

Act No. 249
Public Acts of 2020
Approved by the Governor
November 5, 2020
Filed with the Secretary of State
November 5, 2020
EFFECTIVE DATE: November 5, 2020

**STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2020**

Introduced by Rep. Lightner

ENROLLED HOUSE BILL No. 6297

AN ACT to amend 2003 PA 238, entitled “An act 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 funds; to provide for liability for certain persons; to provide for the admissibility of evidence; to establish the recognition to be given in this state to acknowledgments and other notarial acts performed outside of this state; to prescribe powers and duties of state agencies and local officers; to provide for remedies and penalties; and to repeal acts and parts of acts,” by amending sections 3, 9, 26, and 26b (MCL 55.263, 55.269, 55.286, and 55.286b), sections 3 and 26b as amended by 2018 PA 360, section 26 as added by 2018 PA 360, and by adding sections 26c and 26d.

The People of the State of Michigan enact:

Sec. 3. As used in this act:

(a) “Acknowledgment” means a declaration by an individual in the presence of a notary public that he or she has signed a record for the purposes stated in the record and, if the record is signed in a representative capacity, that he or she signed the record with the proper authority and signed it as the act of the person identified in the record.

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

(c) “Credential analysis” means a process or service by which a third party affirms the validity of an identity document described in section 25(6)(c) through a review of public and proprietary data sources conducted remotely.

(d) “Department” means the department of state.

(e) “Electronic” means relating to technology that has electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(f) “Electronic notarization system” means a set or system of applications, programs, hardware, software, or technologies designed to enable a notary public to perform electronic notarizations.

(g) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record.

(h) “Identity proofing” means 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.

(i) “Information” includes data, text, images, sounds, codes, computer programs, software, and databases.

(j) “In a representative capacity” means any of the following:

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

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

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

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

(k) "In the presence of" means either of the following:

(i) In the same physical location with and close enough to see, hear, communicate with, and exchange tangible identification credentials with another individual.

(ii) Interacting with another individual by means of audio and visual communication technology that is part of a remote electronic notarization platform approved under section 26b or 2-way real-time audiovisual technology that meets the requirements under section 26c.

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

(2) Except as otherwise provided in subsection (4), a notary public may reside in, move to, and perform notarial acts anywhere in this state from the date of appointment until the notary's birthday occurring not less than 6 years and not more than 7 years after the date of his or her appointment unless the appointment is canceled, suspended, or revoked by the secretary or by operation of law.

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

(4) A notary public's commission under subsection (2) that expired after March 1, 2020 and before December 31, 2020 is valid through December 31, 2020.

Sec. 26. (1) Except as otherwise provided in section 26c, a notary public may select 1 or more tamper-evident electronic notarization systems to perform notarial acts electronically. A person may not require a notary public to perform a notarial act electronically with an electronic notarization system that the notary public has not selected.

(2) Before a notary public performs the notary public's initial notarial act electronically, the notary public shall notify the secretary that the notary public will be performing notarial acts electronically and identify the electronic notarization system the notary public intends to use for electronic notarizations. If the secretary and the department of technology, management, and budget have approved the use of 1 or more electronic notarization systems under section 26a, the notary public must select the system he or she intends to use from the approved electronic notarization systems. The secretary may disallow the use of an electronic notarization system if the electronic notarization system does not satisfy the criteria described in section 26a.

Sec. 26b. (1) By March 30, 2019, the secretary and the department of technology, management, and budget shall review and may approve remote electronic notarization platforms for the performance of notarial acts in this state. Except as otherwise provided in section 26c, a notary public shall not use a remote electronic notarization platform that is not approved under this section.

(2) Subject to subsection (3), in developing criteria for the approval of any remote electronic notarization platform for use in this state, the secretary of state and the department of technology, management, and budget shall consider, at a minimum, all of the following:

(a) The need to ensure that any change to or tampering with an electronic record containing the information required under this act is evident.

(b) The need to ensure integrity in the creation, transmittal, storage, or authentication of remote electronic notarizations, records, or signatures.

(c) The need to prevent fraud or mistake in the performance of remote electronic notarizations.

(d) The ability to adequately investigate and authenticate a notarial act performed remotely with that remote electronic notarization platform.

(e) The most recent standards regarding remote electronic notarization promulgated by national bodies, including, but not limited to, the National Association of Secretaries of State.

(f) The standards, practices, and customs of other jurisdictions that allow remote electronic notarial acts.

(3) If a remote electronic notarization platform for the performance of remote electronic notarizations is approved or certified by a government-sponsored enterprise, as that term is defined in 2 USC 622(8), the secretary of state and the department of technology, management, and budget shall approve the platform for use in this state if verifiable proof of that approval or certification is provided to the secretary and department, unless use of the remote electronic notarization platform is affirmatively disallowed by the secretary.

(4) The secretary and the department of technology, management, and budget shall review their standards for approving remote electronic notarization platforms for use in this state, and whether the number of approved remote electronic notarization platforms are sufficient, at least every 4 years.

(5) A notary public may perform a notarial act using a remote electronic notarization platform if either of the following is met:

(a) The notary public makes all applicable determinations under section 25 according to personal knowledge or satisfactory evidence, performance of the notarial act complies with section 27, and the notary public does not violate section 31 in the performance of the notarial act.

(b) The notary public, through use of the remote electronic notarization platform, personal knowledge, or satisfactory evidence, is able to identify the record before the notary public as the same record presented by the individual for notarization.

(6) The notary public shall not record by audio or visual means a notarial act performed using a remote electronic notarization platform, unless the notary public discloses to the person that requested the notarial act that an audio or visual recording is being made and how the recording will be preserved, and the person consents or has previously consented to the recording. A notary public may refuse to conduct a notarial act using a remote electronic notarization platform if the person that requested the notarial act objects to an audio or visual recording of the notarial act.

(7) If a notary public performs notarial acts using a remote electronic notarization platform, the notary public shall maintain a journal that records, at a minimum, each of those notarial acts. A notary public shall maintain only 1 journal for the recording of notarial acts and must keep the journal either as a tangible, permanent bound register or in a tamper-evident, permanent electronic format. A notary public shall retain the journal for at least 10 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 shall inform the secretary of state where the journal is kept or, if directed by the secretary, shall forward the journal to the secretary or a repository designated by the secretary.

(8) A notary public shall make an entry in a journal maintained under subsection (7) contemporaneously with performance of the notarial act, and the entry must include, at a minimum, all of the following:

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

(b) A description of the record, if any.

(c) The full name and address of each individual for whom the notarial act is performed.

(d) If the identity of the individual for whom the notarial act is performed is based on personal knowledge, a statement to that effect. If the identity of the individual for whom the notarial act is performed 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 for the credential.

(e) The fee charged, if any, by the notary public.

(9) An entry made in a journal maintained by a notary public under subsection (7) must also reference, but shall not itself contain, any audio or visual recording of a notarial act performed using a remote electronic notarization platform. Subject to subsection (1), a notary public must retain an audio or visual recording of a notarial act for at least 10 years after the performance of the notarial act.

(10) A notary public may designate a custodian to do any of the following:

(a) Maintain the journal required under subsection (7) on his or her behalf.

(b) Retain an audio or visual recording of a notarial act under subsection (9) on his or her behalf. If an audio or visual recording of a notarial act is transferred to a custodian to hold on behalf of the notary public, the journal entry must identify the custodian with sufficient information to locate and contact that custodian.

(11) A notarial act performed using a remote electronic notarization platform under this section that otherwise satisfies the requirements of this act is presumed to satisfy any requirement under this act that a notarial act be performed in the presence of a notary public.

Sec. 26c. (1) Notwithstanding any other provision of this act, a notary public may utilize a 2-way real-time audiovisual technology to perform notarial acts electronically if all of the following requirements are met:

(a) The 2-way real-time audiovisual technology allows direct interaction between the individual seeking the notary's services, any witnesses, and the notary, so that each can communicate simultaneously by sight and sound through an electronic device or process at the time of the notarization.

(b) The 2-way real-time audiovisual technology is capable of creating an audio and visual recording of the complete notarial act and the recording is made and retained as a notarial record in accordance with section 26b(7) to (9).

(c) The individual seeking the notary's services and any required witnesses, if not personally known to the notary, presents satisfactory evidence of identity to the notary during the video conference, and does not merely transmit it before or after the transaction, to satisfy the requirements of this act and any other applicable law.

(d) Subject to subdivision (e), the individual seeking the notary's services affirmatively represents that the individual is physically situated in this state or is physically located outside the geographic boundaries of this state and that 1 of the following applies:

(i) The record is intended for filing with or relates to a matter before a court, governmental entity, public official, or other entity subject to the jurisdiction of this state.

(ii) The record involves property located in the territorial jurisdiction of this state or a transaction substantially connected to this state.

(e) If an individual is physically located outside of the geographic boundaries of this state, the notary has no actual knowledge that the individual's act of making the statement or signing the record is prohibited by the laws of the jurisdiction in which the individual is physically located.

(f) The individual seeking the notary's services, any required witnesses, and the notary are able to affix their signatures to the record in a manner that renders any subsequent change or modification of the remote online notarial act to be tamper evident.

(g) The individual seeking the notary's services or the individual's designee transmits by facsimile, mail, or electronic means a legible copy of the entire signed record directly to the notary on the same date it was signed. This requirement applies regardless of the manner in which the record is signed.

(h) Once the notary has received a legible copy of the record with all necessary signatures, the notary notarizes the record in accordance with section 27 and transmits the notarized record back to the individual seeking the notary's services.

(2) The official date and time of the notarization performed under this section is the date and time when the notary witnesses the signature via 2-way real-time audiovisual technology as required under this section.

(3) Notwithstanding any other law or regulation of this state, beginning April 30, 2020, and before January 1, 2021, absent an express prohibition in a record against signing the record in counterparts, a record signed under this act may be signed in counterparts.

(4) This section applies to a notarial act described in subsection (1) performed on or after April 30, 2020 and before January 1, 2021.

(5) If a record is notarized electronically under this section, all of the following apply:

(a) The record does not need to be notarized under any other provision of this act.

(b) The rights or interests of a person that relies in good faith and without actual notice that the record was executed on or after April 30, 2020 and before January 1, 2021 but was not executed or notarized in accordance with this section are not impaired, challenged, or terminated on that basis alone.

(c) Compliance with this section is presumed. A person challenging a record notarized under this section may overcome the presumption by establishing, by clear and convincing evidence, that the notary or the individual seeking the notary public's services intentionally failed to comply with a requirement described in this section.

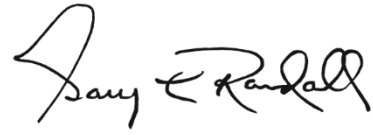
Sec. 26d. (1) Beginning April 30, 2020, it is the intent of the legislature that, governmental agencies and officials of this state are encouraged to use or permit the use of electronic records and electronic signatures to transact business, process applications, and recognize the validity of legal instruments, and, when a notarized signature is required by a law of this state, to use a notary public who performs notarial acts electronically under this act.

(2) Beginning April 30, 2020, it is the intent of the legislature that, any requirement under the law of this state that an in-person witness attests to or acknowledges an instrument, record, or deed is satisfied by the use of 2-way real-time audiovisual technology in accordance with section 26c.

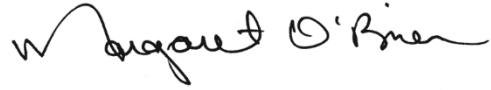
(3) Beginning April 30, 2020, it is the intent of the legislature that, any requirement that an individual appears personally before or be in the presence of either a notary public at the time of a notarization or a witness at the time of an attestation or acknowledgment is satisfied if the individual, the witnesses, or the notary public are not in the physical presence of each other but can communicate simultaneously by 2-way real-time audiovisual technology in accordance with section 26c at the time of the notarization, attestation, or acknowledgment.

(4) This section does not apply after December 31, 2020.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor