

Act No. 426
Public Acts of 2006
Approved by the Governor
October 3, 2006
Filed with the Secretary of State
October 5, 2006
EFFECTIVE DATE: October 5, 2006

**STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2006**

Introduced by Rep. Elsenheimer

ENROLLED HOUSE BILL No. 6197

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 5, 11, 13, 15, 17, 19, 21, 25, 31, 35, 51, and 53 (MCL 55.265, 55.271, 55.273, 55.275, 55.277, 55.279, 55.281, 55.285, 55.291, 55.295, 55.311, and 55.313).

The People of the State of Michigan enact:

Sec. 5. As used in this act:

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

(b) "Lineal ancestor" means an individual in the direct line of ascent including, but not limited to, a parent or grandparent.

(c) "Lineal descendant" means an individual in the direct line of descent including, but not limited to, a child or grandchild.

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

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

(f) "Official misconduct" means either or both of the following:

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

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

(g) "Person" means every natural person, corporation, partnership, trust, association, or other legal entity and its legal successors.

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

(i) "Revocation" means the termination of a notary public's commission.

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

- (a) Is at least 18 years of age.
- (b) Is a resident of this state or maintains a principal place of business in this state.
- (c) Reads and writes in the English language.
- (d) Is free of any felony convictions, misdemeanor convictions, and violations as described in section 41.

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

(f) Has filed with the county clerk of his or her county of residence or expected appointment a proper surety bond and an oath taken as prescribed by the constitution in a format acceptable to the secretary.

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

Sec. 13. (1) Within 90 days before filing an application for a notary public appointment, a person shall file with the county clerk of his or her residence or expected appointment a proper surety bond and an oath taken as prescribed by the constitution.

(2) The bond shall be in the sum of \$10,000.00 with good and sufficient surety by a surety licensed to do business in this state. The bond shall be conditioned upon indemnifying or reimbursing a person, financing agency, or governmental agency for monetary loss caused through the official misconduct of the notary public in the performance of a notarial act. The surety is required to indemnify or reimburse only after a judgment based on official misconduct has been entered in a court of competent jurisdiction against the notary public. The aggregate liability of the surety shall not exceed the sum of the bond. The surety on the bond may cancel the bond 60 days after the surety notifies the notary, the secretary, and the county clerk of the cancellation. The surety is not liable for a breach of a condition occurring after the effective date of the cancellation. The county clerk shall not accept the personal assets of an applicant as security for a surety bond under this act.

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

Sec. 15. (1) A person 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 shall contain the signature of the applicant. In addition to other information as may be required by the secretary, the application shall include all of the following:

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

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

(c) A validated copy of the filing of the bond 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.

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

(3) Upon receipt of 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 prescribed in 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, to check the criminal background of the applicant.

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

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

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

(3) Up to \$150,000.00 shall remain in the fund at the close of each fiscal year and shall not lapse to the general fund. Any amount in excess of \$150,000.00 shall lapse to the general fund.

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

(5) The secretary shall annually file a report regarding the balance of the fund at the time of the report and a detailed account of the expenditures in the preceding fiscal year. This report shall be sent to the speaker of the house of representatives, the minority leader of the house of representatives, the majority leader of the senate, and the minority leader of the senate.

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

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

(3) The secretary shall automatically cancel the notary public commission of any person who makes, draws, utters, or delivers any check, draft, or order for the payment of a processing fee under this act that is not honored by the bank, financial institution, or other depository expected to pay the check, draft, or order for payment upon its first presentation.

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

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

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

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

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

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

(4) If a notary public's certificate of appointment becomes lost, mutilated, or illegible, the notary public shall promptly apply to the secretary for the issuance of a duplicate certificate. The application shall be made on a form prescribed by the secretary and be accompanied by a processing fee of \$10.00. One dollar of each processing fee collected under this subsection shall be deposited into the notary education and training fund established in section 17.

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 person in the presence of the notary public and making the acknowledgment is the person 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 person in the presence of the notary public and making the verification is the person 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 person in the presence of the notary public and is the person 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 person sign the record being verified, witnessed, or attested in the presence of the notary public.

(6) A notary public has satisfactory evidence that a person is the person whose signature is on a record if that person 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 person.

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

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

(a) An original.

(b) A true copy of another record.

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

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

(b) Notarize his or her own signature.

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

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

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

(5) A notary public who is not a licensed attorney and who advertises notarial services in a language other than English shall include in the document, advertisement, stationery, letterhead, business card, or other comparable written material the following, prominently displayed in the same language:

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

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

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

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

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

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

(8) A notary public shall not perform a notarial act for a spouse, lineal ancestor, lineal descendant, or sibling including in-laws, steps, or half-relatives.

(9) A notary public who is a stockholder, director, officer, or employee of a bank or other corporation may take the acknowledgment of a party to a record executed to or by the corporation, or to administer an oath to any other stockholder, director, officer, employee, or agent of the corporation. A notary public shall not take the acknowledgment

of a record by or to a bank or other corporation of which he or she is a stockholder, director, officer, or employee, under circumstances where the notary public is named as a party to the record, either individually or as a representative of the bank or other corporation and the notary public is individually a party to the record.

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

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

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

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

(c) Permit the secretary to inspect his or her notary public records, contracts, or other information that pertains to the official acts of a notary public if those records, contracts, or other information is maintained by the notary public.

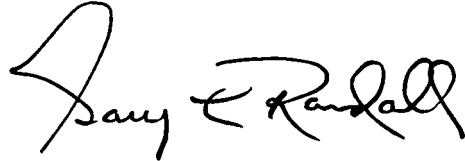
(2) Upon presentation to the secretary of satisfactory evidence that a notary public has failed to respond within 15 days or another time period designated under this act to a request of the secretary under subsection (1), the secretary may notify the notary public that his or her notary public commission is suspended indefinitely until he or she provides a satisfactory response to the request.

Sec. 51. (1) The notary fees fund is created in the state treasury. Except as otherwise provided in sections 15(2) and 21(4), an application processing fee, duplicate notary public certificate of appointment processing fee, certification processing fee, copying processing fee, reimbursement costs, or administrative fine collected under this act by the secretary shall be deposited by the state treasurer in the notary fees fund and is appropriated to defray the costs incurred by the secretary in administering this act.

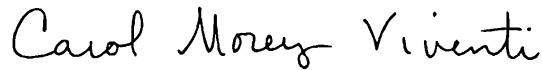
(2) A processing or filing fee paid to the secretary or county clerk under this act is not refundable.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor