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S.B. 300*
134th General Assembly

Bill Analysis

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Version: As Reported by Senate General Government Budget

Primary Sponsor: Sen. Wilson

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SUMMARY

- Amends requirements to the notary's oath of office, allowing a notary to either take the oath in person or certify that the notary will abide by the oath.
- Redefines "acknowledgment" to mean an individual's declaration before a notary that the individual has signed a record for the purpose stated in the record, and if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the person identified in the record.
- Requires notaries seeking to replace lost or destroyed commissions or to amend an existing commission to file an electronic form, as opposed to a paper form.
- Imposes new requirements with regard to notaries verifying the identification of persons making an acknowledgment or a jurat.
- Prohibits a notary from performing a notarial act for a person with whom the notary cannot communicate without the assistance of an interpreter or translator.
- Adds a new form of acknowledgment for limited liability companies.
- Expands the list of county government officials that are required to accept electronically notarized documents to include clerks of courts of record and deputy registrars.
- Removes the requirement that the notarial certificate for an acknowledgement or jurat indicate the type of notarization being performed.

* This analysis was prepared before the report of the Senate General Government Budget Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

DETAILED ANALYSIS

Overview

The bill makes several miscellaneous changes to the Ohio Notary Law. Generally speaking, notaries are public officers that validate and authenticate documents for legal purposes.

Oath of office

The bill amends the requirement that a notary take and subscribe an oath of office. Under the bill, prior to engaging in official duties, a notary is required to do either of the following:

- Personally appear before an officer authorized to administer oaths to take an oath of office;
- Certify under penalty of perjury that the notary will abide by the terms of the oath of office of a notary public.¹

Under continuing law, if a notary is found to have engaged in misconduct, or is unable to perform duties as a notary, the Secretary of State may revoke the notary's commission. Under the bill, a person whose commission is revoked is ineligible for reappointment as a notary.²

Acknowledgments

One of the most common notarial acts that notaries perform are "acknowledgments." The bill amends the definition of "acknowledgement." Under current law, an acknowledgment is a notarial act in which the signer of the notarized document acknowledges all of the following:

- That the signer has signed the document;
- That the signer understands the document;
- That the signer is aware of the consequences of executing the document by signing.

Under the bill, an acknowledgement is a declaration by an individual before a notary that the individual has signed a record for the purpose stated in the record, and if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the individual or entity identified in the record.³

One of the requirements for a valid acknowledgment is that the person taking the acknowledgement must certify that the person doing the acknowledging appeared before the

¹ R.C. 147.01(D) and 147.03.

² R.C. 147.01(C).

³ R.C. 147.011(A).

notary. Continuing law, unchanged by the bill, enables certain persons that are not notaries, such as judges, to perform “notarial acts.” Under the bill, the person taking the acknowledgment may also certify that the person doing the acknowledging appeared before a nonnotary that is authorized to perform notarial acts.⁴

Oaths

The bill removes the prohibition against notaries certifying to the affidavit of a person without administering the appropriate oath of affirmation and the three-year removal from office for violating the prohibition. Instead, the bill more generally requires that a notary is subject to investigation and penalties for failure to administer the appropriate oath or affirmation to the signer when such verification on oath or affirmation is required. Possible penalties include:

- Revoking the notary public’s commission;
- Suspending the notary public’s commission for a specified period of time or until fulfillment of a condition, such as retraining, or both;
- Issuing a letter of admonition that is to be placed in the notary public’s record.⁵

Prohibited acts

The bill prohibits a notary from performing any notarial act for any person with whom the notary cannot directly communicate in the same language, regardless of the presence of a third-party interpreter or translator.⁶

Replacement commissions

Continuing law provides for notaries to replace the physical copies of their commissions when the commission is lost or destroyed. Under current law, the notary is required to provide an affidavit that the original commission has been lost or destroyed. Under the bill, notaries must simply submit an electronic commission request form. Similarly, the notaries seeking an amendment to their commission, such as changing a name or address, are required to submit an electronic amendment form, as opposed to a paper form. The Secretary is accordingly required to prescribe and make available both an electronic duplicate commission request form and an electronic amendment form. The bill appears to require these electronic forms to be used exclusively.⁷

⁴ R.C. 147.53 and R.C. 147.51, not in the bill.

⁵ R.C. 147.14 and 147.032, not in the bill.

⁶ R.C. 147.141(A)(17); see **COMMENT**.

⁷ R.C. 147.371.

Identification

The bill makes new requirements with regard to verifying the identification of persons making an acknowledgment or a jurat. Under the bill, a notary public who takes an acknowledgment of a record is required to determine, from personal knowledge or satisfactory evidence of the identity of the person acknowledging, that the person appearing before the notary public and making the acknowledgment has the identity claimed and that the signature on the record is the signature of the person. A notary public has personal knowledge of the identity of the person appearing before the notary public if the person is personally known to the notary public through dealings sufficient to provide reasonable certainty that the person has the identity claimed.

A notary public is considered to have satisfactory evidence of the identity of the person appearing before the notary public if the notary public can identify the person by any of the following means:

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

This same requirement is imposed with regard to jurats. A **jurat** is an oath or affirmation that the contents of a particular document are true.⁸

Notarial certificates

Under continuing law, a notary is required to provide a notarial certificate for each notarial act the notary performs. For two of those acts, an acknowledgment and a jurat, the certificate must indicate what type of notarial act has been performed. The bill removes this requirement. Furthermore, the bill removes the requirement that an acknowledgment certificate clearly state that no oath or affirmation was administered to the signer.⁹

The bill removes two references to the requirements imposed related to notarial certificates. Continuing law, imposes requirements for the form of both acknowledgments and jurats. Current law requires that these requirements must be applied, regardless of the requirements related to notarial certificates. In other words, in places where the two sets of

⁸ R.C. 147.49 and 147.50.

⁹ R.C. 147.542(B) and (D).

requirements are in conflict, the requirements specific to acknowledgments and jurats would control over the general requirements for notarial certificates. The bill removes this specification of control, but the impact of this change is unclear. There do not appear to be any conflicts between these sets of requirements. But if there were, under the bill, it is uncertain which set of requirements would be followed.¹⁰

Forms of acknowledgments and jurats

The bill adds a new form of acknowledgment for limited liability companies. An acknowledgment for a limited liability company must take the following form:

“State of _____

County of _____

The foregoing instrument was acknowledged before me this (date) by (name of member or managing member, title of member or managing member) of (name of limited liability company acknowledging), a (jurisdiction of formation) limited liability company, on behalf of the limited liability company.

(Signature of person taking acknowledgment)

(Title or rank).”¹¹

The bill also changes the authorized form of a jurat. Under current law, a jurat contains the signature of the person making the jurat. Under the bill, the jurat contains the “name of signer.” Note that, under the bill, the authorized form of a jurat does not actually appear to contain a space for the person making the jurat to actually sign the jurat. However, as this section is permissive in nature, it is likely that a notary could require the person making the jurat to sign the document and the jurat would still be considered valid.¹²

Electronically notarized documents

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

- Auditors;
- Engineers;
- Recorders.

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

¹⁰ R.C. 147.542, 147.55, and 147.551.

¹¹ R.C. 147.55(C).

¹² R.C. 147.551.

Additionally, the bill makes the same change with regard to printed copies of electronically notarized documents that contain an authenticator certificate. Note, however, that the bill specifies that an authenticator certificate may not be signed or notarized with an electronic signature.¹³

COMMENT

The bill prohibits a notary from performing any notarial act for any person with whom the notary cannot directly communicate in the same language, regardless of the presence of a third-party interpreter or translator. It is unclear whether or not this prohibition would include American Sign Language, which often requires an interpreter. If the prohibition does include American Sign Language, then the prohibition could possibly be in violation of the federal Americans with Disabilities Act of 1990, which prohibits public entities, which includes state and local governments, from excluding persons with disabilities from the services, programs, or activities of the public entity.¹⁴

HISTORY

Action	Date
Introduced	02-22-22
Reported, S. General Government Budget	---

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¹³ R.C. 147.591(B) and (C).

¹⁴ 42 United States Code 12131 and 12132.