

- SUBJECT:** Raising notary fees and allowing employers to charge the fees
- COMMITTEE:** Licensing and Administrative Procedures — favorable, with amendment
- VOTE:** 9 ayes — Wilson, Kubiak, Brimer, Dear, Goolsby, D. Jones, Pickett, Torres, Yarbrough
- 0 nays
- WITNESSES:** None
- BACKGROUND:** Texas has 314,339 notaries public, who are commissioned by the state to perform various services related to documents and to charge fees set in law.
- DIGEST:** HB 172, as amended, would increase the fees for notary services and specify that a notary's employer, as well as the notary, could charge the fees. Fees would be set as follows:
- protesting a bill or note for nonacceptance or nonpayment, register and seal, increase from \$3 to \$5;
 - for each a notice of protest, increase from 50 cents to \$1;
 - protesting in all other cases, increase from 50 cents for each 100 words, to a \$5 flat fee;
 - a certificate and seal to a protest, increase from \$3 to \$5;
 - taking the acknowledgment or proof of a deed or other instrument in writing, for registration, including certificate and seal, increase from \$5 to \$10 for the first signature and \$1 for each additional signature;
 - administering an oath or affirmation with certificate and seal, increase from \$5 to \$7;
 - a certificate under seal not otherwise provided for, increase from \$5 to \$10;

- swearing a witness to a deposition, certificate, seal, and other business connected with taking the deposition, increase from \$5 to \$7; and
- for a notarial act not otherwise provided for, increase from \$5 to \$10.

The bill would take effect September 1, 1995.

**SUPPORTERS
SAY:**

The maximum fees notaries may charge for their services have been increased only once since 1915, in 1987. Meanwhile, notaries have seen the Legislature increase notaries' renewal fees many times, most recently, in 1983, 1985 and 1987. These fees, required when notaries renew their commissions every four years, are \$21, plus about \$50 for a \$2,500 bond notaries must carry. Many notaries feel that the amounts that they can charge do not even cover operating costs.

The committee amendment to allow employers to charge the fees for notary services performed by their employees would make the law conform to reasonable business practices. A business that pays its employees a salary to perform notary services on company time should be allowed to derive any of the fees paid for these services. Additionally, many companies do not charge for services provided by their employee/notaries, but instead provide such services as a courtesy to customers.

**OPPONENTS
SAY:**

Increasing notary fees to the levels proposed in this bill would be unjustified. The small costs associated with retaining a notary certification do not justify almost doubling the fees.

The committee amendment, which would allow employers to charge fees for their employees' notary services, could violate the notary's duty as a public officer. As public officers notaries are agents of the state and their duties are controlled and directed by state law. Allowing employers to charge fees for notary services by their employees would obscure the focus of a notary's duty and blur the issue of who has the authority and control over the notary's official duties.

Notary services, which are required when executing most official documents in Texas, should be provided at a minimum cost to consumers and not as a "hidden moneymaker" for employers. A fee increase could wind up being a windfall for employers whose professions require the execution of many notarized documents. For instance, title companies often employ notaries, who apart from their other duties notarize official documents needed for real estate closings. In 1993 about 1,348,937 title insurance policies were issued in Texas. A conservative estimate of the extra notary costs involved under the fee increases in the bill would be \$13 million. Most consumers when making a large purchase such as a home may not think twice paying about another \$10 or \$20 in notary fees, but that is no reason to allow such an unjustified windfall for title insurance companies and others who employ notaries.

NOTES: The committee amendment added an employer as one who can charge fees.

During the 73rd regular session in 1993 an almost identical bill, HB 38 by S. Thompson, passed the House and was reported favorably by the Senate Jurisprudence Committee, but was removed from the Local and Uncontested Calendar. A similar bill, HB 2158 by S. Thompson, passed the House during the 72nd regular session in 1991 and was reported favorably by the Senate Jurisprudence Committee, but the Senate took no action on the bill.