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NOTARY PUBLIC

**House Bill 5004 as introduced
House Bill 5005 (Substitute H-1)**

First Analysis (11-1-95)

**Sponsor: Rep. Ilona Varga
Committee: Regulatory Affairs**

THE APPARENT PROBLEM:

A notary public is an officer appointed by the secretary of state to confirm the authenticity of a person's signature, oaths, affidavits, and other legal documents. Duties include administering oaths and affirmations, attesting documents, and taking proof of execution and acknowledgements of instruments, such as property deeds and powers of attorney. Notaries are required by law to certify that a person acknowledging a document or instrument (for example, a contract) appeared in person before them and that they had "satisfactory evidence" that the person before them was the one described in and who had executed the document. However, since current law does not define what "satisfactory evidence" is, a notary faced with a person presenting questionable identification has 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 are in a "legal limbo" if they cannot sign their names or marks on documents because of illness, injury, or other disability. For instance, granting power of attorney to another requires the ability to sign one's name, and so otherwise able persons are forced to seek court-appointed guardians, a time-consuming and costly process. At the request of the National Notary Association, legislation has been proposed to address these and other concerns.

THE CONTENT OF THE BILLS:

The bills would make several changes to the laws regulating notaries public, such as allowing a notary public to sign for another person under certain circumstances and setting the fee for a notary public's service into statute. Specifically, the bills would do the following:

House Bill 5004. According to the Uniform Recognition of Acknowledgments Act (MCL 565.262), notaries public are required to have "satisfactory evidence" that a person having a document notarized is the person who is described in and executed the document. The bill would add a definition for the term "satisfactory evidence" to the act. "Satisfactory evidence" would be defined as "evidence upon which reliance is placed" on "the sworn word of a credible witness who is personally known to the notary public and who personally knows the signer" or a current state- or federally-issued picture identification card that contains the bearer's signature (such as a driver's license or passport).

House Bill 5005 would amend a chapter of the Revised Statutes of 1846 entitled "Of County Officers" (MCL 55.113 et al.) to allow a notary public to sign the name of a person who, because of his or her physical condition, is unable to sign or mark a document that has been submitted for notarization as long as 1) the notary public was verbally, orally, or by means of an electronic or mechanical device directed to do so by the person, (2) the person was in the physical presence of the notary and, 3) the notary public inscribed "signature affixed pursuant to section 55.113(2) of the Michigan Compiled Laws" underneath the signature.

Currently, if a notary public dies, an executor or administrator must deposit the notary public's records with the county clerk's office within three months of being appointed, or face a civil fine. The bill would delete the reference to an executor or administrator and replace it with a "personal representative" of a deceased notary public. The bill would also set the fee for a notary public's service at \$2.00 or less for each service performed. [Currently, the Revised Judicature Act (MCL 600.2564) sets certain fees at twenty to fifty cents.]

The bill is tie-barred to House Bill 5004.

House Bills 5004 and 5005 (11-1-95)

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, neither of the bills would have a fiscal impact at the state or local level. (10-24-95)

ARGUMENTS:

For:

By defining what constitutes reliable identification, House Bill 5004 would ensure that signers of documents such as property deeds and other often-forged documents would be identified with a high standard of care. The bill would also serve consumers by preventing discriminatory refusal of service by notaries. Yet, when presented with questionable or fraudulent identification, a notary would have a clear guideline to follow and the authority to refuse service.

For:

House Bill 5005 would be a positive step in protecting the rights and dignity of all citizens, especially when through injury, illness, or other disability, a person is not able to sign his or her name on legal documents and contracts. By allowing a person either orally or by use of electronic or mechanical means to direct a notary to sign a document on his or her behalf, a person who is paralyzed but otherwise competent, or a person who communicates through the use of word boards or other devices, would be able to conduct his or her own affairs.

For:

Where the costs for a notary's bond, seals, stamps and certificates have risen through the years, and notaries have unlimited liability for their notarial acts, it is only fair that charges for notarial acts be raised from the current cap of twenty to fifty cents on certain documents established under the Revised Judicature Act. Notaries are also encouraged by the secretary of state's office to obtain liability, or "errors and omissions", insurance.

Against:

The proposed fee increase is too large. This is a public service, and should be available to all citizens. The actual supply costs for a notary are usually less than \$100 per year. Therefore, the increase is not justified.

Response:

Many notaries donate their services to low-income people and senior citizens. Reportedly, many states have set a \$5.00 or \$6.00 fee for notarial services, and Florida and California charge \$10.00 for each notarial act. The increase to no more than \$2.00 would enable notaries to keep up with increased supply costs and

liability insurance, yet still provide a low-cost, professional service to the public.

POSITIONS:

The National Notary Association supports the bill. (10-30-95)

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.