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SFA



BILL ANALYSIS

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House Bills 4142 and 4143 (as reported without amendment)

Sponsor: Representative Ilona Varga

House Committee: Regulatory Affairs

Senate Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 3-25-97

RATIONALE

A notary public is an officer appointed by the Secretary of State to confirm the authenticity of a person's signature on legal documents; a notary also may administer oaths and take affidavits in court-related matters. Notaries are required by the Uniform Recognition of Acknowledgments Act to certify that a person seeking acknowledgment of a document or instrument (for example, a contract) appeared in person before the notary and that the notary had "satisfactory evidence" that the person was the one who was described in and had executed the document. It has been pointed out that since current law does not define "satisfactory evidence", a notary faced with a person presenting questionable identification may have no real authority to deny his or her notarial services if he or she suspects fraud. Some believe that clearer guidelines as to what constitutes proper identification would better serve notaries and consumers alike.

In a separate issue, many competent persons cannot sign their names or make a mark on documents because of illness, injury, or other disability. This can be a particular problem for a person who wants to authorize another person to conduct his or her affairs through power of attorney. Reportedly, if a person is unable to sign a document granting power of attorney, he or she must attempt to obtain a court-appointed guardian, which can be complicated and time-consuming. It has been suggested that a notary should be allowed, under specified circumstances, to sign a document for a person whose physical characteristics limit his or her ability to sign.

CONTENT

House Bill 4142 would amend Chapter 14 of the Revised Statutes of 1846 to allow a notary

public to sign a document for a physically disabled person. House Bill 4143 would amend the Uniform Recognition of Acknowledgments Act to specify what would be considered "satisfactory evidence" of the identification of a person seeking acknowledgment of a document by a notary. House Bill 4142 is tie-barred to House Bill 4143. Following is a detailed description of each bill.

House Bill 4142

The bill would allow a notary public to sign the name of a person whose physical characteristics limited his or her capacity to sign or make a mark on a document presented for notarization if all of the following circumstances existed:

- The notary public was directed to do so by that person--whether orally, verbally, or through electronic or mechanical means provided by the person.
- The person was in the physical presence of the notary public.
- The notary public inscribed "signature affixed pursuant to Section 55.113(2) of the Michigan Compiled Laws" beneath the signature. (Section 55.113(2) is a section of the Act that the bill would amend.)

Currently, the Act specifies that for his or her services a notary public is to receive such fees as are provided by law. The bill specifies, instead, that a notary public could receive a service fee of not more than \$2 per acknowledgment or jurat.

House Bill 4143

The bill would define "satisfactory evidence" as evidence upon which reliance was placed upon

either the sworn word of a credible witness who was personally known to the notary public and who personally knew the signer, or a current identification card or document issued by a Federal or State government that contained the bearer's photograph and signature.

MCL 55.113 et al.(H.B. 4142)
565.262 (H.B. 4143)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

By defining what constitutes satisfactory evidence of identification, House Bill 4143 would ensure that signers of documents would be identified with a high standard of care. When presented with questionable or fraudulent identification, a notary would have a clear guideline to follow and the authority to refuse service. The bill also would serve consumers by preventing discriminatory refusal of service by notaries.

Supporting Argument

House Bill 4142 would be a positive step toward protecting the rights and dignity of all citizens, especially when through injury, illness, or other disability, a person was not able to sign his or her name on legal documents and contracts. By allowing a person either orally or through electronic or mechanical means to direct a notary to sign a document on his or her behalf, a person who was paralyzed but otherwise competent, or a person who communicated through the use of word boards or other devices, would be able to conduct his or her own affairs.

Opposing Argument

The proposed fee of \$2 per acknowledgment is too small. Reportedly, several states have set a \$5 or \$6 fee for notarial services, and Florida and California charge \$10 for each notarial act. In addition, some feel that since the county must store a notary's records, the county should get some reimbursement from each fee charged for a notarial act.

Response: This is a public service, and should be available to all citizens. Many notaries donate their services to low-income people and senior citizens. The actual supply costs for a notary are usually less than \$100 per year. Therefore, an increase to \$5 to \$10 is not justified. Setting the fee at no more than \$2 would enable notaries to keep

up with increased supply costs, yet still provide a low-cost, professional service to the public.

Legislative Analyst: G. Towne

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: R. Ross

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.