

ASSEMBLY BILL

No. 1036

Introduced by Assembly Member Quirk

February 26, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1036, as introduced, 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 in prison is an allowable form of identification, for purposes of these provisions.

This bill would also make an inmate identification card that is current or has been issued within 5 years by a sheriff's department, if the inmate is in custody in a local detention facility, an allowable form of identification for a credible witness to prove the identity of an individual who executes a written instrument.

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 purposes of this section, “satisfactory evidence” means
8 the absence of information, evidence, or other circumstances that
9 would lead a reasonable person to believe that the person making
10 the acknowledgment is not the individual he or she claims to be
11 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 a document satisfying the requirements of paragraph
15 (3) or (4), that the person making the acknowledgment is personally
16 known to the witness and that each of the following are true:

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

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

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

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

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

30 (B) A notary public who violates this section by failing to obtain
31 the satisfactory evidence required by subparagraph (A) shall be
32 subject to a civil penalty not exceeding ten thousand dollars
33 (\$10,000). An action to impose this civil penalty may be brought
34 by the Secretary of State in an administrative proceeding or a public
35 prosecutor in superior court, and shall be enforced as a civil
36 judgment. A public prosecutor shall inform the secretary of any
37 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 a document satisfying the requirements of
4 paragraph (3) or (4), that each statement in paragraph (1) is true.

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

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

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

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

14 (D) *An inmate identification card issued by a sheriff's*
15 *department, if the inmate is in custody in a local detention facility.*

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

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

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

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

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

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

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

38 (d) A party who files an action for damages based on the failure
39 of the officer to establish the proper identity of the person making

- 1 the acknowledgment shall have the burden of proof in establishing
- 2 the negligence or misconduct of the officer.
- 3 (e) A person convicted of perjury under this section shall forfeit
- 4 any financial interest in the document.