

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.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 526

INTRODUCER: Commerce and Tourism Committee and Senator Grimsley

SUBJECT: Notaries Public

DATE: March 13, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 526 allows a law enforcement officer engaged in the performance of official duties to remotely administer an oath either through reliable electronic means, or in the physical presence of a person who swears to an affidavit. Currently, a law enforcement officer may only administer an oath in the physical presence of an affiant.

Additionally, the bill allows law enforcement officers to verify documents pursuant to ss. 92.50 and 92.525, F.S.

II. Present Situation:

Notaries public, governed by ch. 117, F.S., have two distinct roles: to administer oaths, and to acknowledge or verify documents.¹ Law enforcement officers, correctional officers, correctional probation officers, traffic accident investigation officers, and traffic infraction enforcement officers engaged in the performance of their official duties may administer oaths in the same manner as a notary public, but do not have authority to verify documents under current law.²

¹ Sections 117.03-.04, F.S.

² Section 117.10, F.S.

Administration of Oaths

In 1983, the Legislature allowed that “all law enforcement and correctional officers as defined in s. 943.10, F.S., may administer oaths, to witnesses, in connection with the taking of a sworn statement during a criminal investigation...”³ Application of this law was limited by a 1983 Florida Attorney General Opinion, which opined that a law enforcement officer’s power to administer oaths was exclusive to sworn statements given by witnesses during informal investigations, and that specifically, an officer was “not empowered to take sworn statements of another officer or witness for the sole purpose of using that document to establish probable cause or serve as a complaint for direct submission to a court.”⁴

The following year, the Legislature created s. 117.10, F.S., which clearly granted law enforcement officers the power to serve as a notary for the purpose of certifying or attesting to documents in connection with the performance of their official duties.⁵

Section 117.10, F.S., was subsequently amended to include correctional probation officers, traffic accident investigation officers, and traffic infraction enforcement officers. The direct reference to notaries was removed, so the statute now states that law enforcement officers are “authorized to administer oaths when engaged in the performance of official duties.”⁶

Law enforcement officers administer oaths to verify signatures on official documents, such as probable cause affidavits, reports, or sworn complaints.⁷

Sections 668.50 and 117.021, F.S., allow electronic signatures on notarized documents. However, an oath administered by a notary or law enforcement officer must still be administered in person. Therefore, a law enforcement officer affiant may electronically sign his affidavit, but only after he physically meets with a fellow law enforcement officer to swear or affirm the oath required.

Verification of Documents

A verified document has been signed or executed by a person who must state under oath (or affirmation) that the facts or matters made therein are true, or other words to that effect.⁸

A document can be verified in two ways:

- Administration of an oath or affirmation by an officer of the state authorized under s. 92.50, F.S., to administer oaths. Officers currently authorized are judges, clerks or deputy clerks of court, or any notary public; or

³ Ch. 83-147, Laws of Florida; Section 925.095, F.S. (1983).

⁴ Fla. AGO 83-85, in response to a request for clarification of s. 925.095, F.S. (1983) from the Havana, Florida, Chief of Police.

⁵ Chapter 84-87, L.O.F., which also repealed s. 925.095, F.S. (1983).

⁶ Section 117.10, F.S.

⁷ Section 117.10, F.S.

⁸ Section 92.525(4)(c), F.S.

- Signing a written declaration, which states “Under penalty of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true.”⁹ Where a verification of a belief is permitted, the phrase “to the best of my knowledge and belief” may be added to the declaration.

Perjury

A person who knowingly makes a false statement under oath regarding any material matter commits perjury, a first degree misdemeanor.¹⁰

A person who knowingly makes a false declaration for the purpose of verifying a document under s. 92.525(2), F.S., is subject to prosecution for perjury by false written declaration, a third degree felony.¹¹

III. Effect of Proposed Changes:

Under this bill, law enforcement officers, correctional officers, correctional probation officers, traffic accident investigation officers, and traffic infraction enforcement officers acting in the scope of their authority will be able to remotely administer oaths pursuant to s. 117.10, F.S. This allows law enforcement officers to administer an oath for work purposes either in the presence of the affiant, or by electronic transmittal of the document from the affiant through means compliant with criminal justice information systems security measures,¹² defined in s. 117.10(1), F.S. For example, the criminal justice information systems security measures requires that all users must uniquely identify themselves before they can perform any actions on the system.¹³

The bill allows law enforcement officers, correctional officers, correctional probation officers, traffic accident investigation officers, and traffic infraction enforcement officers, while engaged in the performance of official duties, to verify documents pursuant to s. 92.525, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁹ Section 92.525(2), F.S.

¹⁰ Section 837.012, F.S.

¹¹ Section 92.525(3), F.S.

¹² The criminal justice information systems (CJIS) security policy is published by the FBI, administered in Florida by the FDLE, and applied to local law enforcement agencies. Phone interview with Charles Schaeffer, February 10, 2015. See also, U.S. Department of Justice, Criminal Justice Information Services Security Policy (August 4, 2014). Retrieved February 10, 2015 from <http://www.fbi.gov/about-us/cjis/cjis-security-policy-resource-center>.

¹³ U.S. Department of Justice, Criminal Justice Information Services Security Policy at 34 (August 4, 2014). Retrieved March 3, 2015 from <http://www.fbi.gov/about-us/cjis/cjis-security-policy-resource-center>.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Law enforcement agencies may, but are not required to, incur some costs associated with either implementing new technological systems or updating current systems to become compliant with the criminal justice information system security measures. Some of these costs may be mitigated by a reduced need for excess hours and other costs associated with the current method of officer administration of oaths and document verification.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Because a certain class of individuals may administer and swear oaths without the physical presence of another party, enforcement of perjury laws may become more burdensome. The prosecution in perjury cases may have extra hurdles to overcome to prove that the defendant was the person who submitted the false statement under oath. The electronic data evincing the unique identifier and password that an officer must enter each time he or she electronically administers or swears an oath may be useful to the prosecution in such cases, but is not without evidentiary hurdles.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 92.525 and 117.10.

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 2, 2015:

Clarifies that enumerated officers may administer oaths electronically and deletes redundant language in section two of the committee substitute.

B. Amendments:

None.

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