

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4938**

A bill to provide for the qualification, appointment, and regulation of notaries; to provide for the levy, assessment, and collection of certain service charges and fees and to provide for their disposition; to create certain funds for certain purposes; to provide for liability for certain persons; to provide for the admissibility of certain evidence; to prescribe powers and duties of certain state agencies and local officers; to provide for remedies and penalties; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan notary public act".

3 Sec. 3. As used in this act:

4 (a) "Acknowledgment" means the confirmation by a person in
5 the presence of a notary public that he or she is placing or has
6 placed his or her signature on a record for the purposes stated

1 in the record and, if the record is signed in a representative
2 capacity, that he or she is placing or has placed his or her
3 signature on the record with the proper authority and in the
4 capacity of the person represented and identified in the record.

5 (b) "Cancellation" means the nullification of a notary public
6 commission due to an error or defect or because the notary public
7 is no longer entitled to the commission.

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

9 (d) "Electronic" means that term as defined in the uniform
10 electronic transactions act, 2000 PA 305, MCL 450.831 to
11 450.849.

12 (e) "Electronic signature in global and national commerce
13 act" means Public Law 106-229, 114 Stat. 464.

14 (f) "Information" means that term as defined in the
15 electronic signature in global and national commerce act.

16 (g) "In a representative capacity" means any of the
17 following:

18 (i) For and on behalf of a corporation, partnership, trust,
19 association, or other legal entity as an authorized officer,
20 agent, partner, trustee, or other representative of the entity.

21 (ii) As a public officer, personal representative, guardian,
22 or other representative in the capacity recited in the document.

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

24 (iv) In any other capacity as an authorized representative of
25 another person.

26 (h) "In the presence of" means in compliance with section
27 101(g) of title I of the electronic signature in global and

1 national commerce act, 15 USC 7001.

2 Sec. 5. As used in this act:

3 (a) "Jurat" means a certification by a notary public that a
4 signer, whose identity is personally known to the notary public
5 or proven on the basis of satisfactory evidence, has made in the
6 presence of the notary public a voluntary signature and taken an
7 oath or affirmation vouching for the truthfulness of the signed
8 record.

9 (b) "Notarial act" means any act that a notary public
10 commissioned in this state is authorized to perform including,
11 but not limited to, the taking of an acknowledgment, the
12 administration of an oath or affirmation, the taking of a
13 verification upon oath or affirmation, and the witnessing or
14 attesting a signature performed in compliance with this act and
15 the uniform recognition of acknowledgments act, 1969 PA 57, MCL
16 565.261 to 565.270.

17 (c) "Notify" means to communicate or send a message by a
18 recognized mail, delivery service, or electronic means.

19 (d) "Official misconduct" means either or both of the
20 following:

21 (i) The exercise of power or the performance of a duty that
22 is unauthorized, unlawful, abusive, negligent, reckless, or
23 injurious.

24 (ii) The charging of a fee that exceeds the maximum amount
25 authorized by law.

26 (e) "Person" means every natural person, corporation,
27 partnership, trust, association, or other legal entity and its

1 legal successors.

2 (f) "Record" means that term as defined in the uniform
3 electronic transactions act, 2000 PA 305, MCL 450.831 to
4 450.849.

5 (g) "Revocation" means the termination of a notary public's
6 commission.

7 Sec. 7. As used in this act:

8 (a) "Secretary" means the secretary of state acting directly
9 or through his or her duly authorized deputies, assistants, and
10 employees.

11 (b) "Signature" means a person's written or printed name or
12 electronic signature as that term is defined in the uniform
13 electronic transactions act, 2000 PA 305, MCL 450.831 to 450.849,
14 or the person's mark attached to or logically associated with a
15 record including, but not limited to, a contract and executed or
16 adopted by the person with the intent to sign the record.

17 (c) "Suspension" means the temporary withdrawal of the
18 notary's commission to perform notarial acts during the period of
19 the suspension.

20 (d) "Verification upon oath or affirmation" means the
21 declaration by oath or affirmation that a statement is true.

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

24 (2) A notary public may reside in, move to, and perform
25 notarial acts anywhere in this state from the date of appointment
26 until the notary's birthday occurring not less than 6 years and
27 not more than 7 years after the date of his or her appointment

1 unless the appointment is canceled, suspended, or revoked by the
2 secretary or by operation of law.

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

7 Sec. 11. (1) The secretary may appoint as a notary public a
8 person who applies to the secretary and meets all of the
9 following qualifications:

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

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

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

14 (d) Is free of any felony convictions, misdemeanor
15 convictions, and violations as described in section 41.

16 (e) For a person who does not reside in the state of
17 Michigan, demonstrates that his or her principal place of
18 business is located in the county in which he or she requests
19 appointment and indicates that he or she is engaged in an
20 activity in which he or she is likely to be required to perform
21 notarial acts as that word is defined in section 2 of the uniform
22 recognition of acknowledgments act, 1969 PA 57, MCL 565.262.

23 (f) Has filed with the county clerk of his or her county of
24 residence or expected appointment a proper surety bond and has
25 taken the oath as prescribed by the constitution.

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

1 Sec. 13. (1) Within 90 days before filing an application
2 for a notary public appointment, a person shall file with the
3 county clerk of his or her residence or expected appointment a
4 proper surety bond and take the oath prescribed by the
5 constitution.

6 (2) The bond shall be in the sum of \$10,000.00 with good and
7 sufficient surety by a surety licensed to do business in this
8 state. The bond shall be conditioned upon indemnifying or
9 reimbursing a person, financing agency, or governmental agency
10 for monetary loss caused through the official misconduct of the
11 notary public in the performance of a notarial act. The surety
12 is required to indemnify or reimburse only after a judgment based
13 on official misconduct has been entered in a court of competent
14 jurisdiction against the notary public. The aggregate liability
15 of the surety shall not exceed the sum of the bond. The surety
16 on the bond may cancel the bond 60 days after the surety notifies
17 the notary, the secretary in a format prescribed by the
18 secretary, and the county clerk of the cancellation. The surety
19 is not liable for a breach of a condition occurring after the
20 effective date of the cancellation. The county clerk shall not
21 accept the personal assets of an applicant as security for a
22 surety bond under this act.

23 (3) Each person who files an oath and bond with a county
24 clerk as required in subsection (1) shall pay a \$10.00 filing fee
25 to the county clerk. Upon receipt of the filing fee, the county
26 clerk shall give a bond and oath certificate of filing to the
27 person as prescribed by the secretary. A charter county with a

1 population of more than 2,000,000 may impose by ordinance a fee
2 for the county clerk's services different than the amount
3 prescribed by this subsection. Two dollars of each fee collected
4 under this subsection shall be deposited into the notary
5 education and training fund established in section 17 on a
6 schedule determined by the secretary.

7 Sec. 15. (1) A person shall apply to the secretary for
8 appointment as a notary public in a format as prescribed by the
9 secretary. An application for appointment as a notary public
10 shall contain the signature of the applicant. In addition to
11 other information as may be required by the secretary, the
12 application shall include all of the following:

13 (a) The applicant's name, residence address, business
14 address, date of birth, and residence and business telephone
15 numbers.

16 (b) The applicant's driver license or state personal
17 identification card number.

18 (c) A copy of the bond and oath certificate of filing
19 received from the county clerk.

20 (d) If applicable, a statement showing whether the applicant
21 has previously applied for an appointment as a notary public in
22 this or any other state, the result of the application, and
23 whether the applicant has ever been the holder of a notary public
24 appointment that was revoked, suspended, or canceled in this or
25 any other state.

26 (e) A statement describing the date and circumstances of any
27 felony or other conviction of the applicant during the preceding

1 10 years.

2 (f) A declaration that the applicant is a citizen of the
3 United States or, if not a citizen of the United States, proof of
4 the applicant's legal presence in this country.

5 (g) An affirmation by the applicant that the application is
6 correct, that the applicant has read this act, and that the
7 applicant will perform his or her notarial acts faithfully.

8 (2) Each application shall be accompanied by an application
9 fee of \$10.00. One dollar of each fee collected under this
10 subsection shall be deposited into the notary education and
11 training fund established in section 17 on a schedule determined
12 by the secretary.

13 (3) Upon receipt of an application that is accompanied by
14 the prescribed service charge, the secretary may inquire as to
15 the qualifications of the applicant and shall determine whether
16 the applicant meets the qualifications prescribed in this act.
17 To assist in deciding whether the applicant is qualified, the
18 secretary may use the law enforcement information network as
19 provided in the L.E.I.N. policy council act of 1974, 1974 PA 163,
20 MCL 28.211 to 28.216, to check the criminal background of the
21 applicant.

22 (4) After approval of the application, the secretary shall
23 mail directly to the applicant the certificate of appointment as
24 a notary public. Each certificate of appointment shall identify
25 the person as a notary public of this state and shall specify the
26 term of the person's commission.

27 Sec. 17. (1) The notary education and training fund is

1 created within the state treasury. Money from fees collected
2 under sections 13(3), 15(2), and 21(4) shall be deposited into
3 the fund.

4 (2) The state treasurer may receive money or other assets
5 from any source for deposit into the fund. The state treasurer
6 shall direct the investment of the fund. The state treasurer
7 shall credit to the fund interest and earnings from fund
8 investments.

9 (3) Up to \$85,000.00 shall remain in the fund at the close of
10 each fiscal year and shall not lapse to the general fund. Any
11 amount in excess of \$85,000.00 shall lapse to the general fund.

12 (4) The secretary shall expend money from the fund in the
13 form of grants, upon appropriation, for the purposes of providing
14 education and training programs for county clerks and their
15 staffs including, but not limited to, notary responsibilities,
16 election worker training, and election processes. The secretary
17 shall consult with the president of the Michigan association of
18 county clerks, or his or her designee, when approving grant
19 applications under this section.

20 (5) The secretary shall annually file a report regarding the
21 balance of the fund at the time of the report and a detailed
22 account of the expenditures in the preceding fiscal year. This
23 report shall be sent to the speaker of the house of
24 representatives, the minority leader of the house of
25 representatives, the majority leader of the senate, and the
26 minority leader of the senate.

27 Sec. 19. (1) The secretary shall not automatically

1 reappoint a notary public.

2 (2) A person desiring another notary public appointment may
3 apply to the secretary, in a format prescribed by the secretary,
4 for an original appointment as a notary public. The application
5 may be made not more than 60 days before the expiration of his or
6 her current notary public commission.

7 (3) The secretary shall automatically cancel the notary
8 public commission of any person who makes, draws, utters, or
9 delivers any check, draft, or order for the payment of a service
10 charge under this act that is not honored by the bank, financial
11 institution, or other depository expected to pay the check,
12 draft, or order for payment upon its first presentation.

13 Sec. 21. (1) A notary public shall immediately apply to the
14 secretary, in a format prescribed by the secretary, for a
15 corrected notary public commission upon the occurrence of any of
16 the following circumstances:

17 (a) A change in the notary public's name.

18 (b) A change in the notary public's residence or business
19 address.

20 (c) The issuance by the secretary of a notary public
21 commission that contains an error in the person's name, birth
22 date, county, or other pertinent information if the error was
23 made on the notary public's application and was used by the
24 secretary to appoint the person as a notary public.

25 (2) A notary public shall immediately notify both the
26 secretary and the county clerk of his or her appointment, in a
27 format prescribed by the secretary, upon any change in the

1 factual information stated in the notary public's application for
2 appointment.

3 (3) The secretary shall notify the county clerk of the
4 applicant's appointment when a corrected commission is issued by
5 the secretary.

6 (4) If a notary public's certificate of appointment becomes
7 lost, mutilated, or illegible, the notary public shall promptly
8 apply to the secretary for the issuance of a duplicate
9 certificate. The application shall be made on a form prescribed
10 by the secretary and be accompanied by a fee of \$10.00. One
11 dollar of each fee collected under this subsection shall be
12 deposited into the notary education and training fund established
13 in section 17.

14 Sec. 23. Before a notary public performs any notarial act,
15 the notary public shall obtain and read a copy of all the current
16 statutes of this state that regulate notarial acts.

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

19 (a) Taking acknowledgments.

20 (b) Administering oaths and affirmations.

21 (c) Witnessing or attesting to a signature.

22 (2) In taking an acknowledgment, the notary public shall
23 determine, either from personal knowledge or from satisfactory
24 evidence, that the person in the presence of the notary public
25 and making the acknowledgment is the person whose signature is on
26 the record.

27 (3) In taking a verification upon oath or affirmation, the

1 notary public shall determine, either from personal knowledge or
2 from satisfactory evidence, that the person in the presence of
3 the notary public and making the verification is the person whose
4 signature is on the record being verified.

5 (4) In witnessing or attesting to a signature, the notary
6 public shall determine, either from personal knowledge or from
7 satisfactory evidence, that the signature is that of the person
8 in the presence of the notary public and is the person named in
9 the record.

10 (5) In all matters where the notary public takes a
11 verification upon oath or affirmation, or witnesses or attests to
12 a signature, the notary public shall require that the person sign
13 the record being verified, witnessed, or attested in the presence
14 of the notary public.

15 (6) A notary public has satisfactory evidence that a person
16 is the person whose signature is on a record if that person is
17 any of the following:

18 (a) Personally known to the notary public.

19 (b) Identified upon the oath or affirmation of a credible
20 witness personally known by the notary public and who personally
21 knows the person.

22 (c) Identified on the basis of a current license,
23 identification card, or record issued by a federal or state
24 government that contains the person's photograph and signature.

25 (7) The fee charged by a notary public for performing a
26 notarial act shall not be more than \$10.00 for any individual
27 transaction or notarial act. A notary public shall either

1 conspicuously display a sign or expressly advise a person
2 concerning the fee amount to be charged for a notarial act before
3 the notary public performs the act. Before the notary public
4 commences to travel in order to perform a notarial act, the
5 notary public and client may agree concerning a separate travel
6 fee to be charged by the notary public for traveling to perform
7 the notarial act.

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

9 (9) The secretary shall prescribe the form that a notary
10 public shall use for a jurat, the taking of an acknowledgment,
11 the administering of an oath or affirmation, the taking of a
12 verification upon an oath or affirmation, the witnessing or
13 attesting to a signature, or any other act that a notary public
14 is authorized to perform in this state.

15 (10) A county clerk may collect a service charge fee of
16 \$10.00 for certifying a notarial act of a notary public.

17 Sec. 27. (1) A notary public shall place his or her
18 signature on every record upon which he or she performs a
19 notarial act. The notary public shall sign his or her name
20 exactly as his or her name appears on his or her notary public
21 certificate of appointment received from the secretary.

22 (2) On each record that a notary public performs a notarial
23 act and immediately near the notary public's signature, as is
24 practical, the notary public shall print, type, stamp, or
25 otherwise imprint mechanically or electronically clearly and
26 legibly and in a manner capable of photographic reproduction all
27 of the following:

1 (a) The name of the notary public exactly as it appears on
2 his or her notary public certificate of appointment.

3 (b) The statement: "Notary public, State of Michigan, County
4 of _____."

5 (c) The statement: "My commission expires _____."

6 (d) The statement: "Acting in the County of _____."

7 (3) A notary public may use a stamp seal or electronic
8 process that contains, at a minimum, all of the information
9 required by subsection (2). However, the seal or process shall
10 not be used in a manner that renders anything illegible on the
11 record being notarized. An embosser alone or any other method
12 that cannot be reproduced shall not be used.

13 (4) The illegibility of the statements required in
14 subsection (2) does not affect the validity of the transaction or
15 record that was notarized.

16 Sec. 29. (1) A notary public may use a notary form set
17 forth in this section. A notary form set forth in this section
18 shall be known as a plain English notary form and may be referred
19 to by that name. A notary form set forth in this section that is
20 properly executed is considered sufficient to accomplish its
21 stated purpose under the law of this state. This section does
22 not prohibit the use of other notary forms.

23 (2) An affidavit or sworn statement may be substantially in
24 the following form:

25 SWORN STATEMENT OF MARY DOE

26 I, Mary Doe, (explanation of who Mary Doe is, followed by
27 statements of fact made by Mary Doe).

1 Signature of Mary Doe

2 Mary Doe

3 Signed and sworn to before me in _____ County, Michigan,

4 on _____, _____ (year).

5 Notary's Notary's

6 Stamp _____ Signature_____

7 (Notary's name, county, acting in

8 county, and date commission expires)

9 (3) An acknowledgment for an individual acting in his or her

10 own behalf may be substantially in the following form:

11 Acknowledged before me in _____ County, Michigan, on

12 _____, _____ (year) by Mary Doe.

13 Notary's Notary's

14 Stamp _____ Signature_____

15 (Notary's name, county, acting in

16 county, and date commission expires)

17 (4) An acknowledgment for a copartnership may be

18 substantially in the following form:

19 Acknowledged before me in _____ County, Michigan, on

20 _____, _____ (year) by Mary Doe, partner of X partnership,

21 a Michigan copartnership, for the copartnership.

22 Notary's Notary's

23 Stamp _____ Signature_____

24 (Notary's name, county, acting in

25 county, and date commission expires)

26 (5) An acknowledgment for a limited partnership may be

27 substantially in the following form:

1 Acknowledged before me in _____ County, Michigan, on
2 _____, _____ (year) by Mary Doe, general partner of X
3 partnership, a Michigan limited partnership, for the limited
4 partnership.

5 Notary's _____ Notary's
6 Stamp _____ Signature _____
7 (Notary's name, county, acting in
8 county, and date commission expires)

9 (6) An acknowledgment for a corporation may be substantially
10 in the following form:

11 Acknowledged before me in _____ County, Michigan, on
12 _____, _____ (year) by Mary Doe, president of X company, a
13 Michigan corporation, for the corporation.

14 Notary's _____ Notary's
15 Stamp _____ Signature _____
16 (Notary's name, county, acting in
17 county, and date commission expires)

18 (7) An acknowledgment for a limited liability company may be
19 substantially in the following form:

20 Acknowledge before me in _____ County, Michigan, on
21 _____, _____ (year) by Mary Doe, member of X company, a
22 Michigan limited liability company, for the company.

23 Notary's _____ Notary's
24 Stamp _____ Signature _____
25 (Notary's name, county, acting in
26 county, and date commission expires)

27 (8) An acknowledgment for a public officer may be

1 substantially in the following form:

2 Acknowledged before me in _____ County, Michigan, on
3 _____, _____ (year) by Mary Doe, director of the Michigan
4 department of X.

5 Notary's _____ Notary's
6 Stamp _____ Signature _____
7 (Notary's name, county, acting in
8 county, and date commission expires)

9 (9) An acknowledgment for a trustee may be substantially in
10 the following form:

11 Acknowledged before me in _____ County, Michigan, on
12 _____, _____ (year) by Mary Doe, trustee of the X trust.

13 Notary's _____ Notary's
14 Stamp _____ Signature _____
15 (Notary's name, county, acting in
16 county, and date commission expires)

17 (10) An acknowledgment for a personal representative may be
18 substantially in the following form:

19 Acknowledged before me in _____ County, Michigan, on
20 _____, _____ (year) by Mary Doe, personal representative of
21 the estate of John Doe.

22 Notary's _____ Notary's
23 Stamp _____ Signature _____
24 (Notary's name, county, acting in
25 county, and date commission expires)

26 Sec. 31. (1) A notary public shall not certify or notarize
27 that a record is either of the following:

1 (a) An original.

2 (b) A true copy of another record.

3 (2) A notary public shall not do any of the following:

4 (a) Perform a notarial act upon any record executed by
5 himself or herself.

6 (b) Notarize his or her own signature.

7 (c) Take his or her own deposition or affidavit.

8 (3) A notary public shall not claim to have powers,
9 qualifications, rights, or privileges that the office of notary
10 does not provide, including the power to counsel on immigration
11 matters.

12 (4) A notary public shall not, in any document,
13 advertisement, stationery, letterhead, business card, or other
14 comparable written material describing the role of the notary
15 public, literally translate from English into another language
16 terms or titles including, but not limited to, notary public,
17 notary, licensed, attorney, lawyer, or any other term that
18 implies the person is an attorney.

19 (5) A notary public who is not a licensed attorney and who
20 advertises notarial services in a language other than English
21 shall include in the document, advertisement, stationery,
22 letterhead, business card, or other comparable written material
23 the following, prominently displayed in the same language:

24 (a) The statement: "I am not an attorney and have no
25 authority to give advice on immigration or other legal matters".

26 (b) The fees for notarial acts as specified by statute.

27 (6) A notary public may not use the term "notario publico" or

1 any equivalent non-English term in any business card,
2 advertisement, notice, or sign.

3 (7) A notary public shall not perform any notarial act in
4 connection with a transaction if the notary public has a conflict
5 of interest. As used in this subsection, "conflict of interest"
6 means either or both of the following:

7 (a) The notary public has a direct financial or beneficial
8 interest, other than the notary public fee, in the transaction.

9 (b) The notary public is named, individually, as a grantor,
10 grantee, mortgagor, mortgagee, trustor, trustee, beneficiary,
11 vendor, vendee, lessor, or lessee or as a party in some other
12 capacity to the transaction.

13 (8) A notary public shall not perform a notarial act for a
14 spouse, domestic partner, descendant, or sibling including
15 in-laws, steps, or half-relatives.

16 (9) A notary public shall not perform any notarial act on a
17 record that contains a blank space.

18 (10) A notary public who is a stockholder, director, officer,
19 or employee of a bank or other corporation may take the
20 acknowledgment of a party to a record executed to or by the
21 corporation, or to administer an oath to any other stockholder,
22 director, officer, employee, or agent of the corporation. A
23 notary public shall not take the acknowledgment of a record by or
24 to a bank or other corporation of which he or she is a
25 stockholder, director, officer, or employee, under circumstances
26 where the notary public is named as a party to the record, either
27 individually or as a representative of the bank or other

1 corporation and the notary public is individually a party to the
2 record.

3 (11) For purposes of subsection (7), a notary public has no
4 direct financial or beneficial interest in a transaction where
5 the notary public acts in the capacity of an agent, employee,
6 insurer, attorney, escrow, or lender for a person having a direct
7 financial or beneficial interest in the transaction.

8 Sec. 33. A notary public may sign the name of a person
9 whose physical characteristics limit his or her capacity to sign
10 or make a mark on a record presented for notarization under all
11 of the following conditions:

12 (a) The notary public is orally, verbally, physically, or
13 through electronic or mechanical means provided by the person and
14 directed by that person to sign that person's name.

15 (b) The person is in the physical presence of the notary
16 public.

17 (c) The notary public inscribes beneath the signature:

18 "Signature affixed pursuant to section 33 of the Michigan
19 notary public act."

20 Sec. 35. (1) Upon receiving a written or electronic request
21 from the secretary, a notary public shall do all of the following
22 as applicable:

23 (a) Furnish the secretary with a copy of the notary public's
24 records that relate to the request.

25 (b) Within 15 days after receiving the request, respond to
26 the secretary with information that relates to the official acts
27 performed by the notary public.

1 (c) Permit the secretary to inspect his or her notary public
2 records, contracts, or other information that pertains to the
3 official acts of a notary public.

4 (2) Upon presentation to the secretary of satisfactory
5 evidence that a notary public has failed to respond within 15
6 days or another time period designated under this act to a
7 request of the secretary under subsection (1), the secretary may
8 notify the notary public that his or her notary public commission
9 is suspended indefinitely until he or she provides a satisfactory
10 response to the request.

11 Sec. 37. (1) For the official misconduct of a notary
12 public, the notary public and the sureties on the notary public's
13 surety bond are liable in a civil action for the damages
14 sustained by the persons injured. The employer of a notary
15 public is also liable if both of the following conditions apply:

16 (a) The notary public was acting within the actual or
17 apparent scope of his or her employment.

18 (b) The employer had knowledge of and consented to or
19 permitted the official misconduct.

20 (2) A notary public and the notary public's sureties are not
21 liable for the truth, form, or correctness of the contents of a
22 record upon which the notary public performs a notarial act.

23 Sec. 39. The secretary may investigate, or cause to be
24 investigated by local authorities, the administration of notary
25 public laws and shall report violations of the notary public laws
26 and rules to the attorney general or prosecuting attorney, or
27 both, for prosecution.

1 Sec. 40. (1) The secretary may, on his or her own
2 initiative or in response to a complaint, make a reasonable and
3 necessary investigation within or outside of this state and
4 gather evidence concerning a person who violated, allegedly
5 violated, or is about to violate this act, a rule promulgated
6 under this act, or an order issued under this act or concerning
7 whether a notary public is in compliance with this act, a rule
8 promulgated under this act, or an order issued under this act.

9 (2) A person may file a complaint against a notary public
10 with the secretary. A complaint shall be made in a format
11 prescribed by the secretary and contain all of the following:

12 (a) The complainant's name, address, and telephone number.

13 (b) The complainant's signature and the date the complaint
14 was signed.

15 (c) A complete statement describing the basis for the
16 complaint.

17 (d) The actual record that is the basis for the complaint or
18 a copy, photocopy, or other replica of the record.

19 (3) The secretary may investigate compliance with this act,
20 the rules promulgated under it, or an order issued under it by
21 examination of a notary public's records, contracts, and other
22 pertinent records or information that relate to the official acts
23 of the notary public.

24 Sec. 40a. (1) An applicant for an appointment or a
25 commissioned notary public who has engaged in conduct prohibited
26 by this act, a rule promulgated under this act, or an order
27 issued under this act is subject to 1 or more of the following

1 penalties, in addition to any criminal penalties otherwise
2 imposed:

3 (a) Suspension or revocation of his or her certificate of
4 appointment.

5 (b) Denial of an application for appointment.

6 (c) A civil fine paid to the department in an amount not to
7 exceed \$1,000.00.

8 (d) A requirement to take the affirmative action determined
9 necessary by the secretary, including payment of restitution to
10 an injured person.

11 (e) A letter of censure.

12 (f) A requirement to reimburse the secretary for the costs
13 of the investigation.

14 (2) The secretary may impose 1 or more of the penalties
15 listed in subsection (1) upon presentation to the secretary of
16 satisfactory evidence that the applicant for an appointment or a
17 commissioned notary public has done 1 or more of the following:

18 (a) Violated this act, a rule promulgated under this act, or
19 an order issued under this act or assisted others in the
20 violation of this act, a rule promulgated under this act, or an
21 order issued under this act.

22 (b) Committed an act of official misconduct, dishonesty,
23 fraud, deceit, or of any cause substantially relating to the
24 duties or responsibilities of a notary public or the character or
25 public trust necessary to be a notary public.

26 (c) Failed to perform his or her notary public duties in
27 accordance with this act, a rule promulgated under this act, or

1 an order issued under this act.

2 (d) Failed to fully and faithfully discharge a duty or
3 responsibility required of a notary public.

4 (e) Been found liable in a court of competent jurisdiction
5 for damages in an action grounded in fraud, misrepresentation, or
6 violation of this act.

7 (f) Represented, implied, or used false or misleading
8 advertising that he or she has duties, rights, or privileges that
9 he or she does not possess by law.

10 (g) Charged a fee for a notarial act that was more than is
11 allowed under this act.

12 (h) Failed to complete the notary public's acknowledgment at
13 the time the notary public signed or affixed his or her signature
14 or seal to a record.

15 (i) Failed to administer an oath or affirmation as required
16 by law.

17 (j) Engaged in the unauthorized practice of law as
18 determined by a court of competent jurisdiction.

19 (k) Ceased to maintain his or her residence or principal
20 place of business in this state.

21 (l) Lacks adequate ability to read and write English.

22 (m) Hindered or refused a request by the secretary for
23 notary public records or papers.

24 (n) Engaged in a method, act, or practice that is unfair or
25 deceptive including the making of an untrue statement of a
26 material fact relating to a duty or responsibility of a notary
27 public.

1 (o) Violated a condition of probation imposed under
2 subsection (1).

3 (p) Permitted an unlawful use of a notary public's seal.

4 (q) Failed to maintain good moral character as defined and
5 determined under 1974 PA 381, MCL 338.41 to 338.47.

6 (3) Before the secretary takes any action under subsection
7 (2), the person affected shall be given notice and an opportunity
8 for a hearing.

9 (4) If a person holding office as a notary public is
10 sentenced to a term of imprisonment in a state correctional
11 facility or jail in this or any other state or in a federal
12 correctional facility, that person's commission as a notary
13 public is revoked automatically on the day on which the person
14 begins serving the sentence in the jail or correctional
15 facility. If a person's commission as a notary public is revoked
16 because the person begins serving a term of imprisonment and that
17 person performs or attempts to perform a notarial act while
18 imprisoned, that person is not eligible to receive a commission
19 as a notary public for at least 10 years after the person
20 completes his or her term of imprisonment.

21 (5) Cancellation of a commission is without prejudice to
22 reapplication at any time. A person whose commission is revoked
23 is ineligible for the issuance of a new commission for at least 5
24 years.

25 (6) A fine imposed under this act that remains unpaid for
26 more than 180 days may be referred to the department of treasury
27 for collection. The department of treasury may collect the fine

1 by deducting the amount owed from a payroll or tax refund
2 warrant. The secretary may bring an action in a court of
3 competent jurisdiction to recover the amount of a civil fine.

4 Sec. 41. (1) If a notary public of this state is convicted
5 of a felony or of a substantially corresponding violation of
6 another state, the secretary shall automatically revoke the
7 notary public commission of that person on the date that the
8 person's felony conviction is entered.

9 (2) If a notary public of this state is convicted of 2 or
10 more misdemeanor offenses involving a violation of this act
11 within a 12-month period while commissioned, or of 3 or more
12 misdemeanor offenses involving a violation of this act within a
13 5-year period regardless of being commissioned, the secretary
14 shall automatically revoke the notary public commission of that
15 person on the date that the person's most recent misdemeanor
16 conviction is entered.

17 (3) If a person holding office as a notary public is
18 sentenced to a term of imprisonment in a state correctional
19 facility or jail in this or any other state or in a federal
20 correctional facility, that person's commission as a notary
21 public is revoked automatically on the day on which the person
22 begins serving the sentence in the jail or correctional
23 facility. If a person's commission as a notary public is revoked
24 because the person begins serving a term of imprisonment and that
25 person performs or attempts to perform a notarial act while
26 imprisoned, that person is not eligible to receive a commission
27 as a notary public for at least 10 years after the person

1 completes his or her term of imprisonment.

2 (4) A person found guilty of performing a notarial act after
3 his or her commission is revoked under this section is guilty of
4 a felony punishable by a fine of not more than \$3,000.00 or by
5 imprisonment for not more than 5 years, or both.

6 (5) A person, regardless of whether he or she has ever been
7 commissioned as a notary public, that is convicted of a felony is
8 disqualified from being commissioned as a notary public for not
9 less than 10 years after the person completes his or her sentence
10 for that crime, including any term of imprisonment, parole, or
11 probation, and pays all fines, costs, and assessments. As used
12 in this section, a "felony" means a violation of a penal law of
13 this state, another state, or the United States for which the
14 offender, upon conviction, may be punished by death or
15 imprisonment for more than 1 year or an offense expressly
16 designated by law to be a felony.

17 (6) If a person is convicted of a violation described in
18 subsection (5), the court shall make a determination of whether
19 the person is a notary. If the person is a notary, the court
20 shall inform the secretary of the conviction.

21 Sec. 43. (1) Cancellation of a commission is without
22 prejudice to reapplication at any time. Except as otherwise
23 provided for in section 41(3), a person whose commission is
24 revoked is ineligible for the issuance of a new commission for at
25 least 5 years.

26 (2) A fine imposed under this act that remains unpaid for
27 more than 180 days may be referred to the department of treasury

1 for collection. The department of treasury may collect the fine
2 by deducting the amount owed from a payroll or tax refund
3 warrant. The secretary may bring an action in a court of
4 competent jurisdiction to recover the amount of a civil fine.

5 Sec. 45. (1) Whenever it appears to the secretary that a
6 person has engaged or is about to engage in an act or practice
7 that constitutes or will constitute a violation of this act, a
8 rule promulgated under this act, or an order issued under this
9 act, the attorney general may petition a circuit court for
10 injunctive relief. Upon a proper showing, a circuit court may
11 issue a permanent or temporary injunction or restraining order to
12 enforce the provisions of this act. A party to the action has
13 the right to appeal within 60 days from the date the order or
14 judgment of the court was issued.

15 (2) The court may order a person subject to an injunction or
16 restraining order provided for in this section to reimburse the
17 secretary for the actual expenses incurred in the investigation
18 related to the petition. The secretary shall refund any amount
19 received as reimbursement should the injunction or restraining
20 order later be dissolved by an appellate court.

21 Sec. 47. (1) Subject to subsection (2) and in the courts of
22 this state, the certificate of a notary public of official acts
23 performed in the capacity of a notary public, under the seal of
24 office, is presumptive evidence of the facts contained in the
25 certificate except that the certificate is not evidence of a
26 notice of nonacceptance or nonpayment in any case in which a
27 defendant attaches to his or her pleadings an affidavit denying

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1 the fact of having received that notice of nonacceptance or
2 nonpayment.

3 (2) Notwithstanding subsection (1), the court may invalidate
4 any document not notarized in compliance with this act.

5 Sec. 49. (1) Except as otherwise provided for in section
6 41(4) or as provided by law, a person who violates this act is
7 guilty of a misdemeanor punishable by a fine of not more than
8 \$5,000.00 or by imprisonment for not more than 1 year, or both.

9 (2) An action concerning a fee charged for a notarial act
10 shall be filed in the district court in the place where the
11 notarial act occurred.

12 (3) The penalties and remedies under this act are
13 cumulative. The bringing of an action or prosecution under this
14 act does not bar an action or prosecution under any other
15 applicable law.

16 Sec. 51. The notary fees fund is created in the state
17 treasury. Except as otherwise provided in sections 15(2) and
18 21(4), an application fee, duplicate notary public certificate of
19 appointment service charge, certification service charge, copying
20 service charge, reimbursement costs, or administrative fine
21 collected under this act by the secretary of state shall be
22 deposited by the state treasurer in the notary fees fund and is
23 appropriated to defray the costs incurred by the secretary in
24 administering this act. <<

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27 Sec. 53. A person, or the personal representative of a

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as amended December 3, 2003

1 person who is deceased, who performed a notarial act while
2 commissioned as a notary public under this act shall maintain all
3 the records of that notarial act for at least 5 years after the
4 date of the notarial act.

5 Sec. 55. The secretary may promulgate rules pursuant to the
6 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
7 24.328, to implement this act.

8 Enacting section 1. The following acts and parts of acts
9 are repealed effective [April] 1, 2004:

10 (a) Executive Reorganization Order No. 1980-2, MCL 55.103.

11 (b) Sections 107, 108, 109, 110, 111, 112, 112a, 113, 114,
12 115, 116, and 117 of 1846 RS 14, MCL 55.107, 55.108, 55.109,
13 55.110, 55.111, 55.112, 55.112a, 55.113, 55.114, 55.115, 55.116,
14 and 55.117.

15 (c) 1903 PA 18, MCL 55.221.

16 (d) 1909 PA 18, MCL 55.251.

17 (e) Section 2564 of the revised judicature act of 1961, 1961
18 PA 236, MCL 600.2564.

19 Enacting section 2. This act takes effect <<April 1, 2004>>.