

ELECTRONIC NOTARIZATION SYSTEMS

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Senate Bill 664 (H-2) as reported from House committee
Senate Bill 997 (S-1) as reported from House committee
Senate Bill 998 (S-1) as reported from House committee
Sponsor: Sen. Peter MacGregor

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 996 (S-2) as reported from House committee
Sponsor: Sen. Wayne Schmidt

Senate Bill 999 as reported from House committee
Sponsor: Sen. Curtis Hertel

House Committee: Financial Services
Senate Committee: Banking and Financial Institutions
Complete to 10-5-18

BRIEF SUMMARY:

Taken together, the bills would do all of the following:

- Rename the Michigan Notary Public Act the “Michigan Law on Notarial Acts.”
- Add a section to the Michigan Law on Notarial Acts to govern the recognition of notarial acts performed in a jurisdiction outside of Michigan.
- Repeal the Uniform Recognition of Acknowledgments Act, which currently governs the recognition in this state of notarial acts performed outside this state.
- Require the Secretary of State and the Department of Technology, Management, and Budget to review and approve at least one system for performing electronic notarizations in this state.
- Allow a notary public to perform notarial acts electronically using a tamper-evident electronic notarization system approved or allowed by the SOS.

DETAILED SUMMARY:

Senate Bill 664 would amend the Michigan Notary Public Act to require the Secretary of State (SOS) and the Department of Technology, Management, and Budget (DTMB) to review and approve, by March 30, 2019, at least one *electronic notarization system* for the performance of electronic notarizations in the state. The SOS and DTMB could approve more than one electronic notarization system and could grant approval of additional systems on an ongoing basis.

Electronic notarization system would mean a set or system of applications, programs, hardware, software, or technologies designed to enable a notary public to perform electronic notarizations.

In developing criteria for the approval of any electronic notarization system for use in this state, the SOS and DTMB would have to consider at least all of the following:

- The need to ensure that any change to or tampering with an electronic record containing the information required under the act is evident.
- The need to ensure integrity in the creation, transmittal, storage, or authentication of electronic notarizations, records, or signatures.
- The need to prevent fraud or mistake in the performance of electronic notarizations.
- The ability to adequately investigate and authenticate a notarial act performed electronically with the electronic notarization system.
- The most recent standards regarding electronic notarizations or records promulgated by national bodies, including at least the National Association of Secretaries of State.
- The standards, practices, and customs of other jurisdictions that allow electronic notarial acts.

If an electronic notarization system is approved or certified by a government-sponsored enterprise as defined in 2 USC 622(8),¹ and verifiable proof of that approval or certification is provided to the SOS and DTMB, the SOS and DTMB would be required to approve the platform for use in this state unless the SOS affirmatively disallows use of the platform.

At least every four years, the SOS and DTMB would have to review their criteria for approving electronic notarization systems and whether currently approved electronic notarization systems remain sufficient for the electronic performance of notarial acts.

A notary public could select one or more tamper-evident electronic notarization systems to perform notarial acts electronically. Before doing so, the notary public would have to notify the SOS regarding which electronic notarization system he or she intends to use for performing electronic notarizations. The SOS could disallow the use of a system if it did not meet the criteria for SOS/DTMB approval described above. If the SOS and DTMB have already approved one or more electronic notarization systems, the notary public would have to choose a system to use from among those approved systems.

The bill would allow the SOS to develop and implement an electronic application and payment process for individuals seeking appointment as a notary public.

The bill would amend the definition of “in the presence of,” as used in the act, to mean either of the following:

- In the same physical location with and close enough to see, hear, communicate with, and exchange tangible identification credentials with another individual.
- Interacting with another individual by means of audio and visual communication technology that is part of a remote electronic notarization platform approved under section 26b of the act.²

Finally, the bill would add or amend several other definitions of terms used in the act. Many of these definitional amendments would account for changes proposed by this bill or others in the package. In some cases, a term is currently defined in the act with reference to a definition

¹ The Federal National Mortgage Association (FNMA, commonly known as Fannie Mae) and the Federal Home Loan Mortgage Corporation (FHLMC, commonly known as Freddie Mac) are examples of *government-sponsored enterprises* as defined in 2 USC 622(8).

² Section 26b was added to the act by Public Act 330 of 2018. See <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-5811-F918E9BB.pdf>

contained in another act or federal law, and the bill would replace the reference with the language of the definition from the other act.

MCL 55.263 et al.

Senate Bill 996 would amend the Michigan Notary Public Act to change the act's title to the "Michigan Law on Notarial Acts."

The bill would also add section 25a to the act to specify the conditions under which a notarial act performed in another state, in the jurisdiction of a federally recognized Indian tribe, under federal law, or under the authority and in the jurisdiction of a foreign country would have the same effect in Michigan as a notarial act performed by a Michigan notary public. In general, if the individual performing the notarial act is authorized in the other jurisdiction to do so, the notarial act would be recognized in Michigan and have the same effect under law as if performed here by a notarial officer of this state. The bill would prescribe, for each different jurisdictional area, standards for establishing whether the individual performing the notarial act in the other jurisdiction has the authority to do so.

MCL 55.261 and 55.271; proposed MCL 55.285a

Senate Bill 998 would repeal the Uniform Recognition of Acknowledgments Act. That act currently governs the recognition in this state of notarial acts performed outside of this state and would be superseded by the new section 25a proposed by Senate Bill 996.

MCL 565.261 through 565.270 (repealed)

Senate Bill 997 would revise a citation in the Revised Judicature Act to refer to section 25a of the Michigan Law on Notarial Acts rather than, as currently, to the Uniform Recognition of Acknowledgments Act.

MCL 600.2102

Senate Bill 999 would amend the Uniform Real Property Electronic Recording Act to require that a county register of deeds accept electronic documents for recording only from a person with which the register of deeds has entered into an agreement establishing a verified transactional relationship. [The bill does not define "verified transactional relationship."] The bill also would require the Electronic Recording Commission to adopt standards that address the acceptance and use of electronic notarization of documents submitted to a county register of deeds for recording.

MCL 565.844 and 565.845

Senate Bills 664, 996, 997, and 998 are tie-barred to one another, which means that none of them can take effect unless all are enacted. Senate Bill 999 is tie-barred to the other four bills, which means that it cannot take effect unless all five bills are enacted.

Each bill would take effect 90 days after being enacted into law.

HOUSE COMMITTEE ACTION:

The House Committee on Financial Services reported an H-2 substitute for Senate Bill 664. The substitute generally updates the bill's amendments to the Michigan Notary Public Act to reflect the passage of Public Act 330 of 2018.³ The substitute also adds definitions for the terms *credential analysis*, *identity proofing*, and *remote electronic notarization platform*; amends the definition of *in the presence of*; and requires the Secretary of State to implement an electronic application and payment process for individuals seeking appointment as a notary public.

FISCAL IMPACT:

Senate Bill 664 would create marginal administrative costs for the Department of State (DOS) related to reviewing and approving electronic notarization systems in partnership with the Department of Technology, Management, and Budget. There would also be potential IT costs related to developing and implementing an electronic application and payment process for individuals seeking appointment as a notary public if the department chose to develop that system. Any additional costs from the bill would likely be supported through existing appropriations to DOS.

Senate Bills 996, 997, 998, and 999 would have no fiscal impact on the state or local units of government.

POSITIONS:

The following entities indicated support for the bills:

The Office of the Secretary of State (9-5-18)
Amrock (9-5-18)
Christian Financial Credit Union (9-5-18)
Dow Chemical Employees Credit Union (9-5-18)
LAFCU (9-5-18)
Michigan Bankers Association (9-26-18)
Michigan Credit Union League (9-5-18)

The Michigan Association of Register of Deeds is neutral regarding the bills. (9-5-18)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

³ See <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-5811-F918E9BB.pdf>