

# SENATE BILL No. 664

November 28, 2017, Introduced by Senators MACGREGOR, HANSEN, JONES and BOOHER and referred to the Committee on Finance.

A bill to amend 2003 PA 238, entitled "Michigan notary public act," by amending sections 3, 5, 7, and 15 (MCL 55.263, 55.265, 55.267, and 55.275), section 5 as amended by 2006 PA 426 and section 15 as amended by 2006 PA 510, 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~~  
7       ~~placing or has placed his or her signature on~~ **SIGNED** the record  
8       with the proper authority and ~~in the capacity~~ **SIGNED IT AS THE ACT**  
9       of the person ~~represented and~~ identified in the record.

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

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

5 (d) "Electronic" means ~~that term as defined in the uniform~~  
6 ~~electronic transactions act, 2000 PA 305, MCL 450.831 to 450.849.~~

7 **RELATING TO TECHNOLOGY THAT HAS ELECTRICAL, DIGITAL, MAGNETIC,**  
8 **WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.**

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

11 **(E) "ELECTRONIC SIGNATURE" MEANS AN ELECTRONIC SOUND, SYMBOL,**  
12 **OR PROCESS ATTACHED TO OR LOGICALLY ASSOCIATED WITH A RECORD AND**  
13 **EXECUTED OR ADOPTED BY AN INDIVIDUAL WITH THE INTENT TO SIGN THE**  
14 **RECORD.**

15 (f) "Information" means that term as defined in the electronic  
16 ~~signature~~ **SIGNATURES** in global and national commerce act, **15 USC**  
17 **7001 TO 7031.**

18 (g) "In a representative capacity" means any of the following:

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

23 (ii) As a public officer, personal representative, guardian,  
24 or other representative in the capacity recited in the  
25 ~~document.~~ **RECORD.**

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

27 (iv) In any other capacity as an authorized representative of

1 another person.

2 (h) "In the presence of" means in compliance with section  
3 101(g) of ~~title I of the electronic signature~~**SIGNATURES** in global  
4 and national commerce act, 15 USC 7001.

5 Sec. 5. As used in this act:

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

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

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

16 (d) "Notarial act" means ~~any act~~**AN ACT, WHETHER PERFORMED**  
17 **WITH RESPECT TO A TANGIBLE OR ELECTRONIC RECORD**, that a notary  
18 public commissioned in this state is authorized to perform  
19 including, but not limited to, ~~the taking of an acknowledgment, the~~  
20 ~~administration of~~**ADMINISTERING** an oath or affirmation, ~~the taking~~  
21 ~~of a verification upon oath or affirmation, and the~~**OR** witnessing  
22 or attesting a signature performed in compliance with this act and  
23 the uniform recognition of acknowledgments act, 1969 PA 57, MCL  
24 565.261 to 565.270.

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

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

1 following:

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

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

6 (g) "Person" means ~~every natural person, corporation,~~  
7 ~~partnership, trust, association, or other legal entity and its~~  
8 ~~legal successors.~~ **AN INDIVIDUAL OR A CORPORATION, BUSINESS TRUST,**  
9 **STATUTORY TRUST, ESTATE, PARTNERSHIP, TRUST, LIMITED LIABILITY**  
10 **COMPANY, ASSOCIATION, JOINT VENTURE, PUBLIC CORPORATION, GOVERNMENT**  
11 **OR GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR ANY**  
12 **OTHER LEGAL OR COMMERCIAL ENTITY.**

13 (h) "Record" means ~~that term as defined in the uniform~~  
14 ~~electronic transactions act, 2000 PA 305, MCL 450.831 to~~  
15 ~~450.849.~~ **INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM OR THAT**  
16 **IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS RETRIEVABLE IN**  
17 **PERCEIVABLE FORM.**

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

20 Sec. 7. As used in this act:

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

24 (b) "Signature" means ~~a person's written or printed name or~~  
25 ~~electronic signature as that term is defined in the uniform~~  
26 ~~electronic transactions act, 2000 PA 305, MCL 450.831 to 450.849,~~  
27 ~~or the person's mark attached to or logically associated with a~~

1 ~~record including, but not limited to, a contract and executed or~~  
2 ~~adopted by the person with the intent to sign the record.~~ **A TANGIBLE**  
3 **SYMBOL OR AN ELECTRONIC SIGNATURE THAT EVIDENCES THE SIGNING OF A**  
4 **RECORD.**

5 (c) "Suspension" means the temporary withdrawal of the  
6 ~~notary's~~ **NOTARY PUBLIC'S** commission to perform notarial acts during  
7 the period of the suspension.

8 (d) "Verification upon oath or affirmation" means ~~the~~  
9 ~~declaration by~~ **A DECLARATION, MADE BY AN INDIVIDUAL ON** oath or  
10 affirmation **BEFORE A NOTARY PUBLIC,** that a statement **IN A RECORD** is  
11 true.

12 Sec. 15. (1) ~~A person~~ **AN INDIVIDUAL** shall apply to the  
13 secretary for appointment as a notary public in a format as  
14 prescribed by the secretary. An application for appointment as a  
15 notary public ~~shall contain the~~ **MUST INCLUDE THE HANDWRITTEN**  
16 signature of the applicant ~~. In addition to other information as~~  
17 ~~may be required by the secretary, the application shall include~~ **AND**  
18 all of the following **INFORMATION:**

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

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

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

26 (d) If applicable, a statement showing whether the applicant  
27 has previously applied for an appointment as a notary public in

1 this or any other state, the result of the application, and whether  
2 the applicant has ever been the holder of a notary public  
3 appointment that was revoked, suspended, or canceled in this or any  
4 other state.

5 (e) A statement describing the date and circumstances of any  
6 felony or misdemeanor conviction of the applicant during the  
7 preceding 10 years.

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

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

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

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

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

1 criminal background of the applicant.

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

8 **SEC. 26. (1) A NOTARY PUBLIC MAY SELECT 1 OR MORE TAMPER-**  
9 **EVIDENT TECHNOLOGIES TO PERFORM NOTARIAL ACTS ELECTRONICALLY. A**  
10 **PERSON MAY NOT REQUIRE A NOTARY PUBLIC TO PERFORM A NOTARIAL ACT**  
11 **ELECTRONICALLY WITH A TECHNOLOGY THAT THE NOTARY PUBLIC HAS NOT**  
12 **SELECTED.**

13 (2) BEFORE A NOTARY PUBLIC PERFORMS THE NOTARY PUBLIC'S  
14 INITIAL NOTARIAL ACT ELECTRONICALLY, THE NOTARY PUBLIC SHALL NOTIFY  
15 THE SECRETARY THAT THE NOTARY PUBLIC WILL BE PERFORMING NOTARIAL  
16 ACTS ELECTRONICALLY AND IDENTIFY THE TECHNOLOGY THE NOTARY PUBLIC  
17 INTENDS TO USE. IF THE SECRETARY AND THE DEPARTMENT OF TECHNOLOGY,  
18 MANAGEMENT, AND BUDGET HAVE APPROVED THE USE OF 1 OR MORE  
19 TECHNOLOGIES UNDER SECTION 26A, THE NOTARY PUBLIC MUST SELECT 1 OF  
20 THE APPROVED TECHNOLOGIES. THE SECRETARY MAY PROHIBIT THE USE OF A  
21 TECHNOLOGY IF THE TECHNOLOGY DOES NOT SATISFY THE CRITERIA  
22 DESCRIBED IN SECTION 26A.

23 **SEC. 26A. BEFORE JANUARY 1, 2019, THE SECRETARY AND THE**  
24 **DEPARTMENT OF TECHNOLOGY, MANAGEMENT, AND BUDGET, SHALL REVIEW AND**  
25 **APPROVE TECHNOLOGIES FOR THE ELECTRONIC PERFORMANCE OF NOTARIAL**  
26 **ACTS IN THIS STATE. THE SECRETARY AND THE DEPARTMENT OF TECHNOLOGY,**  
27 **MANAGEMENT, AND BUDGET MAY APPROVE MULTIPLE TECHNOLOGIES, AND MAY**

1 GRANT APPROVAL TO ADDITIONAL TECHNOLOGIES ON AN ONGOING BASIS. THE  
2 SECRETARY AND THE DEPARTMENT OF TECHNOLOGY, MANAGEMENT, AND BUDGET  
3 SHALL REVIEW THE CRITERIA FOR APPROVAL OF TECHNOLOGIES, AND WHETHER  
4 CURRENTLY APPROVED TECHNOLOGIES REMAIN SUFFICIENT FOR THE  
5 ELECTRONIC PERFORMANCE OF NOTARIAL ACTS, AT LEAST EVERY 4 YEARS. IN  
6 CONSIDERING APPROVAL OF ANY TECHNOLOGY FOR USE IN THIS STATE, THE  
7 SECRETARY AND THE DEPARTMENT OF TECHNOLOGY, MANAGEMENT, AND BUDGET  
8 SHALL CONSIDER, AT A MINIMUM, THE FOLLOWING:

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

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

14 (C) THE NEED TO PREVENT FRAUD OR MISTAKE IN THE PERFORMANCE OF  
15 NOTARIAL ACTS WITH RESPECT TO ELECTRONIC RECORDS.

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

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

21 (F) THE STANDARDS, PRACTICES, AND CUSTOMS OF OTHER  
22 JURISDICTIONS THAT ALLOW NOTARIAL ACTS WITH RESPECT TO ELECTRONIC  
23 RECORDS.

24 SEC. 54. THIS ACT MODIFIES, LIMITS, AND SUPERSEDES THE  
25 ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT, 15 USC  
26 7001 TO 7031, BUT DOES NOT MODIFY, LIMIT, OR SUPERSEDE SECTION  
27 101(C) OF THAT ACT, 15 USC 7001(C), OR AUTHORIZE ELECTRONIC



1 DELIVERY OF ANY OF THE NOTICES DESCRIBED IN SECTION 103(B) OF THAT  
2 ACT, 15 USC 7003(B).

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