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OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research
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Legislative Budget
Office

S.B. 300*
134th General Assembly

Occupational Regulation Report

[Click here for S.B. 300's Bill Analysis / Fiscal Note](#)

Primary Sponsor: Sen. Wilson

Impacted Profession: Notaries public

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

LEAST RESTRICTIVE REGULATION COMPARISON

Ohio's general regulatory policy

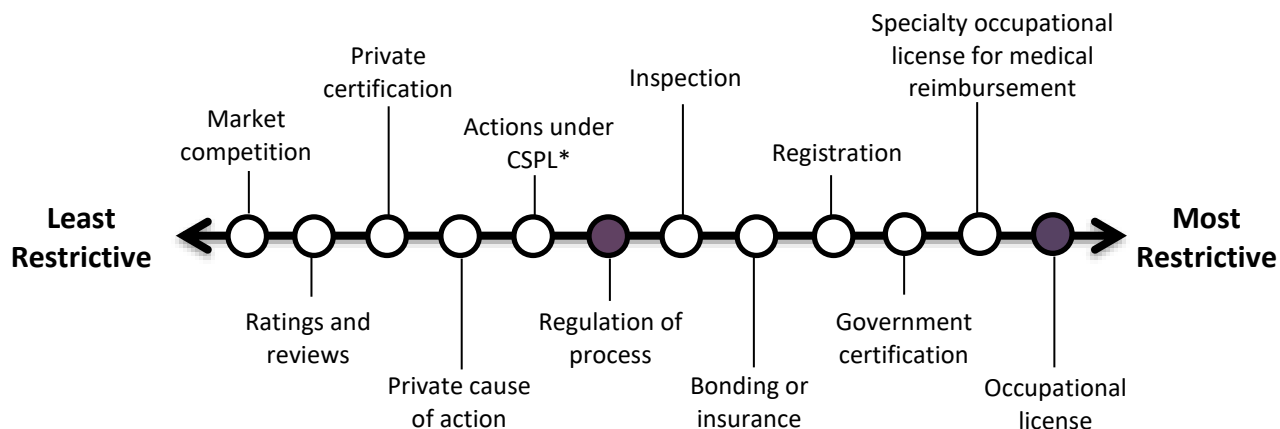
The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect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

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

* This report addresses the "As Introduced" version of S.B. 300. It does not account for changes that may have been adopted after the bill's introduction.

¹ R.C. 103.26, not in the bill.

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



*CSPL – The Consumer Sales Practices Law

S.B. 300 modifies the existing licensure requirements to become a commissioned notary public. Some of the changes, such as to disciplinary procedures for notaries public, appear to increase the restrictiveness of current regulations while others decrease restrictiveness. Because a person must hold a commission to act as a notary and meet certain personal qualifications to be issued the commission, it functions as an occupational license under the state's policy.

The bill also makes changes to process regulations for notaries by adding new requirements for a notary to verify the identity of a person signing an acknowledgment or jurat (an oath or affirmation that the contents of a particular document are true) before the notary. It also creates a new form of acknowledgment that may be used by the notary for limited liability companies (LLCs).

Necessity of regulations

The bill's sponsor, Senator Wilson, testified that the bill's changes will modernize how business is conducted in Ohio by allowing notaries to utilize technology. Senator Wilson testified that this will make it easier for a notary to perform the notary's duties and respond in emergency situations.³

In proponent testimony, Allison DeSantis of the Ohio Secretary of State's Office states that S.B. 300 "would provide clarity for Ohio notaries public" and ensure notaries are aware of their duties and responsibilities. She says that the bill's requirement that a notary verify a person's identity would allow for the notary to be disciplined if the notary fails to identify the person when performing a jurat, which is not required under current law, and that this language is consistent with notary law in many jurisdictions. Additionally, Ms. DeSantis states that

³ See the [Senator Wilson Sponsor Testimony \(PDF\)](#), which is available by searching for S.B. 300 on the General Assembly's website: legislature.ohio.gov.

providing a statutory short form acknowledgment for LLCs will help ensure compliance with notarial certificate requirements.⁴

Restrictiveness of regulations

Licensing provisions

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

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

There is no federal regulatory framework governing notaries public. However, according to the National Notary Association (NNA), all of the U.S. states and territories and the District of Columbia require a person to hold a commission to act as a notary public, although the laws vary from state to state and lack uniformity.⁶ Additionally, while the NNA has drafted a Model Notary Act for legislators to use when considering changes to state notary laws, it does not appear that the Ohio Notary Law⁷ is based on the model act or another uniform national law or practice.⁸

Ohio law does not include a reciprocity provision for notaries, however, this practice is consistent with the philosophy articulated by the NNA – specifically, a notary's "geographic authority to perform notarizations is strictly limited to the boundaries of the appointing state or jurisdiction."⁹ Nonetheless, all states recognize the validity of a notarial act performed before a

⁴ See the [Allison DeSantis Proponent Testimony \(PDF\)](#), which is available by searching for S.B. 300 on the General Assembly's website: legislature.ohio.gov.

⁵ R.C. 4798.02, not in the bill.

⁶ [How to Become a Notary Public](#), which may be accessed by clicking on "Notary Basics" under "Knowledge Center" on the National Notary Association (NNA) website: nationalnotary.org.

⁷ R.C. Chapter 147.

⁸ [Model Notary Act](#), which may be accessed by conducting a keyword "Model notary act" search on the NNA website: nationalnotary.org. See also [Law on Notarial Acts, Revised \(2021\)](#), which may be accessed by conducting a keyword "Notarial acts" search on the Uniform Law Commission website: uniformlaws.org.

⁹ [What it Means to be a Public Official](#), which may be accessed by clicking on "Notary Basics" under "Knowledge Center" on the NNA website: nationalnotary.org.

notary in another state as having the same legal effect as an act performed by a notary in that state.¹⁰

Ohio's current notary commission does not satisfy the above criteria under which licensure is the preferred method of regulation and the bill does not bring the commission into compliance with those criteria. The bill decreases the restrictiveness of the state's regulations by removing the requirement that a person take and subscribe an oath to be issued a commission. Conversely, it increases regulatory restrictiveness by expanding the circumstances under which a notary commission may be revoked and specifying that a person whose commission is revoked is permanently ineligible for reappointment as a notary. It is a policy judgment as to whether the bill's provisions, which modify an existing license, should be subjected to the same scrutiny as legislation that creates new licenses.¹¹

Regulation of process

The state's policy does not provide specific guidance as to when a regulation of process is the best means of protecting the health, safety, and welfare of consumers. However, the policy as a whole suggests that regulations of process are the most preferred method of regulation when market competition, ratings and reviews, private certifications, private causes of action, and actions under the state's Consumer Sales Practices Law do not provide sufficient protection.¹²

The bill establishes new requirements for a notary to verify the identity of a person appearing before the notary when performing an acknowledgment or jurat which, as noted by Ms. DeSantis in her proponent testimony, is a fundamental aspect of the notary's role. Under current law, a notary must certify that a person signing an acknowledgment is known to the notary or presents satisfactory evidence of their identity. Conversely, a notary is not expressly required by current law to identify a signer when performing a jurat.¹³ The bill's verification requirements are consistent with those in administrative rules that apply to online notarial acts.¹⁴ Additionally, all of the surrounding states require a notary to verify a person's identity in the same manner as that proposed in the bill.¹⁵

The impact of the addition of a new form of acknowledgment for LLCs appears to be minimal. Continuing law provides statutory short forms of acknowledgment for other entities,

¹⁰ [The Enduring Benefits of Interstate Recognition of Notarial Act Laws \(PDF\)](#), which may be accessed by conducting a keyword "Interstate recognition" search and clicking on "Special Reports and Articles" on the NNA website: nationalnotary.org.

¹¹ R.C. 147.14.

¹² R.C. 4798.01, not in the bill.

¹³ R.C. 147.53.

¹⁴ Ohio Administrative Code 111:6-1-05.

¹⁵ See "**COMPARISON TO OTHER STATES**," below.

including corporations and partnerships, but also allows a notary to use forms other than the statutory short forms of acknowledgment.¹⁶

IMPACT STATEMENT

Opportunities for licensure

Notaries must apply for and maintain registration with the Ohio Secretary of State. The licensure process requires applicants to pay a license fee, submit to a background check, attend a training course of up to three hours, and in some cases pass a written examination.¹⁷ According to the NNA's most recent census, there was approximately one notary per 1,421 Ohio residents in 2017.¹⁸

S.B. 300 will not increase barriers to entry for persons seeking to begin service as a notary public. However, the bill does expand the circumstances in which the Ohio Secretary of State may remove a commissioned notary public, and requires that persons who are decommissioned not be eligible to be reappointed as a notary public in the future. To the extent that commissioned notary publics already properly document a patron's oath or affirmation, S.B. 300 will not impact the number of notary publics. The bill contains other provisions which increase the variety of form templates a notary may use, adding a form specifically for use with LLCs. The bill may increase the number of persons serving as notary publics, should demand for these services by LLCs be significant.

Consumer choice and market competition

The bill will not impact consumer choice or market competition for notary public services, to the extent that the services offered currently and those offered under S.B. 300 overlap. The bill does add a new form of notarial acknowledgment for LLCs. Among the bill's other changes, most provisions in S.B. 300 increase consumer choice in the market.

A number of provisions in the bill modify the requirements of a notarial act, further changing the codified definitions of verifications allowed a notary to adequately document identity and acknowledgment during notarization of a record. Thus while the marketplace for notarized documents is formally changed by law under the bill, LBO finds it unlikely current demand for notary public services would be greatly impacted by its passage. LBO is unable to comment on the extent to which commissioned notary publics and private sector providers offer comparable services.

¹⁶ R.C. 147.55.

¹⁷ The exact requirements vary based on a variety of factors, including the applicant's occupation, whether the license is a renewal, and whether the prospective notary will be authorized to perform online services. More information on the license requirements is available on the web portal: ohiosos.gov/notary/.

¹⁸ See [The National Notary Association Official 2017 Notary Census \(PDF\)](#), which may be accessed under the "Knowledge Center" tab of NNA's website: nationalnotary.org.

Cost to government

For an analysis of the bill's cost to government, please refer to the [LBO fiscal note \(PDF\)](#).

SUMMARY OF PROPOSED REGULATIONS

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

For a full explanation of the bill's provisions, see the [S.B. 300 Bill Analysis](#).

COMPARISON TO OTHER STATES

All of the surrounding states require the issuance of a notary public commission for an individual to validate notarial acts, and specify disciplinary actions that may be taken against a notary who engages in prohibited conduct. Two states, Indiana and Michigan, prescribe a time period within which an individual whose commission was revoked is ineligible for reappointment. All of the surrounding states require a notary public to verify the identity and signature of an individual who appears before the notary. The table summarizes the law of the surrounding states concerning an individual's eligibility to be reappointed as a notary after having a commission revoked, reasons a notary's commission may be suspended, and requirements for a notary to verify a signer's identity.

Notary Public Disciplinary Actions and Requirements to Verify a Signer's Identity			
State	Eligibility for Reappointment if Commission Revoked	Reasons for Suspending a Notary	Verifying a Signer's Identity
Ohio (under the bill)	Ineligible for life after revocation (<i>R.C. 147.01(C)</i>).	Any official misconduct or incapacity. All violations of the Notary Law may be grounds for suspension but permanent revocation is required for a notary who fails to administer the required oath or affirmation to a signer, charges an unlawful fee, or dishonestly or unfaithfully discharges official duties. (<i>R.C. 147.032 and 147.13, not in the bill; R.C. 147.01(C) and 147.14.</i>)	Requires a notary to determine, from personal knowledge or satisfactory evidence (government-issued documentation or a credible witness), that an individual has the identity claimed and that the signature on record is the individual's signature before performing a notarial act (<i>R.C. 147.49 and 147.50</i>).
Indiana	Ineligible for five years after revocation (<i>Ind. Code 33-42-13-3(j) and (l)</i>).	Any act or omission that demonstrates a deficiency of incompetence, honesty, integrity, or reliability (<i>Ind. Code 33-42-13-1(c)</i>).	Same as Ohio (under the bill) (<i>Ind. Code 33-42-9-2 and 33-42-9-4</i>).

Notary Public Disciplinary Actions and Requirements to Verify a Signer's Identity			
State	Eligibility for Reappointment if Commission Revoked	Reasons for Suspending a Notary	Verifying a Signer's Identity
Kentucky	N/A	Any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a notary public (<i>Ky. Rev. Stat. 423.395</i>).	Same as Ohio (under the bill) (<i>Ky. Rev. Stat. 423.315 and 423.325</i>).
Michigan	Ineligible for five years after revocation, except that an individual who was imprisoned is ineligible for ten years after completing the term of imprisonment (<i>Mich. Comp. Laws 55.300a and 55.303</i>).	Engaging in prohibited conduct, which includes committing an act of fraud or deceit, false advertising, and charging a fee in excess of that allowed by the law governing notaries public (<i>Mich. Comp. Laws 55.300a</i>).	Requires a notary to determine, from personal knowledge or satisfactory evidence (government-issued documentation or a credible witness), that an individual making an acknowledgment or verification on oath or affirmation is the individual whose signature is on record (<i>Mich. Comp. Laws 55.285</i>).
Pennsylvania	N/A	Any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a notary public (<i>57 Pa. Cons. Stat. 323</i>).	Same as Ohio (under the bill) (<i>57 Pa. Cons. Stat. 305 and 307</i>).
West Virginia	N/A	Any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a notary public (<i>W. Va. Code 39-4-21</i>).	Same as Ohio (under the bill) (<i>W. Va. Code 39-4-5 and 39-4-7</i>).