

By the Committees on Commerce; and Commerce

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1 A bill to be entitled
2 An act relating to a review of the Department of State
3 under the Florida Government Accountability Act;
4 reenacting s. 20.10(2)(c), F.S., relating to the
5 Division of Corporations within the department;
6 amending s. 117.01, F.S.; assigning various duties of
7 the Executive Office of the Governor relating to
8 notaries public to the department; revising the
9 application requirements for notaries public;
10 requiring notary public applicants to complete certain
11 interactive or classroom instruction; authorizing
12 certain persons or entities to offer courses for the
13 required instruction; revising provisions for the
14 deposit and use of funds from the notary public
15 surcharge; providing penalties for applicants who
16 submit applications containing certain statements;
17 requiring the department to provide notice on notary
18 application forms of criminal penalties for providing
19 false information; providing for the filing and
20 investigation of complaints against notaries public;
21 requiring the department to submit investigative
22 findings to the Executive Office of the Governor;
23 deleting obsolete provisions relating to notary bonds;
24 requiring entities issuing notary bonds to submit
25 annual reports to the department; requiring the
26 department to refuse bonding certificates from such
27 entity that does not submit its annual report by a
28 specified date; conforming provisions; amending ss.
29 117.021, 117.05, and 117.103, F.S.; deleting an

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30 obsolete provision relating to notary public seals;
31 conforming provisions; amending s. 117.107, F.S.;
32 prohibiting a notary public from using a signature
33 stamp except under certain circumstances; providing
34 penalties; specifying that notaries public are subject
35 to suspension under certain circumstances;
36 transferring the administration of certain provisions
37 relating to notaries public from the Executive Office
38 of the Governor to the department; amending s. 668.50,
39 F.S.; deleting requirements for certain interactive or
40 classroom instruction for notaries public, to conform;
41 providing an appropriation and authorizing additional
42 positions; providing effective dates.

43
44 Be It Enacted by the Legislature of the State of Florida:

45
46 Section 1. Paragraph (c) of subsection (2) of section
47 20.10, Florida Statutes, is reenacted.

48 Section 2. Effective January 1, 2011, section 117.01,
49 Florida Statutes, is amended to read:

50 117.01 Appointment, application, suspension, ~~revocation,~~
51 application fee, bond, and oath.—

52 (1) The Governor may appoint as many notaries public as he
53 or she deems necessary, each of whom shall be at least 18 years
54 of age and a legal resident of the state. A permanent resident
55 alien may apply and be appointed and shall file with his or her
56 application a recorded declaration of domicile. The residence
57 required for appointment must be maintained throughout the term
58 of appointment.

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59 (2) An applicant for appointment as a notary public,
60 including an original, renewal, or subsequent applicant, must
61 submit proof that he or she has, within 1 year before
62 application for such appointment, completed at least 3 hours of
63 interactive or classroom instruction, including electronic
64 notarization, covering the duties of the notary public. Courses
65 satisfying this subsection may be offered by any public or
66 private sector person or entity registered with the Department
67 of State and must include a core curriculum approved by the
68 department.

69 (3) A notary ~~Notaries~~ public shall be appointed for a term
70 of 4 years and shall use and exercise the office of notary
71 public within the boundaries of this state. An applicant must be
72 able to read, write, and understand the English language.

73 (4) (a) ~~(2)~~ The application for appointment must ~~shall~~ be
74 signed and sworn to or affirmed by the applicant, submitted to
75 the Department of State, and ~~shall be~~ accompanied by a fee of
76 \$25, together with the \$10 commission fee required by s. 113.01,
77 and a surcharge of \$4. Of the surcharge, \$2.80 shall be
78 deposited in the Grants and Donations Trust Fund of ~~which \$4 is~~
79 ~~appropriated to~~ the Executive Office of the Governor to be used
80 to fund the issuance of notary commissions and the processing of
81 suspensions, and the remaining \$1.20 shall be deposited in the
82 Operating Trust Fund of the Department of State to be used to
83 fund the processing of notary applications, education educate
84 and assistance for ~~assist~~ notaries public, and the investigation
85 of complaints against notaries public. The Department of State
86 ~~Executive Office of the Governor~~ may contract with private
87 vendors to provide the services set forth in this section.

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88 However, ~~a ne~~ commission fee is not ~~shall be~~ required for the
89 issuance of a commission as a notary public to a veteran who
90 served during a period of wartime service, as defined in s.
91 1.01(14), and who has been rated by the United States Government
92 or the United States Department of Veterans Affairs or its
93 predecessor to have a disability rating of 50 percent or more;
94 such a disability is subject to verification by the Department
95 Secretary of State, which ~~who~~ has authority to adopt reasonable
96 procedures to implement this chapter act.

97 (b) An application must be accompanied by the oath of
98 office and the notary bond required by this section. An ~~shall~~
99 ~~also accompany the application~~ must and shall be submitted in
100 the format a form prescribed by the Department of State and must
101 include, at a minimum ~~which shall require, but not be limited~~
102 ~~to,~~ the following information:

103 1. The applicant's legal full name.

104 2. The applicant's residence address and telephone number.

105 3. The applicant's business address and telephone number.

106 4. The applicant's date of birth, ethnicity, race, gender,
107 and citizenship status. ~~sex,~~

108 5. The applicant's social security number. ~~citizenship~~
109 ~~status,~~

110 6. The applicant's driver ~~driver's~~ license number or the
111 number of another ~~other~~ official state-issued identification.
112 ~~affidavit of good character from someone unrelated to the~~
113 ~~applicant who has known the applicant for 1 year or more,~~

114 7. A list of all professional licenses and commissions
115 issued by the state to the applicant during the previous 10
116 years and a statement as to whether ~~or not~~ the applicant has had

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117 such license or commission revoked or suspended, ~~and~~

118 8. A statement as to whether the applicant has previously
119 been commissioned as a notary public in this state.

120 9. A statement as to whether ~~or not~~ the applicant has been
121 convicted or found guilty of a felony, and, if convicted or
122 found guilty ~~there has been a conviction,~~ a statement of the
123 nature of the felony and restoration of civil rights. ~~The~~
124 ~~applicant may not use a fictitious or assumed name other than a~~
125 ~~nickname on an application for commission.~~

126 (c) The application shall be maintained by the Department
127 of State for the full term of a notary commission. A notary
128 public shall notify, in writing, the Department of State of any
129 change in his or her business address ~~or, home~~ telephone number,
130 ~~residence address or business~~ telephone number, ~~home address,~~ or
131 criminal ~~history record~~ within 60 days after such change.

132 (d) The Department of State or Governor may require any
133 other information ~~he or she deems~~ necessary for determining
134 whether an applicant is eligible for a notary public commission.
135 Each applicant must swear or affirm on the application that the
136 information on the application is true and correct.

137 (e) An applicant who submits an application that he or she
138 knows to contain any false, fictitious, or fraudulent statement
139 violates s. 817.155.

140 (f) The Department of State shall conspicuously place on
141 all notary public application forms the following statement:

142
143 Please note that any applicant who submits an
144 application that he or she knows to contain any false,
145 fictitious, or fraudulent statement commits a felony

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146 of the third degree pursuant to s. 817.155, Florida
147 Statutes.

148 (5)~~(3)~~ As part of the oath, the applicant must swear or
149 affirm that he or she has read this chapter and knows the
150 duties, responsibilities, limitations, and powers of a notary
151 public.

152 (6) Any person may file a complaint with the Department of
153 State alleging a violation of this chapter by a notary public.
154 Upon receipt of a complaint, the department shall investigate
155 the complaint and submit a summary of its investigative findings
156 to the Executive Office of the Governor.

157 (7)~~(4)~~ The Governor may suspend a notary public for any of
158 the grounds provided in s. 7, Art. IV of the State Constitution.
159 Grounds constituting malfeasance, misfeasance, or neglect of
160 duty include, but are not limited to, the following:

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

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

163 (c) Failure to cooperate with or respond to an
164 investigation by the Executive Office of the Governor ~~Governor's~~
165 ~~office~~ or the Department of State regarding a complaint.

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

167 (e) False or misleading advertising relating to notary
168 public services.

169 (f) Unauthorized practice of law.

170 (g) Failure to report a change in business or residence
171 ~~home~~ address or telephone number, or failure to submit
172 documentation to request an amended commission after a lawful
173 name change, within the specified period of time.

174 (h) Commission of fraud, misrepresentation, or any

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175 intentional violation of this chapter.

176 (i) Charging fees in excess of fees authorized by this
177 chapter.

178 (j) Failure to maintain the bond required by this section.

179 ~~(8)-(5)~~(a) If a notary public receives notice from the
180 Department of State that he or she ~~his or her office~~ has been
181 suspended from office ~~declared vacant~~, the notary public shall
182 forthwith mail or deliver ~~to the Secretary of State~~ his or her
183 notary commission to the Department of State.

184 (b) A notary public who wishes to resign his or her
185 commission, or a notary public who does not maintain legal
186 residence in this state during the entire term of appointment,
187 or a notary public whose resignation is required by the
188 Governor, shall send a signed letter of resignation to the
189 Governor and shall return his or her certificate of notary
190 public commission. The resigning notary public shall destroy his
191 or her official notary public seal of office, unless the
192 Governor requests its return.

193 ~~(9)-(6)~~ A ~~No~~ person may not ~~be~~ automatically be reappointed
194 as a notary public. The application process must be completed
195 ~~regardless of~~ whether an applicant is requesting his or her
196 initial ~~first~~ notary commission, a renewal of a commission, or
197 any subsequent commission.

198 ~~(10)-(7)~~(a) A notary public shall, before ~~prior to~~ executing
199 the duties of the office and throughout the term of office, give
200 bond, payable to any individual harmed as a result of a breach
201 of duty by the notary public acting in his or her official
202 capacity, in the amount of \$7,500, conditioned on ~~for~~ the due
203 discharge of the office and shall take an oath that he or she

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204 will honestly, diligently, and faithfully discharge the duties
205 of the notary public. The bond shall be approved and filed with
206 the Department of State and executed by a surety company for
207 hire duly authorized to transact business in this state.

208 ~~(b) Any notary public whose term of appointment extends~~
209 ~~beyond January 1, 1999, is required to increase the amount of~~
210 ~~his or her bond to \$7,500 only upon reappointment on or after~~
211 ~~January 1, 1999.~~

212 ~~(b)(c) Beginning July 1, 1996,~~ Surety companies for hire
213 which process notary public applications, oaths, affidavits of
214 character, or ~~and~~ bonds for submission to the Department of
215 State must properly submit these documents in a software and
216 hard copy format approved by the department ~~of State.~~

217 ~~(11)(8) Upon payment to~~ Any individual harmed as a result
218 ~~of a breach of duty by the notary public,~~ the entity issuing
219 bonds for one or more notaries public must submit to the
220 Department of State an annual report that includes a statement
221 of whether any bonds were paid and, if the bonds were paid, a
222 summary of ~~who has issued the bond for the notary public shall~~
223 ~~notify the Governor of the payment and the circumstances that~~
224 ~~which~~ led to the claim. If an entity issuing such bonds does not
225 submit its annual report to the department by January 1, the
226 department shall refuse to accept bonding certificates from the
227 entity until the entity submits its annual report.

228 Section 3. Effective January 1, 2011, subsection (4) of
229 section 117.021, Florida Statutes, is amended to read:

230 117.021 Electronic notarization.-

231 (4) Failure of a notary public to comply with any of the
232 requirements of this section may constitute grounds for

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233 suspension of the notary public's commission by the ~~Executive~~
234 ~~Office of the~~ Governor.

235 Section 4. Effective January 1, 2011, subsections (1), (3),
236 and (9) of section 117.05, Florida Statutes, are amended to
237 read:

238 117.05 Use of notary commission; unlawful use; notary fee;
239 seal; duties; employer liability; name change; advertising;
240 photocopies; penalties.-

241 (1) A ~~No~~ person may not ~~shall~~ obtain or use a notary public
242 commission in other than his or her legal name or, ~~and it is~~
243 ~~unlawful for a notary public to~~ notarize his or her own
244 signature. Any person applying for a notary public commission
245 must submit proof of identity to the Department of State if ~~so~~
246 requested. Any person who violates ~~the provisions of~~ this
247 subsection commits ~~is guilty of~~ a felony of the third degree,
248 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

249 (3) (a) A notary public seal shall be affixed to all
250 notarized paper documents and shall be of the rubber stamp type
251 and shall include the words "Notary Public-State of Florida."
252 The seal shall also include the name of the notary public, the
253 date of expiration of the commission of the notary public, and
254 the commission number. The rubber stamp seal must be affixed to
255 the notarized paper document in photographically reproducible
256 black ink. Every notary public shall print, type, or stamp below
257 his or her signature on a paper document his or her name exactly
258 as commissioned. An impression-type seal may be used in addition
259 to the rubber stamp seal, but the rubber stamp seal shall be the
260 official seal for use on a paper document, and the impression-
261 type seal may not be substituted therefor.

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

266 (b)~~(e)~~ The notary public official seal and the certificate
267 of notary public commission are the exclusive property of the
268 notary public and must be kept under the direct and exclusive
269 control of the notary public. The seal and certificate of
270 commission must not be surrendered to an employer upon
271 termination of employment, regardless of whether the employer
272 paid for the seal or for the commission.

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

277 (d)~~(e)~~ Any person who unlawfully possesses a notary public
278 official seal or any papers or copies relating to notarial acts
279 is guilty of a misdemeanor of the second degree, punishable as
280 provided in s. 775.082 or s. 775.083.

281 (9) Any notary public who lawfully changes his or her name
282 shall, within 60 days after such change, request an amended
283 commission from the Department Secretary of State and shall send
284 \$25, his or her current commission, and a notice of change form,
285 obtained from the department Secretary of State, which shall
286 include the new name and contain a specimen of his or her
287 official signature. The Department Secretary of State shall
288 issue an amended commission to the notary public in the new
289 name. A rider to the notary public's bond must accompany the
290 notice of change form. After submitting the required notice of

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291 change form and rider to the Department Secretary of State, the
292 notary public may continue to perform notarial acts in his or
293 her former name for 60 days or until receipt of the amended
294 commission, whichever date is earlier.

295 Section 5. Effective January 1, 2011, section 117.103,
296 Florida Statutes, is amended to read:

297 117.103 Certification of notary's authority by Department
298 ~~Secretary~~ of State.—A notary public is not required to record
299 his or her notary public commission in an office of a clerk of
300 the circuit court. If certification of the notary public's
301 commission is required, it must be obtained from the Department
302 ~~Secretary~~ of State. Upon ~~the~~ receipt of a written request and a
303 fee of \$10 payable to the Department Secretary of State, the
304 department Secretary of State shall issue a certificate of
305 notarial authority, in a form prescribed by the department
306 ~~Secretary of State~~, which shall include a statement explaining
307 the legal qualifications and authority of a notary public in
308 this state.

309 Section 6. Effective January 1, 2011, subsections (2) and
310 (9) of section 117.107, Florida Statutes, are amended to read:

311 117.107 Prohibited acts.—

312 (2) A notary public may not sign notarial certificates
313 using a ~~facsimile~~ signature stamp unless the notary public has a
314 physical disability that limits or prohibits his or her ability
315 to make a written signature and unless the notary public has
316 first submitted written notice to the Department of State with
317 an exemplar of the ~~facsimile~~ signature stamp.

318 (9) A notary public may not notarize a signature on a
319 document if the person whose signature ~~is~~ being notarized is not

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320 in the presence of the notary public at the time the signature
 321 is notarized. Any notary public who violates this subsection is
 322 guilty of a civil infraction, punishable by penalty not
 323 exceeding \$5,000, and such violation constitutes malfeasance and
 324 misfeasance in the conduct of official duties. It is not a ~~no~~
 325 defense to the civil infraction specified in this subsection
 326 that the notary public acted without intent to defraud. A notary
 327 public who violates this subsection with the intent to defraud
 328 violates is guilty of violating s. 117.105 and is subject to
 329 suspension pursuant to s. 117.01(7).

330 Section 7. All powers, duties, functions, rules, records,
 331 personnel, and property; unexpended balances of appropriations,
 332 allocations, or other funds; administrative authority; pending
 333 issues; and existing contracts of the Executive Office of the
 334 Governor relating to notaries public or the administration of
 335 chapter 117, Florida Statutes, except for the issuance of notary
 336 commissions and the suspension of notaries public, are
 337 transferred by a type two transfer, as defined in s. 20.06(2),
 338 Florida Statutes, from the Executive Office of the Governor to
 339 the Department of State.

340 Section 8. Subsection (11) of section 668.50, Florida
 341 Statutes, is amended to read:

342 668.50 Uniform Electronic Transaction Act.—

343 (11) NOTARIZATION AND ACKNOWLEDGMENT.—

344 ~~(a)~~ If a law requires a signature or record to be
 345 notarized, acknowledged, verified, or made under oath, the
 346 requirement is satisfied if the electronic signature of the
 347 person authorized by applicable law to perform those acts,
 348 together with all other information required to be included by

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349 other applicable law, is attached to or logically associated
350 with the signature or record. Neither a rubber stamp nor an
351 impression type seal is required for an electronic notarization.

352 ~~(b) A first-time applicant for a notary commission must~~
353 ~~submit proof that the applicant has, within 1 year prior to the~~
354 ~~application, completed at least 3 hours of interactive or~~
355 ~~classroom instruction, including electronic notarization, and~~
356 ~~covering the duties of the notary public. Courses satisfying~~
357 ~~this section may be offered by any public or private sector~~
358 ~~person or entity registered with the Executive Office of the~~
359 ~~Governor and must include a core curriculum approved by that~~
360 ~~office.~~

361 Section 9. The sum of \$120,000 in recurring funds from the
362 Operating Trust Fund is appropriated to the Department of State
363 and one full-time equivalent position, with associated salary
364 rate of 38,652 is authorized, for the 2010-2011 fiscal year for
365 the purpose of carrying out the provisions of this act related
366 to notaries public.

367 Section 10. Except as otherwise expressly provided in this
368 act, this act shall take effect July 1, 2010.