

## REMOTE PERFORMANCE OF NOTARIAL ACTS

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**House Bill 5811 as introduced**  
**Sponsor: Rep. Diana Farrington**  
**Committee: Financial Services**  
**Complete to 4-25-18**

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

### BRIEF SUMMARY:

House Bill 5811 would amend the Michigan Notary Public Act to allow the Secretary of State and the Department of Technology, Management, and Budget to review and approve at least one remote online notarization platform for the performance of notarial acts in this state. The bill would specify guidelines and establish procedures for notarial acts performed using such a platform. The bill would also allow the Secretary of State to require a notary public applicant to provide a criminal background check through the Department of State Police at the applicant's expense. The bill would take effect 90 days after it is enacted.

### DETAILED SUMMARY:

#### **Remote Online Notarization Platforms**

House Bill 5811 would require the Secretary of State (SOS) and the Department of Technology, Management, and Budget (DTMB) to approve at least one **remote online notarization platform** for the performance of notarial acts in the state, and could grant approval to additional remote online notarization platforms on an ongoing basis. In considering approval of a remote online notarization platform, the SOS and DTMB would have to consider the platform's functionality in performing an **identity proofing** process or **credential analysis** process or service.

**Remote online notarization platform** would mean 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.

**Identity proofing** would mean 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.

**Credential analysis** would mean a process or service by which a third party affirms, through a review of public and proprietary data sources conducted remotely, the validity of a government-issued identity document that contains an individual's photograph and signature.

A remote online notarization platform that has been evaluated and approved or accepted by a government-sponsored enterprise of the United States (e.g., the Federal Home Loan Mortgage Corporation or the Government National Mortgage Association) would be considered approved for use in this state unless the SOS affirmatively disallows it.

At least every four years, the SOS and the DTMB would have to review their standards for approving remote online notarization platforms for use in this state and whether the number of approved remote online notarization platforms is sufficient.

### **Online Notarial Acts**

A notary public could perform a notarial act using a remote online notarization platform if either of the following is met:

- He or she makes all applicable determinations according to personal knowledge or satisfactory evidence, performance of the notarial act complies with Section 27 of the Act (regarding his or her signing), and he or she does not violate Section 31 (prohibited conduct for a notary public) in the performance of the act.
- Through use of the platform, personal knowledge, or satisfactory evidence, the notary public is able to identify the record before him or her as the same record presented by the individual for notarization.

A notary public could not use a remote online notarization platform that was not approved under the bill's provisions. A notarial act performed using a remote online notarization platform that otherwise satisfied the requirements of the Act would be presumed to satisfy any requirement that a notarial act be performed in the presence of a notary public. Identification of an individual through an identity proofing process and the presentation of an identity document that is verified through credential analysis would be considered satisfactory evidence that an individual is the individual whose signature is on a record. The notary public would have to note on the record being notarized whether the notarial act was performed electronically or using a remote online notarization platform.

### **Audio or Visual Recording**

The notary public could not record by audio or visual means a notarial act performed using a remote online notarization platform unless he or she discloses that such a recording is being made, and how the recording will be preserved, to the person requesting the notarial act and the person consents to the recording. A notary public may refuse to conduct a notarial act using a remote online notarization platform if the person requesting the notarial act objects to the audio or visual recording of it. A notary public would have to retain an audio or visual recording of a notarial act for at least ten years after the performance of the notarial act.

### **Journal**

A notary public who performs notarial acts using a remote online notarization platform would have to maintain a journal that records each of those notarial acts. A notary public could keep only one journal for recording notarial acts and would have to keep the journal either as a tangible, permanent bound register or in a tamper-evident, permanent electronic format.

A notary public would be required to make an entry in the journal contemporaneously with performance of the notarial act, and the entry would have to include, at a minimum, all of the following:

- The date, time, and nature of the notarial act.
- A description of the record, if any.
- The full name and address of each individual for whom the notarial act is performed.
- If the identity of the individual is based on personal knowledge, a statement to that effect. If the identity of the individual 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 of the credential.
- The fee charged, if any, by the notary public.

An entry made in a journal maintained by a notary public would have to also reference (but could not itself contain) any audio or visual recording of a notarial act performed using a remote online notarization platform.

The journal would have to be retained for at least ten 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 would have to inform the SOS where the journal is kept or, if directed by the SOS, forward the journal to the SOS or a repository designated by the SOS.

A notary public could designate a custodian to maintain the journal, or retain an audio or visual recording of a notarial act, on his or her behalf. If an audio or visual recording is transferred to a custodian to hold, the journal entry must identify the custodian with sufficient contact and location information.

### **Criminal Background Check for Applicants**

The bill would require an applicant for appointment as a notary public to provide his or her email address on the application form. The bill would also allow the SOS to request an applicant to provide a criminal history check or criminal records check through the Department of State Police. The applicant would bear the cost of any requested criminal history or criminal records check.

### **Michigan Notary Public Act Modification Declaration**

Finally, the bill would add a section to the Michigan Notary Public Act to declare that the Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 USC 7001 to 7031, but does not modify, limit, or supersede section 101(c) of that act or authorize electronic delivery of any of the notices described in section 103(b) of that act.

MCL 55.275 et al.

## **FISCAL IMPACT:**

The bill would have an indeterminate, but likely marginal, impact on the Department of State (DOS) and the Department of Technology, Management, and Budget (DTMB). Costs related to acquiring the license or software for a remote online notarization platform are not yet determined but would likely be supported through existing appropriations to the DOS. There would also be minimal costs associated with the evaluation and procurement process conducted jointly between the DOS and the DTMB.

The bill would also authorize the DOS to require applicants for appointment as a notary public to provide a criminal history and records check performed by the Department of State Police (MSP) and pay for the cost. The MSP currently charges \$42 for a criminal background check, of which \$12 is allocated to the federal government and \$30 is allocated to MSP to defray the costs of conducting background checks.

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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.