

**SUBSTITUTE FOR
HOUSE BILL NO. 6297**

A bill to amend 2003 PA 238, entitled
"Michigan law on notarial acts,"
by amending sections 3, 9, 26, and 26b (MCL 55.263, 55.269, 55.286,
and 55.286b), sections 3 and 26b as amended by 2018 PA 360, section
26 as added by 2018 PA 360, and by adding sections 26c and 26d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. As used in this act:

2 (a) "Acknowledgment" means a declaration by an individual in
3 the presence of a notary public that he or she has signed a record
4 for the purposes stated in the record and, if the record is signed
5 in a representative capacity, that he or she signed the record with
6 the proper authority and signed it as the act of the person
7 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) "Credential analysis" means a process or service by which
5 a third party affirms the validity of an identity document
6 described in section 25(6)(c) through a review of public and
7 proprietary data sources conducted remotely.

8 (d) "Department" means the department of state.

9 (e) "Electronic" means relating to technology that has
10 electrical, digital, magnetic, wireless, optical, electromagnetic,
11 or similar capabilities.

12 (f) "Electronic notarization system" means a set or system of
13 applications, programs, hardware, software, or technologies
14 designed to enable a notary public to perform electronic
15 notarizations.

16 (g) "Electronic signature" means an electronic sound, symbol,
17 or process attached to or logically associated with a record and
18 executed or adopted by an individual with the intent to sign the
19 record.

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

25 (i) "Information" includes data, text, images, sounds, codes,
26 computer programs, software, and databases.

27 (j) "In a representative capacity" means any of the following:

28 (i) For and on behalf of a corporation, limited liability
29 company, partnership, trust, association, or other legal entity as



1 an authorized officer, manager, agent, partner, trustee, or other
2 representative of the entity.

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

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

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

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

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

12 (ii) Interacting with another individual by means of audio and
13 visual communication technology that is part of a remote electronic
14 notarization platform approved under section 26b **or 2-way real-time**
15 **audiovisual technology that meets the requirements under section**
16 **26c.**

17 Sec. 9. (1) The secretary may appoint as a notary public a
18 person who complies with the requirements of this act.

19 (2) ~~A-Except as otherwise provided in subsection (4),~~ a notary
20 public may reside in, move to, and perform notarial acts anywhere
21 in this state from the date of appointment until the notary's
22 birthday occurring not less than 6 years and not more than 7 years
23 after the date of his or her appointment unless the appointment is
24 canceled, suspended, or revoked by the secretary or by operation of
25 law.

26 (3) The secretary shall not appoint as a notary public a
27 person who is serving a term of imprisonment in a state
28 correctional facility or jail in this or any other state or in a
29 federal correctional facility.



1 (4) A notary public's commission under subsection (2) that
 2 expired after March 1, 2020 and before December 31, 2020 is valid
 3 through December 31, 2020.

4 Sec. 26. (1) ~~A-Except as otherwise provided in section 26c, a~~
 5 notary public may select 1 or more tamper-evident electronic
 6 notarization systems to perform notarial acts electronically. A
 7 person may not require a notary public to perform a notarial act
 8 electronically with an electronic notarization system that the
 9 notary public has not selected.

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

22 Sec. 26b. (1) By March 30, 2019, the secretary and the
 23 department of technology, management, and budget shall review and
 24 may approve remote electronic notarization platforms for the
 25 performance of notarial acts in this state. ~~A-Except as otherwise~~
 26 **provided in section 26c, a** notary public shall not use a remote
 27 electronic notarization platform that is not approved under this
 28 section.

29 (2) Subject to subsection (3), in developing criteria for the



1 approval of any remote electronic notarization platform for use in
2 this state, the secretary of state and the department of
3 technology, management, and budget shall consider, at a minimum,
4 all of the following:

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

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

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

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

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

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

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



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

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

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

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

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

27 (7) If a notary public performs notarial acts using a remote
28 electronic notarization platform, the notary public shall maintain
29 a journal that records, at a minimum, each of those notarial acts.



1 A notary public shall maintain only 1 journal for the recording of
2 notarial acts and must keep the journal either as a tangible,
3 permanent bound register or in a tamper-evident, permanent
4 electronic format. A notary public shall retain the journal for at
5 least 10 years after the performance of the last notarial act
6 recorded in it. If a notary public is not reappointed, or his or
7 her commission is revoked, the former notary public shall inform
8 the secretary of state where the journal is kept or, if directed by
9 the secretary, shall forward the journal to the secretary or a
10 repository designated by the secretary.

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

15 (a) The date, time, and nature of the notarial act.

16 (b) A description of the record, if any.

17 (c) The full name and address of each individual for whom the
18 notarial act is performed.

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

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

27 (9) An entry made in a journal maintained by a notary public
28 under subsection (7) must also reference, but shall not itself
29 contain, any audio or visual recording of a notarial act performed



1 using a remote electronic notarization platform. Subject to
2 subsection (1), a notary public must retain an audio or visual
3 recording of a notarial act for at least 10 years after the
4 performance of the notarial act.

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

7 (a) Maintain the journal required under subsection (7) on his
8 or her behalf.

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

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

20 **Sec. 26c. (1) Notwithstanding any other provision of this act,**
21 **a notary public may utilize a 2-way real-time audiovisual**
22 **technology to perform notarial acts electronically if all of the**
23 **following requirements are met:**

24 (a) **The 2-way real-time audiovisual technology allows direct**
25 **interaction between the individual seeking the notary's services,**
26 **any witnesses, and the notary, so that each can communicate**
27 **simultaneously by sight and sound through an electronic device or**
28 **process at the time of the notarization.**

29 (b) **The 2-way real-time audiovisual technology is capable of**



1 creating an audio and visual recording of the complete notarial act
2 and the recording is made and retained as a notarial record in
3 accordance with section 26b(7) to (9).

4 (c) The individual seeking the notary's services and any
5 required witnesses, if not personally known to the notary, presents
6 satisfactory evidence of identity to the notary during the video
7 conference, and does not merely transmit it before or after the
8 transaction, to satisfy the requirements of this act and any other
9 applicable law.

10 (d) Subject to subdivision (e), the individual seeking the
11 notary's services affirmatively represents that the individual is
12 physically situated in this state or is physically located outside
13 the geographic boundaries of this state and that 1 of the following
14 applies:

15 (i) The record is intended for filing with or relates to a
16 matter before a court, governmental entity, public official, or
17 other entity subject to the jurisdiction of this state.

18 (ii) The record involves property located in the territorial
19 jurisdiction of this state or a transaction substantially connected
20 to this state.

21 (e) If an individual is physically located outside of the
22 geographic boundaries of this state, the notary has no actual
23 knowledge that the individual's act of making the statement or
24 signing the record is prohibited by the laws of the jurisdiction in
25 which the individual is physically located.

26 (f) The individual seeking the notary's services, any required
27 witnesses, and the notary are able to affix their signatures to the
28 record in a manner that renders any subsequent change or
29 modification of the remote online notarial act to be tamper



1 evident.

2 (g) The individual seeking the notary's services or the
3 individual's designee transmits by facsimile, mail, or electronic
4 means a legible copy of the entire signed record directly to the
5 notary on the same date it was signed. This requirement applies
6 regardless of the manner in which the record is signed.

7 (h) Once the notary has received a legible copy of the record
8 with all necessary signatures, the notary notarizes the record in
9 accordance with section 27 and transmits the notarized record back
10 to the individual seeking the notary's services.

11 (2) The official date and time of the notarization performed
12 under this section is the date and time when the notary witnesses
13 the signature via 2-way real-time audiovisual technology as
14 required under this section.

15 (3) Notwithstanding any other law or regulation of this state,
16 beginning April 30, 2020, and before January 1, 2021, absent an
17 express prohibition in a record against signing the record in
18 counterparts, a record signed under this act may be signed in
19 counterparts.

20 (4) This section applies to a notarial act described in
21 subsection (1) performed on or after April 30, 2020 and before
22 January 1, 2021.

23 (5) If a record is notarized electronically under this
24 section, all of the following apply:

25 (a) The record does not need to be notarized under any other
26 provision of this act.

27 (b) The rights or interests of a person that relies in good
28 faith and without actual notice that the record was executed on or
29 after April 30, 2020 and before January 1, 2021 but was not



1 executed or notarized in accordance with this section are not
2 impaired, challenged, or terminated on that basis alone.

3 (c) Compliance with this section is presumed. A person
4 challenging a record notarized under this section may overcome the
5 presumption by establishing, by clear and convincing evidence, that
6 the notary or the individual seeking the notary public's services
7 intentionally failed to comply with a requirement described in this
8 section.

9 Sec. 26d. (1) Beginning April 30, 2020, it is the intent of
10 the legislature that, governmental agencies and officials of this
11 state are encouraged to use or permit the use of electronic records
12 and electronic signatures to transact business, process
13 applications, and recognize the validity of legal instruments, and,
14 when a notarized signature is required by a law of this state, to
15 use a notary public who performs notarial acts electronically under
16 this act.

17 (2) Beginning April 30, 2020, it is the intent of the
18 legislature that, any requirement under the law of this state that
19 an in-person witness attests to or acknowledges an instrument,
20 record, or deed is satisfied by the use of 2-way real-time
21 audiovisual technology in accordance with section 26c.

22 (3) Beginning April 30, 2020, it is the intent of the
23 legislature that, any requirement that an individual appears
24 personally before or be in the presence of either a notary public
25 at the time of a notarization or a witness at the time of an
26 attestation or acknowledgment is satisfied if the individual, the
27 witnesses, or the notary public are not in the physical presence of
28 each other but can communicate simultaneously by 2-way real-time
29 audiovisual technology in accordance with section 26c at the time



1 of the notarization, attestation, or acknowledgment.

2 (4) This section does not apply after December 31, 2020.

