

Act No. 360  
Public Acts of 2018  
Approved by the Governor  
December 12, 2018  
Filed with the Secretary of State  
December 12, 2018  
EFFECTIVE DATE: March 12, 2019

**STATE OF MICHIGAN  
99TH LEGISLATURE  
REGULAR SESSION OF 2018**

Introduced by Senators MacGregor, Hansen, Jones and Booher

# **ENROLLED SENATE BILL No. 664**

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 3, 5, 7, 15, 26b, and 27 (MCL 55.263, 55.265, 55.267, 55.275, 55.286b, and 55.287), section 5 as amended by 2006 PA 426 and sections 15 and 27 as amended and 26b as added by 2018 PA 330, and by adding sections 26 and 26a.

*The People of the State of Michigan enact:*

Sec. 3. As used in this act:

(a) “Acknowledgment” means a declaration by an individual in the presence of a notary public that he or she has signed a record for the purposes stated in the record and, if the record is signed in a representative capacity, that he or she signed the record with the proper authority and signed it as the act of the person identified in the record.

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

(c) “Credential analysis” means a process or service by which a third party affirms the validity of an identity document described in section 25(6)(c) through a review of public and proprietary data sources conducted remotely.

(d) “Department” means the department of state.

(e) “Electronic” means relating to technology that has electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(f) “Electronic notarization system” means a set or system of applications, programs, hardware, software, or technologies designed to enable a notary public to perform electronic notarizations.

(g) “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 the record.

(h) “Identity proofing” means a process or service by which a third party provides a notary public with a reasonable means to verify the identity of an individual through a review of personal information from public or proprietary data sources conducted remotely.

(i) “Information” includes data, text, images, sounds, codes, computer programs, software, and databases.

(j) “In a representative capacity” means any of the following:

(i) For and on behalf of a corporation, limited liability company, partnership, trust, association, or other legal entity as an authorized officer, manager, agent, partner, trustee, or other representative of the entity.

(ii) As a public officer, personal representative, guardian, or other representative in the capacity recited in the record.

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

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

(k) "In the presence of" means either of the following:

(i) In the same physical location with and close enough to see, hear, communicate with, and exchange tangible identification credentials with another individual.

(ii) 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.

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 who is in the direct line of ascent including, but not limited to, a parent or grandparent.

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

(d) "Notarial act" means any of the following:

(i) An act, whether performed with respect to a tangible or electronic record, that a notary public commissioned in this state is authorized to perform including, but not limited to, 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 this act.

(ii) An act described in subparagraph (i) that is performed in another jurisdiction and meets the requirements of section 25a.

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

(f) "Official misconduct" means 1 or more 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 an individual or a corporation, business trust, statutory trust, estate, partnership, trust, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(h) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(i) "Remote electronic notarization platform" means any combination of technology that enables a notary public to perform a notarial act remotely; that allows the notary public to communicate by sight and sound with the individual for whom he or she is performing the notarial act, and witnesses, if applicable, by means of audio and visual communication; and that includes features to conduct credential analysis and identity proofing.

(j) "Revocation" means the termination of a notary public's commission to perform notarial acts.

Sec. 7. As used in this act:

(a) "Secretary" means the secretary of state or his or her designee.

(b) "Signature" means an individual's written or printed name, electronic signature, or mark, attached to or logically associated with a contract or other record and executed, adopted, or made by the individual with the intent to sign the record.

(c) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(d) "Suspension" means the temporary withdrawal of the notary public's commission to perform notarial acts during the period of the suspension.

(e) "Verification upon oath or affirmation" means a declaration, made by an individual on oath or affirmation before a notary public, that a statement in a record is true.

Sec. 15. (1) An individual shall apply to the secretary for appointment as a notary public in a format as prescribed by the secretary. Unless the application is submitted electronically under subsection (5), an application for appointment

as a notary public must include the handwritten signature of the applicant. An application must include all of the following information:

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

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

(c) A validated copy of the filing of the bond, if applicable, 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.

(h) Any other information required by the secretary.

(2) An application processing fee of \$10.00 must accompany an application or be paid electronically under subsection (5). The secretary shall deposit \$1.00 of each fee collected under this subsection into the notary education and training fund established in section 17 on a schedule determined by the secretary.

(3) When he or she receives an application and the prescribed processing fee, the secretary may inquire as to the qualifications of the applicant and shall determine whether the applicant meets the qualifications for appointment as a notary public under 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, or the internet criminal history access tool (ICHAT) maintained by the department of state police, to check the criminal background of the applicant.

(4) After approval of an application for appointment as a notary public, the secretary shall mail directly to the applicant the certificate of appointment as a notary public. Each certificate of appointment shall identify the individual as a notary public of this state and shall specify the term and county of his or her commission.

(5) The secretary may develop and implement an electronic application and payment process for individuals who are seeking appointment as a notary public. Except as provided in this section, all of the requirements of this section apply to an application or payment made using this electronic process.

Sec. 26. (1) A notary public may select 1 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 an electronic notarization system that the notary public has not selected.

(2) Before a notary public performs the notary public's initial notarial act electronically, the notary public shall notify the secretary that the notary public will be performing notarial acts electronically and identify the electronic notarization system the notary public intends to use for electronic notarizations. If the secretary and the department of technology, management, and budget have approved the use of 1 or more electronic notarization systems under section 26a, the notary public must select the system he or she intends to use from the approved electronic notarization systems. The secretary may disallow the use of an electronic notarization system if the electronic notarization system does not satisfy the criteria described in section 26a.

Sec. 26a. (1) By March 30, 2019, the secretary and the department of technology, management, and budget shall review and approve at least 1 electronic notarization system for the performance of electronic notarizations in this state. The secretary and the department of technology, management, and budget may approve multiple electronic notarization systems, and may grant approval of additional electronic notarization systems on an ongoing basis. The secretary and the department of technology, management, and budget shall review the criteria for approval of electronic notarization systems, and whether currently approved electronic notarization systems remain sufficient for the electronic performance of notarial acts, at least every 4 years.

(2) Subject to subsection (3), in considering whether to approve an electronic notarization system for use in this state under subsection (1), the secretary and the department of technology, management, and budget shall consider, at a minimum, the following:

(a) The need to ensure that any change to or tampering with an electronic record containing the information required under this act is evident.

(b) The need to ensure integrity in the creation, transmittal, storage, or authentication of electronic notarizations, records, or signatures.

(c) The need to prevent fraud or mistake in the performance of electronic notarizations.

(d) The ability to adequately investigate and authenticate a notarial act performed electronically with that electronic notarization system.

(e) The most recent standards regarding electronic notarizations or records promulgated by national bodies, including, but not limited to, the National Association of Secretaries of State.

(f) The standards, practices, and customs of other jurisdictions that allow electronic notarial acts.

(3) If an electronic notarization system for the performance of electronic notarizations is approved or certified by a government-sponsored enterprise, as that term is defined in 2 USC 622(8), the secretary and the department of technology, management, and budget shall approve the system for use in this state if verifiable proof of that approval or certification is provided to the secretary and department, unless the use of the electronic notarization system is affirmatively disallowed by the secretary.

Sec. 26b. (1) By March 30, 2019, the secretary and the department of technology, management, and budget shall review and may approve remote electronic notarization platforms for the performance of notarial acts in this state. A notary public shall not use a remote electronic notarization platform that is not approved under this section.

(2) Subject to subsection (3), in developing criteria for the approval of any remote electronic notarization platform for use in this state, the secretary of state and the department of technology, management, and budget shall consider, at a minimum, all of the following:

(a) The need to ensure that any change to or tampering with an electronic record containing the information required under this act is evident.

(b) The need to ensure integrity in the creation, transmittal, storage, or authentication of remote electronic notarizations, records, or signatures.

(c) The need to prevent fraud or mistake in the performance of remote electronic notarizations.

(d) The ability to adequately investigate and authenticate a notarial act performed remotely with that remote electronic notarization platform.

(e) The most recent standards regarding remote electronic notarization promulgated by national bodies, including, but not limited to, the National Association of Secretaries of State.

(f) The standards, practices, and customs of other jurisdictions that allow remote electronic notarial acts.

(3) If a remote electronic notarization platform for the performance of remote electronic notarizations is approved or certified by a government-sponsored enterprise, as that term is defined in 2 USC 622(8), the secretary of state and the department of technology, management, and budget shall approve the platform for use in this state if verifiable proof of that approval or certification is provided to the secretary and department, unless use of the remote electronic notarization platform is affirmatively disallowed by the secretary.

(4) The secretary and the department of technology, management, and budget shall review their standards for approving remote electronic notarization platforms for use in this state, and whether the number of approved remote electronic notarization platforms are sufficient, at least every 4 years.

(5) A notary public may perform a notarial act using a remote electronic notarization platform if either of the following is met:

(a) The notary public makes all applicable determinations under section 25 according to personal knowledge or satisfactory evidence, performance of the notarial act complies with section 27, and the notary public does not violate section 31 in the performance of the notarial act.

(b) The notary public, through use of the remote electronic notarization platform, personal knowledge, or satisfactory evidence, is able to identify the record before the notary public as the same record presented by the individual for notarization.

(6) The notary public shall not record by audio or visual means a notarial act performed using a remote electronic notarization platform, unless the notary public discloses to the person that requested the notarial act that an audio or visual recording is being made and how the recording will be preserved, and the person consents or has previously consented to the recording. A notary public may refuse to conduct a notarial act using a remote electronic notarization platform if the person that requested the notarial act objects to an audio or visual recording of the notarial act.

(7) If a notary public performs notarial acts using a remote electronic notarization platform, the notary public shall maintain a journal that records, at a minimum, each of those notarial acts. A notary public shall maintain only 1 journal for the recording of notarial acts and must keep the journal either as a tangible, permanent bound register or in a tamper-evident, permanent electronic format. A notary public shall retain the journal for at least 10 years after the performance of the last notarial act recorded in it. If a notary public is not reappointed, or his or her commission is

revoked, the former notary public shall inform the secretary of state where the journal is kept or, if directed by the secretary, shall forward the journal to the secretary or a repository designated by the secretary.

(8) A notary public shall make an entry in a journal maintained under subsection (7) contemporaneously with performance of the notarial act, and the entry must include, at a minimum, all of the following:

- (a) The date, time, and nature of the notarial act.
- (b) A description of the record, if any.
- (c) The full name and address of each individual for whom the notarial act is performed.

(d) If the identity of the individual for whom the notarial act is performed is based on personal knowledge, a statement to that effect. If the identity of the individual for whom the notarial act is performed is based on satisfactory evidence, a brief description of the method of identification and the identification credential presented, if any, including the date of issuance and expiration for the credential.

- (e) The fee charged, if any, by the notary public.

(9) An entry made in a journal maintained by a notary public under subsection (7) must also reference, but shall not itself contain, any audio or visual recording of a notarial act performed using a remote electronic notarization platform. Subject to subsection (1), a notary public must retain an audio or visual recording of a notarial act for at least 10 years after the performance of the notarial act.

(10) A notary public may designate a custodian to do any of the following:

- (a) Maintain the journal required under subsection (7) on his or her behalf.
- (b) Retain an audio or visual recording of a notarial act under subsection (9) on his or her behalf. If an audio or visual recording of a notarial act is transferred to a custodian to hold on behalf of the notary public, the journal entry must identify the custodian with sufficient information to locate and contact that custodian.

(11) A notarial act performed using a remote electronic notarization platform under this section that otherwise satisfies the requirements of this act is presumed to satisfy any requirement under this act that a notarial act be performed in the presence of a notary public.

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

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

- (a) The name of the notary public exactly as it appears on his or her application for commission as a notary public.
- (b) The statement: "Notary public, State of Michigan, County of \_\_\_\_\_."
- (c) The statement: "My commission expires \_\_\_\_\_."
- (d) If performing a notarial act in a county other than the county of commission, the statement: "Acting in the County of \_\_\_\_\_."
- (e) The date the notarial act was performed.
- (f) If applicable, whether the notarial act was performed using an electronic notarization system under section 26a or performed using a remote electronic notarization platform under section 26b.

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

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

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

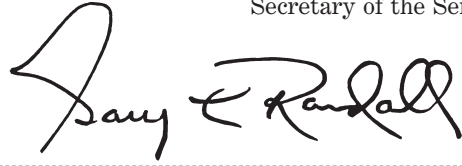
Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 99th Legislature are enacted into law:

- (a) Senate Bill No. 996.
- (b) Senate Bill No. 997.
- (c) Senate Bill No. 998.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved .....

.....  
Governor