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## BILL ANALYSIS



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Senate Bill 664 (as enacted)  
Senate Bills 996 through 999 (as enacted)  
Sponsor: Senator Peter MacGregor (S.B. 664, 997 & 998)  
Senator Wayne Schmidt (S.B. 996)  
Senator Curtis Hertel (S.B. 999)  
Senate Committee: Banking and Financial Institutions  
House Committee: Financial Services

**PUBLIC ACT 360 of 2018**  
**PUBLIC ACTS 361-364 of 2018**

Date Completed: 3-5-19

**CONTENT**

**Senate Bill 664** amends the Michigan Notary Public Act to do the following:

- Require the Secretary of State (SOS) and the Department of Technology Management, and Budget (DTMB), by March 30, 2019, to review and approve at least one electronic notarization system for the performance of electronic notarizations in the State.
- Require the SOS and the DTMB to review the criteria for approval of electronic notarization systems, and whether currently approved systems remained sufficient for the electronic performance of notarial acts, at least every four years.
- Require the SOS and DTMB to consider certain criteria in determining whether to approve an electronic notarization system.
- Allow a notary public to select one or more tamper-evident electronic notarization systems to perform notarial acts electronically.
- Require a notary public to inform the SOS that he or she is performing notarial acts electronically, and identify which electronic notarization system he or she intended to use.
- Allow the SOS to develop and implement an electronic application and payment process for individuals who are seeking appointment as a notary public.

**Senate Bill 996** adds Section 25a to the Michigan Notary Public Act to specify that notarial acts performed in another state, under the authority or jurisdiction of a federally-recognized Indian tribe or a foreign country, or under Federal law, have the same effect under Michigan law as if performed by a notary public of Michigan, if they are performed by certain individuals. The bill also renames the statute the "Michigan Law on Notarial Acts".

**Senate Bill 997** amends the Revised Judicature Act to delete a reference to the Uniform Recognition of Acknowledgments Act, and instead refer to Section 25a of the Michigan Law on Notarial Acts.

**Senate Bill 998** repeals the Uniform Recognition of Acknowledgments Act, which governs the recognition of acknowledgements and notarial acts performed outside the State.

**Senate Bill 999 amends the Uniform Real Property Electronic Recording Act to permit a county register of deeds to 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 also requires the Electronic Recording Commission to adopt standards to address the acceptance and use of electronic notarization of documents submitted to a county register of deeds for recording.**

The bills will take effect on March 12, 2019.

Senate Bills 664 and 996 are described in greater detail below.

### **Senate Bill 664**

#### Definitions

The Michigan Notary Public Act defines "notarial act" as any act that a notary public commissioned in the State is authorized to perform, including taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, or witnessing or attesting a signature performed in compliance with the Act and the Uniform Recognition of Acknowledgments Act. Under the bill, the term refers to an act, "whether performed with respect to a tangible or electronic record". The bill retains the rest of the definition except the reference to the uniform law. Under the bill, the term also means an act that was performed in another jurisdiction and met the requirements of Section 25a.

The bill defines "electronic notarization system" as a set or system of applications, programs, hardware, software, or technologies designed to enable a notary public to perform electronic notarizations.

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign a record.

The Act currently defines "person" as every natural person, corporation, partnership, trust, association, or other legal entity and its legal successors. Under the bill, the term means an individual or a corporation, business or statutory trust, estate, partnership, trust, limited liability corporation, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

The bill defines "state" as a U.S. state, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, or any other territory or insular possession subject to the jurisdiction of the U.S.

"Verification upon oath or affirmation" means the declaration by oath or affirmation that a statement is true. The bill, instead, defines the term as a declaration, made by an individual on oath or affirmation before a notary public, that a statement in a record is true.

Currently, the Act defines "in the presence of" as in compliance with Section 101g of Title I of the Electronic Signature in Global and National Commerce Act. Under the bill, the term means 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 an approved remote electronic notarization.

## Electronic Notarization System

The bill requires the Secretary of State and the Department of Technology, Management, and Budget, by March 30, 2019, to review and approve at least one electronic notarization system for the performance of electronic notarizations in the State. The SOS and the DTMB may approve multiple systems, and may grant approval of additional electronic notarization systems on an ongoing basis. At least every four years, the SOS and the DTMB must review the criteria for approval of electronic notarization systems, and whether currently approved systems remain sufficient for the electronic performance of notarial acts.

In considering whether to approve a system for use in the State, the SOS and the DTMB must consider, at minimum, the following:

- The need to ensure that any change to or tampering with an electronic record containing 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 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 that term is defined in 2 USC 622(8), the SOS and the DTMB must approve the system for use in the State if verifiable proof of that approval or certification is provided to the SOS and the DTMB, unless the SOS affirmatively disallows the use of the system.

("Government-sponsored enterprise" means a corporate entity created by a law of the U.S. that has a Federal charter authorized by law; is privately owned; is under the direction of a board of directors; is a financial institution with the power to make loans or loan guarantees, and raise money by borrowing; does not exercise powers that are reserved to the government as a sovereign; does not have the power to limit the government financially; and has employees whose salaries are paid by the enterprise and are not Federal employees.)

## Electronic Notarial Acts

The bill authorizes a notary public to select one or more tamper-evident electronic notarization systems to perform notarial acts electronically. A person may not require a notary public to perform a notarial act electronically with a system that the notary public has not selected.

Before a notary public performs his or her initial notarial act electronically, the notary public must notify the SOS that he or she is performing the notarial acts electronically and identify the electronic notarization system he or she intends to use for electronic notarizations. If the SOS and the DTMB have approved the use of one or more systems, the notary public must select the system he or she intends to use from the approved systems. The SOS may disallow the use of a system if it does not satisfy the criteria described above.

## Notary Signature

The Act requires a notary public to place his or her signature on every record upon which he or she performs a notarial act. On each record that the notary public performs a notarial act and immediately near his or her signature, he or she must convey in a specified form certain

information, including the name of the notary public and the date the notarial act was performed.

Under the bill, the notary public also must convey, if applicable, whether the notarial act was performed using an electronic notarization system.

#### Notary Public Application

The Act requires a person to apply to the Secretary of State for appointment as a notary public. An application for appointment must include the handwritten signature of the applicant. Under the bill, the signature requirement applies unless the application is submitted electronically.

The Act require a \$10 application fee to accompany an application. Under the bill, the fee may be paid electronically.

The bill allows the SOS to develop and implement an electronic application and payment process for individuals who are seeking appointment as a notary public. Except as provided under the bill, all of the Act's requirements apply to an application or payment made using this electronic process.

### **Senate Bill 996**

As noted above, the bill adds Section 25a to the Michigan Notary Public Act and renames the statute the "Michigan Law on Notarial Acts".

Under the bill, a notarial act performed in another state or under the authority and in the jurisdiction of a Federally recognized Indian tribe has the same effect under Michigan law as if performed by a notarial officer of the State of Michigan, if the act is performed by any of the following individuals:

- A notary public who is authorized to perform notarial acts in the state in which the act was performed, or a notary public of the tribe.
- A judge, clerk, or deputy clerk or any court of record in the state in which the notarial act is performed, or of the tribe.
- Any other individual who is authorized to perform notarial acts in the state in which the act is performed, or under the law of the tribe.

A notarial act performed under Federal law has the same effect under Michigan law as if performed by a notary public of the State, if the act is performed by any of the following individuals:

- A judge, clerk, or deputy clerk of a Federal court.
- An individual who is in military service, or is performing duties under the authority of military service, who is authorized to perform notarial acts under Federal law.
- An individual who is designated as a notarizing officer by the U.S. Department of State to perform notarial acts outside of the U.S.
- Any other individual who is authorized by Federal law to perform the act.

Both of the following apply with regard to a notarial act that is performed in another state, under the authority and in the jurisdiction of a Federally recognized Indian tribe, and under Federal law:

- The signature and title of an individual described above who performs a notarial act is prima facie evidence that the signature is genuine and that the individual holds the

designated title. The signature and title of a notary public or other individual who performs a notarial act conclusively establish the authority of the individual to perform the act.

All of the following apply with regard to a notarial act performed by an individual under the authority and in the jurisdiction of a foreign country or a constituent unit of a foreign country:

- If a notarial act is performed under authority and in the jurisdiction of a foreign country or constituent unit of the foreign country or under the authority of a multinational or international governmental organization, the act has same effect under Michigan law as if performed by a notarial officer of the State.
- If the title of office and indication of authority to perform notarial acts in a foreign country appeared in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.
- The signature and official stamp of an individual who holds an office in a multinational or international governmental organization is prima facie evidence that the signature is genuine and the individual holds the designated title.
- An apostille in the form prescribed by the Hague Convention of October 5, 1961, and issued by a foreign party to the Convention, conclusively establishes that the signature is genuine and that the individual holds the indicated license.
- A consular authentication that is issued by an individual who is designated as a notarizing officer by the U.S. Department of State to perform notarial acts outside of the U.S. and attached to a record with respect to which the act is performed conclusively establishes that the signature is genuine and that the individual holds the indicated office.

"Foreign country" means a government other than the U.S., a state, or a Federally recognized Indian tribe.

MCL 55.263 et al. (S.B. 664)  
55.261 et al (S.B. 996)  
600.2102 (S.B. 997)  
565.261-565.270 (S.B. 998)  
565.844 & 565.845 (S.B. 999)

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### **FISCAL IMPACT**

The bills will have no fiscal impact on State or local government.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.