



**Ninety-Eighth Legislature - First Session - 2003**  
**Committee Statement**  
**LB 315**

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**Hearing Date:** February 28, 2003  
**Committee On:** Judiciary

**Introducer(s):** (Brashear)  
**Title:** Change provisions relating to notaries public

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**Roll Call Vote – Final Committee Action:**

- Advanced to General File
  - X Advanced to General File with Amendments
  - Indefinitely Postponed
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**Vote Results:**

7	Yes	Senators Brashear, Foley, Mines, Mossey, Pedersen, Quandahl, Tyson
	No	
	Present, not voting	
1	Absent	Senator Chambers

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**Proponents:**

Senator Kermit Brashear  
 Greg Lemon  
 Cecilia Olivarez-Huerta  
 Perre Neilan  
 Bill Mueller

**Representing:**

Introducer  
 Secretary of State  
 Mexican-American Commission  
 Nebraska Realtors Association  
 Nebraska State Bar Association

**Opponents:**

**Representing:**

**Neutral:**

Jeannie Bower

**Representing:**

Self

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**Summary of purpose and/or changes:**

Legislative Bill 315 proposes changes to the current statutes governing notaries public.

Under current law a person must assemble 25 signatures of legal voters from the applicant’s county of residence to apply for a notary public stamp. The bill eliminates the 25 signatures requirement and provides that a written test shall be administered to such applicants. The Secretary of State shall develop the written test which shall consist of questions relating to laws, procedures and ethics for notaries public. Additionally the bill prohibits persons who have

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been convicted of a felony or a crime involving fraud or dishonesty from becoming notaries public.

Under current law a surety bond in the amount of \$10,000 must be approved by and filed in the office of the Secretary of State. LB 315 would increase such bond requirement to \$25,000.

Section 5 of the bill provides that a notary public shall not perform a notarial act if the principal (signator) is not in the presence of the notary or is not personally known or identified by the notary. Proof of identity of the principal for purposes of performing notarial acts is defined as presenting at least one document issued by a government agency that bears a photograph and description of the principal to the notary or the affirmation of the identity of the principal by at least one credible witness unaffected by the document to be notarized.

The bill provides that a notary public shall not perform notarial duties in matters in which he or she may have a conflict of interest. Specifically, a notary is disqualified from performing a notarial act if he or she:

- is a party to the document to be notarized;
- will receive a direct or indirect commission or fee not otherwise permitted (this provision does not apply to licensed or regulated professional organizations such as real estate brokers or attorneys);
- is a spouse or relative to the principal.

Section 7 of the bill provides for a process whereby a notary shall certify a signature by mark in instances in which a principal is unable to sign by reason of physical incapacity. Specifically a notary public may certify the affixation or signature if the mark is affixed in the presence of the notary public and two witnesses unaffected by the document. Such certification must be noted as an acknowledgement.

Section 8 of the bill prohibits notaries from engaging in the unauthorized practice of law or from presenting themselves as qualified to provide legal advice.

The bill also requires notaries to inform the Secretary of State when they change address.

Finally, the bill further defines malfeasance in office by a notary public to include the grounds of failing to follow the requirements and procedures for notarial act and being convicted of a felony or other crime involving fraud or dishonesty. The bill also provides for a sanction of temporary revocation of a person's notary commission.

#### **Explanation of amendments, if any:**

The committee amendment (AM1034) makes several changes to the bill.

Currently the statutes relating to the administration of notaries provides that both the Governor and the Secretary of State share such administrative duty. However, as a matter of practice the Secretary of State typically performs the responsibilities. To reflect this long

standing practice, the provisions that refer to the Governor are amended to require the Secretary of State to perform such responsibilities.

The bill proposed to increase the surety bond requirement to \$25,000. The amendment lowers the proposed bond increase to \$15,000.

Section 5 of the bill is amended to clarify that the principal for whom a notarial act is being performed must be in the presence of the notary and the notary must personally know the principal or have satisfactory means of identifying such principal prior to the notary performing the notarial act.

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**Senator Kermit A. Brashear, Chairperson**