

Introduced by Senator Monning

February 18, 2014

An act to amend Sections 1189 and 1195 of the Civil Code, and to amend Section 8202 of the Government Code, relating to notaries public.

LEGISLATIVE COUNSEL'S DIGEST

SB 1050, as introduced, Monning. Notaries public: verification of content of documents.

Existing law provides for the appointment and commission of notaries public by the Secretary of State. Existing law authorizes a notary public to execute a certificate of acknowledgment or proof of execution of an instrument, or a jurat attached to a sworn affidavit. Existing law requires a certificate of acknowledgment, proof of execution, and jurat to be in a specified form.

This bill would require a statement to be included in those documents indicating that acknowledgment, proof of execution, or a notarial certificate of a jurat does not authenticate or verify the contents of those documents.

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

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

- 1 SECTION 1. Section 1189 of the Civil Code is amended to
- 2 read:
- 3 1189. (a) (1) Any certificate of acknowledgment taken within
- 4 this state shall be in the following form:

1 State of California)
2 County of _____)

3
4 *This acknowledgment does not authenticate or verify the contents of the*
5 *document.*

6
7 On _____ before me,
8 (here insert name and title of the officer),
9 personally appeared _____,
10 who proved to me on the basis of
11 satisfactory evidence to be the person(s) whose name(s) is/are
12 subscribed to the within instrument and acknowledged to me that
13 he/she/they executed the same in his/her/their authorized
14 capacity(ies), and that by his/her/their signature(s) on the
15 instrument the person(s), or the entity upon behalf of which the
16 person(s) acted, executed the instrument.

17
18 I certify under PENALTY OF PERJURY under the laws of the State of
19 California that the foregoing paragraph is true and correct.

20
21 WITNESS my hand and official seal.

22
23 Signature _____ (Seal)

24
25 (2) A notary public who willfully states as true any material
26 fact that he or she knows to be false shall be subject to a civil
27 penalty not exceeding ten thousand dollars (\$10,000). An action
28 to impose a civil penalty under this subdivision may be brought
29 by the Secretary of State in an administrative proceeding or any
30 public prosecutor in superior court, and shall be enforced as a civil
31 judgment. A public prosecutor shall inform the secretary of any
32 civil penalty imposed under this section.

33 (b) Any certificate of acknowledgment taken in another place
34 shall be sufficient in this state if it is taken in accordance with the
35 laws of the place where the acknowledgment is made.

36 (c) On documents to be filed in another state or jurisdiction of
37 the United States, a California notary public may complete any
38 acknowledgment form as may be required in that other state or
39 jurisdiction on a document, provided the form does not require the
40 notary to determine or certify that the signer holds a particular

1 representative capacity or to make other determinations and
2 certifications not allowed by California law.

3 (d) An acknowledgment provided prior to January 1, 1993, and
4 conforming to applicable provisions of former Sections 1189,
5 1190, 1190a, 1190.1, 1191, and 1192, as repealed by Chapter 335
6 of the Statutes of 1990, shall have the same force and effect as if
7 those sections had not been repealed.

8 SEC. 2. Section 1195 of the Civil Code is amended to read:

9 1195. (a) Proof of the execution of an instrument, when not
10 acknowledged, may be made by any of the following:

- 11 (1) By the party executing it, or either of them.
- 12 (2) By a subscribing witness.
- 13 (3) By other witnesses, in cases mentioned in Section 1198.

14 (b) (1) Proof of the execution of a power of attorney, grant
15 deed, mortgage, deed of trust, quitclaim deed, security agreement,
16 or any instrument affecting real property is not permitted pursuant
17 to Section 27287 of the Government Code, though proof of the
18 execution of a trustee’s deed or deed of reconveyance is permitted.

19 (2) Proof of the execution for any instrument requiring a notary
20 public to obtain a thumbprint from the party signing the document
21 in the notary public’s journal is not permitted.

22 (c) Any certificate for proof of execution taken within this state
23 shall be in the following form:

24
25 State of California)
26 County of _____) ss.

27
28
29 *This proof of execution does not authenticate or verify the contents of the*
30 *document.*

31
32 On ____ (date), before me, ____ (name and title of officer), personally appeared
33 ____ (name of subscribing witness), proved to me to be the person whose name
34 is subscribed to the within instrument, as a witness thereto, on the oath of ____
35 (name of credible witness), a credible witness who is known to me and provided
36 a satisfactory identifying document. ____ (name of subscribing witness), being
37 by me duly sworn, said that he/she was present and saw/heard ____ (name[s]
38 of principal[s]), the same person(s) described in and whose name(s) is/are
39 subscribed to the within or attached instrument in his/her/their authorized
40 capacity(ies) as (a) party(ies) thereto, execute or acknowledge executing the

1 same, and that said affiant subscribed his/her name to the within or attached
2 instrument as a witness at the request of ____ (name[s] of principal[s]).

3
4 WITNESS my hand and official seal.
5 Signature_____ (Seal)

6
7 SEC. 3. Section 8202 of the Government Code is amended to
8 read:

9 8202. (a) When executing a jurat, a notary shall administer an
10 oath or affirmation to the affiant and shall determine, from
11 satisfactory evidence as described in Section 1185 of the Civil
12 Code, that the affiant is the person executing the document. The
13 affiant shall sign the document in the presence of the notary.

14 (b) To any affidavit subscribed and sworn to before a notary,
15 there shall be attached a jurat in the following form:

16
17 State of California
18 County of _____

19
20 *This notarial certificate does not authenticate or verify the contents*
21 *of the document.*

22
23 Subscribed and sworn to (or affirmed) before me on this _____
24 day of _____, 20__, by _____, proved
25 to me on the basis of satisfactory evidence to be the person(s) who
26 appeared before me.

27
28 Seal_____

29
30 Signature_____

31