

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 846

INTRODUCER: Commerce and Tourism Committee and Senator Polsky

SUBJECT: Notary Public Fraud

DATE: April 2, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McMillan</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Collazo</u>	<u>Cibula</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 846 amends existing statutes and introduces new provisions addressing notary public fraud and the unlicensed practice of law in connection with immigration matters.

Specifically, the bill:

- Prohibits the literal translation of “Notary Public” into languages other than English and establishes penalties for violations.
- Restricts notaries public who are not licensed to practice law from using certain terms in their advertisements that imply they possess legal expertise in immigration law.
- Authorizes the Attorney General, state attorneys, and city attorneys to seek declaratory or injunctive relief against anyone violating the bill’s provisions.
- Authorizes aggrieved persons or entities to bring a civil action for injunctive relief or to recover damages from anyone violating the bill’s provisions.
- Authorizes the Attorney General, state attorneys, and city attorneys to bring enforcement actions against local governmental entities, local law enforcement agencies, and others who violate their duties under state federal immigration enforcement laws.
- Prohibits individuals from engaging in the practice of law, or engaging in certain acts or practices, in an immigration matter unless that person is licensed to practice law.
- Requires unlicensed or unauthorized individuals offering immigration services to post conspicuous notices on their websites and at their places of business in relevant languages.

The bill takes effect July 1, 2025.

II. Present Situation:

Notaries Public in Florida

A notary public is a public officer under the Florida Constitution¹ and “an impartial agent of the state.”² As a public officer, notaries public are constitutionally required to give a bond (as required by law) and swear or affirm to uphold the Constitutions of the U.S. and Florida.³ Notaries public are appointed and commissioned by the Governor to four-year terms⁴ and are authorized under state law to perform six basic duties:

- Administer oaths or affirmations.⁵
- Take acknowledgments.⁶
- Solemnize marriages.⁷
- Attest to photocopies.⁸
- Verify vehicle identification numbers (VINs).⁹
- Certify the contents of a safe-deposit box.¹⁰

A notary public may only exercise the foregoing duties within the physical boundaries of the state of Florida.¹¹ Generally, a notary public may not charge more than \$10 per notarial act and may not charge a fee for notarizing a vote-by-mail ballot.¹²

A notary public may provide an electronic signature that is unique, verifiable, under the notary public’s sole control, and attached to a document in a way revealing any subsequent alteration.¹³ When an electronic signature must be accompanied by a notary public seal, the requirement is met when the notary public includes his or her full name as provided in the notary public’s application for commission, the words “Notary Public State of Florida,” the expiration date of the notary public’s commission, and the notary public’s commission number.¹⁴ The seal must also be applied to all notarized paper documents using a rubber stamp containing the foregoing information.¹⁵ The rubber stamp seal must be affixed to the notarized paper document in photographically reproducible black ink. Every notary public must print, type, or stamp below his or her signature on a paper document his or her name exactly as commissioned.¹⁶

¹ See FLA. CONST. art. II, s. 5(a) (recognizing that notaries public are public officers that may hold another office).

² 58 AM. JUR. 2D s. 1 *Notaries Public*.

³ See s. 117.01(3), F.S. (requiring that, as part of oath, the applicant must swear he or she has read ch. 117, F.S., and knows the duties, responsibilities, limitations, and powers of a notary); see also s. 117.01(7), F.S. (requiring that notaries give a bond in the amount of \$7,500, which is to be kept on file with the Department of State, in the event the notary breaches his or her duties). Notaries must be able to read, write, and understand the English language. Section 117.01(1), F.S.

⁴ Section 117.01(1), F.S.

⁵ Section 117.03, F.S.

⁶ Section 117.04, F.S.

⁷ Section 117.045, F.S.

⁸ Section 117.05(12)(a), F.S.

⁹ Section 319.23(3)(a)2., F.S.

¹⁰ Section 655.94(1), F.S.

¹¹ Section 117.01(1), F.S.

¹² Section 117.05(2), F.S.

¹³ Section 117.021(2), F.S.

¹⁴ Section 117.021(3), F.S.

¹⁵ Section 117.05(3), F.S.

¹⁶ *Id.*

Additionally, as a public officer, a notary public is held to high standards and is subject to discipline, including suspension by the Governor and removal by the Senate, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony.¹⁷ A notary public is also subject to criminal penalties for certain unlawful uses of the notary public commission (such as notarizing his or her own signature),¹⁸ and liable to pay fees for certain civil infractions (such as notarizing a document when the signor is not in the notary public's presence).¹⁹

Becoming a Notary Public in Florida

To be eligible to become a notary public in Florida, a person must:

- Be at least 18 years of age.
- Be a Florida resident or permanent resident alien with a recorded declaration of domicile.
- Maintain Florida residence throughout the appointment.
- Be able to read, write, and understand the English language.²⁰

To apply to be a notary public in Florida, the application form provided by the Department of State must be completed, signed, sworn, and filed along with the appropriate applications fees.²¹ Because the bond must be attached, the bonding agency usually submits the application in both a paper and electronic format. The oath of office and notary public bond must accompany the notary public's application when filed with the Department of State.²²

Applicants must also provide the following as part of the application:

- Personal identification information.
- Affidavit of good character from a reference who has known the applicant for at least 1 year and is not a relative.
- 10-year history of any licenses and discipline.
- Statement regarding whether the applicant has ever been convicted of a felony or had his or her civil rights restored.
- Any other information requested by the Governor's office to confirm eligibility.²³

Notary's Duty to Confirm Identity

One of the notary public's primary duties is to verify the identity of the person who is signing a document. If the person is personally known to the notary public or provides "satisfactory evidence" by producing valid identification or witnesses or both verifying that the person is who he or she claims to be, the notary public may notarize the document.²⁴

¹⁷ FLA. CONST. art. IV, s. 7.

¹⁸ Section 117.05(1), F.S. (providing that any violation of the subsection is a third-degree felony); *see also* s. 117.05(3)(d), (7), and (8), F.S.; s. 117.105, F.S.; s. 117.107(9), F.S. (additional examples of unlawful uses of the notary public commission).

¹⁹ Section 117.107(9), F.S. (providing that any violation is a civil infraction punishable by a fine of up to \$5,000).

²⁰ Section 117.01(1), F.S.

²¹ Section 117.01(2), F.S. (requiring a \$25 application fee, a \$10 commission fee, and a \$4 educational surcharge, except that the commission fee is waived for veterans with a 50 percent disability).

²² Section 117.01(2), F.S.

²³ *Id.*

²⁴ Section 117.05(5), F.S.

Prohibited Acts

State law prohibits certain acts by notaries.²⁵ A notary public may not:

- Use a name or initial in signing certificates other than that by which the notary public is commissioned.
- Sign notarial certificates using a facsimile signature stamp, unless the notary public has a physical disability that limits his or her ability to make a written signature, and unless the notary public has first submitted written notice to the Department of State with an exemplar of the facsimile signature stamp. This does not apply to, or prohibit the use of, an electronic signature and seal by a notary public who is registered as an online notary public to perform an electronic or online notarization in accordance with ch. 117, F.S.
- Affix his or her signature to a blank form of affidavit or certificate of acknowledgment and deliver that form to another person, with the intent that it be used as an affidavit or acknowledgment.
- Take the acknowledgment of or administer an oath to a person whom the notary public actually knows to have been adjudicated mentally incapacitated by a court of competent jurisdiction, if the acknowledgment or oath necessitates the exercise of a right that has been removed, and if the person has not been restored to capacity as a matter of record.
- Notarize a signature on a document if it appears that the person is mentally incapable of understanding the nature and effect of the document at the time of notarization.
- Take the acknowledgment of a person who does not speak or understand the English language, unless the nature and effect of the instrument to be notarized is translated into a language which the person does understand.
- Change anything in a written instrument after it has been signed by anyone.
- Amend a notarial certificate after the notarization is complete.
- Notarize a signature on a document if the person whose signature is being notarized does not appear before the notary public either by means of physical presence or by means of audio-video communication technology as authorized under part II of ch. 117, F.S., at the time the signature is notarized.
- Notarize a signature on a document if the document is incomplete or blank. However, an endorsement or assignment in blank of a negotiable or nonnegotiable note, and the assignment in blank of any instrument given as security for such note, is not deemed incomplete.
- Notarize a signature on a document if the person whose signature is to be notarized is the spouse, son, daughter, mother, or father of the notary public.
- Notarize a signature on a document if the notary public has a financial interest in or is a party to the underlying transaction; however, a notary public who is an employee may notarize a signature for his or her employer, and this employment does not constitute a financial interest in the transaction nor make the notary a party to the transaction as long as he or she does not receive a benefit other than his or her salary and the fee for services as a notary public authorized by law.²⁶

²⁵ Section 117.107, F.S.

²⁶ *Id.*

Notaries in Other Countries

The services that a notary public in Florida or the U.S. can legally offer may differ significantly from the services, and legal expertise, that notaries in other countries can offer. In the U.S., notaries do not require a law degree, nor may they offer legal advice unless they are licensed to practice law.²⁷ This dynamic is typical for common law countries.²⁸

However, in civil law jurisdictions notaries can assume certain duties that are similar to those of a practicing lawyer in common law jurisdictions. For example, in France, notaries essentially serve the government and can provide neutral legal counsel to both parties during a contract negotiation for real estate and in other matters. In such cases, notaries must have an undergraduate law degree along with a master's degree in law or from a notarial school.²⁹

The differing competencies and roles of notaries around the world can confuse individuals seeking immigration services in the U.S.

Unlicensed Practice of Law

Florida's Constitution gives the Supreme Court of Florida the power to regulate the conduct of attorneys, and the Court has given The Florida Bar the duty to investigate and take action against the unlicensed practice of law.³⁰

Unlicensed Practice of Law (UPL) committees investigate instances of unlicensed practice of law.³¹ The Florida Bar prosecutions are filed with the Supreme Court of Florida and trials are held before judges, called referees, appointed by the Court.³² The Florida Bar acts as prosecutor in UPL cases.³³ Additionally, the unlicensed practice of law is a third-degree felony.³⁴

Federal Immigration Enforcement

Any executive or administrative state, county, or municipal officer who violates his or her duties under ch. 908, F.S., regulating federal immigration enforcement, may be subject to action by the Governor in the exercise of his or her authority under the Florida Constitution and Florida law.³⁵

²⁷ See s. 117.01(1), F.S. (identifying the minimum requirements to be a notary public in Florida); see also s. 117.01(4)(f), F.S. (providing that a notary public engaging in the unauthorized practice of law constitutes malfeasance, misfeasance, or neglect of duty, for which the Governor may suspend the notary public).

²⁸ Notarize with Proof Blog, *Going Global: How Notaries Differ Across the World* (updated Jun. 11, 2024), <https://www.notarize.com/blog/going-global-how-notaries-differ-across-the-world>.

²⁹ *Id.*

³⁰ The Florida Bar, *Unlicensed Practice of Law – Consumer Help*, <https://www.floridabar.org/rules/upl/upl001/> (last visited Mar. 26, 2025); see also R. Regul. Fl. Bar 10-1.1, <https://www.floridabar.org/rules/rtfb/> (last visited Mar. 26, 2025); see also FLA. CONST. art. V, s. 15; see also s. 454.021, F.S.

³¹ The Florida Bar, *Consumer Information: Filing an Unlicensed Practice of Law Complaint*, <https://www.floridabar.org/public/consumer/pamphlet012/> (last visited Mar. 26, 2025).

³² *Id.*

³³ *Id.*

³⁴ *Id.*; see also s. 454.23, F.S. (providing that the unlicensed practice of law is punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.). A third-degree felony is punishable by imprisonment not to exceed 5 years and a fine not to exceed \$5,000. Sections 775.082 and 775.083, F.S.

³⁵ Section 908.107(1), F.S.

The Governor may initiate judicial proceedings in the name of the state against such officers to enforce compliance with any duty under ch. 908, F.S., or restrain any unauthorized act.³⁶ In addition, the Attorney General may file suit against a local governmental entity or local law enforcement agency in a court of competent jurisdiction for declaratory or injunctive relief for a violation of ch. 908, F.S.³⁷

If a local governmental entity or local law enforcement agency violates ch. 908, F.S., the court must enjoin the unlawful sanctuary policy.³⁸ The court has continuing jurisdiction over the parties and subject matter and may enforce its orders with the initiation of contempt proceedings as provided by law.³⁹ An order approving a consent decree or granting an injunction must include written findings of fact that describe with specificity the existence and nature of the sanctuary policy that is in violation.⁴⁰

III. Effect of Proposed Changes:

The bill amends existing statutes and introduces new provisions addressing notary public fraud and the unlicensed practice of law in connection with immigration matters.

Currently, s. 117.05(11), F.S., prohibits the literal translation of the phrase “Notary Public” into a language other than English in advertisements for notarial services. **Section 1** of the bill amends the subsection to prohibit such literal translations in all cases, not just in advertisements for notarial services. The bill also subjects any person violating this prohibition to the penalties specified in a new statute, s. 117.107, F.S., created in Section 2 of the bill.

Section 2 prohibits a notary public who does not hold an active license to practice law in a state, territory, or jurisdiction of the U.S., and is not otherwise authorized to practice law or represent others under federal law in an immigration matter, from advertising his or her notary public services using the terms notario público, notario, immigration assistant, immigration consultant, immigration specialist, or any other designation or title, in any language, which conveys or implies that he or she possesses professional legal skills in immigration law.

Under the bill, for any violation of this prohibition (subsection (13)(a)) or s. 117.05(11), F.S., as amended by Section 1 of the bill:

- The Attorney General, a state attorney, or a city attorney may file suit against the appropriate party in a court of competent jurisdiction for declaratory or injunctive relief.
- An aggrieved person or an entity may, in an appropriate state court, bring a civil action for injunctive relief or to recover actual monetary losses caused by the violation, plus an amount equal to treble the amount of actual damages or \$1,000 per violation, whichever is greater.
- If a person or an entity prevails in a civil action for injunctive relief, the person or entity is entitled to recover reasonable attorney fees and costs.

³⁶ *Id.*

³⁷ Section 908.107(2), F.S.

³⁸ Section 908.107(3), F.S.

³⁹ *Id.*

⁴⁰ Section 908.107(4), F.S.

Section 3 amends s. 908.107, F.S., regarding enforcement against state, county, and municipal officers who violate their duties under ch. 908, F.S., to expand the list of who may bring enforcement actions to include state attorneys and city attorneys; current law only permits the Attorney General to bring enforcement actions.

Moreover, under the bill, the Attorney General, a state attorney, or a city attorney may file suit against “any other appropriate party”; a suit may already be brought against a local governmental entity or a local law enforcement agency under current law.

Section 4 creates s. 908.113, F.S., regarding fraud protection, which prohibits persons from engaging in the practice of law in an immigration matter for compensation unless the person is licensed to practice law in a state, territory, or jurisdiction of the U.S., or is otherwise authorized to practice law or represent others under federal law in an immigration matter.

Unlicensed or unauthorized persons also may not engage in the following acts or practices for compensation:

- Selecting or assisting another in selecting, or advising another in selecting, a benefit, visa, or program to apply for in an immigration matter.
- Soliciting to prepare documents for, or otherwise representing the interests of, another in a judicial or administrative proceeding in an immigration matter.
- Explaining, advising, or otherwise interpreting the meaning or intent of a question on a governmental agency form in an immigration matter.
- Charging a fee for referring another to a person licensed to practice law that such person may perform.
- Selecting, drafting, or completing legal documents affecting the legal rights of another in an immigration matter.

Under the bill, a person or business offering immigration services, other than those persons or businesses holding active licenses to practice law in Florida or otherwise permitted to practice law or represent others under federal law in an immigration matter, must post conspicuous notices on its main website and at its place of business in English and every other language in which the person or business provides or offers immigration assistance with the following statement:

I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE. I AM NOT ACCREDITED TO REPRESENT YOU IN IMMIGRATION MATTERS.

The bill also prohibits persons, other than those holding an active license to practice law in a state of the U.S. or otherwise authorized to practice law or represent others under federal law in an immigration matter, from engaging in the following acts or practices, regardless of whether compensation is sought:

- Representing, either orally or in any document, letterhead, advertisement, stationery, business card, website, or other comparable written material, that he or she is a notario público, notario, immigration assistant, immigration consultant, immigration specialist, or using any other designation or title, in any language, that conveys or implies that he or she possesses professional legal skills in the area of immigration law.

- Representing, in any language, either orally or in any document, letterhead, advertisement, stationery, business card, website, or other comparable written material, that he or she can or is willing to provide services in an immigration matter, if such services would constitute the practice of law.

The provisions in the bill prohibiting the unlicensed practice of law do not apply to the activities of nonlawyer assistants acting under the supervision of a person holding an active license to practice law in Florida or otherwise authorized to practice law or represent others under federal law in an immigration matter. Additionally, a person is not prohibited from offering translation or interpretation services, regardless of whether compensation is sought. Translating words contained on a governmental form from English to another language and translating a person's words from another language into English does not constitute the unauthorized practice of law.

The bill takes effect July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. **Government Sector Impact:**

Because the bill creates a new cause of action, courts may experience an indeterminate increase in the number of notary public fraud cases they docket and hear. However, it is unlikely that the bill will significantly impact judicial resources.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

Section 117.01(4)(f), F.S., provides that the unauthorized practice of law constitutes malfeasance, misfeasance, or neglect of duty, and authorizes the Governor to suspend a notary public.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 117.05, 117.107, 908.107.

This bill creates s. 908.113 of the Florida Statutes.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on March 25, 2025:

The committee substitute removes the requirement that an action be set for trial at the earliest possible date and take precedence over all other cases for violations of ss. 117.107(13)(a) and 117.05(11), F.S., which are the sections of the bill restricting the use of the phrase “notary public” into a language other than English and prohibiting a notary public who does not hold an active law license from practicing law. The committee substitute removes the provision providing a private right of action and damages for violations of ch. 908, F.S., which is the chapter that provides the framework for federal immigration enforcement. Additionally, the committee substitute removes certain provisions in s. 908.113, F.S., which is the section of the bill providing fraud protection for the unlicensed or unauthorized practice of law, and lists certain prohibitions for individuals other than those authorized to practice law relating to assisting individuals in immigration matters.

B. **Amendments:**

None.