House
Legislative
Analysis
Section

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REVISE NOTARY PUBLIC PROVISIONS

House Bill 6003
Sponsor: Rep. Mark Jansen
Committee: Regulatory Reform

Complete to 10-30-02

A SUMMARY OF HOUSE BILL 6003 AS INTRODUCED 5-7-02

The bill would create a new act entitled the Michigan Notary Public Act. The new act would replace several provisions of current law concerning notary publics, which would be repealed by the bill. The bill would take effect six months after it was enacted.

Many of the provisions of the bill are similar or identical to current provisions that would be repealed. The following is a summary of the bill, with substantive changes from current law specifically noted.

Appointment of notaries public. Under the bill the secretary of state could appoint as a notary public a person who complies with the requirements of the bill. A notary public could reside in, move to, and perform notarial acts anywhere in the state. An initial appointment would be for six to seven years (rather than for four to five years, as under current law) expiring on the applicant's birthday.

To be appointed as a notary, a person would have to be at least 18 years old, be a resident of the state or maintain a principal place of business in the state, read and write in the English language, and be of good moral character. (Under the bill, an application would not have to be indorsed by a legislator or a judge, as required under current law.) A person who is not a state resident would have to demonstrate that his or her principal place of business is located in Michigan and that he or she is engaged in an activity in which one is likely to be required to perform notarial acts. A person serving a term of imprisonment would not be eligible for appointment as a notary.

The secretary of state would have to distribute applications for appointment as a notary public through its own offices, and through county clerks, bonding companies, or other businesses. Under the bill, the applicant's driver license or state personal identification card number would have to be included on the application, and the bill specifies that this information would be exempt from disclosure under the Freedom of Information Act. (These would be new provisions not appearing in current law.) In addition to identifying information, an application would have to indicate whether an applicant had been previously appointed as a notary and whether the applicant's notary appointment had been revoked or suspended, include a statement describing the date and circumstances of any felony conviction during the preceding ten years, and contain an affirmation that the applicant will perform his or her notarial acts faithfully.

An application would be accompanied by a service charge prescribed by the secretary of state, in an amount sufficient to recover the costs of administering the act. (Under current law, an

application must be accompanied by a fee of $3. In addition, currently county clerks are entitled to receive a $1 fee from each person qualifying, and the law allows a charter county with a population of more than 2 million to impose a different fee, but it cannot be greater than the actual cost of the service provided.)

The secretary of state could inquire about an applicant's qualifications, and would be required to determine whether the applicant met the requirements prescribed in the bill. Under the bill, the secretary of state would be authorized to use the Law Enforcement Information Network to check the criminal background of an applicant (this provision is not included in current law).

The secretary of state would notify the county clerk of an applicant's residence if the application was approved. The secretary would also notify the applicant, and if approved, inform the applicant that he or she may receive the commission at the appropriate county clerk's office by filing a surety bond and an oath with the clerk.

Surety bond. A person would have to file a properly executed surety bond in the amount of $15,000 (increased from $10,000 under current law) with the county clerk in order to receive his or her commission as a notary. The bond would have to be conditioned upon indemnifying or reimbursing a person, financing agency, or governmental agency for monetary loss caused by official misconduct on the part of the notary. However, the surety would be required to indemnify or reimburse only after a judgment has been entered by a court. The aggregate liability of the surety would not exceed the sum of the bond. A surety could cancel a bond upon 60 days notice to the notary, the county clerk, and the secretary of state. A county clerk could not accept the personal assets of an applicant as security for the required surety bond.

County clerks would be required to transmit to the secretary of state a quarterly report indicating the names and addresses of those who have received notary commissions and certification that those named have complied with the requirements of the bill. A separate report would be required, within 120 days after a person fails to qualify for a commission, listing the person's name, etc., and reasons for failure to qualify.

Reappointment. The bill specifies that the secretary of state could not automatically reappoint a notary public. Rather, a person desiring reappointment would have to reapply in the same manner as for an original appointment, making application within the last 60 days of his or her commission.

Notification of changes and corrections. A notary public would be required to immediately apply to the secretary of state for a corrected notary public commission upon a change in his or her name or address, or when the commission contains an error. A notary would also be required to notify the secretary of state and the county clerk upon any change in the factual information stated in the person's application for appointment. A corrected notary public service charge would have to accompany an application for a corrected commission. The secretary of state would have to notify the county clerk upon issuance of a corrected commission, and transmit 1/3 of the service charge to the county clerk. However, the secretary could waive the service charge if the error was not the applicant's fault. (The bill would add these new provisions; under current

law, according to the secretary of state, a change in name or address, etc. requires reapplication for a new commission.)

A notary whose certificate of appointment was lost, mutilated, or illegible would have to apply for its replacement and pay a service charge.

Duties of notaries public. A notary public would have to obtain and read a copy of all the current state statutes regulating notarial acts before performing any such act. (This would be a new requirement.)

A notary would be authorized to take acknowledgments, administer oaths and affirmations, and witness or attest to a signature. In taking an acknowledgment, a notary would be required to determine that the person making the acknowledgment is the person who signature is on the record. In taking a verification upon oath or affirmation, the notary public would have to determine that the person making the verification is the person whose signature is being verified. In witnessing or attesting to a signature, the notary public would have to determine that the signature is that of the person in the presence of the notary and is the person named in the record.

In all of these cases, the notary public would have to require that the person sign the record being verified, witnessed, or attested to in the notary public's presence.

As evidence that a person is the person whose signature is on a record, the bill states that a notary public could rely on personally knowing the person, or on the identification upon the oath or affirmation of a credible witness who personally knows the person and whom the notary public personally knows. In addition, a notary public could rely on a current license, identification card, or record issued by a federal or state government that contains the person's photograph and signature.

A notary public could refuse to perform a notarial act.

Fees. A notary public could charge no more than $10 for performing any individual transaction or notarial act. (Current law limits the fee to not more than $2 per acknowledgment or jurat.) A notary would have to expressly advise a person as to the amount to be charged before performing the act. A separate travel fee could be agreed upon.

Format of notary forms. The secretary of state would prescribe the form that a notary public would use for a jurat (a certification by a notary public that a person has voluntarily signed a document in the notary's presence), the taking of an acknowledgment, the administering or an oath or affirmation, the taking of a verification upon an oath or affirmation, the witnessing or attesting to a signature, or any other notarial act. (In a change from current law, the bill would define "signature" to include an electronic signature as that term is defined in the Uniform Electronic Transactions Act.)

A notary public would be required to place his or her signature on every record, in exactly the form it appears on his or her certificate of appointment, whenever he or she performs a notarial act. In addition, on each form, the notary public would have to print, type, or stamp, or

otherwise imprint, information that includes the notary's name, county of appointment, date of expiration of commission, and the county the notary is acting in. The method of printing would have to result in a legible, reproducible record. However, the bill specifies that the illegibility of any of the required statements would not affect the validity of the transaction or record.

The bill contains examples of plain English notary forms and specifies that a notary public could use such a form, and that it would be considered sufficient to accomplish its stated purpose under the laws of the state.

Responsibility of county clerks. Under current law, a county clerk is required to "receive and safely keep" all records and papers of notaries public, and to give certified copies of such records as required. The provision allows the county clerk to receive a fee for copies, and notes that copies are as valid and effectual as if given by a notary public. This provision would be repealed by the bill and would not be replaced.

Prohibited acts. A notary could not do any of the following:

- Certify or notarize that a record is either an original, or a true copy of another record.

- Perform a notarial act upon any record executed by himself or herself, notarize his or her own signature, or take his or her own deposition or affidavit.

- Perform any notarial act in connection with a transaction if the notary has a conflict of interest (including a direct financial or beneficial interest, or when the notary is named individually as a grantor, grantee, mortgagor, mortgagee, trustor, trustee, beneficiary, vendor, vendee, lessor, or lessee, or as another party to the transaction).

- Perform a notarial act in connection with a transaction if the record contains a blank space.

- Take the acknowledgment of a party to a record executed to or by the corporation or bank for which he or she is a stockholder, director, officer, or employee (or administer an oath to another stockholder, director, officer, employee, or agent), unless the notary is named as a party to the record, either individually or as a representative of the corporation and the notary is individually a party to the record. (Note: This provision appears to *reverse* the policy of a corresponding provision of current law [MCL 55.251], which would be repealed by the bill.)

Signing for another. A notary public could sign the name of a person whose physical characteristics limit his or her capacity to sign or make a mark on a record presented for notarization, if the person directs the notary public to sign (whether orally, verbally, physically, or through electronic or mechanical means), if the person is in the physical presence of the notary, and if the notary indicates on the record that he or she is signing for the person according to the bill's provisions.

Responsibility to secretary of state. A notary public would be required to furnish records to the secretary of state upon request, respond to such requests within 15 days, and permit the secretary of state to inspect his or her records. The secretary of state could suspend a notary public's commission until the notary provided a satisfactory response.

Liability. A notary public and the surety listed on his or her surety bond would be liable in a civil action for damages resulting from the notary's official misconduct. The employer of a notary would also be liable if the notary was acting within the actual or apparent scope of his or her employment, and the employer had knowledge of and consented to or permitted the official misconduct. A notary public and his or her surety would not be liable for the truth, form, or correctness of the contents of a record that is notarized.

Violations and penalties. Current law requires the secretary of state to revoke a commission under certain circumstances. The bill would add new language regarding violations and penalties, and provide for rights of a hearing and appeal.

The secretary of state would be required to investigate alleged violations of the bill, rules promulgated under the bill, or orders issued under it, and other offenses. A person could file a complaint with the secretary of state, and the secretary of state could investigate by examination of a notary public's records, contracts, and other pertinent information.

Other offenses could include:

- making an omission or false statement in an application for appointment;

- assisting others in violations;

- failing to perform notary public duties in accordance with the bill, rules, or orders issued under it, or failing to fully and faithfully discharge a duty or responsibility;

- committing an act of official misconduct (defined as exercising of power or performance of a duty that is unauthorized, unlawful, abusive, negligent, reckless, or injurious, or, charging a fee in excess of the amount allowed by law), dishonesty, fraud, deceit, or any other cause relating to the duties or responsibilities of a notary public or the character of public trust necessary to be a notary public;

- being convicted of (or pleading no contest to) a crime involving dishonesty or moral turpitude;

- being found liable for damages in an action grounded in fraud, misrepresentation, or violation of the bill;

- representing, implying, or using false or misleading advertising that he or she has duties, rights, or privileges that he or she does not possess by law;

- charging a fee in excess of that allowed under the bill;

- failing to complete the notary public's acknowledgment at the time he or she signed or sealed a record;

- failing to administer an oath or affirmation as required by law;

- engaging in the unauthorized practice of law;

- ceasing to maintain his or her residence or principal place of business in the state;

- lacking adequate ability to read and write in English;

- hindering or refusing a request by the secretary of state for records;

- engaging in a method, act, or practice that is unfair or deceptive, including making an untrue statement of a material fact relating to a duty or responsibility of a notary public;

- violating a condition of probation imposed under the bill;

- permitting an unlawful use of the notary public's seal; and,

- failing to maintain good moral character, as defined by law.

(Note: Under current law, the knowing destruction, defacing, or concealing or records or papers belonging to a notary public subjects a violator to a civil fine of up to $500, and a violator is also liable for damages in an action by an injured party. This provision would be repealed by the bill and not replaced.)

In addition to any criminal penalties, a violation of the act could result in suspension, revocation, or limitation on a notary public's certificate of appointment, denial of an application for appointment, civil fines up to $1,000, probation, a letter of censure, or a requirement to pay restitution to an injured person or to reimburse the secretary of state for the costs of the investigation.

Before imposing a penalty for a violation, the secretary of state would have to give the affected person notice and an opportunity for a hearing.

If a person holding office as a notary public is sentenced to imprisonment, his or her commission would be revoked automatically on the first day of the sentence. If such a person attempted to perform a notarial act while imprisoned, he or she would be ineligible to receive a commission as a notary public for at least 10 years after completing the prison sentence.

The bill states that cancellation of a commission would be without prejudice to reapplication at any time. However, a person whose commission is revoked would be ineligible for the issuance of a new commission for at least five years.

A fine imposed under the bill that remains unpaid for more than 180 days could be referred to the Department of Treasury for collection. The treasury department could collect the fine by deduction from a payroll or tax refund warrant. In addition, the secretary of state could bring an action in a court of competent jurisdiction to recover the amount of a civil fine.

Criminal penalties. The bill specifies that, except as otherwise provided by law, a person who violated the bill would be guilty of a misdemeanor punishable by a fine of up to $5,000, imprisonment for up to one year, or both fine and imprisonment. Further, the penalties and remedies under the bill would be cumulative; the bringing of an action or prosecution under the bill would not bar an action or prosecution under any other applicable law.

Cease and desist order. The secretary of state would be authorized to petition a court for injunctive relief if it appeared that a person had engaged or was about to engage in an act or practice that would constitute a violation. A circuit court could issue a permanent or temporary

injunction or restraining order to enforce the provisions of the bill. A party to such an action would have the right to appeal within 60 days from the date of the order.

The court could order a person subject to an injunction or restraining order to reimburse the secretary of state for actual expenses incurred in the investigation. The secretary of state would have to refund such reimbursement if the injunction or restraining order was overturned on appeal.

Notary certificate admissible as evidence. In the courts of the state, a certificate of a notary public of official acts performed in the capacity of a notary public, under the seal of the office, would be presumptive evidence of the facts contained in the certificate, except that a certificate would not be evidence of nonacceptance or nonpayment in any case in which a defendant attaches to his or her pleadings an affidavit denying the fact of having received that notice of nonacceptance or nonpayment.

Vacating of office. If the office of any notary public becomes vacant, or if a notary resigned or was removed from office, the personal representative of the person (or the person) would be required to maintain all the records pertaining to the office of notary public for at least seven years. (Under current law, a notary public [or the personal representative of a deceased notary public] is required to deposit his or her records and papers with the county clerk within three months after resigning or being removed from office. A violation of this requirement is punishable by a civil fine of from $50 to $200.)

Fees and fines to be used to administer act. The bill specifies that all charges and fines collected under the act by the secretary of state would be deposited in the general fund and used first to defray the costs of the secretary of state in administering the act.

Administrative rules. The secretary of state would be authorized to promulgate rules under the Administrative Procedures Act to implement the bill.

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