

Regular Session, 2012

ACT No. 829

HOUSE BILL NO. 1192 (Substitute for House Bill No. 922 by Representative Barras)

BY REPRESENTATIVE BARRAS AND SENATOR WALSWORTH

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AN ACT

To enact R.S. 35:191(W), relative to notaries public; to provide for qualifications of notaries in certain parishes; to provide for authority and jurisdiction; to provide for employment; to provide for bonding and liability; to provide for provisional status; to provide for enforceability of certain notarial acts; to provide for expiration of commissions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 35:191(W) is hereby enacted to read as follows:

§191. Appointment; qualifications; examination

* * *

W.(1)(a) Notwithstanding any provision of this Section or any other law to the contrary, any person who resides in a parish with a population of less than forty thousand, and who has passed the examination provided by R.S. 35:191.1, except for any performance assessment component, during examinations administered between December 1, 2009, and December 31, 2012, may be provisionally appointed to the office of notary public in and for that parish upon fulfillment of all requirements of this Subsection and upon meeting all other qualifications necessary to be appointed to the office of notary public in this state.

(b) Notwithstanding any provision of this Section or any other law to the contrary, any person who resides in a parish with a population of less than forty thousand and who passes the examination provided by R.S. 35:191.1, except for any performance assessment component, during examinations administered after January 1, 2013, and before August 1, 2016, may be provisionally appointed to the office of

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 ~~notary public in and for that parish upon fulfillment of all requirements of this~~
2 ~~Subsection and upon meeting all other qualifications necessary to be appointed to the~~
3 ~~office of notary public in this state.~~

4 (2)(a) ~~A notary commissioned pursuant to this Subsection shall have~~
5 ~~authority to exercise all the powers of a notary public commissioned in this state as~~
6 ~~enumerated in R.S. 35:2, but shall exercise notarial functions only within the course~~
7 ~~and scope of his employment and under the direction of a supervisor for the~~
8 ~~employer who is not a notary commissioned under this Subsection. The term~~
9 ~~"employer" as used in this Subsection shall include only businesses that are in~~
10 ~~existence on the effective date of this Act, but shall not include a business whose~~
11 ~~primary function is to provide notary services. The exercise of any notarial functions~~
12 ~~under this Subsection shall be deemed to be within the course and scope of~~
13 ~~employment if either of the following is applicable:~~

14 (i) ~~The employer of the notary is a party to the act or other instrument being~~
15 ~~sworn to, acknowledged, or passed before the notary, or the act or other instrument~~
16 ~~is necessary to or incidental to the business activities or operations of the employer.~~

17 (ii) ~~At least one of the persons appearing before the notary to execute an~~
18 ~~affidavit, acknowledgment, or other notarial act or instrument is a former, current,~~
19 ~~or prospective client or customer of the employer.~~

20 (b) ~~A notary commissioned pursuant to this Subsection shall not do any of~~
21 ~~the following in the course and scope of his employment:~~

22 (i) ~~Draft and prepare a last will and testament or donation mortis causa.~~

23 (ii) ~~Draft and prepare a trust.~~

24 (iii) ~~Draft and prepare any instrument that transfers title to immovable~~
25 ~~property including but not limited to an act of sale or act of donation.~~

26 (3) ~~A notary commissioned pursuant to this Subsection shall have~~
27 ~~jurisdiction within the parish of commission, and in any adjacent parish with a~~
28 ~~population of less than forty thousand where the employer of the notary maintains~~
29 ~~an office.~~

1 (4)(a) All notaries commissioned pursuant to this Subsection shall post and
2 maintain a bond, at the expense of the employer, with a commercial surety licensed
3 in this state, in the amount of twenty thousand dollars conditioned on the faithful
4 performance of all duties required by law toward all persons who receive his services
5 in his official capacity as notary public. The minimum bond requirements described
6 in this Paragraph shall be in lieu of those provided by R.S. 35:71.

7 (b) The employer shall hold the notary harmless for any claim made against
8 his bond when the notary is acting in the course and scope of the employment or
9 under the direction of the employer.

10 (c) All persons requesting a commission pursuant to this Subsection shall,
11 in addition to all other documents required for issuance of a commission pursuant to
12 this Title, submit a statement signed by the applicant and the employer of the
13 applicant providing all of the following:

14 (i) The name and principal business address of the employer.

15 (ii) The primary address at which the applicant will exercise notarial
16 functions.

17 (iii) An acknowledgment of the limits of the authority and jurisdiction of a
18 commission issued pursuant to the provisions of this Subsection and the penalties
19 that may be imposed for violations of the limitations and prohibitions imposed by
20 this Subsection.

21 (d) All notaries commissioned pursuant to this Subsection shall be required
22 to attend a notary orientation class approved by the secretary of state.

23 (5)(a) If the employer named in the statement required by Subparagraph
24 (4)(c) of this Subsection terminates the employment of the notary commissioned
25 pursuant to this Subsection, or if the employer no longer wishes to be bound by the
26 provisions of this Subsection with respect to any person commissioned pursuant to
27 its provisions, the employer shall immediately send written notice to the secretary
28 of state, and the commission shall be automatically revoked unless the notary
29 complies with the provisions of Item (b)(i) or (ii) of this Paragraph.

1 **(b) If the notary commissioned pursuant to the provisions of this Subsection**
 2 **voluntarily terminates his employment with the employer named in the statement**
 3 **required by Subparagraph (4)(c) of this Subsection, the notary shall immediately**
 4 **send written notice to the secretary of state, and the commission shall be assigned a**
 5 **status as follows:**

6 **(i) If the notary declares in writing his intention to remain qualified under**
 7 **this Subsection, the secretary of state shall assign the notary a provisional inactive**
 8 **status until the notary submits a new statement required by Subparagraph (4)(c) of**
 9 **this Subsection, and the notary shall exercise no notarial functions until the secretary**
 10 **of state notifies him and the new employer that the required statement has been**
 11 **received and that the commission registry reflects a provisional active status.**

12 **(ii) If the notary declares in writing his intention to pursue successful**
 13 **completion of the performance assessment component of the examination provided**
 14 **by R.S. 35:191.1, the secretary of state shall assign the notary a provisional inactive**
 15 **status until he passes the performance assessment component, and the notary shall**
 16 **exercise no notarial functions until he passes the performance assessment component**
 17 **and is notified by the secretary of state that his commission status is changed.**

18 **(6)(a) No notarial act executed by a notary commissioned pursuant to this**
 19 **Subsection shall be deemed invalid or unenforceable as a notarial act solely on the**
 20 **basis that the execution of the act exceeded the authority or jurisdiction limitations**
 21 **imposed by Paragraphs (2) and (3) of this Subsection.**

22 **(b) An employer shall have no liability to any person for any damages**
 23 **caused by the negligent or fraudulent errors or omissions by any notary**
 24 **commissioned pursuant to this Subsection when the exercise of the notarial functions**
 25 **giving rise to the damages was occasioned by the notary acting outside the course**
 26 **and scope of his employment as established by this Subsection.**

27 **(7) Any person receiving a notary commission pursuant to this Subsection**
 28 **may have his commission suspended or revoked by the court pursuant to R.S. 35:15.**
 29 **In addition, upon receipt of a sworn affidavit and a determination by the secretary**
 30 **of state that reasonable grounds exist requiring immediate action in order to protect**

1 the public from unauthorized notarial practice, the secretary of state may summarily
2 suspend the commission of a notary commissioned pursuant to this Subsection prior
3 to the rule to show cause hearing provided for in R.S. 35:15. Upon such a
4 suspension, the secretary of state shall notify the notary whose commission was
5 suspended by certified mail, return receipt requested, and include a copy of the order
6 of immediate suspension informing the notary that he has thirty days from receipt of
7 the notice to file a written appeal with the secretary of state contesting the decision
8 to suspend the commission. During such a period of suspension, the notary shall
9 have no authority to exercise any of the duties or functions of a notary public. If the
10 notary fails to file a written appeal within thirty days of receipt of the notice or if no
11 later than thirty days after receipt of the notary's written appeal the secretary of state
12 determines that the suspension should be upheld, the secretary of state shall notify
13 the district attorney of the parish in which the notary is commissioned for the
14 purpose of institution of the rule to show cause proceeding to revoke the commission
15 pursuant to R.S. 35:15.

16 (8) The secretary of state shall on or before March 1, 2014, and March 1,
17 2015, provide a written report to the House Civil Law and Procedure Committee and
18 the Senate Committee on Judiciary A detailing the intervening progress in
19 implementation of the acts which originated as House Bill No. 929 and House Bill
20 No. 1192 of the 2012 Regular Session. The secretary of state shall include in his
21 report a compilation of the results of the notary examinations administered, the
22 number of non-attorney and provisional notaries commissioned in Louisiana, the
23 parishes where such provisional notaries are authorized to practice as a notary, and
24 the number of provisional notaries whose commission has been suspended by the
25 secretary of state, or suspended and/or revoked by the court.

26 (9) The provisions of this Subsection shall expire on August 1, 2016, and any
27 commission granted pursuant to this Subsection shall also expire on that date, except
28 if the notary has, subsequent to issuance of a commission pursuant to this
29 Subsection, passed all components of the examination provided by R.S. 35:191.1 on
30 or before August 1, 2016.

1 Section 2. The provisions of this Act shall become effective on January 1, 2013.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____