

BILL ANALYSIS

C.S.H.B. 3657
By: Anchía
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There have been a number of reported cases of land and homes being stolen by deed fraud, where a person forges the property owner's signature and files a fraudulent deed. Property transfers typically occur outside of a title company, and the only check on the authenticity of an owner's in-person signature is a notary public, which makes the notary public the primary weak link in the in-person system. In-person notaries are being exploited by criminals in various ways, including through the presentment of fake IDs, false claims that the signatory is unavailable, and previously signed documents. In some cases, notaries are complicit in these fraudulent transactions. C.S.H.B. 3657 seeks to shore up the integrity, education, and records retention of in-person notaries public in order to address the issue of deed fraud. The bill establishes education requirements for appointment and reappointment as a notary public, a retention period for notary records, and a criminal offense to penalize notaries complicit in deed fraud.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the secretary of state in SECTIONS 6 and 7 of this bill.

ANALYSIS

C.S.H.B. 3657 amends the Government Code to include the failure to maintain notary records as required by state law among the "good causes" for which the secretary of state may reject an application or suspend or revoke the commission of a notary public. The bill requires a notary public to retain the requisite notary records until the 10th anniversary of the date of notarization.

C.S.H.B. 3657 creates a Class A misdemeanor offense for a notary public who knowingly performs any notarization, other than an online notarization, with knowledge that the signer, grantor, or maker for whom the notarization is performed did not personally appear before the notary at the time the notarization is executed. The bill enhances from a Class A misdemeanor to a third degree felony the penalty for the offense if the document being notarized involves the transfer of real property.

C.S.H.B. 3657 requires the secretary of state to adopt rules necessary to establish education requirements for appointment as a notary public and continuing education requirements for reappointment. However, the bill prohibits the rules from requiring a person appointed as a notary public before September 1, 2023, to complete education requirements required for initial

appointment on or after that date. The bill conditions a person's appointment or reappointment as a notary public on successful completion of the applicable education requirements.

C.S.H.B. 3657 requires the secretary of state to adopt rules necessary to implement the bill's provisions not later than January 1, 2024. The bill applies only to an application for a notary public appointment or reappointment submitted on or after that date.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 3657 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Both the introduced and the substitute require the secretary of state to establish continuing education requirements that a notary public must complete before being reappointed. However, the substitute includes provisions not in the introduced requiring the secretary of state also to establish education requirements that a person must complete for initial appointment as a notary public and prohibiting the secretary of state from requiring a person appointed as a notary public before September 1, 2023, to complete education requirements required for initial appointment on or after that date. The substitute revises the provision of the introduced specifying that the bill applies only to an application for a notary public reappointment submitted on or after January 1, 2024, to also include an application for a notary public appointment in this prospective applicability provision.

The substitute revises a provision in the introduced establishing the offense of notarization for a person not personally appearing before the notary public at the time the notarization is executed by doing the following:

- specifying that the offense does not apply to an online notarization; and
- changing the conduct constituting the offense from knowingly performing a notarization when the person for whom the notarization is performed did not personally appear, as in the introduced, to performing a notification with knowledge that the signer, grantor, or maker for whom the notarization is performed did not personally appear.

The substitute requires a notary public to retain notary records until the 10th anniversary of the date of notarization, whereas the introduced required those records to be retained until the 15th anniversary of that date.