

AMENDED IN ASSEMBLY APRIL 21, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2452**

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**Introduced by Assembly Member Davis**

February 21, 2008

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~~An act to amend Sections 8201, 8211, and 8223 of the Government Code, and to amend Sections 1185 and 1196 of the Civil Code, and to amend Sections 8201 and 8206 of the Government Code, relating to notaries public.~~  
*An act to amend Sections 1185 and 1196 of the Civil Code, and to amend Sections 8201 and 8206 of the Government Code, relating to notaries public.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2452, as amended, Davis. Notaries public.

Existing law requires a notary public to complete 3 hours of refresher coursework before being reappointed as a notary, ~~and limits the amounts a notary public can charge for certain services.~~ *Existing law specifies certain documents as allowable forms of identification for a credible witness, who, by oath or affirmation, attests to the identity of an individual executing a written instrument in the presence of, and acknowledged by, a notary public.*

This bill would increase the length of refresher coursework from 3 to 6 hours, ~~and increase the limits on the amounts a notary public can charge for certain services, as specified.~~ *This bill would add specified governmental employee identification cards as an allowable form of identification for a credible witness to prove the identity of an individual who executes a written instrument. This bill would delete a provision allowing a witness to an individual's identification who is personally known to the officer to serve as evidence for an acknowledgment.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1185 of the Civil Code is amended to  
2 read:

3     1185. (a) The acknowledgment of an instrument shall not be  
4 taken unless the officer taking it has satisfactory evidence that the  
5 person making the acknowledgment is the individual who is  
6 described in and who executed the instrument.

7     (b) For the purposes of this section “satisfactory evidence”  
8 means the absence of any information, evidence, or other  
9 circumstances ~~which~~ *that* would lead a reasonable person to believe  
10 that the person making the acknowledgment is not the individual  
11 he or she claims to be and any one of the following:

12     (1) (A) The oath or affirmation of a credible witness personally  
13 known to the officer, whose identity is proven to the officer upon  
14 presentation of any document satisfying the requirements of  
15 paragraph (3) or (4), that the person making the acknowledgment  
16 is personally known to the witness and that each of the following  
17 are true:

18     (i) The person making the acknowledgment is the person named  
19 in the document.

20     (ii) The person making the acknowledgment is personally known  
21 to the witness.

22     (iii) That it is the reasonable belief of the witness that the  
23 circumstances of the person making the acknowledgment are such  
24 that it would be very difficult or impossible for that person to  
25 obtain another form of identification.

26     (iv) The person making the acknowledgment does not possess  
27 any of the identification documents named in paragraphs (3) and  
28 (4).

29     (v) The witness does not have a financial interest in the  
30 document being acknowledged and is not named in the document.

31     (B) A notary public who violates this section by failing to obtain  
32 the satisfactory evidence required by subparagraph (A) shall be  
33 subject to a civil penalty not exceeding ten thousand dollars  
34 (\$10,000). An action to impose this civil penalty may be brought  
35 by the Secretary of State in an administrative proceeding or any  
36 public prosecutor in superior court, and shall be enforced as a civil  
37 judgment. A public prosecutor shall inform the secretary of any  
38 civil penalty imposed under this subparagraph.

1 (2) The oath or affirmation under penalty of perjury of two  
2 credible witnesses, whose identities are proven to the officer upon  
3 the presentation of any document satisfying the requirements of  
4 paragraph (3) or (4), that each statement in paragraph (1) of this  
5 subdivision is true.

6 (3) Reasonable reliance on the presentation to the officer of any  
7 one of the following, if the document is current or has been issued  
8 within five years:

9 (A) An identification card or driver's license issued by the  
10 California Department of Motor Vehicles.

11 (B) A passport issued by the Department of State of the United  
12 States.

13 (4) Reasonable reliance on the presentation of any one of the  
14 following, provided that a document specified in subparagraphs  
15 (A) to ~~(E)~~ (F), inclusive, shall either be current or have been issued  
16 within five years and shall contain a photograph and description  
17 of the person named on it, shall be signed by the person, shall bear  
18 a serial or other identifying number, and, in the event that the  
19 document is a passport, shall have been stamped by the United  
20 States Immigration and Naturalization Service:

21 (A) A passport issued by a foreign government.

22 (B) A driver's license issued by a state other than California or  
23 by a Canadian or Mexican public agency authorized to issue  
24 drivers' licenses.

25 (C) An identification card issued by a state other than California.

26 (D) An identification card issued by any branch of the Armed  
27 Forces of the United States.

28 (E) An inmate identification card issued on or after January 1,  
29 1988, by the Department of Corrections and Rehabilitation, if the  
30 inmate is in custody.

31 (F) *An employee identification card issued by a federal, state,*  
32 *county, or municipal agency.*

33 ~~(F)~~

34 (G) An inmate identification card issued prior to January 1,  
35 1988, by the Department of Corrections and Rehabilitation, if the  
36 inmate is in custody.

37 (c) An officer who has taken an acknowledgment pursuant to  
38 this section shall be presumed to have operated in accordance with  
39 the provisions of law.

1 (d) Any party who files an action for damages based on the  
2 failure of the officer to establish the proper identity of the person  
3 making the acknowledgment shall have the burden of proof in  
4 establishing the negligence or misconduct of the officer.

5 (e) Any person convicted of perjury under this section shall  
6 forfeit any financial interest in the document.

7 *SEC. 2. Section 1196 of the Civil Code is amended to read:*

8 1196. ~~If by a subscribing witness, that~~ A witness shall be  
9 personally known to the officer taking the proof to be the person  
10 whose name is subscribed to the instrument as a witness, or shall  
11 be proved to be such by the oath of a credible witness who is  
12 personally known to the officer taking the proof, as defined in  
13 subdivision (b) of Section 1185. *proved to be a subscribing witness*  
14 *by the oath of a credible witness who provides the officer with any*  
15 *document satisfying the requirements of paragraph (3) or (4) of*  
16 *subdivision (b) of Section 1185.*

17 **SECTION 1.**

18 *SEC. 3. Section 8201 of the Government Code is amended to*  
19 *read:*

20 8201. (a) Every person appointed as notary public shall meet  
21 all of the following requirements:

22 (1) Be at the time of appointment a legal resident of this state,  
23 except as otherwise provided in Section 8203.1.

24 (2) Be not less than 18 years of age.

25 (3) Have satisfactorily completed a six-hour course of study  
26 approved by the Secretary of State pursuant to Section 8201.2  
27 concerning the functions and duties of a notary public.

28 (4) Have satisfactorily completed a written examination  
29 prescribed by the Secretary of State to determine the fitness of the  
30 person to exercise the functions and duties of the office of notary  
31 public. All questions shall be based on the law of this state as set  
32 forth in the booklet of the laws of California relating to notaries  
33 public distributed by the Secretary of State.

34 (b) (1) Each applicant for notary public shall provide  
35 satisfactory proof that he or she has completed the course of study  
36 required pursuant to paragraph (3) of subdivision (a) prior to  
37 approval of his or her appointment as a notary public by the  
38 Secretary of State.

39 (2) An applicant for notary public who holds a California notary  
40 public commission, shall provide satisfactory proof when applying

1 for reappointment as a notary public that he or she has satisfactorily  
2 completed a six-hour refresher course of study prior to  
3 reappointment as a notary public by the Secretary of State.

4 *SEC. 4. Section 8206 of the Government Code is amended to*  
5 *read:*

6 8206. (a) (1) A notary public shall keep one active sequential  
7 journal at a time, of all official acts performed as a notary public.  
8 The journal shall be kept in a locked and secured area, under the  
9 direct and exclusive control of the notary. Failure to secure the  
10 journal shall be cause for the Secretary of State to take  
11 administrative action against the commission held by the notary  
12 public pursuant to Section 8214.1.

13 (2) The journal shall be in addition to, and apart from, any copies  
14 of notarized documents that may be in the possession of the notary  
15 public and shall include all of the following:

16 (A) Date, time, and type of each official act.

17 (B) Character of every instrument sworn to, affirmed,  
18 acknowledged, or proved before the notary.

19 (C) The signature of each person whose signature is being  
20 notarized.

21 (D) A statement as to whether the identity of a person making  
22 an acknowledgment or taking an oath or affirmation was based on  
23 satisfactory evidence. If identity was established by satisfactory  
24 evidence pursuant to Section 1185 of the Civil Code, then the  
25 journal shall contain the signature of the credible witness swearing  
26 or affirming to the identity of the individual or the type of  
27 identifying document, the governmental agency issuing the  
28 document, the serial or identifying number of the document, and  
29 the date of issue or expiration of the document.

30 (E) ~~If the identity of the person making the acknowledgment or~~  
31 ~~taking the oath or affirmation was established by the oaths or~~  
32 ~~affirmations of two credible witnesses whose identities are proven~~  
33 ~~upon the presentation of satisfactory evidence, the type of~~  
34 ~~identifying documents, the identifying numbers of the documents~~  
35 ~~and the dates of issuance or expiration of the documents presented~~  
36 ~~by the witnesses to establish their identity to the notary public by~~  
37 ~~presentation of any document satisfying the requirements of~~  
38 ~~paragraph (3) or (4) of subdivision (b) of Section 1185 of the Civil~~  
39 ~~Code.~~

40 (F) The fee charged for the notarial service.

1 (G) If the document to be notarized is a deed, quitclaim deed,  
2 deed of trust affecting real property, or a power of attorney  
3 document, the notary public shall require the party signing the  
4 document to place his or her right thumbprint in the journal. If the  
5 right thumbprint is not available, then the notary shall have the  
6 party use his or her left thumb, or any available finger and shall  
7 so indicate in the journal. If the party signing the document is  
8 physically unable to provide a thumbprint or fingerprint, the notary  
9 shall so indicate in the journal and shall also provide an explanation  
10 of that physical condition. This paragraph shall not apply to a  
11 trustee's deed resulting from a decree of foreclosure or a  
12 nonjudicial foreclosure pursuant to Section 2924 of the Civil Code,  
13 nor to a deed of reconveyance.

14 (b) If a sequential journal of official acts performed by a notary  
15 public is stolen, lost, misplaced, destroyed, damaged, or otherwise  
16 rendered unusable as a record of notarial acts and information, the  
17 notary public shall immediately notify the Secretary of State by  
18 certified or registered mail. The notification shall include the period  
19 of the journal entries, the notary public commission number, and  
20 the expiration date of the commission, and when applicable, a  
21 photocopy of any police report that specifies the theft of the  
22 sequential journal of official acts.

23 (c) Upon written request of any member of the public, which  
24 request shall include the name of the parties, the type of document,  
25 and the month and year in which notarized, the notary shall supply  
26 a photostatic copy of the line item representing the requested  
27 transaction at a cost of not more than thirty cents (\$0.30) per page.

28 (d) The journal of notarial acts of a notary public is the exclusive  
29 property of that notary public, and shall not be surrendered to an  
30 employer upon termination of employment, whether or not the  
31 employer paid for the journal, or at any other time. The notary  
32 public shall not surrender the journal to any other person, except  
33 the county clerk, pursuant to Section 8209, or immediately, or if  
34 the journal is not present then as soon as possible, upon request to  
35 a peace officer investigating a criminal offense who has reasonable  
36 suspicion to believe the journal contains evidence of a criminal  
37 offense, as defined in Sections 830.1, 830.2, and 830.3 of the Penal  
38 Code, acting in his or her official capacity and within his or her  
39 authority. If the peace officer seizes the notary journal, he or she  
40 must have probable cause as required by the laws of this state and

1 the United States. A peace officer or law enforcement agency that  
2 seizes a notary journal shall notify the Secretary of State by  
3 facsimile within 24 hours, or as soon possible thereafter, of the  
4 name of the notary public whose journal has been seized. The  
5 notary public shall obtain a receipt for the journal, and shall notify  
6 the Secretary of State by certified mail within 10 days that the  
7 journal was relinquished to a peace officer. The notification shall  
8 include the period of the journal entries, the commission number  
9 of the notary public, the expiration date of the commission, and a  
10 photocopy of the receipt. The notary public shall obtain a new  
11 sequential journal. If the journal relinquished to a peace officer is  
12 returned to the notary public and a new journal has been obtained,  
13 the notary public shall make no new entries in the returned journal.  
14 A notary public who is an employee shall permit inspection and  
15 copying of journal transactions by a duly designated auditor or  
16 agent of the notary public's employer, provided that the inspection  
17 and copying is done in the presence of the notary public and the  
18 transactions are directly associated with the business purposes of  
19 the employer. The notary public, upon the request of the employer,  
20 shall regularly provide copies of all transactions that are directly  
21 associated with the business purposes of the employer, but shall  
22 not be required to provide copies of any transaction that is unrelated  
23 to the employer's business. Confidentiality and safekeeping of any  
24 copies of the journal provided to the employer shall be the  
25 responsibility of that employer.

26 (e) The notary public shall provide the journal for examination  
27 and copying in the presence of the notary public upon receipt of  
28 a subpoena duces tecum or a court order, and shall certify those  
29 copies if requested.

30 (f) Any applicable requirements of, or exceptions to, state and  
31 federal law shall apply to a peace officer engaged in the search or  
32 seizure of a sequential journal.

33 ~~SEC. 2. Section 8211 of the Government Code is amended to~~  
34 ~~read:~~

35 ~~8211. Fees charged by a notary public for the following services~~  
36 ~~shall not exceed the fees prescribed by this section:~~

37 ~~(a) For taking an acknowledgment or proof of a deed, or other~~  
38 ~~instrument, to include the seal and the writing of the certificate,~~  
39 ~~the sum of twenty-five dollars (\$25) for each signature taken.~~

1 ~~(b) For administering an oath or affirmation to one person and~~  
2 ~~executing the jurat, including the seal, the sum of twenty-five~~  
3 ~~dollars (\$25).~~

4 ~~(c) For all services rendered in connection with the taking of~~  
5 ~~any deposition, the sum of fifty dollars (\$50), and in addition~~  
6 ~~thereto, the sum of fifteen dollars (\$15) for administering the oath~~  
7 ~~to the witness and the sum of fifteen dollars (\$15) for the certificate~~  
8 ~~to the deposition.~~

9 ~~(d) For every protest for the nonpayment of a promissory note~~  
10 ~~or for the nonpayment or nonacceptance of a bill of exchange,~~  
11 ~~draft, or check, the sum of twenty-five dollars (\$25).~~

12 ~~(e) For serving every notice of nonpayment of a promissory~~  
13 ~~note or of nonpayment or nonacceptance of a bill of exchange,~~  
14 ~~order, draft, or check, the sum of fifteen dollars (\$15).~~

15 ~~(f) For recording every protest, the sum of fifteen dollars (\$15).~~

16 ~~(g) No fee may be charged to notarize signatures on vote by~~  
17 ~~mail ballot identification envelopes or other voting materials.~~

18 ~~(h) For certifying a copy of a power of attorney under Section~~  
19 ~~4307 of the Probate Code the sum of twenty-five dollars (\$25).~~

20 ~~(i) In accordance with Section 6107, no fee may be charged to~~  
21 ~~a United States military veteran for notarization of an application~~  
22 ~~or a claim for a pension, allotment, allowance, compensation,~~  
23 ~~insurance, or any other veteran's benefit.~~

24 ~~SEC. 3. Section 8223 of the Government Code is amended to~~  
25 ~~read:~~

26 ~~8223. (a) No notary public who holds himself or herself out~~  
27 ~~as being an immigration specialist, immigration consultant or any~~  
28 ~~other title or description reflecting an expertise in immigration~~  
29 ~~matters shall advertise in any manner whatsoever that he or she is~~  
30 ~~a notary public.~~

31 ~~(b) A notary public qualified and bonded as an immigration~~  
32 ~~consultant under Chapter 19.5 (commencing with Section 22440)~~  
33 ~~of Division 8 of the Business and Professions Code may enter data,~~  
34 ~~provided by the client, on immigration forms provided by a federal~~  
35 ~~or state agency. The fee for this service shall not exceed twenty-five~~  
36 ~~dollars (\$25) per individual for each set of forms. If notary services~~  
37 ~~are performed in relation to the set of immigration forms, additional~~  
38 ~~fees may be collected pursuant to Section 8211. This fee limitation~~  
39 ~~shall not apply to an attorney, who is also a notary public, who is~~  
40 ~~rendering professional services regarding immigration matters.~~

1 ~~(e) Nothing in this section shall be construed to exempt a notary~~  
2 ~~public who enters data on an immigration form at the direction of~~  
3 ~~a client, or otherwise performs the services of an immigration~~  
4 ~~consultant, as defined by Section 22441 of the Business and~~  
5 ~~Professions Code, from the requirements of Chapter 19.5~~  
6 ~~(commencing with Section 22440) of Division 8 of the Business~~  
7 ~~and Professions Code. A notary public who is not qualified and~~  
8 ~~bonded as an immigration consultant under Chapter 19.5~~  
9 ~~(commencing with Section 22440) of Division 8 of the Business~~  
10 ~~and Professions Code may not enter data provided by a client on~~  
11 ~~immigration forms nor otherwise perform the services of an~~  
12 ~~immigration consultant.~~

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