

HOUSE BILL No. 5811

April 17, 2018, Introduced by Reps. Farrington, Green, McCready, Marino, Graves, Gay-Dagnogo, LaFave, Lilly and VanderWall and referred to the Committee on Financial Services.

A bill to amend 2003 PA 238, entitled "Michigan notary public act," by amending sections 15, 25, and 27 (MCL 55.275, 55.285, and 55.287), section 15 as amended by 2006 PA 510, section 25 as amended by 2006 PA 426, and section 27 as amended by 2006 PA 155, and by adding sections 26b and 54.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 15. (1) ~~A person~~ **AN INDIVIDUAL** shall apply to the
2 secretary for appointment as a notary public in a format as
3 prescribed by the secretary. An application for appointment as a
4 notary public ~~shall contain the~~ **MUST INCLUDE THE HANDWRITTEN**
5 signature of the applicant ~~. In addition to other information as~~
6 ~~may be required by the secretary, the application shall include~~ **AND**
7 all of the following **INFORMATION:**

8 (a) The applicant's name, residence address, business address,

1 date of birth, ~~and~~ residence and business telephone numbers, **AND**
2 **ELECTRONIC MAIL ADDRESS.**

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

5 (c) A validated copy of the filing of the bond, if applicable,
6 and oath certificate received from the county clerk.

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11 appointment that was revoked, suspended, or canceled in this or any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

13 (e) A statement describing the date and circumstances of any
14 felony or misdemeanor conviction of the applicant during the
15 preceding 10 years.

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

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

22 **(H) ANY OTHER INFORMATION REQUIRED BY THE SECRETARY.**

23 **(2) IN ADDITION TO THE REQUIREMENTS UNDER SUBSECTION (1), THE**
24 **SECRETARY MAY REQUEST THAT AN APPLICANT PROVIDE A CRIMINAL HISTORY**
25 **CHECK AND CRIMINAL RECORDS CHECK THROUGH THE DEPARTMENT OF STATE**
26 **POLICE ACCORDING TO THE PROCEDURES ESTABLISHED BY THAT DEPARTMENT,**
27 **TO CHECK THE CRIMINAL BACKGROUND OF THE APPLICANT. THE ACTUAL COST**

1 OF ANY CRIMINAL HISTORY CHECK OR CRIMINAL RECORDS CHECK IS THE
2 RESPONSIBILITY OF THE APPLICANT.

3 (3) ~~(2)~~—Each application shall be accompanied by an
4 application processing fee of \$10.00. ~~One dollar~~ **THE SECRETARY**
5 **SHALL DEPOSIT \$1.00** of each fee collected under this subsection
6 ~~shall be deposited~~ into the notary education and training fund
7 established in section 17 on a schedule determined by the
8 secretary.

9 (4) ~~(3)~~ ~~Upon receipt of~~ **WHEN HE OR SHE RECEIVES** an application
10 that is accompanied by the prescribed processing fee, the secretary
11 may inquire as to the qualifications of the applicant and shall
12 determine whether the applicant meets the qualifications ~~prescribed~~
13 ~~in~~ **FOR APPOINTMENT AS A NOTARY PUBLIC UNDER** this act. To assist in
14 deciding whether the applicant is qualified, **IF THE SECRETARY HAS**
15 **NOT REQUESTED THAT THE APPLICANT PROVIDE A CRIMINAL HISTORY OR**
16 **RECORDS CHECK UNDER SUBSECTION (2)**, the secretary may use the law
17 enforcement information network as provided in the C.J.I.S. policy
18 council act, 1974 PA 163, MCL 28.211 to 28.215, to check the
19 criminal background of the applicant.

20 (5) ~~(4)~~—After approval of ~~the~~ **AN** application **FOR APPOINTMENT**
21 **AS A NOTARY PUBLIC**, the secretary shall mail directly to the
22 applicant the certificate of appointment as a notary public. Each
23 certificate of appointment shall identify the ~~person~~ **INDIVIDUAL** as
24 a notary public of this state and shall specify the term and county
25 of ~~the person's~~ **HIS OR HER** commission.

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

1 (a) Taking acknowledgments.

2 (b) Administering oaths and affirmations.

3 (c) Witnessing or attesting to a signature.

4 (2) In taking an acknowledgment, the notary public shall
5 determine, either from personal knowledge or from satisfactory
6 evidence, that the ~~person~~**INDIVIDUAL** in the presence of the notary
7 public and making the acknowledgment is the ~~person~~**INDIVIDUAL** whose
8 signature is on the record.

9 (3) In taking a verification upon oath or affirmation, the
10 notary public shall determine, either from personal knowledge or
11 from satisfactory evidence, that the ~~person~~**INDIVIDUAL** in the
12 presence of the notary public and making the verification is the
13 ~~person~~**INDIVIDUAL** whose signature is on the record being verified.

14 (4) In witnessing or attesting to a signature, the notary
15 public shall determine, either from personal knowledge or from
16 satisfactory evidence, that the signature is that of the ~~person~~
17 **INDIVIDUAL** in the presence of the notary public and is the ~~person~~
18 **INDIVIDUAL** named in the record.

19 (5) In all matters where the notary public takes a
20 verification upon oath or affirmation, or witnesses or attests to a
21 signature, the notary public shall require that the ~~person~~
22 **INDIVIDUAL** sign the record being verified, witnessed, or attested
23 in the presence of the notary public.

24 (6) A notary public has satisfactory evidence that a ~~person~~**AN**
25 **INDIVIDUAL** is the ~~person~~**INDIVIDUAL** whose signature is on a record
26 if that ~~person~~**INDIVIDUAL** is any of the following:

27 (a) Personally known to the notary public.

1 (b) Identified upon the oath or affirmation of a credible
2 witness personally known by the notary public and who personally
3 knows the ~~person~~. **INDIVIDUAL**.

4 (c) Identified on the basis of a current license,
5 identification card, or record issued by a federal or state
6 government that contains the ~~person's~~ **INDIVIDUAL'S** photograph and
7 signature.

8 **(D) WITH REGARD TO A NOTARIAL ACT PERFORMED UNDER SECTION 26B,**
9 **IDENTIFIED AND VERIFIED THROUGH AN IDENTITY PROOFING PROCESS OR**
10 **SERVICE THAT IS PART OF A REMOTE ONLINE NOTARIZATION PLATFORM**
11 **APPROVED UNDER SECTION 26B(1), AND THE PERSON PRESENTS AN IDENTITY**
12 **DOCUMENT DESCRIBED IN SUBDIVISION (C) THAT IS VERIFIED THROUGH A**
13 **CREDENTIAL ANALYSIS PROCESS OR SERVICE THAT IS PART OF A REMOTE**
14 **ONLINE NOTARIZATION PLATFORM APPROVED UNDER SECTION 26B(1).**

15 (7) The fee charged by a notary public for performing a
16 notarial act shall not be more than \$10.00 for any individual
17 transaction or notarial act. A notary public shall either
18 conspicuously display a sign or expressly advise a ~~person~~ **AN**
19 **INDIVIDUAL** concerning the fee amount to be charged for a notarial
20 act before the notary public performs the act. Before the notary
21 public commences to travel in order to perform a notarial act, the
22 notary public and client may agree concerning a separate travel fee
23 to be charged by the notary public for traveling to perform the
24 notarial act.

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

26 (9) The secretary shall prescribe the form that a notary
27 public shall use for a jurat, the taking of an acknowledgment, the

1 administering of an oath or affirmation, the taking of a
2 verification upon an oath or affirmation, the witnessing or
3 attesting to a signature, or any other act that a notary public is
4 authorized to perform in this state.

5 (10) A county clerk may collect a processing fee of \$10.00 for
6 certifying a notarial act of a notary public.

7 **SEC. 26B. (1) THE SECRETARY AND THE DEPARTMENT OF TECHNOLOGY,**
8 **MANAGEMENT, AND BUDGET SHALL REVIEW AND APPROVE AT LEAST 1 REMOTE**
9 **ONLINE NOTARIZATION PLATFORM FOR THE PERFORMANCE OF NOTARIAL ACTS**
10 **IN THIS STATE. THE SECRETARY AND THE DEPARTMENT OF TECHNOLOGY,**
11 **MANAGEMENT, AND BUDGET MAY GRANT APPROVAL TO ADDITIONAL REMOTE**
12 **ONLINE NOTARIZATION PLATFORMS ON AN ONGOING BASIS. A NOTARY PUBLIC**
13 **SHALL NOT USE A REMOTE ONLINE NOTARIZATION PLATFORM THAT IS NOT**
14 **APPROVED UNDER THIS SECTION.**

15 (2) SUBJECT TO SUBSECTION (3), IN CONSIDERING APPROVAL OF A
16 REMOTE ONLINE NOTARIZATION PLATFORM IN THIS STATE, THE SECRETARY
17 AND THE DEPARTMENT OF TECHNOLOGY, MANAGEMENT, AND BUDGET SHALL
18 CONSIDER THE FUNCTIONALITY OF THE REMOTE ONLINE NOTARIZATION
19 PLATFORM IN PERFORMING AN IDENTITY PROOFING PROCESS OR SERVICE OR
20 CREDENTIAL ANALYSIS PROCESS OR SERVICE.

21 (3) IF A REMOTE ONLINE NOTARIZATION PLATFORM HAS BEEN
22 EVALUATED, AND APPROVED OR ACCEPTED, BY A GOVERNMENT-SPONSORED
23 ENTERPRISE OF THE UNITED STATES, SUCH AS THE FEDERAL HOME LOAN
24 MORTGAGE CORPORATION OR THE GOVERNMENT NATIONAL MORTGAGE
25 ASSOCIATION, THE REMOTE ONLINE NOTARIZATION PLATFORM IS CONSIDERED
26 APPROVED FOR USE IN THIS STATE UNLESS AFFIRMATIVELY DISALLOWED BY
27 THE SECRETARY.

1 (4) THE SECRETARY AND THE DEPARTMENT OF TECHNOLOGY,
2 MANAGEMENT, AND BUDGET SHALL REVIEW THEIR STANDARDS FOR APPROVING
3 REMOTE ONLINE NOTARIZATION PLATFORMS FOR USE IN THIS STATE, AND
4 WHETHER THE NUMBER OF APPROVED REMOTE ONLINE NOTARIZATION PLATFORMS
5 ARE SUFFICIENT, AT LEAST EVERY 4 YEARS.

6 (5) A NOTARY PUBLIC MAY PERFORM A NOTARIAL ACT USING A REMOTE
7 ONLINE NOTARIZATION PLATFORM IF EITHER OF THE FOLLOWING IS MET:

8 (A) THE NOTARY PUBLIC MAKES ALL APPLICABLE DETERMINATIONS
9 UNDER SECTION 25 ACCORDING TO PERSONAL KNOWLEDGE OR SATISFACTORY
10 EVIDENCE, PERFORMANCE OF THE NOTARIAL ACT COMPLIES WITH SECTION 27,
11 AND THE NOTARY PUBLIC DOES NOT VIOLATE SECTION 31 IN THE
12 PERFORMANCE OF THE NOTARIAL ACT.

13 (B) THE NOTARY PUBLIC, THROUGH USE OF THE REMOTE ONLINE
14 NOTARIZATION PLATFORM, PERSONAL KNOWLEDGE, OR SATISFACTORY
15 EVIDENCE, IS ABLE TO IDENTIFY THE RECORD BEFORE THE NOTARY PUBLIC
16 AS THE SAME RECORD PRESENTED BY THE INDIVIDUAL FOR NOTARIZATION.

17 (6) THE NOTARY PUBLIC SHALL NOT RECORD BY AUDIO OR VISUAL
18 MEANS A NOTARIAL ACT PERFORMED USING A REMOTE ONLINE NOTARIZATION
19 PLATFORM, UNLESS THE NOTARY PUBLIC DISCLOSES TO THE PERSON THAT
20 REQUESTED THE NOTARIAL ACT THAT AN AUDIO OR VISUAL RECORDING IS
21 BEING MADE AND HOW THE RECORDING WILL BE PRESERVED, AND THE PERSON
22 CONSENTS OR HAS PREVIOUSLY CONSENTED TO THE RECORDING. A NOTARY
23 PUBLIC MAY REFUSE TO CONDUCT A NOTARIAL ACT USING A REMOTE ONLINE
24 NOTARIZATION PLATFORM IF THE PERSON THAT REQUESTED THE NOTARIAL ACT
25 OBJECTS TO AN AUDIO OR VISUAL RECORDING OF THE NOTARIAL ACT.

26 (7) IF A NOTARY PUBLIC PERFORMS NOTARIAL ACTS USING A REMOTE
27 ONLINE NOTARIZATION PLATFORM, THE NOTARY PUBLIC SHALL MAINTAIN A

1 JOURNAL THAT RECORDS, AT A MINIMUM, EACH OF THOSE NOTARIAL ACTS. A
2 NOTARY PUBLIC SHALL MAINTAIN ONLY 1 JOURNAL FOR THE RECORDING OF
3 NOTARIAL ACTS AND MUST KEEP THE JOURNAL EITHER AS A TANGIBLE,
4 PERMANENT BOUND REGISTER OR IN A TAMPER-EVIDENT, PERMANENT
5 ELECTRONIC FORMAT. A NOTARY PUBLIC SHALL RETAIN THE JOURNAL FOR AT
6 LEAST 10 YEARS AFTER THE PERFORMANCE OF THE LAST NOTARIAL ACT
7 RECORDED IN IT. IF A NOTARY PUBLIC IS NOT REAPPOINTED, OR HIS OR
8 HER COMMISSION IS REVOKED, THE FORMER NOTARY PUBLIC SHALL INFORM
9 THE SECRETARY OF STATE WHERE THE JOURNAL IS KEPT OR, IF DIRECTED BY
10 THE SECRETARY, SHALL FORWARD THE JOURNAL TO THE SECRETARY OR A
11 REPOSITORY DESIGNATED BY THE SECRETARY.

12 (8) A NOTARY PUBLIC SHALL MAKE AN ENTRY IN A JOURNAL
13 MAINTAINED UNDER SUBSECTION (7) CONTEMPORANEOUSLY WITH PERFORMANCE
14 OF THE NOTARIAL ACT, AND THE ENTRY MUST INCLUDE, AT A MINIMUM, ALL
15 OF THE FOLLOWING:

16 (A) THE DATE, TIME, AND NATURE OF THE NOTARIAL ACT.

17 (B) A DESCRIPTION OF THE RECORD, IF ANY.

18 (C) THE FULL NAME AND ADDRESS OF EACH INDIVIDUAL FOR WHOM THE
19 NOTARIAL ACT IS PERFORMED.

20 (D) IF THE IDENTITY OF THE INDIVIDUAL FOR WHOM THE NOTARIAL
21 ACT IS PERFORMED IS BASED ON PERSONAL KNOWLEDGE, A STATEMENT TO
22 THAT EFFECT. IF THE IDENTITY OF THE INDIVIDUAL FOR WHOM THE
23 NOTARIAL ACT IS PERFORMED IS BASED ON SATISFACTORY EVIDENCE, A
24 BRIEF DESCRIPTION OF THE METHOD OF IDENTIFICATION AND THE
25 IDENTIFICATION CREDENTIAL PRESENTED, IF ANY, INCLUDING THE DATE OF
26 ISSUANCE AND EXPIRATION FOR THE CREDENTIAL.

27 (E) THE FEE CHARGED, IF ANY, BY THE NOTARY PUBLIC.

1 (9) AN ENTRY MADE IN A JOURNAL MAINTAINED BY A NOTARY PUBLIC
2 UNDER SUBSECTION (7) MUST ALSO REFERENCE, BUT SHALL NOT ITSELF
3 CONTAIN, ANY AUDIO OR VISUAL RECORDING OF A NOTARIAL ACT PERFORMED
4 USING A REMOTE ONLINE NOTARIZATION PLATFORM. SUBJECT TO SUBSECTION
5 (1), A NOTARY PUBLIC MUST RETAIN AN AUDIO OR VISUAL RECORDING OF A
6 NOTARIAL ACT FOR AT LEAST 10 YEARS AFTER THE PERFORMANCE OF THE
7 NOTARIAL ACT.

8 (10) A NOTARY PUBLIC MAY DESIGNATE A CUSTODIAN TO DO ANY OF
9 THE FOLLOWING:

10 (A) MAINTAIN THE JOURNAL REQUIRED UNDER SUBSECTION (7) ON HIS
11 OR HER BEHALF.

12 (B) RETAIN AN AUDIO OR VISUAL RECORDING OF A NOTARIAL ACT
13 UNDER SUBSECTION (9) ON HIS OR HER BEHALF. IF AN AUDIO OR VISUAL
14 RECORDING OF A NOTARIAL ACT IS TRANSFERRED TO A CUSTODIAN TO HOLD
15 ON BEHALF OF THE NOTARY PUBLIC, THE JOURNAL ENTRY MUST IDENTIFY THE
16 CUSTODIAN WITH SUFFICIENT INFORMATION TO LOCATE AND CONTACT THAT
17 CUSTODIAN.

18 (11) A NOTARIAL ACT PERFORMED USING A REMOTE ONLINE
19 NOTARIZATION PLATFORM UNDER THIS SECTION THAT OTHERWISE SATISFIES
20 THE REQUIREMENTS OF THIS ACT IS PRESUMED TO SATISFY ANY REQUIREMENT
21 UNDER THIS ACT THAT A NOTARIAL ACT BE PERFORMED IN THE PRESENCE OF
22 A NOTARY PUBLIC.

23 (12) AS USED IN THIS SECTION:

24 (A) "CREDENTIAL ANALYSIS" MEANS A PROCESS OR SERVICE BY WHICH
25 A THIRD PARTY AFFIRMS THE VALIDITY OF AN IDENTITY DOCUMENT
26 DESCRIBED IN SECTION 25(6)(C) THROUGH A REVIEW OF PUBLIC AND
27 PROPRIETARY DATA SOURCES CONDUCTED REMOTELY.

1 (B) "IDENTITY PROOFING" MEANS A PROCESS OR SERVICE BY WHICH A
2 THIRD PARTY PROVIDES A NOTARY PUBLIC WITH A REASONABLE MEANS TO
3 VERIFY THE IDENTITY OF AN INDIVIDUAL THROUGH A REVIEW OF PERSONAL
4 INFORMATION FROM PUBLIC OR PROPRIETARY DATA SOURCES CONDUCTED
5 REMOTELY.

6 (C) "REMOTE ONLINE NOTARIZATION PLATFORM" MEANS ANY
7 COMBINATION OF TECHNOLOGY THAT ENABLES A NOTARY TO PERFORM A
8 NOTARIAL ACT REMOTELY; THAT ALLOWS THE NOTARY PUBLIC TO COMMUNICATE
9 BY SIGHT AND SOUND WITH THE INDIVIDUAL FOR WHOM HE OR SHE IS
10 PERFORMING THE NOTARIAL ACT, AND WITNESSES, IF APPLICABLE, BY MEANS
11 OF AUDIO AND VISUAL COMMUNICATION; AND THAT INCLUDES FEATURES TO
12 CONDUCT CREDENTIAL ANALYSIS AND IDENTITY PROOFING.

13 Sec. 27. (1) A notary public shall place his or her signature
14 on every record upon which he or she performs a notarial act. The
15 notary public shall sign his or her name exactly as his or her name
16 appears on his or her application for commission as a notary
17 public.

18 (2) On each record that a notary public performs a notarial
19 act and immediately near the notary public's signature, as is
20 practical, the notary public shall print, type, stamp, or otherwise
21 imprint mechanically or electronically sufficiently clear and
22 legible to be read by the secretary and in a manner capable of
23 photographic reproduction all of the following in this format or in
24 a similar format that conveys all of the same information:

25 (a) The name of the notary public exactly as it appears on his
26 or her application for commission as a notary public.

27 (b) The statement: "Notary public, State of Michigan, County

1 of _____."

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

3 (d) If performing a notarial act in a county other than the
4 county of commission, the statement: "Acting in the County of
5 _____."

6 (e) The date the notarial act was performed.

7 **(F) IF APPLICABLE, WHETHER THE NOTARIAL ACT WAS PERFORMED**
8 **ELECTRONICALLY OR PERFORMED USING A REMOTE ONLINE NOTARIZATION**
9 **PLATFORM UNDER SECTION 26B.**

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

16 (4) The illegibility of the statements required in subsection
17 (2) does not affect the validity of the transaction or record that
18 was notarized.

19 **SEC. 54. THIS ACT MODIFIES, LIMITS, AND SUPERSEDES THE**
20 **ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT, 15 USC**
21 **7001 TO 7031, BUT DOES NOT MODIFY, LIMIT, OR SUPERSEDE SECTION**
22 **101(C) OF THAT ACT, 15 USC 7001(C), OR AUTHORIZE ELECTRONIC**
23 **DELIVERY OF ANY OF THE NOTICES DESCRIBED IN SECTION 103(B) OF THAT**
24 **ACT, 15 USC 7003(B).**

25 Enacting section 1. This amendatory act takes effect 90 days
26 after the date it is enacted into law.