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AB-2566 Notaries public: acceptance of identification. (2015-2016)

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Assembly Bill No. 2566

CHAPTER 762

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

[Approved by Governor September 28, 2016. Filed with Secretary of State September 28, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2566, Nazarian. Notaries public: acceptance of identification.

Existing law relating to property transfers prohibits the acknowledgment of an instrument unless the officer taking it has satisfactory evidence that the person making the acknowledgment is the individual who is described in and who executed the instrument. Existing law provides that an officer may reasonably rely on, among other things, a passport issued by a foreign government, a driver's license issued by another state or a Canadian or Mexican public agency, an identification card issued by another state or a branch of the Armed Forces of the United States, or an employee identification card issued by an agency or office of this state or a city, county, or city and county in this state, provided that the document meets certain requirements. In the event the document is a passport, it must be stamped by the United States Citizenship and Immigration Services of the Department of Homeland Security.

This bill, instead of that provision pertaining to a passport issued by a foreign government, would authorize the acceptance of a valid passport from the applicant's country of citizenship, or a valid consular identification document issued by a consulate from the applicant's country of citizenship, as proof of identity. The bill would eliminate the requirement that the passport be stamped by the United States Citizenship and Immigration Services of the Department of Homeland Security.

This bill would incorporate additional changes to Section 1185 of the Civil Code proposed by SB 997 that would become operative if this bill and SB 997 are enacted and this bill is enacted last.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1185 of the Civil Code is amended to read:

1185. (a) The acknowledgment of an instrument shall not be taken unless the officer taking it has satisfactory evidence that the person making the acknowledgment is the individual who is described in and who executed the instrument.

(b) For purposes of this section, "satisfactory evidence" means the absence of information, evidence, or other circumstances that would lead a reasonable person to believe that the person making the acknowledgment is not the individual he or she claims to be and any one of the following:

(1) (A) The oath or affirmation of a credible witness personally known to the officer, whose identity is proven to the officer upon presentation of a document satisfying the requirements of paragraph (3) or (4), that the person making the acknowledgment is personally known to the witness and that each of the following are true:

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

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

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

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

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

(B) A notary public who violates this section by failing to obtain the satisfactory evidence required by subparagraph (A) shall be subject to a civil penalty not exceeding ten thousand dollars (\$10,000). An action to impose this civil penalty may be brought by the Secretary of State in an administrative proceeding or a public prosecutor in superior court, and shall be enforced as a civil judgment. A public prosecutor shall inform the secretary of any civil penalty imposed under this subparagraph.

(2) The oath or affirmation under penalty of perjury of two credible witnesses, whose identities are proven to the officer upon the presentation of a document satisfying the requirements of paragraph (3) or (4), that each statement in paragraph (1) is true.

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

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

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

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

(D) Any form of inmate identification issued by a sheriff's department, if the inmate is in custody in a local detention facility.

(4) Reasonable reliance on the presentation of any one of the following, provided that a document specified in subparagraphs (A) to (E), inclusive, shall either be current or have been issued within five years and shall contain a photograph and description of the person named on it, shall be signed by the person, and shall bear a serial or other identifying number:

(A) A valid consular identification document issued by a consulate from the applicant's country of citizenship, or a valid passport from the applicant's country of citizenship.

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

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

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

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

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

(d) A party who files an action for damages based on the failure of the officer to establish the proper identity of the person making the acknowledgment shall have the burden of proof in establishing the negligence or misconduct of the officer.

(e) A person convicted of perjury under this section shall forfeit any financial interest in the document.

SEC. 1.5. Section 1185 of the Civil Code is amended to read:

1185. (a) The acknowledgment of an instrument shall not be taken unless the officer taking it has satisfactory evidence that the person making the acknowledgment is the individual who is described in and who executed the instrument.

(b) For purposes of this section, "satisfactory evidence" means the absence of information, evidence, or other circumstances that would lead a reasonable person to believe that the person making the acknowledgment is not the individual he or she claims to be and any one of the following:

(1) (A) The oath or affirmation of a credible witness personally known to the officer, whose identity is proven to the officer upon presentation of a document satisfying the requirements of paragraph (3) or (4), that the person making the acknowledgment is personally known to the witness and that each of the following are true:

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

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

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

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

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

(B) A notary public who violates this section by failing to obtain the satisfactory evidence required by subparagraph (A) shall be subject to a civil penalty not exceeding ten thousand dollars (\$10,000). An action to impose this civil penalty may be brought by the Secretary of State in an administrative proceeding or a public prosecutor in superior court, and shall be enforced as a civil judgment. A public prosecutor shall inform the secretary of any civil penalty imposed under this subparagraph.

(2) The oath or affirmation under penalty of perjury of two credible witnesses, whose identities are proven to the officer upon the presentation of a document satisfying the requirements of paragraph (3) or (4), that each statement in paragraph (1) is true.

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

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

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

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

(D) Any form of inmate identification issued by a sheriff's department, if the inmate is in custody in a local detention facility.

(4) Reasonable reliance on the presentation of any one of the following, provided that a document specified in subparagraphs (A) to (F), inclusive, shall either be current or have been issued within five years and shall contain a photograph and description of the person named on it, shall be signed by the person, and shall bear a serial or other identifying number:

(A) A valid consular identification document issued by a consulate from the applicant's country of citizenship, or a valid passport from the applicant's country of citizenship.

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

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

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

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

(F) An identification card issued by a federally recognized tribal government.

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

(d) A party who files an action for damages based on the failure of the officer to establish the proper identity of the person making the acknowledgment shall have the burden of proof in establishing the negligence or misconduct of the officer.

(e) A person convicted of perjury under this section shall forfeit any financial interest in the document.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 1185 of the Civil Code proposed by both this bill and Senate Bill 997. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2017, (2) each bill amends Section 1185 of the Civil Code, and (3) this bill is enacted after Senate Bill 997, in which case Section 1 of this bill shall not become operative.