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House Bill 6197 (Substitute H-1 as passed by the House)  
Sponsor: Representative Kevin Elsenheimer  
House Committee: Local Government and Urban Policy  
Senate Committee: Economic Development, Small Business and Regulatory Reform

Date Completed: 9-13-06

## **CONTENT**

**The bill would amend the Michigan Notary Public Act to increase the amount of money that must remain in the Notary Education and Training Fund at the close of each fiscal year from \$85,000 to \$150,000; prohibit a notary public from performing a notarial act for a lineal ancestor; allow a notary public to perform a notarial act on a record that contained a blank space; and make various other changes to the Act.**

The Act created the Notary Education and Training Fund within the State Treasury. Money from various fees collected under the Act must be deposited into the Fund. Up to \$85,000 must remain in the Fund at the close of each fiscal year and may not lapse to the General Fund. Any amount in excess of \$85,000 must lapse to the General Fund. Under the bill, up to \$150,000 would have to remain in the Fund at the close of each fiscal year and any amount in excess of \$150,000 would lapse to the General Fund.

The Act provides that a notary public may not perform a notarial act for a spouse, domestic partner, descendant, or sibling including in-laws, steps, or half-relatives. Under the bill, a notary public could not perform a notarial act for a spouse, lineal ancestor, lineal descendant, or sibling including in-laws, steps, or half-relatives. "Lineal ancestor" would mean an individual in the direct line of ascent including, but not limited to, a parent or grandparent. "Lineal descendant" would mean an individual in the direct line of descent including, but not limited to, a child or grandchild.

The Act prohibits a notary public from performing any notarial act on a record that contains a blank space. The bill would delete this provision.

Under the Act, upon receiving a written or electronic request from the Secretary of State, a notary public must permit the Secretary to inspect his or her notary public records, contracts, or other information that pertains to the official acts of a notary public. Under the bill, the notary public would have to allow the Secretary to inspect those records, contracts, or other information if the records, contracts, or information were maintained by the notary public.

Currently, a person or the personal representative of a person who is deceased, who performed a notarial act while commissioned as a notary public under the Act, must maintain all the records of that notarial act for at least five years after the date of the notarial act. Under the bill, this would apply if the person or the personal representative both performed the notarial act and created a record of the act performed.

Under the Act, the Secretary of State may appoint as a notary public a person who applies to the Secretary and meets the Act's qualifications. One of the qualifications is that the applicant has filed with the county clerk of his or her county of residence or expected appointment a proper surety bond and has taken the oath as prescribed by the Constitution. Under the bill, the oath would have to be in a format acceptable to the Secretary.

The Act allows the surety on the bond to cancel it 60 days after the surety notifies the notary, the Secretary of State in a format prescribed by the Secretary, and the county clerk of the cancellation. The bill would delete the requirement that the Secretary of State's notification be in a format prescribed by the Secretary.

Under the Act, an application for appointment as a notary public must include, among other things, a copy of the bond and oath certificate received from the county clerk. Under the bill, the copy would have to be validated.

The Act also requires the application to contain a statement describing the date and circumstances of any felony or other conviction of the applicant during the preceding 10 years. Under the bill, the statement would have to describe the date and circumstances of any felony or misdemeanor conviction within the preceding 10 years.

Under the Act, each certificate of appointment must identify the person as a notary public of this State and specify the term of the person's commission. Under the bill, the certificate also would have to specify the county of the person's commission.

The Act provides for the payment of various fees and service charges by applicants and notaries public. The bill would refer to processing fees, rather than fees or service charges. The bill also provides that a processing or filing fee paid to the Secretary of State or county clerk under the Act would not be refundable.

MCL 55.265 et al.

Legislative Analyst: J.P. Finet

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government. The bill would increase the amount of funds that must remain in the Notary Education and Training Fund from \$85,000 per year to \$150,000 per year. The increase in the amount eligible to be carried forward would decrease the amount lapsing to the General Fund by \$65,000 annually.

Fiscal Analyst: Joe Carrasco

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.