

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 678

(Senator Jennings, *et al.*)

Judicial Proceedings

State Government - Notarial Acts and Notaries Public

The bill alters the qualifications to become a notary public, increases the maximum fee that may be charged for individual notarial acts, authorizes a notary to perform electronic notarization and remote notarization under specified conditions, specifies restrictions on allowable acts by a notary public, and generally updates provisions related to performing, and maintaining records of, notarial acts. The Secretary of State (SOS) may adopt regulations to implement various provisions of the bill, as specified.

Fiscal Summary

State Effect: General fund expenditures increase by \$58,100 in FY 2020. Future year expenditures are annualized and reflect ongoing costs. General fund revenues from processing fees for the commission of notaries public may be affected, as discussed below.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
GF Revenue	-	-	-	-	-
GF Expenditure	\$58,100	\$63,600	\$65,800	\$68,000	\$70,400
Net Effect	(\$58,100)	(\$63,600)	(\$65,800)	(\$68,000)	(\$70,400)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: Potential meaningful

Analysis

Bill Summary:

Notary Public Qualifications

The bill modifies the qualifications necessary for an individual to be appointed as a notary public in the State. In addition to being at least age 18, which is already a requirement, notaries public must also (1) be a citizen or permanent legal resident of the United States; (2) be a resident of the State or have a place of employment or practice in the State (instead of the requirement to live or work in the State); and (3) be able to read and write English. The bill repeals the existing eligibility requirement that an individual appointed as a notary public must be of good moral character and integrity.

An initial applicant must also have completed a course of study and pass an examination that covers the laws, regulations, procedures, and ethics relevant to notarial acts. A renewal applicant must have completed the course, but is not required to take another examination. SOS must regularly offer the course of study and the examination; the course and the examination may be offered through an entity approved by SOS.

Removal, Suspension, and Other Actions

The bill repeals existing provisions relating to the removal and suspension of a notary public by the Governor for good cause. Instead, the Governor is authorized to deny, refuse to renew, revoke, suspend, or impose conditions on a notary public commission for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a notary public, as specified.

Notarial Fees and Charges

Under current law, SOS must adopt regulations to establish fees that do not exceed \$4 for an original notarial act. The bill increases the maximum fee from \$4 to \$25. Under the bill's provisions authorizing remote notarial acts, a notary public or person acting on behalf of a notary public is also authorized to charge a fee of up to \$25 for the performance of a notarial act.

The bill also modifies the amount a notary public may charge for mileage as compensation for travel required for the performance of a notarial act. Instead of a maximum of 19 cents per mile, the bill authorizes a notary public to charge the prevailing rate for mileage established by the Internal Revenue Service for business travel per mile. A notary public may still charge a higher amount set by regulation as well as a fee of up to \$5, as authorized under current law.

Powers and Duties of Notaries Public

The bill repeals existing provisions relating to various powers and duties of notaries public and replaces them with provisions of the Revised Uniform Law on Notarial Acts. Specified powers and duties established by the bill are described below.

Remote and Electronic Notarization

The bill expands current notarization practices to include remote and electronic notarization practices, as specified. A notary public located in Maryland may perform a notarial act for a remotely located individual under specified conditions by using communication technology that allows the two parties to communicate simultaneously by sight and sound and that makes appropriate accommodations for an individual who has a vision, hearing, or speech impairment. The bill also specifies mechanisms for the notary to (1) verify the identity of the remote individual using third-party verification services; (2) record the notarial act; and (3) verify records being notarized.

The bill authorizes notaries to perform notarial acts with respect to electronic as well as tangible records, under conditions and procedures specified in the bill. A notary may select one or more tamper-evident technologies to perform notarial acts for electronic records. The bill specifies the procedures and conditions under which a notary may, or may not, perform a notarial act with respect to an electronic record. A notary public may certify that the tangible copy of an electronic record is an accurate copy of the electronic record.

Required Certificates, Stamps, and Records

Each notarial act must be evidenced by a certificate, as specified. The bill also establishes provisions regarding official stamps that must be affixed under specified conditions. With respect to electronic notarizations, for example, a notary public must attach or logically associate the notary's electronic signature and official stamp to an electronic record using digital technology that complies with specified standards.

A notary public must keep a journal of all of his/her notarial acts for 10 years. A separate journal or journals must be kept for traditional and electronic notarial acts. A journal may be maintained on a tangible medium or may be electronic. The bill establishes requirements for journal entries and other provisions relating to journals.

Electronic Database

SOS must maintain an electronic database of notaries public (1) through which a person may verify the authority of a notary public and (2) that indicates whether a notary public provides electronic notarization.

Restrictions and Other Provisions

A notary may refuse to provide notarial services under specified conditions.

A notarial act may be performed in the State by a notary public, a judge, clerk or deputy clerk of a court of the State, or a magistrate appointed by a court of the State. A judge or magistrate of the State may not charge a fee to perform a notarial act.

A notarial act performed in another state, in a federally recognized Indian tribe, under federal law, or in the jurisdiction of a foreign state, has the same effect under the laws of the State under specified conditions.

Satisfactory evidence of identity of the person appearing before a notarial officer may be established with specified unexpired government identification containing both the signature and photograph of the individual.

A notarial officer may not perform notarial acts where either the officer or his/her spouse has a beneficial interest. A notary public is not authorized to give legal advice, assist in drafting legal records, act as an immigration consultant, or otherwise engage in the practice of law unless licensed as an attorney in the State.

A commission as a notary public in effect on the bill's effective date continues to be in effect until its expiration date.

Current Law/Background:

Notaries Public, Generally

A notary public must (1) be at least age 18; (2) be of good moral character and integrity; (3) live or work in Maryland; and (4) be a resident of the senatorial district in which he or she is appointed or, if living outside the state, be a resident of a state that allows Maryland residents working in that state to serve as notaries. There is no exam to become a notary public, nor are there any education requirements. The term of a notary is four years.

A notary public must provide a public notarial seal or stamp with which the notary will authenticate the notary's acts, instruments, and attestations. The seal or stamp must include the name, surname, and office of the notary and the notary's place of residence, which must be designated by the county of the notary's residence or, if the notary is a resident of Baltimore City.

The fee for an original notarial act may not exceed \$4. A notary public may charge 19 cents per mile or a higher amount set by regulation by SOS, and a fee of up to \$5, as compensation for travel required for the performance of a notarial act. Under current SB 678/ Page 4

regulations, a notary public may demand and receive a fee of \$4 for the performance of an original notarial act; a notary public may charge \$2 for copies, as specified.

Each application for an original or renewal appointment as a notary public must be accompanied by a processing fee of \$9 payable to SOS.

As of February 2019, SOS advises that there are approximately 80,000 notaries public in Maryland.

Commercial Transactions

The Maryland Uniform Electronic Transactions Act (MUETA) gives legal effect to an electronic record or signature provided the procedures in the Act are adhered to. Under MUETA, a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation, and if a law requires a record to be in writing, an electronic record satisfies the law. Similarly, if a law requires a signature, an electronic signature satisfies the law.

Federal Law

In June 2000, the U.S. Congress passed the federal Electronic Signatures in Global and National Commerce Act, which states that if a statute, regulation, or other rule of law requires a signature or record relating to a transaction to be notarized, acknowledged, verified, or made under oath, that requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable statute, regulation, or rule of law, is attached to or logically associated with the signature or record.

Several states have laws authorizing notarizations of electronic documents using an electronic notary seal. However, in most of these states, the signer is still required to appear in person for a notary to notarize a document. In 2011, Virginia became the first state in the country to authorize remote, online notarization, which allows an electronic notary to perform a notarization without being in the physical presence of the signer.

According to the National Notary Association, as of February 2019, 10 states (Indiana, Michigan, Minnesota, Montana, Nevada, Ohio, Tennessee, Texas, Vermont, and Virginia) have authorized remote notarization.

Maryland Notary Workgroup

In May 2018, SOS convened the [Maryland Notary Workgroup](#) to study, review, and make recommendations regarding notaries public and remote notarization in the State. In its final report, the workgroup recommended, among other things, that:

- notaries should be required to complete education and testing;
- SOS should create an online directory of actively commissioned notaries;
- recordkeeping requirements should be enhanced;
- provisions of law relating to satisfactory identification of a signer should be updated; and
- the infrastructure of the notary division within SOS should be fully modernized and adequately staffed before remote notarization can be considered.

State Revenues: Although the bill does not change the processing fee for a notary public that is paid to the State, general fund revenues from processing fees could be affected to the extent the bill results in a change in the number of notaries public commissioned. Any such impact cannot be estimated at this time. As noted above, under current regulations, the processing fee is \$9 for each application for an original or renewal appointment.

State Expenditures: SOS advises that it currently has two notary officers that regulate notaries public in the State and that, in order to implement the bill, it needs to hire four additional staff (two notary officers, one supervisor, and one investigator) to establish additional application and commission requirements, establish the required course of study and examination, establish the required electronic database, and administer the bill's provisions regarding remote notarization (including vetting and credential technology providers, maintaining files, drafting regulations, tracking and investigating complaints, and conducting hearings, among other things) at a cost of more than \$200,000 annually beginning in fiscal 2020. SOS also advises that the bill requires an estimated \$580,000 in contractual services in fiscal 2020, with ongoing costs of \$70,000 annually, to establish an electronic database.

The Department of Legislative Services (DLS) disagrees and believes that SOS can implement the bill with fewer than four new positions. While SOS is understaffed to perform its existing duties, the additional requirements of the bill do not justify the need for four additional staff. Given that SOS must develop and implement a course of study and an examination and oversee the bill's provisions relating to remote and electronic notarizations, DLS estimates that SOS requires one additional notary officer. The bill does not explicitly require active enforcement; however, to the extent the intent of the bill is to require SOS to actively investigate and enforce the implementation of remote notarization, additional staff may be needed. To the extent one additional notary officer proves insufficient to implement the bill, SOS may request additional resources through the annual budget process.

With respect to the assertion by SOS that it needs a new electronic database, DLS advises that SOS already maintains an online database indicating if a person is an active notarial official. Based on information provided by the Department of Information Technology (DoIT), upgrading the database to denote if a notarial official offers electronic notary

services only requires adding additional fields to the existing database. Thus, the bill does not require a completely new database. To the extent that modifications to the existing database are not sufficient to meet the bill's requirements, additional funding may be needed.

Therefore, general fund expenditures increase by \$58,080 in fiscal 2020, which accounts for the bill's October 1, 2019 effective date. This estimate reflects the cost of hiring one notary officer within SOS to oversee the bill's provisions relating to education, testing, and remote and electronic notarizations. It includes a salary, fringe benefits, one-time start-up costs (including software upgrades provided by DoIT), and ongoing operating expenses.

Position	1
Salary and Fringe Benefits	\$47,205
Software Upgrades (DoIT)	5,516
Other Equipment/Operating Expenses	<u>5,359</u>
Total FY 2020 State Expenditures	\$58,080

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

Small Business Effect: Any small businesses that offer notary services may benefit from the bill's provisions that (1) increase the fees they may charge for notarial acts and (2) allow them to perform notarial services remotely and electronically. However, additional education and examination requirements apply.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Information Technology; Comptroller's Office; Secretary of State; Judiciary (Administrative Office of the Courts); Office of Administrative Hearings; National Notary Association; Department of Legislative Services

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