



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

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### **S.B. 263**

132nd General Assembly  
(As Introduced)

**Sens.** Huffman and Wilson, Terhar, Lehner, Sykes

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## **BILL SUMMARY**

### **Online notary**

- Allows a duly appointed and commissioned notary public to apply to the Secretary of State for authorization to perform notarizations online using live video links, electronic signatures, and electronic notary seals.
- Requires notaries public seeking authorization to act as online notaries publics to complete an educational course and pass a test in addition to those necessary to acquire an initial notary commission.
- Requires the Secretary of State to adopt rules for online notarizations, including rules regarding approval to perform online notarizations, process and procedure for online notarial acts, required technology, record retention, online notarial certificates, and revocation of authorization to perform online notarizations.
- Requires online notaries public to only perform online notarizations while physically present in Ohio.
- Allows online notaries public to perform online notarizations for individuals located in U.S. territory, and for individuals located outside of the U.S. in limited circumstances.
- Requires online notaries public to complete certain procedures when confirming the identities of individuals seeking online notary services, and requires the Secretary of State to adopt standards regarding those procedures.

- Requires online notaries public to use only technology approved by the Secretary of State and to abide by minimum security requirements during the conduct of online notarizations and in the storage of required information.
- Requires online notaries public to maintain audio and video recordings of the process used to confirm identities during online notarizations for five years and to deposit those recordings with the Secretary of State or an approved repository where they must be kept for another ten years.
- Requires online notaries public to maintain electronic journals with details of all online notarizations performed.
- Allows individuals who provide particular information about a notarization to review a related record in an electronic journal, and allows journals to be copied without restriction by law enforcement engaged in official investigations, by court order, or at the direction of the Secretary of State.

### **Electronic notary**

- Allows a notary public to obtain an electronic signature and electronic seal to notarize electronic documents in the presence of the individual seeking notarization.
- Applies the online notary public provisions' technology and security requirements to electronic signatures and seals obtained for in-person electronic notarizations.

### **Notary commissions**

- Requires a nonattorney individual seeking a notary public commission to complete an education course and related test.
- Requires an attorney admitted to practice on or after the bill's effective date seeking a notary public commission to complete an education course and related test.
- Requires a nonattorney individual seeking a notary public commission to obtain a criminal records check showing that the individual has not been convicted of, or pled guilty or no contest to, a disqualifying offense.
- Requires commissioned notaries public to self-report a conviction, or guilty or no contest plea, for any criminal offense during the notary's term to the Secretary of State, and requires the Secretary of State to revoke the commission if the offense is a disqualifying offense.

- Requires notaries public whose existing commissions expire after the bill's effective date to submit a new criminal records check when renewing their commissions and submit a fee of not more than \$60.
- Requires renewal applications to be submitted no more than three months before a commission's expiration and requires a notary public who does not renew before expiration to obtain a new commission, rather than a renewal commission.

### **Secretary of State's responsibility for notaries public**

- Requires the Secretary of State to oversee the entire process of appointing and commission notaries public.
- Prohibits the Secretary of State from delegating any portion of the review or certification of notary public applicants to another entity, unless authorized by the Notary Law.
- Removes recordkeeping requirements currently imposed on common pleas court clerks with regard to notary public commissions and maintains similar recordkeeping requirements imposed on the Secretary of State.
- Increases the fee for a notary public commission from a flat fee of \$15 to a fee set by the Secretary of State of up to \$150.
- Requires submissions related to the application for, or renewal of, notary public commissions, or used to update information with the Secretary of State, to be transmitted electronically.
- Transfers responsibility for notary public discipline from courts of common pleas to the Secretary of State.
- Prohibits notaries public from engaging in numerous practices that could call the reliability of a notarization into question.
- Prohibits nonattorney notaries public from engaging in certain practices that might constitute the practice of law.
- Allows the Secretary of State to establish an advisory board to discuss matters related to notary public laws and procedures.
- Requires the Secretary of State to maintain an online database of commissioned notaries public.

## Notarial acts and fees

- Eliminates the recording of notarial protests from the list of authorized notarial acts.
- Adds definitions to the Notary Law for the notarial terms "acknowledgment," where signers acknowledge that they have signed, understand, and recognize the consequences of a document and a "jurat," where a signer swears an oath that a statement is true and signs in the notary's presence.
- Adds new requirements for notarial certificates used to memorialize notarial acts.
- Adds a new statutorily approved form for the memorialization of jurats.
- Allows an individual who is physically unable to sign a document needing notarization to designate an alternative signer to sign on that individual's behalf if certain conditions are met.

## Fees

- Replaces the existing list of fees for notarial acts with authority for notaries public to charge up to \$25 for online notarizations and up to \$5 for other notarizations, but not both for any notarial act.
- Prohibits notaries public from calculating fees on a per signature basis.

## Notarial tools

- Changes the requirements for the size of notarial seals, but allows notaries public to continue using currently compliant stamps already in their possession.
- Eliminates a requirement that notaries public provide themselves with an official register in which to record certificates of protests and copies of note.

## Notary resignation

- Requires attorney notaries public to deliver written notice to the Secretary of State when resigning a commission, consistent with existing law for nonattorney notaries public.

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## CONTENT AND OPERATION

### Online notary

The bill allows a notary public who has been duly appointed and commissioned under the Notary Law (R.C. Chapter 147.) to apply to the Secretary of State for authorization to act as an online notary public during the commission's term.<sup>1</sup> (See "**Renewal commissions**," below). The bill also establishes related education and application requirements, rulemaking requirements for the Secretary of State, technology and security requirements for online notaries public, and procedural requirements for online notarial acts.

If the bill's online notarization provisions conflict with other provisions of the Revised Code, the bill's online notarization provisions control.<sup>2</sup>

### **Education, application, and technology requirements for online notaries public**

Before an individual may be authorized to act as an online notary public, the bill requires that individual to successfully complete a course, approved by the Secretary of State, and pass a related examination. The course must cover notarial rules, procedures, and ethical obligations pertaining to online notarization. The course and examination are in addition to the course and examination required of nonattorney notaries public seeking a new commission, which are also required by the bill, but the online notary public course may be taken in conjunction with the educational program for initial notary public commissions that is also required by the bill. (See "**Education requirements**," below).

The bill also requires the Secretary of State to adopt rules with standards, procedures, and application forms through which notaries public can seek authorization to act as online notaries.<sup>3</sup> Some aspects of the application and approval process are mandated by the bill. Specifically, applications must be submitted to the Secretary of State electronically, and include the following information:

- The applicant's full legal name and official notary public name to be used in acting as an online notary public;

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<sup>1</sup> R.C. 147.63(A).

<sup>2</sup> R.C. 147.63(A).

<sup>3</sup> R.C. 147.62(A)(1).



- A description of the technology the applicant intends to use in performing online notarizations;
- A certification that the applicant will comply with the Secretary of State's rules for online notaries public adopted pursuant to the bill;
- An email address for the applicant;
- Any information or software necessary to enable the application to be read;
- Proof of compliance with the application and testing requirements;
- Disclosure of license or commission revocations, or other professional disciplinary actions, taken against the applicant; and
- Any other information the Secretary of State may require.

The bill also allows the Secretary of State to require a reasonable application fee, but it may not exceed \$25.

If the Secretary of State is satisfied that an applicant meets the standards adopted in its rules, and that the applicant is otherwise qualified to be an online notary public, the Secretary is required to issue the applicant a written authorization to perform online notarizations. The authorization runs concurrently with the underlying notary public commission and can be renewed along with the underlying commission.

An authorization may be denied if any of the required application information is missing or incorrect. Applications may also be denied if the technology the applicant identifies for use in online notarizations is not approved by the Secretary. Standards for approval of online-notary public technology are to be established in a rule adopted by the Secretary of State, with assistance from the Department of Administrative Services.<sup>4</sup>

If an authorization to act as an online notary public is granted, the person authorized must subsequently notify the Secretary of State of changes to either the hardware or software that the person intends to use on a form prescribed by the Secretary. If the Secretary determines that the new hardware or software does not meet the Secretary's standards, adopted in rules, then the Secretary may suspend or revoke the authorization to perform online notarizations. The bill specifically provides, however, that these provisions are not to be interpreted to prohibit online notaries public from updating software already approved by the Secretary of State for online

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<sup>4</sup> R.C. 147.62(A)(3) and (B) and 147.63(A) to (D), and (G).

notarizations, so long as the software update does not materially change the approved technology.<sup>5</sup>

### **Online notarization procedure and recording**

Aside from taking and certifying depositions, which may not be conducted through an online notarization, an online notary public has the authority to perform any notarial act as an online notarization. (See "**Notarial Acts**," below). The means of performing online notarizations are to be established in rules adopted by the Secretary of State, but the bill does set some requirements.<sup>6</sup>

### **Residency and location**

Under the bill, a notary public authorized to perform online notarizations may only do so if the online notary public is an Ohio resident, and when the online notary public is physically in Ohio.<sup>7</sup>

Generally, online notarizations may be performed for any "**principal**," the natural person whose electronic signature is being notarized or who is taking an oath or affirmation from the online notary, who is located within U.S. territory. Under some circumstances, online notarizations may be performed for principals located outside of U.S. territory as well. Those are when both (1) to the online notary's knowledge, the notarial act is not prohibited in the jurisdiction where the principal is located, and (2) the record being notarized is part of, or pertains to, a matter that is to be filed with or that is before a court, governmental entity, or other entity within U.S. territory; involves property located in U.S. territory; or pertains to a transaction substantially connected with the U.S.<sup>8</sup>

### **Appear in person**

When an online notarization requires a principal to appear before an online notary public, the bill requires the principal to do so in person, and both the principal and notary public must sign the record with an electronic signature. The bill defines "**appear in person**" as being in the same physical location as another person and being close enough to hear, communicate with, and exchange tangible identification credentials with that individual *and also* as being in a different location as another

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<sup>5</sup> R.C. 147.63(E) and (F).

<sup>6</sup> R.C. 147.62(A)(2) and 147.64(A).

<sup>7</sup> R.C. 147.64(B).

<sup>8</sup> R.C. 147.60(K) and 147.64(C).





person and interacting with that individual by means of live two-way, audio-video communication.<sup>9</sup>

### **Identity verification**

Under the bill, an online notary public must also determine, from personal knowledge or from satisfactory evidence of identity, that the principal appearing before the notary by means of live audio-video communication is the individual that person claims to be. Satisfactory evidence is present when the notary public can identify the principal based on either the procurement of sufficient evidence by the notary public or through the use of a reliable witness or witnesses.

If the notary public procures the evidence, the principal must remotely present a government-issued I.D. with a signature and photograph, and the notary public must secure a credential analysis of the I.D. provided as well as identity proofing of the principal. "**Remote presentation**" means transmission to an online notary public through live two-way video and audio-conference technology of an image of a government I.D. that is of sufficient quality to enable the online notary public to identify the principal seeking services and to perform credential analysis. The bill requires the Secretary of State to adopt related standards.

"**Credential analysis**" and "**identity proofing**" are both defined as processes or services operating according to standards to be adopted by the Secretary of State. In **credential analysis**, a third person affirms the validity of a government-issued identification credential through review of public and proprietary data sources. In **identity proofing**, a third person affirms the identity of a natural person through the review of personal information from public and proprietary data sources.

If the notary public relies on a reliable witness or witnesses, each witness must personally appear before the notary public and be identified by either personal knowledge on the notary's part or presentation of a government I.D. with a signature and photograph.<sup>10</sup>

### **Notarial certificate**

A notarial certificate for an online notarization must include a notation that the notarial act is an online notarization. The Secretary of State is also required to include

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<sup>9</sup> R.C. 147.60(A) and (I) and 147.64(D).

<sup>10</sup> R.C. 147.60(B), (G), and (L), 147.62(A)(4), and 147.64(E).



modified forms of notarial certificates for online notarizations in rules adopted pursuant to the bill.<sup>11</sup>

### **Security requirements during an online notarization**

In addition to requirements for the conduct of notarial acts during an online notarization, the bill imposes general security and recording requirements. Online notaries public must take reasonable steps to ensure the integrity, security, and authenticity of online notarizations; take reasonable steps to ensure that the two-way, audio-video communication used is secure from unauthorized interception, and create and maintain, pursuant to the bill's recordkeeping provisions a complete recording of the audio-video communication, that is the basis for identification of a principal for each online notarization (see "**Recordkeeping requirements**," below). Those audio-video recordings must be created in a tamper-evident electronic format complying with the Secretary of State's rules.<sup>12</sup>

The bill also requires online notaries public to take reasonable steps to ensure that any device or software used to create an official electronic signature is current and has not been recalled or declared vulnerable by the device or software's manufacturer, seller, or developer. When attaching an electronic signature and seal to a notarial certificate, the online notary public must do so in a manner that is capable of independent verification and that renders any subsequent change or modification to the electronic document evident.<sup>13</sup>

### **Recordkeeping requirements**

The bill requires the Secretary of State to adopt standards for the retention of records relating to online notarizations. It also provides some specific requirements, including a mandate that online notaries public maintain at least one electronic journal and record, in chronological order, all online notarizations in an electronic journal. Electronic journals must be accessible by a password or other secure means of authentication and be in a tamper-evident electronic format that complies with the Secretary of State's rules.<sup>14</sup>

For every online notarization, the online notary public must record the following information in the required electronic journal:

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<sup>11</sup> R.C. 147.62(A)(6) and 147.64(F) and (G).

<sup>12</sup> R.C. 147.65(D)(1) to (3), and (5)(a)(ii).

<sup>13</sup> R.C. 147.66(A) and (C).

<sup>14</sup> R.C. 147.62(A)(5) and 147.65(A).

- The date, time, and type of the notarial act;
- The title or a description of the notarized record, if any;
- The electronic signature of each principal;
- The printed full name and address of each principal;
- A statement that identification of the principal was based on personal knowledge, if that is the case;
- A description of the evidence relied upon if identification of the principal was based upon satisfactory evidence;
- The name of the witness or witnesses if witness identification of the principal was used;
- The address where the notarization was performed, if not the online notary public's business address;
- A description of the online notarization system used;
- Any fee charged (see "**Fees**," below);
- The jurisdiction in which the principal was located at the time of notarization;
- The audio-video recording upon which identification of the principal was based; and
- Any other information required by the Secretary of State.

The bill also prohibits online notaries public from recording a social security number in an electronic journal.

Additional provisions require online notaries public to maintain backups of electronic journals and of the audio-video recordings used for identification. Third parties may be used to keep and store electronic journals, and the Secretary of State must adopt related standards, by rule.<sup>15</sup>

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<sup>15</sup> R.C. 147.65(B), (C), and (D)(5)(b).

## Security over records and online notary tools

Online notaries public must safeguard the electronic journal and all other notarial records by maintaining the exclusive use and control of electronic journals, official electronic signatures, and electronic seals. If an online notary's public electronic journal is lost, stolen, compromised, or used by another person, the notary public must notify the Secretary of State on discovering the issue.

In the case of theft, compromise, or vandalism of an electronic journal the notary public must also notify an appropriate law enforcement agency. With regard to an official electronic signature or electronic seal, law enforcement must be notified in the case of theft or vandalism, and the Secretary of State must be notified of loss, compromise, or use by another person. (See **COMMENT1**.)

The bill also prohibits employers from retaining the electronic journals of an employee who is an online notary public at the end of the notary's employment, and the online notary public employee from surrendering an electronic journal at that time. Those prohibitions do not, however, prevent an online notary public from making an agreement with a current or former employer to keep and store an electronic journal pursuant to the bill's provisions allowing third-party storage.<sup>16</sup>

## Retention periods

Electronic journals and the audio-video recordings that are the basis for identification of principals must be maintained by online notaries public for five years after the date of the online notarization. At the expiration of the five-year period, electronic journals must be transmitted to the Secretary of State or to a repository approved by the Secretary of State, where they are to be maintained for ten years. If a repository is used, the online notary public must inform the Secretary of State of that fact.

Under certain circumstances the bill requires an electronic journal to be transmitted to the Secretary of State or an approved repository before the expiration of the five-year term, where they are subject to the same ten year retention requirement. Online notaries public whose commissions are resigned, revoked, or expire without renewal, must transmit their electronic journals to the Secretary of State or an approved repository after that event. Additionally, upon the death or adjudicated incompetence of an online notary public, the executor, administrator, guardian, or any other person knowingly in possession of the notary's electronic journal must transmit it to the Secretary of State or an approved repository. If a journal is transmitted due to

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<sup>16</sup> R.C. 147.65(D)(4) to (7), (E), and (F) and 147.66(B).

resignation, revocation, expiration without renewal, death, or adjudicated incompetence, the online notary public, the notary's personal representative or guardian, or the administrator or executor of the estate must also provide, to the Secretary of State, any access instructions that person has.<sup>17</sup>

### **Inspection of electronic journals**

The bill provides that any person may inspect or request a copy of an entry or entries in an electronic journal. The requestor must specify the month, year, type of record, and name of the principal. If the online notary public has a reasonable and explainable belief that the requestor has criminal or other inappropriate purposes, then the notary public may deny access.

If access is granted, the notary public must not surrender possession or control of the journal and may only show or give the requestor a copy of the entry or entries specified. A separate entry must also be made in the journal that explains the circumstances of the request and notes any related act of copy certification by the notary.

Electronic journals also may be examined and copied without restriction by a law enforcement officer in the course of an official investigation, subpoenaed by court order, or surrendered at the direction of the Secretary of State.<sup>18</sup>

### **Other rules**

In addition to the rules discussed above, the bill requires the Secretary of State to adopt requirements for the termination of a notary public's authorization to perform online notarizations. It also requires the Information Technology Office in the Department of Administrative Services to provide assistance with regard to the equipment, security, and technological aspects of standards established pursuant to the bill.<sup>19</sup>

### **Definitions**

The bill provides the following definitions, in addition to those discussed above, in its online notary public provisions:

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<sup>17</sup> R.C. 147.65(G) and 147.66(D).

<sup>18</sup> R.C. 147.65(H) and (I).

<sup>19</sup> R.C. 147.62(A)(7) and (B).



(1) "**Electronic**" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) "**Electronic document**" means information that is created, generated, sent, communicated, received, or stored in an electronic medium and is retrievable in perceivable form.

(3) "**Electronic seal**" means information within a notarized electronic document to which all of the following apply: (1) the information confirms the notary public's name, jurisdiction, and commission expiration date, (2) the information indicates that a document was notarized via an online notarization or in the physical presence of the notary public in accordance with the bill, and (3) the information generally corresponds to the contents, layout, and format of the notary public's seal for use on paper documents.

(4) "**Electronic signature**" means an electronic sound, symbol, or process attached to or logically associated with an electronic document and executed or adopted by a natural person with the intent to sign the electronic document.

(5) "**Notarial act**" generally has the same meaning as the term does for paper notarizations but does not include the taking or certifying of depositions.

(6) "**Online notary public**" means a notary public who has been duly appointed and commissioned under the Notary Law and has received authorization by the Secretary of State to perform online notarizations.

(7) "**Territory of the U.S.**" means the U.S., Puerto Rico, the U.S. Virgin Islands, and any territory, insular possession, or other location subject to the jurisdiction of the U.S.<sup>20</sup>

## **Electronic notary**

The bill allows any notary public to obtain an electronic seal and electronic signature. An electronic document that is signed within an electronic signature, within the physical presence of the notary, and notarized with an electronic seal is considered an original document under the bill.

For purposes of this provision, "electronic document," "electronic seal," and "electronic signature" have the same meanings as under the bill's online notary public

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<sup>20</sup> R.C. 147.60.

provisions, and notaries public must comply with the online notary provisions' technology and security requirements for electronic signatures and electronic seals.<sup>21</sup>

## **Notary commissions**

Continuing law allows the Secretary of State to appoint and commission as many notaries public as the Secretary considers necessary.<sup>22</sup> But the bill changes the qualification requirements for who may be commissioned as a notary public and the requirements for the commission.

### **Age and residency requirements**

Under existing law, a person must be at least 18 years old, and meet either a residency or work requirement. That is, the person must either be a state resident, or a nonresident attorney, admitted to the practice of law by the Ohio Supreme Court, with a principal place of business or primary practice in Ohio. The bill removes language addressing resident attorneys and resident nonattorneys, but under existing law the distinction does not have any practical effect.<sup>23</sup>

### **Education requirements**

The bill adds a requirement that applicants complete an educational program related to the requirements of the Notary Law and pass a test demonstrating knowledge of those requirements. The bill allows the Secretary of State to authorize completion of the education requirement online, and requires the Secretary to adopt rules regarding standards and curricula. Those rules must address: (1) the entities authorized to administer the program and the required test, (2) the standards and curricula of the program, which must include all of the following: (a) the terms of notary commissions, (b) how to renew a commission, (c) the conditions under which a commission may be revoked, (d) what constitutes a legal notarial act, (e) the manner of taking depositions, (f) the taking of an acknowledgment, and (g) the administration of a jurat.

The educational requirements do not apply to attorneys admitted to the practice of law in Ohio prior to the bill's effective date.<sup>24</sup>

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<sup>21</sup> R.C. 147.591 and 147.66.

<sup>22</sup> R.C. 147.01(A).

<sup>23</sup> R.C. 147.01(B)(2).

<sup>24</sup> R.C. 147.01(B)(4) and 147.021(A)(1).



## Criminal records requirements

The bill requires nonattorney applicants for notary public commissions to submit a criminal records check from the Bureau of Criminal Identification and Investigation (BCII), completed no more than six months before submission, demonstrating that the applicant has not been convicted of, or pled guilty or no contest to, a disqualifying offense. The applicant pays the cost of the criminal records check, and the criminal records check uses the standard BCII procedures. Ohio attorneys are not required to submit a records check under the bill.<sup>25</sup>

"**Disqualifying offense**" is defined in the bill as "a crime of moral turpitude" or a violation of a provision in the Revised Code chapter dealing with theft and fraud. "**Crime of moral turpitude**" is defined in continuing law, and means all of the following:

- Aggravated murder, murder, or complicity in either;
- A sexually oriented offense;
- An offense of violence that is a first or second degree felony;
- Attempt to commit, conspiracy to commit, or complicity in committing any of the above if that attempt, conspiracy, or complicity is a first or second degree felony;
- Violation of any former Ohio law, any existing or former law applicable in a military or Indian tribal court, or any existing or former law of any foreign nation that is or was substantially equivalent to any of the above.<sup>26</sup>

The bill also addresses the procedure surrounding records checks. It requires the Secretary of State to provide each person applying for a notary commission with information about accessing, completing, and forwarding the form and standard fingerprint impression sheet to the Superintendent of BCII. (See **COMMENT 2.**) Those documents are prescribed in continuing law, and unaffected by the bill.

An applicant's failure to access, complete, or forward the required materials to the Superintendent *or* failure to submit a completed criminal records check report to the

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<sup>25</sup> R.C. 109.572, 147.01(B)(3), and 147.022(A) to (C).

<sup>26</sup> R.C. 147.011(C) and R.C. 4776.10, not in the bill.





Secretary of State, after the Secretary of State has provided the required information about the needed materials, requires denial of the application under the bill.<sup>27</sup>

The bill establishes that reports completed as part of the application, are not public records, and disclosure is limited to the applicant or the applicant's representative; the Secretary of State or the Secretary's staff; and a court, hearing officer, or other necessary individual involved in a case dealing with the denial of a notary public commission resulting from the criminal records check.<sup>28</sup> (See **COMMENT 3**.)

### **Self-reporting after commission as a notary public**

Under the bill, if a notary public is convicted of, or pleads guilty or no contest to, any criminal offense during the term of the notary's commission, the notary public must inform the Secretary of State. The bill also requires the Secretary of State to revoke a notary public's commission, whether an attorney or not, if the notary public is convicted of, or pleads guilty or no contest to, a disqualifying offense.<sup>29</sup>

### **Renewal commissions**

Under continuing law, notary public commissions for nonattorneys are for five-year terms, unless revoked. Attorney commissions last as long as the attorney is an Ohio resident or maintains the attorney's principal place of business or primary practice in Ohio, remains in good standing with the Ohio Supreme Court, and the commission is not revoked. If a notary public has received an authorization to act as an online notary public, that authorization expires with the notary's underlying commission, and may be renewed with the underlying commission.<sup>30</sup>

The bill requires that notaries public whose commissions expire after the bill's effective date complete additional steps to renew their commissions. Those notaries public must submit a new criminal records check report (nonattorney notaries public only – see "**Criminal records requirements**," above), pay a fee set by the Secretary of State, which cannot be more than \$60, and submit a renewal application on a form prescribed by the Secretary of State.

A renewal application may be submitted beginning three months prior to the commission's expiration date, and must be submitted before the expiration date. If the

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<sup>27</sup> R.C. 147.022(E).

<sup>28</sup> R.C. 147.022(D).

<sup>29</sup> R.C. 147.05(D).

<sup>30</sup> R.C. 147.03, 147.031(A)(2), and 147.63(D)(1)(a).

commission expires before a renewal application is submitted, the Secretary of State may not renew the commission, but must permit the person to apply for a new commission.<sup>31</sup>

### **Eliminated requirements**

The bill repeals the existing provision laying out the required qualifications to be a notary. Under existing law, repealed by the bill, before the appointment of a notary public is made, the applicant must produce to the Secretary of State a certificate from a judge or justice of the court of common pleas, court of appeals, or Ohio Supreme Court that contains the following:

(1) A statement that the applicant is of good moral character;

(2) If the applicant is not an attorney admitted to the practice of law in Ohio, a statement that the applicant is a citizen of the county in which the applicant resides;

(3) If the applicant is an attorney admitted to the practice of law in Ohio, a statement that the applicant is possessed of sufficient qualifications and ability to discharge the duties of the office of notary public.<sup>32</sup>

### **Responsibility for commissioning, recordkeeping, and discipline**

#### **Commissioning responsibility**

The bill requires the Secretary of State to oversee the entire process of appointing and commissioning notaries public. No portion of the review or certification of applicants is to be delegated to another entity, except as prescribed in the Notary Law as modified by the bill, and as verified by the Secretary of State.<sup>33</sup>

#### **Records of commissioned notaries public**

Under continuing law, before entering upon the duties of office, a notary public must take and subscribe an oath to be endorsed on the notary public's commission.<sup>34</sup> Existing law requires that the notary public also leave the commission, with the oath endorsed, with the court of common pleas clerk in the notary public's county of residence. The clerk must record the commission in a book kept for that purpose and

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<sup>31</sup> R.C. 147.031(B).

<sup>32</sup> R.C. 147.02, repealed by the bill.

<sup>33</sup> R.C. 147.01(D).

<sup>34</sup> R.C. 147.03.

endorse on the margin of the record and on the back of the commission the time that the clerk received the commission for record and make a proper index to all commissions so recorded. The clerk's fee for doing this is \$5.

The bill eliminates these responsibilities for common pleas court clerks. The bill preserves a requirement, in existing law, that the Secretary of State maintain a record of the commissions of each notary public appointed and commissioned and make a proper index to that record.<sup>35</sup>

### **Commissioning fees**

The bill revises the fee the Secretary of State charges each person receiving a commission as a notary public. Existing law sets a mandatory \$15 fee, while the bill *allows* the Secretary of State to charge a fee up to \$150.<sup>36</sup>

### **Changes to name or address**

Under existing law, notaries public who legally change their name or address after having been commissioned must notify the Secretary of State and the appropriate clerk of courts within 30 days after the change. The bill eliminates the requirement for notification to the common pleas court clerks.<sup>37</sup>

### **Electronic submissions**

The bill requires, beginning 180 days after its effective date, that all submissions to the Secretary of State for receiving and renewing notary commissions, updating name and address information for notaries public, or resigning a notary commission be submitted electronically.<sup>38</sup>

### **Certified copies of commissions**

The bill transfers the responsibility to prepare certified copies of notary commissions from common pleas court clerks to the Secretary of State and increases the fee for the certified copy from \$2 to \$5.<sup>39</sup>

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<sup>35</sup> R.C. 147.05(A), 147.371, and 2303.20(R).

<sup>36</sup> R.C. 147.37.

<sup>37</sup> R.C. 147.05(B).

<sup>38</sup> R.C. 147.01(E).

<sup>39</sup> R.C. 147.06.

## **Discipline**

Under current law, a notary public who violates the oath of office, charges or receives a fee greater than the amount prescribed by law, who dishonestly or unfaithfully discharges any official duties as notary public, or certifies to the affidavit of a person without administering the appropriate oath or affirmation to that person must be removed from office by the court of common pleas of the county in which the notary public resides, upon complaint filed and substantiated in that court, which is required to certify the removal to the Secretary of State. The bill moves the responsibility for removal from county courts of common pleas to the Secretary of State.<sup>40</sup>

The bill also grants the Secretary of State investigatory and disciplinary authority over notaries public if the Secretary of State believes a violation of the Notary Law has occurred or upon a signed complaint from any person.

If the Secretary of State determines, after an investigation, that a disciplinary hearing is appropriate, the bill allows that as well and grants the Secretary a range of disciplinary options for violations of the Notary Law. Those are to revoke a commission; suspend a commission for a specified period of time or until fulfillment of a condition, such as retraining, or both; or issue a letter of admonition that is to be placed in the notary public's record.

If a person's commission is revoked, that person may not apply for a subsequent notary commission. This is a requirement under both continuing law and the Secretary of State's new disciplinary authority under the bill.<sup>41</sup>

### **Prohibited acts established by the bill**

#### **All notaries**

Expanding the prohibitions that notaries public are subject to, the bill additionally prohibits notaries from doing any of the following:

- Performing a notarial act with regard to a record or document executed by the notary;
- Notarizing the notary's own signature;
- Taking the notary's own deposition;

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<sup>40</sup> R.C. 147.03, 147.13 and 147.14.

<sup>41</sup> R.C. 147.03, and 147.032(A) to (E).



- Performing a notarial act if the notary has a "conflict of interest" (a direct financial or other interest in the transaction in question, excluding the fees authorized by the Notary Law, or if the notary is named, individually or as a grantor, grantee, mortgagor, trustor, trustee, beneficiary, vendor, lessor, or lessee, or as a party in some other capacity to the transaction);
- Certifying that a document is either an original document or a true copy of another record;
- Using a name or initial in signing certificates other than that by which the notary public is commissioned;
- Signing notarial certificates using a facsimile signature stamp unless the notary public has a physical disability that limits or prohibits the notary's ability to make a written signature and unless the notary has first submitted written notice to the Secretary of State with an example of the facsimile signature stamp;
- Affixing the notary's signature to a blank form of an affidavit or certificate of acknowledgement and delivering that form to another person with the intent that it be used as an affidavit or acknowledgment;
- Taking the acknowledgment of, or administer an oath to, a person who the notary public knows to have been adjudicated mentally incompetent by a court of competent jurisdiction, if the acknowledgment or oath necessitates the exercise of a right that has been removed;
- Notarizing a signature on a document if it appears that the person is mentally incapable of understanding the nature and effect of the document at the time of notarization;
- Altering anything in a written instrument after it has been signed by anyone;
- Amending or altering a notarial certificate after the notarization is complete;
- Notarizing a signature on a document if the document is incomplete or blank;
- Notarizing a signature on a document if it appears that the signer may be unduly influenced or coerced so as to be restricted from or compromised in exercising the person's own free will when signing the document;

- Taking an acknowledgment of execution in lieu of an oath or affirmation if an oath or affirmation is required.<sup>42</sup>

### **Nonattorney notaries**

The bill also adds prohibitions specifically for nonattorney notaries public, prohibiting them from:

- Determining the validity of a power of attorney document or any other form designating a representative capacity, such as trustee, authorized officer, agent, personal representative, or guardian;
- Representing or advertising themselves as immigration consultants or experts in immigration matters;
- Providing any service that constitutes the unauthorized practice of law under the Revised Code;
- Stating or implying that the notary public is an attorney licensed to practice law in Ohio;
- Soliciting or accepting compensation to prepare documents for or otherwise represent the interest of another person in a judicial or administrative proceeding, including a proceeding relating to immigration, U.S. citizenship, or related matters;
- Soliciting or accepting compensation to obtain relief of any kind on behalf of another from any officer, agency, or employee of the State of Ohio or of the U.S.;
- Using the phrase "notario" or "notario public" to advertise the services of a notary public.<sup>43</sup>

### **Advisory commission**

The bill allows, but does not require, the Secretary of State to establish an advisory board to meet as the Secretary considers necessary, to discuss matters related to notary law and procedures.<sup>44</sup>

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<sup>42</sup> R.C. 147.141.

<sup>43</sup> R.C. 147.141(A)(16) and 147.142.

<sup>44</sup> R.C. 147.032(F).

## Online database of notaries

The bill requires the Secretary of State to maintain a database of notaries public on a publicly accessible website. The website must provide, in relation to each notary public, a verification of the authority and good standing of the individual to perform notarial acts, whether the notary public is registered to perform online notarizations, and a description of any administrative or disciplinary action taken against the notary.<sup>45</sup>

As a practical matter, the Secretary of State currently maintains an *Ohio Notaries Public Search* webpage that allows individuals to search for notaries public by name, county, and zip code. Search results display a notary public's name, address, county, commission number, notary type (attorney or notary public), "special type," commencing date, commission date, commission expiration date, a comment field, and whether or not the notary public is an electronic notary public (note, the Revised Code provisions for electronic notaries public were recently repealed).<sup>46</sup>

## Notarial acts

### Authorized notarial acts

Existing law authorizes a notary public to, throughout the state, administer oaths required or authorized by law, take and certify depositions, take and certify acknowledgments of deeds, mortgages, liens, powers of attorney, and other instruments of writing, and receive, make and record notarial protests. The bill maintains this authority, except for the receipt, making, and recording of notarial protests, which the bill eliminates.

Another provision of existing law defines "**notarial acts**" as those which the laws and regulations of Ohio authorize notaries public to perform, including the administration of oaths and affirmations, taking proof of execution and acknowledgment of instruments, and attesting documents. The bill adds executing a jurat to that list.

The bill defines "**jurat**" as a notarial act in which both of the following requirements are met: (1) the signer of the notarized document is required to swear under oath that the statement in the notarized document is true and accurate, and (2) the signer signs the notarized document in the presence of a notary public.

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<sup>45</sup> R.C. 147.051.

<sup>46</sup> Section 2 of Sub. H.B. 31 of the 132nd General Assembly; Ohio Secretary of State, *Ohio Notaries Public Search*, <https://www5.sos.state.oh.us/ords/f?p=NOTARYSEARCH:SEARCH:::NO:RP,1::> (accessed March 9, 2018).



The bill also includes a definition for "**acknowledgment**" to the Notary Law. That is a notarial act in which the signer of the notarized document acknowledges that the signer: (1) has signed the document, (2) understands the document, and (3) is aware of the consequences of executing the document by signing it.<sup>47</sup>

The bill allows notaries public to explain the difference between an acknowledgment and a jurat, but prohibits notaries public who are not attorneys from advising the signer on the type of notarial act that best suits a situation.<sup>48</sup>

### **Requirements for notarial acts and notarial certificates**

The bill establishes procedures and requirements with respect to notarial certificates. "Notarial certificate" is not defined in current law or the bill. Current law does discuss the form of a certificate of acknowledgment, and states that one must be accepted in Ohio if it (1) is in a form prescribed by Ohio law or regulation, (2) is in a form prescribed by the laws or regulations applicable in the place in which the acknowledgment is taken, or (3) contains the words "acknowledged before me" or their substantial equivalent. The bill does not change these provisions.<sup>49</sup>

The bill imposes both general and specific notarial certificate requirements. The general requirements provide that a certificate required (see **COMMENT 4.**) *may be provided through* preprinting on a notarial document, ink stamp, handwritten note, or a separate attached document. Each certificate *must show* all of the following:

- The state and county venue where the notarization is being performed;
- The wording of the acknowledgment or jurat in question;
- The date on which the notarial act was performed;
- The signature of the notary, exactly as shown on the notary's commission;
- The notary's printed name, displayed below the notary's signature or inked stamp;
- The notary's notarial seal and commission expiration date.<sup>50</sup>

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<sup>47</sup> R.C. 147.07, 147.011(A) and (D), and 147.51.

<sup>48</sup> R.C. 147.542(G) and R.C. 147.09, repealed by the bill.

<sup>49</sup> R.C. 147.54, not in the bill.

<sup>50</sup> R.C. 147.542(E) and (F).



The bill's specific requirements for notaries public when issuing notarial certificates are as follows:

- For an acknowledgment and a jurat, the corresponding notarial certificate must indicate the type of notarization being performed.
- If a notarial certificate incorrectly indicates the type of notarization performed, the notary public must provide a correct certificate at no charge to the person signing.
- An acknowledgment certificate must clearly state that no oath was administered to the signer with regard to the notarial act.
- A jurat certificate must clearly state that an oath was administered to the signer with regard to the notarial act.
- A notary public must not use an acknowledgment certificate with regard to a notarial act in which an oath or affirmation has been administered.
- A notary public must not use a jurat certificate with regard to a notarial act in which an oath or affirmation has not been administered. (See COMMENT 5.)<sup>51</sup>

### **Existing statutory short forms of acknowledgments**

Existing law provides statutory short forms of acknowledgment that are sufficient for their respective purposes under any section of the Revised Code. Existing statutory short forms are available for acknowledgments by individuals acting in their own right, acknowledgments by corporations through their officers or agents, acknowledgments by partnerships through their partners or agents, individuals acting as principal by an attorney in fact, and by public officers, trustees, or personal representatives. Existing law also states that its authorization of the forms does not preclude the use of other forms.

The bill preserves those forms, notwithstanding the bill's new requirements for notarial certificates, with only minor changes. Existing law requires, for each statutory short form, the signature, title or rank, and serial number, if any, of the person taking the acknowledgment (i.e, the notary public). The bill removes the serial number requirement in each form.<sup>52</sup>

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<sup>51</sup> R.C. 147.542(A) through (D).

<sup>52</sup> R.C. 147.55.

## A new form for jurats

The bill adds a new approved form for jurats, stating that they may take the following form:

State of Ohio

County of .....

Sworn to or affirmed and subscribed before me by (signature of person making jurat) this date of (date).

(Signature of notary public administering jurat)

(Affix seal here)

(Title of rank)

Unlike existing law's language approving different forms for acknowledgments, the bill's language approving this form of jurat does not specifically state that other forms are not precluded. The provision does use the permissive "may," however, when approving this form for jurats.<sup>53</sup>

## Designated alternative signers

The bill allows individuals whose physical characteristics limit their ability to sign a document presented for notarization to direct a designated alternative signer to sign on their behalf. A designated alternative signer may be used when all of the following requirements are met:

- The individual designating the alternative signer clearly indicates, through oral, verbal, physical, electronic, or mechanical means, to the notary public, the individual's intent for the designated alternative signer to sign the individual's name on the notarial document.
- Both the individual and the designated alternative signer provide satisfactory identification to the notary public.
- The designated alternative signer signs the document in the presence of the notary public.
- The designated alternative signer is not named in the document.

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<sup>53</sup> R.C. 147.551.

- The notarial certificate provided to the individual gives the name of the designated alternative signer and that the document was signed at the direction of the individual.

The bill also provides that designated alternative signers may be used to perform an online notarial act if all of the above requirements are met.<sup>54</sup>

## **Fees notaries public may charge**

The bill revises the fees that notaries public may charge. The bill changes the fees by allowing up to \$5 for any notarial act that is not an online notarization and up to \$25 for an online notarization. Under the bill, fees may not be calculated on a per signature basis, but a notary public may charge a reasonable travel fee, as agreed to by the notary public and the principal prior to the notarial act. The Secretary of State is also authorized to adopt rules increasing the fees established by the bill.

The bill eliminates the existing fees that notaries public may charge. Under existing law, notaries public may charge the following fees:

- For the protest of a bill of exchange or promissory note, \$1 and actual and necessary expenses in going beyond the corporate limits of a municipal corporation to make presentment or demand;
- For recording an instrument required to be recorded by a notary public, 10¢ for each 100 words;
- For taking and certifying depositions, the customary fees or expenses charged in the particular community for similar services, unless the party requesting the deposition agrees that the fees or expenses to be charged may exceed the usual and customary fees or expense charged in the particular community;
- For taking and certifying acknowledgments of deeds, mortgages, liens, powers of attorney, and other instruments of writing, administering oaths, and other official services, the same fees as common pleas court clerks are allowed, by law, to charge for like services;
- One dollar for taking and certifying an affidavit.<sup>55</sup>

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<sup>54</sup> R.C. 147.59.

<sup>55</sup> R.C. 147.08(A) and 2319.27.



## Miscellaneous

### Notarial tools

Under continuing law, notaries public must obtain the seal of a notary public before entering upon the discharge of official duties. Existing law states that the seal must consist of the state's coat of arms within a one-inch-diameter circle surrounded by required text. The bill changes the diameter requirement from one inch to at least three-quarters of an inch, but not larger than one inch. The bill also states that a notary public commissioned prior to the bill's effective date may continue to use a seal that meets the Notary Law's requirements already in that person's possession.

The bill also eliminates a current requirement that notaries public provide themselves with an official register in which to record a copy of every certificate of protest and copy of note. Under existing law, the record and seal are exempt from execution, and must be deposited with the county recorder in the notary public's county of residence upon death, expiration of term without reappointment, or removal from office.<sup>56</sup>

### Resignation of notaries

Under current law, a notary, other than an attorney, who resigns the person's commission must deliver to the Secretary of State, on a form prescribed by the Secretary, a written notice indicating the effective date of resignation. The bill expands this requirement to include attorneys.<sup>57</sup>

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## COMMENT

1. R.C. 147.65(F) requires an online notary public to notify the Secretary of State upon discovery that an electronic journal has been lost, stolen, or compromised. R.C. 147.66(B) states:

An online notary public shall immediately notify an appropriate law enforcement agency and the secretary of state of the theft or vandalism of the online notary public's electronic journal, official electronic signature, or electronic seal. An online notary public shall immediately notify the secretary of state of the loss, compromise, or use by another

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<sup>56</sup> R.C. 147.04 and 147.041.

<sup>57</sup> R.C. 147.05(C).

person of the online notary public's electronic journal, official electronic signature, or electronic seal.

These provisions are not in direct conflict, but are difficult to interpret together without careful scrutiny.

2. Under the bill, R.C. 147.022(B) requires the Secretary of State to provide information regarding criminal records checks to "each person applying for a notary commission." Pursuant to R.C. 147.022(A), however, the bill does not require attorney applicants to undergo a criminal records check.

3. R.C. 147.01(B)(3)(a) requires applicants for notary public commissions to submit criminal records check reports demonstrating that they have not been convicted of, or plead guilty or no contest to, a disqualifying offense. The bill requires the Superintendent of BCII to run criminal records checks for notary commission applicants that search for disqualifying offenses as well as any offense that is substantially equivalent to a disqualifying offense. It is unclear, however, whether the Secretary of State would be able to disqualify an applicant for all substantially equivalent offense under the bill's current language. While the terms "offense of violence" and "sexually oriented offense" that are a first or second degree felony include comparable violations of other states' laws, it is unclear whether the disqualifying offenses includes violations of other states' laws that are comparable to aggravated murder, murder, and theft and fraud violations. This is likely a drafting error.

4. The bill's provisions in R.C. 147.542(E) reference certificates required under that section, but the section does not include language actually requiring a certificate. A reference to certificates required under the chapter, rather than the section, may have been intended.

5. The bill's provisions in R.C. 147.542(C) require acknowledgment certificates to clearly state that no oath was administered and jurat certificates to clearly state that an oath was administered. R.C. 147.542(D) then prohibits a notary public from using an acknowledgment certificate with regard to a notarial act in which an oath *or affirmation* has been administered or from using a jurat certificate with regard to a notarial in which an oath *or affirmation* has not been administered. In other words, division (C) requires administration of an oath for a jurat certificate, but division (D) indicates that either an oath or affirmation are acceptable for a jurat certificate.

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## HISTORY

ACTION	DATE
Introduced	02-22-18



