As well, the form certificate is amended to reflect this clarification.

Subsection (14) requires notaries to make reasonable accommodations to provide services to persons with disabilities. Additionally, the requirement that a notary read the entire instrument to a person who is blind prior to notarizing it is transferred from s. 117.07(5), F.S. Further, the notary may notarize the signature of a person who signs with a mark under specified circumstances.

Section 6. The bill also amends s. 117.10, F.S., to correct statutory references. Traffic infraction enforcement officers are now defined in s. 316.640, F.S. The amendment also clarifies the authority of law enforcement officers. These officers are currently permitted only to take sworn (or affirmed) statements and do not exercise any of the other powers of a notary public.

Section 7. The bill amends s. 117.103, F.S. The bill clarifies that a notary is not required to record his or her notary public commission in an office of a clerk of the circuit court. If certification is required, it must be obtained from the Secretary of State.

Section 8. The bill amends s. 117.107, F.S. Language which is repeated in s. 117.05, F.S., is stricken. A notary is prohibited from signing notarial certificates using a facsimile signature stamp unless he or she has a physical disability that limits or prohibits his or her ability to make a written signature and unless the notary public has first submitted written notice to the Department of State with an exemplar of the facsimile signature stamp.

The bill also prohibits a notary from notarizing 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.

As well, the requirements of s. 117.05(6), F.S., are placed in a new subsection (9).

Section 9. The bill amends s. 117.20, F.S., which relates to electronic notarization, to correct cross-references necessary due to the revision of the act by the bill. Further, the bill requires an electronic notarization to include the words “Notary Public - State of Florida.”

The bill creates a new subsection (5) which requires a notary who performs electronic notarizations to keep a sequential journal of all electronic notarizations. The journal is required to include specified information, including, the date and time of the notarial act, the type of notarial act, the type or name of the document, the signer’s printed name and signature, the signer’s complete address and telephone number, and the specific type of identification presented by the signer. The journal must be maintained for at least 5 years past the last recorded date included in the journal. If the journal is lost, stolen, or destroyed, the notary must advise the Governor’s Office or the Department of State in writing of the circumstances.

The bill also requires notaries to present the journal for inspection when requested by the Governor’s Office or the Department of State.

Sections 10-16. The bill also revises the notarial certificates in the prescribed forms found in ss. 11.03, 475.180, 713.08, 713.13, 713.135, 713.245, 727.104, 732.503, and 747.051, F.S., and makes them consistent with the certificate forms specified in s. 117.05, F.S. Also, s. 732.503, F.S., is amended to remove language describing the testator as a witness.

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:

None.

B. Private Sector Impact:

The bill increases the notary bond amount from \$5,000 to \$10,000. The impact of this increase is in dispute. Premium rates must be filed with the Department of Insurance pursuant to s. 627.062, F.S. Pursuant to that section, the department must review the filed rate to determine if it is excessive, inadequate, or unfairly discriminatory. The department may initiate proceedings to disapprove a rate if it determines that the rate is excessive, inadequate, or unfairly discriminatory. The Surety Association of America established a maximum premium rate of \$50 for notary bonds for \$1,000 to \$10,000 that it filed with the Department of Insurance.

According to some notary application processing company representatives, the average minimum fee that these companies pay to underwriters will increase from \$40 for a \$5,000 bond to a minimum of \$50 for a \$10,000 bond. On the other hand, representatives from other notary application processing companies state that there will be no increase in the cost for raising the bond amount.

The Department of Insurance provided the following information on notary bond experience.

FLORIDA CLASSIFICATION EXPERIENCE REPORT				
YEAR	DIRECT PREMIUMS WRITTEN	DIRECT PREMIUMS EARNED	DIRECT LOSSES INCURRED	LOSS RATIO
1992	3,243,242	1,679,792	37,261	2.2
1993	2,494,183	1,948,140	18,160	0.9
1994	1,915,636	1,817,237	41,314	2.3
1995	2,191,113	1,824,401	53,825	3.0
1996	2,095,036	2,416,629	37,953	1.6
TOTAL	11,939,212	9,686,249	188,513	1.9

NATIONAL CLASSIFICATION EXPERIENCE REPORT				
YEAR	DIRECT PREMIUMS WRITTEN	DIRECT PREMIUMS EARNED	DIRECT LOSSES INCURRED	LOSS RATIO
1992	19,351,453	17,406,497	533,538	3.1
1993	17,489,921	17,233,640	376,711	2.2
1994	15,819,794	16,740,980	516,940	3.1
1995	16,732,616	16,899,337	503,195	3.0
1996	18,090,320	22,327,884	826,535	3.7
TOTAL	87,484,104	90,608,338	2,756,919	3.0

Due to the increased coverage that would result from increasing the bond amount from \$5,000 to \$10,000, an increase in the number of claims could be experienced.

C. Government Sector Impact:

If the bond amount is raised from \$5,000 to \$10,000, and there is an increase in cost of becoming a notary as a result, there could be a reduction in the number of persons applying to be notaries. The state collects \$39 per notary application. Section 117.01(2), F.S., provides for an application fee of \$25. As well, a surcharge of \$4 is collected that is appropriated to the Executive Office of the Governor for notary education. Also, a \$10 commission certificate fee is collected and appropriated for the Secretary of the State.

VI. Technical Deficiencies:

None.

VII. Related Issues:

During the 1997 Regular Session, CS/SB 1650 passed out of the Senate Committee on Governmental Reform and Oversight. The committee substitute was substantially similar to SB 1130 by Senator Grant, though language increasing the notary bond from \$5,000 to \$10,000 was stricken from the committee substitute. The CS/SB 1650 died in the Committee on Banking and Insurance.

VIII. Amendments:

#1 by Governmental Reform and Oversight:

Reduces the notary bond increase in the bill from \$10,000 to \$7,500.

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