



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Final Analysis

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**Sens.** Huffman and Wilson, Terhar, Lehner, Sykes, Hackett, Hottinger, Beagle, Coley, Dolan, Hoagland, Kunze, LaRose, Peterson, Schiavoni, Yuko

**Reps.** Blessing, Anielski, Carfagna, Craig, Galonski, Hambley, Miller, Perales, Reineke, Ryan, Schuring, Seitz, Slaby, R. Smith

**Effective date:** Notary provisions effective September 20, 2019; other provisions effective March 20, 2019; one provision effective July 1, 2019

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## **ACT SUMMARY**

### **Online notary**

- Allows the Secretary of State to authorize notaries public who are Ohio residents to perform notarizations online using live video links, electronic signatures, and electronic notary seals, but does not extend this authority to taking and certifying depositions.
- Requires notaries public seeking authorization to act as online notaries public to complete an educational course and pass a test in addition to those necessary to acquire an initial notary commission.
- Generally establishes five-year terms for online notary authorizations for both nonattorneys and attorneys.
- Establishes continuing education requirements for online notaries.
- 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.
- Specifies that an electronic document notarized through an online notarization is considered an original document.

- Prohibits online notaries public from performing online notarizations while physically outside of 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 comply with certain procedures to confirm 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 that meets the Secretary of State's standards.
- Requires online notaries public 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 during the term of their authorization to perform online notarizations.
- Requires online notaries public to maintain electronic journals with details of all online notarizations performed during the five-year term of their authorization to perform online notarizations, and to deposit those journals with the Secretary of State or an approved repository on the expiration of the term, where they are kept for an additional ten years.
- 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.
- Imposes restrictions on access to electronic journals maintained by attorney notaries authorized to conduct online notarizations.
- Authorizes the Secretary of State to charge a fee to individuals registering to be an online notary and to set the fee for the related course of instruction and examination.

### **Electronic notary**

- Allows a notary public to obtain an electronic signature and electronic seal to notarize electronic documents in the physical 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.
- Specifies that an electronic document notarized through an electronic notarization is considered an original document.
- Requires county auditors, engineers, and recorders to accept printed documents that were notarized electronically and contain the required notarial certificate for purposes of approval, transfer, and recording.

### **Notary commissions**

- Requires an individual seeking a notary public commission to complete an education course and, if the individual is not an attorney, to also pass a related test.
- Requires a nonattorney seeking a notary public commission to obtain a criminal records check showing that the individual has not been convicted of a disqualifying offense; requires commissioned notaries public to self-report a conviction of a disqualifying offense, and requires the Secretary of State to revoke the commission of a notary public who is convicted of a disqualifying offense.
- Requires nonattorney notaries public whose existing commissions expire after the act's effective date to submit a new criminal records check when renewing their commissions and submit a fee set at \$60 or less.
- Revises the fee to become a notary from \$15 to a fee of \$150 or less, with up to \$15 of the fee going to the Secretary of State and the remainder going to the entity providing the educational course.
- Allows 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 notary application processing and notary commissioning.
- Requires the Secretary of State to create and maintain an online database of notaries public.
- Removes record-keeping requirements imposed on common pleas court clerks with regard to notary public commissions and maintains similar record-keeping requirements imposed on the Secretary of State.



- Requires information submitted to the Secretary of State as part of the application or renewal of notary public commissions, or to update a notary public's records, 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.

### **Notarial acts**

- Eliminates the recording of notarial protests from the statutory list of authorized notarial acts and adds the execution of jurats.
- Defines the notarial terms "acknowledgment," where signers acknowledge that they have signed, understand, and recognize the consequences of a document, and "jurat," where a signer gives an oath or affirmation that a statement is true and signs in the notary's presence.
- Adds requirements for notarial certificates used to memorialize notarial acts.
- Adds a 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 if certain conditions are met.

### **Fees**

- Replaces the 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 stamps in their possession that were compliant prior to the act's effective date.
- 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 continuing law for nonattorney notaries public.

## **Salvage certificates of title**

- Exempts insurance companies seeking salvage certificates of title from notarization and verification requirements in certain circumstances.
- Until January 1, 2021, generally prohibits clerks of court from issuing a salvage certificate of title if the only basis for issuing the title is information reported from the National Motor Vehicle Title Information System (NMVTIS).
- Creates the National Motor Vehicle Title Information System Utilization Study Committee and requires it to study and report on the following:
  - The advantages and disadvantages of using information reported to NMVTIS for making decisions on issuing salvage certificates of title in Ohio;
  - The accuracy of that information;
  - Allowing that information to be shared in the same manner as information is shared under Ohio law that allows the public to access certain motor vehicle title information online; and
  - How other states utilize this information.
- Transfers oversight of the Statewide Salvage Motor Vehicle Database to the Department of Public Safety or a third-party provider pursuant to a contract with the Department, effective July 1, 2019.



## Oil and gas land professionals

- Exempts oil and gas land professionals who perform their duties as employees from the Real Estate Broker Licensing Law.
- Exempts oil and gas land professionals who perform their duties as independent contractors from the Real Estate Broker Licensing Law if they register with the Superintendent of Real Estate and make certain disclosures to people involved in transactions.

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## CONTENT AND OPERATION

### Online notary

The act allows a notary public who has been duly appointed and commissioned under the Notary Law (R.C. Chapter 147.), and who is also an Ohio resident, to apply to the Secretary of State for authorization to act as an online notary public. An authorization generally remains effective during a notary commission's five-year term. Authorizations for attorney notaries, whose commissions do not have set expiration dates, expire every five years.<sup>1</sup> The act 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 act's online notarization provisions conflict with other provisions of the Revised Code, the act's online notarization provisions control.<sup>2</sup>

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

The act requires individuals seeking authorization to act as online notaries public to pay a fee (see "**Online authorization fees**," below), successfully complete a course, approved by the Secretary of State, and pass a related examination. The Secretary is required to approve one business entity comprised of bar associations with statewide scope and regional presence that have expertise and experience in notary laws and

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<sup>1</sup> R.C. 147.63(A), (D)(2), and (D)(4).

<sup>2</sup> R.C. 147.61.



processes to provide the course and administer the 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 act, but the online notary public course may be taken in conjunction with the educational program for initial notary public commissions.

The act 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. Some aspects of the application and approval process, though, are mandated by the act. 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;
- 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 act;
- An email address for the applicant;
- Any information or software necessary to enable the application to be read;
- Proof of compliance with the education 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.

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, unless the notary is also an attorney. Attorney notary commissions do not have set expiration dates, and generally last as long as the attorney is licensed to practice law by the Supreme Court of Ohio. Under the act, an authorization to conduct online notarizations that is granted to an attorney is effective for five years, the same length as a nonattorney





notary's commission, and can be renewed beginning three months before its expiration. (See "**Online authorization renewals and continuing education**," below.)

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 does not conform to standards developed by the Secretary. Standards for 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.

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 with assistance from the Department of Administrative Services' information technology office, then the Secretary may suspend or revoke the authorization to perform online notarizations. The act specifically provides, however, that these provisions are not to be interpreted to prohibit online notaries public from updating software disclosed to the Secretary of State as part of an application for authorization to perform online notarizations, so long as the software update does not materially change the disclosed technology.<sup>3</sup>

### **Online authorization fees**

The act requires the Secretary of State to establish, by rule, the fee for the online notary course of instruction and examination, not to exceed \$600 (stated in the act as no more than four times the fee for receiving a standard notary commission), and a portion of that fee, not to exceed \$20, that is to be remitted to the Secretary. The applicant seeking authorization to conduct online notarizations is to remit the Secretary's portion directly to the Secretary and the rest of the fee directly to the entity administering the course and examination.

Note that these fees are only to be charged to applicants seeking authorization to conduct online notarizations. The Secretary is prohibited from charging a fee to a notary obtaining an electronic seal and signature for the sole purpose of conducting electronic notarizations in person (see "**Electronic notarization**," below).<sup>4</sup>

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<sup>3</sup> R.C. 147.03, 147.62(A)(1) through (3) and (B), and 147.63(A) through (D)(3)(a), (D)(4) through (6), (E), and (F).

<sup>4</sup> R.C. 147.62(A)(1) and 147.631 and, by reference, R.C. 147.37.



## Online authorization renewals and continuing education

The act requires online notaries seeking to renew their authorizations to submit all of the following to the Secretary of State, by way of the entity authorized to conduct the online notarization educational course and examination:

- A fee that is set by the Secretary at \$240 or less;
- A renewal application form;
- Evidence that the required continuing education, established in rules by the Secretary, has been completed.

If an online authorization expires before the notary submits the application for renewal, the Secretary is prohibited from renewing the expired authorization, but may allow the notary to apply for a new authorization.<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.) And, an electronic document notarized through an online notarization is considered an original document. The means of performing online notarizations are to be established in rules adopted by the Secretary of State, but the act does set some requirements.<sup>6</sup>

## Residency and location

A notary public authorized to perform online notarizations under the act may only do so while an Ohio resident and while physically present 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

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<sup>5</sup> R.C. 147.63(D)(3)(b) and (G), and, by reference, R.C. 147.031(B)(2).

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

<sup>7</sup> R.C. 147.63(A) and 147.64(B).



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 act requires the principal to do so in person, and both the principal and notary public must sign the record with an electronic signature. The act 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 person and interacting with that individual by means of live two-way, audio-video communication.<sup>9</sup>

### **Identity verification**

Under the act, 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 the procurement of sufficient evidence by the notary public.

A notary public can use one of two methods to identify a principal through sufficient evidence. In the first, the principal must remotely present a government-issued I.D. with a signature and photograph, and the notary public must secure both credential analysis of the I.D. provided and 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 act requires the Secretary of State to adopt related standards.

"**Credential analysis**" and "**identity proofing**" are 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.

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

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



The second method by which an online notary may obtain sufficient evidence of a principal's identity is through verification by one or more credible witnesses. Each witness must appear in person before the notary public and be identified by either personal knowledge or the same I.D. presentation and verification methods that can be used to confirm the identity of a principal.<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 modified forms of notarial certificates for online notarizations in rules adopted pursuant to the act (see "**Requirements for notarial acts and notarial certificates,**" below).<sup>11</sup>

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

In addition to requirements for the conduct of notarial acts during an online notarization, the act 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 act's record-keeping provisions a complete recording of the audio-video communication, that is the basis for identification of a principal for each online notarization (see "**Record-keeping 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 act 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's 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>

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

<sup>11</sup> R.C. 147.542(F)(7), 147.62(A)(6), and 147.64(F).

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

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



## Record-keeping requirements

The act requires the Secretary of State to adopt record retention standards for online notaries. It also provides some specific requirements, including a mandate that online notaries maintain at least one electronic journal and record, in chronological order, all online notarizations in the journal or journals. 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 or journals:

- 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, including the date of issuance or expiration of any I.D. presented or the name of any witnesses relied upon, if identification of the principal was based upon satisfactory evidence;
- 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.

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



The act also prohibits online notaries public from recording a Social Security number in an electronic journal.<sup>15</sup>

### **Security over records and online notary tools**

Online notaries public must safeguard electronic journals and all other notarial records by maintaining the exclusive use and control of electronic journals, official electronic signatures, and electronic seals. Though, the act does permit the use of a third party to keep and store electronic journals. Online journals and other notarial records can only be surrendered or destroyed by rule of law, court order, or at the Secretary of State's direction, and backups of electronic journals and audio-video recordings of online notarizations are to be maintained.

The act also imposes reporting requirements if certain security breaches occur. Specifically, the act requires a third-party repository that keeps and stores electronic journals pursuant to the Secretary of State's standards to immediately notify the Secretary of State, an appropriate law enforcement agency, and any affected notaries of the unauthorized access of any electronic journals in the repository's possession or control. If a third party discovers *the loss* of any electronic journals in its possession or control, the act requires it to immediately notify the Secretary of State and any affected notaries. In instances where an online notary discovers the unauthorized access or the loss of an electronic journal, the notary has the same notification obligations as a third-party repository if notice has not already been given by a repository.

The act 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 act'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 an online notary public during the term of the notary's authorization to conduct online notarizations. At the expiration of the term, 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

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<sup>15</sup> R.C. 147.65(B) and (C).

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

of that fact. If the authorization is renewed, then the online notary public must begin a new journal.

Additionally, 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, where it must be maintained for ten years. In the case of 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. Whether a journal is transmitted due to resignation, revocation, expiration without renewal, death, or adjudicated incompetence, the person transmitting the journal must provide the Secretary of State any access instructions that person has.<sup>17</sup>

### **Inspection of electronic journals**

The act provides that any person may inspect or request a copy of an entry or entries in an electronic journal maintained by a nonattorney online notary. The requestor must specify the month and year of the notarization, the 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.

Online notaries who are also attorneys must only allow inspection, or provide copies of, journal entries if the requesting party was a principal in the transaction or transactions to which the entries apply or if the requesting party is acting on a principal's behalf. Once an attorney's journal is deposited with the Secretary of State or a third-party repository, those entities must also limit inspection and copying to the same parties that an attorney must limit access to. Finally, attorney online notaries may also deny a request to inspect or receive copies of a journal entry based on attorney-client privilege.

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 copy certification by the notary.

The act also provides that electronic journals may be examined and copied without restriction by a law enforcement officer in the course of an official investigation,

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<sup>17</sup> R.C. 147.65(F) and 147.66(E).



subpoenaed by court order, or surrendered at the direction of the Secretary of State, but attorney notaries may assert attorney-client privilege to object to those actions.<sup>18</sup>

### **Authorization termination**

In addition to the rules discussed above, the act requires the Secretary of State to adopt requirements for the termination of a notary public's authorization to perform online notarizations.<sup>19</sup>

### **Definitions**

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

(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 both of the following apply: (a) the information confirms the notary public's name, jurisdiction, and commission expiration date and (b) 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.

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

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





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

## **Electronic notarization**

The act allows any notaries public to notarize electronic documents signed with an electronic signature *in their physical presence*. The act also allows notaries to obtain an electronic seal and electronic signature for that purpose without paying an additional fee to the Secretary of State. Notaries public must comply with the online notary provisions' technology and security requirements for electronic signatures and electronic seals.

An electronic document that is signed with an electronic signature in the notary's physical presence and notarized with an electronic seal is considered an original document under the act. Further, a printed copy of such a document is to be accepted by county auditors, engineers, and recorders for purposes of approval, transfer, and recording as long as it has the required notarial certificate specifying that it was electronically notarized. It cannot be rejected solely because it contains electronic signatures or an electronic notarization, including an online notarization (see "**Online notary**," above).

For purposes of this provision, "electronic document," "electronic seal," and "electronic signature" have the same meanings as in the act's online notary public provisions.<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> The act changes the qualification requirements for who may be commissioned as a notary public and the requirements for a commission.

### **Residency requirements**

Under continuing law, a person must meet either a residency or work requirement. That is, the person must either be a state resident, or a nonresident licensed to practice law in Ohio with a principal place of business or primary practice in Ohio. Under prior law, attorney and nonattorney residents were addressed separately.

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

<sup>21</sup> R.C. 147.542(G)(7), 147.591, 147.631(A)(2), and 147.66.

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



The act combines these provisions as the prior law distinction did not have any practical effect.<sup>23</sup>

### **Education requirements**

The act adds a requirement that notary applicants complete a class on the Notary Law and that nonattorney applicants pass a related test. The act also allows the Secretary of State to authorize completion of the course online, and requires the Secretary to adopt rules regarding standards and curricula for notary education.

Those rules must address: (1) the entities authorized to administer the program and the required test, (2) the provisions and content of the test, and (3) the program's standards and curricula, which must be established in coordination with the entities authorized to administer the program and 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. Note that the act requires the Secretary to approve both of the following to administer the test and educational program, provided they meet the minimum requirements established by the Secretary:

- Those entities performing such services prior to the provision's September 20, 2019, effective date;
- Another entity that has a business relationship with those entities already performing such services.

The educational requirements do not apply to attorneys already commissioned as a notaries public prior to the September 20, 2019, effective date.<sup>24</sup>

### **Commissioning fees**

The act revises the fee the Secretary of State charges each person receiving a commission as a notary public. Prior law set a mandatory \$15 fee, while the act requires the Secretary of State to charge a fee *up to* \$150. The applicant pays the fee to the entity administering the educational program, and the entity then splits the fee into two parts, with one part being kept by the entity and the other part, up to \$15, going to the Secretary. The act requires the Secretary to set the fee amount, as well as the fee split, in rule. The Secretary is also required to specify in rule the portion of the fee that an

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

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



attorney is to pay to an educational program, as an attorney is not required to take the associated test.<sup>25</sup>

### **Criminal records requirements**

The act 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 a disqualifying offense, or any offense under an existing or former Ohio law, any other state, or the United States that is substantially equivalent to such 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 act.<sup>26</sup>

Under the act, a "**disqualifying offense**" is any 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;
- A theft or fraud offense.<sup>27</sup>

The act also requires the Secretary of State to provide each nonattorney applying for a notary commission with information about accessing, completing, and forwarding the form and standard fingerprint impression sheet to the Superintendent of BCII. 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 Secretary of State, after the Secretary of State has provided the required information about the needed materials, requires denial of the application.

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<sup>25</sup> R.C. 147.37.

<sup>26</sup> R.C. 109.572(A)(15) and (B)(4), 147.01(B)(3), and 147.022(A) to (C).

<sup>27</sup> R.C. 147.011(C) and R.C. Chapter 2913.; R.C. 4776.10, not in the act.



The act 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>

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

Under the act, if a notary public is convicted of a disqualifying offense, or any offense under an existing or former Ohio law, law of any other state, or United States law that is substantially equivalent to such a disqualifying offense, during the term of the notary's commission, the notary public must inform the Secretary of State. The act also requires the Secretary of State to revoke a notary public's commission if the notary public is convicted of a disqualifying offense.<sup>29</sup>

### **Renewal commissions**

Under continuing law, unchanged by the act, 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 nonattorney notary public has received an authorization to act as an online notary public, that authorization expires with the notary's underlying commission, and is to be renewed with the underlying commission. Authorizations granted to attorney notaries expire five years after the date authorization is granted, and may be renewed beginning three months before the expiration date.<sup>30</sup>

The act requires that notaries public whose commissions expire after the act's September 20, 2019, 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>28</sup> R.C. 147.022(B), (D), and (E).

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

<sup>30</sup> R.C. 147.03, 147.031(A)(2), and 147.63(D)(4) and (5).

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 act repeals a provision that laid out the required qualifications to be a notary. Under the law repealed by the act, before the appointment of a notary public could be made, the applicant was required to 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 contained the following:

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

(2) If the applicant was not an Ohio attorney, a statement that the applicant was a citizen of the county in which the applicant resided;

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

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

#### **Commissioning responsibility**

The act requires the Secretary of State to oversee the processing of notary public applications, issue and revoke notary commissions, and oversee the creation and maintenance of an online database of notaries public. The act also authorizes the Secretary to perform other duties as necessary, and requires those entities authorized by the Secretary to administer the act's educational and testing requirements to do so.<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> Prior law required 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 was required to record the commission in a book kept for that

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

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

<sup>33</sup> R.C. 147.01(D) and 147.03.

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



purpose and 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 was \$5.

The act eliminates these responsibilities for common pleas court clerks but preserves a requirement 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>

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

Under continuing law, notaries public who legally change their name or address after having been commissioned must notify the Secretary of State within 30 days after the change. The act eliminates the requirement that the notary public also notify the appropriate clerk of courts.<sup>36</sup>

### **Electronic submissions**

The act requires that all submissions to the Secretary of State for receiving and renewing notary commissions, updating name and address information for notaries public, notifying the Secretary of certain criminal convictions, or resigning a notary commission be submitted electronically.<sup>37</sup>

### **Certified copies of commissions**

The act 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>38</sup>

### **Discipline**

Under continuing 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 a 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, upon a substantiated complaint. The act moves the

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

<sup>36</sup> R.C. 147.05(B).

<sup>37</sup> R.C. 147.01(E) and 147.05.

<sup>38</sup> R.C. 147.06.



removal authority to the Secretary of State from the court of common pleas. Under prior law, the court was required to certify the removal to the Secretary of State.<sup>39</sup>

The act 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 act allows that as well and grants the Secretary a range of disciplinary options. 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. The act allows the Secretary to adopt rules regarding procedures for the entire process, investigations, hearings, and disciplinary actions.<sup>40</sup>

## **Prohibited acts**

### **All notaries**

Expanding the prohibitions that notaries public are subject to, the act additionally establishes that notaries must not:

- Perform a notarial act with regard to a record or document executed by the notary;
- Notarize the notary's own signature;
- Take the notary's own deposition;
- Perform a notarial act if the notary has a "conflict of interest" (a direct financial or other interest in the transaction in question, excluding authorized fees, 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);
- Certify that a document is either an original document or a true copy of another record, though online notaries may certify copies made from their electronic journals, and may notarize the signature of another person certifying that a document is an original true copy;

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<sup>39</sup> R.C. 147.03, 147.13 and 147.14.

<sup>40</sup> R.C. 147.03, 147.032(A) to (E), 147.13, and 147.14.



- Use a name or initial in signing certificates other than that by which the notary public is commissioned;
- Sign 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 first submits written notice to the Secretary of State with an example of the facsimile signature stamp;
- Affix the notary's signature to a blank form of an affidavit or certificate of acknowledgement and deliver that form to another person with the intent that it be used as an affidavit or acknowledgment;
- Take the acknowledgment of, or administering an oath or affirmation to, a person who the notary public knows to have been adjudicated mentally incompetent by a court, if the acknowledgment or oath or affirmation necessitates the exercise of a right that has been removed;
- Notarize 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;
- Alter anything in a written instrument after it has been signed by anyone;
- Amend or alter a notarial certificate after the notarization is complete;
- Notarize a signature on a document if the document is incomplete or blank;
- Notarize 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;
- Take an acknowledgment of execution in lieu of an oath or affirmation if an oath or affirmation is required.<sup>41</sup>

### **Nonattorney notaries**

The act also adds prohibitions specifically for nonattorney notaries public. They may not:

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<sup>41</sup> R.C. 147.141(A)(1) to (15), (B), and (C) and 147.65(G)(2).





- Determine the validity of a power of attorney document or any other form designating a representative capacity;
- Represent or advertise themselves as immigration consultants or experts in immigration matters;
- Provide any service that constitutes the unauthorized practice of law;
- State or imply that the notary public is an Ohio attorney;
- Solicit or accept compensation to prepare documents for or otherwise represent the interest of another person in a judicial or administrative proceeding;
- Solicit or accept 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.;
- Use the phrase "notario" or "notario public" to advertise their services.<sup>42</sup>

### **Advisory board**

The act 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>43</sup>

### **Online database of notaries**

The act requires the Secretary of State to maintain a database of notaries public on a publicly accessible website. The website must provide, for 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>44</sup>

### **Notarial acts**

#### **Authorized notarial acts**

The act eliminates the authority of a notary public to receive, make, and record notarial protests. But it continues a notary public's authority to administer oaths

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<sup>42</sup> R.C. 147.141(A)(16) and 147.142.

<sup>43</sup> R.C. 147.032(F).

<sup>44</sup> R.C. 147.051.



required or authorized by law, take and certify depositions, and take and certify acknowledgments of deeds, mortgages, liens, powers of attorney, and other instruments of writing.

Another provision of continuing 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 act adds executing a jurat to that list.

The act defines "**jurat**" as a notarial act in which (1) the signer of the notarized document is required to give an oath or affirmation that the statement in the notarized document is true and correct, and (2) the signer signs the notarized document in the presence of a notary public.

The act also includes a definition for "**acknowledgment**." 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>45</sup>

The act allows notaries public to explain the difference between an acknowledgment and a jurat, but prohibits nonattorney notaries public from advising the signer on the type of notarial act that best suits a situation.<sup>46</sup>

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

The act establishes procedures and requirements with respect to notarial certificates. Continuing law, unchanged by the act, discusses the form of a certificate of acknowledgment. It 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 act does not change these provisions.<sup>47</sup>

The act does, however, add a definition for "**notarial certificate**," defining the term as the part of, or attachment to, a document that is completed by the notary public and upon which the notary public places the notary public's signature and seal. It also adds a requirement that notaries provide a completed notarial certificate for every

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<sup>45</sup> R.C. 147.07, 147.011(A) and (D), and 147.51; R.C. 147.09, repealed by the act.

<sup>46</sup> R.C. 147.542(H).

<sup>47</sup> R.C. 147.54, not in the act.



notarial act, and imposes several other requirements for the content of, and procedures used when completing, notarial certificates.

A certificate *may be provided through* preprinting on a notarial document, ink stamp, handwritten note, or a separate attached document, and each certificate *must show* all of the following:

- The state and county venue where the notarization was 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;
- If an electronic document was signed in the physical presence of a notary and electronically notarized, or if an online notarization was performed, a statement to that effect.

Additional requirements depend on the particular circumstances:

- For an acknowledgment and a jurat, the corresponding notarial certificate must indicate the type of notarization 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 or affirmation was administered to the signer with regard to the notarial act.
- A jurat certificate must clearly state that an oath or affirmation 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.<sup>48</sup>

### **Statutory short forms of acknowledgments**

Continuing law, largely unchanged by the act, provides statutory short forms of acknowledgment that are sufficient for their respective purposes under any section of the Revised Code. These short forms are available for acknowledgments by individuals acting in their own right, by corporations through their officers or agents, by partnerships through their partners or agents, by individuals acting as principal by a power of attorney, and by public officers, trustees, or personal representatives. Under continuing law, the statutory short forms do not preclude the use of other forms.

The act preserves those forms with only minor changes, notwithstanding the act's new requirements for notarial certificates. The act removes the requirement that each short form contain the serial number, if any, of the person taking the acknowledgment (i.e., the notary public). Each short form continues to require the signature and title or rank of the person taking the acknowledgment.<sup>49</sup>

### **Statutory short form for jurats**

The act 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 or rank)

(Commission expiration date)

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<sup>48</sup> R.C. 147.011(E) and 147.542.

<sup>49</sup> R.C. 147.55.



Unlike the Notary Law's language approving different forms for acknowledgments, the act's language approving this form of jurat does not specifically state that other forms are not precluded. The provision does, however, use the permissive "may."<sup>50</sup>

### **Designated alternative signers**

The act allows individuals with physical limits on 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.
- The notarial certificate provided to the individual gives the name of the designated alternative signer and states that the document was signed at the direction of the individual.

The act also provides that designated alternative signers may be used to perform an online notarial act if all of the above requirements are met.<sup>51</sup>

### **Fees notaries public may charge**

The act revises the fees that notaries public may charge. The act 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. 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 allowable fees.

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<sup>50</sup> R.C. 147.551.

<sup>51</sup> R.C. 147.59.



The act eliminates the following fees that notaries public were authorized to charge:

- 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 acknowledgments of 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;
- For taking and certifying an affidavit, \$1.50;
- 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 expenses charged in the particular community.<sup>52</sup>

## Miscellaneous

### Notarial tools

The act changes the required size of the notary public's seal from a one-inch-diameter circle containing the state's coat of arms (and surrounded by required text) to a circle having a diameter between three-quarters of an inch to one inch. The act also states that a notary public commissioned prior to the September 20, 2019, effective date of these provisions may continue to use a seal that was in the notary's possession before that date that complied with the law's then-current requirements.

The act also eliminates a 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. A related requirement that a notary's official record 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 is also eliminated by the act, as is a provision stating that a notary's seal and record are exempt from execution.<sup>53</sup>

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<sup>52</sup> R.C. 147.08; R.C. 2319.27, not in the act.

<sup>53</sup> R.C. 147.04 and 147.041.



## **Resignation of notaries**

Under continuing law, a nonattorney notary 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 act expands this requirement to include attorney notaries.<sup>54</sup>

## **Salvage certificates of title for motor vehicles**

### **Insurance companies – notarization requirements**

The act makes changes to the law pertaining to the transfer of a motor vehicle title to an insurance company. Continuing law prescribes how an insurance company is to obtain a salvage certificate of title for a vehicle that the insurance company has decided is not worth repairing as part of a claim. Under continuing law, unchanged by the act, when the insurance company receives the certificate of title it is required to deliver the certificate to a clerk of a court of common pleas and apply for a salvage certificate of title.

The act specifies that such a certificate of title, any supporting power of attorney, and application for a salvage certificate of title is not subject to the standard notarization and verification requirements of the Motor Vehicle Title Law. Similarly, the act specifies that when an insurance company obtains possession of a vehicle for which a physical title was not issued, the insurer's application for a salvage certificate of title is not subject to the standard notarization and verification requirements of the Motor Vehicle Title Law, nor is any power of attorney included with such an application required to conform to the standard signature requirements prescribed for a power of attorney.<sup>55</sup>

### **Moratorium on issuing salvage certificates of title based on NMVTIS**

The act establishes a moratorium that prohibits a clerk of court from issuing a salvage certificate of title if the only basis for issuing the title is information reported to the National Motor Vehicle Title Information System (NMVTIS). This restriction takes effect March 20, 2019, and ends January 1, 2021.<sup>56</sup>

In Ohio, a clerk of a court issues motor vehicle certificates of title, and there are specific procedures for issuing a salvage certificate of title. For instance, when an insurance company purchases a motor vehicle from an insured and declares it

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<sup>54</sup> R.C. 147.05(C).

<sup>55</sup> R.C. 4505.11(C)(1)(a) and (c); R.C. 1337.25, not in the act.

<sup>56</sup> Section 4; 49 U.S.C. 30504; National Motor Vehicle Title Information System's Frequently Asked Questions page: [https://www.vehiclehistory.gov/nmvtis\\_faq.html](https://www.vehiclehistory.gov/nmvtis_faq.html).



economically impractical to repair, the insurance company must deliver the certificate of title to a clerk and apply for a salvage certificate of title. The clerk then must issue a salvage certificate of title, which must bear the word "**SALVAGE**" on the front.

Once a salvage certificate of title has been issued for a motor vehicle, that vehicle generally may not be operated on a public road unless it is properly restored, inspected, and issued a "**REBUILT SALVAGE**" certificate of title.<sup>57</sup>

Under the act, clerks may continue to issue salvage certificates of title pursuant to the following procedures, unchanged by the act:

- When the clerk receives information from Ohio's automated title processing system indicating that a previously issued certificate of title in Ohio was a salvage certificate of title;
- When the vehicle was previously titled in another state and the previous certificate of title indicated that the vehicle was considered or categorized as salvage; or
- When an entity – authorized under Ohio law to apply for a salvage certificate of title – applies for a salvage certificate of title (such as a salvage dealer, insurance company, rental or leasing company, secured creditor, etc.).<sup>58</sup>

However, during the moratorium period, if none of those three scenarios apply, and the clerk only has information from NMVTIS – for example, information that the vehicle was at one point considered a junk vehicle – the clerk may not issue a salvage certificate of title.<sup>59</sup>

### **NMVTIS Utilization Study Committee**

The act creates the National Motor Vehicle Title Information System Utilization Study Committee to study the following:

(1) The advantages and disadvantages of utilizing information reported pursuant to 49 U.S.C. 30504 that is included within NMVTIS for making decisions on issuing salvage certificates of title in Ohio;

(2) The accuracy of that information;

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<sup>57</sup> R.C. 4505.11(C) and (E).

<sup>58</sup> Section 4(A) to (C).

<sup>59</sup> The moratorium does not affect persons applying for certificates of title under R.C. 4505.103.





(3) Allowing that information to be shared in the same manner as information is shared under the Ohio law that allows the public to access certain motor vehicle title information online; and

(4) How other states utilize this information.<sup>60</sup>

The Committee will consist of the Director of Public Safety, or the Director's designee who may not be the Registrar of Motor Vehicles, who will serve as the committee chair, and the following persons appointed by the Director:

- A representative of the Attorney General's Office;
- A representative of the Ohio Automobile Dealers Association;
- A representative of the Ohio Insurance Institute;
- A representative of the salvage automobile auction industry;
- A representative of the Ohio Clerks of Court Association;
- A representative of the salvage dealer industry;
- A representative of AAA Ohio Auto Club;
- A representative from the Ohio Independent Automobile Dealers Association;
- A representative from the National Auto Auction Association;
- A representative of the auto finance industry; and
- Up to two additional stakeholders identified by the Director from organizations or industries not represented on the Committee.<sup>61</sup>

It must complete its study and submit a report of its findings and any recommendations to the Governor and the General Assembly by January 31, 2020. The Committee will then cease to exist.<sup>62</sup>

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<sup>60</sup> Section 5(A) and (E).

<sup>61</sup> Section 5(B).

<sup>62</sup> Section 5(F) and (G).



## Salvage motor vehicle database

Effective July 1, 2019, the act transfers responsibility for maintaining the Statewide Salvage Motor Vehicle Database. Under continuing law, salvage motor vehicle auctions and salvage motor vehicle pools must collect certain information with regard to salvage vehicle transactions. This information must then be reported to be stored in a database. Under prior law, this information was reported to a third-party consolidator selected by the Registrar of Motor Vehicles.

Under the act, the information is reported to either the Department of Public Safety or a third-party provider, pursuant to a contract with the Department. Accordingly, the act makes the Department, or such a third-party provider, responsible for establishing the database. The act removes the requirement that costs associated with maintaining be paid from the Public Safety – Highway Purposes Fund.<sup>63</sup>

## Oil and gas land professionals

The act creates two new exemptions from the Real Estate Broker Professional Licensing Laws for oil and gas land professionals.

Under the act, an "**oil and gas land professional**" is a person who regularly engages in the preparation and negotiation of agreements for the purpose of exploring for, transporting, producing, or developing oil and gas mineral interests, including oil and gas leases and pipeline easements. Colloquially, oil and gas land professionals have long been referred to as "landmen."

### Employee oil and gas land professionals

The act's first exemption is for oil and gas land professionals who are employed by a person or entity on whose behalf they are working. The act exempts them from the Real Estate Broker Professional Licensing Law by declaring them to not be "real estate brokers" or "real estate salespersons" within the meaning of Ohio law. As a result, continuing law's prohibition on acting or holding one's self out to be a real estate broker without a license does not apply to oil and gas land professionals working as employees on behalf of those persons or entities.<sup>64</sup>

### Independent oil and gas land professionals

The second exemption applies to oil and gas land professionals who are *not* employed by the entity or person on whose behalf they perform their duties. In other

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<sup>63</sup> R.C. 4738.021.

<sup>64</sup> R.C. 4735.01(I)(1)(i).



words, it applies to oil and gas land professionals working as independent contractors. To be exempt from the Real Estate Broker Professional Licensing Law under the act, independent oil and gas land professionals must (1) not engage in the purchase or sale of fee simple absolute interests in oil and gas or other real estate, (2) be a member in good standing of an appropriate professional organization, (3) register with the Superintendent of Real Estate, and (4) provide required notices when engaging counterparties in negotiations and agreements.<sup>65</sup>

Registrations must include both of the following:

- The name and address of the professional;
- Evidence of the professional's membership and good standing in a national, state, or local professional organization that has been in existence for at least three years and has, as part of its mission, developed a set of standards of performance and ethics for oil and gas land professionals.

The registration must be completed annually and professionals are to pay a fee established by the Superintendent. The act limits the fee to no more than \$100.

The notices these professionals are required to provide must be given to any landowner or other person with an interest in real estate in relation to the independent oil and gas land professional's activities. The professional must make the disclosure either prior to or upon first contact with such a person and the disclosure must include all of the following:

- The professional's name and address as registered with the Superintendent;
- That the professional is registered as such with the Superintendent and is a member in good standing in a national, state, or local professional organization that has been in existence for at least three years and has, as part of its mission, developed a set of standards of performance and ethics for oil and gas land professionals;
- That the oil and gas land professional is not a licensed real estate broker or real estate salesperson;
- That the landowner or other person with an interest in real estate may seek legal counsel in connection with any transaction with the professional;

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<sup>65</sup> R.C. 4735.01(I)(1)(h).



- That the professional is not representing the landowner or other person with an interest in real estate.

Additionally, an independent oil and gas land professional must make a similar disclosure upon or prior to entering into any agreements for the purpose of exploring for, transporting, producing, or developing oil and gas mineral interests, including oil and gas leases and pipeline easements with any landowner or other person with an interest in real estate.

If an independent oil and gas land professional ceases to be a member in good standing of a professional organization, then the professional must report the change in membership status to the Superintendent within 30 days of that change. The act prescribes that failure to report such change in membership status results in the automatic suspension of registration status and subjects the professional to the penalties for unlicensed real estate broker activity. Similarly, any independent oil and gas land professional who fails to register with the Superintendent is subject to the penalties for unlicensed activity.<sup>66</sup>

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## HISTORY

ACTION	DATE
Introduced	02-22-18
Reported, S. Insurance & Financial Institutions	05-15-18
Passed Senate (33-0)	06-06-18
Reported, H. Gov't Accountability & Oversight	12-06-18
Passed House (77-10)	12-06-18
Senate concurred in House amendments (31-0)	12-13-18

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<sup>66</sup> R.C. 4735.01(I)(1)(h) and (i) and (GG) and 4735.023.