

BILL ANALYSIS

C.S.H.B. 3704
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Committee Report (Substituted)

BACKGROUND AND PURPOSE

The bill author has informed the committee of a number of issues surrounding a notable rise in deed fraud whereby a person forges an owner's signature and files a fraudulent deed, including that in-person notaries public do not have safety protocols to prevent these situations, that these property transfers typically occur outside a title company, and that the notary in this transaction is the primary weak link in this type of deed fraud. The bill author has further informed the committee that in-person notaries can be exploited by criminals in various ways, including through the presentation of fake IDs and previously signed documents to the notary as well as false claims to the notary that the signatory is unavailable. Moreover, as the bill author has noted, in some cases notaries may be complicit in these fraudulent transactions. C.S.H.B. 3704 seeks to strengthen the integrity, education, and records retention policies for 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 SECTION 6 of this bill.

ANALYSIS

C.S.H.B. 3704 amends the Government Code to create a Class A misdemeanor offense for a notary public who performs any notarization with knowledge that the signer, grantor, maker, or principal 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 state jail felony the penalty for the offense if the document being notarized involves the transfer of real property or any interest in real property. The bill establishes as an affirmative defense to prosecution for the offense that the person who personally appeared before the notary public knowingly presented an apparently valid proof of identification identifying the person as the signer, grantor, maker, or principal for whom the notarization was purported to be performed, regardless of the identity of the person. For these purposes, the bill establishes that a person personally appears before a notary public if the person does the following:

- for a notarization other than an online notarization, physically appears before the notary public at the time of the notarization in a manner that permits the notary public and the person to see, hear, communicate with, and provide proof of identification to each other; and

- for an online notarization, appears at the time of the notarization by an interactive two-way video and audio conference technology that meets the standards adopted for online notarization under state law.

C.S.H.B. 3704 requires the secretary of state to adopt rules necessary to establish education requirements for appointment and continuing education requirements for reappointment as a notary public. The rules must require the following:

- that the secretary of state establish and offer education and continuing education courses and allow the secretary of state to charge a reasonable fee for such courses; and
- that the education and continuing education course hours required for appointment or reappointment as a notary public only be completed through a course established and offered by the secretary of state.

In addition, the bill prohibits the rules from requiring a person to do the following:

- complete more than two hours of education for appointment or two hours of continuing education for reappointment as a notary public; and
- with respect to a person who is appointed as a notary public before September 1, 2025, 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. The bill includes the failure to maintain notary records as required by state law among the statutory "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. 3704 requires the secretary of state, not later than January 1, 2026, to adopt rules necessary to implement the bill's provisions. The bill's provisions apply only to an application for a notary public appointment or reappointment submitted on or after that date. An application submitted before that date is governed by the law as it existed immediately before the bill's effective date, and that law is continued in effect for that purpose.

EFFECTIVE DATE

September 1, 2025.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 3704 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.

While both the introduced and the substitute enhance the penalty for the offense of notarization for a person not personally appearing if the document being notarized involves the transfer of real property, the substitute also makes that enhancement to the offense if the document being notarized involves any interest in real property, whereas the introduced did not.

Relating to the requirement for the secretary of state to adopt rules necessary to establish education requirements for appointment and continuing education requirements for reappointment as a notary public, the substitute includes provisions absent from the introduced that require the rules to require the following:

- that the secretary of state establish and offer education and continuing education courses and allow the secretary of state to charge a reasonable fee for such courses; and
- that the education and continuing education course hours required for appointment or reappointment as a notary public only be completed through a course established and offered by the secretary of state.