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# OHIO LEGISLATIVE SERVICE COMMISSION

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## Final Analysis

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**Primary Sponsors:** Reps. Stewart and Brown

**Effective date:** April 6, 2023

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## SUMMARY

### Court documents and records

- Requires the clerk of the court of common pleas, by October 7, 2024, to make available online the court's general docket for remote access by the public of the information in that docket, including all documents in each case file, pertaining to civil cases filed on or after April 6, 2023.
- Provides that nothing in that requirement is to be construed as making available online internal documents of judicial officers and court staff or any document or information in a case file the public access to which the court has ordered restricted under the Rules of Superintendence for the Courts of Ohio.
- Provides that the clerk of court is not required to make available online: (1) the general docket of the domestic relations division, the juvenile court, or the probate court, or (2) the general docket in civil cases pertaining to domestic relations if the court does not have a domestic relations division.
- Requires a party to an action or proceeding to omit personal identifiers from a case document submitted to the court or filed with the clerk of court pursuant to Superintendence Rule 45.
- Grants immunity to a clerk of court who posts a case document with personal identifiers on the clerk's website.
- Permits pleadings or documents filed with the clerk of court on paper to be converted to electronic format, and documents created by the clerk to be created in electronic format.
- Specifies that when pleadings or documents are received, created, or converted to an electronic format, that format must be considered the official version of the record.

- Requires the clerk to keep records as indicated by the Rules of Superintendence for the Courts of Ohio.
- Aligns the requirements for recording orders made out of court and the duty of the common pleas court clerk to maintain records with the Rules of Superintendence for the Courts of Ohio.

### **PIVOT program**

- Allows the Tiffin-Fostoria Municipal Court and the Seneca County Court of Common Pleas to exercise concurrent jurisdiction in operating the Participating in Victory of Transition (PIVOT) drug recovery program indefinitely.

## **Certificate of motor vehicle title changes and notary changes**

### **Notary changes**

- Removes notary requirements for a variety of motor vehicle title documents when a licensed motor vehicle dealer is a party to the transfer of that motor vehicle.
- Removes the requirement that a power of attorney (POA) be notarized when a person grants that POA to a licensed motor vehicle dealer or the dealer's agent for the transfer of motor vehicle title.

### **Transfer of vehicles involving a minor**

- Related to the sale, purchase, disposal, acquisition, or other transfer of a motor vehicle by a minor:
  - Adds a licensed motor vehicle dealer (or designee) to the list of people who may witness a parent or guardian's signature on the BMV form that accompanies the certificate of title application; and
  - Requires the dealer (or designee) to sign a statement acknowledging that the dealer used reasonable diligence in ascertaining the minor's age and the signing adult's identity.
- Authorizes a dealer (or designee) filing a certificate of title application for an all-purpose vehicle or off-highway motorcycle on behalf of a minor to submit a signed statement certifying that the dealer:
  - Used reasonable diligence in ascertaining the minor's age and the signing adult's identity; and
  - That the adult provided any necessary identification.

### **Nonresident purchaser tax affidavit**

- Authorizes a nonresident purchaser of a motor vehicle who intends to remove the motor vehicle from Ohio to use, title, and register in another state to sign a statement, rather than an affidavit, regarding that intent.

- Requires the motor vehicle dealer to have the statement signed in duplicate (rather than in triplicate under prior law), if nonelectronic, or signed once if signed electronically, to be submitted to the clerk of courts and forwarded to the Tax Commissioner.
- Retains the nonresident purchaser tax affidavit for purchases of a watercraft or outboard motor, but authorizes the affidavit to be executed in duplicate, rather than in triplicate.

### **Application to be a notary public**

- Exempts peace officers from having to obtain a criminal records check when applying to be a notary public.

### **Notarial certificates and forms of acknowledgments**

- Redefines “acknowledgment” to mean an individual’s declaration before a notary that the individual has signed a record for the purpose stated in the record, and if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the person identified in the record.
- Removes the requirement that the notarial certificate for an acknowledgment or jurat indicate the type of notarization being performed.
- Adds a new form of acknowledgment for limited liability companies.
- Changes the authorized form of a jurat, from the signature of the person making the jurat to the “name of signer.”

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## **DETAILED ANALYSIS**

### **Court documents and records**

#### **Background**

The act requires the clerk of the court of common pleas to keep records as indicated by the Rules of Superintendence for the Courts of Ohio. The records will be called the appearance docket, trial docket and printed duplicates of the trial docket for the use of the court and its officers, journal, and execution docket.<sup>1</sup>

#### **Online availability of general docket**

The act generally requires that not later than October 7, 2024, the clerk of court make available on the clerk of court’s website the “general docket” of the court for remote access and printing by the public of the information in that docket, including all individual documents

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<sup>1</sup> R.C. 2303.12(B).

in each “case file,” pertaining to civil cases filed on or after April 6, 2023.<sup>2</sup> (Terms in quotation marks are defined in “**Definitions.**”)

### **Exceptions**

The act provides that nothing in this requirement is to be construed as making available online any of the following:<sup>3</sup>

- Internal documents, such as notes, emails, drafts, recommendations, advice, or research of judicial officers and court staff;
- Any document or any information in a case file the public access to which the court has ordered restricted under the Rules of Superintendence for the Courts of Ohio.

The act also provides that the clerk of court is not required to make available online either:<sup>4</sup>

- The general docket of the division of domestic relations, the juvenile court, or the probate court;
- If the court does not have a division of domestic relations, the general docket in civil cases pertaining to domestic relations.

### **Record of documents**

The act modifies continuing law by requiring the clerk to keep a record in book form or permitting the clerk to prepare a record by using any photostatic, photographic, miniature photographic, film, microfilm, or microphotographic process, electrostatic process, perforated tape, magnetic tape, or other electromagnetic means, electronic data processing, machine readable media, graphic or video display, or any combination of them, which correctly and accurately copies or reproduces *every case file* (added by the act) and other original document, paper, or instrument in writing.<sup>5</sup>

Under prior law, the board of county commissioners was required to furnish the clerk of the court of common pleas all blankbooks, including the printed trial dockets, blanks, stationery, and all things necessary for the prompt discharge of the clerk’s duties. Under the act, the board is required to furnish all things necessary for the prompt discharge of the clerk’s duties.<sup>6</sup> The act also removes the requirement that the clerk of the court of common pleas keep at least four books and use materials that comply with the minimum standards prescribed by

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<sup>2</sup> R.C. 2303.12(D)(1).

<sup>3</sup> R.C. 2303.12(E).

<sup>4</sup> R.C. 2303.12(D)(2).

<sup>5</sup> R.C. 2303.12(B).

<sup>6</sup> R.C. 2303.06.

the National Bureau of Standards, and instead requires the clerk to keep records as indicated by the Rules of Superintendence for the Courts of Ohio.<sup>7</sup>

Additionally, the act aligns the requirements for recording orders made out of court with the Rules of Superintendence for the Courts of Ohio, where under prior law the clerk of the court of common pleas was required to enter out of court orders in the journal of the court in the same manner as orders made in term.<sup>8</sup> Similarly, the act requires the clerk of the court of common pleas to maintain all materials as referenced in the Rules of Superintendence for the Courts of Ohio.<sup>9</sup>

## **Case documents and personal identifiers**

Under the act, when submitting a case document to the court or filing a “case document” with the clerk of court, a party to an action or proceeding must omit “personal identifiers” from the case document pursuant to Rule 45 of the Rule of Superintendence for the Courts of Ohio. The clerk of court is not liable to any party or any person if a case document that is submitted to the court or filed with the clerk of court contains personal identifiers and the clerk posts that case document on its website.<sup>10</sup> (Terms in quotation marks are defined in “**Definitions.**”)

Pleadings or documents may be filed with the clerk of court either in paper format or in electronic format. Documents created by the clerk of court in the exercise of the clerk’s duties may be created in an electronic format.<sup>11</sup> Pleadings and documents filed on paper may be converted to an electronic format, which will be considered the official version of the record. Pleadings or documents received or created in electronic format will be considered the official version of the record.<sup>12</sup>

## **PIVOT program**

The act allows the Tiffin-Fostoria Municipal Court and the Seneca County Court of Common Pleas to exercise concurrent jurisdiction in operating the Participating in Victory of Transition (PIVOT) drug recovery program indefinitely. Under prior law, the concurrent jurisdiction was effective until August 1, 2023, unless renewed or made permanent by the General Assembly prior to that expiration.<sup>13</sup>

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<sup>7</sup> R.C. 2303.12(B).

<sup>8</sup> R.C. 2303.15.

<sup>9</sup> R.C. 2303.14.

<sup>10</sup> R.C. 2303.901(B).

<sup>11</sup> R.C. 2303.081(A).

<sup>12</sup> R.C. 2303.081(B).

<sup>13</sup> R.C. 1901.186.

## Certificate of motor vehicle title changes and notary changes

### Notary changes

Generally, many of the documents related to the transfer of a motor vehicle between two parties require a notary's signature. This is particularly true for the transfer of a motor vehicle between two parties in the course of a casual sale.<sup>14</sup> The notarization requirements prior to the act, however, were less clear when a licensed motor vehicle dealer was one of the parties to the transfer.

The act expressly removes the notary requirements when a licensed motor vehicle dealer is a party to the transfer of a motor vehicle (i.e., either the buyer or the seller) for all of the following documents:

1. The motor vehicle certificate of title;
2. An application for a motor vehicle certificate of title;
3. Assignment of ownership for a motor vehicle;
4. Power of attorney to title a motor vehicle (see "**POA**" below); and
5. Any other document required by the clerk of courts for the titling of a motor vehicle.

A clerk of courts may request a notarized affidavit to make corrections to any of the documents listed above, however, if necessary. In addition to these documents not requiring notarization, the documents also may be signed electronically.<sup>15</sup>

### POA

As a service to customers, a licensed motor vehicle dealer will often file the motor vehicle certificate of title documents with the clerk of courts. However, in order to do so, the customer must give the dealer a limited power of attorney (POA) to manage any transfer of title and the associated documents and applications. Instead of signing the POA before a notary, the customer may sign the POA before the dealer, the dealer's employee, or the dealer's agent. Under prior law, the dealer, employee, or agent then had to swear before a notary that the customer signed the POA in his or her presence. Thus, a notary was still involved in the process.

The act removes the notary from the process, similar to the other notary changes above. Instead, a person may grant the dealer, employee, or agent a limited POA to make an assignment of a certificate of title and to complete an application for a certificate of title (excluding the federally required odometer acknowledgements) without anyone signing or verifying the signature before a notary. The act also removes the authorization to witness a signature via audio-visual conference technology, since no witness signature is now required.<sup>16</sup>

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<sup>14</sup> R.C. 4505.062, not in the act.

<sup>15</sup> R.C. 4505.063.

<sup>16</sup> R.C. 4505.071.

## **Transfer of vehicles involving a minor**

Under continuing law, unchanged by the act, a minor cannot sell, dispose of, purchase, or otherwise acquire a motor vehicle without the consent of a parent, guardian, or other person having custody of the minor. The adult must give consent to the transaction by signing a statement on a form (prescribed by the Registrar of Motor Vehicles) that accompanies the application for the certificate of title for the motor vehicle. Under prior law, the adult could only sign the form in front of a clerk or deputy clerk of courts or a notary.

The act expands the number of people who may witness the adult's signature. Specifically, it authorizes the adult to sign the BMV form in the presence of a motor vehicle dealer (or the dealer's designee), if the transaction involves that dealer. If the adult signs before the dealer, the dealer must sign a statement verifying that the dealer used reasonable diligence in ascertaining the minor's age and the adult's identity (i.e., that the minor did not use an adult friend or other nonauthorized family member to sign). If the adult signs the form in the dealer's presence, the form does not require notarization or any additional signature of the clerk of courts, a deputy clerk of courts, or a notary.<sup>17</sup>

The act creates a similar authorization for off-highway motorcycles and all-purpose vehicles. In the case of these vehicles, a dealer involved in the transaction may submit a signed affidavit affirming that the dealer used reasonable diligence in ascertaining the minor's age and the adult who signed the form (including that the adult provided the correct identification). The Registrar must determine what types of identification are acceptable for the adult to show the clerk of court or a dealer.<sup>18</sup>

## **Nonresident purchaser tax affidavit**

The act authorizes a nonresident consumer who purchases a motor vehicle in Ohio and who intends to (1) immediately remove the motor vehicle from Ohio for use outside Ohio and (2) title or register the vehicle in another state (if such titling or registration is required) to sign a statement certifying this intent. Under prior law, the consumer was required to sign an affidavit. The purpose of the affidavit (under prior law) or the statement (under the act) is to exempt the consumer from the typical sales and use taxes due on the purchase of the motor vehicle. The presumption is that the consumer will pay similar sales and use taxes in the other state. Relatedly, the act requires the motor vehicle dealer to have the statement signed in duplicate (rather than signing the affidavit in triplicate, under prior law) if the statement is nonelectronic (i.e., signed on paper). The consumer may sign the statement once if signing electronically. The dealer must then submit the statement to the clerk of courts, and the clerk must forward it to the Tax Commissioner.<sup>19</sup>

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<sup>17</sup> R.C. 4505.031.

<sup>18</sup> R.C. 4519.70.

<sup>19</sup> R.C. 4505.06 and 5739.029.

A similar affidavit for a nonresident purchaser exists for the purchase of a watercraft or outboard motor. The act does not change that affidavit to a statement; however, it does authorize the affidavit to be executed in duplicate, rather than in triplicate, as under prior law.<sup>20</sup>

### **Application to be a notary public**

The act exempts peace officers from having to obtain a criminal records check when applying to be a notary public. Previously, only Ohio-licensed attorneys were exempt.<sup>21</sup>

### **Notarial certificates and forms of acknowledgments**

The act removes the requirement that the notarial certificate for an acknowledgment or jurat indicate the type of notarization being performed. It also removes the requirement that an acknowledgment certificate clearly state that no oath or affirmation was administered to the signer with regard to the notarial act.<sup>22</sup>

Under the act, a new statutory short form of acknowledgment is created for limited liability companies.<sup>23</sup> The act also changes the form of a jurat to the “name of signer” from “the signature of the person making the jurat.”<sup>24</sup>

### **Definitions**

The act defines the following terms:<sup>25</sup>

1. **“Acknowledgment”** is redefined to mean a declaration by an individual before a notary public that the individual has signed a record for the purpose stated in the record, and if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the individual or entity identified in the record.<sup>26</sup>
2. **“Case document”** means any document, or information in any document, that is submitted to a court or filed with a clerk of court in a court action or proceeding, including any exhibit, pleading, motion, order, or judgment, or any documentation prepared by the court or clerk in the action or proceeding, including journals, dockets, and indices.<sup>27</sup>

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<sup>20</sup> R.C. 5739.027.

<sup>21</sup> R.C. 147.01 and 147.022.

<sup>22</sup> R.C. 147.542.

<sup>23</sup> R.C. 147.55(C).

<sup>24</sup> R.C. 147.551.

<sup>25</sup> R.C. 2303.12(A).

<sup>26</sup> R.C. 147.011.

<sup>27</sup> R.C. 2303.901(A)(1).



- a. "Case document" does not include:
- i. Any document or information in any document that is exempt from disclosure under state, federal, or common law;
  - ii. Personal identifiers;
  - iii. Any document or information in any document to which public access has been restricted under Rule 45 of the Rules of Superintendence for the Courts of Ohio;
  - iv. Except as relevant to the juvenile's prosecution later as an adult, a juvenile's previous disposition in abuse, neglect, or dependency cases, juvenile civil commitment files, post-adjudicatory residential treatment facility reports, or post-adjudicatory releases of a juvenile's social history;
  - v. Notes, drafts, recommendations, advice, or research of court officers or staff;
  - vi. Forms containing personal identifiers that are submitted or filed pursuant to Rule 45 of the Rules of Superintendence for the Courts of Ohio;
  - vii. Information on, or obtained from, the Ohio courts network, except that the information must be available at the originating source if not otherwise exempt from public access;
  - viii. In a court of common pleas or a division of that court with domestic relations or juvenile jurisdiction, any of the following documents:
    - (1) Health care documents, including physical health, psychological health, psychiatric health, mental health, or counseling documents;
    - (2) Drug or alcohol use assessments or predisposition treatment facility reports;
    - (3) Guardian ad litem reports, including collateral source documents attached to or filed with the reports;
    - (4) Home investigation reports, including collateral source documents attached to or filed with the reports;
    - (5) Child custody evaluations or reports, including collateral source documents attached to or filed with the evaluations or reports;
    - (6) Domestic violence risk assessments;
    - (7) Supervised parenting time or companionship or visitation records or reports, including exchange records or reports;
    - (8) Financial disclosure records or statements regarding property, debt, taxes, income, or expenses, including collateral source documents attached to or filed with the records or statements;
    - (9) Asset appraisals and evaluations.

3. **“Case file”** means the compendium of original documents filed in a civil action or proceeding in the court of common pleas, including the pleadings, motions, orders, and judgments of the court on a case-by-case basis.<sup>28</sup>
4. **“General docket”** means the appearance docket, trial docket, journal, execution docket, and case files in relation to those dockets and journal.<sup>29</sup>
5. **“Personal identifiers”** means any of the following: (1) Social Security numbers, except for the last four digits; (2) financial account numbers, including debit card, charge card, or credit card numbers; (3) employer or employee identification numbers; (4) a juvenile’s name in an abuse, neglect, or dependency case, except for the juvenile’s initials or a generic abbreviation such as “CV” for “child victim.”<sup>30</sup>

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## HISTORY

Action	Date
Introduced	02-09-22
Reported, H. Civil Justice	05-05-22
Passed House (84-1)	05-18-22
Reported, S. Judiciary	12-14-22
Passed Senate (32-0)	12-14-22
House concurred in Senate amendments (87-0)	12-14-22

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<sup>28</sup> R.C. 2303.12(A)(1).

<sup>29</sup> R.C. 2303.12(A)(2).

<sup>30</sup> R.C. 2303.901(A)(2).