

NEW NOTARY PUBLIC REQUIREMENTS: EDUCATION, EXAM, AND RECORD-KEEPING

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House Bill 4374 as introduced
Sponsor: Rep. Michael Webber
Committee: Judiciary
Complete to 4-24-17

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

SUMMARY:

House Bill 4374 would amend the Michigan Notary Public Act by adding new requirements for the appointment or reappointment of a Notary Public. The new requirements include the completion of an education program as well as passing an exam before being appointed or reappointed by the Secretary of State. The bill would also impose the requirement that a notary public keep, maintain, and protect an official journal of every notarial act performed.

[According to the Secretary of State's website: "A notary public is an officer commissioned by the Michigan Secretary of State to serve as an unbiased and impartial witness. The most common function of the notary is to prevent fraud by attesting to the identity of a person signing a document. Notarization on a document certifies that the person whose signature is entered on the document personally appeared before the notary, established his or her identity, and personally signed the document in the presence of the notary."]¹

Education and Exam

Currently under the law, there is no requirement to complete specific education program or pass an exam to become a notary public. HB 4374 would create Section 12, giving the Secretary of State the task of developing or approving an education program, which would have to:

- Contain at least four hours of instruction.
- Address topics that the Secretary considers relevant to the duties and responsibilities of a notary public.
- Be provided by the Department of State or by the National Notary Association, or another person approved by the Secretary.

For purposes of Sections 11 and 19, the bill would also make the Secretary of State responsible for developing and providing the administration of an exam. Before taking the exam, an individual wishing to be appointed or reappointed as a notary public must first show proof that of successfully completion of the education program.

Current Qualifications for Appointment

The current qualifications for an individual to be appointed or reappointed are described in Section 11 of the act and require an individual to:

¹ <http://www.michigan.gov/sos/0,4670,7-127-1638---,00.html>

- Be at least 18 years of age.
- Be a resident of this state or maintain a principal place of business in this state;
- Read and write in the English language.
- Have not been convicted of a felony as defined in Section 41(5) or a specified misdemeanor as defined in Section 41(2).
- Demonstrate, for an individual who does not reside in the state of Michigan, that his or her principal place of business is located in the county in which appointment is requested and indicate that he or she is engaged in an activity in which a notarial act is likely to be required.
- If applicable, has filed with the county clerk of the county of residence or expected appointment, a surety bond and oath under Section 13, in a format acceptable to the Secretary. The requirement of filing a bond does not apply to an applicant who demonstrates licensure as an attorney at law in this state.

New Qualifications

As noted above, the bill would add the following two qualifications for an individual to be appointed or reappointed:

- Beginning January 1, 2018, submits proof acceptable to the SOS that of successful completion of an education program described in Section 12 before submitting the application.
- Beginning January 1, 2018, passes the examination described in Section 12.

Reappointment Requirements

Notary public appointments are good for six or seven years and then reappointment is necessary. There is no renewal process, so notaries must re-apply (although the Secretary will automatically send reappointment applications to licensed attorneys). The bill would create new reappointment qualifications similar to those for initial appointment. Beginning January 1, 2018, the Secretary would not be allowed to reappoint a notary public unless the individual does both of the following:

- Submits proof acceptable to the Secretary of successfully completing an education program described in Section 12 before submitting the application for reappointment. However, this subdivision would not apply to an applicant who previously completed an education program described in Section 12 and submitted proof of completion of the education program in connection with a previous application for appointment or reappointment
- Passes the examination described in Section 12.

New Record-Keeping Requirements

HB 4374 would also amend Section 25 by requiring a notary public to keep, maintain, and protect, under his or her exclusive control, a chronological paper or electronic official journal of every notarial act performed. This journal would have to contain the following entries for each notarial act:

- The date and time of the notarial act.
- The type of notarial act.
- The type, title, or description and date of every record notarized.

- The name, address, signature, and, in the case of real estate records, the right thumbprint of each individual whose signature is notarized.
- A description of the satisfactory evidence relied upon to identify each individual whose signature is notarized, including one or more of the following:
 - A statement that the individual is "personally known" to the notary;
 - A notation of the type of identification document, its issuing agency, its serial or identification number, and its date of issuance or expiration; or
 - The name, address, and signature of any credible witness.
 - The fee, if any, charged for the notarial act.

The bill also replaces "person" with "individual" throughout the act.

MCL 55.271 et al

FISCAL IMPACT:

This bill would have a negative fiscal impact on the Department of State. Potential cost estimates of the bill's requirements are not yet determined but will vary widely depending how the requirements are implemented.

There are approximately 117,000 registered notaries in the state with roughly 19,500 applying for a new notary commission each year. The bill states that the required training program "may be provided by the department or by the National Notary Association (NNA) or another person approved by the secretary." The department currently offers free notary education classroom training in Lansing for those interested in attending as well as provides approximately \$50,000 in notary education grants to counties each year. It is not yet known whether, or how much, additional resources would be required to accommodate all new applicants' training if the department provides it. The cost to develop and administer an applicant exam is also not yet determined.

If the NNA, or any other "person approved by the secretary" provided the training, the cost to the department would be significantly less and likely limited to administrative costs of evaluating and approving the third-party training. NNA currently offers online notary training for \$59; however, this does not satisfy any state training requirements.

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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.