

HOUSE SUMMARY OF SENATE AMENDMENTS

House Bill No. 1192 by Representative Barras

NOTARIES: Provides with respect to notaries

Synopsis of Senate Amendments

1. Changes the requirement for provisional notaries from having to pass two of three of the notary exam sections to having to pass all but the performance assessment component of the exam.
2. Restricts application of proposed law to businesses in existence on the effective date of proposed law.
3. Adds a list of acts that provisional notaries are not authorized to perform.
4. Adds requirement that the statement signed by the applicant include the penalties that may be imposed for violations of proposed law.
5. Specifies that the provisional notary may maintain inactive status until he passes the performance assessment component of the exam.
6. Specifies that no notarial act of a provisional notary shall be deemed invalid solely on the basis that the provisional notary exceeded his authority or jurisdictional limitations.
7. Changes provisions relative to the revocation of the notary's commission from requiring a court hearing or a determination by the secretary of state that the notary exceeded his authority to authorizing the secretary of state to summarily suspend the commission under certain circumstances and provide detailed procedures for prosecution and revocation of the commission through a rule to show cause.
8. Requires the secretary of state to provide a written report to the House Committee on Civil Law and Procedure and the Senate Committee on Judiciary A detailing the progress of implementing proposed law.
9. Adds effective date of January 1, 2013.
10. Adds technical Legislative Bureau amendments.

Digest of Bill as Finally Passed by Senate

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 the statewide notary examination, except for any performance assessment component, 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. Further provides 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 a notary commissioned pursuant to proposed law shall not do any of the following in the course and scope of his employment: (1) draft and prepare a last will and testament or donation mortis causa; (2) draft and prepare a trust; or (3) draft and prepare any instrument that transfers title to immovable property including, but not limited to, an act of sale or act of donation.

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 only include businesses that are in existence on the effective date of the proposed law, but 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 provided for in proposed law.

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.

Proposed law provides any person receiving a notary commission pursuant to proposed law may have his commission suspended or revoked by the court pursuant to proposed law (R.S. 35:15), and provides that the secretary of state may, under certain circumstances, summarily suspend the provisionally commissioned notary prior to the rule to show cause hearing provided for in R.S. 35:15, and provides for notice and procedures for prosecution of the revocation proceedings.

Proposed law requires the secretary of state to provide a written report to the House Civil Law and Procedure Committee and the Senate Committee on Judiciary A detailing the intervening progress in implementation of the acts which originated as House Bill No. 929 and House Bill No. 1192 of the 2012 Regular Session on or before March 1, 2014 and March 1, 2015.

Provides that the provisions of proposed law shall expire on August 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 August 1, 2016.

Effective Jan. 1, 2013.

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