

SUBJECT: Allowing the electronic maintenance of records by a notary public

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 7 ayes — Swinford, Miller, Gattis, B. Cook, Farrar, J. Keffer, Wong

0 nays

2 absent — Martinez Fischer, Villarreal

WITNESSES: For — None

Against — Toni Perich

On — Ron Williams, RLI Insurance; Henry Garcia

BACKGROUND: Government Code, ch. 406, regulates notaries public. Sec. 406.014 requires a notary, except a court clerk, to keep certain records relating to notarized documents in a book.

DIGEST: HB 46 would allow a notary to maintain records electronically in a computer or other storage device.

The bill would take effect September 1, 2005.

SUPPORTERS SAY: Allowing notaries to maintain records electronically would modernize the notary business and make it more convenient, efficient, and secure. Many notaries have expressed a desire to keep these records electronically in order to more quickly and easily have access to this information. Unlike records in a physical book, electronic records can be quickly searched for a particular record, which then easily can be printed if a copy is requested. In certain instances, such as during an investigation or court case, a particular record or even the entire journal could be provided to the court or investigator on disk or via the Internet.

Electronic storage of notary records would be more secure than the current haphazard system. Since the requirement that the Texas Notary's record book be "well-bound" was eliminated in 1989, notaries have been using all

kinds of insecure devices, including loose-leaf notebooks, to hold their records. Password protected electronic records would be considerably more secure than these notebooks.

OPPONENTS
SAY:

Allowing a notary public to maintain records electronically could open those records to manipulation, fraud, and loss due to computer viruses, hackers, and identity thieves. With the growing prevalence of identity theft - which primarily occurs online - it would be unwise to place more information of value to these thieves online. The safest place for these records is still in a physical book.

This bill could pave the way for certain national notary organizations to bring further legislation requiring notaries public to maintain their records electronically and thus create a market for their expensive computer software. There have been no problems with maintenance of notary public records, and consequently there is no reason to change how these records are maintained.

NOTES:

The companion bill, SB 220 by Carona, passed the Senate on the Local and Uncontested Calendar on March 31 and was reported favorably, as substituted, by the House State Affairs Committee on May 3.