

ELECTRONIC NOTARIZATION SYSTEMS

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Senate Bill 664 as enacted
Public Act 360 of 2018

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 997 as enacted
Public Act 362 of 2018

Senate Bill 996 as enacted
Public Act 361 of 2018
Sponsor: Sen. Wayne Schmidt

Senate Bill 998 as enacted
Public Act 363 of 2018

Senate Bill 999 as enacted
Public Act 364 of 2018
Sponsor: Sen. Curtis Hertel

Sponsor: Sen. Peter MacGregor

House Committee: Financial Services
Senate Committee: Banking and Financial Institutions

Complete to 1-3-19

BRIEF SUMMARY:

Taken together, the bills do all of the following:

- Rename the Michigan Notary Public Act the “Michigan Law on Notarial Acts.”
- Add a section to the Michigan Law on Notarial Acts to govern the recognition of notarial acts performed in a jurisdiction outside of Michigan.
- Repeal the Uniform Recognition of Acknowledgments Act, which governed the recognition in this state of notarial acts performed outside this state.
- Require the Secretary of State and the Department of Technology, Management, and Budget to review and approve at least one system for performing electronic notarizations in this state.
- Allow a notary public to perform notarial acts electronically using a tamper-evident electronic notarization system approved or allowed by the SOS.

The bills take effect March 12, 2019.

BRIEF DISCUSSION:

Electronic notarizations are similar to traditional notarizations inasmuch as the signer appears before the notary, except in an electronic notarization the document being notarized is digital and the notary uses an electronic signature. Electronic notarization differs from remote notarization. In a remote notarization, the signer is not in the notary’s physical presence at the time of the notarization but is communicating with the notary via webcam and internet audio technology. (Remote notarization is often called “webcam” notarization.)

Senate Bills 664 and 997 through 999, enacted as Public Acts 360 to 364 of 2018, address electronic notarizations. A related bill, House Bill 5811, enacted as Public Act 330 of 2018, addresses remote notarizations.

DETAILED SUMMARY:

Senate Bill 664 amends the Michigan Notary Public Act to require the Secretary of State (SOS) and the Department of Technology, Management, and Budget (DTMB) to review and approve, by March 30, 2019, at least one *electronic notarization system* for the performance of electronic notarizations in the state. The SOS and DTMB may approve more than one electronic notarization system and may grant approval of additional systems on an ongoing basis.

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.

In developing criteria for the approval of any electronic notarization system for use in this state, the SOS and DTMB must consider at least all of the following:

- The need to ensure that any change to or tampering with an electronic record containing the information required under the act is evident.
- The need to ensure integrity in the creation, transmittal, storage, or authentication of electronic notarizations, records, or signatures.
- The need to prevent fraud or mistake in the performance of electronic notarizations.
- The ability to adequately investigate and authenticate a notarial act performed electronically with the electronic notarization system.
- The most recent standards regarding electronic notarizations or records promulgated by national bodies, including at least the National Association of Secretaries of State.
- The standards, practices, and customs of other jurisdictions that allow electronic notarial acts.

If an electronic notarization system is approved or certified by a government-sponsored enterprise as defined in 2 USC 622(8),¹ and verifiable proof of that approval or certification is provided to the SOS and DTMB, the SOS and DTMB must approve the platform for use in this state unless the SOS affirmatively disallows use of the platform.

At least every four years, the SOS and DTMB must review their criteria for approving electronic notarization systems and whether currently approved electronic notarization systems remain sufficient for the electronic performance of notarial acts.

A notary public may select one or more tamper-evident electronic notarization systems to perform notarial acts electronically. Before doing so, the notary public must notify the SOS regarding which electronic notarization system he or she intends to use for performing electronic notarizations. The SOS may disallow the use of a system that does not meet the criteria for SOS/DTMB approval described above. If the SOS and DTMB have already approved one or more electronic notarization systems, the notary public must choose a system to use from among those approved systems.

¹ The Federal National Mortgage Association (FNMA, commonly known as Fannie Mae) and the Federal Home Loan Mortgage Corporation (FHLMC, commonly known as Freddie Mac) are examples of *government-sponsored enterprises* as defined in 2 USC 622(8).

The bill allows the SOS to develop and implement an electronic application and payment process for individuals seeking appointment as a notary public.

The bill amends the definition of “in the presence of,” as used in the act, to mean either of the following:

- In the same physical location with and close enough to see, hear, communicate with, and exchange tangible identification credentials with another individual.
- 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 of the act.²

Finally, the bill adds or amends several other definitions of terms used in the act. Many of these definitional amendments account for changes made by this bill or others in the package. In some cases, when a term is defined in the act with reference to a definition contained in another act or federal law, the bill replaces the reference with the actual language of the definition from the other act.

MCL 55.263 et al.

Senate Bill 996 amends the Michigan Notary Public Act to change the act’s title to the “Michigan Law on Notarial Acts.”

The bill also adds section 25a to the act to specify the conditions under which a notarial act performed in another state, in the jurisdiction of a federally recognized Indian tribe, under federal law, or under the authority and in the jurisdiction of a foreign country has the same effect in Michigan as a notarial act performed by a Michigan notary public. In general, if the individual performing the notarial act is authorized in the other jurisdiction to do so, the notarial act is recognized in Michigan and has the same effect under law as if performed here by a notarial officer of this state. The bill prescribes, for each different jurisdictional area, standards for establishing whether the individual performing the notarial act in the other jurisdiction has the authority to do so.

MCL 55.261 and 55.271; proposed MCL 55.285a

Senate Bill 998 repeals the Uniform Recognition of Acknowledgments Act. That act governs the recognition in this state of notarial acts performed outside of this state and is superseded by the new section 25a added by Senate Bill 996.

MCL 565.261 through 565.270 (repealed)

Senate Bill 997 revises a citation in the Revised Judicature Act to refer to section 25a of the Michigan Law on Notarial Acts rather than to the Uniform Recognition of Acknowledgments Act.

MCL 600.2102

² Section 26b was added to the act by Public Act 330 of 2018. See <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-5811-ECCE8E4A.pdf>

Senate Bill 999 amends the Uniform Real Property Electronic Recording Act to require that a county register of deeds accept electronic documents for recording only from a person with which the register of deeds has entered into an agreement establishing a verified transactional relationship. [The bill does not define “verified transactional relationship.”]

The bill also requires the Electronic Recording Commission to adopt standards that address the acceptance and use of electronic notarization of documents submitted to a county register of deeds for recording.

MCL 565.844 and 565.845

HOUSE COMMITTEE ACTION:

The House Committee on Financial Services reported an H-2 substitute for Senate Bill 664. The substitute generally updated the bill’s amendments to the Michigan Notary Public Act to reflect the passage of Public Act 330 of 2018.³ The substitute also added definitions for the terms *credential analysis*, *identity proofing*, and *remote electronic notarization platform*; amended the definition of *in the presence of*; and required the Secretary of State to implement an electronic application and payment process for individuals seeking appointment as a notary public.

FISCAL IMPACT:

Senate Bill 664 would create marginal administrative costs for the Department of State (DOS) related to reviewing and approving electronic notarization systems in partnership with the Department of Technology, Management, and Budget. There would also be potential IT costs related to developing and implementing an electronic application and payment process for individuals seeking appointment as a notary public if the department chose to develop that system. Any additional costs from the bill would likely be supported through existing appropriations to DOS.

Senate Bills 996, 997, 998, and 999 would have no fiscal impact on the state or local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

³ See <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-5811-ECCE8E4A.pdf>