

Regular Session, 2008

HOUSE BILL NO. 781

BY REPRESENTATIVE WADDELL

NOTARIES: Provides for unlawful exercise of notary powers

1 AN ACT

2 To enact Chapter 9 of Title 35 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 35:601 through 604, relative to notaries public; to provide relative to the
4 unlawful exercise of notarial powers; to provide for certain prohibitions; to provide
5 for penalties; to provide for the filing of complaints; to provide for notice; to provide
6 relative to evidence; to provide for the development of forms; and to provide for
7 related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Chapter 9 of Title 35 of the Louisiana Revised Statutes of 1950,
10 comprised of R.S. 35:601 through 604, is hereby enacted to read as follows:

11 CHAPTER 9. UNAUTHORIZED EXERCISE OF NOTARIAL POWERS

12 §601. Unlawful exercise of notarial powers; penalties

13 A. A person, who has not first been duly authorized to exercise notarial
14 powers in this state or whose authority to exercise notarial powers in this state has
15 been judicially revoked, shall not perform any of the following actions:

16 (1) Exercise or purport to exercise any notarial function.

17 (2) Hold himself out to the public as being entitled to exercise notarial
18 functions.

19 (3) Render or furnish notarial services.

1 (4) Take any acknowledgment, administer any oath, or execute any
2 instrument purportedly as a notary public or as a person purportedly authorized to
3 exercise notarial power and authority.

4 (5) Assume to be a notary public or to be authorized to exercise notarial
5 functions.

6 (6) Assume, use, or advertise the title of notary public or ex officio notary
7 or equivalent terms in any language, or any similar title in such a manner as to
8 convey the impression that he is authorized to exercise notarial powers.

9 B.(1) Any person who violates any provision of this Section shall be fined
10 not more than one thousand dollars or imprisoned for not more than two years, or
11 both.

12 (2) In addition to the penalties provided by Paragraph (1) of this Subsection,
13 the person shall be required to make full restitution for all costs required to
14 authenticate, confirm, or ratify any instruments that fail to qualify as notarial acts due
15 to the lack of proper authority of the notary or purported notary, including all costs
16 of recordation and all damages each affected party may suffer.

17 §602. Unlawful exercise of prior authorized or limited notarial powers; penalties

18 A. No person who has been duly appointed to the office of notary public or
19 who has been otherwise authorized to exercise notarial functions in this state shall
20 exercise any notarial function in this state during any period when:

21 (1) His commission or authority to exercise notarial functions is either:

22 (a) Statutorily or judicially suspended.

23 (b) Statutorily or administratively revoked.

24 (2) He is no longer validly commissioned in this state.

25 (3) He has elected to place his commission in retirement status under the
26 provisions of R.S. 35:202(G).

27 (4) He is no longer validly possessed of the office or position from which his
28 authority to exercise notarial functions was derived.

29 (5) He has been convicted of a felony and has not been pardoned.

1 (6) He is not authorized by law to exercise that particular notarial function.

2 B.(1) Any person who knowingly violates any provision of this Section shall
3 be fined not more than one thousand dollars and shall be required to make full
4 restitution for all costs required to authenticate, confirm, or ratify any instruments
5 that fail to qualify as notarial acts due to the lack of proper authority of the notary or
6 purported notary, including all costs of recordation and all damages each affected
7 party may suffer.

8 (2) In addition to the penalties provided in Paragraph (1) of this Subsection,
9 the person shall also be subject to a suspension or revocation of his commission and
10 shall be subject to being permanently enjoined from exercising any notarial function
11 in any capacity.

12 §603. Secretary of state; duties upon receipt of sworn complaint

13 A. The secretary of state, upon receipt of a sworn complaint alleging a
14 violation of the provisions of R.S. 35:601 or 602, shall proceed as follows:

15 (1) If the records of the secretary of state indicate that the person who is the
16 subject of the complaint has a valid active status, the secretary shall notify that
17 person and the complainant of the findings.

18 (2) If the records of the secretary of state indicate that the person who is the
19 subject of the complaint does not have a valid active status, the secretary of state
20 shall send notice by certified mail, return receipt requested, to that person of the
21 impediment to his authority and allow that person to remedy, if possible, the
22 impediment within ten days of receipt of the notice.

23 (3) If the person who is the subject of the complaint fails to remedy the
24 impediment to his authority within the time provided by Paragraph (2) of this
25 Subsection, the secretary of state shall transmit a copy of the sworn complaint to the
26 appropriate law enforcement or prosecutorial agency for further investigation or
27 prosecution.

28 B. The secretary of state shall provide a form to be used to file a complaint
29 alleging a violation of the provisions of R.S. 35:601 or 602. All complaints filed

1 with the secretary of state shall be on the complaint form prepared by the secretary
2 of state or on a form which contains the same information as required by the
3 complaint form prepared by the secretary of state.

4 C. Nothing in this Section shall operate to limit any other legal methods of
5 notice, service of process, or enforcement of any provision of R.S. 35:601 or 602.

6 §604. Exceptions

7 The provisions of this Chapter shall not apply to attorneys licensed to practice
8 law in this state.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Waddell

HB No. 781

Abstract: Prohibits any person from unlawfully exercising notarial powers in this state, and provides for penalties, including fines, possible incarceration, and restitution, for the unlawful exercise of notarial powers.

Proposed law (R.S. 35:601) prohibits any person, who has not first been duly authorized to exercise notarial powers in this state, or whose authority to exercise notarial powers in this state has been judicially revoked, from performing certain acts.

Proposed law provides for a fine of not more than \$1,000 or imprisonment for not more than two years, or both, and making full restitution for all costs and damages.

Proposed law (R.S. 35:602) prohibits a person who has been duly appointed to the office of notary public or who has been otherwise authorized to exercise notarial functions in this state from exercising any notarial functions under certain circumstances.

Proposed law provides, for any person who knowingly violates any provision of proposed law, a fine of not more than \$1,000, full restitution for all costs and damages, and provides that the person shall also be subject to a suspension or revocation of his commission and shall be subject to being permanently enjoined from exercising any notarial function in any capacity.

Proposed law (R.S. 35:603) provides that the secretary of state, upon receipt of a sworn complaint alleging a violation of the provisions of R.S. 35:601 or 602 of proposed law, shall notify the complainant and the alleged offender if the alleged offender is properly in possession of the authority to exercise notarial functions.

Proposed law provides that if the records of the secretary of state indicate that the alleged offender does not have a valid active status, the secretary of state shall give written notice to the alleged offender by certified mail, return receipt requested, that the alleged offender has 10 days to remedy his impediment, if possible.

Proposed law provides that if the alleged offender fails to comply with the requirements provided in the notice, the secretary of state shall transmit a copy of the sworn complaint to the appropriate law enforcement authority for further investigation.

Proposed law requires the secretary of state to develop the notice forms for implementation of proposed law.

Proposed law (R.S. 35:604) exempts attorneys licensed to practice law in this state from the provisions of proposed law.

(Adds R.S. 35:601-604)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Changes all provisions of proposed law requiring the secretary of state to send notice of noncompliance to a person who is the subject of a complaint by removing the cease and desist order and by requiring notice by certified mail, return receipt requested, and a 10-day opportunity to remedy the noncompliance prior to forwarding the complaint to the appropriate law enforcement authority.
2. Adds an exemption from proposed law for attorneys licensed to practice law in this state.