

HB

394

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 14, 1992

FURTHER REFERRALS:

Date of Committee Action: 4-3-92

The JUDICIARY Committee considered:

HB 394

HOUSE BILL NO. 394

REGULATION OF NOTARIES PUBLIC

"An Act relating to notaries; and providing for an effective date."

RECOMMENDATIONS:

be replaced with _____

CSHB 394 (L+C)

the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) Gov. (2-14-92)

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>J. L. Ellis</i>					
<i>Pat Shanley</i>	/				
<i>Terrill Montross</i>	/				
<i>Mark Stanley</i>	/				
<i>Kevin P. O'Connell</i>	/				

Pat Shanley
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. _____

Revision Date: _____ Department Affected: Office of the Governor
 Title: "An Act relating to notaries public;..." BRU: Executive Operations
 Component: Office of the Lt. Governor
 Sponsor: _____
 Requestor: Governor COMPONENT SERIAL NO.

0	0	1	1
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	n/a	n/a	n/a	n/a	n/a	n/a
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
 No fiscal impact

Prepared By: Michael Nizich, Director Phone: 465-3616
 Division: Division of Administrative Services Date: 12-26-91
 Approved by Commissioner: D. Max Hodel, Chief of Staff
 Agency: Office of the Governor Date: 1/2/92

State of Alaska

House Majority Leader
COMMITTEES
HOUSE JUDICIARY
HOUSE RULES
HOUSE STATE AFFAIRS
SPECIAL COMMITTEE
MILITARY AND VET. AFFAIRS
LEGISLATIVE COUNCIL



Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

P.O. Box V
JUNEAU, AK 99811
(907) 465-3718
465-4968/4986
(SESSION)

3111 C STREET, SUITE 440
ANCHORAGE, AK 99503
(907) 561-7621

MEMORANDUM

TO: All Members
House Judiciary committee

FROM: Representative Max Gruenberg *Max*

DATE: March 31, 1992

RE: Support of HB 394

I would appreciate it if you would support HB 394, "An Act Relating to Notaries; and providing for an effective date."

HB 394 deals with several important notary issues: (1) it would require all notaries to use a rubber stamp instead of the embossed seal; (2) it would require notaries to keep a journal; (3) it would require the notary's expiration date to be included with the information already required on the seal. (4) it sets out, disqualifications of a notary, and requirements under AS 44.50. (5) it requires a notary to return papers to the Lieutenant Governor if a the notary dies, resigns, is disqualified, removed from office, or permanently moves from the state.

If you have any questions, please call me or Stan Robbins, my Chief of staff, at ext.4968.

Thank you for your consideration.

House Bill 394

"An Act relating to notaries; and providing for an effective date."

House Bill 394 deals with three important notary issues. First, it would require all notaries after July 1, 1992 to use a rubber inking stamp instead of the embossed seal. Secondly, HB 394 would require Alaskan notaries to keep a journal of each notarial act performed. Lastly, it would require the notary's expiration date to be included with the information already required on the seal.

Journal

(1) Currently, Alaskan notary's are not required to record any information on completed notarial acts. Alaska Statute does indirectly refer to maintaining a journal, but does not specifically require it. HB 394 would specifically require Alaskan Notaries to keep a journal for each notarial act completed.

Journals are important for two simple reasons, they deter fraud, and it protects the notary against lawsuits. HB 394 requires a notary to record specific information concerning each notarial act completed. Lawsuits are usually initiated three to five years after the notarial act has been performed. If accurate records are kept, the notary should be able to go right to the date the act was completed, and answer pertinent questions in regards to it. Currently Alaskan notaries who do not keep a journal do not have this option.

Notary Stamp

(2) HB 394 will also require notaries commissioned after July 1, of this year to purchase a rubber inking stamp instead of the familiar embossed seal. Changing from the embossed seal to the rubber inking stamp will accomplish two goals. First, it will improve the efficiency of government by eliminating the "smudging" process. Currently, each document that is submitted to the recorders office that has been notarized by an embossed seal must be "smudged." Smudging is the lengthy process of rubbing a pencil or carbon paper over the top of a seal impression in order for it to be microfilmed. Using a rubber inking stamp will eliminate this process.

Secondly, HB 394 will almost eliminate the instances which invalidate notarial acts due to illegible seal impressions, and handwriting. Many times an embosser does not crimp the paper well enough to tell who the notary was, and if the notary did not legibly write their name the act would be considered invalid. Using a rubber inking stamp will alleviate this concern.

Expiration Date

(3) Virtually every state, including Alaska, require notaries to write or type their expiration date on each notarial certificate. HB 394 would require notaries to include their expiration date along with the information already required by statute on the stamp. The main purpose of this clause is to prevent notaries from illegally using their stamp after their commission has expired.

Patty Trott
Notary Commissions Administrator
Office of the Lieutenant Governor

Sectional Analysis

Section 1. Requires the notary to include the date of notarization, the city and state where the notarization was performed; and the fact that the notarization was entered on the date of the notarization in the journal maintained by the notary under AS 44.50.095. Replaces the words "print or emboss" with the word "place" to comply with Section 10.

Section 2. Requires information supplied in Section 1 for verification's.

Section 3. Requires information supplied in Section 1 for acknowledgements.

Section 4. Adds a new subsection preventing convicted felons from being commissioned notaries.

Section 5. Allows the lieutenant governor to set notary commission fees by regulation.

Section 6. Deletes [The certificate shall be signed by the notary in the notary's own handwriting] and inserts it in section 7.

Requires the notary to keep a journal under AS 44.50.095 which is referenced in section 11. Deletes [A deposition, affidavit, oath, or affirmation shall be signed by the notary in the notary's own handwriting, and the notary shall endorse after the signature the date of expiration of the notary's commission.]

Section 7. Requires a notary to sign a notarial act if needed and also requires the notary to insert the information required by AS 09.63.030(c)(1).

Section 8. Prevents a notary from performing a notarial act under specific guidelines set forth in AS 44.50.065.

Section 9. Adds a section defining impartiality, and requires a notary to perform notarial acts in lawful transactions, unless the notary has stated a reason for refusal and recorded that reason in the journal as required by AS 44.50.095(c).

Prohibits a notary from knowingly executing a false certificate, and from endorsing or promoting a product, service, contest, or other offering if the notary's title or seal is used in the endorsement or promotional statement.

Prohibits the notary from the unauthorized practice of law as specified in AS 44.50.078 but does not prohibit a notary who is qualified in, and, if required, licensed to practice, a particular profession from giving advice relating to matters in that

professional field.

Prohibits the notary from making representations to have powers, qualifications, rights, or privileges that the office of notary does not have.

Section 10. Requires a notary to use a rubber inking stamp in compliance with AS 44.50.080(b).

Section 11. Adds a journal requirement as specified in AS 44.50.095.

Section 12. Amends AS 44.50.100 with language in regards to the seal and journal.

Section 13. Deletes [To revocation of notary commission] and adds "and in the adoption of regulations under this chapter."

Section 14. Adds a new section giving the lieutenant governor the authority to adopt regulations to carry out the purposes of AS 44.50. Requires the lieutenant governor to produce, and distribute a handbook with a summary of the provisions of AS 44.50 and any adopted regulations.

Section 15. Defines notary as notary public.

Section 16. Allows for a transition period for these changes to go into effect.

Section 17. The Act takes effect on July 1, 1992.

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

February 13, 1992

SUBJECT: Provision in CSHB 394 (L&C) needing review (Work Order No. 17-LS1728\G)

TO: Representative David Finkelstein, Chair
House Labor and Commerce Committee

FROM: Theresa L. Bannister *tb*
Legislative Counsel

This memo accompanies a final version of CSHB 394 (L&C) as requested by the Labor and Commerce Committee. Please note that the change in sec. 44.50.095(c) appears to create an inconsistency with sec. 44.50.072(b). Sec. 44.50.095(c) now allows, but does not require, a notary to enter a refusal to notarize in the notary journal. Sec. 44.50.072(b), on the other hand, requires a notary to record the reason for a refusal in the journal. Since sec. 44.50.095(c) no longer requires entry in the journal, the subsection is not consistent with sec. 44.50.095(c). This inconsistency could be cured by deleting the phrase "and recorded that reason in the journal as required by AS 44.50.095(c)" (p. 3, ll. 14 - 15). This change would carry out the intent of the committee, as I understand it, to make these journal entries optional.

If I may be of further assistance, please advise.

TLB:gc
92-129.glc

Enclosure

JOHN B. COGHILL
LIEUTENANT GOVERNOR

STATE OF ALASKA

P O BOX AA

JUNEAU 99811-0111

(907) 465-3520

January 17, 1992

The Honorable David Finkelstein
House of Representatives
PO Box V
Juneau, Alaska 99811

Dear Representative Finkelstein,

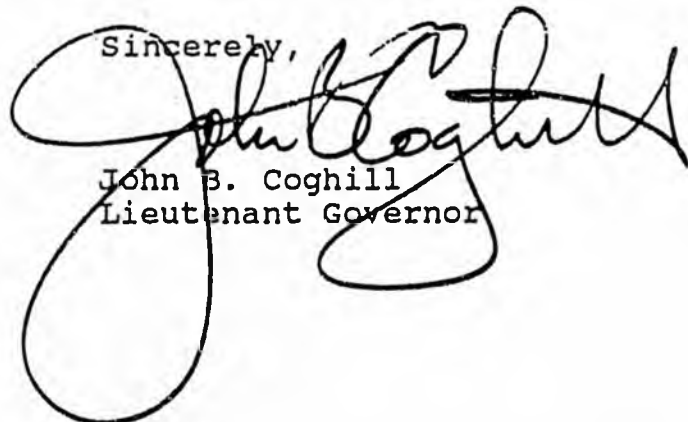
Representative Max Gruenberg has introduced House Bill 394, "An Act relating to notaries; and providing for an effective date." This has been referred to the House Labor and Commerce Committee.

House Bill 394 deals with three important notary issues. First, it would require all notaries after July 1, 1992 to use a rubber inking stamp instead of the embossed seal. Secondly, HB 394 would require Alaskan notaries to keep a journal of each notarial act performed. Lastly, it would require the notary's expiration date to be included with the information already required on the seal.

The current notarial statutes have not been changed since they were written in 1961. HB 394 offers improvements to the statutes which are designed to protect the notary.

The Lieutenant Governor's Office offers its full support of HB 394. We would greatly appreciate your quick consideration. If you have any questions in regards to the specifics of HB 394, please contact the Notary Administrator, Patty Trott in my office.

Sincerely,

A large, stylized handwritten signature in black ink, which appears to read "John B. Coghill". The signature is written over the typed name and title.

John B. Coghill
Lieutenant Governor

cc: Representative Gruenberg

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES

State of Alaska

DIVISION OF MANAGEMENT

TO: Sharon Barton
Director

DATE: January 24, 1992

FILE NO: 8-300

TELEPHONE NO.: 762-2437

FROM: Linda Plumb
State Recorder

SUBJECT: HB 394

Yesterday I received a call from the Lieutenant Governor's Office requesting our support for HB 394 "An Act relating to notaries; and providing for an effective date." While most of this bill does not affect the Recorders/UCC Section, the proposed amendments to Sec. 44.50.080. SEAL.(b), would require that the notary seal be printed and in black ink that legibly reproduces under photographic methods. Current statute is not specific on this point and many of the attested documents that Recorders receive bear seals that are illegible, thus often rendering expiration dates and notary names unreadable. HB 394 would provide the statutory authority to reject documents that bear illegible notarial seals.

Unless this bill undergoes significant change before it reaches the floor vote, I request that the Department support its passage.

The only caveat I would like to bring up regarding this bill involves Sec. 44.50.185. Regulations and Handbook. and would be as an advisory note only. If a printed seal becomes a requirement under statutory directive, a portion of the notary handbook should require that the seal not encroach on any printed or signed portion of a document. Currently, no such information is given to notaries on receiving their commission and many do not realize the affect of placing the seal over signatures or on top of the certificate of acknowledgement or a portion of the document's text. After recording and microfilming, these printed seals may obliterate important elements of a document that may culminate in litigation for the parties involved.

Attachment: HB 394

cc: Meg Hayes, Assistant Director
Patty Trott, Lt. Governor's Office



Office of the City Clerk
832-5441
Incorporated November 17, 1921

City of Nenana

State of Alaska

February 18, 1992

Dave Donley, Chair
Judiciary committee
Rm 120, Capital
Juneau, AK 99811

RE: HB 394 - An Act relating to notaries

Dear Chairman Donley,

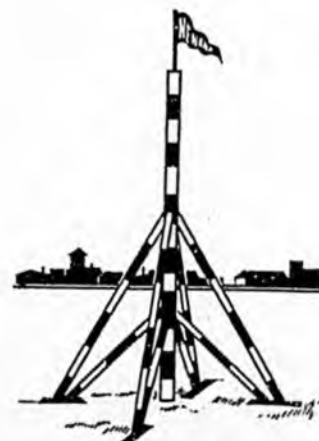
Patty Trott of Lt. Governor's Office asked me if I would write to you making comment on the referenced bill. I am happy to do so. I am a notary as well as city clerk for the City of Nenana. While, I personally feel that procedures can easily be over-regulated, I believe that the casual manner in which many notaries dispatch their duties warrants attention. I have reviewed HB 394 and find the amendments to be satisfactory and not overly burdensome.

Thank you for the opportunity to comment on this bill.

Sincerely,

Karen Harvey, Municipal Clerk
Notary for State of Alaska

cc: Lt. Governor Coghill
Committee Members



NENANA CITY PUBLIC SCHOOLS

P.O. BOX 00010
NENANA, ALASKA 99760
907-832-5464
FAX 907-832-5625

January 24, 1992

David Finkelstein, Chairman
Labor and Commerce Committee
Room 17 Capitol
Juneau, Ak. 99811

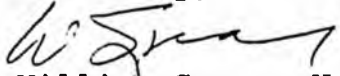
Re: House Bill No. 394

Dear Mr. Finkelstein,

I support most of the changes recommended under HB 394 especially Sec. 4 AS 44.50.060 (4) and Sec. 7 AS 44.50.095 the requirement to keep a journal of all notarized acts performed by the notary.

I disagree with the changes made to Sec. 44.50.080 (A) & (B). At \$30.00 each (Fairbanks price) for replacement stamp, the cost to notaries in the State of Alaska would be \$392,000 for the 1st year and approximately \$98,000 for each year there after. I would encourage you to look into other less costly methods of addressing the application of the expiration date.

Sincerely,



William Spear, Notary
Business Manager



A Nonprofit
Educational Organization

NATIONAL NOTARY ASSOCIATION®

8236 Remmet Ave., P.O. Box 7184, Canoga Park, CA 91304-7184
Telephone: (818) 713-4000, FAX: (818) 713-0842

MILTON G. VALERA
President

DEBORAH M. THAW
Executive Director

LINDA L. BAZAR
Vice President, Finance

CHARLES N. FAERBER
Vice President, Legislation

RAYMOND C. ROTHMAN
Founder

January 27, 1991

Honorable Max F. Gruenberg, Jr.
House of Representatives
State Capitol
Juneau, AK 99811

RE: House Bill 394, Revision of Notary Code

Dear Representative Gruenberg:

On behalf of the National Notary Association, a nonprofit educational organization serving the nation's four million Notaries Public, I applaud the recent introduction of House Bill 394, a proposal affecting notarial acts in Alaska.

Specifically, the bill requires a Notary to keep a journal of his or her notarial acts and also mandates that, upon commission expiration or leaving the state permanently, the Notary must deliver the journal to the secretary of state.

We believe keeping a journal is not only a prudent, businesslike practice, but protects the public by providing valuable documentary evidence of a notarization should memory fail or an original document becomes altered or misplaced. A journal also may preclude a baseless lawsuit by showing that a Notary did use reasonable care or that a transaction did occur as recorded. Moreover, having the document holder sign the journal gives the Notary a signature sample to compare against the signature on the document and on identification cards.

The bill additionally requires Notaries to use only seals that are black-inking stamps — a provision favored by document recorders to simplify the microfilming process.

As the nation's clearinghouse for information on Notary laws, customs and practices, we welcome your questions. Please let us know if we can be of service.

Sincerely,

Milton G. Valera
President

MGV:dab

cc: Honorable John B. Coghill
Lieutenant Governor

The Official Charter and Guiding Purposes of the National Notary Association

I

To educate Notaries about the legal, ethical and technical facets of performing a notarial act.

II

To instill in Notaries a sense of self-respect and professional pride in the important role of impartial public servant.

III

To develop and promote the highest ethical principles for Notaries.

IV

To increase public awareness and understanding of the Notary's vital function in modern society.

V

To serve as a notarial information center for Notary-regulating officials, legislators, educators and the public-at-large.

VI

To promote uniform, modern and effective notarial laws in all states through promulgation of the Model Notary Act.

VII

To provide the highest quality professional support services for Notaries.

VIII

To promote notarial procedures that deter impropriety, injustice and fraud.

IX

To facilitate the agreements and proceedings of commerce and law.

X

To preserve and cultivate appreciation for the rich heritage and tradition of the notarial office.



LEGISLATIVE REVIEW

A summary of important legislation affecting Notaries Public throughout the United States.

BILL • AUTHOR	SUMMARY	STATUS	COMMENT
ALASKA			
House Bill 394 Gruenberg	Requires Notaries to keep a journal. A Notary's stamp must use black ink. Stamp and journal must be surrendered to the secretary of state when commission expires or Notary leaves state permanently. Prohibits notarization for relatives or Notary testimonials. Includes language from the <i>Model Notary Act</i> .	<i>Model Notary Act</i> provisions added in House Labor Committee; goes to Judicial Committee next.	This important bill would immeasurably strengthen Alaska's Notary law, especially the requirement for a journal of notarial acts.
COLORADO			
Senate Bill 11 Martinez	Replaces state's current \$5,000 bond with state-run recovery fund. Prohibits notarization of blank documents.	Sent to Senate Appropriations Committee to assess fiscal impact.	Would put state in insurance business. State's "deep pockets" would invite litigation.
FLORIDA			
Senate Bill 496 Dantzer	Removes prohibition against notarizing if Notary is related by blood or marriage to one whose signature is being notarized, or if Notary has financial interest in underlying transaction. (Companion bill is HB 1365.)	Sent to Senate Judiciary Committee.	A financial interest may prompt Notary to exert undue influence or ignore irregularities.
INDIANA			
House Bill 1054 Eddy	Allows city, town and county elected officials to take acknowledgments, administer oaths, take depositions of witnesses, certify affidavits and depositions, and execute any other duty of Notaries allowed by statute.	In House Ways and Means Committee.	Will provide services to public, but officials should get same education as other Notaries.
MARYLAND			
Senate Bill 122 Committee on Judicial Proceedings	Requires a Notary to only administer an oath or notarize an acknowledgment of an individual when he or she personally appears before that Notary — but also allows telephone depositions.	In Senate Committee on Judicial Proceedings.	Allowing depositions by telephone defeats the merits of the bill's personal appearance requirement for other notarial acts.
PENNSYLVANIA			
House Bill 923 McCall	Allows a recorder of deeds to accept a document without an embossed seal, even though state law requires a Notary to use both an ink stamp and an embosser in notarizing.	Passed House, sent to Senate Committee on Local Government.	If law requires both embosser and stamp, why weaken it with an exception?
VIRGINIA			
House Bill 324 Howell	Notaries are no longer prohibited from notarizing a will that names the Notary as a fiduciary of the will.	In Senate Committee on Courts of Justice.	Still prohibits notarization if Notary is a beneficiary of the estate.

AROUND THE NATION

Investigation Reveals Unethical Behavior

MASSACHUSETTS — A Notary voluntarily resigned his commission after he became the focus of an investigation by the Board of Bar Overseers for misusing more than \$374,884 in company funds and for improperly drafting a will.

Attorney Robert O. Bullard, Jr. signed an affidavit a year ago explaining his wrongful actions, which included the "impropriety of drafting an instrument, such as a will, under which I might benefit."

Music, Candlelight And...Affidavits?

CANADA — Soft music and candlelight traditionally are associated with romantic evenings, and Canadian men soon may add notarized affidavits to that list.

A bill recently introduced in Parliament defines date rape and requires an affidavit of consent to sex, which is designed to eliminate any doubt that a woman consented to a sexual relationship with a man.

Should the measure pass, will Notaries and justices of the peace be required to remain open late at night and to make "house calls" in order to notarize the affidavits?

Notary Indicted On Fraud Charge

NEW YORK — A Long Island Notary was indicted on perjury charges after allegedly lying to a Nassau County grand jury about notarizing

affidavits filed by deceased multimillionaire Marvin Middlemark's former caretaker.

Notary Andrew Petti, Jr., who faces seven years in jail if convicted, pleaded innocent.

Charges against Petti, 35, arose after he notarized affidavits in May signed by John Randolph, the former caretaker, who told a district attorney that Middlemark's son, Martin, had paid him to change an affidavit.

In November, Petti testified before a grand jury that Randolph signed the affidavits in his presence, but prosecutors have evidence that he did not.

For the last two years, Martin has been involved in a fierce battle over the \$5 million estate of his father, inventor of the "rabbit ears" indoor television antenna, who died in 1989.

Weddings Are All In A Day's Work

MAINE — Taking acknowledgments, checking identification and performing marriages are all part of Notary Carlene Bellefleur's job.

While on her afternoon coffee break recently, Bellefleur performed a wedding ceremony for a Belgian couple. The pair had been traveling in Canada and decided to get married. They discovered, however, there is a 30-day waiting period for a marriage ceremony.

When they learned they could get married immediately in the United States, they drove to Maine.

"They got married and left," Bellefleur said.

Signature Doubted On Lease Contract

CALIFORNIA — Although the signature of a representative of the Los Coyotes Band of Mission Indians was notarized on a contract by an Escondido Notary, the man's affidavit claims he never appeared before the woman.

The Notary, Helen Marie Zarate, said she doesn't specifically remember the man because she performs so many notarizations. But, she said if her seal is on the document, then she performed the notarization correctly.

"I go strictly by the rules," Zarate said. "If I need identification from a document signer, I ask for it."

Tougher Guidelines May Be Imposed

ALASKA — Attempting to heighten the standards of Notaries by revising the state's 31-year-old Notary laws, officials are optimistic that a bill mandating a journal and other measures will pass this year.

"The laws have not been changed since 1961, they are archaic and need work," said Patricia Trott, Alaska Notary commission administrator.

Based on recommendations from the National Notary Association and Lieutenant Governor Jack Coghill, House Bill 394 proposes to make a journal mandatory, imposes disqualification and impartiality guidelines and makes a rubber inking seal compulsory.

Trott, who expects little resistance to the bill, said that Notaries are in favor of the pro-

posed change because they are concerned about liability in performing notarizations.

If the bill passes, it could become law by July 1, Trott said.

Inked Stamp Can Save Time, Trouble

MICHIGAN — After a court of appeals ruled a divorce settlement invalid because it was unsigned, a family law educator said it is prudent to get a Notary's seal on a settlement to ensure the finality of such an agreement.

"To be safe, a Notary's signature is a good idea," said Richard S. Victor, a family law educator and past president of the State Bar's Family Law Section.

Victor's comments followed a ruling that allows a husband who agreed to a divorce settlement to renege on the deal because it was not signed before he backed out.

Increased Wages, Happier Notaries

NEW YORK — Frustrated by years of being able to charge only a quarter for performing a notarization, Notaries are relieved now that the maximum fee in the state has increased to \$2.

"Our personal policy is that to charge a quarter is so ridiculous that we don't charge anything," said Richard Clark, manager of the Tebbutt Funeral Home in Albany. "So now it is \$2. At least it sounds like a more reasonable fee."

