

# HOUSE BILL No. 4938

July 2, 2003, Introduced by Reps. Taub, Huizenga, Minore, Ward, Stakoe, Stahl, Moolenaar, Gaffney, DeRossett, Garfield, Nofs, Wenke and Hoogendyk and referred to the Committee on Local Government and Urban Policy.

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 U.S.C. 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 residence a  
4 proper surety bond and take the oath prescribed by the  
5 constitution.

6           (2) The bond shall be in the sum of \$25,000.00 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.

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

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

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

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

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23 appointment that was revoked, suspended, or canceled in this or  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

25       (e) A statement describing the date and circumstances of any  
26 felony or other conviction of the applicant during the preceding  
27 10 years.

1 (f) A declaration that the applicant is a citizen of the  
2 United States or proof of the applicant's legal residency in this  
3 country.

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

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

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

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

25 Sec. 17. (1) The notary education and training fund is  
26 created within the state treasury. Money from fees collected  
27 under sections 13(3), 15(2), and 21(4) shall be deposited into



1 the fund.

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

7 (3) Money in the fund at the close of the fiscal year shall  
8 remain in the fund and shall not lapse to the general fund.

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

17 Sec. 19. (1) The secretary shall not automatically  
18 reappoint a notary public.

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

24 (3) The secretary shall automatically cancel the notary  
25 public commission of any person who makes, draws, utters, or  
26 delivers any check, draft, or order for the payment of a service  
27 charge under this act that is not honored by the bank, financial

1 institution, or other depository expected to pay the check,  
2 draft, or order for payment upon its first presentation.

3       Sec. 21. (1) A notary public shall immediately apply to the  
4 secretary, in a format prescribed by the secretary, for a  
5 corrected notary public commission upon the occurrence of any of  
6 the 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  
11 commission that contains an error in the person's name, birth  
12 date, county, or other pertinent information if the error was  
13 made on the notary public's application and was used by the  
14 secretary to appoint the person as a notary public.

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

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

23       (4) If a notary public's certificate of appointment becomes  
24 lost, mutilated, or illegible, the notary public shall promptly  
25 apply to the secretary for the issuance of a duplicate  
26 certificate. The application shall be made on a form prescribed  
27 by the secretary and be accompanied by a fee of \$10.00. One

1 dollar of each fee collected under this subsection shall be  
2 deposited into the notary education and training fund established  
3 in section 17.

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

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

9       (a) Taking acknowledgments.

10       (b) Administering oaths and affirmations.

11       (c) Witnessing or attesting to a signature.

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

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

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

27       (5) In all matters where the notary public takes a

1 verification upon oath or affirmation, or witnesses or attests to  
2 a signature, the notary public shall require that the person sign  
3 the record being verified, witnessed, or attested in the presence  
4 of the notary public.

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

8 (a) Personally known to the notary public.

9 (b) Identified upon the oath or affirmation of a credible  
10 witness personally known by the notary public and who personally  
11 knows the person.

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

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  
19 concerning the fee amount to be charged for a notarial act before  
20 the notary public performs the act. Before the notary public  
21 commences to travel in order to perform a notarial act, the  
22 notary public and client may agree concerning a separate travel  
23 fee to be charged by the notary public for traveling to perform  
24 the 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,

1 the 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  
4 is authorized to perform in this state.

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

7 Sec. 27. (1) A notary public shall place his or her  
8 signature on every record upon which he or she performs a  
9 notarial act. The notary public shall sign his or her name  
10 exactly as his or her name appears on his or her notary public  
11 certificate of appointment received from the secretary.

12 (2) On each record that a notary public performs a notarial  
13 act and immediately near the notary public's signature, as is  
14 practical, the notary public shall print, type, stamp, or  
15 otherwise imprint mechanically or electronically clearly and  
16 legibly and in a manner capable of photographic reproduction all  
17 of the following:

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

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

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

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

24 (3) A notary public may use a stamp seal or electronic  
25 process that contains, at a minimum, all of the information  
26 required by subsection (2). However, the seal or process shall  
27 not be used in a manner that renders anything illegible on the

1 record being notarized. An embosser alone or any other method  
2 that cannot be reproduced shall not be used.

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

6 Sec. 29. (1) A notary public may use a notary form set  
7 forth in this section. A notary form set forth in this section  
8 shall be known as a plain English notary form and may be referred  
9 to by that name. A notary form set forth in this section that is  
10 properly executed is considered sufficient to accomplish its  
11 stated purpose under the law of this state. This section does  
12 not prohibit the use of other notary forms.

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

15 SWORN STATEMENT OF MARY DOE

16 I, Mary Doe, (explanation of who Mary Doe is, followed by  
17 statements of fact made my Mary Doe).

18 Signature of Mary Doe

19 Mary Doe

20 Signed and sworn to before me in \_\_\_\_\_ County, Michigan,  
21 on \_\_\_\_\_, \_\_\_\_\_ (year).

22 Notary's

Notary's

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

Signature\_\_\_\_\_

24 (Notary's name, county, acting in  
25 county, and date commission expires)

26 (3) An acknowledgment for an individual acting in his or her  
27 own behalf may be substantially in the following form:

1 Acknowledged before me in \_\_\_\_\_ County, Michigan, on  
2 \_\_\_\_\_, \_\_\_\_\_ (year) by Mary Doe.

3 Notary's \_\_\_\_\_ Notary's \_\_\_\_\_  
4 Stamp \_\_\_\_\_ Signature \_\_\_\_\_

5 (Notary's name, county, acting in  
6 county, and date commission expires)

7 (4) An acknowledgment for a copartnership may be  
8 substantially in the following form:

9 Acknowledged before me in \_\_\_\_\_ County, Michigan, on  
10 \_\_\_\_\_, \_\_\_\_\_ (year) by Mary Doe, partner of X partnership,  
11 a Michigan copartnership, for the copartnership.

12 Notary's \_\_\_\_\_ Notary's \_\_\_\_\_  
13 Stamp \_\_\_\_\_ Signature \_\_\_\_\_

14 (Notary's name, county, acting in  
15 county, and date commission expires)

16 (5) An acknowledgment for a limited partnership may be  
17 substantially in the following form:

18 Acknowledged before me in \_\_\_\_\_ County, Michigan, on  
19 \_\_\_\_\_, \_\_\_\_\_ (year) by Mary Doe, general partner of X  
20 partnership, a Michigan limited partnership, for the limited  
21 partnership.

22 Notary's \_\_\_\_\_ Notary's \_\_\_\_\_  
23 Stamp \_\_\_\_\_ Signature \_\_\_\_\_

24 (Notary's name, county, acting in  
25 county, and date commission expires)

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

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

4 Notary's \_\_\_\_\_ Notary's \_\_\_\_\_  
5 Stamp \_\_\_\_\_ Signature\_\_\_\_\_

6 (Notary's name, county, acting in  
7 county, and date commission expires)

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

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

13 Notary's \_\_\_\_\_ Notary's \_\_\_\_\_  
14 Stamp \_\_\_\_\_ Signature\_\_\_\_\_

15 (Notary's name, county, acting in  
16 county, and date commission expires)

17 (8) An acknowledgment for a public officer may be  
18 substantially in the following form:

19 Acknowledged before me in \_\_\_\_\_ County, Michigan, on  
20 \_\_\_\_\_, \_\_\_\_\_ (year) by Mary Doe, director of the Michigan  
21 department of X.

22 Notary's \_\_\_\_\_ Notary's \_\_\_\_\_  
23 Stamp \_\_\_\_\_ Signature\_\_\_\_\_

24 (Notary's name, county, acting in  
25 county, and date commission expires)

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



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

3 Notary's \_\_\_\_\_ Notary's \_\_\_\_\_  
4 Stamp \_\_\_\_\_ Signature \_\_\_\_\_

5 (Notary's name, county, acting in  
6 county, and date commission expires)

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

9 Acknowledged before me in \_\_\_\_\_ County, Michigan, on  
10 \_\_\_\_\_, \_\_\_\_\_ (year) by Mary Doe, personal representative of  
11 the estate of John Doe.

12 Notary's \_\_\_\_\_ Notary's \_\_\_\_\_  
13 Stamp \_\_\_\_\_ Signature \_\_\_\_\_

14 (Notary's name, county, acting in  
15 county, and date commission expires)

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

- 18 (a) An original.
- 19 (b) A true copy of another record.

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

- 21 (a) Perform a notarial act upon any record executed by  
22 himself or herself.
- 23 (b) Notarize his or her own signature.
- 24 (c) Take his or her own deposition or affidavit.

25 (3) A notary public shall not perform any notarial act in  
26 connection with a transaction if the notary public has a conflict  
27 of interest. As used in this subsection, "conflict of interest"

1 means either or both of the following:

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

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

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

11 (5) A notary public shall not perform any notarial act on a  
12 record that contains a blank space.

13 (6) A notary public who is a stockholder, director, officer,  
14 or employee of a bank or other corporation shall not take the  
15 acknowledgment of a party to a record executed to or by the  
16 corporation, or to administer an oath to any other stockholder,  
17 director, officer, employee, or agent of the corporation. A  
18 notary public shall not take the acknowledgment of a record by or  
19 to a bank or other corporation of which he or she is a  
20 stockholder, director, officer, or employee, under circumstances  
21 where the notary public is named as a party to the record, either  
22 individually or as a representative of the bank or other  
23 corporation and the notary public is individually a party to the  
24 record.

25 (7) For purposes of subsection (3), a notary public has no  
26 direct financial or beneficial interest in a transaction where  
27 the notary public acts in the capacity of an agent, employee,

1 insurer, attorney, escrow, or lender for a person having a direct  
2 financial or beneficial interest in the transaction.

3       Sec. 33. A notary public may sign the name of a person  
4 whose physical characteristics limit his or her capacity to sign  
5 or make a mark on a record presented for notarization under all  
6 of the following conditions:

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

10       (b) The person is in the physical presence of the notary  
11 public.

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

13       "Signature affixed pursuant to section 33 of the Michigan  
14 notary public act.".

15       Sec. 35. (1) Upon receiving a written or electronic request  
16 from the secretary, a notary public shall do all of the following  
17 as applicable:

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

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

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

26       (2) Upon presentation to the secretary of satisfactory  
27 evidence that a notary public has failed to respond within 15

1 days or another time period designated under this act to a  
2 request of the secretary under subsection (1), the secretary may  
3 notify the notary public that his or her notary public commission  
4 is suspended indefinitely until he or she provides a satisfactory  
5 response to the request.

6       Sec. 37. (1) For the official misconduct of a notary  
7 public, the notary public and the sureties on the notary public's  
8 surety bond are liable in a civil action for the damages  
9 sustained by the persons injured. The employer of a notary  
10 public is also liable if both of the following conditions apply:

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

13       (b) The employer had knowledge of and consented to or  
14 permitted the official misconduct.

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

18       Sec. 39. The secretary may investigate, or cause to be  
19 investigated by local authorities, the administration of notary  
20 public laws and shall report violations of the notary public laws  
21 and rules to the attorney general or prosecuting attorney, or  
22 both, for prosecution.

23       Sec. 41. (1) If a notary public of this state is convicted  
24 of a felony or of a substantially corresponding violation of  
25 another state, the secretary shall automatically revoke the  
26 notary public commission of that person on the date that the  
27 person's felony conviction is entered.

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

9           (3) 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           (4) A person found guilty of performing a notarial act after  
22 his or her commission is revoked under this section is guilty of  
23 a felony punishable by a fine of not more than \$3,000.00 or by  
24 imprisonment for not more than 5 years, or both.

25           (5) A person, regardless of whether he or she has ever been  
26 commissioned as a notary public, that is convicted of a felony is  
27 disqualified from being commissioned as a notary public for not

1 less than 10 years after the person completes his or her sentence  
2 for that crime, including any term of imprisonment, parole, or  
3 probation, and pays all fines, costs, and assessments. As used  
4 in this section, a "felony" means a violation of a penal law of  
5 this state, another state, or the United States for which the  
6 offender, upon conviction, may be punished by death or  
7 imprisonment for more than 1 year or an offense expressly  
8 designated by law to be a felony.

9 (6) If a person is convicted of a violation described in  
10 subsection (5), the court shall make a determination of whether  
11 the person is a notary. If the person is a notary, the court  
12 shall inform the secretary of the conviction.

13 Sec. 43. (1) Cancellation of a commission is without  
14 prejudice to reapplication at any time. Except as otherwise  
15 provided for in section 41(3), a person whose commission is  
16 revoked is ineligible for the issuance of a new commission for at  
17 least 5 years.

18 (2) A fine imposed under this act that remains unpaid for  
19 more than 180 days may be referred to the department of treasury  
20 for collection. The department of treasury may collect the fine  
21 by deducting the amount owed from a payroll or tax refund  
22 warrant. The secretary may bring an action in a court of  
23 competent jurisdiction to recover the amount of a civil fine.

24 Sec. 45. (1) Whenever it appears to the secretary that a  
25 person has engaged or is about to engage in an act or practice  
26 that constitutes or will constitute a violation of this act, a  
27 rule promulgated under this act, or an order issued under this

1 act, the attorney general may petition a circuit court for  
2 injunctive relief. Upon a proper showing, a circuit court may  
3 issue a permanent or temporary injunction or restraining order to  
4 enforce the provisions of this act. A party to the action has  
5 the right to appeal within 60 days from the date the order or  
6 judgment of the court was issued.

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

13 Sec. 47. (1) Subject to subsection (2) and in the courts of  
14 this state, the certificate of a notary public of official acts  
15 performed in the capacity of a notary public, under the seal of  
16 office, is presumptive evidence of the facts contained in the  
17 certificate except that the certificate is not evidence of a  
18 notice of nonacceptance or nonpayment in any case in which a  
19 defendant attaches to his or her pleadings an affidavit denying  
20 the fact of having received that notice of nonacceptance or  
21 nonpayment.

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

24 Sec. 49. (1) Except as otherwise provided for in section  
25 41(4) or as provided by law, a person who violates this act is  
26 guilty of a misdemeanor punishable by a fine of not more than  
27 \$5,000.00 or by imprisonment for not more than 1 year, or both.

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

4           (3) The penalties and remedies under this act are  
5 cumulative. The bringing of an action or prosecution under this  
6 act does not bar an action or prosecution under any other  
7 applicable law.

8           Sec. 51. Except as otherwise provided in sections 13(3),  
9 15(2), and 21(4), an application fee, duplicate notary public  
10 certificate of appointment service charge, certification service  
11 charge, copying service charge, reimbursement costs, or  
12 administrative fine collected under this act by the secretary  
13 shall be deposited by the state treasurer in the general fund and  
14 be appropriated first to defray the costs incurred by the  
15 secretary in administering this act.

16           Sec. 53. A person, or the personal representative of a  
17 person who is deceased, who performed a notarial act while  
18 commissioned as a notary public under this act shall maintain all  
19 the records of that notarial act for at least 5 years after the  
20 date of the notarial act.

21           Sec. 55. The secretary may promulgate rules pursuant to the  
22 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
23 24.328, to implement this act.

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

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

27           (b) Sections 107, 108, 109, 110, 111, 112, 112a, 113, 114,



1 115, 116, and 117 of 1846 RS 14, MCL 55.107, 55.108, 55.109,  
2 55.110, 55.111, 55.112, 55.112a, 55.113, 55.114, 55.115, 55.116,  
3 and 55.117.

4 (c) 1903 PA 18, MCL 55.221.

5 (d) 1909 PA 18, MCL 55.251.

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

8 Enacting section 2. This act takes effect January 1, 2004.