

# Legislative Analysis



## REVISIONS TO NOTARY PUBLIC ACT

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**House Bill 6197 as enrolled**

**Public Act 426 of 2006**

**Sponsor: Rep. Kevin Elsenheimer**

**House Committee: Local Government and Urban Policy**

**Senate Committee: Economic Development, Small Business and Regulatory Reform**

### First Analysis (10-16-06)

**BRIEF SUMMARY:** The bill would make numerous revisions and technical changes to the Michigan Notary Act, including increasing the amount that is to remain in the Notary Education and Training Fund at the close of a fiscal year.

**FISCAL IMPACT:** The bill would have no fiscal impact on the state or local units of government. However, increasing from \$85,000 to \$150,000 the amount that is authorized to remain in the Notary Education and Training Fund means up to \$65,000 less will be lapsed to the General Fund.

### **THE APPARENT PROBLEM:**

Public Act 238 of 2003 created the Michigan Notary Public Act to update the regulation of the state's notaries public. At that time there were approximately 150,000 notaries public in Michigan, and each year about 34,000 new applicants file to receive a notary's commission. Commissioned notaries have the power to attest to the authenticity of a person's signature, to administer oaths, and to take affidavits. Generally, the powers of notaries public are limited to acts of verification, and in the United States they have no authority to practice law.

Now that a couple years have passed since the new regulations took effect, it is apparent that several provisions need to be revised for clarity. For instance, notaries public are not allowed to perform notarial acts for descendants; some feel that the term needs to be more specific and also broadened to apply to other close relatives such as grandparents and parents.

In addition, Public Act 238 established a six-year commission cycle and required a portion of several fees collected under the act to be deposited in the Notary Education and Training Fund and used for education and training programs for county clerks and their staffs, including but not limited to notary responsibilities, election worker training, and election processes. Revenue in excess of \$85,000 at the close of a fiscal year lapses to the General Fund. Recently, it has become apparent that in switching from a three-year commission cycle to a six-year cycle, that most of the commission renewals would fall within the early years of the six-year cycle and that revenue would drop off sharply in the last two years of the cycle, leaving insufficient revenue to fund training programs in those years. It has been suggested that the cap be increased to allow more revenue to be carried over from year to year to offset the anticipated shortfall.

Legislation was offered to address these and other concerns.

## ***THE CONTENT OF THE BILL:***

The bill would make technical and substantive revisions to the Michigan Notary Public Act (MCL 55.265 et al.) The proposed changes include the following:

- Increase, from \$85,000 to \$150,000, the amount required to remain in the Notary Education and Training Fund at the end of a fiscal year. (Any amount over \$150,000 at the end of a fiscal year would lapse to the General Fund.)
- Include a lineal ancestor and lineal descendant in the list of persons for whom a notary public is prohibited from performing a notarial act.
- Define "lineal ancestor" to mean an individual in the direct line of ascent including, but not limited to, a parent or grandparent.
- Define "lineal descendant" to mean an individual in the direct line of descent including, but not limited to, a child or grandchild.
- Delete a "domestic partner" from the list of persons for whom a notary public is prohibited from performing a notarial act.
- Delete the prohibition on a notary public from performing a notarial act on a record containing a blank space.
- In regards to the fee that must accompany an application for a certificate of appointment as a notary public, replace the term "service charge" with "processing fee."
- Specify that a processing or filing fee paid to the secretary of state or county clerk under the act would not be refundable.
- Require the county of the person's commission to be included on the certificate of appointment.
- Clarify that it is a validated copy of the filing of the bond and oath certificate received from the county clerk that must be included with an application for appointment as a notary public.
- Clarify that the application for appointment must contain a statement describing the date and circumstances of any felony or misdemeanor conviction within the preceding ten years.
- Currently, the secretary of state is permitted to inspect his or her notary public records, contracts, or other information pertaining to the official acts of a notary public. The bill would specify that this is permitted if those records, contracts, or other information was maintained by the notary public.
- Currently, a person, or the personal representative of a person who is deceased, who *performed a notarial act* while commissioned as a notary public must maintain all the records of the that notarial act for at least five years. The bill would apply the recordkeeping requirement to a person who both performed a notarial act and created a record of the act performed while commissioned as a notary public.

## ***ARGUMENTS:***

### ***For:***

The bill would make numerous editorial and technical changes, and a few substantive changes. Currently, a notary public cannot notarize a document for a descendant. The bill would clarify that the prohibition would extend to a lineal descendant, defined as a child or grandchild, or other individuals in the direct line of descent. The bill also extends the prohibition to include lineal ancestors, such as a parent or grandparent. The prohibition on

performing notarial acts for a domestic partner, however, would be eliminated. Further, a notary public could, under the bill, perform a notarial act on a record that contained a blank space. This is an important change considering that individuals who need to sign a particular document may reside in different states. Under the change, a person in Michigan could have a document notarized, even though the other signature was missing and then could mail it to the out-of-state person for his or her signature.

***For:***

The 2003 legislation that created the Notary Education and Training Fund placed a cap of \$85,000 on the amount that could be kept within the fund at the close of a fiscal year. Revenue over that amount must lapse to the General Fund. Currently, \$1 of the application fee, \$2 of the fee to file an oath and surety bond, and \$1 of the processing fee for a duplicate certificate of appointment are deposited into the fund. When the fund was first established, it was believed that the \$85,000 amount would be sufficient to enable the Office of the Secretary of State and the Michigan Association of County Clerks to establish an annual conference, as well as enhance the organization's regional education and training conferences throughout each year.

Only recently has it been realized that annual revenue to the fund will not be the same each year due to the switch from a three-year commission cycle to a six-year cycle. Even though there are new applicants each year, the total number of notaries public remains fairly constant from year to year, but most of the renewals for current notary commissions fall within the first few years of the cycle. Whereas unspent money in the fund at the end of year three of the cycle may be used to supplement funds generated in the fourth year, it is now anticipated that years five and six will only generate about \$4,000 or \$5,000 per year in revenue, an insufficient amount to fund the necessary training and education programs. Fiscal Year 2005-2006 is the first year that there will be more than \$85,000 in the fund at the end of the fiscal year.

If the cap were raised, the extra amount could be carried forward from year to year and saved for use in those years when the revenue generated was small. Some have expressed a reservation regarding tying up funds for several years otherwise earmarked for the General Fund, but a compromise was reached to raise it only to \$150,000 – enough to provide needed revenue for the years when a shortfall is expected, but not enough to draw a significant amount away from the General Fund. (Note: The bill was signed and took effect after the close of the 2005-2006 Fiscal Year; therefore, the increase of the cap will not benefit the Notary Education and Training Fund until the close of Fiscal Year 2006-2007.)

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