

HOUSE BILL No. 6003

May 7, 2002, Introduced by Reps. Jansen, Hart and Richner and referred to the Committee on Regulatory Reform.

A bill to provide for the qualification, appointment, and regulation of notaries; to provide for the levy, assessment, and collection of certain service charges and fees and to provide for their disposition; to provide for liability for certain persons; to provide for the admissibility of certain evidence; to prescribe the powers and duties of certain state agencies and local officers; to provide for remedies and penalties; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan notary public act".

3 Sec. 3. As used in this act:

4 (a) "Acknowledgment" means the confirmation by a person in
5 the presence of a notary public that he or she is placing or has
6 placed his or her signature on a record for the purposes stated

1 in the record and, if the record is signed in a representative
2 capacity, that he or she is placing or has placed his or her sig-
3 nature on the record with the proper authority and in the capac-
4 ity of the person represented and identified in the record.

5 (b) "Cancellation" means the nullification of a notary
6 public commission due to an error or defect or because the notary
7 public is no longer entitled to the commission.

8 (c) "Department" means the department of state.

9 (d) "Electronic" means that term as defined in the uniform
10 electronic transactions act, 2000 PA 305, MCL 450.831 to
11 450.849.

12 (e) "Electronic signature in global and national commerce
13 act" means Public Law 106-229, 114 Stat. 464.

14 (f) "Information" means that term as defined in the elec-
15 tronic signature in global and national commerce act.

16 (g) "In a representative capacity" means any of the
17 following:

18 (i) For and on behalf of a corporation, partnership, trust,
19 association, or other legal entity as an authorized officer,
20 agent, partner, trustee, or other representative of the entity.

21 (ii) As a public officer, personal representative, guardian,
22 or other representative in the capacity recited in the document.

23 (iii) As an attorney in fact for a principal.

24 (iv) In any other capacity as an authorized representative
25 of another person.

(h) "In the presence of" means in compliance with section 101(g) of title I of the electronic signature in global and national commerce act, 15 U.S.C. 7001.

Sec. 5. As used in this act:

(a) "Jurat" means a certification by a notary public that a signer, whose identity is personally known to the notary public or proven on the basis of satisfactory evidence, has made in the presence of the notary public a voluntary signature and taken an oath or affirmation vouching for the truthfulness of the signed record.

(b) "Notarial act" means any act that a notary public commissioned in this state is authorized to perform including, but not limited to, the taking of an acknowledgment, the administration of an oath or affirmation, the taking of a verification upon oath or affirmation, and the witnessing or attesting a signature performed in compliance with this act and the uniform recognition of acknowledgments act, 1969 PA 57, MCL 565.261 to 565.270.

(c) "Notify" means to communicate or send a message by a recognized mail, delivery service, or electronic means.

(d) "Official misconduct" means either or both of the following:

(i) The exercise of power or the performance of a duty that is unauthorized, unlawful, abusive, negligent, reckless, or injurious.

(ii) The charging of a fee that exceeds the maximum amount authorized by law.

1 (e) "Person" means every natural person, corporation,
2 partnership, trust, association, or other legal entity and its
3 legal successors.

4 (f) "Record" means that term as defined in the uniform elec-
5 tronic transactions act, 2000 PA 305, MCL 450.831 to 450.849.

6 (g) "Revocation" means the termination of a notary public's
7 commission.

8 Sec. 7. As used in this act:

9 (a) "Secretary" means the secretary of state acting directly
10 or through his or her duly authorized deputies, assistants, and
11 employees.

12 (b) "Signature" means a person's written or printed name or
13 electronic signature as that term is defined in the uniform elec-
14 tronic transactions act, 2000 PA 305, MCL 450.831 to 450.849, or
15 the person's mark attached to or logically associated with a
16 record including, but not limited to, a contract and executed or
17 adopted by the person with the intent to sign the record.

18 (c) "Suspension" means the temporary withdrawal of the
19 notary's commission to perform notarial acts during the period of
20 the suspension.

21 (d) "Verification upon oath or affirmation" means the decla-
22 ration by oath or affirmation that a statement is true.

23 Sec. 9. (1) The secretary may appoint as a notary public a
24 person who complies with the requirements of this act.

25 (2) A notary public may reside in, move to, and perform
26 notarial acts anywhere in this state from the date of appointment
27 until the notary's birthday occurring not less than 6 years and

1 not more than 7 years after the date of his or her appointment
2 unless the appointment is canceled, suspended, or revoked by the
3 secretary or by operation of law.

4 (3) The secretary shall not appoint as a notary public a
5 person who is serving a term of imprisonment in a state correc-
6 tional facility or jail in this or any other state or in a fed-
7 eral correctional facility.

8 Sec. 11. (1) The secretary may appoint as a notary public a
9 person who applies to the secretary and meets all of the follow-
10 ing qualifications:

11 (a) Is at least 18 years of age.

12 (b) Is a resident of this state or maintains a principal
13 place of business in this state.

14 (c) Reads and writes in the English language.

15 (d) Is of good moral character as defined and determined
16 under 1974 PA 381, MCL 338.41 to 338.47.

17 (e) For a person who does not reside in the state of
18 Michigan, demonstrates that his or her principal place of busi-
19 ness is located in the county in which he or she requests
20 appointment and indicates that he or she is engaged in an activ-
21 ity in which he or she is likely to be required to perform notar-
22 ial acts as that word is defined in section 2 of the uniform
23 recognition of acknowledgments act, 1969 PA 57, MCL 565.262.

24 (2) An application for appointment as a notary public shall
25 contain the signature of the applicant and be made in a format
26 prescribed, furnished, and distributed by the secretary through
27 an office of the secretary, county clerks, bonding companies, or

1 other businesses. In addition to other information as may be
2 required by the secretary, the application shall include all of
3 the following:

4 (a) The applicant's name, residence address, business
5 address, date of birth, and residence and business telephone
6 numbers.

7 (b) The applicant's driver license or state personal identi-
8 fication card number.

9 (c) If applicable, a statement showing whether the applicant
10 has previously applied for an appointment as a notary public in
11 this or any other state, the result of the application, and
12 whether the applicant has ever been the holder of a notary public
13 appointment that was revoked, suspended, or canceled in this or
14 any other state.

15 (d) A statement describing the date and circumstances of any
16 felony conviction of the applicant during the preceding 10
17 years.

18 (e) An affirmation by the applicant that the application is
19 correct, that the applicant has read this act, and that the
20 applicant will perform his or her notarial acts faithfully.

21 (3) Each application shall be accompanied by an application
22 service charge as prescribed by the secretary. The secretary
23 shall set the service charge at an amount that allows the secre-
24 tary to recover the costs of administering this act.

25 (4) Upon receipt of an application that is accompanied by
26 the prescribed service charge, the secretary may inquire as to
27 the qualifications of the applicant and shall determine whether

1 the applicant meets the qualifications prescribed in this act.
2 To assist in deciding whether the applicant is qualified, the
3 secretary may use the law enforcement information network as pro-
4 vided in the L.E.I.N. policy council act of 1974, 1974 PA 163,
5 MCL 28.211 to 28.216, to check the criminal background of the
6 applicant.

7 (5) The applicant's driver license or state personal identi-
8 fication card number is exempt from disclosure under the freedom
9 of information act, 1976 PA 442, MCL 15.231 to 15.246. The sec-
10 retary shall not release a copy of that portion of an applicant's
11 application for a notary public commission that contains the
12 applicant's driver license or state personal identification card
13 number.

14 Sec. 13. (1) After receiving a completed application accom-
15 panied by the prescribed service charge, the secretary shall
16 notify the county clerk of the applicant's residence if the
17 application is approved or notify the applicant if the applica-
18 tion is denied.

19 (2) After receiving a commission from the secretary, the
20 county clerk shall notify the applicant that his or her applica-
21 tion for a commission as a notary public is approved. The notice
22 shall also inform the applicant that he or she may receive the
23 commission at the office of his or her county clerk by filing a
24 proper surety bond and an oath with the county clerk.

25 (3) The person shall not perform any notarial act until the
26 bond and oath have been filed with the county clerk and the
27 person has received his or her commission from the county clerk.

1 Sec. 15. (1) Within 90 days after receiving notice of an
2 appointment from the county clerk, a person appointed as a notary
3 public shall file with the county clerk of his or her appointment
4 a proper surety bond and take the oath prescribed by the
5 constitution.

6 (2) A county clerk shall not give a person a notary public
7 commission approved by the secretary until the person files with
8 the clerk a properly executed surety bond. The bond shall be in
9 the sum of \$15,000.00 with good and sufficient surety by a surety
10 licensed to do business in this state. The bond shall be condi-
11 tioned upon indemnifying or reimbursing a person, financing
12 agency, or governmental agency for monetary loss caused through
13 the official misconduct of the notary public in the performance
14 of a notarial act. The surety is required to indemnify or reim-
15 burse only after a judgment based on official misconduct has been
16 entered in a court of competent jurisdiction against the notary
17 public. The aggregate liability of the surety shall not exceed
18 the sum of the bond. The surety on the bond may cancel the bond
19 60 days after the surety notifies the notary, the secretary in a
20 format prescribed by the secretary, and the county clerk of the
21 cancellation. The surety is not liable for a breach of a condi-
22 tion occurring after the effective date of the cancellation. The
23 county clerk shall not accept the personal assets of an applicant
24 as security for a surety bond under this act.

25 (3) After a person files an oath and bond with a county
26 clerk as required in subsection (1), the county clerk shall
27 immediately give or forward a notary public certificate of

1 appointment to the person, in a format prescribed by the
2 secretary, that identifies the person as an official notary
3 public of this state and specifies the term of the person's
4 commission.

5 (4) On the last day of March, June, September, and December
6 of each year, a county clerk shall transmit to the secretary, in
7 a format prescribed by the secretary, a written or electronic
8 list containing all of the following:

9 (a) The name and address of each person to whom, during each
10 preceding quarter, the clerk delivered a notary public
11 commission.

12 (b) The date each notary public filed his or her oath and
13 bond with the clerk.

14 (c) A certification by the clerk that each person listed has
15 fully complied with the applicable provisions of the law regard-
16 ing his or her qualifications for the office of a notary public.

17 (5) The county clerk shall send a separate written or elec-
18 tronic report to the secretary, in a format prescribed by the
19 secretary, not more than 120 days after a person fails to qualify
20 for a commission stating the person's name, residence address,
21 and reason why the person failed to qualify for a commission.

22 Sec. 17. (1) The secretary shall not automatically reap-
23 point a notary public.

24 (2) A person desiring another notary public appointment may
25 apply to the secretary, in a format prescribed by the secretary,
26 for an original appointment as a notary public. The application

1 may be made not more than 60 days before the expiration of his or
2 her current notary public commission.

3 Sec. 19. (1) A notary public shall immediately apply to the
4 secretary, in a format prescribed by the secretary, for a cor-
5 rected notary public commission upon the occurrence of any of the
6 following circumstances:

7 (a) A change in the notary public's name.

8 (b) A change in the notary public's residence or business
9 address.

10 (c) The issuance by the secretary of a notary public commis-
11 sion that contains an error in the person's name, birth date,
12 county, or other pertinent information if the error was made on
13 the notary public's application and was used by the secretary to
14 appoint the person as a notary public.

15 (2) A notary public shall immediately notify both the secre-
16 tary and the county clerk of his or her appointment, in a format
17 prescribed by the secretary, upon any change in the factual
18 information stated in the notary public's application for
19 appointment.

20 (3) A corrected notary public commission application under
21 this section shall be accompanied by a correction service charge
22 as determined by the secretary.

23 (4) The secretary shall notify the county clerk of the
24 applicant's appointment when a corrected commission is issued by
25 the secretary and, except as otherwise provided in this subsec-
26 tion, transmit 1/3 of the correction service charge collected to
27 that county clerk. The secretary may waive a correction service

1 charge if the secretary determines that the error in the
2 commission issued was not the fault of the notary public.

3 (5) If a notary public's certificate of appointment becomes
4 lost, mutilated, or illegible, the notary public shall promptly
5 apply to the secretary for the issuance of a duplicate
6 certificate. The application shall be made on a form prescribed
7 by the secretary and be accompanied by a service charge.

8 (6) Each service charge provided for under this section
9 shall be as prescribed by the secretary. The secretary shall set
10 the service charge at an amount that allows the secretary to
11 recover the costs of administering this act.

12 Sec. 21. Before a notary public performs any notarial act,
13 the notary public shall obtain and read a copy of all the current
14 statutes of this state that regulate notarial acts.

15 Sec. 23. (1) A notary public may perform notarial acts that
16 include, but are not limited to, the following:

17 (a) Taking acknowledgments.

18 (b) Administering oaths and affirmations.

19 (c) Witnessing or attesting to a signature.

20 (2) In taking an acknowledgment, the notary public shall
21 determine, either from personal knowledge or from satisfactory
22 evidence, that the person in the presence of the notary public
23 and making the acknowledgment is the person whose signature is on
24 the record.

25 (3) In taking a verification upon oath or affirmation, the
26 notary public shall determine, either from personal knowledge or
27 from satisfactory evidence, that the person in the presence of

1 the notary public and making the verification is the person whose
2 signature is on the record being verified.

3 (4) In witnessing or attesting to a signature, the notary
4 public shall determine, either from personal knowledge or from
5 satisfactory evidence, that the signature is that of the person
6 in the presence of the notary public and is the person named in
7 the record.

8 (5) In all matters where the notary public takes a verifica-
9 tion upon oath or affirmation, or witnesses or attests to a sig-
10 nature, the notary public shall require that the person sign the
11 record being verified, witnessed, or attested in the presence of
12 the notary public.

13 (6) A notary public has satisfactory evidence that a person
14 is the person whose signature is on a record if that person is
15 any of the following:

16 (a) Personally known to the notary public.

17 (b) Identified upon the oath or affirmation of a credible
18 witness personally known by the notary public and who personally
19 knows the person.

20 (c) Identified on the basis of a current license, identifi-
21 cation card, or record issued by a federal or state government
22 that contains the person's photograph and signature.

23 (7) The fee charged by a notary public for performing a
24 notarial act shall not be more than \$10.00 for any individual
25 transaction or notarial act. A notary public shall either con-
26 spicuously display a sign or expressly advise a person concerning
27 the fee amount to be charged for a notarial act before the notary

1 public performs the act. Before the notary public commences to
2 travel in order to perform a notarial act, the notary public and
3 client may agree concerning a separate travel fee to be charged
4 by the notary public for traveling to perform the notarial act.

5 (8) A notary public may refuse to perform a notarial act.

6 (9) The secretary shall prescribe the form that a notary
7 public shall use for a jurat, the taking of an acknowledgment,
8 the administering of an oath or affirmation, the taking of a ver-
9 ification upon an oath or affirmation, the witnessing or attest-
10 ing to a signature, or any other act that a notary public is
11 authorized to perform in this state.

12 Sec. 25. (1) A notary public shall place his or her signa-
13 ture on every record upon which he or she performs a notarial
14 act. The notary public shall sign his or her name exactly as his
15 or her name appears on his or her notary public certificate of
16 appointment received from the secretary.

17 (2) On each record that a notary public performs a notarial
18 act and immediately near the notary public's signature, as is
19 practical, the notary public shall print, type, stamp, or other-
20 wise imprint mechanically or electronically clearly and legibly
21 and in a manner capable of photographic reproduction all of the
22 following:

23 (a) The name of the notary public exactly as it appears on
24 his or her notary public certificate of appointment.

25 (b) The statement: "Notary public, State of Michigan,
26 County of _____."

1 (c) The statement: "My commission expires _____.".

2 (d) The statement: "Acting in the County of _____.".

3 (3) A notary public may use a stamp seal or electronic pro-
 4 cess that contains, at a minimum, all of the information required
 5 by subsection (2). However, the seal or process shall not be
 6 used in a manner that renders anything illegible on the record
 7 being notarized. An embosser alone or any other method that
 8 cannot be reproduced shall not be used.

9 (4) The illegibility of the statements required in
 10 subsection (2) does not affect the validity of the transaction or
 11 record that was notarized.

12 Sec. 27. (1) A notary public may use a notary form set
 13 forth in this section. A notary form set forth in this section
 14 shall be known as a plain English notary form and may be referred
 15 to by that name. A notary form set forth in this section that is
 16 properly executed is considered sufficient to accomplish its
 17 stated purpose under the law of this state. This section does
 18 not prohibit the use of other notary forms.

19 (2) An affidavit or sworn statement may be substantially in
 20 the following form:

21 SWORN STATEMENT OF MARY DOE

22 I, Mary Doe, (explanation of who Mary Doe is, followed by state-
 23 ments of fact made by Mary Doe).

24 Signature of Mary Doe

25 Mary Doe

26 Signed and sworn to before me in _____ County, Michigan,
 27 on _____, _____ (year).

7 Acknowledged before me in _____ County, Michigan, on
8 _____, _____ (year) by Mary Doe.

9 Notary's _____ Notary's _____
10 Stamp _____ Signature _____
11 (Notary's name, county, acting in
12 county, and date commission expires)

18 Notary's _____ Notary's _____
19 Stamp _____ Signature _____
20 (Notary's name, county, acting in
21 county, and date commission expires)

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1 Notary's Notary's
 2 Stamp _____ Signature_____
 3 (Notary's name, county, acting in
 4 county, and date commission expires)

5 (6) An acknowledgment for a corporation may be substantially
 6 in the following form:

7 Acknowledged before me in _____ County, Michigan, on
 8 _____, _____ (year) by Mary Doe, president of X company, a
 9 Michigan corporation, for the corporation.

10 Notary's Notary's
 11 Stamp _____ Signature_____
 12 (Notary's name, county, acting in
 13 county, and date commission expires)

14 (7) An acknowledgment for a limited liability company may be
 15 substantially in the following form:

16 Acknowledge before me in _____ County, Michigan, on
 17 _____, _____ (year) by Mary Doe, member of X company, a
 18 Michigan limited liability company, for the company.

19 Notary's Notary's
 20 Stamp _____ Signature_____
 21 (Notary's name, county, acting in
 22 county, and date commission expires)

23 (8) An acknowledgment for a public officer may be substan-
 24 tially in the following form:

25 Acknowledged before me in _____ County, Michigan, on
 26 _____, _____ (year) by Mary Doe, director of the Michigan
 27 department of X.

1 Notary's Notary's
 2 Stamp _____ Signature_____
 3 (Notary's name, county, acting in
 4 county, and date commission expires)

5 (9) An acknowledgment for a trustee may be substantially in
 6 the following form:

7 Acknowledged before me in _____ County, Michigan, on
 8 _____, _____ (year) by Mary Doe, trustee of the X trust.

9 Notary's Notary's
 10 Stamp _____ Signature_____
 11 (Notary's name, county, acting in
 12 county, and date commission expires)

13 (10) An acknowledgment for a personal representative may be
 14 substantially in the following form:

15 Acknowledged before me in _____ County, Michigan, on
 16 _____, _____ (year) by Mary Doe, personal representative of
 17 the estate of John Doe.

18 Notary's Notary's
 19 Stamp _____ Signature_____
 20 (Notary's name, county, acting in
 21 county, and date commission expires)

22 Sec. 29. (1) A notary public shall not certify or notarize
 23 that a record is either of the following:

24 (a) An original.

25 (b) A true copy of another record.

26 (2) A notary public shall not do any of the following:

1 (a) Perform a notarial act upon any record executed by
2 himself or herself.

3 (b) Notarize his or her own signature.

4 (c) Take his or her own deposition or affidavit.

5 (3) A notary public shall not perform any notarial act in
6 connection with a transaction if the notary public has a conflict
7 of interest. As used in this subsection, "conflict of interest"
8 means either or both of the following:

9 (a) The notary public has a direct financial or beneficial
10 interest, other than the notary public fee, in the transaction.

11 (b) The notary public is named, individually, as a grantor,
12 grantee, mortgagor, mortgagee, trustor, trustee, beneficiary,
13 vendor, vendee, lessor, or lessee or as a party in some other
14 capacity to the transaction.

15 (4) A notary public shall not perform any notarial act in
16 connection with a transaction if the record upon which the notary
17 public intends to perform a notarial act contains a blank space.

18 (5) A notary public who is a stockholder, director, officer,
19 or employee of a bank or other corporation shall not take the
20 acknowledgment of a party to a record executed to or by the cor-
21 poration, or to administer an oath to any other stockholder,
22 director, officer, employee, or agent of the corporation. A
23 notary public may take the acknowledgment of a record by or to a
24 bank or other corporation of which he or she is a stockholder,
25 director, officer, or employee, under circumstances where the
26 notary public is named as a party to the record, either
27 individually or as a representative of the bank or other

1 corporation and the notary public is individually a party to the
2 record.

3 (6) For purposes of subsection (3), a notary public has no
4 direct financial or beneficial interest in a transaction where
5 the notary public acts in the capacity of an agent, employee,
6 insurer, attorney, escrow, or lender for a person having a direct
7 financial or beneficial interest in the transaction.

8 Sec. 31. A notary public may sign the name of a person
9 whose physical characteristics limit his or her capacity to sign
10 or make a mark on a record presented for notarization under all
11 of the following conditions:

12 (a) The notary public is orally, verbally, physically, or
13 through electronic or mechanical means provided by the person and
14 directed by that person to sign that person's name.

15 (b) The person is in the physical presence of the notary
16 public.

17 (c) The notary public inscribes beneath the signature:

18 "Signature affixed pursuant to section 31 of the Michigan
19 notary public act.".

20 Sec. 33. (1) Upon receiving a written or electronic request
21 from the secretary, a notary public shall do all of the following
22 as applicable:

23 (a) Furnish the secretary with a copy of the notary public's
24 records that relate to the request.

25 (b) Within 15 days after receiving the request, respond to
26 the secretary with information that relates to the official acts
27 performed by the notary public.

1 (c) Permit the secretary to inspect his or her notary public
2 records, contracts, or other information that pertains to the
3 official acts of a notary public.

4 (2) Upon presentation to the secretary of satisfactory evi-
5 dence that a notary public has failed to respond within 15 days
6 or another time period designated under this act to a request of
7 the secretary under subsection (1), the secretary may notify the
8 notary public that his or her notary public commission is sus-
9 pended indefinitely until he or she provides a satisfactory
10 response to the request.

11 Sec. 35. (1) For the official misconduct of a notary
12 public, the notary public and the sureties on the notary public's
13 surety bond are liable in a civil action for the damages sus-
14 tained by the persons injured. The employer of a notary public
15 is also liable if both of the following conditions apply:

16 (a) The notary public was acting within the actual or appar-
17 ent scope of his or her employment.

18 (b) The employer had knowledge of and consented to or per-
19 mitted the official misconduct.

20 (2) A notary public and the notary public's sureties are not
21 liable for the truth, form, or correctness of the contents of a
22 record upon which the notary public performs a notarial act.

23 Sec. 37. (1) The secretary shall, on his or her own initia-
24 tive or in response to a complaint, make a reasonable and neces-
25 sary investigation within or outside of this state and gather
26 evidence concerning a person who violated, allegedly violated, or
27 is about to violate this act, a rule promulgated under this act,

1 or an order issued under this act or concerning whether a notary
2 public is in compliance with this act, a rule promulgated under
3 this act, or an order issued under this act.

4 (2) A person may file a complaint against a notary public
5 with the secretary. A complaint shall be made in a format pre-
6 scribed by the secretary and contain all of the following:

7 (a) The complainant's name, address, and telephone number.

8 (b) The complainant's signature and the date the complaint
9 was signed.

10 (c) A complete statement describing the basis for the
11 complaint.

12 (d) The actual record that is the basis for the complaint or
13 a copy, photocopy, or other replica of the record.

14 (3) The secretary may investigate compliance with this act,
15 the rules promulgated under it, or an order issued under it by
16 examination of a notary public's records, contracts, and other
17 pertinent records or information that relate to the official acts
18 of the notary public.

19 Sec. 39. (1) An applicant for an appointment or a commis-
20 sioned notary public who has engaged in conduct prohibited by
21 this act, a rule promulgated under this act, or an order issued
22 under this act is subject to 1 or more of the following penal-
23 ties, in addition to any criminal penalties otherwise imposed:

24 (a) Placement of a limitation on the notary public's certif-
25 icate of appointment.

26 (b) Suspension or revocation of his or her certificate of
27 appointment.

1 (c) Denial of an application for appointment.

2 (d) A civil fine paid to the department in an amount not to
3 exceed \$1,000.00.

4 (e) A condition of probation.

5 (f) A requirement to take the affirmative action determined
6 necessary by the secretary, including payment of restitution to
7 an injured person.

8 (g) A letter of censure.

9 (h) A requirement to reimburse the secretary for the costs
10 of the investigation.

11 (2) The secretary may impose 1 or more of the penalties
12 listed in subsection (1) upon presentation to the secretary of
13 satisfactory evidence that the applicant for an appointment or a
14 commissioned notary public has done 1 or more of the following:

15 (a) Made an omission or false statement of a material fact
16 in the person's application for an appointment.

17 (b) Violated this act, a rule promulgated under this act, or
18 an order issued under this act or assisted others in the viola-
19 tion of this act, a rule promulgated under this act, or an order
20 issued under this act.

21 (c) Committed an act of official misconduct, dishonesty,
22 fraud, deceit, or of any cause substantially relating to the
23 duties or responsibilities of a notary public or the character or
24 public trust necessary to be a notary public.

25 (d) Failed to perform his or her notary public duties in
26 accordance with this act, a rule promulgated under this act, or
27 an order issued under this act.

1 (e) Been convicted of a crime involving dishonesty or moral
2 turpitude. A conviction after a plea of nolo contendere is con-
3 sidered a conviction within the meaning of this subdivision.

4 (f) Failed to fully and faithfully discharge a duty or
5 responsibility required of a notary public.

6 (g) Been found liable in a court of competent jurisdiction
7 for damages in an action grounded in fraud, misrepresentation, or
8 violation of this act.

9 (h) Represented, implied, or used false or misleading adver-
10 tising that he or she has duties, rights, or privileges that he
11 or she does not possess by law.

12 (i) Charged a fee for a notarial act that was more than is
13 allowed under this act.

14 (j) Failed to complete the notary public's acknowledgment at
15 the time the notary public signed or affixed his or her signature
16 or seal to a record.

17 (k) Failed to administer an oath or affirmation as required
18 by law.

19 (l) Engaged in the unauthorized practice of law as deter-
20 mined by a court of competent jurisdiction.

21 (m) Ceased to maintain his or her residence or principal
22 place of business in this state.

23 (n) Lacks adequate ability to read and write English.

24 (o) Hindered or refused a request by the secretary for
25 notary public records or papers.

26 (p) Engaged in a method, act, or practice that is unfair or
27 deceptive including the making of an untrue statement of a

1 material fact relating to a duty or responsibility of a notary
2 public.

3 (q) Violated a condition of probation imposed under
4 subsection (1).

5 (r) Permitted an unlawful use of a notary public's seal.

6 (s) Failed to maintain good moral character as defined and
7 determined under 1974 PA 381, MCL 338.41 to 338.47.

8 (3) Before the secretary takes any action under
9 subsection (2), the person affected shall be given notice and an
10 opportunity for a hearing.

11 (4) If a person holding office as a notary public is sen-
12 tenced to a term of imprisonment in a state correctional facility
13 or jail in this or any other state or in a federal correctional
14 facility, that person's commission as a notary public is revoked
15 automatically on the day on which the person begins serving the
16 sentence in the jail or correctional facility. If a person's
17 commission as a notary public is revoked because the person
18 begins serving a term of imprisonment and that person performs or
19 attempts to perform a notarial act while imprisoned, that person
20 is not eligible to receive a commission as a notary public for at
21 least 10 years after the person completes his or her term of
22 imprisonment.

23 (5) Cancellation of a commission is without prejudice to
24 reapplication at any time. A person whose commission is revoked
25 is ineligible for the issuance of a new commission for at least 5
26 years.

1 (6) A fine imposed under this act that remains unpaid for
2 more than 180 days may be referred to the department of treasury
3 for collection. The department of treasury may collect the fine
4 by deducting the amount owed from a payroll or tax refund
5 warrant. The secretary may bring an action in a court of compe-
6 tent jurisdiction to recover the amount of a civil fine.

7 Sec. 41. (1) Upon presentation to the secretary of satis-
8 factory evidence that a person has violated this act, a rule
9 promulgated under it, or an order issued under it or engaged in
10 an unfair or deceptive method, act, or practice, the secretary
11 may issue an order requiring the person to cease and desist from
12 the unlawful act or practice or to take such affirmative action
13 as in the judgment of the secretary will carry out the purposes
14 of this act or a rule promulgated under this act.

15 (2) If the secretary makes a determination in writing that
16 the public interest will be irreparably harmed by delay in issu-
17 ing an order under subsection (1), the secretary may summarily
18 issue a temporary cease and desist order.

19 Sec. 43. (1) Whenever it appears to the secretary that a
20 person has engaged or is about to engage in an act or practice
21 that constitutes or will constitute a violation of this act, a
22 rule promulgated under this act, or an order issued under this
23 act, the attorney general may petition a circuit court for
24 injunctive relief. Upon a proper showing, a circuit court may
25 issue a permanent or temporary injunction or restraining order to
26 enforce the provisions of this act. A party to the action has

1 the right to appeal within 60 days from the date the order or
2 judgment of the court was issued.

3 (2) The court may order a person subject to an injunction or
4 restraining order provided for in this section to reimburse the
5 secretary for the actual expenses incurred in the investigation
6 related to the petition. The secretary shall refund any amount
7 received as reimbursement should the injunction or restraining
8 order later be dissolved by an appellate court.

9 Sec. 45. In the courts of this state, the certificate of a
10 notary public of official acts performed in the capacity of a
11 notary public, under the seal of office, is presumptive evidence
12 of the facts contained in the certificate except that the certif-
13 icate is not evidence of a notice of nonacceptance or nonpayment
14 in any case in which a defendant attaches to his or her pleadings
15 an affidavit denying the fact of having received that notice of
16 nonacceptance or nonpayment.

17 Sec. 47. If the office of any notary public becomes vacant
18 or the notary public resigns or is removed from office, the per-
19 sonal representative of that notary public or that notary public
20 shall maintain all the records of the notary public relating to
21 his or her office for not less than 7 years after the vacating,
22 expiration, or termination of the notary public's commission.

23 Sec. 49. (1) Except as otherwise provided by law, a person
24 who violates this act is guilty of a misdemeanor punishable by a
25 fine of not more than \$5,000.00 or by imprisonment for not more
26 than 1 year, or both.

1 (2) The penalties and remedies under this act are
2 cumulative. The bringing of an action or prosecution under this
3 act does not bar an action or prosecution under any other appli-
4 cable law.

5 Sec. 51. An application service charge, duplicate notary
6 public certificate of appointment service charge, certification
7 service charge, copying service charge, reimbursement costs, or
8 fine collected under this act by the secretary shall be deposited
9 by the state treasurer in the general fund and be used first to
10 defray the costs incurred by the secretary in administering this
11 act.

12 Sec. 53. The secretary may promulgate rules pursuant to the
13 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
14 24.328, to implement this act.

15 Enacting section 1. The following acts and parts of acts
16 are repealed 6 months after the date this act is enacted:

17 (a) Executive Reorganization Order No. 1980-2, MCL 55.103.

18 (b) Sections 107, 108, 109, 110, 111, 112, 112a, 113, 114,
19 115, 116, and 117 of 1846 RS 14, MCL 55.107, 55.108, 55.109,
20 55.110, 55.111, 55.112, 55.112a, 55.113, 55.114, 55.115, 55.116,
21 and 55.117.

22 (c) 1903 PA 18, MCL 55.221.

23 (d) 1909 PA 18, MCL 55.251.

24 (e) Section 2564 of the revised judicature act of 1961, 1961
25 PA 236, MCL 600.2564.

26 Enacting section 2. This act takes effect 6 months after
27 the date this act is enacted.