

HOUSE BILL NO. 4542

March 18, 2021, Introduced by Rep. Tisdell and referred to the Committee on Judiciary.

A bill to amend 2003 PA 238, entitled "Michigan law on notarial acts," by amending sections 11, 19, and 25 (MCL 55.271, 55.279, and 55.285), section 11 as amended by 2018 PA 361, section 19 as amended by 2006 PA 510, and section 25 as amended by 2018 PA 330, and by adding section 12.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 11. (1) The secretary may appoint as a notary public an
2 individual who applies to the secretary and meets all of the

1 following qualifications:

2 (a) Is at least 18 years of age.

3 (b) Is a resident of this state or maintains a principal place
4 of business in this state.

5 (c) Reads and writes in the English language.

6 (d) Has not been convicted of a felony ~~, misdemeanor, or~~
7 ~~violation described in section 41.~~ **as defined in section 41(5) or a**
8 **specified misdemeanor as defined in section 41(2).**

9 (e) For an applicant who does not reside in ~~the~~ **this** state, ~~of~~
10 ~~Michigan,~~ demonstrates that his or her principal place of business
11 is located in the county in which he or she requests appointment
12 and indicates that he or she is engaged in an activity in
13 connection with that business in which he or she is likely to be
14 required to perform **a notarial acts-act.**

15 (f) If applicable, has filed with the county clerk of his or
16 her county of residence or expected appointment a surety bond and
17 an oath under section 13, in a format acceptable to the secretary.
18 The requirement of filing a bond does not apply to an applicant
19 that demonstrates, in a manner acceptable to the secretary,
20 licensure as an attorney at law in this state.

21 **(g) Beginning January 1, 2022, submits proof acceptable to the**
22 **secretary that he or she successfully completed an education**
23 **program described in section 12 before submitting his or her**
24 **application.**

25 **(h) Beginning January 1, 2022, passes the examination**
26 **described in section 12.**

27 (2) The secretary shall, on a monthly basis, notify the county
28 clerk's office of the appointment of any notaries in that county.

29 **Sec. 12. (1) Before January 1, 2022, the secretary shall**

1 develop or approve an education program for purposes of sections 11
2 and 19. All of the following apply to the education program:

3 (a) The program must consist of at least 4 hours of
4 instruction.

5 (b) The program must address topics that the secretary
6 considers relevant to the duties and responsibilities of a notary
7 public.

8 (c) The program may be provided by the department or by
9 another person approved by the secretary.

10 (2) Before January 1, 2022, for purposes of sections 11 and
11 19, the secretary shall develop and provide for the administration
12 of an examination of applicants for appointment or reappointment.
13 Before he or she is permitted to take the examination, an applicant
14 for appointment or reappointment must show proof that he or she
15 successfully completed the education program described in
16 subsection (1), either before his or her initial appointment or
17 before his or her first reappointment after December 31, 2021.

18 Sec. 19. (1) The secretary shall not automatically reappoint a
19 notary public **when his or her current commission as a notary public**
20 **expires.**

21 (2) ~~A person desiring~~ **An individual who is seeking** another
22 notary public appointment may apply to the secretary, in a format
23 prescribed by the secretary, for an original appointment as a
24 notary public. ~~The application may be submitted~~ **individual shall**
25 **submit the application** not more than 60 days before the expiration
26 of his or her current notary public commission.

27 (3) ~~In the case of~~ **If** a licensed attorney **is** granted an
28 appointment as a notary public under this act, ~~and after the~~
29 ~~initial application under section 15,~~ the secretary shall send a

1 reappointment application form to the licensed attorney at least 90
2 days before the expiration of ~~the~~**his or her** current notary
3 appointment. The application for reappointment ~~shall~~**must** contain a
4 certification to be completed by the applicant certifying that he
5 or she is still a member in good standing in the ~~state bar~~**State**
6 **Bar** of Michigan. The applicant shall otherwise comply with the
7 requirements for appointment as a notary public as described in
8 section 15.

9 (4) The secretary shall automatically cancel the notary public
10 commission of any ~~person~~**individual** who makes, draws, utters, or
11 delivers any check, draft, or order for the payment of a processing
12 fee under this act that is not honored by the bank, financial
13 institution, or other depository expected to pay the check, draft,
14 or order for payment ~~upon~~**on** its first presentation.

15 (5) **Beginning January 1, 2022, the secretary shall not**
16 **reappoint a notary public under this section unless he or meets**
17 **both of the following:**

18 (a) **Submits proof acceptable to the secretary that he or she**
19 **successfully completed an education program described in section 12**
20 **before submitting his or her application for reappointment. This**
21 **subdivision does not apply to an applicant who previously completed**
22 **an education program described in section 12 and submitted proof of**
23 **completion of the education program in connection with a previous**
24 **application for appointment or reappointment.**

25 (b) **Passes the examination described in section 12.**

26 Sec. 25. (1) A notary public may perform notarial acts that
27 include, but are not limited to, the following:

28 (a) Taking acknowledgments.

29 (b) Administering oaths and affirmations.

1 (c) Witnessing or attesting to a signature.

2 (2) In taking an acknowledgment, the notary public shall
3 determine, either from personal knowledge or from satisfactory
4 evidence, that the individual in the presence of the notary public
5 and making the acknowledgment is the individual whose signature is
6 on the record.

7 (3) In taking a verification upon oath or affirmation, the
8 notary public shall determine, either from personal knowledge or
9 from satisfactory evidence, that the individual in the presence of
10 the notary public and making the verification is the individual
11 whose signature is on the record being verified.

12 (4) In witnessing or attesting to a signature, the notary
13 public shall determine, either from personal knowledge or from
14 satisfactory evidence, that the signature is that of the individual
15 in the presence of the notary public and is the individual named in
16 the record.

17 (5) In all matters where the notary public takes a
18 verification upon oath or affirmation, or witnesses or attests to a
19 signature, the notary public shall require that the individual sign
20 the record being verified, witnessed, or attested in the presence
21 of the notary public.

22 (6) A notary public has satisfactory evidence that an
23 individual is the individual whose signature is on a record if that
24 individual is any of the following:

25 (a) Personally known to the notary public.

26 (b) Identified upon the oath or affirmation of a credible
27 witness personally known by the notary public and who personally
28 knows the individual.

29 (c) Identified on the basis of a current license,

1 identification card, or record issued by a federal or state
2 government that contains the individual's photograph and signature.

3 (d) With regard to a notarial act performed under section 26b,
4 identified and verified through an identity proofing process or
5 service that is part of a remote electronic notarization platform
6 approved under section 26b(1), and the ~~person~~**individual** presents
7 an identity document described in subdivision (c) that is verified
8 through a credential analysis process or service that is part of a
9 remote electronic notarization platform approved under section
10 26b(1).

11 (7) The fee charged by a notary public for performing a
12 notarial act ~~shall~~**must** not be more than \$10.00 for any individual
13 transaction or notarial act. A notary public shall either
14 conspicuously display a sign or expressly advise an individual
15 concerning the fee amount to be charged for a notarial act before
16 the notary public performs the act. Before the notary public
17 commences to travel ~~in order~~ to perform a notarial act, the notary
18 public and client may agree concerning a separate travel fee to be
19 charged by the notary public for traveling to perform the notarial
20 act.

21 (8) A notary public may refuse to perform a notarial act.

22 (9) The secretary shall prescribe the form that a notary
23 public shall use for a jurat, the taking of an acknowledgment, the
24 administering of an oath or affirmation, the taking of a
25 verification upon an oath or affirmation, the witnessing or
26 attesting to a signature, or any other act that a notary public is
27 authorized to perform in this state.

28 (10) **A notary public shall keep, maintain, and protect, under**
29 **his or her exclusive control, a chronological paper or electronic**

1 official journal of every notarial act performed by him or her. The
2 journal must contain the following entries for each notarial act:

3 (a) The date and time of the notarial act.

4 (b) The type of notarial act.

5 (c) The type, title, or description and date of every record
6 notarized.

7 (d) The name, address, and signature of each individual whose
8 signature is notarized.

9 (e) A description of the satisfactory evidence relied upon to
10 identify each individual whose signature is notarized, including 1
11 or more of the following:

12 (i) A statement that the individual is "personally known" to
13 the notary.

14 (ii) A notation of the type of identification document, its
15 issuing agency, and its date of issuance or expiration.

16 (iii) The name, address, and signature of any credible witness.

17 (f) The fee, if any, charged for the notarial act.

18 (11) ~~(10)~~—A county clerk may collect a processing fee of
19 \$10.00 for certifying a notarial act of a notary public.

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