PROBATE & ESTATE PLANNING SECTION

Agendas and Attachments for:

JUNE 5, 2020, 9 a.m. MEETING
Virtual Meeting 100% Members

Meeting of the Committee on Special Projects (CSP)

Meeting of the Council of the Probate and Estate Planning Section

NOTICE FOR REMOTE REGISTERING AND ATTENDANCE:

The Zoom link for Section members to register for remote attendance at the June Council meeting is:
https://us04web.zoom.us/meeting/register/upAvc-6hqTwjHNW60hHR55nFDKqPtvh7_LQP

If you have any difficulty registering for remote attendance, please contact Mike Lichterman at mike@baarlegal.com. Remote attendees are required to register ahead of time. It is a new registration link each month and I will make sure to email it to you before you send out the Section-wide invitation to the meeting.
The meeting of the Section’s Committee on Special Projects (CSP) meeting will begin at 9 a.m. and will end at approximately 10:15 a.m. The meeting of the Council of the Probate and Estate Planning Section will begin at approximately 10:30 a.m. If time allows and at the discretion of the Chair, we will work further on CSP materials after the Council of the Section meeting concludes.

Mark E. Kellogg, Secretary
Fraser Trebilcock Davis & Dunlap, P.C.
124 West Allegan Street, Suite 1000
Lansing, Michigan  48933
517-377-0890
Email: mkellogg@fraserlawfirm.com
Each meeting starts with the Committee on Special Projects at 9 a.m., followed by the meeting of the Council of the Probate & Estate Planning Section.

CALL FOR MATERIALS

Due dates for Materials for Committee on Special Projects
All materials are due on or before 5 p.m. of the date falling 9 days before the next CSP meeting.
CSP materials are to be sent to Katie Lynwood, Chair of CSP (klynwood@blhlaw.com)

Due dates for Materials for Council Meeting
All materials are due on or before 5 p.m. of the date falling 8 days before the next Council Meeting.
More information to follow at a later date.

JULY AND AUGUST MEETINGS
There are no meetings in July or August

NEXT PROBATE COUNCIL MEETING:
Friday, September 11, 2020 meeting (membership meeting at 9 a.m., followed by Council Meeting)
## Officers of the Council for 2019-2020 Term

<table>
<thead>
<tr>
<th>Office</th>
<th>Officer</th>
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<tbody>
<tr>
<td>Chairperson</td>
<td>Christopher A. Ballard</td>
</tr>
<tr>
<td>Chairperson Elect</td>
<td>David P. Lucas</td>
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<td>Vice Chairperson</td>
<td>David L.J.M. Skidmore</td>
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<tr>
<td>Secretary</td>
<td>Mark E. Kellogg</td>
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<td>Treasurer</td>
<td>James P. Spica</td>
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## Council Members for 2019-2020 Term

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<tr>
<th>Council Member</th>
<th>Year Elected to Current Term (partial, first or second full term)</th>
<th>Current Term Expires</th>
<th>Eligible after Current Term?</th>
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<td>Silver, Kenneth</td>
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<td>2022</td>
<td>Yes</td>
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Ex Officio Members of the Council

John E. Bos; Robert D. Brower, Jr.; Douglas G. Chalgian; George W. Gregory; Henry M. Grix; Mark K. Harder; Philip E. Harter; Dirk C. Hoffius; Brian V. Howe; Shaheen I. Imami; Stephen W. Jones; Robert B. Joslyn; James A. Kendall; Kenneth E. Konop; Nancy L. Little; James H. LoPrete; Richard C. Lowe; John D. Mabley; John H. Martin; Michael J. McClory; Douglas A. Mielock; Amy N. Morrissey; Patricia Cormely Prince; Douglas J. Rasmussen; Harold G. Schuitmaker; John A. Scott; James B. Steward; Thomas F. Sweeney; Fredric A. Sytsma; Lauren M. Underwood; W. Michael Van Haren; Susan S. Westerman; Everett R. Zack; Marlaine C. Teahan, Marguerite Munson Lentz
CSP Materials
MEETING OF THE COMMITTEE ON SPECIAL PROJECTS OF THE COUNCIL OF THE PROBATE AND ESTATE PLANNING SECTION OF THE STATE BAR OF MICHIGAN

AGENDA

Friday, June 5, 2020
virtual/telephone meeting
9:00 – 11:00 AM

1. Nathan Piwowarski – Remote Notarization and Witnessing Joint Workgroup – 70 minutes
   Re: Executive Orders 2020-42 and 2020-74 and permanent legislative solutions for remote witnessing and notarizing
   See attached memorandum (Exhibit 1 – 29 pages)

2. Ken Silver – Ad Hoc Committee on Undue Influence – 30 minutes
   See attached memorandum (Exhibit 2 – 30 pages)

3. Melisa Mysliwiec – Court Rules, Forms, and Proceedings Committee – 20 minutes
   Re: SCAO form revisions related to the addition of a limited guardian for purposes of visitation
   See attached memorandum (Exhibit 3 – 13 pages)
REMOTE NOTARIZATION AND WITNESSING JOINT WORKGROUP

JUNE 1, 2020 PRESENTATION MATERIALS

Introduction

Estate planning documents have varying witness and notarization requirements. In normal times, these formalities enhance these documents’ trustworthiness—and safeguard against their abuse. In the wake over COVID-19, these formalities prevent Michiganders from signing urgently-needed estate planning documents. The five remote notary services approved by the Department of State primarily focus on real estate transactions, and have proven unable to serve the current demand for time-sensitive estate planning documents. These services do not address the need for a witness’s in-person presence for many documents. Executive Orders 2020-42 and 2020-74 addressed this immediate need but they are temporary—active only until they expire by their stated terms.

The Elder Law and Disability Rights Section and the Probate and Estate Planning Section collaborated to provide feedback to the Executive Branch when it was preparing Executive Orders 2020-42 and 2020-74. Each Section has committed to jointly proposing a permanent legislative solution to the questions of remote witnessing and notarization. Further, the ELDRS Legislation Committee and the PEPS Legislation Development and Drafting Committee have been actively involved in the preparation of a proposal.

The joint work group surveyed practitioners (including through SBM Connect) and comprehensively researched existing legislation and executive orders nationwide, as well as the Revised Uniform Law on Notarial Acts. Based on this process, the workgroup concluded that legislation is necessary to:

1. Ratify actions taken under the Executive Orders;
2. Permanently permit remote witnessing; and,
3. Permanently expand remote notarization beyond the platforms allowed by current statute.

1 Wills (two witnesses, plus notary for self-proving will), MCL 700.2502; durable powers of attorney (two witnesses or notarization [for recordable documents]); MCL 700.5501(2); patient advocate designations (two witnesses who are not healthcare workers or presumptive heirs, or notarization), MCL 700.5506(3); nominations of guardians of minors, MCL 700.5103 (notarization); designations of funeral representatives, MCL 700.3206 (notarization); trust agreements MCL 700.7402 (not required to be witnessed or notarized, but customarily witnessed and notarized; Deeds (notarization), MCL 565.8 (notarized), and a variety of filings necessary to the disposition of a decedent’s property, including affidavits of decedent’s successors, MCL 700.3983 (notarization); testimony to identify heirs, MCL 700.3303(3) (notarization).
Remote Notarization and Witnessing Workgroup

Through a legislative approach, we seek to address ongoing needs that will still exist either because of further extension of stay-at-home orders, the continuing health risks associated with in-person meetings even after the stay at home orders have been lifted, or simply the desire to serve clients where they are—which may be outside of the attorney’s office.

At this stage of the legislation’s development, we will ask for straw votes on the savings clause- and witnessing-related provisions. We will request feedback on the notary-related provisions, which is not as far along in the drafting process.

Savings Clause

The Executive Orders face challenges to their validity. But few would want to call into doubt the efficacy of acts made in reliance on Executive Orders 2020-42 and 2020-74. As such, the workgroup recommends adopting a savings clause that ratifies those acts, even if the executive orders may later be invalidated. Further, given the complexities and ambiguities of those orders, the workgroup advocates creating a broadly-forgiving dispensing power for those acts not completed in strict compliance with the executive orders. Two amendatory sections are needed:

1. The Michigan Law on Notarial Acts, MCL 55.261, et seq., should be amended to add a savings clause that reads:

   (a) Any documents notarized in compliance with Executive Orders 2020-41 or 2020-74 are validly notarized. A document notarized under these Executive Orders need not be re-notarized in compliance with this Act’s other provisions.

   (b) Although a document was not notarized in compliance with Executive Orders 2020-41 or 2020-74, the document is treated as if it had been notarized in compliance with those Executive Orders if the proponent of the document establishes by clear and convincing evidence that the notary intended to notarize that document in compliance with those Executive Orders.

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Remote Notarization and Witnessing Workgroup

2. The Estate and Protected Individuals Code, MCL 700.1101, et seq., should be amended to add a savings clause that reads:

(a) If an individual has witnessed a document in compliance with Executive Orders 2020-41 or 2020-74, that individual has validly witnessed that document.
(b) Although an individual has not witnessed a document in compliance with Executive Orders 2020-41 or 2020-74, the document is treated as if that individual had witnessed the document in compliance with those Executive Orders if the proponent of the document establishes by clear and convincing evidence that the individual intended to witness the document in compliance with those Executive Orders.

Witnessing Clause

Rather than creating an arduous process that's open to a broad class of witnesses (as exists under the Executive Orders), the joint workgroup believes that remote witnessing should (at least initially) be available only to a narrow, trusted class of persons. If it works well, it can be expanded and refined later. We concluded that one amendatory section to the Estates and Protected Individuals Code is necessary:

A document under this Act may be witnessed through the use of audio and visual communication technology so long as at least one witness to that document is an attorney licensed to practice in this state.

An important minority in our workgroup favors more widely-available remote witnessing. While this alternative has not received as much development to date, it might resemble the following:

The act of witnessing a signature under this Act is satisfied if a witness is either:
(a) In the presence of the signatory at the time he executes or acknowledges the document[3]; or,
(b) That witness is present through audio and visual communication technology at the time the signatory's signature is affixed, and either:
   (i) Sees the signatory sign the document; or
   (ii) Hears the signatory make a statement acknowledging that he has signed the document, or that he has requested that a person sign it under section 2502 of this Act or section 33 of the Law on Notarial Acts.

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[3] This being intended to be read in pari materia with MCL 55.263(k).
Remote Notarization and Witnessing Workgroup

(c) [Optional clause; no current recommendation from workgroup: The counterparts of a document witnessed under subsection (b) must be assembled into a one document within ___ days of the signing.]

While not immediately evident when reviewing their text, these proposals have much in common:

1. Like the executive orders, they continue to require audio and visual presence.
2. Unlike the executive orders, they do not require the approval of vendors by the executive branch.
3. Unlike the executive orders, they do not require detailed formalities related to the remotely-witnessed document (e.g., the “page 1 of x” numbering requirement).
4. Unlike the executive orders, they do not require detailed formalities related to the performance of the signing (e.g., requiring that statements that a remote witnessing is happening, requiring witnessing the act of signing—as opposed to the acknowledgment of the signatory’s signature, the “page 1 of x” numbering requirement, etc.).
5. Unlike the executive orders, they are silent on territorial presence requirements.
6. Unlike the executive orders, they do not require the creation or retention of recordings.
7. Unlike the executive orders, they would not impose strict “document transmission” requirements.

Additionally, irrespective of which of these clauses is adopted, we believe an ancillary change to the definition of “governing instrument” is desirable to confirm that bills of sale and patient advocate designations are considered documents “under this Act:”

“Governing instrument” means a deed; will; trust; funeral representative designation; insurance or annuity policy; account with POD designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney; bill of sale or assignment; patient advocate designation; or dispositive, appointive, or nominative instrument of any similar type.” MCL 700.1104(m).
Remote Notarization and Witnessing Workgroup

Expanded Remote Notarization

The current statute permitting a version of remote notarization is found within the Michigan Law on Notarial Acts, MCL 55.261 et seq. The current law has many elements that are found in the Revised Uniform Law on Notarial Acts (RULONA). It does not, however, authorize remote notarizations other than those performed through remote electronic notarization platforms approved by the Secretary of State. The workgroup recommends expanding remote notarization beyond these platforms.

The workgroup has considered the current executive orders, RULONA, other states with remote notarization statutes and executive orders, as well as the existing statutory framework. The new, additional approach to remote notarization may be achieved by modifying our existing statute.

As a general matter of policy, the workgroup has laid out the following principles:

1. Like the executive orders, they recommend that the law continue to require audio and visual presence. That said, we wish to ensure that the remote notarization will allow services to facilitate communication with a remotely located individual who has a vision, hearing, or speech impairment.
2. As a matter of political expediency, it is undesirable to adversely affect the five incumbent remote notarization platforms approved by the Secretary of State. That said, the vendor-approval requirement in the law stifles the public’s access to remote notarization; it is necessary to allow for remote notarization outside of services approved by the executive branch.
3. The workgroup recognizes that “identity verification” is the heart of the notarial act. But it considers the during-meeting verification requirements clunky and onerous. Relatedly, the statutory term. “personally known” may benefit from improvement (providing that, for example, receipt of documents incident to a normal estate planning consultation constitutes personal knowledge that the declarant is who she says she is).
4. The workgroup favors loosening geographical nexus requirements: after all, the Office of the Great Seal already has the ability to regulate a notary wherever she happens to be located.
5. The workgroup does not favor recording-creation and -retention requirements, but acknowledges that it likely will be difficult to eliminate them. A close review of the RULONA (and some helpful comments from the Uniform Law Commission’s staff) reveals that the ten-year retention requirement is not required under the uniform law. Any reduction below ten years is desirable.

4 Remote electronic notarization platform” means any combination of technology that enables a notary public 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.” MCL 55.265(i).
Remote Notarization and Witnessing Workgroup

6. The workgroup disfavors strict “document transmission” requirements, as small inadvertencies could imperil the validity of documents—with little commensurate benefit arising from tight statutory timelines.

7. The law should clearly communicate where the notarial act is deemed to have occurred (e.g., the county in which the notary was acting at the time of the acknowledgment).

While this our work is not yet complete, we submit that the following items require modification to expand remote notarization:

1. **Amend MCL 55.263 to address the definition of “in the presence of” to allow additional approaches for remote notarization beyond a remote electronic notarization platform.**

   (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 which can include that is part of a remote electronic notarization platform approved under section 26b.

2. **Amend MCL 55.286b to include the option for other versions of remote notarizations similar to those occurring under the Executive Orders.**

   (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. 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.
Remote Notarization and Witnessing Workgroup

(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 either a remote electronic notarization platform or another audio and visual communication technology, 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, other audio and visual communication technology, 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 or other audio and visual communication technology, 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.
Remote Notarization and Witnessing Workgroup

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 or other audio and visual communication technology 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, or other audio and visual communication technology, 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, or other audio and visual communication technology. 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.
Remote Notarization and Witnessing Workgroup

(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, or other audio and visual communication technology, 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.

3. Consider the Addition of Complementary Elements

The Notary Subcommittee has a heavier drafting responsibility than the other two subcommittees, and has not had the opportunity to deliberate over several other complementary clauses that workgroup members identified while reviewing other states’ legislation and executive orders. The following are offered for your feedback, which the subcommittee will consider later in the drafting process:

1. Create a separate category of attorney-notaries, and allow them to complete remote notarizations with fewer of the administrative approvals or formalities required elsewhere in the statute.
2. Protect proponents of documents if notaries fail to maintain accurate journals.
EXECUTIVE ORDER

No. 2020-41

Encouraging the use of electronic signatures and remote notarization, witnessing, and visitation during the COVID-19 pandemic

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Michigan Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq.

In the three weeks that followed, the virus spread across Michigan, bringing deaths in the hundreds, confirmed cases in the thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. In response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33 on April 1, 2020. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945.

The Emergency Management Act vests the governor with broad powers and duties to "cope[c] with dangers to this state or the people of this state presented by a disaster or emergency," which the governor may implement through "executive orders, proclamations, and directives having the force and effect of law." MCL 30.103(1)-(2). Similarly, the Emergency Powers of the Governor Act of 1945 provides that, after declaring a state of emergency, "the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control." MCL 10.31(1).
Remote Notarization and Witnessing Workgroup
(Appendix A: EO 2020-41)

To mitigate the spread of COVID-19, protect the public health, and provide essential protections to vulnerable Michiganders, it is crucial that all Michiganders limit in-person contact to the fullest extent possible. This includes practicing social distancing and restricting in-person work and interaction to only that which is strictly necessary. To that end, it is reasonable and necessary to provide limited and temporary relief from certain rules and requirements so as to enable and encourage the use of electronic signatures, remote notarizations, remote witness attestations and acknowledgments, and remote visitations. This will help ensure that necessary transactions and interactions may continue to occur during this time of crisis without unduly compromising the health and safety of this state and its residents.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. Strict compliance with rules and procedures under the Uniform Electronic Transactions Act ("UETA"), 2000 PA 305, as amended, MCL 450.831 et seq., and the Uniform Real Property Electronic Recording Act ("URPERA"), 2010 PA 123, as amended, MCL 565.841 et seq., is temporarily suspended to the extent necessary to permit the use of an electronic signature for a transaction whenever a signature is required under Michigan law, unless the law specifically mandates a physical signature. As provided in section 7 of the UETA, MCL 450.837, a signature will not be denied legal effect or enforceability solely because it is in electronic form and if a law requires a signature, an electronic signature satisfies the law.

2. Strict compliance with rules and procedures under section 18 of the UETA, MCL 450.848, is temporarily suspended so as to permit each state department to send and accept electronic records and electronic signatures to and from other persons without a determination from or approval by the Department of Technology, Management and Budget.

3. Strict compliance the Michigan Law on Notarial Acts, 2003 PA 238, as amended, MCL 55.261 et seq., is temporarily suspended, to the extent it requires a notary to be in the physical presence of an individual seeking the notary’s services or of any required witnesses.

4. To minimize in-person interaction and facilitate remote work during the declared states of emergency and disaster:

   (a) Governmental agencies and officials of this state are encouraged to use or permit the use of electronic records and electronic signatures for transaction of business, processing of applications, and recognition of the validity of legal instruments, and, when a notarized signature is mandated by law, to use a remote electronic notary pursuant to the Michigan Law on Notarial Acts, MCL 55.261 et seq.

   (b) Persons and entities engaged in transactions are encouraged to use electronic records and electronic signatures and, when a notarized signature is mandated by law, to use a remote electronic notary pursuant to the Michigan Law on Notarial Acts, MCL 55.261 et seq.
5. In addition to other means available by law, any notarial act that is required under Michigan law may be performed by a notary who currently holds a valid notarial commission in this state ("notary") utilizing two-way real-time audiovisual technology, provided that all of the following conditions are met:

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

(b) The two-way real-time audiovisual technology must be capable of creating an audio and visual recording of the complete notarial act and such recording must be made and retained as a notarial record in accordance with sections 26b(7) to 26b(9) of the Michigan Law on Notarial Acts, MCL 55.286b(7) to 55.286b(9).

(c) The individual seeking the notary’s services and any required witnesses, if not personally known to the notary, must present satisfactory evidence of identity (e.g., a valid state-issued photo identification) to the notary during the video conference, not merely transmit it prior to or after the transaction, to satisfy the requirements of the Michigan Law on Notarial Acts, MCL 55.261 et seq., and any other applicable law.

(d) The individual seeking the notary’s services must affirmatively represent either that the individual is physically situated in this state, or that the individual is physically located outside the geographic boundaries of this state and that either:

   (1) The document 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; or

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

If an individual is physically located outside of the geographic boundaries of this state, the notary must have no actual knowledge that the individual’s act of making the statement or signing the document is prohibited by the laws of the jurisdiction in which the individual is physically located.

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

(f) The individual seeking the notary’s services or the individual’s designee must transmit by fax, mail, or electronic means a legible copy of the entire signed document directly to the notary on the same date it was signed. This requirement shall apply regardless of the manner in which the document is signed.
Remote Notarization and Witnessing Workgroup
(Appendix A: EO 2020-41)

(g) Once the notary has received a legible copy of the document with all necessary signatures, the notary may notarize the document and transmit the notarized document back to the individual seeking the notary’s services.

(h) The official date and time of the notarization shall be the date and time when the notary witnesses the signature via two-way real-time audiovisual technology as required under this section.

6. Any requirement under Michigan law that an in-person witness attest to or acknowledge an instrument, document, or deed may be satisfied by the use of two-way real-time audiovisual technology, provided that all of the following conditions are met:

(a) The two-way real-time audiovisual technology must allow direct, contemporaneous interaction by sight and sound between the individual signing the document (the "signatory") and the witness(es).

(b) The interaction between the signatory and the witness(es) must be recorded and preserved by the signatory or the signatory's designee for a period of at least three years, unless a law of this state requires a different period of retention.

(c) The signatory must affirmatively represent either that the signatory is physically situated in this state, or that the signatory is physically located outside the geographic boundaries of this state and that either of the following apply:

(1) The document 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; or

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

(d) The signatory must affirmatively state during their interaction with the witness(es) on the two-way real-time audiovisual technology what document they are executing.

(e) Each title page and signature page of the document being witnessed must be shown to the witness(es) on the two-way real-time audiovisual technology in a manner clearly legible to the witness(es), and every page of the document must be numbered to reflect both the page number of the document and the total number of pages of the document.

(f) Each act of signing the document must be captured sufficiently up close on the two-way real-time audiovisual technology for the witness(es) to observe.
(g) The signatory or the signatory's designee must transmit by fax, mail, or electronic means a legible copy of the entire signed document directly to the witness(es) within 24 hours of when it is executed.

(h) Within 24 hours of receipt, the witness(es) must sign the transmitted copy of the document as a witness and return the signed copy of the document to the signatory or the signatory's designee by fax, mail, or electronic means.

7. Notwithstanding any law or regulation of this state to the contrary, absent an express prohibition in the document against signing in counterparts, any document signed under this order may be signed in counterparts.

8. A guardian, guardian ad litem, or visitor may satisfy any requirement concerning a visit with a person, including but not limited to a visit in the physical presence of a person under the Estates and Protected Individuals Code, 1998 PA 386, as amended, MCL 700.1101 et seq., by instead conferring with that person via two-way real-time audiovisual technology that allows direct, contemporaneous interaction by sight and sound between the person being visited and the guardian, guardian ad litem, or visitor.

9. Any law of this state requiring an individual to appear personally before or be in the presence of either a notary at the time of a notarization or a witness at the time of attestation or acknowledgment shall be satisfied if the individual, the witness(es), and/or the notary are not in the physical presence of each other but can communicate simultaneously by sight and sound via two-way real-time audiovisual technology at the time of the notarization, attestation, or acknowledgment.

10. For the duration of this order and any order that may follow from it, financial institutions and registers of deeds must not refuse to record a tangible copy of an electronic record on the ground that it does not bear the original signature of a person, witness, or notary, if the notary before whom it was executed certifies that the tangible copy is an accurate copy of the electronic record.

11. For purposes of the “verified user agreement” requirement of section 4 of the URERA, MCL 565.841(4), a county recording office must deem all financial institutions and all licensed title insurers or their employed or contracted settlement agents as covered by a verified user agreement for the duration of this order and any order that may follow from it. The recorder may ask the financial institution or title insurance company for verification of a notary’s employment or contractual association.

12. As used in this order:

(a) “Electronic,” “electronic record,” “electronic signature,” “governmental agency,” “person,” and “transaction” mean those terms as defined under section 2 of the UETA, MCL 450.832.

(b) “Financial institution” means that term as defined in section 4(c) of the Michigan Strategic Fund Act, 1984 PA 270, as amended, MCL 125.2004(c).
13. This order is effective immediately and continues through May 6, 2020 at 11:59 pm.

Given under my hand and the Great Seal of the State of Michigan.

Date: April 8, 2020

Time: 8:32 pm

GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE
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.


The People of the State of Michigan enact:

55.261 Short title.
Sec. 1. This act shall be known and may be cited as the "Michigan law on notarial acts".


55.263 Definitions; A to I.
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 256(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 260b.

55.265 Definitions; J to R.
Sec. 5. As used in this act:
(i) "Jurat" means a certification by a notary public that a signer, whose identity is personally known to the notary public or proven on the basis of satisfactory evidence, has made in the presence of the notary public a voluntary signature and taken an oath or affirmation vouching for the truthfulness of the signed record.
(b) "Lineal ancestor" means an individual who is in the direct line of ascent including, but not limited to, a
parent or grandparent.
(c) "Lineal descendant" means an individual who is in the direct line of descent including, but not limited to, a
child or grandchild.
(d) "Notarial act" means any of the following:
(i) An act, whether performed with respect to a tangible or electronic record, that a notary public
commissioned in this state is authorized to perform including, but not limited to, taking an acknowledgment,
administering an oath or affirmation, taking a verification upon oath or affirmation, or witnessing or attesting
a signature performed in compliance with this act.
(ii) An act described in subparagraph (i) that is performed in another jurisdiction and meets the
requirements of section 25a.
(e) "Notify" means to communicate or send a message by a recognized mail, delivery service, or electronic
means.
(f) "Official misconduct" means 1 or more of the following:
(i) The exercise of power or the performance of a duty that is unauthorized, unlawful, abusive, negligent,
reckless, or injurious.
(ii) The charging of a fee that exceeds the maximum amount authorized by law.
(g) "Person" means an individual or a corporation, business trust, statutory trust, estate, partnership, trust,
limited liability company, association, joint venture, public corporation, government or governmental
subdivision, agency, or instrumentality, or any other legal or commercial entity.
(h) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or
other medium and is retrieveable in perceivable form.
(i) "Remote electronic notarization platform" means any combination of technology that enables a notary
public 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.
(j) "Revocation" means the termination of a notary public's commission to perform notarial acts.


55.267 Definitions; S to V.
Sec. 7. As used in this act:
(a) "Secretary" means the secretary of state or his or her designee.
(b) "Signature" means an individual's written or printed name, electronic signature, or mark, attached to or
logically associated with a contract or other record and executed, adopted, or made by the individual with the
intent to sign the record.
(c) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico,
the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United
States.
(d) "Suspension" means the temporary withdrawal of the notary public's commission to perform notarial
acts during the period of the suspension.
(e) "Verification upon oath or affirmation" means a declaration, made by an individual on oath or
affirmation before a notary public, that a statement in a record is true.


55.269 Notary public; appointment.
Sec. 9. (1) The secretary may appoint as a notary public a person who complies with the requirements of
this act.
(2) 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.


55.271 Notary public; qualifications.
Sec. 11. (1) The secretary may appoint as a notary public an individual who applies to the secretary and

meets all of the following qualifications:

(a) Is at least 18 years of age.
(b) Is a resident of this state or maintains a principal place of business in this state.
(c) Reads and writes in the English language.
(d) Has not been convicted of a felony, misdemeanor, or violation described in section 41.
(e) For an applicant who does not reside in the state of Michigan, demonstrates that his or her principal place of business is located in the county in which he or she requests appointment and indicates that he or she is engaged in an activity in connection with that business in which he or she is likely to be required to perform notarial acts.

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

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


55.273 Filing; oath; bond; fee.

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

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

(3) Each person who files an oath and, if applicable, a bond with a county clerk as required in subsection (1) shall pay a $10.00 filing fee to the county clerk. Upon receipt of the filing fee, the county clerk shall give an oath certificate of filing and a bond, if applicable, to the person as prescribed by the secretary. A charter county with a population of more than 2,000,000 may impose by ordinance a fee for the county clerk's services different than the amount prescribed by this subsection. Two dollars of each fee collected under this subsection shall be deposited into the notary education and training fund established in section 17 on a schedule determined by the secretary.


55.275 Application; format; fee; use of LEIN or ICHAT; certificate of appointment; electronic application and payment process.

Sec. 15. (1) An individual shall apply to the secretary for appointment as a notary public in a format as prescribed by the secretary. Unless the application is submitted electronically under subsection (5), an application for appointment as a notary public must include the handwritten signature of the applicant. An application must include all of the following information:

(a) The applicant's name, residence address, business address, date of birth, residence and business telephone numbers, and electronic mail address.

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

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

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

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

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

Page 3 Michigan Compiled Laws Complete Through PA 85 of 2020
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Remote Notarization and
Witnessing Workgroup
(Appendix B: Existing Law)
(g) An affirmation by the applicant that the application is correct, that the applicant has read this act, and that the applicant will perform his or her notarial acts faithfully.

(h) Any other information required by the secretary.

(2) An application processing fee of $10.00 must accompany an application or be paid electronically under subsection (5). The secretary shall deposit $4.00 of each fee collected under this subsection into the notary education and training fund established in section 17 on a schedule determined by the secretary.

(3) When he or she receives an application and the prescribed processing fee, the secretary may inquire as to the qualifications of the applicant and shall determine whether the applicant meets the qualifications for appointment as a notary public under this act. To assist in deciding whether the applicant is qualified, the secretary may use the law enforcement information network as provided in the C.S.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215, or the internet criminal history access tool (ICHA T) maintained by the department of state police, to check the criminal background of the applicant.

(4) After approval of an application for appointment as a notary public, the secretary shall mail directly to the applicant the certificate of appointment as a notary public. Each certificate of appointment shall identify the individual as a notary public of this state and shall specify the term and county of his or her commission.

(5) The secretary may develop and implement an electronic application and payment process for individuals who are seeking appointment as a notary public. Except as provided in this section, all of the requirements of this section apply to an application or payment made using this electronic process.


55.277 Notary education and training fund.

Sec. 17. (1) The notary education and training fund is created within the state treasury. Money from fees collected under sections 15(3), 15(5), and 21(4) shall be deposited into the fund.

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

(3) Up to $1,500,000.00 shall remain in the fund at the close of each fiscal year and shall not lapse to the general fund. Any amount in excess of $1,500,000.00 shall lapse to the general fund.

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

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


55.279 Reappointment; licensed attorney as notary public; cause for cancellation of appointment.

Sec. 19. (1) The secretary shall not automatically reappoint a notary public.

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

(3) In the case of a licensed attorney granted an appointment as a notary public under this act and after the initial application under section 15, the secretary shall send a reappointment application form to the licensed attorney at least 90 days before the expiration of the current notary public commission. The application for reappointment shall contain a certification to be completed by the applicant certifying that he or she is still a member in good standing in the state bar of Michigan. The applicant shall otherwise comply with the requirements for appointment as a notary public as described in section 15.

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


Page 4 Michigan Compiled Laws Complete Through PA 85 of 2020
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Remote Notarization and Witnessing Workgroup
(Appendix B: Existing Law)
55.281 Corrected notary public commission.
Sec. 21. (1) A notary public shall immediately apply to the secretary, in a format prescribed by the secretary, for a corrected notary public commission upon the occurrence of any of the following circumstances:
(a) A change in the notary public's name.
(b) A change in the notary public's residence or business address.
(c) The issuance by the secretary of a notary public commission that contains an error in the person's name, birth date, county, or other pertinent information if the error was made on the notary public's application and was used by the secretary to appoint the person as a notary public.
(2) A notary public shall immediately notify both the secretary and the county clerk of his or her appointment, in a format prescribed by the secretary, upon any change in the factual information stated in the notary public's application for appointment.
(3) The secretary shall notify the county clerk of the applicant's appointment when a corrected commission is issued by the secretary.
(4) If a notary public's certificate of appointment becomes lost, mutilated, or illegible, the notary public shall promptly apply to the secretary for the issuance of a duplicate certificate. The application shall be made on a form prescribed by the secretary and be accompanied by a processing fee of $10.00. One dollar of each processing fee collected under this subsection shall be deposited into the notary education and training fund established in section 17.

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

55.285 Performance of notarial acts; scope; verification.
Sec. 25. (1) A notary public may perform notarial acts that include, but are not limited to, the following:
(a) Taking acknowledgments.
(b) Administering oaths and affirmations.
(c) Witnessing or attesting to a signature.
(2) In taking an acknowledgment, the notary public shall determine, either from personal knowledge or from satisfactory evidence, that the individual in the presence of the notary public and making the acknowledgment is the individual whose signature is on the record.
(3) In taking a verification upon oath or affirmation, the notary public shall determine, either from personal knowledge or from satisfactory evidence, that the individual in the presence of the notary public and making the verification is the individual whose signature is on the record being verified.
(4) In witnessing or attesting to a signature, the notary public shall determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the individual in the presence of the notary public and is the individual named in the record.
(5) In all matters where the notary public takes a verification upon oath or affirmation, or witnesses or attests to a signature, the notary public shall require that the individual sign the record being verified, witnessed, or attested in the presence of the notary public.
(6) A notary public has satisfactory evidence that an individual is the individual whose signature is on a record if that individual is any of the following:
(a) Personally known to the notary public.
(b) Identified upon the oath or affirmation of a credible witness personally known by the notary public and who personally knows the individual.
(c) Identified on the basis of a current license, identification card, or record issued by a federal or state government that contains the individual's photograph and signature.
(d) With regard to a notarial act performed under section 26b, identified and verified through an identity proofing process or service that is part of a remote electronic notarization platform approved under section 26b(1), and the person presents an identity document described in subdivision (c) that is verified through a credential analysis process or service that is part of a remote electronic notarization platform approved under section 26b(1).
(7) The fee charged by a notary public for performing a notarial act shall not be more than $10.00 for any individual transaction or notarial act. A notary public shall either conspicuously display a sign or expressly
advise an individual concerning the fee amount to be charged for a notarial act before the notary public performs the act. Before the notary public commences to travel in order to perform a notarial act, the notary public and client may agree concerning a separate travel fee to be charged by the notary public for traveling to perform the notarial act.

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

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

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


55.285a Notarial acts performed in another state; in federally recognized Indian tribe; under federal law; in foreign country; applicability; definition of "foreign country".

Sec. 25a. (1) All of the following apply with regard to a notarial act that is performed in another state:

(a) A notarial act performed in another state has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed in that state is performed by any of the following individuals:

(i) A notary public who is authorized to perform notarial acts in the state in which the act is performed.

(ii) A judge, clerk, or deputy clerk of any court of record in the state in which the notarial act is performed.

(iii) Any other individual who is authorized to perform notarial acts in the state in which the act is performed.

(b) The signature and title of an individual described in subdivision (a)(i) to (iii) who performs a notarial act in another state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(c) The signature and title of an individual described in subdivision (a)(i) or (ii) who performs a notarial act in another state conclusively establish the authority of the individual to perform the notarial act.

(2) All of the following apply with regard to a notarial act that is performed under the authority and in the jurisdiction of a federally recognized Indian tribe:

(a) A notarial act performed under the authority and in the jurisdiction of a federally recognized Indian tribe has the same effect as if performed by a notarial officer of this state, if the act performed in the jurisdiction of the tribe is performed by any of the following individuals:

(i) A notary public of the tribe.

(ii) A judge, clerk, or deputy clerk of a court of the tribe.

(iii) Any other individual who is authorized under the law of the tribe to perform notarial acts.

(b) The signature and title of an individual described in subdivision (a)(i) to (iii) who performs a notarial act under the authority of and in the jurisdiction of a federally recognized Indian tribe are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(c) The signature and title of an individual described in subdivision (a)(i) or (ii) who performs a notarial act under the authority of and in the jurisdiction of a federally recognized Indian tribe conclusively establish the authority of the individual to perform the notarial act.

(3) All of the following apply with regard to a notarial act that is performed under federal law:

(a) A notarial act performed under federal law has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed under federal law is performed by any of the following individuals:

(i) A judge, clerk, or deputy clerk of a federal court.

(ii) An individual who is in military service, or is performing duties under the authority of military service, who is authorized to perform notarial acts under federal law.

(iii) An individual who is designated as a notarizing officer by the United States Department of State to perform notarial acts outside of the United States.

(b) Any other individual who is authorized by federal law to perform the notarial act.

(c) The signature and title of an individual described in subdivision (a)(i) to (iv) who performs a notarial act under federal authority are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(d) The signature and title of an individual described in subdivision (a)(i) to (iii) who performs a notarial act under federal authority conclusively establish the authority of the individual to perform the notarial act.

(4) All of the following apply with regard to a notarial act performed by an individual under the authority and in the jurisdiction of a foreign country or a constituent unit of a foreign country:
55.286 Electronic notarization systems; notification required.

Sec. 26. (1) 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.


55.286a Approval of electronic notarization systems; minimum requirements; certification by government-sponsored enterprise.

Sec. 26a. (1) By March 30, 2019, the secretary and the department of technology, management, and budget shall review and approve at least 1 electronic notarization system for the performance of electronic notarizations in this state. The secretary and the department of technology, management, and budget may approve multiple electronic notarization systems, and may grant approval of additional electronic notarization systems on an ongoing basis. The secretary and the department of technology, management, and budget shall review the criteria for approval of electronic notarization systems, and whether currently approved electronic notarization systems remain sufficient for the electronic performance of notarial acts, at least every 4 years.

(2) Subject to subsection (3), in considering whether to approve an electronic notarization system for use in this state under subsection (1), the secretary and the department of technology, management, and budget shall consider, at a minimum, 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 electronic notarizations, records, or signatures.

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

(d) The ability to adequately investigate and authenticate a notarial act performed electronically with that electronic notarization system.

(e) The most recent standards regarding electronic notarizations or records 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 electronic notarial acts.

(3) If an electronic notarization system for the performance of electronic notarizations is approved or certified by a government-sponsored enterprise, as that term is defined in 2 USC 622(8), the secretary and the department of technology, management, and budget shall approve the system for use in this state if verifiable.