

Assembly Bill No. 625

CHAPTER 159

An act to amend Section 1185 of the Civil Code, relating to notaries public.

[Approved by Governor August 27, 2013. Filed with
Secretary of State August 27, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 625, Quirk. Notaries public: acceptance of identification.

Existing law relating to property transfers 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. Existing law specifies that an inmate identification card that is current or has been issued within 5 years by the Department of Corrections and Rehabilitation if the inmate is in custody is an allowable form of identification, for purposes of these provisions, if it contains certain identifying information, including a photograph and description of the person named on it, is signed by the person, and has a serial or other identifying number.

This bill would recast those provisions to make an inmate identification card that is current or has been issued within 5 years by the department, if the inmate is in custody in prison, an allowable form of identification for a credible witness to prove the identity of an individual who executes a written instrument, and to delete the requirement that the card have the additional identifying information.

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

SECTION 1. The Legislature finds and declares the following:

(a) The state and its counties have a financial and public safety interest in ensuring the children of people convicted of felonies and sentenced to state prison time have access to appropriate schooling and medical treatment. Eighty percent of imprisoned women are mothers and the vast majority were the primary care provider of minor children at the time of their arrest and imprisonment. These minor children's access to school and medical treatment may be unnecessarily interrupted should their incarcerated parent lack timely and affordable access to a notary necessary for them to complete paperwork to establish temporary guardianship for their children.

(b) The state and its counties have a financial and public safety interest in ensuring people convicted of felonies and sentenced to state prison time are able to successfully reenter their communities upon completion of their

sentences and live a crime-free life. Evidence-based research demonstrates a clear connection between decreased recidivism rates and strength of familial bonds during periods of incarceration. These bonds are weakened when minor children are unnecessarily prevented from visiting incarcerated parents due merely to the incarcerated parents' lack of timely and affordable access to a notary public required to complete required visitation forms.

(c) The state has taken significant measures to ensure due process and accuracy in determining the identity of people convicted of felonies and held in control of the Department of Corrections and Rehabilitation, and in tracking these individuals' appropriate identity through issuance and monitoring of state inmate identification cards.

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

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

(b) For purposes of this section, "satisfactory evidence" means the absence of information, evidence, or other circumstances that would lead a reasonable person to believe that the person making the acknowledgment is not the individual he or she claims to be and any one of the following:

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

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

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

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

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

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

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

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

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

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

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

(C) An inmate identification card issued by the Department of Corrections and Rehabilitation, if the inmate is in custody in prison.

(4) Reasonable reliance on the presentation of any one of the following, provided that a document specified in subparagraphs (A) to (E), inclusive, shall either be current or have been issued within five years and shall contain a photograph and description of the person named on it, shall be signed by the person, shall bear a serial or other identifying number, and, in the event that the document is a passport, shall have been stamped by the United States Citizenship and Immigration Services of the Department of Homeland Security:

(A) A passport issued by a foreign government.

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

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

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

(E) An employee identification card issued by an agency or office of the State of California, or by an agency or office of a city, county, or city and county in this state.

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

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

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