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Proposed Committee Substitute by the Committee on Commerce

A bill to be entitled

An act relating to a review of the Department of State under the Florida Government Accountability Act; reenacting s. 20.10(2)(c), F.S., relating to the Division of Corporations within the department; amending s. 117.01, F.S.; providing a definition; providing for the distribution of the notary application surcharge; transferring administration of notary education and investigation of complaints against notaries from the Governor to the department; revising the notary application requirements; requiring applicants to complete an education course provided by a person or entity registered with the department; requiring the department to randomly review and verify certain application information; requiring a report on the department's findings related to the review; requiring the department to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives relating to the review and verification of criminal history information in notary applications; specifying the fee charged by the Department of Law Enforcement for a criminal history record check; providing that a notary applicant who submits false information relating to his or her criminal history is subject to criminal penalties; disqualifying a notary applicant who has been convicted of certain criminal offenses; deleting



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29           obsolete provisions; requiring bonding entities to  
30           provide an annual report to the department relating to  
31           claims paid; providing for the expiration of  
32           requirements for the department to randomly review and  
33           verify certain criminal history information and to  
34           submit a report on such matters to the Governor, the  
35           President of the Senate, and the Speaker of the House  
36           of Representatives; amending s. 117.05, F.S.; deleting  
37           obsolete provisions; revising provisions related to  
38           notification of a change of name by the notary;  
39           amending s. 117.103, F.S.; providing for the  
40           certification of a notary's authority by the  
41           department, rather than the Secretary of State;  
42           amending s. 117.107, F.S.; making technical changes;  
43           amending s. 668.50, F.S.; deleting education  
44           requirements for first-time applicants for notary  
45           commission; providing an appropriation and authorizing  
46           additional positions; providing effective dates.

47  
48           WHEREAS, sections 11.901-11.920, Florida Statutes, the  
49           Florida Government Accountability Act, subjects the Division of  
50           Corporations within the Department of State to a sunset review  
51           process in order to determine whether the agency should be  
52           retained, modified, or abolished, and

53           WHEREAS, the Department of State produced a report  
54           providing specific information, as enumerated in s. 11.906,  
55           Florida Statutes, and

56           WHEREAS, upon receipt of the report, the Joint Legislative  
57           Sunset Committee and committees of the Senate and the House of



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58 Representatives assigned to act as sunset review committees  
59 reviewed the report and requested studies by the Office of  
60 Program Policy Analysis and Government Accountability, and

61 WHEREAS, based on the report, studies by the Office of  
62 Program Policy Analysis and Government Accountability, and  
63 public input, the legislative sunset review committees made  
64 recommendations on the abolition, continuation, or  
65 reorganization of the Division of Corporations within the  
66 Department of State; on the need for the functions performed by  
67 this division; and on the consolidation, transfer, or  
68 reorganization of programs within the Department of State under  
69 review, NOW, THEREFORE,

70

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

72

73 Section 1. Effective July 1, 2010, paragraph (c) of  
74 subsection (2) of section 20.10, Florida Statutes, is reenacted.

75 Section 2. Section 117.01, Florida Statutes, is amended to  
76 read:

77 117.01 Appointment, application, suspension, ~~revocation,~~  
78 application fee, bond, and oath.—

79 (1) (a) As used in this section the term "department" means  
80 the Department of State.

81 (b) The Governor may appoint as many notaries public as he  
82 or she deems necessary, each of whom must ~~shall~~ be at least 18  
83 years of age and a legal resident of the state. A permanent  
84 resident alien may apply and be appointed and shall file with  
85 his or her application a recorded Declaration of Domicile. The  
86 residence required for appointment must be maintained throughout



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87 the term of appointment. Notaries public shall be appointed for  
88 4 years and shall use and exercise the office of notary public  
89 within the boundaries of this state. An applicant must be able  
90 to read, write, and understand the English language.

91 (2)(a) The application for appointment shall be signed and  
92 sworn to by the applicant and shall be accompanied by a fee of  
93 \$25, together with the \$10 commission fee required by s. 113.01,  
94 and a surcharge of \$4, of which surcharge \$3 shall be ~~\$4 is~~  
95 deposited into the Grants and Donations Trust Fund within  
96 appropriated to the Executive Office of the Governor and to be  
97 used to issue commissions and process suspensions educate and  
98 assist notaries public. The remainder of the surcharge shall be  
99 deposited into the department's Operating Trust Fund and used to  
100 receive and process notary applications, educate and assist  
101 notaries public, and receive and investigate complaints against  
102 notaries public. The department shall submit its findings  
103 regarding such complaints to the Executive Office of the  
104 Governor. The department ~~Executive Office of the Governor~~ may  
105 contract with private vendors to provide the services set forth  
106 in this section. However, no commission fee shall be required  
107 for the issuance of a commission as a notary public to a veteran  
108 who served during a period of wartime service, as defined in s.  
109 1.01(14), and who has been rated by the United States Government  
110 or the United States Department of Veterans Affairs or its  
111 predecessor to have a disability rating of 50 percent or more.†  
112 Such a disability is subject to verification by the department  
113 ~~Secretary of State, which~~ who has authority to adopt reasonable  
114 procedures to implement this paragraph ~~act~~.

115 (b) The oath of office and notary bond required by this



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116 section shall also accompany the application and shall be in a  
117 form prescribed by the department ~~of State~~ which shall require,  
118 but not be limited to, the following information: legal full  
119 name, name to be used as a notary public, residence address and  
120 telephone number, business address and telephone number, date of  
121 birth, race, sex, social security number, citizenship status,  
122 driver's license number or the number of other official state-  
123 issued identification, affidavit of good character from someone  
124 unrelated to the applicant who has known the applicant for 1  
125 year or more, and a list of all professional licenses,  
126 appointments, and commissions issued by the state during the  
127 previous 10 years and a statement as to whether ~~or not~~ the  
128 applicant has had such license, appointment, or commission  
129 revoked or suspended. The application shall also require the  
130 applicant to submit, ~~and~~ a statement as to whether ~~or not~~ the  
131 applicant has been convicted of falsification of records under  
132 s. 893.13 or a felony, and, if there has been a conviction of a  
133 felony, a statement of the nature of the felony and restoration  
134 of civil rights. The applicant may not use a fictitious or  
135 assumed name other than a nickname on an application for  
136 commission.

137 (c) The application shall be maintained by the department  
138 ~~of State~~ for the full term of a notary commission. A notary  
139 public shall notify, in writing, the department ~~of State~~ of any  
140 change in his or her business address, home telephone number,  
141 business telephone number, home address, or criminal record  
142 within 60 days after such change. The department or the Governor  
143 may require any other information the department or the Governor  
144 ~~he or she~~ deems necessary for determining whether an applicant



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145 is eligible for a notary public commission. Each applicant must  
146 swear or affirm on the application that the information on the  
147 application is true and correct.

148 (3) As part of the oath, the applicant must swear that he  
149 or she has read this chapter and knows the duties,  
150 responsibilities, limitations, and powers of a notary public.

151 (4) An applicant for a notary commission, whether original,  
152 renewal, or subsequent, must submit proof that the applicant  
153 has, within 1 year before submitting the application, completed  
154 at least 3 hours of interactive or classroom instruction  
155 covering the duties of the notary public, including electronic  
156 notarization. Courses satisfying this section may be offered by  
157 any public or private-sector person or entity registered with  
158 the department and must include a core curriculum approved by  
159 the department.

160 (5) The department shall, on an annual basis, randomly  
161 select 1 percent of notary public applicants to verify whether  
162 each of the selected applicant's have accurately reported the  
163 existence of a misdemeanor conviction under s. 839.13, any  
164 felony conviction, or the restoration of the applicant's civil  
165 rights. If the department determines that an applicant has  
166 misrepresented information relating to a felony conviction or  
167 restoration of civil rights, the department shall notify the  
168 applicant that he or she is ineligible to become a notary  
169 public.

170 (6) By December 1 of each year, the department shall report  
171 to the Governor, the President of the Senate, and the Speaker of  
172 the House of Representatives a summary of its findings,  
173 including:



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174       (a) The number of applicants it initially identifies and  
175 finally determines have misrepresented information relating to a  
176 misdemeanor conviction under s. 839.13, a felony conviction, or  
177 restoration of civil rights;

178       (b) Problems associated with implementation of the  
179 requirement to verify an applicant's statements relating to a  
180 felony conviction or restoration of civil rights;

181       (c) The sufficiency of resources to verify an applicant's  
182 conviction of a misdemeanor under s. 839.13, a felony, or  
183 restoration of civil rights; and

184       (d) Any other information the department deems pertinent to  
185 include in the report.

186       (7) The department shall conspicuously place the following  
187 statement on the notary application form:

188  
189       Please note that the required criminal history  
190 information required on this form is subject to  
191 verification through the Florida Crime Information  
192 Center and National Crime Information Center criminal  
193 information systems. The submission of a false  
194 statement relating to a person's criminal history or  
195 restoration of the person's civil rights constitutes a  
196 violation of s. 817.155, a third-degree felony, and is  
197 punishable as provided in s. 775.082, s. 775.083, or  
198 s. 775.084.

199       (8) The Department of Law Enforcement may charge the  
200 department a fee of \$.... for each level 1 criminal history  
201 record check performed using the Florida Crime Information  
202 Center criminal information system.



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203       (9) A notary applicant is not eligible to be appointed or  
204 commissioned as a notary if he or she has been convicted of a  
205 misdemeanor under s. 839.13 for falsifying records or any  
206 felony, unless the applicant's civil rights have been restored.

207       ~~(10)-(4)~~ The Governor may suspend a notary public for any of  
208 the grounds provided in s. 7, Art. IV of the State Constitution.  
209 Grounds constituting malfeasance, misfeasance, or neglect of  
210 duty include, ~~but are not limited to,~~ the following:

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

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

213           (c) Failure to cooperate or respond to an investigation by  
214 the department or Governor's office ~~or the Department of State~~  
215 regarding a complaint.

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

217           (e) False or misleading advertising relating to notary  
218 public services.

219           (f) Unauthorized practice of law.

220           (g) Failure to report a change in business or home address  
221 or telephone number, or failure to submit documentation to  
222 request an amended commission after a lawful name change, within  
223 the specified period of time.

224           (h) Commission of fraud, misrepresentation, or any  
225 intentional violation of this chapter.

226           (i) Charging fees in excess of fees authorized by this  
227 chapter.

228           (j) Failure to maintain the bond required by this chapter  
229 section.

230       (k) Falsifying records under s. 839.13.

231       ~~(11)-(5)~~(a) If a notary public receives notice from the





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232 department ~~of State~~ that he or she has been suspended from his  
233 ~~or her office has been declared vacant~~, the notary public shall  
234 forthwith mail or deliver to the department ~~Secretary of State~~  
235 his or her notary commission.

236 (b) A notary public who wishes to resign his or her  
237 commission, or a notary public who does not maintain legal  
238 residence in this state during the entire term of appointment,  
239 or a notary public whose resignation is required by the  
240 Governor, shall send a signed letter of resignation to the  
241 Governor and shall return his or her certificate of notary  
242 public commission to the department. The resigning notary public  
243 shall destroy his or her official notary public seal of office,  
244 unless the Governor requests its return.

245 (12) ~~(6)~~ A ~~No~~ person may not be automatically reappointed as  
246 a notary public. The application process must be completed  
247 regardless of whether an applicant is requesting his or her  
248 first notary commission, a renewal of a commission, or any  
249 subsequent commission.

250 (13) ~~(7)~~ ~~(a)~~ A notary public shall, prior to executing the  
251 duties of the office and throughout the term of office, give  
252 bond, payable to any individual harmed as a result of a breach  
253 of duty by the notary public acting in his or her official  
254 capacity, in the amount of \$7,500, conditioned for the due  
255 discharge of the office and shall take an oath that he or she  
256 will honestly, diligently, and faithfully discharge the duties  
257 of the notary public. The bond shall be approved and filed with  
258 the department ~~of State~~ and executed by a surety company for  
259 hire duly authorized to transact business in this state.

260 ~~(b) Any notary public whose term of appointment extends~~



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261 ~~beyond January 1, 1999, is required to increase the amount of~~  
262 ~~his or her bond to \$7,500 only upon reappointment on or after~~  
263 ~~January 1, 1999.~~

264 ~~(c) Beginning July 1, 1996,~~ Surety companies for hire which  
265 process notary public applications, oaths, affidavits of  
266 character, and bonds for submission to the department ~~of State~~  
267 must properly submit these documents in a software and hard copy  
268 format approved by the department ~~of State~~.

269 ~~(14)(8) Any~~ Upon payment to any individual harmed as a  
270 result of a breach of duty by the notary public, the entity  
271 issuing bonds for notaries public must annually report to the  
272 department whether any bonds have been paid and, if bonds have  
273 been paid, the report must include the circumstances that led to  
274 each claim. If an entity issuing bonds does not provide the  
275 required annual report to the department by January 1, the  
276 department may not accept bonding certificates from the entity  
277 until the entity submits the report to the department ~~who has~~  
278 ~~issued the bond for the notary public shall notify the Governor~~  
279 ~~of the payment and the circumstances which led to the claim.~~

280 (15) Subsections (5) and (6), which require the department  
281 to verify certain criminal history information of notary public  
282 applicants and provide a related annual report, expire December  
283 31, 2015.

284 Section 3. Subsections (3) and (9) of section 117.05,  
285 Florida Statutes, are amended to read:

286 117.05 Use of notary commission; unlawful use; notary fee;  
287 seal; duties; employer liability; name change; advertising;  
288 photocopies; penalties.-

289 (3) (a) A notary public seal shall be affixed to all



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290 notarized paper documents and shall be of the rubber stamp type  
291 and shall include the words "Notary Public-State of Florida."  
292 The seal shall also include the name of the notary public, the  
293 date of expiration of the commission of the notary public, and  
294 the commission number. The rubber stamp seal must be affixed to  
295 the notarized paper document in photographically reproducible  
296 black ink. Every notary public shall print, type, or stamp below  
297 his or her signature on a paper document his or her name exactly  
298 as commissioned. An impression-type seal may be used in addition  
299 to the rubber stamp seal, but the rubber stamp seal shall be the  
300 official seal for use on a paper document, and the impression-  
301 type seal may not be substituted therefore ~~therefor~~.

302 ~~(b) Any notary public whose term of appointment extends~~  
303 ~~beyond January 1, 1992, is required to use a rubber stamp type~~  
304 ~~notary public seal on paper documents only upon reappointment on~~  
305 ~~or after January 1, 1992.~~

306 (b)(e) The notary public official seal and the certificate  
307 of notary public commission are the exclusive property of the  
308 notary public and must be kept under the direct and exclusive  
309 control of the notary public. The seal and certificate of  
310 commission must not be surrendered to an employer upon  
311 termination of employment, regardless of whether the employer  
312 paid for the seal or for the commission.

313 (c)(d) A notary public whose official seal is lost, stolen,  
314 or believed to be in the possession of another person shall  
315 immediately notify the Department of State ~~or the Governor~~ in  
316 writing.

317 (d)(e) Any person who unlawfully possesses a notary public  
318 official seal or any papers or copies relating to notarial acts



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319 commits ~~is guilty of~~ a misdemeanor of the second degree,  
320 punishable as provided in s. 775.082 or s. 775.083.

321 (9) Any notary public who lawfully changes his or her name  
322 shall, within 60 days after such change, request an amended  
323 commission from the Department of State ~~Secretary of State~~ and  
324 shall send \$25, his or her current commission, and a notice of  
325 change form, obtained from the Department of State ~~Secretary of~~  
326 ~~State~~, which shall include the new name and contain a specimen  
327 of his or her official signature. The Department of State  
328 ~~Secretary of State~~ shall issue an amended commission to the  
329 notary public in the new name. A rider to the notary public's  
330 bond must accompany the notice of change form. After submitting  
331 the required notice of change form and rider to the Department  
332 of State ~~Secretary of State~~, the notary public may continue to  
333 perform notarial acts in his or her former name for 60 days or  
334 until receipt of the amended commission, whichever date is  
335 earlier.

336 Section 4. Section 117.103, Florida Statutes, is amended to  
337 read:

338 117.103 Certification of notary's authority by the  
339 Department of State ~~Secretary of State~~.—A notary public is not  
340 required to record his or her notary public commission in an  
341 office of a clerk of the circuit court. If certification of the  
342 notary public's commission is required, it must be obtained from  
343 the Department of State ~~Secretary of State~~. Upon the receipt of  
344 a written request and a fee of \$10 payable to the Department of  
345 State ~~Secretary of State~~, the Department of State ~~Secretary of~~  
346 ~~State~~ shall issue a certificate of notarial authority, in a form  
347 prescribed by the Department of State ~~Secretary of State~~, which



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348 shall include a statement explaining the legal qualifications  
349 and authority of a notary public in this state.

350 Section 5. Subsections (2) and (4) of section 117.107,  
351 Florida Statutes, are amended to read:

352 117.107 Prohibited acts.—

353 (2) A notary public may not sign notarial certificates  
354 using a facsimile signature stamp unless the notary public has a  
355 physical disability that limits or prohibits his or her ability  
356 to make a written signature and ~~unless~~ the notary public has  
357 first submitted written notice to the Department of State with  
358 an exemplar of the facsimile signature stamp.

359 (4) A notary public may not take the acknowledgment of or  
360 administer an oath to a person whom the notary public actually  
361 knows to have been adjudicated mentally incapacitated by a court  
362 of competent jurisdiction, if ~~where~~ the acknowledgment or oath  
363 necessitates the exercise of a right that has been removed  
364 pursuant to s. 744.3215(2) or (3), and ~~where~~ the person has not  
365 been restored to capacity as a matter of record.

366 Section 6. Subsection (11) of section 668.50, Florida  
367 Statutes, is amended to read:

368 668.50 Uniform Electronic Transaction Act.—

369 (11) NOTARIZATION AND ACKNOWLEDGMENT.—

370 ~~(a)~~ If a law requires a signature or record to be  
371 notarized, acknowledged, verified, or made under oath, the  
372 requirement is satisfied if the electronic signature of the  
373 person authorized by applicable law to perform those acts,  
374 together with all other information required to be included by  
375 other applicable law, is attached to or logically associated  
376 with the signature or record. Neither a rubber stamp nor an



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377 impression type seal is required for an electronic notarization.

378 ~~(b) A first-time applicant for a notary commission must~~  
379 ~~submit proof that the applicant has, within 1 year prior to the~~  
380 ~~application, completed at least 3 hours of interactive or~~  
381 ~~classroom instruction, including electronic notarization, and~~  
382 ~~covering the duties of the notary public. Courses satisfying~~  
383 ~~this section may be offered by any public or private sector~~  
384 ~~person or entity registered with the Executive Office of the~~  
385 ~~Governor and must include a core curriculum approved by that~~  
386 ~~office.~~

387 Section 7. The sum of \$120,000 in recurring funds from the  
388 Operating Trust Fund is appropriated to the Department of State  
389 and one full-time equivalent position, with associated salary  
390 rate of 38,652 is authorized, for the 2010-2011 fiscal year for  
391 the purpose of carrying out the provisions of this act related  
392 to notaries public.

393 Section 8. Except as otherwise expressly provided in this  
394 act and except for this section, which shall take effect July 1,  
395 2010, this act shall take effect January 1, 2011.