

MICHIGAN NOTARY PUBLIC ACT (EXCERPT)
Act 238 of 2003

***** 55.286b.added THIS ADDED SECTION IS EFFECTIVE SEPTEMBER 30, 2018 *****

55.286b.added Remote electronic notarization platforms; requirements; approval; review standards; recording limitations; journal; requirements; custodian; definitions.

Sec. 26b. (1) Beginning 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.

(12) As used in this section:

(a) "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.

(b) "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.

(c) "Remote electronic notarization platform" means any combination of technology that enables a notary 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.

History: Add. 2018, Act 330, Eff. Sept. 30, 2018.