June 25, 2014

To: California Association of Clerks and Election Officials

From: Matt Siverling, Legislative Advocate

Re: Legislative Report

I submit the following report on legislative activity.

Because the Legislature takes a Summer Recess during the month of July, there is less time that there seems to be for bills to be acted on prior to the end of Session. The Houses will adjourn on July 3rd and not return until August 4th for the stretch run of the Session. Once they return, there will only be four weeks remaining for the Assembly and Senate to accomplish their goals.

The upcoming deadline that everyone is working toward is May 23, 2014, which is the last day for policy committees to hear bills. Bills may continued to be heard on “Rule Waiver” after the deadline, but this will only be applied to bills on a piecemeal basis. Once the deadline passes, the attention will be turned to the fiscal deadline in mid-August, and ultimately the end of Session at midnight on August 31st.

**Sponsored Bills**

The CACEO Legislative Committee opted to sponsor three proposals for introduction in the 2014 Legislative Session.

**Senate Bill 1467**

**Business and Professions Code/Fictitious Business Name Cleanup Legislation**

In 2012, CACEO “opposed unless amended” Assembly Bill 1325 (Lara), which was eventually amended and signed into law. With the amendments that were taken into the bill, the Association removed opposition and officially went neutral.

AB 1325 made wholesale amendments to the Business and Professions Code related to the fictitious business name form and application process. It was introduced in reaction to a constituent complaint in Los Angeles County who felt that they had been the victim of identity theft through the FBN application process. The bill added a “safeguard” by allowing the county clerk to request identification or a certificate of ID to ensure that a paper trail was created during the process.

In preparing for the enactment date of January 1, 2014 for the new laws contained in AB 1325, the counties began to identify several issues that would need to be fixed moving forward. Current law did not provide an appropriate process for “unincorporated associations” to complete the fictitious business name registration. The current law also requires a higher level of scrutiny than clerks felt was needed to identify corporations and LLC’s, which creates a more expensive and time-consuming process than is necessary to carry out the intent of the original bill, AB 1325 (Lara, ’12).

The bill would clarify who should be listed as the "registrant" when business is being conducted by an "**Unincorporated Association**."  Currently, as set up by AB 1325 (Lara, '12) those signing up as "unincorporated associations" do not have a set of rules/guidelines that fit their needs.  They differ from "partnerships" since they have no "partners" and differ from "corporations" because corporations are treated as stand-alone entities.  The bill would add a process for designating the appropriate person to sign the FBN.

Second, the current law requires an "original certificate of status" from the Secretary of State when registering for an FBN as a corporation, LLC, and limited liability partnership.  This proposal would allow alternative forms of "evidence or proof" to indicate the current existence and good standing of the company.   This suggestion will streamline the process for this population of registrant and would save time and money for those applicants who could satisfy the requirement through other means.   For example, until the law went into effect on January 1, 2014, Los Angeles County was allowing a screen print of the Business Entity Detail report that populates the Secretary of State's web form. The current "original certificate of status" would carry a cost and also, according to courier services and recent applicants, slow the process by weeks.

The language is now contained in the Committee bill and has been heard and approved

by the Assembly Business and Professions Committee.

**Senate Bill 1467**

**Professional Photocopier Registration Legislation**

This Committee bill also specifies that a person registering as a professional photocopier with the county is made aware that their notary commission must remain current throughout the duration of their registration period.

Current law only requires that a person registering as a professional photocopier with the county clerk only possess a “current commission to act as a notary from the Secretary of State.” Because the commission may expire after four (4) years, there is a possibility that a lapse may occur during the course of the registration with the county, which lasts two (2) years.

This bill will ensure that a person is aware that they are required to carry a commission to act as a notary that is active throughout the registration with the county, and if it expires in the middle of the county registration, they must notify the clerk that the issue has been addressed. This bill will provide a higher likelihood that professional photocopiers are current with necessary requirements throughout the duration of their registration, not just at the time they register.

**Assembly Bill 2747**

**Confidential Marriage License/Marriage Ceremony Location Bill**

This measure was adopted for sponsorship by the Association due to reports from numerous counties of members of the public inadvertently violating current law related to confidential marriage licenses. Current law mandates that the marriage ceremony must take place within the county that issued the license. If and when couples do not follow this law, the license is invalid and the couple must seek legal recourse to repair the problem.

In researching the history of the Code Section, Family Code 504, it was determined that the language to mandate that the same county issue the license and host the marriage was added in 1983 by…the California County Clerks Association. In the analysis which was provided to then-Governor Deukmejian, the sponsor indicated that the amendment would address the numerous instances where couples were unaware of which county their license was located. Mandating them to register and then hold their ceremony within the same county would correct this problem.

Moving forward, it would be helpful to gather some anecdotal examples of couples who have struggled to deal with this Code Section. As long as the registration and the ultimate filing stay with the same county, it should not matter where the ceremony takes place.

**Other Bills of Interest**

**Assembly Bill 1525 (Lowenthal) Position: Oppose**

The Committee opted to oppose Assembly Bill 1525, which would add “city clerk” to the list of individuals permitted to solemnize a marriage by virtue of their title. City clerks would be added to clergy, Congress, members of the Senate and Assembly, elected Mayors, and members of the County Board of Supervisors.

Last month, this measure was heard in the Senate Judiciary Committee. The Association argued that since county clerks are the statutorily designated “commissioner of marriages” in their respective counties, and function as a political subdivision of the California Department of Public Health, the designation should remain solely with the county to provide this service. Further, one of the principal functions of the county clerk is the issuance and administration of the marriage license, which won’t be offered at the city. Under current law, county clerks also have the ability to “deputize” interested individuals to perform a marriage.

County clerks explained to the Committee that they are troubled and concerned by AB 1525, which would blur the function between city and county clerks. The existing list of eligible dignitaries and elected officials may occasionally perform marriages for constituents from time to time, which is different than adding “city clerks” to the list; who would confuse the public by granting the authority to an administrative public office which currently does not provide any services related to marriages. Couples would continue to be required to apply for their marriage license at the county office, file their license with the county recorder within 10 days of the ceremony and obtain their certified copies of marriage documents from the county clerk.

The Committee forced amendments into the bill to put the language into Family Code Section 400.1, which also contains the authorization for mayors and county supervisors. The Section also requires the “training” requirement that is imposed on the other designations. Finally, the bill was amended to specify that ***only*** the city clerk and not their staff would be eligible to solemnize marriages.

With the amendments, the Committee approved the bill with one no vote. It is currently on the Senate Floor.

**Assembly Bill 2275 (Ridley Thomas)** **Position: Support**

CACEO opted to support AB 2275, which will increase Californians access to vital records utilizing an electronic identification process for notaries.

The Association generally supports greater access to public records. In addition, allowing electronic identification will make the online request process more efficient and reduce the additional costs associated with obtaining a notarized affidavit of identity.  This bill will benefit persons who may not have ready access to notary services such as members of the military who are deployed overseas or out at sea, civilians residing overseas, and indigent or homeless constituents for whom the cost of additional notary fees or lack of physical identification may be prohibitive.

Current California statute allows for electronic notarization, but there are no notaries in California who are offering this service. Other online technologies/services offer methods to establish and verify a person’s identity electronically.  Such technologies have allowed a number of industries to revolutionize their business processes and services to the benefit of their customers including the banking, insurance and healthcare industries.

The Senate Judiciary Committee issued a scathing analysis claiming that the risks outweigh the benefits of this option. Among the reasons for opposing were increased identity theft concerns, fear of fraud, and a lack of security measures. The measure was lobbied hard by the ACLU and the Privacy Rights Clearinghouse.

There was a last effort by the Author and the sponsors to amend the bill into a three region pilot project, but the effort fell short on votes. The measure is effectively dead for the year without a Rule Waiver.

**Assembly Bill 2528 (Skinner) Position: Concern**

The April 1, 2014 amendments added “marriage licenses” into the provisions of the proposal, which requires “diacritical marks” to be added to government documents. CACEO is currently in the process of evaluating the impacts of this mandate.

AB 2528, as amended, now provides that all marriage records include diacritical marks, including but not limited to accents, tildes, graves, umlats and cedillas.  County Clerks have expressed concerns that this law would create unintended complications for customers. Historically, all electronic indexes maintained by the County Clerk have only been programmed to use 26 alphabetical characters. The various software systems that are currently in use throughout the state will need to be modified to accept diacritical marks.  Additional staff time processing amendments may be required if the marks are inadvertently left off or improperly included when issuing a marriage license. CACEO is still researching how this bill would affect our customers on the federal level since the marriage license is used as a legal name change document in the State of California. This may cause issues with the issuance of federal passports and interaction with Social Security offices.

CACEO understands the intent of the measure but also must communicate the potential challenges of complying with this State mandate. Individual counties each may encounter unique issues in attempting to comply with this proposal depending on the vendor and technology employed to issue licenses and maintain indexes. As problems are identified, the Association will relay them to the Author.

The measure was referred to suspense. The analysis indicates that the measure would cost “millions” (upward of $10 million) at the Secretary of State and likely more at the DMV (if they could comply at all). The analysis also referenced local costs of “easily in the tens of millions.”

The bill was held in Appropriations and effectively killed for the year.

**Senate Bill 1050 (Monning) Amend or Oppose**

This bill adds a statutory notice to a form certificate of acknowledgment, proof of execution, and jurat that the notarial certification verifies only the identity of the person who signed the document to which the certification is attached, and not the truthfulness, accuracy, or validity of that document.

CACEO has issues with the bill, because the measure requires that notice, **in not less than 12-point boldface font type,** to be inserted in a box at the top of the certificate of acknowledgment, proof of execution, or jurat.

CACEO participated in a meeting with the Secretary of State, the notaries and the Recorders to voice concerns about the “12 point font” requirement. Under the bill, the clerks would need to verify whether the notice was legal and following all of the requirements, including the font size.

The measure was amended to remove the font requirement and now reads that the notice needs to be “legible.” This should address the Association concerns.

**Senate Bill 1345 (Committee on Natural Resources) Position: Support**

Last year, CACEO identified an incorrect reference to “county clerk” as the designated officer to “record a lien” within the language of a Chaptered bill, SB 753 (Steinberg). This reference would more appropriately read “county recorder”.

The Committee staff for the Senate Pro Tem was approached and provided with the Code Section of the error. They have agreed to quickly and quietly clean it up this year in this Committee bill.

The bill is moving right along, and was unanimously approved by the Assembly Natural Resources Committee.