

SUBSTITUTE FOR
SENATE BILL NO. 664

A bill to amend 2003 PA 238, entitled
"Michigan notary public act,"
by amending sections 3, 5, 7, 15, and 27 (MCL 55.263, 55.265,
55.267, 55.275, and 55.287), section 5 as amended by 2006 PA 426,
section 15 as amended by 2006 PA 510, and section 27 as amended by
2006 PA 155, and by adding sections 26, 26a, and 54.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. As used in this act:

2 (a) "Acknowledgment" means ~~the confirmation by a person~~ **A**
3 **DECLARATION BY AN INDIVIDUAL** in the presence of a notary public
4 that he or she ~~is placing or has placed his or her signature on~~ **HAS**
5 **SIGNED** a record for the purposes stated in the record and, if the
6 record is signed in a representative capacity, that he or she ~~is~~

1 ~~placing or has placed his or her signature on~~ **SIGNED** the record
 2 with the proper authority and ~~in the capacity~~ **SIGNED IT AS THE ACT**
 3 of the person ~~represented and identified~~ in the record.

4 (b) "Cancellation" means the nullification of a notary public
 5 commission due to an error or defect or because the notary public
 6 is no longer entitled to the commission.

7 (c) "Department" means the department of state.

8 (d) "Electronic" means ~~that term as defined in the uniform~~
 9 ~~electronic transactions act, 2000 PA 305, MCL 450.831 to 450.849.~~
 10 **RELATING TO TECHNOLOGY THAT HAS ELECTRICAL, DIGITAL, MAGNETIC,**
 11 **WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.**

12 ~~— (e) "Electronic signature in global and national commerce act"~~
 13 ~~means Public Law 106 229, 114 Stat. 464.~~

14 (E) **"ELECTRONIC NOTARIZATION SYSTEM" MEANS A SET OR SYSTEM OF**
 15 **APPLICATIONS, PROGRAMS, HARDWARE, SOFTWARE, OR TECHNOLOGIES**
 16 **DESIGNED TO ENABLE A NOTARY PUBLIC TO PERFORM ELECTRONIC**
 17 **NOTARIZATIONS.**

18 (F) **"ELECTRONIC SIGNATURE" MEANS AN ELECTRONIC SOUND, SYMBOL,**
 19 **OR PROCESS ATTACHED TO OR LOGICALLY ASSOCIATED WITH A RECORD AND**
 20 **EXECUTED OR ADOPTED BY AN INDIVIDUAL WITH THE INTENT TO SIGN THE**
 21 **RECORD.**

22 (G) ~~(f)~~ "Information" means ~~that term as defined in the~~
 23 ~~electronic signature in global and national commerce act.~~ **INCLUDES**
 24 **DATA, TEXT, IMAGES, SOUNDS, CODES, COMPUTER PROGRAMS, SOFTWARE, AND**
 25 **DATABASES.**

26 (H) ~~(g)~~ "In a representative capacity" means any of the
 27 following:

1 (i) For and on behalf of a corporation, **LIMITED LIABILITY**
2 **COMPANY**, partnership, trust, association, or other legal entity as
3 an authorized officer, **MANAGER**, agent, partner, trustee, or other
4 representative of the entity.

5 (ii) As a public officer, personal representative, guardian,
6 or other representative in the capacity recited in the
7 document.**RECORD.**

8 (iii) As an attorney in fact for a principal.

9 (iv) In any other capacity as an authorized representative of
10 another person.

11 (I) ~~(h)~~ "In the presence of" means in compliance with section
12 101(g) of ~~title I of the~~ electronic signature **SIGNATURES** in global
13 and national commerce act, 15 USC 7001.

14 Sec. 5. As used in this act:

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

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

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

27 (d) "Notarial act" means any **OF THE FOLLOWING:**

1 *(i)* **AN act, WHETHER PERFORMED WITH RESPECT TO A TANGIBLE OR**
 2 **ELECTRONIC RECORD,** that a notary public commissioned in this state
 3 is authorized to perform including, but not limited to, ~~the taking~~
 4 ~~of an acknowledgment, the administration of~~ **ADMINISTERING** an oath
 5 or affirmation, ~~the taking of~~ a verification upon oath or
 6 affirmation, ~~and the~~ **OR** witnessing or attesting a signature
 7 performed in compliance with this act. ~~and the uniform recognition~~
 8 ~~of acknowledgments act, 1969 PA 57, MCL 565.261 to 565.270.~~

9 *(ii)* **AN ACT DESCRIBED IN SUBPARAGRAPH (i) THAT IS PERFORMED IN**
 10 **ANOTHER JURISDICTION AND MEETS THE REQUIREMENTS OF SECTION 25A.**

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

13 (f) "Official misconduct" means ~~either or both~~ **1 OR MORE** of
 14 the 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) "Person" means ~~every natural person, corporation,~~
 20 ~~partnership, trust, association, or other legal entity and its~~
 21 ~~legal successors.~~ **AN INDIVIDUAL OR A CORPORATION, BUSINESS TRUST,**
 22 **STATUTORY TRUST, ESTATE, PARTNERSHIP, TRUST, LIMITED LIABILITY**
 23 **COMPANY, ASSOCIATION, JOINT VENTURE, PUBLIC CORPORATION, GOVERNMENT**
 24 **OR GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR ANY**
 25 **OTHER LEGAL OR COMMERCIAL ENTITY.**

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

1 ~~450.849~~-INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM OR THAT
2 IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS RETRIEVABLE IN
3 PERCEIVABLE FORM.

4 (i) "Revocation" means the termination of a notary public's
5 commission **TO PERFORM NOTARIAL ACTS**.

6 Sec. 7. As used in this act:

7 (a) "Secretary" means the secretary of state ~~acting directly~~
8 ~~or through his or her duly authorized deputies, assistants, and~~
9 ~~employees.~~ **OR HIS OR HER DESIGNEE.**

10 (b) "Signature" means ~~a person's written or printed name or~~
11 ~~electronic signature as that term is defined in the uniform~~
12 ~~electronic transactions act, 2000 PA 305, MCL 450.831 to 450.849,~~
13 ~~or the person's mark attached to or logically associated with a~~
14 ~~record including, but not limited to, a contract and executed or~~
15 ~~adopted by the person with the intent to sign the record.~~ **AN**
16 **INDIVIDUAL'S WRITTEN OR PRINTED NAME, ELECTRONIC SIGNATURE, OR**
17 **MARK, ATTACHED TO OR LOGICALLY ASSOCIATED WITH A CONTRACT OR OTHER**
18 **RECORD AND EXECUTED, ADOPTED, OR MADE BY THE INDIVIDUAL WITH THE**
19 **INTENT TO SIGN THE RECORD.**

20 (C) "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT
21 OF COLUMBIA, THE COMMONWEALTH OF PUERTO RICO, THE UNITED STATES
22 VIRGIN ISLANDS, OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO
23 THE JURISDICTION OF THE UNITED STATES.

24 (D) ~~(e)~~- "Suspension" means the temporary withdrawal of the
25 ~~notary's~~ **NOTARY PUBLIC'S** commission to perform notarial acts during
26 the period of the suspension.

27 (E) ~~(d)~~- "Verification upon oath or affirmation" means the

1 ~~declaration by~~ **A DECLARATION, MADE BY AN INDIVIDUAL ON** oath or
2 affirmation **BEFORE A NOTARY PUBLIC,** that a statement **IN A RECORD** is
3 true.

4 Sec. 15. (1) ~~A person~~ **AN INDIVIDUAL** shall apply to the
5 secretary for appointment as a notary public in a format as
6 prescribed by the secretary. An application for appointment as a
7 notary public ~~shall contain the~~ **MUST INCLUDE THE HANDWRITTEN**
8 signature of the applicant ~~. In addition to other information as~~
9 ~~may be required by the secretary, the application shall include~~ **AND**
10 all of the following **INFORMATION:**

11 (a) The applicant's name, residence address, business address,
12 date of birth, ~~and~~ residence and business telephone numbers, **AND**
13 **ELECTRONIC MAIL ADDRESS.**

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

16 (c) A validated copy of the filing of the bond, if applicable,
17 and oath certificate received from the county clerk.

18 (d) If applicable, a statement showing whether the applicant
19 has previously applied for an appointment as a notary public in
20 this or any other state, the result of the application, and whether
21 the applicant has ever been the holder of a notary public
22 appointment that was revoked, suspended, or canceled in this or any
23 other state.

24 (e) A statement describing the date and circumstances of any
25 felony or misdemeanor conviction of the applicant during the
26 preceding 10 years.

27 (f) A declaration that the applicant is a citizen of the

1 United States or, if not a citizen of the United States, proof of
2 the applicant's legal presence in this country.

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

6 **(H) ANY OTHER INFORMATION REQUIRED BY THE SECRETARY.**

7 (2) Each application shall be accompanied by an application
8 processing fee of \$10.00. ~~One dollar~~**THE SECRETARY SHALL DEPOSIT**
9 **\$1.00** of each fee collected under this subsection ~~shall be~~
10 ~~deposited~~ into the notary education and training fund established
11 in section 17 on a schedule determined by the secretary.

12 (3) ~~Upon receipt of~~**WHEN HE OR SHE RECEIVES** an application
13 that is accompanied by the prescribed processing fee, the secretary
14 may inquire as to the qualifications of the applicant and shall
15 determine whether the applicant meets the qualifications ~~prescribed~~
16 ~~in~~**FOR APPOINTMENT AS A NOTARY PUBLIC UNDER** this act. To assist in
17 deciding whether the applicant is qualified, the secretary may use
18 the law enforcement information network as provided in the C.J.I.S.
19 policy council act, 1974 PA 163, MCL 28.211 to 28.215, to check the
20 criminal background of the applicant.

21 (4) After approval of ~~the~~**AN** application **FOR APPOINTMENT AS A**
22 **NOTARY PUBLIC**, the secretary shall mail directly to the applicant
23 the certificate of appointment as a notary public. Each certificate
24 of appointment shall identify the ~~person~~**INDIVIDUAL** as a notary
25 public of this state and shall specify the term and county of ~~the~~
26 ~~person's~~**HIS OR HER** commission.

27 **SEC. 26. (1) A NOTARY PUBLIC MAY SELECT 1 OR MORE TAMPER-**

1 EVIDENT ELECTRONIC NOTARIZATION SYSTEMS TO PERFORM NOTARIAL ACTS
2 ELECTRONICALLY. A PERSON MAY NOT REQUIRE A NOTARY PUBLIC TO PERFORM
3 A NOTARIAL ACT ELECTRONICALLY WITH AN ELECTRONIC NOTARIZATION
4 SYSTEM THAT THE NOTARY PUBLIC HAS NOT SELECTED.

5 (2) BEFORE A NOTARY PUBLIC PERFORMS THE NOTARY PUBLIC'S
6 INITIAL NOTARIAL ACT ELECTRONICALLY, THE NOTARY PUBLIC SHALL NOTIFY
7 THE SECRETARY THAT THE NOTARY PUBLIC WILL BE PERFORMING NOTARIAL
8 ACTS ELECTRONICALLY AND IDENTIFY THE ELECTRONIC NOTARIZATION SYSTEM
9 THE NOTARY PUBLIC INTENDS TO USE FOR ELECTRONIC NOTARIZATIONS. IF
10 THE SECRETARY AND THE DEPARTMENT OF TECHNOLOGY, MANAGEMENT, AND
11 BUDGET HAVE APPROVED THE USE OF 1 OR MORE ELECTRONIC NOTARIZATION
12 SYSTEMS UNDER SECTION 26A, THE NOTARY PUBLIC MUST SELECT THE SYSTEM
13 HE OR SHE INTENDS TO USE FROM THE APPROVED ELECTRONIC NOTARIZATION
14 SYSTEMS. THE SECRETARY MAY DISALLOW THE USE OF AN ELECTRONIC
15 NOTARIZATION SYSTEM IF THE ELECTRONIC NOTARIZATION SYSTEM DOES NOT
16 SATISFY THE CRITERIA DESCRIBED IN SECTION 26A.

17 SEC. 26A. (1) WITHIN 180 DAYS AFTER THE EFFECTIVE DATE OF THIS
18 SECTION, THE SECRETARY AND THE DEPARTMENT OF TECHNOLOGY,
19 MANAGEMENT, AND BUDGET SHALL REVIEW AND APPROVE AT LEAST 1
20 ELECTRONIC NOTARIZATION SYSTEM FOR THE PERFORMANCE OF ELECTRONIC
21 NOTARIZATIONS IN THIS STATE. THE SECRETARY AND THE DEPARTMENT OF
22 TECHNOLOGY, MANAGEMENT, AND BUDGET MAY APPROVE MULTIPLE ELECTRONIC
23 NOTARIZATION SYSTEMS, AND MAY GRANT APPROVAL OF ADDITIONAL
24 ELECTRONIC NOTARIZATION SYSTEMS ON AN ONGOING BASIS. THE SECRETARY
25 AND THE DEPARTMENT OF TECHNOLOGY, MANAGEMENT, AND BUDGET SHALL
26 REVIEW THE CRITERIA FOR APPROVAL OF ELECTRONIC NOTARIZATION
27 SYSTEMS, AND WHETHER CURRENTLY APPROVED ELECTRONIC NOTARIZATION

1 SYSTEMS REMAIN SUFFICIENT FOR THE ELECTRONIC PERFORMANCE OF
2 NOTARIAL ACTS, AT LEAST EVERY 4 YEARS.

3 (2) SUBJECT TO SUBSECTION (3), IN CONSIDERING WHETHER TO
4 APPROVE AN ELECTRONIC NOTARIZATION SYSTEM FOR USE IN THIS STATE
5 UNDER SUBSECTION (1), THE SECRETARY AND THE DEPARTMENT OF
6 TECHNOLOGY, MANAGEMENT, AND BUDGET SHALL CONSIDER, AT A MINIMUM,
7 THE FOLLOWING:

8 (A) THE NEED TO ENSURE THAT ANY CHANGE TO OR TAMPERING WITH AN
9 ELECTRONIC RECORD CONTAINING THE INFORMATION REQUIRED UNDER THIS
10 ACT IS EVIDENT.

11 (B) THE NEED TO ENSURE INTEGRITY IN THE CREATION, TRANSMITTAL,
12 STORAGE, OR AUTHENTICATION OF ELECTRONIC NOTARIZATIONS, RECORDS, OR
13 SIGNATURES.

14 (C) THE NEED TO PREVENT FRAUD OR MISTAKE IN THE PERFORMANCE OF
15 ELECTRONIC NOTARIZATIONS.

16 (D) THE ABILITY TO ADEQUATELY INVESTIGATE AND AUTHENTICATE A
17 NOTARIAL ACT PERFORMED ELECTRONICALLY WITH THAT ELECTRONIC
18 NOTARIZATION SYSTEM.

19 (E) THE MOST RECENT STANDARDS REGARDING ELECTRONIC
20 NOTARIZATIONS OR RECORDS PROMULGATED BY NATIONAL BODIES, INCLUDING,
21 BUT NOT LIMITED TO, THE NATIONAL ASSOCIATION OF SECRETARIES OF
22 STATE.

23 (F) THE STANDARDS, PRACTICES, AND CUSTOMS OF OTHER
24 JURISDICTIONS THAT ALLOW ELECTRONIC NOTARIAL ACTS.

25 (3) IF AN ELECTRONIC NOTARIZATION SYSTEM FOR THE PERFORMANCE
26 OF ELECTRONIC NOTARIZATIONS IS APPROVED OR CERTIFIED BY A
27 GOVERNMENT-SPONSORED ENTERPRISE, AS THAT TERM IS DEFINED IN 2 USC

1 622(8), THE SECRETARY AND THE DEPARTMENT OF TECHNOLOGY, MANAGEMENT,
2 AND BUDGET SHALL APPROVE THE SYSTEM FOR USE IN THIS STATE IF
3 VERIFIABLE PROOF OF THAT APPROVAL OR CERTIFICATION IS PROVIDED TO
4 THE SECRETARY AND DEPARTMENT, UNLESS THE USE OF THE ELECTRONIC
5 NOTARIZATION SYSTEM IS AFFIRMATIVELY DISALLOWED BY THE SECRETARY.

6 Sec. 27. (1) A notary public shall place his or her signature
7 on every record upon which he or she performs a notarial act. The
8 notary public shall sign his or her name exactly as his or her name
9 appears on his or her application for commission as a notary
10 public.

11 (2) On each record that a notary public performs a notarial
12 act and immediately near the notary public's signature, as is
13 practical, the notary public shall print, type, stamp, or otherwise
14 imprint mechanically or electronically sufficiently clear and
15 legible to be read by the secretary and in a manner capable of
16 photographic reproduction all of the following in this format or in
17 a similar format that conveys all of the same information:

18 (a) The name of the notary public exactly as it appears on his
19 or her application for commission as a notary public.

20 (b) The statement: "Notary public, State of Michigan, County
21 of _____."

22 (c) The statement: "My commission expires _____."

23 (d) If performing a notarial act in a county other than the
24 county of commission, the statement: "Acting in the County of
25 _____."

26 (e) The date the notarial act was performed.

27 **(F) IF APPLICABLE, THAT THE NOTARIAL ACT WAS PERFORMED**

1 **ELECTRONICALLY.**

2 (3) A notary public may use a stamp, seal, or electronic
3 process that contains all of the information required by subsection
4 (2). However, the stamp, seal, or electronic process shall not be
5 used in a manner that renders anything illegible on the record
6 being notarized. An embosser alone or any other method that cannot
7 be reproduced shall not be used.

8 (4) The illegibility of the statements required in subsection
9 (2) does not affect the validity of the transaction or record that
10 was notarized.

11 **SEC. 54. THIS ACT MODIFIES, LIMITS, AND SUPERSEDES THE**
12 **ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT, 15 USC**
13 **7001 TO 7031, BUT DOES NOT MODIFY, LIMIT, OR SUPERSEDE SECTION**
14 **101(C) OF THAT ACT, 15 USC 7001(C), OR AUTHORIZE ELECTRONIC**
15 **DELIVERY OF ANY OF THE NOTICES DESCRIBED IN SECTION 103(B) OF THAT**
16 **ACT, 15 USC 7003(B).**

17 Enacting section 1. This amendatory act takes effect 90 days
18 after the date it is enacted into law.

19 Enacting section 2. This amendatory act does not take effect
20 unless all of the following bills of the 99th Legislature are
21 enacted into law:

22 (a) Senate Bill No. 996.

23 (b) Senate Bill No. 997.

24 (c) Senate Bill No. 998.