

**SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 4938**

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 create certain funds for certain purposes; to provide for liability for certain persons; to provide for the admissibility of certain evidence; to prescribe 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  
3 signature on the record with the proper authority and in the  
4 capacity of the person represented and identified in the record.

5 (b) "Cancellation" means the nullification of a notary public  
6 commission due to an error or defect or because the notary public  
7 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  
15 electronic 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 of  
25 another person.

26 (h) "In the presence of" means in compliance with section  
27 101(g) of title I of the electronic signature in global and

1 national commerce act, 15 USC 7001.

2 Sec. 5. As used in this act:

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

9 (b) "Notarial act" means any act that a notary public  
10 commissioned in this state is authorized to perform including,  
11 but not limited to, the taking of an acknowledgment, the  
12 administration of an oath or affirmation, the taking of a  
13 verification upon oath or affirmation, and the witnessing or  
14 attesting a signature performed in compliance with this act and  
15 the uniform recognition of acknowledgments act, 1969 PA 57, MCL  
16 565.261 to 565.270.

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

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

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

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

26 (e) "Person" means every natural person, corporation,  
27 partnership, trust, association, or other legal entity and its

1 legal successors.

2 (f) "Record" means that term as defined in the uniform  
3 electronic transactions act, 2000 PA 305, MCL 450.831 to  
4 450.849.

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

7 Sec. 7. As used in this act:

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

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

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

20 (d) "Verification upon oath or affirmation" means the  
21 declaration by oath or affirmation that a statement is true.

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

24 (2) A notary public may reside in, move to, and perform  
25 notarial acts anywhere in this state from the date of appointment  
26 until the notary's birthday occurring not less than 6 years and  
27 not more than 7 years after the date of his or her appointment

1 unless the appointment is canceled, suspended, or revoked by the  
2 secretary or by operation of law.

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

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

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

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

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

14 (d) Is free of any felony convictions, misdemeanor  
15 convictions, and violations as described in section 41.

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

23 (f) Has filed with the county clerk of his or her county of  
24 residence or expected appointment a proper surety bond and has  
25 taken the oath as prescribed by the constitution.

26 (2) The secretary shall, on a monthly basis, notify the  
27 county clerk's office of the appointment of any notaries.

1           Sec. 13. (1) Within 90 days before filing an application  
2 for a notary public appointment, a person shall file with the  
3 county clerk of his or her residence or expected appointment a  
4 proper surety bond and take the oath prescribed by the  
5 constitution.

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

23           (3) Each person who files an oath and bond with a county  
24 clerk as required in subsection (1) shall pay a \$10.00 filing fee  
25 to the county clerk. Upon receipt of the filing fee, the county  
26 clerk shall give a bond and oath certificate of filing to the  
27 person as prescribed by the secretary. A charter county with a

1 population of more than 2,000,000 may impose by ordinance a fee  
2 for the county clerk's services different than the amount  
3 prescribed by this subsection. Two dollars of each fee collected  
4 under this subsection shall be deposited into the notary  
5 education and training fund established in section 17 on a  
6 schedule determined by the secretary.

7       Sec. 15. (1) A person shall apply to the secretary for  
8 appointment as a notary public in a format as prescribed by the  
9 secretary. An application for appointment as a notary public  
10 shall contain the signature of the applicant. In addition to  
11 other information as may be required by the secretary, the  
12 application shall include all of the following:

13       (a) The applicant's name, residence address, business  
14 address, date of birth, and residence and business telephone  
15 numbers.

16       (b) The applicant's driver license or state personal  
17 identification card number.

18       (c) A copy of the bond and oath certificate of filing  
19 received from the county clerk.

20       (d) If applicable, a statement showing whether the applicant  
21 has previously applied for an appointment as a notary public in  
22 this or any other state, the result of the application, and  
23 whether the applicant has ever been the holder of a notary public  
24 appointment that was revoked, suspended, or canceled in this or  
25 any other state.

26       (e) A statement describing the date and circumstances of any  
27 felony or other conviction of the applicant during the preceding

1 10 years.

2 (f) A declaration that the applicant is a citizen of the  
3 United States or, if not a citizen of the United States, proof of  
4 the applicant's legal presence in this country.

5 (g) An affirmation by the applicant that the application is  
6 correct, that the applicant has read this act, and that the  
7 applicant will perform his or her notarial acts faithfully.

8 (2) Each application shall be accompanied by an application  
9 fee of \$10.00. One dollar of each fee collected under this  
10 subsection shall be deposited into the notary education and  
11 training fund established in section 17 on a schedule determined  
12 by the secretary.

13 (3) Upon receipt of an application that is accompanied by  
14 the prescribed service charge, the secretary may inquire as to  
15 the qualifications of the applicant and shall determine whether  
16 the applicant meets the qualifications prescribed in this act.  
17 To assist in deciding whether the applicant is qualified, the  
18 secretary may use the law enforcement information network as  
19 provided in the L.E.I.N. policy council act of 1974, 1974 PA 163,  
20 MCL 28.211 to 28.216, to check the criminal background of the  
21 applicant.

22 (4) After approval of the application, the secretary shall  
23 mail directly to the applicant the certificate of appointment as  
24 a notary public. Each certificate of appointment shall identify  
25 the person as a notary public of this state and shall specify the  
26 term of the person's commission.

27 Sec. 17. (1) The notary education and training fund is

1 created within the state treasury. Money from fees collected  
2 under sections 13(3), 15(2), and 21(4) shall be deposited into  
3 the fund.

4 (2) The state treasurer may receive money or other assets  
5 from any source for deposit into the fund. The state treasurer  
6 shall direct the investment of the fund. The state treasurer  
7 shall credit to the fund interest and earnings from fund  
8 investments.

9 (3) Up to \$85,000.00 shall remain in the fund at the close of  
10 each fiscal year and shall not lapse to the general fund. Any  
11 amount in excess of \$85,000.00 shall lapse to the general fund.

12 (4) The secretary shall expend money from the fund in the  
13 form of grants, upon appropriation, for the purposes of providing  
14 education and training programs for county clerks and their  
15 staffs including, but not limited to, notary responsibilities,  
16 election worker training, and election processes. The secretary  
17 shall consult with the president of the Michigan association of  
18 county clerks, or his or her designee, when approving grant  
19 applications under this section.

20 (5) The secretary shall annually file a report regarding the  
21 balance of the fund at the time of the report and a detailed  
22 account of the expenditures in the preceding fiscal year. This  
23 report shall be sent to the speaker of the house of  
24 representatives, the minority leader of the house of  
25 representatives, the majority leader of the senate, and the  
26 minority leader of the senate.

27 Sec. 19. (1) The secretary shall not automatically

1 reappoint a notary public.

2 (2) A person desiring another notary public appointment may  
3 apply to the secretary, in a format prescribed by the secretary,  
4 for an original appointment as a notary public. The application  
5 may be made not more than 60 days before the expiration of his or  
6 her current notary public commission.

7 (3) The secretary shall automatically cancel the notary  
8 public commission of any person who makes, draws, utters, or  
9 delivers any check, draft, or order for the payment of a service  
10 charge under this act that is not honored by the bank, financial  
11 institution, or other depository expected to pay the check,  
12 draft, or order for payment upon its first presentation.

13 Sec. 21. (1) A notary public shall immediately apply to the  
14 secretary, in a format prescribed by the secretary, for a  
15 corrected notary public commission upon the occurrence of any of  
16 the following circumstances:

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

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

20 (c) The issuance by the secretary of a notary public  
21 commission that contains an error in the person's name, birth  
22 date, county, or other pertinent information if the error was  
23 made on the notary public's application and was used by the  
24 secretary to appoint the person as a notary public.

25 (2) A notary public shall immediately notify both the  
26 secretary and the county clerk of his or her appointment, in a  
27 format prescribed by the secretary, upon any change in the

1 factual information stated in the notary public's application for  
2 appointment.

3 (3) The secretary shall notify the county clerk of the  
4 applicant's appointment when a corrected commission is issued by  
5 the secretary.

6 (4) If a notary public's certificate of appointment becomes  
7 lost, mutilated, or illegible, the notary public shall promptly  
8 apply to the secretary for the issuance of a duplicate  
9 certificate. The application shall be made on a form prescribed  
10 by the secretary and be accompanied by a fee of \$10.00. One  
11 dollar of each fee collected under this subsection shall be  
12 deposited into the notary education and training fund established  
13 in section 17.

14 Sec. 23. Before a notary public performs any notarial act,  
15 the notary public shall obtain and read a copy of all the current  
16 statutes of this state that regulate notarial acts.

17 Sec. 25. (1) A notary public may perform notarial acts that  
18 include, but are not limited to, the following:

19 (a) Taking acknowledgments.

20 (b) Administering oaths and affirmations.

21 (c) Witnessing or attesting to a signature.

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

27 (3) In taking a verification upon oath or affirmation, the

1 notary public shall determine, either from personal knowledge or  
2 from satisfactory evidence, that the person in the presence of  
3 the notary public and making the verification is the person whose  
4 signature is on the record being verified.

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

10 (5) In all matters where the notary public takes a  
11 verification upon oath or affirmation, or witnesses or attests to  
12 a signature, the notary public shall require that the person sign  
13 the record being verified, witnessed, or attested in the presence  
14 of the notary public.

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

18 (a) Personally known to the notary public.

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

22 (c) Identified on the basis of a current license,  
23 identification card, or record issued by a federal or state  
24 government that contains the person's photograph and signature.

25 (7) The fee charged by a notary public for performing a  
26 notarial act shall not be more than \$10.00 for any individual  
27 transaction or notarial act. A notary public shall either

1 conspicuously display a sign or expressly advise a person  
2 concerning the fee amount to be charged for a notarial act before  
3 the notary public performs the act. Before the notary public  
4 commences to travel in order to perform a notarial act, the  
5 notary public and client may agree concerning a separate travel  
6 fee to be charged by the notary public for traveling to perform  
7 the notarial act.

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

9 (9) The secretary shall prescribe the form that a notary  
10 public shall use for a jurat, the taking of an acknowledgment,  
11 the administering of an oath or affirmation, the taking of a  
12 verification upon an oath or affirmation, the witnessing or  
13 attesting to a signature, or any other act that a notary public  
14 is authorized to perform in this state.

15 (10) A county clerk may collect a service charge fee of  
16 \$10.00 for certifying a notarial act of a notary public.

17 Sec. 27. (1) A notary public shall place his or her  
18 signature on every record upon which he or she performs a  
19 notarial act. The notary public shall sign his or her name  
20 exactly as his or her name appears on his or her notary public  
21 certificate of appointment received from the secretary.

22 (2) On each record that a notary public performs a notarial  
23 act and immediately near the notary public's signature, as is  
24 practical, the notary public shall print, type, stamp, or  
25 otherwise imprint mechanically or electronically clearly and  
26 legibly and in a manner capable of photographic reproduction all  
27 of the following:

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

3 (b) The statement: "Notary public, State of Michigan, County  
4 of \_\_\_\_\_."

5 (c) The statement: "My commission expires \_\_\_\_\_."

6 (d) The statement: "Acting in the County of \_\_\_\_\_."

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

13 (4) The illegibility of the statements required in  
14 subsection (2) does not affect the validity of the transaction or  
15 record that was notarized.

16 Sec. 29. (1) A notary public may use a notary form set  
17 forth in this section. A notary form set forth in this section  
18 shall be known as a plain English notary form and may be referred  
19 to by that name. A notary form set forth in this section that is  
20 properly executed is considered sufficient to accomplish its  
21 stated purpose under the law of this state. This section does  
22 not prohibit the use of other notary forms.

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

25 SWORN STATEMENT OF MARY DOE

26 I, Mary Doe, (explanation of who Mary Doe is, followed by  
27 statements of fact made by Mary Doe).

1 Signature of Mary Doe

2 Mary Doe

3 Signed and sworn to before me in \_\_\_\_\_ County, Michigan,

4 on \_\_\_\_\_, \_\_\_\_\_ (year).

5 Notary's Notary's

6 Stamp \_\_\_\_\_ Signature\_\_\_\_\_

7 (Notary's name, county, acting in

8 county, and date commission expires)

9 (3) An acknowledgment for an individual acting in his or her

10 own behalf may be substantially in the following form:

11 Acknowledged before me in \_\_\_\_\_ County, Michigan, on

12 \_\_\_\_\_, \_\_\_\_\_ (year) by Mary Doe.

13 Notary's Notary's

14 Stamp \_\_\_\_\_ Signature\_\_\_\_\_

15 (Notary's name, county, acting in

16 county, and date commission expires)

17 (4) An acknowledgment for a copartnership may be

18 substantially in the following form:

19 Acknowledged before me in \_\_\_\_\_ County, Michigan, on

20 \_\_\_\_\_, \_\_\_\_\_ (year) by Mary Doe, partner of X partnership,

21 a Michigan copartnership, for the copartnership.

22 Notary's Notary's

23 Stamp \_\_\_\_\_ Signature\_\_\_\_\_

24 (Notary's name, county, acting in

25 county, and date commission expires)

26 (5) An acknowledgment for a limited partnership may be

27 substantially in the following form:

1 Acknowledged before me in \_\_\_\_\_ County, Michigan, on  
2 \_\_\_\_\_, \_\_\_\_\_ (year) by Mary Doe, general partner of X  
3 partnership, a Michigan limited partnership, for the limited  
4 partnership.

5 Notary's \_\_\_\_\_ Notary's \_\_\_\_\_  
6 Stamp \_\_\_\_\_ Signature \_\_\_\_\_  
7 (Notary's name, county, acting in  
8 county, and date commission expires)

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

11 Acknowledged before me in \_\_\_\_\_ County, Michigan, on  
12 \_\_\_\_\_, \_\_\_\_\_ (year) by Mary Doe, president of X company, a  
13 Michigan corporation, for the corporation.

14 Notary's \_\_\_\_\_ Notary's \_\_\_\_\_  
15 Stamp \_\_\_\_\_ Signature \_\_\_\_\_  
16 (Notary's name, county, acting in  
17 county, and date commission expires)

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

20 Acknowledge before me in \_\_\_\_\_ County, Michigan, on  
21 \_\_\_\_\_, \_\_\_\_\_ (year) by Mary Doe, member of X company, a  
22 Michigan limited liability company, for the company.

23 Notary's \_\_\_\_\_ Notary's \_\_\_\_\_  
24 Stamp \_\_\_\_\_ Signature \_\_\_\_\_  
25 (Notary's name, county, acting in  
26 county, and date commission expires)

27 (8) An acknowledgment for a public officer may be

1 substantially in the following form:

2 Acknowledged before me in \_\_\_\_\_ County, Michigan, on  
3 \_\_\_\_\_, \_\_\_\_\_ (year) by Mary Doe, director of the Michigan  
4 department of X.

5 Notary's \_\_\_\_\_ Notary's  
6 Stamp \_\_\_\_\_ Signature \_\_\_\_\_  
7 (Notary's name, county, acting in  
8 county, and date commission expires)

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

11 Acknowledged before me in \_\_\_\_\_ County, Michigan, on  
12 \_\_\_\_\_, \_\_\_\_\_ (year) by Mary Doe, trustee of the X trust.

13 Notary's \_\_\_\_\_ Notary's  
14 Stamp \_\_\_\_\_ Signature \_\_\_\_\_  
15 (Notary's name, county, acting in  
16 county, and date commission expires)

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

19 Acknowledged before me in \_\_\_\_\_ County, Michigan, on  
20 \_\_\_\_\_, \_\_\_\_\_ (year) by Mary Doe, personal representative of  
21 the estate of John Doe.

22 Notary's \_\_\_\_\_ Notary's  
23 Stamp \_\_\_\_\_ Signature \_\_\_\_\_  
24 (Notary's name, county, acting in  
25 county, and date commission expires)

26 Sec. 31. (1) A notary public shall not certify or notarize  
27 that a record is either of the following:

1 (a) An original.

2 (b) A true copy of another record.

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

4 (a) Perform a notarial act upon any record executed by  
5 himself or herself.

6 (b) Notarize his or her own signature.

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

8 (3) A notary public shall not claim to have powers,  
9 qualifications, rights, or privileges that the office of notary  
10 does not provide, including the power to counsel on immigration  
11 matters.

12 (4) A notary public shall not, in any document,  
13 advertisement, stationery, letterhead, business card, or other  
14 comparable written material describing the role of the notary  
15 public, literally translate from English into another language  
16 terms or titles including, but not limited to, notary public,  
17 notary, licensed, attorney, lawyer, or any other term that  
18 implies the person is an attorney.

19 (5) A notary public who is not a licensed attorney and who  
20 advertises notarial services in a language other than English  
21 shall include in the document, advertisement, stationery,  
22 letterhead, business card, or other comparable written material  
23 the following, prominently displayed in the same language:

24 (a) The statement: "I am not an attorney and have no  
25 authority to give advice on immigration or other legal matters".

26 (b) The fees for notarial acts as specified by statute.

27 (6) A notary public may not use the term "notario publico" or

1 any equivalent non-English term in any business card,  
2 advertisement, notice, or sign.

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

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

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

13 (8) A notary public shall not perform a notarial act for a  
14 spouse, domestic partner, descendant, or sibling including  
15 in-laws, steps, or half-relatives.

16 (9) A notary public shall not perform any notarial act on a  
17 record that contains a blank space.

18 (10) A notary public who is a stockholder, director, officer,  
19 or employee of a bank or other corporation may take the  
20 acknowledgment of a party to a record executed to or by the  
21 corporation, or to administer an oath to any other stockholder,  
22 director, officer, employee, or agent of the corporation. A  
23 notary public shall not take the acknowledgment of a record by or  
24 to a bank or other corporation of which he or she is a  
25 stockholder, director, officer, or employee, under circumstances  
26 where the 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 (11) For purposes of subsection (7), 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. 33. 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 33 of the Michigan  
19 notary public act."

20 Sec. 35. (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  
5 evidence that a notary public has failed to respond within 15  
6 days or another time period designated under this act to a  
7 request of the secretary under subsection (1), the secretary may  
8 notify the notary public that his or her notary public commission  
9 is suspended indefinitely until he or she provides a satisfactory  
10 response to the request.

11 Sec. 37. (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  
14 sustained by the persons injured. The employer of a notary  
15 public is also liable if both of the following conditions apply:

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

18 (b) The employer had knowledge of and consented to or  
19 permitted 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. 39. The secretary may investigate, or cause to be  
24 investigated by local authorities, the administration of notary  
25 public laws and shall report violations of the notary public laws  
26 and rules to the attorney general or prosecuting attorney, or  
27 both, for prosecution.

1           Sec. 40. (1) The secretary may, on his or her own  
2 initiative or in response to a complaint, make a reasonable and  
3 necessary investigation within or outside of this state and  
4 gather evidence concerning a person who violated, allegedly  
5 violated, or is about to violate this act, a rule promulgated  
6 under this act, or an order issued under this act or concerning  
7 whether a notary public is in compliance with this act, a rule  
8 promulgated under this act, or an order issued under this act.

9           (2) A person may file a complaint against a notary public  
10 with the secretary. A complaint shall be made in a format  
11 prescribed by the secretary and contain all of the following:

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

13           (b) The complainant's signature and the date the complaint  
14 was signed.

15           (c) A complete statement describing the basis for the  
16 complaint.

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

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

24           Sec. 40a. (1) An applicant for an appointment or a  
25 commissioned notary public who has engaged in conduct prohibited  
26 by this act, a rule promulgated under this act, or an order  
27 issued under this act is subject to 1 or more of the following

1 penalties, in addition to any criminal penalties otherwise  
2 imposed:

3 (a) Suspension or revocation of his or her certificate of  
4 appointment.

5 (b) Denial of an application for appointment.

6 (c) A civil fine paid to the department in an amount not to  
7 exceed \$1,000.00.

8 (d) A requirement to take the affirmative action determined  
9 necessary by the secretary, including payment of restitution to  
10 an injured person.

11 (e) A letter of censure.

12 (f) A requirement to reimburse the secretary for the costs  
13 of the investigation.

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

18 (a) Violated this act, a rule promulgated under this act, or  
19 an order issued under this act or assisted others in the  
20 violation of this act, a rule promulgated under this act, or an  
21 order issued under this act.

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

26 (c) Failed to perform his or her notary public duties in  
27 accordance with this act, a rule promulgated under this act, or

1 an order issued under this act.

2 (d) Failed to fully and faithfully discharge a duty or  
3 responsibility required of a notary public.

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

7 (f) Represented, implied, or used false or misleading  
8 advertising that he or she has duties, rights, or privileges that  
9 he or she does not possess by law.

10 (g) Charged a fee for a notarial act that was more than is  
11 allowed under this act.

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

15 (i) Failed to administer an oath or affirmation as required  
16 by law.

17 (j) Engaged in the unauthorized practice of law as  
18 determined by a court of competent jurisdiction.

19 (k) Ceased to maintain his or her residence or principal  
20 place of business in this state.

21 (l) Lacks adequate ability to read and write English.

22 (m) Hindered or refused a request by the secretary for  
23 notary public records or papers.

24 (n) Engaged in a method, act, or practice that is unfair or  
25 deceptive including the making of an untrue statement of a  
26 material fact relating to a duty or responsibility of a notary  
27 public.

1 (o) Violated a condition of probation imposed under  
2 subsection (1).

3 (p) Permitted an unlawful use of a notary public's seal.

4 (q) Failed to maintain good moral character as defined and  
5 determined under 1974 PA 381, MCL 338.41 to 338.47.

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

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

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

25 (6) A fine imposed under this act that remains unpaid for  
26 more than 180 days may be referred to the department of treasury  
27 for collection. The department of treasury may collect the fine

1 by deducting the amount owed from a payroll or tax refund  
2 warrant. The secretary may bring an action in a court of  
3 competent jurisdiction to recover the amount of a civil fine.

4       Sec. 41. (1) If a notary public of this state is convicted  
5 of a felony or of a substantially corresponding violation of  
6 another state, the secretary shall automatically revoke the  
7 notary public commission of that person on the date that the  
8 person's felony conviction is entered.

9       (2) If a notary public of this state is convicted of 2 or  
10 more misdemeanor offenses involving a violation of this act  
11 within a 12-month period while commissioned, or of 3 or more  
12 misdemeanor offenses involving a violation of this act within a  
13 5-year period regardless of being commissioned, the secretary  
14 shall automatically revoke the notary public commission of that  
15 person on the date that the person's most recent misdemeanor  
16 conviction is entered.

17       (3) If a person holding office as a notary public is  
18 sentenced to a term of imprisonment in a state correctional  
19 facility or jail in this or any other state or in a federal  
20 correctional facility, that person's commission as a notary  
21 public is revoked automatically on the day on which the person  
22 begins serving the sentence in the jail or correctional  
23 facility. If a person's commission as a notary public is revoked  
24 because the person begins serving a term of imprisonment and that  
25 person performs or attempts to perform a notarial act while  
26 imprisoned, that person is not eligible to receive a commission  
27 as a notary public for at least 10 years after the person

1 completes his or her term of imprisonment.

2 (4) A person found guilty of performing a notarial act after  
3 his or her commission is revoked under this section is guilty of  
4 a felony punishable by a fine of not more than \$3,000.00 or by  
5 imprisonment for not more than 5 years, or both.

6 (5) A person, regardless of whether he or she has ever been  
7 commissioned as a notary public, that is convicted of a felony is  
8 disqualified from being commissioned as a notary public for not  
9 less than 10 years after the person completes his or her sentence  
10 for that crime, including any term of imprisonment, parole, or  
11 probation, and pays all fines, costs, and assessments. As used  
12 in this section, a "felony" means a violation of a penal law of  
13 this state, another state, or the United States for which the  
14 offender, upon conviction, may be punished by death or  
15 imprisonment for more than 1 year or an offense expressly  
16 designated by law to be a felony.

17 (6) If a person is convicted of a violation described in  
18 subsection (5), the court shall make a determination of whether  
19 the person is a notary. If the person is a notary, the court  
20 shall inform the secretary of the conviction.

21 Sec. 43. (1) Cancellation of a commission is without  
22 prejudice to reapplication at any time. Except as otherwise  
23 provided for in section 41(3), a person whose commission is  
24 revoked is ineligible for the issuance of a new commission for at  
25 least 5 years.

26 (2) A fine imposed under this act that remains unpaid for  
27 more than 180 days may be referred to the department of treasury

1 for collection. The department of treasury may collect the fine  
2 by deducting the amount owed from a payroll or tax refund  
3 warrant. The secretary may bring an action in a court of  
4 competent jurisdiction to recover the amount of a civil fine.

5       Sec. 45. (1) Whenever it appears to the secretary that a  
6 person has engaged or is about to engage in an act or practice  
7 that constitutes or will constitute a violation of this act, a  
8 rule promulgated under this act, or an order issued under this  
9 act, the attorney general may petition a circuit court for  
10 injunctive relief. Upon a proper showing, a circuit court may  
11 issue a permanent or temporary injunction or restraining order to  
12 enforce the provisions of this act. A party to the action has  
13 the right to appeal within 60 days from the date the order or  
14 judgment of the court was issued.

15       (2) The court may order a person subject to an injunction or  
16 restraining order provided for in this section to reimburse the  
17 secretary for the actual expenses incurred in the investigation  
18 related to the petition. The secretary shall refund any amount  
19 received as reimbursement should the injunction or restraining  
20 order later be dissolved by an appellate court.

21       Sec. 47. (1) Subject to subsection (2) and in the courts of  
22 this state, the certificate of a notary public of official acts  
23 performed in the capacity of a notary public, under the seal of  
24 office, is presumptive evidence of the facts contained in the  
25 certificate except that the certificate is not evidence of a  
26 notice of nonacceptance or nonpayment in any case in which a  
27 defendant attaches to his or her pleadings an affidavit denying

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1 the fact of having received that notice of nonacceptance or  
2 nonpayment.

3 (2) Notwithstanding subsection (1), the court may invalidate  
4 any document not notarized in compliance with this act.

5 Sec. 49. (1) Except as otherwise provided for in section  
6 41(4) or as provided by law, a person who violates this act is  
7 guilty of a misdemeanor punishable by a fine of not more than  
8 \$5,000.00 or by imprisonment for not more than 1 year, or both.

9 (2) An action concerning a fee charged for a notarial act  
10 shall be filed in the district court in the place where the  
11 notarial act occurred.

12 (3) The penalties and remedies under this act are  
13 cumulative. The bringing of an action or prosecution under this  
14 act does not bar an action or prosecution under any other  
15 applicable law.

16 Sec. 51. The notary fees fund is created in the state  
17 treasury. Except as otherwise provided in sections 15(2) and  
18 21(4), an application fee, duplicate notary public certificate of  
19 appointment service charge, certification service charge, copying  
20 service charge, reimbursement costs, or administrative fine  
21 collected under this act by the secretary of state shall be  
22 deposited by the state treasurer in the notary fees fund and is  
23 appropriated to defray the costs incurred by the secretary in  
24 administering this act. <<

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27 Sec. 53. A person, or the personal representative of a

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1 person who is deceased, who performed a notarial act while  
2 commissioned as a notary public under this act shall maintain all  
3 the records of that notarial act for at least 5 years after the  
4 date of the notarial act.

5 Sec. 55. The secretary may promulgate rules pursuant to the  
6 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
7 24.328, to implement this act.

8 Enacting section 1. The following acts and parts of acts  
9 are repealed effective January 1, 2004:

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

11 (b) Sections 107, 108, 109, 110, 111, 112, 112a, 113, 114,  
12 115, 116, and 117 of 1846 RS 14, MCL 55.107, 55.108, 55.109,  
13 55.110, 55.111, 55.112, 55.112a, 55.113, 55.114, 55.115, 55.116,  
14 and 55.117.

15 (c) 1903 PA 18, MCL 55.221.

16 (d) 1909 PA 18, MCL 55.251.

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

19 Enacting section 2. This act takes effect <<April 1, 2004>>.