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OHIO LEGISLATIVE SERVICE COMMISSION

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S.B. 130*
135th General Assembly

Occupational Regulation Report

[Click here for S.B. 130's Bill Analysis / Fiscal Note](#)

Primary Sponsor: Sen. Wilson

Impacted Profession: Notaries public

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LSC is required by law to issue a report for each introduced bill that substantially changes or enacts an occupational regulation. The report must: (1) explain the bill's regulatory framework in the context of Ohio's statutory policy of using the least restrictive regulation necessary to protect consumers, (2) compare the regulatory schemes governing the same occupation in other states, and (3) examine the bill's potential impact on employment, consumer choice, market competition, and cost to government.¹

LEAST RESTRICTIVE REGULATION COMPARISON

Ohio's general regulatory policy

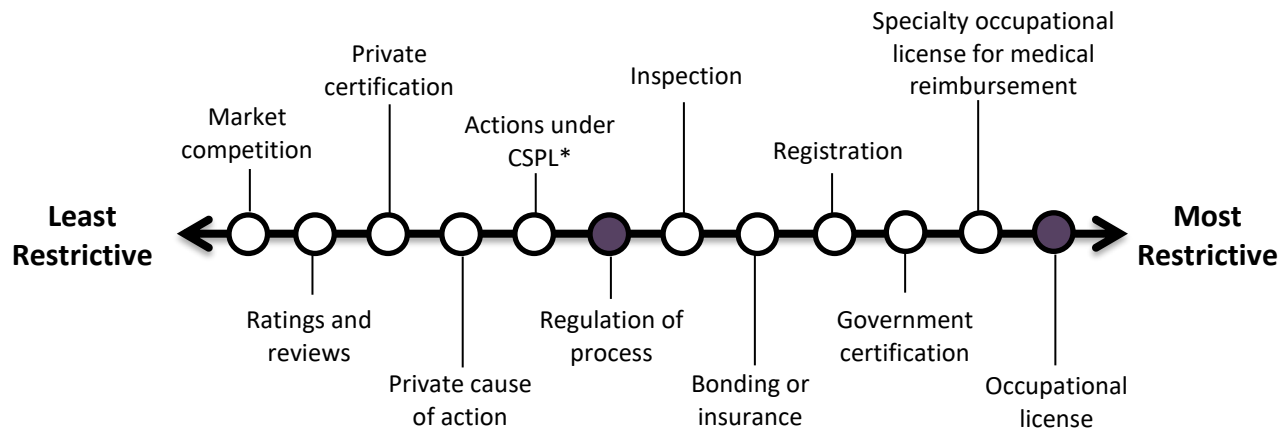
The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect consumers from "present, significant, and substantiated harms that threaten health, safety, or welfare," the state's expressed intent is to enact the "least restrictive regulation that will adequately protect consumers from such harms."²

The degree of "restrictiveness" of an occupational regulation is prescribed by statute. The following graphic identifies each type of occupational regulation expressly mentioned in the state's policy by least to most restrictive:

*This report addresses the "As Introduced" version of S.B. 130. It does not account for changes that may have been adopted after the bill's introduction.

¹ R.C. 103.26, not in the bill.

² R.C. 4798.01 and 4798.02, neither in the bill.



*CSPL – The Consumer Sales Practices Law

S.B. 130 modifies the existing licensure requirements to become a commissioned notary public. Some of the changes, such as changes to disciplinary procedures for notaries public and requiring notaries to take the oath of office in person, appear to increase the restrictiveness of current regulations while others decrease restrictiveness. The bill also makes changes to process regulations for notaries by adding new requirements for a notary to verify the identity of a person signing an acknowledgment or jurat (an oath or affirmation that the contents of a particular document are true) before the notary.

Necessity of regulations

The bill's sponsor, Senator Wilson, testified that Ohio law does not adequately provide notaries with the tools and resources necessary to be effective in the 21st century and during public emergencies, and that the bill's changes will correct that by allowing notaries to utilize modern technology. Senator Wilson testified that this will improve Ohio's business services by allowing notaries "the freedom to do the job they swore an oath to carry out."³

In proponent testimony, Allison DeSantis of the Ohio Secretary of State's Office states that S.B. 130 "would provide clarity for Ohio notaries public" by clarifying the roles and responsibilities of a notary public, as well as improving and clarifying the discipline process for notaries. She states that language in the bill allowing the Secretary of State's Office to revoke a notary commission on a court's judgment is necessary because current law requires the Secretary of State's Office to hold an administrative hearing before revoking a commission. Ms. DeSantis says that the bill's requirement that a notary public verify a person's identity when signing a jurat would close a major loophole in current law, which requires a notary to identify the signer when

³ See [Senator Steve Wilson Sponsor Testimony](#), Senate Small Business and Economic Development Committee, September 20, 2023, which is available on the General Assembly's website, legislature.ohio.gov, by searching for "SB 130" and looking under the "Committee Activity" tab.

performing an acknowledgment but not a jurat. This change would allow for the notary to be disciplined if the notary fails to identify the person when performing a jurat.⁴

Restrictiveness of regulations

Licensure

Licensure is the most restrictive of all regulatory options within the state's continuum. Accordingly, the state's policy prescribes a narrow range of situations in which required licensure is appropriate; specifically, when all of the following circumstances are present:

- The occupation involves providing a service regulated by both state and federal law;
- The licensing framework allows individuals licensed in other states and territories to practice in Ohio; and
- The licensing requirement is based on uniform national laws, practices, and examinations that have been adopted by at least 50 U.S. states and territories.⁵

Continuing Ohio law requires a person to hold a commission to act as a notary public. Because certain personal qualifications must be met for a person to be issued the commission, such as completing an educational program, it functions as an occupational license under the state's policy.⁶ However, neither current law nor the bill satisfies the state policy's first criterion regarding concurrent state and federal regulation. Notarization is currently regulated by state law, and there is no federal regulatory framework governing notaries public.⁷

Under continuing law, a reciprocity provision in the Ohio Notary Law⁸ requires the Secretary of State (SOS) to issue a commission to an applicant who is commissioned or licensed as a notary public in another state in accordance with the Occupational License Reciprocity Law.⁹ This reciprocity provision is unchanged by the bill. However, the bill states that a notary commission is not an occupational or professional license for the purposes of Ohio's occupational regulation laws, including the Occupational License Reciprocity Law.¹⁰ Thus, it is not clear how to determine whether the state's second policy criterion regarding licensure of out-of-state individuals is satisfied under continuing law and the bill. Nonetheless, all states recognize the

⁴ See [Allison DeSantis Proponent Testimony](#), Senate Small Business and Economic Development Committee, December 12, 2023, which is available on the General Assembly's website, legislature.ohio.gov, by searching for "SB 130" and looking under the "Committee Activity" tab.

⁵ R.C. 4798.02, not in the bill.

⁶ R.C. 147.01 and R.C. 4798.01(B), not in the bill.

⁷ [How to Become a Notary Public](#), which may be accessed by clicking on "Notary Basics" under "Knowledge Center" on the National Notary Association (NNA) website: nationalnotary.org.

⁸ R.C. Chapter 147.

⁹ R.C. 147.01(F) and R.C. Chapter 4796.

¹⁰ R.C. 147.011.

validity of a notarial act performed before a notary public in another state as having the same legal effect as an act performed by a notary in that state.¹¹ In Ohio, this is accomplished via the Uniform Recognition of Acknowledgements Act, which is included in the Ohio Notary Law. The Act specifies that it must be so interpreted as to make uniform the laws of all states that enact it.¹²

Neither current law nor the bill satisfies the state policy's third criterion because notary licensure laws are not consistent across the nation. According to the National Notary Association (NNA), all of the U.S. states and territories and the District of Columbia require a person to hold a commission to act as a notary public, although the laws vary from state to state and lack uniformity.¹³ Additionally, while the NNA has drafted a Model Notary Act for legislators to use when considering changes to state notary laws, it does not appear that the Ohio Notary Law is based on the model act or another uniform national law or practice.¹⁴

The bill increases restrictiveness by expanding the reasons for which the SOS may revoke a notary commission. The bill adds that the SOS may revoke a notary's commission if a court determines that the notary has engaged in misconduct or is unable to perform duties. Additionally, the bill makes a person whose commission has been revoked ineligible for reappointment as a notary, increasing restrictiveness.¹⁵ The bill also requires a notary, before entering the duties of the office, to personally appear before a notary public or any other officer authorized by law to administer oaths to take the oath of office. Whether this is more restrictive is unclear, as it may depend on the notary's access to someone who is able to administer the oath.¹⁶

On the other hand, some changes in discipline may lessen restrictiveness. Currently, a notary public who fails to administer the appropriate oath or affirmation loses the notary public's appointment and is ineligible for reappointment for three years. Under the bill, such a failure results in potential discipline, including revocation or suspension of the commission or a letter of admonition.¹⁷ Depending on how it is applied, this could result in less restrictiveness.

¹¹ R.C. 147.51, not in the bill. See also [The Enduring Benefits of Interstate Recognition of Notarial Act Laws \(PDF\)](#), which may be accessed by conducting a keyword "Interstate recognition" search and clicking on "Special Reports and Articles" on the NNA website: nationalnotary.org.

¹² R.C. 147.57 and 147.58, neither in the bill.

¹³ [How to Become a Notary Public](#).

¹⁴ [The Model Notary Act of 2022: An Overview](#), which may be accessed by conducting a keyword "Model notary act" search on the NNA website: nationalnotary.org. See also [Law on Notarial Acts, Revised \(2021\)](#), which may be accessed by conducting a keyword "Notarial acts" search on the Uniform Law Commission website: uniformlaws.org.

¹⁵ R.C. 147.01(C).

¹⁶ R.C. 147.01(F) and 147.03.

¹⁷ R.C. 147.14, by reference to R.C. 147.032, not in the bill.

Regulation of process

The state's policy does not provide specific guidance as to when a regulation of process is the best means of protecting the health, safety, and welfare of consumers. However, the policy as a whole suggests that regulations of process are the most preferred method of regulation when market competition, ratings and reviews, private certifications, private causes of action, and actions under the state's Consumer Sales Practices Law do not provide sufficient protection.¹⁸ Whether these mechanisms are a sufficient means of protecting consumers is a policy decision.

The bill establishes new requirements for a notary to verify the identity of a person appearing before the notary when performing an acknowledgment or jurat. Under current law, a notary must certify that a person signing an acknowledgment is known to the notary or presents satisfactory evidence of their identity. Conversely, a notary is not expressly required by current law to identify a signer when performing a jurat.¹⁹ The bill's verification requirements are consistent with those in administrative rules that apply to online notarial acts.²⁰ Additionally, four of the surrounding states require a notary to verify a person's identity in the same manner as that proposed in the bill.²¹

IMPACT STATEMENT

Opportunities for employment

The bill is not expected to increase barriers to entry for individuals seeking a commission as a notary public. S.B. 130 adds several miscellaneous provisions governing Ohio notary law, including alterations to the revocation of a commission, procedure of oath of office, and method of identity verification of individuals appearing before the notary public when making an acknowledgment or signing a jurat, none of which are expected to appreciably change available opportunities for employment in the state. Notaries public whose commissions are revoked by the SOS are ineligible for reappointment under the bill; however, a notary public is required to have been found to have engaged in misconduct or be unable to perform the duties of a notary for such a revocation to result.

Consumer choice and market competition

The bill is not expected to impact consumer choice or market competition for notary public services. A number of provisions in the bill modify the requirements of a notarial act, changing codified definitions regarding identity verification and acknowledgment protocol during the notarization of a record, along with defining conflict of interest. LBO finds it unlikely current demand for notary public services would be greatly impacted by S.B. 130's passage.

¹⁸ R.C. 4798.01, not in the bill.

¹⁹ R.C. 147.49, 147.50, and 147.53.

²⁰ Ohio Administrative Code 111:6-1-05.

²¹ See "COMPARISON TO OTHER STATES" below.

The bill also makes several changes to the fees associated with Limited Liability Company (LLC) filings with the SOS. None of these changes, or those applicable to notary law, are expected to significantly change Ohio consumer choice or market competition.

Cost to government

Revenue loss to the state, from the elimination of the foreign-owned LLC filing fees, is estimated to be minimal, and may be partially offset by the addition of other statement fees included in the bill. Please see LBO's [S.B. 130 fiscal note \(PDF\)](#) for a detailed fiscal analysis.

SUMMARY OF PROPOSED REGULATIONS

The Ohio Notary Law provides for the regulation of notaries public, who are generally public officers that validate and authenticate documents for legal purposes. In addition to the changes described above, the bill makes several changes to the law that do not affect occupational regulations, such as expanding the list of government officials that must accept electronically notarized documents and changes to certain fees the SOS may charge regarding limited liability companies.

For a full explanation of the bill's provisions, see the [S.B. 130 Bill Analysis \(PDF\)](#).

COMPARISON TO OTHER STATES

Ohio and the surrounding states require the issuance of a notary public commission for an individual to validate notarial acts, and specify disciplinary actions that may be taken against a notary who engages in prohibited conduct, including revocation of the notary's commission. Two states, Indiana and Michigan, also prescribe a time period within which an individual whose commission was revoked is ineligible for reappointment. All of the surrounding states require a notary public to verify the signature of an individual who appears before the notary; only Michigan does not also require the notary to verify the individual's identity.

The table below summarizes the law of the surrounding states concerning the reasons a notary's commission may be revoked, an individual's eligibility to be reappointed as a notary after having a commission revoked, and the requirements for a notary to verify a signer's identity.

Notary Public Disciplinary Actions and Requirements to Verify a Signer's Identity			
State	Reasons for Revoking a Notary Commission	Eligibility for Reappointment if Commission Revoked	Verifying a Signer's Identity
Ohio (under the bill)	Any official misconduct or incapacity as shown by the presentation of satisfactory evidence or on a court's judgement, charging an unlawful fee, or dishonestly or unfaithfully discharging official duties. The Secretary of State may also revoke a commission for any other violation of the Ohio Notary Law. <i>(R.C. 147.01(C); R.C. 147.032 and 147.13, not in the bill)</i>	Ineligible for life after revocation. <i>(R.C. 147.01(C))</i>	Requires a notary to determine, from personal knowledge or satisfactory evidence (government-issued documentation or a credible witness), that an individual has the identity claimed and that the signature on record is the individual's signature before performing a notarial act. <i>(R.C. 147.49 and 147.50)</i>
Indiana	Any act or omission that demonstrates a deficiency in competence, honesty, integrity, or reliability. <i>(Ind. Code 33-42-13-1(c))</i>	Ineligible for five years after revocation. <i>(Ind. Code 33-42-13-3(j) and (l))</i>	Same as Ohio (under the bill). <i>(Ind. Code 33-42-9-2 and 33-42-9-4)</i>
Kentucky	Any act or omission that demonstrates the individual lacks the honesty, integrity,	N/A	Same as Ohio (under the bill). <i>(Ky. Rev. Stat. 423.315 and 423.325)</i>

Notary Public Disciplinary Actions and Requirements to Verify a Signer's Identity			
State	Reasons for Revoking a Notary Commission	Eligibility for Reappointment if Commission Revoked	Verifying a Signer's Identity
	competence, or reliability to act as a notary public. <i>(Ky. Rev. Stat. 423.395)</i>		
Michigan	Engaging in prohibited conduct, which includes committing an act of official misconduct, failing to fully and faithfully discharge an official duty or responsibility, and charging a fee in excess of that allowed by the law governing notaries public. <i>(Mich. Comp. Laws 55.300a)</i>	Ineligible for five years after revocation, except that an individual who was imprisoned is ineligible for ten years after completing the term of imprisonment. <i>(Mich. Comp. Laws 55.300a, 55.301, and 55.303)</i>	Requires a notary to determine, from personal knowledge or satisfactory evidence (government-issued documentation or a credible witness), that an individual making an acknowledgment or verification on oath or affirmation is the individual whose signature is on record. <i>(Mich. Comp. Laws 55.285)</i>
Pennsylvania	Same as Kentucky. <i>(57 Pa. Cons. Stat. 323)</i>	N/A	Same as Ohio (under the bill). <i>(57 Pa. Cons. Stat. 305 and 307)</i>
West Virginia	Same as Kentucky. <i>(W. Va. Code 39-4-21)</i>	N/A	Same as Ohio (under the bill). <i>(W. Va. Code 39-4-5 and 39-4-7)</i>