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S.B. 130*
135th General Assembly

Bill Analysis

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Version: As Reported by Senate Small Business and Economic Opportunity

Primary Sponsor: Sen. Wilson

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SUMMARY

Ohio Notary Law

- Requires a notary to take the oath of office in person.
- Eliminates the requirement that the Secretary of State (SOS) hold an administrative hearing disciplining a notary for violating the notary law.
- Allows the SOS to revoke a notary public's commission for any act or omission that demonstrates a lack of honesty, integrity, competence, or reliability as well as refusing to cooperate with an investigation of an alleged violation.
- Prohibits a notary public whose commission has been revoked by the SOS from reappointment.
- Revises the required information to be included in the notary database maintained by the SOS.
- Authorizes online notaries to charge a \$10 technology fee per online notarization session for use of an online identity verification process and increases the maximum fee for online notarization from \$25 to \$30.
- Clarifies the certification required by persons making an acknowledgment to account for those made before nonnotaries that are authorized to perform notarial acts (such as judges).
- Specifies the form of an oath or affirmation given by a notary to a person signing a jurat.

* This analysis was prepared before the report of the Senate Small Business and Economic Opportunity Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

- Establishes acceptable forms of a notarial certificate used by a nonnotary whose authority is recognized in Ohio.
- Requires notaries seeking a duplicate commission or amending an existing commission to file an electronic form, as opposed to a paper form.
- Imposes new requirements for verifying the identity of persons making an acknowledgment or a jurat.
- Expands the list of county government officials that are required to accept electronically notarized documents to include clerks of courts of record and deputy registrars.
- Specifies that a notary commission is not an occupational or professional license for the purposes of the state's occupational regulation laws.

Limited liability companies (LLCs)

- Allows the Secretary of State to charge a \$50 filing fee for a limited liability company (LLC) statement of authority, an amendment or cancellation of a statement of authority, or a denial of a statement of authority.
- Eliminates the \$50 filing fee for certificates of correction concerning the registration or assumed name of a foreign LLC.
- Requires a certificate of merger to include the name and mailing address of the person or entity that will provide a copy of the merger agreement to shareholders, partners, or equity holders of a constituent entity.

DETAILED ANALYSIS

Overview

The bill makes several miscellaneous changes to the Ohio Notary Law and to the law governing limited liability companies (LLCs).

Notary Public Law

Oath of office

The bill amends the requirement that a notary take and subscribe an oath of office. Under the bill, prior to engaging in official duties, a notary is required to take an oath of office in person before another notary public or an officer authorized to administer oaths.¹

¹ R.C. 147.01(G) and 147.03.

Notary commissions

Revocation of commission

Under continuing law, the Secretary of State (SOS) may revoke a notary's commission if, by presentation of satisfactory evidence, the notary is found to have engaged in misconduct or is unable to perform duties as a notary. Current law requires the SOS to hold an administrative hearing regarding such conduct before revoking the notary's commission. The bill removes the administrative hearing requirement and adds additional details as to when the SOS may revoke a notary's commission. Specifically, the SOS may revoke a notary's commission if the SOS's investigation determines that the notary has demonstrated a lack of honesty, integrity, competence, or reliability, including by doing any of the following:

- Failing to administer an oath or affirmation when executing a jurat;
- Performing a notarial act, other than an online notarization, without requiring a personal appearance;
- Fraudulent, dishonest, or deceitful misstatement or omission on a notarial certificate.

A notary is required to fully cooperate with, and timely respond to questions from, the SOS in conjunction with such an investigation. The SOS is required to revoke the commission of any notary who fails to do so. Furthermore, the bill specifies that a notary whose commission is revoked is ineligible for reappointment.²

Electronic forms

Continuing law establishes a procedure for notaries to replace the physical copies of their commissions when the commission is lost or destroyed. Under current law, the notary is required to provide an affidavit that the original commission has been lost or destroyed. Under the bill, notaries must instead submit an electronic commission request form.

Similarly, the bill requires a notary seeking an amendment to their commission, such as changing a name or address, to submit an electronic amendment form, as opposed to a paper form. The SOS is required to prescribe and make available both an electronic duplicate commission request form and an electronic amendment form.³

Notary public database

Continuing law requires the SOS to maintain a database of notaries public. Under the bill, the notary database must include each notary's "status [and] authority to perform notarial acts" rather than "verification of . . . authority and good standing." Additionally, the database

² R.C. 147.01(C)(3) and 147.032.

³ R.C. 147.371.

must include whether a notary is “authorized” rather than “registered” to perform online notarizations.⁴

Notary public fees

Under current law, a notary public is authorized to charge up to \$25 for an online notarization. The bill increases the maximum fee to \$30. Additionally, the bill authorizes online notaries to charge a \$10 technology fee per online notarization session for use of an online identity verification process. A notary public is prohibited from charging or accepting a fee greater than these amounts.⁵

Notarial acts

Notarial certificates

Current law requires that a notary public provide a completed notarial certificate for every notarial act performed. Under the bill, the form of a notarial certificate used by a person authorized to perform notarial acts must be accepted if any the following apply:

- The certificate is in a form prescribed by state law;
- The certificate is in a form prescribed by law or regulation in the place in which the notarial act is performed;
- The certificate contains the words:
 - “Acknowledged by me,” or a substantial equivalent;
 - “Sworn to and subscribed before me,” “affirmed to and subscribed by me,” or a substantial equivalent.⁶

Acknowledgments

One of the most common notarial acts that notaries perform are “acknowledgments.” Under continuing law, an acknowledgment is a declaration by an individual 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 individual or entity identified in the record.⁷

One of the requirements for a valid acknowledgment is that the person taking the acknowledgement must certify that the person doing the acknowledging appeared before the notary. Continuing law, unchanged by the bill, enables certain persons that are not notaries, such as judges, to perform “notarial acts.” The bill specifies that these notarial acts include:

⁴ R.C. 147.051.

⁵ R.C. 147.08 and 147.141(A)(18).

⁶ R.C. 147.542.

⁷ R.C. 147.011(A).

- Administering oaths or affirmations required or authorized by law;
- Taking and certifying acknowledgements of deeds, mortgages, liens, powers of attorney, and other instruments of writing;
- Taking and certifying depositions.⁸

The person taking the acknowledgment may also certify that the person doing the acknowledging appeared before a nonnotary that is authorized to perform notarial acts.⁹

Jurats

The bill makes new requirements with regard to verifying the identification of persons making an acknowledgment or a jurat. A jurat is an oath or affirmation that the contents of a particular document are true.

Identification

Under the bill, a notary public who takes an acknowledgment of a record is required to determine, from personal knowledge or satisfactory evidence of the identity of the person acknowledging, that the person appearing before the notary public and making the acknowledgment has the identity claimed and that the signature on the record is the signature of the person.

A notary public has personal knowledge of the identity of the person appearing before the notary public if the person is personally known to the notary public through dealings sufficient to provide reasonable certainty that the person has the identity claimed. A notary public is considered to have satisfactory evidence of the identity of the person appearing before the notary public if the notary public can identify the person by any of the following means:

- A passport, driver's license, government-issued nondriver identification card, or other form of government-issued identification with the signature or photograph of the individual, which is current or expired not more than three years before performance of the notarial act, and is satisfactory to the officer;
- By verification on oath or affirmation of a credible witness personally appearing before the notary public and known to the notary public or whom the notary public can identify on the basis of such a government-issued identification card;
- Any additional information or credentials required by the notary to assure the identity of the person.

⁸ R.C. 147.51.

⁹ R.C. 147.53.

The bill states that a witness is not credible if the witness has a conflict of interest in regards to the transaction. It defines “conflict of interest,” as a direct financial or other interest in the transaction at issue, or being named as a party to the transaction.¹⁰

Certifications

The bill requires the person executing a jurat to certify all of the following:

- The signer appeared before the notary public;
- The notary public administered an oath or affirmation to the signer that the statement in the jurat is true and correct;
- The signer signed the document in the presence of the notary public.

Additionally, the oath or affirmation must include the question, “Do you solemnly swear that the statements in this document are true, so help you God?” “Do you affirm, under penalty of perjury, that the statements in this document are true?” or a substantially similar question.¹¹

Electronically notarized documents

The bill expands the list of county government officials that are required to accept electronically notarized documents. Under current law, all of the following county officials are required to accept a digital copy of a document executed electronically by a notary for purposes of approval, transfer, and recording:

- Auditors;
- Engineers;
- Recorders.

The bill adds clerks of courts of record and deputy registrars to this list.

Additionally, the bill makes the same change with regard to printed copies of electronically notarized documents that contain an authenticator certificate. Note, however, that the bill specifies that an authenticator certificate may not be signed or notarized with an electronic signature, either in person or through an online notarization system.¹²

Occupational regulations

The bill specifies that a notary commission is not an occupation or professional license for the purposes of state laws concerning occupational regulations.¹³ Among other things, those laws establish a general policy of adopting the least restrictive regulation required to

¹⁰ R.C. 147.49 and 147.50.

¹¹ R.C. 147.54.

¹² R.C. 147.591(B) and (C).

¹³ R.C. 147.011.

address a material harm, and require the General Assembly to review the state's occupational licensing boards at least once every six years.¹⁴

Limited liability companies (LLCs)

Fees collected by the Secretary of State

Under continuing law, a LLC may file a statement of authority with the Secretary of State, affirming the power of a specific person or position to enter into transactions on behalf of the LLC. The LLC may amend or cancel the statement of authority by making a new filing with the Secretary. Furthermore, a person named in a statement authority may file a statement denying the person's authority. The bill specifies that a \$50 fee is required to file a statement of authority, an amendment or cancellation thereof, or a statement of denial. The same fee applies under current law for filing certain documents related to a partnership, including a statement of denial, a statement of dissociation, a statement of disclaimer of general partner state, or a cancellation of disclaimer of general partner state.¹⁵

The bill eliminates the \$50 fee charged by the Secretary of State for a certificate of correction filed with respect to the registration or assumed name of a foreign LLC.¹⁶

Merger certificates

Continuing law allows LLCs to merge with one or more constituent entities (i.e., a party to a merger agreement) upon certain specified conditions. One of those conditions is filing a merger certificate with the Secretary of State after each constituent entity has approved the merger agreement. Under current law, a merger certificate must include:

- The name and form of each constituent entity, the jurisdiction of its governing statute, and, if any, its registration number;
- The name and form of the surviving entity, the jurisdiction of its government statute, and, if any, a statement that the surviving entity is created pursuant to the merger;
- The effective date of the merger;
- If the surviving merger is to be created pursuant to the merger.

The bill expands this list by requiring the merger certificate to include the name and mailing address of the person or entity that is to provide a copy of the merger agreement in response to any written request made by a shareholder, partner, or other equity holder of a constituent entity.¹⁷

¹⁴ R.C. Chapter 4798, not in the bill.

¹⁵ R.C. 111.16(N).

¹⁶ R.C. 111.16(P); R.C. 1706.511 and 1706.513, not in the bill.

¹⁷ R.C. 1706.712(B).

HISTORY

Action	Date
Introduced	06-27-23
Reported, S. Small Business & Economic Opportunity	--
