

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: April 1, 1998 Revised: _____

Subject: Notaries

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

I. Summary:

This bill clarifies and reorganizes ch. 117, F.S., which relates to notaries public. The bill specifies that a notary public may perform official duties only in Florida and requires that applicant must be able to read, write, and understand the English language. As well, the bill requires submission of a letter of resignation from notaries who do not maintain legal residence in the state during their commission period or when the Governor requires their resignation. The bill places solemnization of marriage authority in a newly-created section of law. The bill increases the amount of the notary bond from \$5,000 to \$7,500. Notaries would be required to make reasonable accommodations to provide services to persons with disabilities. The bill also modifies and makes uniform notary forms throughout the Florida Statutes.

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, 118.10, 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

¹Section 117.01(1), F.S.

notary public, a person must be at least 18 years of age and be a legal resident of Florida.² 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

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.

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. The bill also authorizes the Executive Office of the Governor to contract with private vendors to provide the notary educational services set forth in this section.

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 \$7,500. 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.

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.

Section 10. The bill amends s. 118.10, F.S., which relates to Florida international notaries. This section was enacted in 1997 to empower the Secretary of State to commission Florida international notaries. These notaries are authorized to issue authentication instruments for use in non-United States jurisdictions. The act was in response to problems encountered with transactions between persons in Florida with persons in other countries due to the lack of a domestic equivalent to an international notary to execute and authenticate transactions. The current law defines the term “authentication instrument” to mean “an instrument executed by a Florida international notary . . . which includes the particulars and capacities to act of transacting parties, a confirmation of the full text of the instrument, the signatures of the parties or legal equivalent thereof, and the signature and seal of a Florida international notary as prescribed by the Florida Secretary of State for use in a jurisdiction outside the borders of the United States.” Also defined is the term “Florida international notary” to mean a person who is admitted to the practice of law in this state, who has practiced law for at least 5 years, and who has been commissioned by the Secretary of State as a Florida international notary. These authentication instruments have no legal consequences or effects as authentication instruments in the United States. In addition, international notaries may not authenticate documents for use in countries which are not diplomatically recognized by the United States.

The bill changes the term “authentication instruments” to “authentic acts” to conform to the terminology more commonly used in civil law countries. It also strikes the provisions of current law that specify that the authentication instruments are not valid within the United States, so that the authentic acts of a Florida international notary will have legal effect in other states of the U.S.

as well as in foreign jurisdictions. The bill clarifies that only members of The Florida Bar are authorized to become Florida international notaries and further authorizes the Secretary of State to impose certain testing requirements and take certain regulatory actions subject to agreement by The Florida Bar.

Sections 11-19. 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.

Section 20. Effective date of January 1, 1999.

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 \$7,500. 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. (The Committee Substitute lowered the bond to \$7,500.) 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 \$7,500, an increase in the number of claims could be experienced.

C. Government Sector Impact:

If the bond amount is raised from \$5,000 to \$7,500, 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:

None.

VIII. Amendments:

None.

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