

SUBSTITUTE FOR
HOUSE BILL NO. 5811

A bill to amend 2003 PA 238, entitled "Michigan notary public act," by amending sections 15, 25, and 27 (MCL 55.275, 55.285, and 55.287), section 15 as amended by 2006 PA 510, section 25 as amended by 2006 PA 426, and section 27 as amended by 2006 PA 155, and by adding sections 26b and 54.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 15. (1) ~~A person~~**AN INDIVIDUAL** shall apply to the
2 secretary for appointment as a notary public in a format as
3 prescribed by the secretary. An application for appointment as a
4 notary public ~~shall contain the~~**MUST INCLUDE THE HANDWRITTEN**
5 signature of the applicant ~~. In addition to other information as~~
6 ~~may be required by the secretary, the application shall include~~**AND**

1 all of the following **INFORMATION**:

2 (a) The applicant's name, residence address, business address,
3 date of birth, ~~and~~ residence and business telephone numbers, **AND**
4 **ELECTRONIC MAIL ADDRESS**.

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

7 (c) A validated copy of the filing of the bond, if applicable,
8 and oath certificate received from the county clerk.

9 (d) If applicable, a statement showing whether the applicant
10 has previously applied for an appointment as a notary public in
11 this or any other state, the result of the application, and whether
12 the applicant has ever been the holder of a notary public
13 appointment that was revoked, suspended, or canceled in this or any
14 other state.

15 (e) A statement describing the date and circumstances of any
16 felony or misdemeanor conviction of the applicant during the
17 preceding 10 years.

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

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

24 **(H) ANY OTHER INFORMATION REQUIRED BY THE SECRETARY.**

25 (2) Each application shall be accompanied by an application
26 processing fee of \$10.00. ~~One dollar~~ **THE SECRETARY SHALL DEPOSIT**
27 **\$1.00** of each fee collected under this subsection ~~shall be~~

1 ~~deposited~~ into the notary education and training fund established
2 in section 17 on a schedule determined by the secretary.

3 (3) ~~Upon receipt of~~ **WHEN HE OR SHE RECEIVES** an application
4 that is accompanied by the prescribed processing fee, the secretary
5 may inquire as to the qualifications of the applicant and shall
6 determine whether the applicant meets the qualifications ~~prescribed~~
7 ~~in~~ **FOR APPOINTMENT AS A NOTARY PUBLIC UNDER** this act. To assist in
8 deciding whether the applicant is qualified, the secretary may use
9 the law enforcement information network as provided in the C.J.I.S.
10 policy council act, 1974 PA 163, MCL 28.211 to 28.215, **OR THE**
11 **INTERNET CRIMINAL HISTORY ACCESS TOOL (ICHAT) MAINTAINED BY THE**
12 **DEPARTMENT OF STATE POLICE**, to check the criminal background of the
13 applicant.

14 (4) After approval of ~~the~~ **AN** application **FOR APPOINTMENT AS A**
15 **NOTARY PUBLIC**, the secretary shall mail directly to the applicant
16 the certificate of appointment as a notary public. Each certificate
17 of appointment shall identify the ~~person~~ **INDIVIDUAL** as a notary
18 public of this state and shall specify the term and county of ~~the~~
19 ~~person's~~ **HIS OR HER** commission.

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

- 22 (a) Taking acknowledgments.
23 (b) Administering oaths and affirmations.
24 (c) Witnessing or attesting to a signature.

25 (2) In taking an acknowledgment, the notary public shall
26 determine, either from personal knowledge or from satisfactory
27 evidence, that the ~~person~~ **INDIVIDUAL** in the presence of the notary

1 public and making the acknowledgment is the ~~person~~**INDIVIDUAL** whose
2 signature is on the record.

3 (3) In taking a verification upon oath or affirmation, the
4 notary public shall determine, either from personal knowledge or
5 from satisfactory evidence, that the ~~person~~**INDIVIDUAL** in the
6 presence of the notary public and making the verification is the
7 ~~person~~**INDIVIDUAL** whose signature is on the record being verified.

8 (4) In witnessing or attesting to a signature, the notary
9 public shall determine, either from personal knowledge or from
10 satisfactory evidence, that the signature is that of the ~~person~~
11 **INDIVIDUAL** in the presence of the notary public and is the ~~person~~
12 **INDIVIDUAL** named in the record.

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

18 (6) A notary public has satisfactory evidence that a ~~person~~**AN**
19 **INDIVIDUAL** is the ~~person~~**INDIVIDUAL** whose signature is on a record
20 if that ~~person~~**INDIVIDUAL** is any of the following:

21 (a) Personally known to the notary public.

22 (b) Identified upon the oath or affirmation of a credible
23 witness personally known by the notary public and who personally
24 knows the ~~person~~**INDIVIDUAL**.

25 (c) Identified on the basis of a current license,
26 identification card, or record issued by a federal or state
27 government that contains the ~~person's~~**INDIVIDUAL'S** photograph and

1 signature.

2 (D) WITH REGARD TO A NOTARIAL ACT PERFORMED UNDER SECTION 26B,
3 IDENTIFIED AND VERIFIED THROUGH AN IDENTITY PROOFING PROCESS OR
4 SERVICE THAT IS PART OF A REMOTE ELECTRONIC NOTARIZATION PLATFORM
5 APPROVED UNDER SECTION 26B(1), AND THE PERSON PRESENTS AN IDENTITY
6 DOCUMENT DESCRIBED IN SUBDIVISION (C) THAT IS VERIFIED THROUGH A
7 CREDENTIAL ANALYSIS PROCESS OR SERVICE THAT IS PART OF A REMOTE
8 ELECTRONIC NOTARIZATION PLATFORM APPROVED UNDER SECTION 26B(1).

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

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

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

26 (10) A county clerk may collect a processing fee of \$10.00 for
27 certifying a notarial act of a notary public.

1 SEC. 26B. (1) BEGINNING JANUARY 1, 2019, THE SECRETARY AND THE
2 DEPARTMENT OF TECHNOLOGY, MANAGEMENT, AND BUDGET SHALL REVIEW AND
3 MAY APPROVE REMOTE ELECTRONIC NOTARIZATION PLATFORMS FOR THE
4 PERFORMANCE OF NOTARIAL ACTS IN THIS STATE. A NOTARY PUBLIC SHALL
5 NOT USE A REMOTE ELECTRONIC NOTARIZATION PLATFORM THAT IS NOT
6 APPROVED UNDER THIS SECTION.

7 (2) SUBJECT TO SUBSECTION (3), IN DEVELOPING CRITERIA FOR THE
8 APPROVAL OF ANY REMOTE ELECTRONIC NOTARIZATION PLATFORM FOR USE IN
9 THIS STATE, THE SECRETARY OF STATE AND THE DEPARTMENT OF
10 TECHNOLOGY, MANAGEMENT, AND BUDGET SHALL CONSIDER, AT A MINIMUM,
11 ALL OF THE FOLLOWING:

12 (A) THE NEED TO ENSURE THAT ANY CHANGE TO OR TAMPERING WITH AN
13 ELECTRONIC RECORD CONTAINING THE INFORMATION REQUIRED UNDER THIS
14 ACT IS EVIDENT.

15 (B) THE NEED TO ENSURE INTEGRITY IN THE CREATION, TRANSMITTAL,
16 STORAGE, OR AUTHENTICATION OF REMOTE ELECTRONIC NOTARIZATIONS,
17 RECORDS, OR SIGNATURES.

18 (C) THE NEED TO PREVENT FRAUD OR MISTAKE IN THE PERFORMANCE OF
19 REMOTE ELECTRONIC NOTARIZATIONS.

20 (D) THE ABILITY TO ADEQUATELY INVESTIGATE AND AUTHENTICATE A
21 NOTARIAL ACT PERFORMED REMOTELY WITH THAT REMOTE ELECTRONIC
22 NOTARIZATION PLATFORM.

23 (E) THE MOST RECENT STANDARDS REGARDING REMOTE ELECTRONIC
24 NOTARIZATION PROMULGATED BY NATIONAL BODIES, INCLUDING, BUT NOT
25 LIMITED TO, THE NATIONAL ASSOCIATION OF SECRETARIES OF STATE.

26 (F) THE STANDARDS, PRACTICES, AND CUSTOMS OF OTHER
27 JURISDICTIONS THAT ALLOW REMOTE ELECTRONIC NOTARIAL ACTS.

1 (3) IF A REMOTE ELECTRONIC NOTARIZATION PLATFORM FOR THE
2 PERFORMANCE OF REMOTE ELECTRONIC NOTARIZATIONS IS APPROVED OR
3 CERTIFIED BY A GOVERNMENT-SPONSORED ENTERPRISE, AS THAT TERM IS
4 DEFINED IN 2 USC 622(8), THE SECRETARY OF STATE AND THE DEPARTMENT
5 OF TECHNOLOGY, MANAGEMENT, AND BUDGET SHALL APPROVE THE PLATFORM
6 FOR USE IN THIS STATE IF VERIFIABLE PROOF OF THAT APPROVAL OR
7 CERTIFICATION IS PROVIDED TO THE SECRETARY AND DEPARTMENT, UNLESS
8 USE OF THE REMOTE ELECTRONIC NOTARIZATION PLATFORM IS AFFIRMATIVELY
9 DISALLOWED BY THE SECRETARY.

10 (4) THE SECRETARY AND THE DEPARTMENT OF TECHNOLOGY,
11 MANAGEMENT, AND BUDGET SHALL REVIEW THEIR STANDARDS FOR APPROVING
12 REMOTE ELECTRONIC NOTARIZATION PLATFORMS FOR USE IN THIS STATE, AND
13 WHETHER THE NUMBER OF APPROVED REMOTE ELECTRONIC NOTARIZATION
14 PLATFORMS ARE SUFFICIENT, AT LEAST EVERY 4 YEARS.

15 (5) A NOTARY PUBLIC MAY PERFORM A NOTARIAL ACT USING A REMOTE
16 ELECTRONIC NOTARIZATION PLATFORM IF EITHER OF THE FOLLOWING IS MET:

17 (A) THE NOTARY PUBLIC MAKES ALL APPLICABLE DETERMINATIONS
18 UNDER SECTION 25 ACCORDING TO PERSONAL KNOWLEDGE OR SATISFACTORY
19 EVIDENCE, PERFORMANCE OF THE NOTARIAL ACT COMPLIES WITH SECTION 27,
20 AND THE NOTARY PUBLIC DOES NOT VIOLATE SECTION 31 IN THE
21 PERFORMANCE OF THE NOTARIAL ACT.

22 (B) THE NOTARY PUBLIC, THROUGH USE OF THE REMOTE ELECTRONIC
23 NOTARIZATION PLATFORM, PERSONAL KNOWLEDGE, OR SATISFACTORY
24 EVIDENCE, IS ABLE TO IDENTIFY THE RECORD BEFORE THE NOTARY PUBLIC
25 AS THE SAME RECORD PRESENTED BY THE INDIVIDUAL FOR NOTARIZATION.

26 (6) THE NOTARY PUBLIC SHALL NOT RECORD BY AUDIO OR VISUAL
27 MEANS A NOTARIAL ACT PERFORMED USING A REMOTE ELECTRONIC

1 NOTARIZATION PLATFORM, UNLESS THE NOTARY PUBLIC DISCLOSES TO THE
2 PERSON THAT REQUESTED THE NOTARIAL ACT THAT AN AUDIO OR VISUAL
3 RECORDING IS BEING MADE AND HOW THE RECORDING WILL BE PRESERVED,
4 AND THE PERSON CONSENTS OR HAS PREVIOUSLY CONSENTED TO THE
5 RECORDING. A NOTARY PUBLIC MAY REFUSE TO CONDUCT A NOTARIAL ACT
6 USING A REMOTE ELECTRONIC NOTARIZATION PLATFORM IF THE PERSON THAT
7 REQUESTED THE NOTARIAL ACT OBJECTS TO AN AUDIO OR VISUAL RECORDING
8 OF THE NOTARIAL ACT.

9 (7) IF A NOTARY PUBLIC PERFORMS NOTARIAL ACTS USING A REMOTE
10 ELECTRONIC NOTARIZATION PLATFORM, THE NOTARY PUBLIC SHALL MAINTAIN
11 A JOURNAL THAT RECORDS, AT A MINIMUM, EACH OF THOSE NOTARIAL ACTS.
12 A NOTARY PUBLIC SHALL MAINTAIN ONLY 1 JOURNAL FOR THE RECORDING OF
13 NOTARIAL ACTS AND MUST KEEP THE JOURNAL EITHER AS A TANGIBLE,
14 PERMANENT BOUND REGISTER OR IN A TAMPER-EVIDENT, PERMANENT
15 ELECTRONIC FORMAT. A NOTARY PUBLIC SHALL RETAIN THE JOURNAL FOR AT
16 LEAST 10 YEARS AFTER THE PERFORMANCE OF THE LAST NOTARIAL ACT
17 RECORDED IN IT. IF A NOTARY PUBLIC IS NOT REAPPOINTED, OR HIS OR
18 HER COMMISSION IS REVOKED, THE FORMER NOTARY PUBLIC SHALL INFORM
19 THE SECRETARY OF STATE WHERE THE JOURNAL IS KEPT OR, IF DIRECTED BY
20 THE SECRETARY, SHALL FORWARD THE JOURNAL TO THE SECRETARY OR A
21 REPOSITORY DESIGNATED BY THE SECRETARY.

22 (8) A NOTARY PUBLIC SHALL MAKE AN ENTRY IN A JOURNAL
23 MAINTAINED UNDER SUBSECTION (7) CONTEMPORANEOUSLY WITH PERFORMANCE
24 OF THE NOTARIAL ACT, AND THE ENTRY MUST INCLUDE, AT A MINIMUM, ALL
25 OF THE FOLLOWING:

26 (A) THE DATE, TIME, AND NATURE OF THE NOTARIAL ACT.

27 (B) A DESCRIPTION OF THE RECORD, IF ANY.

1 (C) THE FULL NAME AND ADDRESS OF EACH INDIVIDUAL FOR WHOM THE
2 NOTARIAL ACT IS PERFORMED.

3 (D) IF THE IDENTITY OF THE INDIVIDUAL FOR WHOM THE NOTARIAL
4 ACT IS PERFORMED IS BASED ON PERSONAL KNOWLEDGE, A STATEMENT TO
5 THAT EFFECT. IF THE IDENTITY OF THE INDIVIDUAL FOR WHOM THE
6 NOTARIAL ACT IS PERFORMED IS BASED ON SATISFACTORY EVIDENCE, A
7 BRIEF DESCRIPTION OF THE METHOD OF IDENTIFICATION AND THE
8 IDENTIFICATION CREDENTIAL PRESENTED, IF ANY, INCLUDING THE DATE OF
9 ISSUANCE AND EXPIRATION FOR THE CREDENTIAL.

10 (E) THE FEE CHARGED, IF ANY, BY THE NOTARY PUBLIC.

11 (9) AN ENTRY MADE IN A JOURNAL MAINTAINED BY A NOTARY PUBLIC
12 UNDER SUBSECTION (7) MUST ALSO REFERENCE, BUT SHALL NOT ITSELF
13 CONTAIN, ANY AUDIO OR VISUAL RECORDING OF A NOTARIAL ACT PERFORMED
14 USING A REMOTE ELECTRONIC NOTARIZATION PLATFORM. SUBJECT TO
15 SUBSECTION (1), A NOTARY PUBLIC MUST RETAIN AN AUDIO OR VISUAL
16 RECORDING OF A NOTARIAL ACT FOR AT LEAST 10 YEARS AFTER THE
17 PERFORMANCE OF THE NOTARIAL ACT.

18 (10) A NOTARY PUBLIC MAY DESIGNATE A CUSTODIAN TO DO ANY OF
19 THE FOLLOWING:

20 (A) MAINTAIN THE JOURNAL REQUIRED UNDER SUBSECTION (7) ON HIS
21 OR HER BEHALF.

22 (B) RETAIN AN AUDIO OR VISUAL RECORDING OF A NOTARIAL ACT
23 UNDER SUBSECTION (9) ON HIS OR HER BEHALF. IF AN AUDIO OR VISUAL
24 RECORDING OF A NOTARIAL ACT IS TRANSFERRED TO A CUSTODIAN TO HOLD
25 ON BEHALF OF THE NOTARY PUBLIC, THE JOURNAL ENTRY MUST IDENTIFY THE
26 CUSTODIAN WITH SUFFICIENT INFORMATION TO LOCATE AND CONTACT THAT
27 CUSTODIAN.

1 (11) A NOTARIAL ACT PERFORMED USING A REMOTE ELECTRONIC
2 NOTARIZATION PLATFORM UNDER THIS SECTION THAT OTHERWISE SATISFIES
3 THE REQUIREMENTS OF THIS ACT IS PRESUMED TO SATISFY ANY REQUIREMENT
4 UNDER THIS ACT THAT A NOTARIAL ACT BE PERFORMED IN THE PRESENCE OF
5 A NOTARY PUBLIC.

6 (12) AS USED IN THIS SECTION:

7 (A) "CREDENTIAL ANALYSIS" MEANS A PROCESS OR SERVICE BY WHICH
8 A THIRD PARTY AFFIRMS THE VALIDITY OF AN IDENTITY DOCUMENT
9 DESCRIBED IN SECTION 25(6) (C) THROUGH A REVIEW OF PUBLIC AND
10 PROPRIETARY DATA SOURCES CONDUCTED REMOTELY.

11 (B) "IDENTITY PROOFING" MEANS A PROCESS OR SERVICE BY WHICH A
12 THIRD PARTY PROVIDES A NOTARY PUBLIC WITH A REASONABLE MEANS TO
13 VERIFY THE IDENTITY OF AN INDIVIDUAL THROUGH A REVIEW OF PERSONAL
14 INFORMATION FROM PUBLIC OR PROPRIETARY DATA SOURCES CONDUCTED
15 REMOTELY.

16 (C) "REMOTE ELECTRONIC NOTARIZATION PLATFORM" MEANS ANY
17 COMBINATION OF TECHNOLOGY THAT ENABLES A NOTARY TO PERFORM A
18 NOTARIAL ACT REMOTELY; THAT ALLOWS THE NOTARY PUBLIC TO COMMUNICATE
19 BY SIGHT AND SOUND WITH THE INDIVIDUAL FOR WHOM HE OR SHE IS
20 PERFORMING THE NOTARIAL ACT, AND WITNESSES, IF APPLICABLE, BY MEANS
21 OF AUDIO AND VISUAL COMMUNICATION; AND THAT INCLUDES FEATURES TO
22 CONDUCT CREDENTIAL ANALYSIS AND IDENTITY PROOFING.

23 Sec. 27. (1) A notary public shall place his or her signature
24 on every record upon which he or she performs a notarial act. The
25 notary public shall sign his or her name exactly as his or her name
26 appears on his or her application for commission as a notary
27 public.

1 (2) On each record that a notary public performs a notarial
2 act and immediately near the notary public's signature, as is
3 practical, the notary public shall print, type, stamp, or otherwise
4 imprint mechanically or electronically sufficiently clear and
5 legible to be read by the secretary and in a manner capable of
6 photographic reproduction all of the following in this format or in
7 a similar format that conveys all of the same information:

8 (a) The name of the notary public exactly as it appears on his
9 or her application for commission as a notary public.

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

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

13 (d) If performing a notarial act in a county other than the
14 county of commission, the statement: "Acting in the County of
15 _____."

16 (e) The date the notarial act was performed.

17 **(F) IF APPLICABLE, WHETHER THE NOTARIAL ACT WAS PERFORMED**
18 **ELECTRONICALLY OR PERFORMED USING A REMOTE ELECTRONIC NOTARIZATION**
19 **PLATFORM UNDER SECTION 26B.**

20 (3) A notary public may use a stamp, seal, or electronic
21 process that contains all of the information required by subsection
22 (2). However, the stamp, seal, or electronic process shall not be
23 used in a manner that renders anything illegible on the record
24 being notarized. An embosser alone or any other method that cannot
25 be reproduced shall not be used.

26 (4) The illegibility of the statements required in subsection
27 (2) does not affect the validity of the transaction or record that

1 was notarized.

2 **SEC. 54. THIS ACT MODIFIES, LIMITS, AND SUPERSEDES THE**
3 **ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT, 15 USC**
4 **7001 TO 7031, BUT DOES NOT MODIFY, LIMIT, OR SUPERSEDE SECTION**
5 **101(C) OF THAT ACT, 15 USC 7001(C), OR AUTHORIZE ELECTRONIC**
6 **DELIVERY OF ANY OF THE NOTICES DESCRIBED IN SECTION 103(B) OF THAT**
7 **ACT, 15 USC 7003(B).**

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