

HOUSE BILL No. 6197

June 14, 2006, Introduced by Rep. Elsenheimer and referred to the Committee on Local Government and Urban Policy.

A bill to amend 2003 PA 238, entitled
"Michigan notary public act,"
by amending sections 5, 11, 13, 15, 19, 21, 25, 31, 35, 51, and 53
(MCL 55.265, 55.271, 55.273, 55.275, 55.279, 55.281, 55.285,
55.291, 55.295, 55.311, and 55.313).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5. As used in this act:

2 (a) "Jurat" means a certification by a notary public that a
3 signer, whose identity is personally known to the notary public or
4 proven on the basis of satisfactory evidence, has made in the
5 presence of the notary public a voluntary signature and taken an
6 oath or affirmation vouching for the truthfulness of the signed
7 record.

8 (b) "LINEAL ANCESTOR" MEANS AN INDIVIDUAL IN THE DIRECT LINE

1 OF ASCENT INCLUDING, BUT NOT LIMITED TO, A PARENT OR GRANDPARENT.

2 (C) "LINEAL DESCENDANT" MEANS AN INDIVIDUAL IN THE DIRECT LINE
3 OF DESCENT INCLUDING, BUT NOT LIMITED TO, A CHILD OR GRANDCHILD.

4 (D) ~~(b)~~ "Notarial act" means any act that a notary public
5 commissioned in this state is authorized to perform including, but
6 not limited to, the taking of an acknowledgment, the administration
7 of an oath or affirmation, the taking of a verification upon oath
8 or affirmation, and the witnessing or attesting a signature
9 performed in compliance with this act and the uniform recognition
10 of acknowledgments act, 1969 PA 57, MCL 565.261 to 565.270.

11 (E) ~~(e)~~ "Notify" means to communicate or send a message by a
12 recognized mail, delivery service, or electronic means.

13 (F) ~~(d)~~ "Official misconduct" means either or both of the
14 following:

15 (i) The exercise of power or the performance of a duty that is
16 unauthorized, unlawful, abusive, negligent, reckless, or injurious.

17 (ii) The charging of a fee that exceeds the maximum amount
18 authorized by law.

19 (G) ~~(e)~~ "Person" means every natural person, corporation,
20 partnership, trust, association, or other legal entity and its
21 legal successors.

22 (H) ~~(f)~~ "Record" means that term as defined in the uniform
23 electronic transactions act, 2000 PA 305, MCL 450.831 to 450.849.

24 (I) ~~(g)~~ "Revocation" means the termination of a notary
25 public's commission.

26 Sec. 11. (1) The secretary may appoint as a notary public a
27 person who applies to the secretary and meets all of the following

1 qualifications:

2 (a) Is at least 18 years of age.

3 (b) Is a resident of this state or maintains a principal place
4 of business in this state.

5 (c) Reads and writes in the English language.

6 (d) Is free of any felony convictions, misdemeanor
7 convictions, and violations as described in section 41.

8 (e) For a person who does not reside in the state of Michigan,
9 demonstrates that his or her principal place of business is located
10 in the county in which he or she requests appointment and indicates
11 that he or she is engaged in an activity in which he or she is
12 likely to be required to perform notarial acts as that word is
13 defined in section 2 of the uniform recognition of acknowledgments
14 act, 1969 PA 57, MCL 565.262.

15 (f) Has filed with the county clerk of his or her county of
16 residence or expected appointment a proper surety bond and ~~has~~
17 ~~taken the~~ **AN** oath **TAKEN** as prescribed by the constitution **IN A**
18 **FORMAT ACCEPTABLE TO THE SECRETARY.**

19 (2) The secretary shall, on a monthly basis, notify the county
20 clerk's office of the appointment of any notaries.

21 Sec. 13. (1) Within 90 days before filing an application for a
22 notary public appointment, a person shall file with the county
23 clerk of his or her residence or expected appointment a proper
24 surety bond and ~~take the~~ **AN** oath **TAKEN AS** prescribed by the
25 constitution.

26 (2) The bond shall be in the sum of \$10,000.00 with good and
27 sufficient surety by a surety licensed to do business in this

1 state. The bond shall be conditioned upon indemnifying or
2 reimbursing a person, financing agency, or governmental agency for
3 monetary loss caused through the official misconduct of the notary
4 public in the performance of a notarial act. The surety is required
5 to indemnify or reimburse only after a judgment based on official
6 misconduct has been entered in a court of competent jurisdiction
7 against the notary public. The aggregate liability of the surety
8 shall not exceed the sum of the bond. The surety on the bond may
9 cancel the bond 60 days after the surety notifies the notary, the
10 secretary, ~~in a format prescribed by the secretary,~~ and the
11 county clerk of the cancellation. The surety is not liable for a
12 breach of a condition occurring after the effective date of the
13 cancellation. The county clerk shall not accept the personal assets
14 of an applicant as security for a surety bond under this act.

15 (3) Each person who files an oath and bond with a county clerk
16 as required in subsection (1) shall pay a \$10.00 filing fee to the
17 county clerk. Upon receipt of the filing fee, the county clerk
18 shall give a bond and oath certificate of filing to the person as
19 prescribed by the secretary. A charter county with a population of
20 more than 2,000,000 may impose by ordinance a fee for the county
21 clerk's services different than the amount prescribed by this
22 subsection. Two dollars of each fee collected under this subsection
23 shall be deposited into the notary education and training fund
24 established in section 17 on a schedule determined by the
25 secretary.

26 Sec. 15. (1) A person shall apply to the secretary for
27 appointment as a notary public in a format as prescribed by the

1 secretary. An application for appointment as a notary public shall
2 contain the signature of the applicant. In addition to other
3 information as may be required by the secretary, the application
4 shall include all of the following:

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

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

9 (c) A **VALIDATED** copy of the **FILING OF THE** bond and oath
10 certificate ~~of filing~~ received from the county clerk.

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

17 (e) A statement describing the date and circumstances of any
18 felony or ~~other~~ **MISDEMEANOR** conviction of the applicant during
19 the preceding 10 years.

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

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

26 (2) Each application shall be accompanied by an application
27 **PROCESSING** fee of \$10.00. One dollar of each fee collected under

1 this subsection shall be deposited into the notary education and
2 training fund established in section 17 on a schedule determined by
3 the secretary.

4 (3) Upon receipt of an application that is accompanied by the
5 prescribed ~~service charge~~ **PROCESSING FEE**, the secretary may
6 inquire as to the qualifications of the applicant and shall
7 determine whether the applicant meets the qualifications prescribed
8 in this act. To assist in deciding whether the applicant is
9 qualified, the secretary may use the law enforcement information
10 network as provided in the ~~L.E.I.N.~~ **C.J.I.S.** policy council act,
11 ~~of 1974,~~ 1974 PA 163, MCL 28.211 to ~~28.216~~ **28.215**, to check the
12 criminal background of the applicant.

13 (4) After approval of the application, the secretary shall
14 mail directly to the applicant the certificate of appointment as a
15 notary public. Each certificate of appointment shall identify the
16 person as a notary public of this state and shall specify the term
17 **AND COUNTY** of the person's commission.

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

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

25 (3) The secretary shall automatically cancel the notary public
26 commission of any person who makes, draws, utters, or delivers any
27 check, draft, or order for the payment of a ~~service charge~~

1 **PROCESSING FEE** under this act that is not honored by the bank,
2 financial institution, or other depository expected to pay the
3 check, draft, or order for payment upon its first presentation.

4 Sec. 21. (1) A notary public shall immediately apply to the
5 secretary, in a format prescribed by the secretary, for a corrected
6 notary public commission upon the occurrence of any of the
7 following circumstances:

8 (a) A change in the notary public's name.

9 (b) A change in the notary public's residence or business
10 address.

11 (c) The issuance by the secretary of a notary public
12 commission that contains an error in the person's name, birth date,
13 county, or other pertinent information if the error was made on the
14 notary public's application and was used by the secretary to
15 appoint the person as a notary public.

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

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

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

1 and be accompanied by a **PROCESSING** fee of \$10.00. One dollar of
2 each **PROCESSING** fee collected under this subsection shall be
3 deposited into the notary education and training fund established
4 in section 17.

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

7 (a) Taking acknowledgments.

8 (b) Administering oaths and affirmations.

9 (c) Witnessing or attesting to a signature.

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

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

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

25 (5) In all matters where the notary public takes a
26 verification upon oath or affirmation, or witnesses or attests to a
27 signature, the notary public shall require that the person sign the

1 record being verified, witnessed, or attested in the presence of
2 the notary public.

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

6 (a) Personally known to the notary public.

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

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

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

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

24 (9) The secretary shall prescribe the form that a notary
25 public shall use for a jurat, the taking of an acknowledgment, the
26 administering of an oath or affirmation, the taking of a
27 verification upon an oath or affirmation, the witnessing or

1 attesting to a signature, or any other act that a notary public is
2 authorized to perform in this state.

3 (10) A county clerk may collect a ~~service charge~~ **PROCESSING**
4 fee of \$10.00 for certifying a notarial act of a notary public.

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

7 (a) An original.

8 (b) A true copy of another record.

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

10 (a) Perform a notarial act upon any record executed by himself
11 or herself.

12 (b) Notarize his or her own signature.

13 (c) Take his or her own deposition or affidavit.

14 (3) A notary public shall not claim to have powers,
15 qualifications, rights, or privileges that the office of notary
16 does not provide, including the power to counsel on immigration
17 matters.

18 (4) A notary public shall not, in any document, advertisement,
19 stationery, letterhead, business card, or other comparable written
20 material describing the role of the notary public, literally
21 translate from English into another language terms or titles
22 including, but not limited to, notary public, notary, licensed,
23 attorney, lawyer, or any other term that implies the person is an
24 attorney.

25 (5) A notary public who is not a licensed attorney and who
26 advertises notarial services in a language other than English shall
27 include in the document, advertisement, stationery, letterhead,

1 business card, or other comparable written material the following,
2 prominently displayed in the same language:

3 (a) The statement: "I am not an attorney and have no authority
4 to give advice on immigration or other legal matters".

5 (b) The fees for notarial acts as specified by statute.

6 (6) A notary public may not use the term "notario publico" or
7 any equivalent non-English term in any business card,
8 advertisement, notice, or sign.

9 (7) A notary public shall not perform any notarial act in
10 connection with a transaction if the notary public has a conflict
11 of interest. As used in this subsection, "conflict of interest"
12 means either or both of the following:

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

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

19 (8) A notary public shall not perform a notarial act for a
20 spouse, domestic partner, **LINEAL ANCESTOR, LINEAL** descendant, or
21 sibling including in-laws, steps, or half-relatives.

22 ~~—— (9) A notary public shall not perform any notarial act on a~~
23 ~~record that contains a blank space.~~

24 (9) ~~—(10)—~~ A notary public who is a stockholder, director,
25 officer, or employee of a bank or other corporation may take the
26 acknowledgment of a party to a record executed to or by the
27 corporation, or to administer an oath to any other stockholder,

1 director, officer, employee, or agent of the corporation. A notary
2 public shall not take the acknowledgment of a record by or to a
3 bank or other corporation of which he or she is a stockholder,
4 director, officer, or employee, under circumstances where the
5 notary public is named as a party to the record, either
6 individually or as a representative of the bank or other
7 corporation and the notary public is individually a party to the
8 record.

9 (10) ~~—(11)—~~ For purposes of subsection (7), a notary public
10 has no direct financial or beneficial interest in a transaction
11 where the notary public acts in the capacity of an agent, employee,
12 insurer, attorney, escrow, or lender for a person having a direct
13 financial or beneficial interest in the transaction.

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

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

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

22 (c) Permit the secretary to inspect his or her notary public
23 records, contracts, or other information that pertains to the
24 official acts of a notary public **IF THOSE RECORDS, CONTRACTS, OR**
25 **OTHER INFORMATION IS MAINTAINED BY THE NOTARY PUBLIC.**

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

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

6 Sec. 51. (1) The notary fees fund is created in the state
7 treasury. Except as otherwise provided in sections 15(2) and 21(4),
8 an application **PROCESSING** fee, duplicate notary public certificate
9 of appointment ~~service charge~~ **PROCESSING FEE**, certification
10 ~~service charge~~ **PROCESSING FEE**, copying ~~service charge~~ **PROCESSING**
11 **FEE**, reimbursement costs, or administrative fine collected under
12 this act by the secretary ~~of state~~ shall be deposited by the
13 state treasurer in the notary fees fund and is appropriated to
14 defray the costs incurred by the secretary in administering this
15 act.

16 (2) **A PROCESSING OR FILING FEE PAID TO THE SECRETARY OR COUNTY**
17 **CLERK UNDER THIS ACT IS NOT REFUNDABLE.**

18 Sec. 53. A person, or the personal representative of a person
19 who is deceased, who **BOTH** performed a notarial act **AND CREATED A**
20 **RECORD OF THE ACT PERFORMED** while commissioned as a notary public
21 under this act shall maintain all the records of that notarial act
22 for at least 5 years after the date of the notarial act.