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BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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Michigan State Law Commission

Senate Bill 77 (as reported without amendment)

Sponsor: Senator John F. Kelly

Committee: Judiciary

Date Completed: 5-13-87

RATIONALE

The Uniform Recognition of Acknowledgments Act defines and regulates notarial acts and acknowledgments and specifies certification and form requirements for such acts or acknowledgments. Some people contend that the Act's approval of notarial acts in foreign jurisdictions and under Federal authority should be clarified. The Michigan Law Revision Commission has recommended adopting the Uniform Law on Notarial Acts, as six states have done to date, to clarify the confusing provisions of the current law.

CONTENT

The bill would create the "Uniform Law on Notarial Acts" to do the following:

- Define a "notarial act" and describe the duties and responsibilities of a notary officer (a notary public or other officer authorized to perform notarial acts) in Michigan.
- Specify persons who would be authorized to perform a notarial act in the State.
- Provide for certain conditions under which a notarial act, if performed outside the State or outside the United States, would have the same effect under the law of Michigan as if performed by a notarial officer of this State.
- Require that a notarial act be evidenced by a certificate signed and dated by a notarial officer and specify the form and information necessary for the certificate to be sufficient.
- Repeal the Uniform Recognition of Acknowledgments Act (MCL 565.251-565.270).

Notarial Acts

A notarial act would mean any act that a notary public of this State was authorized to perform. It would include taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument. An "acknowledgment" would mean a declaration by a person that the person had executed an instrument for the purpose stated and, if the instrument would be executed "in a representative capacity", that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified. "In a representative capacity" would mean one or more of the following:

- For and on behalf of a corporation, partnership, trust, or other entity, as an authorized officer, agent, partner, trustee, or other representative.
- As a public officer, personal representative, guardian, or other representative, in the capacity recited in the instrument.

- As an attorney-in-fact for a principal.
- In any other capacity as an authorized representative of another.

A "verification upon oath or affirmation" would mean a declaration that a statement was true made by a person upon oath or affirmation.

Notary Officer Duties and Responsibilities

In taking or witnessing an acknowledgment, a notarial officer would have to determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the acknowledgment, verification, or signature, was the person whose true signature was on the instrument.

In certifying or attesting a copy of a document or other item, the officer would have to determine that the proffered copy was a full, true, and accurate transcription or reproduction of that which was copied. In making or noting a protest (a certificate of dishonor) of a negotiable instrument, the officer would have to determine the matters set forth for such a procedure in Public Act 174 of 1962 (MCL 440.3509).

A notarial officer would have satisfactory evidence that a person was the person whose true signature was on a document if that person was personally known to the officer, was identified upon the oath or affirmation of a credible witness personally known to the officer, or was identified on the basis of identification documents.

Authorized Persons

A notarial act could be performed within the State by any of the following persons:

- A notary public of the State.
- A judge, clerk, or deputy clerk of any court of this State.
- A person licensed to practice law in this State.
- A person who would be authorized by the law of this State to administer oaths.
- Any other person who would be authorized to perform the specific act by the law of this State.

Notarial acts performed within the State under Federal authority would have the same effect as if performed by a notarial officer of this State.

A notarial act would have the same effect under the law of this State as if it were performed by a notarial officer of this State, if it were performed in another state, commonwealth, territory, district, or possession of the United States by any of the following persons:

- A notary public of that jurisdiction.
- A judge, clerk, or deputy clerk of a court of that jurisdiction.

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- Any other person who would be authorized by law of that jurisdiction to perform notarial acts.

Notarial acts performed in other jurisdictions of the United States under Federal authority would have the same effect as if performed by a notarial officer of this State. The signature and title of a person performing a notarial act would be prima facie evidence that the signature was genuine and that the person held the designated title. The signature and indicated title of an officer listed above or below would conclusively establish the authority of a holder of that title to perform a notarial act.

A notarial act would have the same effect under the law of this State as if it were performed by a notarial officer of this State if performed anywhere by any of the following persons under authority granted by the law of the United States:

- A judge, clerk, or deputy clerk of a court.
- A commissioned officer on active duty in the military service.
- An officer of the foreign service or a consular officer.
- Any other person who would be authorized by Federal law to perform notarial acts.

A notarial act would have the same effect under the law of this State as if it were performed by a notarial officer of this State if performed within the jurisdiction of and under the authority of a foreign nation or its constituent units or a multinational or international organization by any of the following persons:

- A notary public or notary.
- A judge, clerk, or deputy clerk of a court of record.
- Any other person who would be authorized by the law of that jurisdiction to perform notarial acts.

An "apostille", in the form prescribed by the Hague convention of October 3, 1961, would conclusively establish that the signature of the notarial officer was genuine and that the officer held the indicated office. A certificate by a foreign service or consular officer of the United States would conclusively establish any matter relating to the authenticity or validity of the notarial act set forth in the certificate, whether the officer was stationed in a foreign nation or in the United States.

An official stamp or seal of the person who performed the notarial act would be prima facie evidence that the signature was genuine and that the person held the indicated title. An official stamp or seal of an officer listed above would be prima facie evidence that the signature was genuine and that the person with the indicated title had authority to perform notarial acts. If the title of office and indication of authority to perform notarial acts appeared either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts would be established conclusively.

Notarial Certificate

A notarial act would have to be evidenced by a certificate. It would have to include identification of the jurisdiction in which the notarial act was performed and the title of the office of the notarial officer. It could also include the official stamp or seal of the office. If the officer were a notary public, the certificate would have to indicate the date of expiration, if any. If the officer were a commissioned officer on active duty in the military service, it would have to include the officer's rank.

A certificate would be sufficient if it met the above requirements and either set forth the actions of the officer and those were sufficient to have met the requirements of

the designated notarial act, or was in one or more of the following forms:

- In the short form as set forth in this bill.
- In a form that was otherwise prescribed by the law of this State.
- In a form that was prescribed by the laws or regulations applicable in the place the act was performed.

The bill would apply to notarial acts performed on or after its effective date, and would have to be applied and construed to effectuate its general purpose to make uniform the laws with respect to notarial acts among the states that enacted it.

FISCAL IMPACT

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

ARGUMENTS

Supporting Argument

By replacing the Uniform Recognition of Acknowledgments Act with the Uniform Law on Notarial Acts, the bill would clarify the provisions for the State's acceptance of notarial acts under Federal or international jurisdiction. The proposed Act would cross-reference Federal requirements and specifies that standards approved by the Hague Convention of October 3, 1961, would be acceptable in Michigan to establish conclusively that the signature of a notarial officer was genuine and that the officer held the indicated office.

Supporting Argument

The bill represents a uniform state law, already adopted by six states, and is recommended by the Michigan Law Revision Commission.

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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.