

Regular Session, 2012

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

BY REPRESENTATIVE BARRAS

NOTARIES: Provides with respect to notaries

1 AN ACT

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

7 Be it enacted by the Legislature of Louisiana:

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

9 §191. Appointment; qualifications; examination

10 * * *

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

19 (b) Notwithstanding any provision of this Section or any other law to the
20 contrary, any person who resides in a parish with a population of less than forty
21 thousand and who passes the examination provided by R.S. 35:191.1, except for any

1 performance assessment component, during examinations administered after January
2 1, 2013, and before August 1, 2016, may be provisionally appointed to the office of
3 notary public in and for that parish upon fulfillment of all requirements of this
4 Subsection and upon meeting all other qualifications necessary to be appointed to the
5 office of notary public in this state.

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

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

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

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

25 (4)(a) All notaries commissioned pursuant to this Subsection shall post and
26 maintain a bond, at the expense of the employer, with a commercial surety licensed
27 in this state, in the amount of twenty thousand dollars conditioned on the faithful
28 performance of all duties required by law toward all persons who receive his services
29 in his official capacity as notary public. The minimum bond requirements described

1 in this Paragraph shall be in lieu of those provided by R.S. 35:71.

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

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

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

10 (ii) The primary address at which the applicant will exercise notarial
11 functions.

12 (iii) An acknowledgment of the limits of the authority and jurisdiction of a
13 commission issued pursuant to the provisions of this Subsection.

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

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

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

28 (i) If the notary declares in writing his intention to remain qualified under
29 this Subsection, the secretary of state shall assign the notary a provisional inactive

1 status until the notary submits a new statement required by Subparagraph (4)(c) of
2 this Subsection, and the notary shall exercise no notarial functions until the secretary
3 of state notifies him and the new employer that the required statement has been
4 received and that the commission registry reflects a provisional active status.

5 (ii) If the notary declares in writing his intention to pursue successful
6 completion of the performance assessment or other component of the examination
7 provided by R.S. 35:191.1, the secretary of state shall assign the notary a provisional
8 inactive status until he passes the performance assessment or other component, and
9 the notary shall exercise no notarial functions until he passes the performance
10 assessment or other component and is notified by the secretary of state that his
11 commission status is changed.

12 (6)(a) No notarial act executed by a notary commissioned pursuant to this
13 Subsection shall be deemed invalid or unenforceable as a notarial act solely on the
14 basis that the execution of the act exceeded the limitations imposed with respect to
15 the restriction that the notary exercise notarial functions only within the course and
16 scope of the employment of the notary or under the direction of the employer.

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

22 (7) Any person receiving a notary commission pursuant to this Subsection
23 shall have his commission revoked if any of the following occur:

24 (a) A court determines that the notary exceeded his authority or jurisdiction
25 provided by the Subsection.

26 (b) The secretary of state determines that the notary exceeded his authority
27 or jurisdiction provided by this Subsection after receiving sufficient proof and
28 providing an opportunity for the notary to contest such determination.

29 (c) The notary violates any other provision of law providing for the

- 1 revocation or suspension of a notary commission.
- 2 (8) The provisions of this Subsection shall expire on August 1, 2016, and any
- 3 commission granted pursuant to this Subsection shall also expire on that date, except
- 4 if the notary has, subsequent to issuance of a commission pursuant to this
- 5 Subsection, passed all components of the examination provided by R.S. 35:191.1 on
- 6 or before August 1, 2016.

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)]

Barras

HB No. 1192

Abstract: Provides for the qualifications, bonding, and supervision of certain notaries who reside in a parish with a population of less than 40,000.

Present law provides for the appointment, qualifications, and examination of persons in order to be commissioned as a notary public.

Proposed law provides that any person who resides in a parish with a population of less than 40,000, and who has passed two of three components of the statewide notary examination during examinations administered between Dec. 1, 2009, and Dec. 31, 2012, may be provisionally appointed to the office of notary public in and for that parish, and that any person who resides in a parish with a population of less than 40,000 and who passes the examination, except for any performance assessment component, during examinations administered after Jan. 1, 2013, and before Aug. 1, 2016, may be provisionally appointed to the office of notary public in and for that parish.

Proposed law provides that any notary commissioned pursuant to proposed law shall exercise notarial functions only within the course and scope of his employment and under the direction of a supervisor for the employer, and provides that an "employer" shall not include a business whose primary function is to provide notary services.

Proposed law provides for those actions which shall be deemed to be within the course and scope of employment, and provides for the jurisdiction of the notary.

Proposed law requires the notary to post and maintain a bond, at the expense of the employer, with a commercial surety licensed in this state, in the amount of \$20,000, and provides that the employer shall hold the notary harmless for any claim made against his bond when the notary is acting in the course and scope of the employment or under the direction of the employer.

Proposed law requires the notary to submit a statement signed by the applicant and the employer, and provides for the contents of the statement.

Proposed law provides for the revocation of the notary commission upon termination from employment, and provides for provisional active or inactive status depending on whether the notary is re-employed or successfully completes the remainder of the notary examination.

Proposed law provides for revocation of the notary commission upon a determination by the

court or the secretary of state that the notary exceeded his authority, or upon violation of any other provision of law providing for the revocation or suspension of a notary commission.

Provides that no notarial act executed by a notary commissioned pursuant to proposed law shall be deemed invalid or unenforceable as a notarial act solely on the basis that the execution of the act exceeded the limitations of the notary's authority.

Proposed law provides that an employer shall have no liability to any person for any damages caused by the negligent or fraudulent errors or omissions by any notary commissioned pursuant to proposed law when the notary acts outside the course and scope of his employment.

Provides that the provisions of proposed law shall expire on Aug. 1, 2016, and any commission granted pursuant to proposed law shall also expire on that date, except if the notary has, subsequent to issuance of a commission, passed all components of the examination on or before Aug. 1, 2016.

(Adds R.S. 35:191(W))

Summary of Amendments Adopted by House

House Floor Amendments to the engrossed bill.

1. Added provision that a provisionally inactive notary may have his status changed by the secretary of state if he completes the performance assessment or other portion of the exam.
2. Added provisions for the revocation of the notary commission.
3. Made technical changes.