

Legislative Analysis



REVOCATION OF NOTARY'S COMMISSION

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House Bill 5269 (reported from committee without amendment)

Sponsor: Rep. Holly Hughes

Committee: Local, Intergovernmental, and Regional Affairs

First Analysis (3-6-12)

(Enacted as Public Act 425 of 2012)

BRIEF SUMMARY: The bill would describe certain "specified misdemeanors" that, if committed by a notary, would lead to the revocation of a notary public's commission. These would include misdemeanors that involve, in addition to violations of the Notary Public Act, a violation of the public trust; an act of official misconduct, dishonesty, fraud, or deceit; and an act substantially related to the duties or responsibilities of a notary public. Currently, the Notary Public Act refers only to misdemeanors "involving a violation of this act."

FISCAL IMPACT: House Bill 5269 would have an indeterminate fiscal impact on state and local governments, and no fiscal impact on the Department of State. To the extent that the number of people who have their notary public commission revoked increases under this bill, it is possible that the number of felony convictions resulting from performing a notarial act after their commission as a notary public is revoked may also increase. This could impact state and/or local corrections costs and penal fine revenue.

THE APPARENT PROBLEM:

Notaries public are officers commissioned by the Michigan Secretary of State to serve as unbiased and impartial witnesses. There are 127,000 notaries public currently commissioned in Michigan.

According to the Office of the Great Seal, located within the Department of State, the most common function of a notary is to prevent fraud by attesting to the identity of a person signing a document. Notarization on a document certifies that the person whose signature is entered on the document personally appeared before the notary, established his or her identity, and personally signed the document in the presence of the notary.

Every citizen appointed as a notary has a duty to learn the notarial laws on their own initiative. Before a notary performs any notarial act, the notary is required to read the Notary Public Act, 2003 PA 238 (MCL 55.261, et seq.) An electronic copy of the act may be found on the Legislature's web site at www.legislature.mi.gov In addition, more information about notaries public can be found at this Secretary of State website: http://www.mi.gov/sos/0,4670,7-127-1638_8736-85744--,00.html

Now under the law, notaries public must meet the following qualifications:

- Be at least 18 years old.
- Be a Michigan resident or maintain a place of business in Michigan.

- Be a U.S. citizen or possess proof of legal presence.
- Be a resident of the county in which you request appointment (if you do not reside in Michigan, maintain a principal place of business in the county you request appointment).
- Read and write in the English language.
- Be free of any felony convictions within the past 10 years (if previously convicted of a felony, the 10-year period includes completion of the sentence for that crime, any term of imprisonment, parole, or probation, and payment of all fines, costs, and assessments).
- Have not been convicted of two or more misdemeanor offenses involving a violation of the Michigan Notary Public Act within a 12-month period while commissioned, or three or more misdemeanor offenses involving a violation of this act within a five-year period regardless of being commissioned.
- Have filed with the appropriate county clerk a proper surety bond in the amount of \$10,000 and taken the oath of office as prescribed by the State Constitution (a requirement that is waived for attorneys licensed in the state).
- Sign a declaration that all information on your application for Michigan Notary Public Commission is correct, that you have read the Michigan Notary Public Act, and that you will perform all notarial acts faithfully.

At present a notary public's commission is revoked for conviction of a felony. And, any individual currently serving a term of imprisonment in any state, county or federal correctional facility is prohibited from being appointed or serving as a notary public. Further, a notary's commission is revoked if the notary is convicted of a misdemeanor violation of the Michigan Notary Public Act.

Legislation has been introduced to extend and make explicit other kinds of misdemeanor offences that would result in a 10-year revocation of a notary's commission.

THE CONTENT OF THE BILL:

House Bill 5269 would amend the Michigan Notary Public Act (MCL 55.301) to describe the misdemeanors that, if committed by a notary, would lead to the revocation of a notary public's commission. A more detailed description of the bill follows.

Now under the law, the commission of a notary public is automatically revoked if the notary is convicted of a felony; convicted of two or more misdemeanor offenses within a 12-month period; or convicted of three or more misdemeanor offenses within a five-year period. Further, if convicted of a felony, the individual is disqualified from being commissioned as a notary public for at least 10 years. House Bill 5269 would retain these provisions but refer to "specified misdemeanors" instead of "misdemeanors."

Under the bill, "specified misdemeanor" would be defined to mean a misdemeanor that the Secretary of State determines involves any of the following:

- A violation of this act.

- A violation of the public trust.
- An act of official misconduct, dishonesty, fraud, or deceit.
- An act substantially related to the duties or responsibilities of a notary public.

Finally, House Bill 5269 specifies that an individual commissioned as a notary public in Michigan who is convicted of any felony or misdemeanor in any court must notify the Secretary of State in writing within 10 days after the date of the conviction.

ARGUMENTS:

For:

Michigan's 127,000 notaries public are public officers of good reputation who are commissioned by the Office of the Great Seal, which is located in the Department of State. Their chief function is to serve as unbiased and impartial witnesses when legal or commercial documents and contracts are executed, in order to attest that the parties signing the documents are who they claim to be. Notaries public prevent fraud, by attesting to the identity of the document signers, and requiring that the documents be signed in person before them.

This important function to assure trust and honesty during the transactions of law and commerce requires that notaries public, themselves, abide by the laws. If they do not, their commissions must be revoked. Now under the law, a commission can be revoked if a notary is convicted on a felony, or of a misdemeanor violation of the Notary Public Act. This bill will extend and make explicit other kinds of misdemeanors that would result in the revocation, for 10 years, of a notary's commission, including violations of the act, or of the public trust; acts of official misconduct, dishonesty, fraud, or deceit; and acts substantially related to the duties of a notary public.

POSITIONS:

The Secretary of State supports the bill. (3-1-12)

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