

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: CS/SB 172

INTRODUCER: Commerce and Tourism Committee and Senator Soto

SUBJECT: Notaries Public

DATE: March 11, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Malcolm	Hrdlicka	CM	Fav/CS
2.			RI	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 172 requires a notary public (notary or notaries) to maintain a paper or electronic notarial journal to record certain information at the time of a notarial act. The journal must be kept in a locked and secured area, and in the case of an electronic journal, must be password-protected. Additionally, the journal must be kept for at least 5 years, and the notary must notify the Department of State (DOS) immediately if the journal is lost, stolen, misplaced, destroyed, rendered unusable, or otherwise inaccessible. Failure to comply is grounds for suspension or nonrenewal of the notary's commission and grounds for the denial of a subsequent commission by the Governor. Law enforcement and correctional officers are exempt from the journal requirement.

**II. Present Situation:**

**Notary Public Administration**

Notaries are referenced in the State Constitution as public officers, which are appointed and commissioned by the Governor.<sup>1</sup>

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<sup>1</sup> See Fla. Const. art. II, s. 5, and art. IV, s. 1.; s. 117.01(1), F.S. Notaries differ from other types of public officers (e.g., legislators, law enforcement, clerks of court). For example, notaries are not eligible for the same types of benefits and protections provided for public officers, such as those provided under chs. 111 and 112, F.S.

A notary has been defined as a

public officer whose function it is to attest and certify, by his or her hand and official seal, certain classes of documents in order to give them credit and authenticity in foreign jurisdictions, to take acknowledgements of and certify deeds and other conveyances, and to perform certain official acts, chiefly in commercial matters.<sup>2</sup>

Simply stated, a notary verifies the identities of individuals involved in certain legal transactions and is the gatekeeper for preventing fraudulent transactions. Examples of functions a notary performs include administering oaths and acknowledging deeds and other instruments.<sup>3</sup>

The appointment, commissioning, and activities of notaries are regulated under ch. 117, F.S. Administrative oversight of notaries is provided by both DOS and the Executive Office of the Governor (EOG). The EOG's notary section is responsible for appointing, investigating, and educating notary applicants. It also has the discretion to suspend notary commissions. The Division of Corporations (division) within DOS is responsible for processing notary applications, approving and recording the required bond, issuing notary commissions and certificates of notarial authority, and recording the results of actions taken by the EOG against a notary.

### **Legal Qualifications for Florida Notaries Public**

Notary applicants must meet certain qualifications prior to being commissioned by the Governor. Among the qualifications, an applicant is required to:

- Be at least 18 years of age;
- Be a legal resident of the state and maintain such residency throughout his or her term of appointment;
- Be able to read, write, and understand the English language;
- Submit an affidavit of good character from an unrelated third-party;
- Submit a statement as to whether the applicant has been convicted of a felony;
- Obtain a bond for \$7,500, payable to any individual harmed as a result of a breach of duty by the notary; and
- Provide any other information the Governor deems necessary.<sup>4</sup>

In addition, first-time notary applicants must submit proof that the applicant has, within 1 year prior to the application, completed at least 3 hours of interactive or classroom instruction.<sup>5</sup>

Notary applicants, including renewals, must pay a \$25 application fee and a \$10 commission fee.<sup>6</sup> Applicants must also pay a \$4 fee, which is used to educate and assist notaries.

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<sup>2</sup> 66 C.J.S. Notaries s. 1 (2013); *see also Commercial Union Ins. Co. of New York v. Burt Thomas-Aitken Const. Co.*, 230 A.2d 498, 499 (N.J. 1967). The dictionary defines a notary public as a "person authorized by a state to administer oaths, certify documents, attest to the authenticity of signatures, and perform official acts in commercial matters, such as protesting negotiable instruments." Black's Law Dictionary (9th ed. 2009).

<sup>3</sup> Sections 117.03-.04, F.S.

<sup>4</sup> Section 117.01, F.S.

<sup>5</sup> Section 668.50(11)(b), F.S.

<sup>6</sup> Section 117.01(2), F.S.

A notary is appointed for a 4-year term and no person may be automatically reappointed as a notary.<sup>7</sup> Accordingly, “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.”<sup>8</sup>

Certain types of law enforcement, correctional, and investigative officers are authorized to administer oaths when engaged in the performance of official duties and as such are exempt from a number of the provisions of ch. 117, F.S.

### **Notary Misconduct**

Under s. 117.01, F.S., the Governor is responsible for disciplining notaries. The Governor may suspend a notary for any of the grounds provided in Article IV, section 7 of the Florida Constitution.<sup>9</sup> Acts of malfeasance, misfeasance, or neglect of duty that may result in suspension include:

- A material false statement on the application;
- A complaint found to have merit by the Governor;
- Failure to cooperate or respond to an investigation regarding a complaint;
- Official misconduct as defined in s. 838.022, F.S.;
- False or misleading advertising;
- Unauthorized practice of law;
- Failure to report a change in address or telephone number, or failure to submit documentation to request an amended commission after a lawful name change;
- Commission of fraud, misrepresentation, or any intentional violation of ch. 117, F.S.;
- Charging fees in excess of fees authorized by state law; and
- Failure to maintain the required surety bond.

Additional examples of notary misconduct include forgery of signatures, notarization of signatures of persons not present before the notary, and notarization of blank documents that are later drafted with fraudulent terms.<sup>10</sup> The National Notary Association reports that in Florida, notary misconduct is especially prevalent in fraudulent real estate transactions where the elderly and those who speak English poorly are targeted.<sup>11</sup> Notary misconduct is punishable as a third-degree felony or second-degree misdemeanor.<sup>12</sup>

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<sup>7</sup> *Id.* at (1), (6).

<sup>8</sup> *Id.* at (6).

<sup>9</sup> The grounds for suspension under article IV, section 7 are malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony.

<sup>10</sup> See Lilly, Joanna, *The Unlawful Notary*, available at <http://www.lastwordedits.com/unlawfulnotary.pdf> (last visited Mar. 5, 2014).

<sup>11</sup> National Notary Association, *The Growing Real Estate Problem in Florida: How Requiring a Thumbprint in a Notary Recordbook Can Significantly Diminish Real Property Scams in the State*, 4, Mar. 2003, available at [http://cdn.nationalnotary.org/News\\_and\\_Resources/Library/reFraudfla.pdf](http://cdn.nationalnotary.org/News_and_Resources/Library/reFraudfla.pdf) (last visited Mar. 5, 2014).

<sup>12</sup> See ss. 117.05(1), (3)(e), (7), and (8), and 117.105, F.S.

According to DOS, there were 400,432 notaries registered in the state as of January 14, 2014.<sup>13</sup> In 2013, the Governor removed 12 notaries from office and suspended 46 others.<sup>14</sup> As of March 5, 2014, 28 notaries have been suspended, two have been publicly censured, and none have been removed from office during 2014.<sup>15</sup>

### **Notarial Journals**

Florida notaries are not required to keep a journal of notarial acts although the Governor's Task Force on Notaries Public in 1989 recommended the mandatory use of journals.<sup>16</sup> The Governor's Reference Manual for Notaries advises notaries that, "[t]he best way to protect yourself is to document your notarial acts in a journal (record book or log)."<sup>17</sup> Currently, 14 states and the District of Columbia currently require notarial journals.<sup>18</sup>

The Governor's Reference Manual recommends a notarial journal be bound and have consecutively numbered pages so that a page cannot be removed without being detected. It also recommends the journal record the following information:

- The date of the notarial act;
- The type of notarial act;
- The name or brief description of the document;
- The party's printed name, address, and signature;
- The type of identification relied upon in identifying the party;
- The fee charged; and
- Any additional comments the notary considers important.<sup>19</sup>

It also recommends storing completed journals for at least 5 years.<sup>20</sup>

### **III. Effect of Proposed Changes:**

**Section 1** creates s. 117.055, F.S., to require a notary to keep a bound, sequentially numbered paper journal or an electronic journal that creates sequential and nonmodifiable records of each notarial act. The journal must include the following:

- The date and time of the notarial act;
- The type of notarial act;
- The type, title, name, or description of the document, proceeding, or transaction;

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<sup>13</sup> DOS, Division of Corporations, *Yearly Statistics, Total Active Registrations & Notaries*, available at [http://sunbiz.org/corp\\_stat.html](http://sunbiz.org/corp_stat.html) (last visited Mar. 5, 2014).

<sup>14</sup> Executive Orders issued by Governor Rick Scott, Executive orders issued in 2013, available at <http://www.flgov.com/2013-executive-orders> (last visited Mar. 5, 2014).

<sup>15</sup> Executive Orders issued by Governor Rick Scott, Executive orders issued in 2014, available at <http://www.flgov.com/2014-executive-orders> (last visited Mar. 5, 2014).

<sup>16</sup> *Governor's Reference Manual for Notaries*, 42 (Dec. 1, 1999 ed.) available at [http://www.flgov.com/wp-content/uploads/notary/notary\\_manual.pdf](http://www.flgov.com/wp-content/uploads/notary/notary_manual.pdf) (last visited Mar. 5, 2014).

<sup>17</sup> *Id.*

<sup>18</sup> *Notary Recordbook Requirements*, American Society of Notaries, available at <http://www.notaries.org/notaryrecordbookrequirements.html> (last visited Mar. 5, 2014).

<sup>19</sup> *Governor's Reference Manual* at 42.

<sup>20</sup> *Id.* at 43.

- The signer's printed name, signature, or, in the case of an electronic journal, the signer's name and electronic signature pursuant to s. 668.50(2)(h), F.S., and his or her address;
- An indication that the signer is personally known to the notary or presented a satisfactory form of identification.<sup>21</sup> The notary must record the type, last four digits of the unique identification number, and expiration date of any identification presented; and
- The names of any witnesses.

The journal is the exclusive property of the notary and must be kept in a locked and secure area, under the direct and exclusive control of the notary. Access to an electronic journal must be protected by a password or other secure means of authentication. The journal must be retained for at least 5 years following the date of the last entry in the journal.<sup>22</sup> If a journal is lost, stolen, misplaced, destroyed, erased, compromised, rendered unusable, or otherwise inaccessible, the notary must immediately notify DOS in writing of the circumstances of the incident.

A notary's failure to comply with these requirements constitutes grounds for suspension or nonrenewal of the notary's commission and grounds for the denial of any subsequent commission by the Governor.

**Section 2** amends s. 117.10, F.S., to provide that certain types of law enforcement, correctional, and investigative officers are exempt from the journal requirement.

**Section 3** provides an effective date of July 1, 2014.

#### **IV. Constitutional Issues:**

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

##### A. Tax/Fee Issues:

None.

<sup>21</sup> Acceptable forms of identification include a state-issued identification card or driver's license, an identification card or driver's license issued by Canada or Mexico, and a military-issued identification card. Section 117.05(5)(b)2., F.S.

<sup>22</sup> Due to the nature of electronic journals, it is unclear what would constitute the last entry in such a journal for the purposes of triggering the 5-year retention period requirement in the bill.

**B. Private Sector Impact:**

Notaries in Florida will be required to purchase, accurately maintain, and retain for at least 5 years a notarial journal.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill amends section 117.10 of the Florida Statutes.

The bill creates section 117.055 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Commerce and Tourism on March 10, 2014:**

The committee substitute:

- Requires the journal to be either a bound sequential paper journal or an electronic journal that creates sequential and nonmodifiable records;
- Provides that an electronic journal must include the signer's name and electronic signature pursuant to s. 688.50(2)(h), F.S.;
- Requires notaries to record only the last four digits of the unique identification number of the identification document presented;
- Requires notaries to include the names of any witnesses in the journal;
- Clarifies under what conditions a notary is required to inform DOS when a journal becomes inaccessible;
- Provides that the journal is the property of the notary and must be kept in a locked and secured area, or in the case of an electronic journal, must be password-protected;
- Exempts certain law enforcement, correctional, and investigative officers from the bill; and
- Removes rule-making authority provided to the DOS to implement the act.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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