

Act No. 330  
Public Acts of 2018  
Approved by the Governor  
June 28, 2018  
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July 2, 2018  
EFFECTIVE DATE: September 30, 2018

**STATE OF MICHIGAN  
99TH LEGISLATURE  
REGULAR SESSION OF 2018**

**Introduced by Reps. Farrington, Green, McCreedy, Marino, Graves, Gay-Dagnogo, LaFave, Lilly and VanderWall**

# **ENROLLED HOUSE BILL No. 5811**

AN ACT to amend 2003 PA 238, entitled "An act 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," 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:*

Sec. 15. (1) An individual shall apply to the secretary for appointment as a notary public in a format as prescribed by the secretary. An application for appointment as a notary public must include the handwritten signature of the applicant and all of the following information:

(a) The applicant's name, residence address, business address, date of birth, residence and business telephone numbers, and electronic mail address.

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

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

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the result of the application, and whether the applicant has ever been the holder of a notary public appointment that was revoked, suspended, or canceled in this or any other state.

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

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

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

(h) Any other information required by the secretary.

(2) Each application shall be accompanied by an application processing fee of \$10.00. The secretary shall deposit \$1.00 of each fee collected under this subsection into the notary education and training fund established in section 17 on a schedule determined by the secretary.

(3) When he or she receives an application that is accompanied by the prescribed processing fee, the secretary may inquire as to the qualifications of the applicant and shall determine whether the applicant meets the qualifications for appointment as a notary public under this act. To assist in deciding whether the applicant is qualified, the secretary may use the law enforcement information network as provided in the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to

28.215, or the internet criminal history access tool (ICHAT) maintained by the department of state police, to check the criminal background of the applicant.

(4) After approval of an application for appointment as a notary public, the secretary shall mail directly to the applicant the certificate of appointment as a notary public. Each certificate of appointment shall identify the individual as a notary public of this state and shall specify the term and county of his or her commission.

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

- (a) Taking acknowledgments.
- (b) Administering oaths and affirmations.
- (c) Witnessing or attesting to a signature.

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

(3) In taking a verification upon oath or affirmation, the notary public shall determine, either from personal knowledge or from satisfactory evidence, that the individual in the presence of the notary public and making the verification is the individual whose signature is on the record being verified.

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

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

(6) A notary public has satisfactory evidence that an individual is the individual whose signature is on a record if that individual is any of the following:

- (a) Personally known to the notary public.
- (b) Identified upon the oath or affirmation of a credible witness personally known by the notary public and who personally knows the individual.
- (c) Identified on the basis of a current license, identification card, or record issued by a federal or state government that contains the individual's photograph and signature.

(d) With regard to a notarial act performed under section 26b, identified and verified through an identity proofing process or service that is part of a remote electronic notarization platform approved under section 26b(1), and the person presents an identity document described in subdivision (c) that is verified through a credential analysis process or service that is part of a remote electronic notarization platform approved under section 26b(1).

(7) The fee charged by a notary public for performing a notarial act shall not be more than \$10.00 for any individual transaction or notarial act. A notary public shall either conspicuously display a sign or expressly advise an individual concerning the fee amount to be charged for a notarial act before the notary public performs the act. Before the notary public commences to travel in order to perform a notarial act, the notary public and client may agree concerning a separate travel fee to be charged by the notary public for traveling to perform the notarial act.

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

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

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

Sec. 26b. (1) Beginning March 30, 2019, the secretary and the department of technology, management, and budget shall review and may approve remote electronic notarization platforms for the performance of notarial acts in this state. A notary public shall not use a remote electronic notarization platform that is not approved under this section.

(2) Subject to subsection (3), in developing criteria for the approval of any remote electronic notarization platform for use in this state, the secretary of state and the department of technology, management, and budget shall consider, at a minimum, all of the following:

(a) The need to ensure that any change to or tampering with an electronic record containing the information required under this act is evident.

(b) The need to ensure integrity in the creation, transmittal, storage, or authentication of remote electronic notarizations, records, or signatures.

(c) The need to prevent fraud or mistake in the performance of remote electronic notarizations.

(d) The ability to adequately investigate and authenticate a notarial act performed remotely with that remote electronic notarization platform.

(e) The most recent standards regarding remote electronic notarization promulgated by national bodies, including, but not limited to, the National Association of Secretaries of State.

(f) The standards, practices, and customs of other jurisdictions that allow remote electronic notarial acts.

(3) If a remote electronic notarization platform for the performance of remote electronic notarizations is approved or certified by a government-sponsored enterprise, as that term is defined in 2 USC 622(8), the secretary of state and the department of technology, management, and budget shall approve the platform for use in this state if verifiable proof of that approval or certification is provided to the secretary and department, unless use of the remote electronic notarization platform is affirmatively disallowed by the secretary.

(4) The secretary and the department of technology, management, and budget shall review their standards for approving remote electronic notarization platforms for use in this state, and whether the number of approved remote electronic notarization platforms are sufficient, at least every 4 years.

(5) A notary public may perform a notarial act using a remote electronic notarization platform if either of the following is met:

(a) The notary public makes all applicable determinations under section 25 according to personal knowledge or satisfactory evidence, performance of the notarial act complies with section 27, and the notary public does not violate section 31 in the performance of the notarial act.

(b) The notary public, through use of the remote electronic notarization platform, personal knowledge, or satisfactory evidence, is able to identify the record before the notary public as the same record presented by the individual for notarization.

(6) The notary public shall not record by audio or visual means a notarial act performed using a remote electronic notarization platform, unless the notary public discloses to the person that requested the notarial act that an audio or visual recording is being made and how the recording will be preserved, and the person consents or has previously consented to the recording. A notary public may refuse to conduct a notarial act using a remote electronic notarization platform if the person that requested the notarial act objects to an audio or visual recording of the notarial act.

(7) If a notary public performs notarial acts using a remote electronic notarization platform, the notary public shall maintain a journal that records, at a minimum, each of those notarial acts. A notary public shall maintain only 1 journal for the recording of notarial acts and must keep the journal either as a tangible, permanent bound register or in a tamper-evident, permanent electronic format. A notary public shall retain the journal for at least 10 years after the performance of the last notarial act recorded in it. If a notary public is not reappointed, or his or her commission is revoked, the former notary public shall inform the secretary of state where the journal is kept or, if directed by the secretary, shall forward the journal to the secretary or a repository designated by the secretary.

(8) A notary public shall make an entry in a journal maintained under subsection (7) contemporaneously with performance of the notarial act, and the entry must include, at a minimum, all of the following:

(a) The date, time, and nature of the notarial act.

(b) A description of the record, if any.

(c) The full name and address of each individual for whom the notarial act is performed.

(d) If the identity of the individual for whom the notarial act is performed is based on personal knowledge, a statement to that effect. If the identity of the individual for whom the notarial act is performed is based on satisfactory evidence, a brief description of the method of identification and the identification credential presented, if any, including the date of issuance and expiration for the credential.

(e) The fee charged, if any, by the notary public.

(9) An entry made in a journal maintained by a notary public under subsection (7) must also reference, but shall not itself contain, any audio or visual recording of a notarial act performed using a remote electronic notarization platform. Subject to subsection (1), a notary public must retain an audio or visual recording of a notarial act for at least 10 years after the performance of the notarial act.

(10) A notary public may designate a custodian to do any of the following:

(a) Maintain the journal required under subsection (7) on his or her behalf.

(b) Retain an audio or visual recording of a notarial act under subsection (9) on his or her behalf. If an audio or visual recording of a notarial act is transferred to a custodian to hold on behalf of the notary public, the journal entry must identify the custodian with sufficient information to locate and contact that custodian.

(11) A notarial act performed using a remote electronic notarization platform under this section that otherwise satisfies the requirements of this act is presumed to satisfy any requirement under this act that a notarial act be performed in the presence of a notary public.

(12) As used in this section:

(a) "Credential analysis" means a process or service by which a third party affirms the validity of an identity document described in section 25(6)(c) through a review of public and proprietary data sources conducted remotely.

(b) "Identity proofing" means a process or service by which a third party provides a notary public with a reasonable means to verify the identity of an individual through a review of personal information from public or proprietary data sources conducted remotely.

(c) "Remote electronic notarization platform" means any combination of technology that enables a notary to perform a notarial act remotely; that allows the notary public to communicate by sight and sound with the individual for whom he or she is performing the notarial act, and witnesses, if applicable, by means of audio and visual communication; and that includes features to conduct credential analysis and identity proofing.

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

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

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

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

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

(d) If performing a notarial act in a county other than the county of commission, the statement: "Acting in the County of \_\_\_\_\_."

(e) The date the notarial act was performed.

(f) If applicable, whether the notarial act was performed electronically or performed using a remote electronic notarization platform under section 26b.

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

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

Sec. 54. This act modifies, limits, and supersedes the electronic signatures in global and national commerce act, 15 USC 7001 to 7031, but does not modify, limit, or supersede section 101(c) of that act, 15 USC 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 USC 7003(b).

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

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved .....

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Governor