

Regulatory Analysis Template

TITLE 75 Secretary of State LSA Document # 25-153

I. Description of Rule

With the advent of the Secretary of State's office "Business One Stop" and "INBiz" initiatives (circa 2011) the agency was charged with developing and maintaining a state of the art, highly automated on-line business registration hub, which other state agencies could easily interface with (i.e. DOR, IDWD, IPLA), that provided 24-7 self-service access to millions of imaged and digital business records administered by the agency. The agency's array of IT applications, which the public and other state agencies depend on, exists in a state of nearly constant revision and reinvention – to keep with the pace of IT evolution. The statutory framework for the agency's Business Services Division calls for its IT infrastructure to be entirely transaction funded from "enhanced access" transaction fees. The fee structure (contentiously developed by previous administrations) appears to have struck a reasonable balance between low filing and transaction fees (Indiana ranks among the 10% lowest in the nation for low-cost business registration costs) and costs of hosting, sustaining, and advancing the necessary IT infrastructure for the array of business services the agency is charged with providing.

In keeping with HEA 1623's directives and intent, the agency will be promulgating administrative rules for its transaction fee-based Notaries Public service department.

In general, the Secretary of State, through the Business Services Division, has the statutory authority to administer the commissioning of Notary Publics in the state. Pursuant to IC 33-42 (Notaries Public) the Secretary of State administers Notary Public commission applications, qualification review, bond requirements, certification training, commissioning, and continuing education. Pursuant to IC 33-42-12-1(c)(2) the agency collects a \$5 notary public commission application processing fee. Pursuant to IC 33-42-12-1, IC 33-42-12-2 and 74 IAC 7 the agency administers electronic application, certification training and continuing education for notary publics. Pursuant to IC 4-5-10-2 the agency collects fees for electronic, expedited, and enhanced public and commercial access to information maintained by the Secretary of State. "Enhanced Access" fees collected by the agency in connection with notary public applications, training and continuing education range from \$5 to \$89.55. Pursuant to IC 33-42-14, 74 IAC 7, and IC 4-5-10-2, the agency collects \$1,500 to certify remote notarization technology systems for use in Indiana.

1) Online Notary Public Commission Application	\$65.04
2) Online Notary Public Commission Re-Application	\$65.04
3) Online Duplicate N.P. Commission Certificate	\$5.00
4) Online N.P. Continuing Education Certificate	\$45.52
5) Online Remote Notary Public Application	\$89.55
6) Online Remote N.P. Technology Vendor Application	\$1,500.00

Historically, these fees have been set by policy; HEA 1623-2023 requires that all fees be set by rule. These proposed rules accomplish that mandate. There are no new fees, fines or civil penalties proposed within these rules.

II. Fiscal Impact Analysis

The anticipated effective date of the rule is July 1, 2025. There is no anticipated fiscal impact on state or local government created by this rule, as the content of this rule is already being enforced by the Division under the safe harbor provision of HEA 1623-2023 and has been in effect since at least 2021.

More generally the agency estimates the expenses associated with the collective duties and infrastructure at 10% of the total to meet the requirements of our Notarial responsibilities per IC 4-5-10-5 and IC 33-42. For context the Business Service Division has 10 individuals, one director and one deputy director that are cross trained to handle the variety of transactions, registrations, complaints, and commissions we are charged with completing and recording each day. Those people, our vendor supported call center along with our INBiz portal provide a high level of service to all who need to interact with us.

Legislation directing and authorizing the Secretary of State to provide electronic notary application services, administration of training certification and continuing education, and certification of remote notarization technology for use in Indiana, was enacted in 2017 and 2018, and became effective in 2021. IC 4-5-10 “Technology Enhancement and Service Improvement” authorizing the Secretary of State to provide a transaction fee supported enhanced online access infrastructure for public, commercial, and multiple state agencies was enacted in 1997 and amended in 2011 and 2019. (IC 4-5-10).

The \$5.00 notary commission fee paid to the state General Fund has not changed in at least 18 years. Enhanced Access fees to support an electronic recordkeeping system and online filing were added in 2011. Additional Enhanced Access fees were added effective 2021 to support notary education and certification, vendor certification and continuing education. As of 2021, 46% of a \$74.37 notary commission fee (\$34 per applicant) is paid to the state’s education and certification vendor. 47% of a \$49.37 notary continuing education fee (\$23 per applicant) is paid to the state’s education vendor, and 40% of a \$99.36 notary remote notarization training and certification fee (\$40 per trainee) is paid to the state’s notary education and certification vendor. A detailed breakdown of the total Online fee distribution is below.

Transaction Description	Statutory Fee	SOS EA Fee	IOT EA Fee	IN.gov Processing Fee	Total Online Fee
Application for Commission	\$5.00	\$65.04	\$2.50	\$1.83	\$74.37
Re-application for Commission	\$5.00	\$65.04	\$2.50	\$1.83	\$74.37
Duplicate Commission Certificate	\$0.00	\$5.00	\$2.50	\$0.55	\$8.05
Continuing Education	\$0.00	\$45.52	\$2.50	\$1.35	\$49.37
Remote Notary Application	\$5.00	\$89.55	\$2.50	\$2.31	\$99.36
Remote Technology Vendor Application	\$0.00	\$1,500.00	\$0.00	N/A	\$1,500.00

From 2021 the purpose of the fees collected falls into two categories. The first category is notary public training and certification. The second category is the development, maintenance, and improvement of technology infrastructure to provide perpetual maintenance and 24-7 access to essential filing services and records. No changes in the fees are requested currently.

Note revenue and expenses below:

Fiscal YR.	Revenues from fees	Expenses (based on 10%)	Expenses Paid to 3 rd party	Transactions
FY20	\$134,290	\$520,253	\$0	13,028
FY21	\$1,147,795	\$427,148	\$514,710	20,205
FY22	\$1,317,468	\$527,474	\$583,590	23,648
FY23	\$1,508,915	\$672,277	\$684,410	27,652
FY24 (8 months)	\$982,295	\$477,682	\$474,770	17,962

Enhanced Access Fund revenues for notary public commission administration, recordkeeping, training, certification, continuing education, and compliance enforcement: FY20 \$134,290 for 13,028 transactions; FY21 \$1,147,795 for 20,205 transactions; FY22 \$1,317,468 for 23,648 transactions; FY23 \$1,508,915 for 27,652 transactions; FY24 (8 months) \$982,295 for 17,962 transactions.

Enhanced Access Fund expenses for administration of the agency's notary public commission administration duties, including providing and maintaining an electronic commission administration and recordkeeping system, online filing and access to records, training and certification services, and compliance and enforcement (estimated at 10% of the Agency's Business One Stop/INBiz program costs): FY20 \$520,253; FY21 \$427,148; FY22 \$527,474; FY23 \$672,277; FY24 (8 months) \$477,682.

Pursuant to IC 4-5-10-5 and IC 33-42, all notary commission enhanced access filing fees are deposited into the agency Enhanced Access Fund (46070) and are dedicated to: a) administration of notary training, certification and continuing education; b) maintaining the IT infrastructure necessary for accepting, payment processing, permanent archiving, 24-7 public, self-serve accessibility, and multi-agency access to business records entrusted to the agency; and c) notary compliance and enforcement.

The rule changes do not change or increase fees as explained below but are added for clarity and per requirements of HEA-1623-2023

III. Impacted Parties

At the end of 2023 there were 54,836 active notary commissioned people. Details of the status and or stages they may have been in during the year are recapped below.

Description	Time Frame Calendar 2023
Total Active Notaries	54,836
Total New Commissioned	6,791
Total Renewed Commissioned	3,235
Total Completed CE	13,037
Total Active RTV companies	15

Since these rules are being promulgated in response to HEA-1623 all of the above parties are currently in compliance so we will explain the impact of these fees based on the life of the Notarial commission as it seems logical to view this against the possible revenue these individuals can generate verses the costs of

compliance and our ministerial duties for accurate records and assuring the public and various other business entities that rely on the accuracy of and integrity of their statutory duties.

IV. Changes in Proposed Rule

The provisions of the proposed rules are an entirely new section. They are the promulgation of fees already permitted to be assessed by the Indiana Code. The following is a table of reasons for rejections, fees, and IC/IAC which sets forth the applicable law:

Item	EA Fee	IC Authority	Proposed IAC	Purpose of change
Notary Application	\$65.04	IC 33-42-16-2	75 IAC 7-9-1	Document existing EA Fee
Order duplicate commission	\$5.00	IC 33-42-16-2	75 IAC 7-9-2	Document existing EA Fee
Continuing education	\$45.52	IC 33-42-16-2	75 IAC 7-9-3	Document existing EA Fee
Remote notary application	\$89.55	IC 33-42-16-2	75 IAC 7-9-4	Document existing EA Fee
RTV application	\$1500.00	IC 33-42-16-2	75 IAC 7-9-5	Document existing EA Fee
Apostille authentication	None	IC 33-42-16-2	75 IAC 7-1-7 75 IAC 7-10	Document and clarify existing process for issuance of Apostille authentications

V. Benefit Analysis

As stated previously legislation directing and authorizing the Secretary of State to provide electronic notary application services, administration of training certification and continuing education, and certification of remote notarization technology for use in Indiana, was enacted in 2017 and 2018, and became effective in 2021. IC 4-5-10 “Technology Enhancement and Service Improvement” authorizing the Secretary of State to provide a transaction fee supported enhanced online access infrastructure for public, commercial, and multiple state agencies was enacted in 1997 and amended in 2011 and 2019. (IC 4-5-10). The fees created at that time for enhanced access have struck a strong balance between cost of acquisition and continuing education of the commissions as well as giving the public needing notarial services a searchable portal to find people to provide the service.

The primary benefit of these rules is consumer protection:

1. Consumers can deal with competent trained individuals commissioned to perform these notarial duties.
2. Provides ease of access to promote a compliant exchange between commissioned persons and people seeking notarial acts.
3. Provide a mechanism for anyone to report non complaint activity for review.

The fees surrounding the commissioning, screening and continuing education help ensure that the Notaries the agency commissions:

- carry out their duties understanding the required activities and provide the public and other entities with the accurate execution of those duties.
- create a record that contains the required public information accurately.
- Can access this information in the most efficient and least time-consuming way.

The balance of the fees and associated rules ensure the technology infrastructure and vendor partner solutions to provide the ease of access to complete, record, store, and provide search validation for everyone needing to interact with the website and the information contained therein.

Indiana SOS Business Service Division has struck a balance between:

- Increasing the competency of Commissioned Notaries through screening, education of requirements, testing, continuing education, and maintaining current contact information.
- Providing public access to a database of commissioned notaries and an ability to bring complaints for review.
- Building technology tools to provide business services staff with greater investigative abilities of non-compliant actions.

These fees allow for the maintenance and update of various technology tools and website interface that will increase access and reduce time spent per transaction as well as increase efficiency among staff at the Business Services division as transactional demand increases. It is impossible to calculate the impact of better and complaint individual transactions but the lack of it would create significant additional harm and costs to the commercial systems depending on those transactions and the court systems where people would seek remedies to the harm that results from it.

VI. Cost Analysis

The fees are best reviewed as a total cost of meeting requirements versus the revenue these occupations can generate verses the cost of non-compliant execution of duties.

If you view the costs on an individual notary over the 8-year life of their commission the example would look like this. (Not all these costs pass through the Business Service division such as insurances and background checks)

Range	Application	Continuing Education (3 courses total, one every 2 years)	Bonding & Insurance (Outside vendor)	Background check (outside vendor)	Estimated Salary per Zip Recruiter 2023
Basic	\$74.37	\$148.11	\$148.00	\$16.32	\$59,000
Best	\$74.37	\$148.11	\$324.00	\$16.32	\$69,000

Range	Total costs over commission	Total Salary over commission	Percent of Revenue
Basic	\$386.80	\$472,000	.08 of 1 percent
Best	\$562.80	\$552,000	.10 of 1 percent

For those that may be notaries as part of other duties at commercial entities those entities normally cover continuing education costs and bonding and E & O insurance through their master policies. So, the costs would be even less of an impact as they are normally

able to charge greater fees for the Notarial service wrapped up in an overall processing fee or percentage.(Title Service Companies offer an example)

The only administrative costs are keeping track on a calendar of when continuing education is required or accessing the INBiz portal to note changes in required information. This requires the person to be responsible enough to keep their contact information up to date as the system will send notifications of when required continuing education is due. If their main duty is to ensure accurate identity and signatures are in place on executed documents this does not seem to be an unreasonable expectation.

The fees allow for the technology and foundation of data that insures our INBiz team can properly investigate Notarial complaints and conduct the required communication to understand if a non-complaint act has been executed and act within our statute limitation. If necessary, evidence is gathered and turned over to enforcement agencies.

It is difficult to quantify what the potential cost savings is by maintaining the accuracy of Notarial documents and ensuring that present and future Notary Publics are kept educated to changes in mandated requirements.

VII. Sources of Information

- Division Notary Records
- Zip Recruiter [estimated salary range notary public in Indiana - Search \(bing.com\)](#)
- National Notary Association [Indiana Notary Packages - Become an IN Notary | NNA \(nationalnotary.org\)](#)

VIII. Regulatory Analysis

The Division is proposing additional rules to codify its long-standing policy regarding fees relating to IC 33-42-12-1, IC 33-42-12-2 and 74 IAC 7 the agency administers electronic application, certification training and continuing education for notary publics. Pursuant to IC 4-5-10-2 the agency collects fees for electronic, expedited, and enhanced public and commercial access to information maintained by the Secretary of State. These proposed rules contain no new fines.

A. Summary of Costs

The Division believes that the direct costs associated with this rules are contained herein.. There are no costs to local government. There are no additional costs to state government – the Division already engages in the practice of commissioning, continuing education, and investigating non-compliant acts as reported or discovered and takes action within statute. The costs are well described including third party costs and enhanced access allows for Notaries to conduct all required activity online in a time efficient manner.

B. Summary of Benefits

The fees surrounding the commissioning, screening and continuing education help ensure that the Notaries the agency commissions:

- carry out their duties understanding the required activities and provide the public and other entities with the accurate execution of those duties.
- create a record that contains the required public information accurately.

- Can access this information in the most efficient and least time-consuming way.

The balance of the fees and associated rules ensure the technology infrastructure and vendor partner solutions provide the ease of access to complete commission requirements, record, store, and provide search validation for everyone needing to interact with the division, the website and the information contained therein.

Indiana SOS Business Service Division has struck a balance between:

- Increasing the competency of Commissioned Notaries through screening, education of requirements, testing, continuing education. And maintaining current contact information.
- Providing public access to a database of commissioned notaries and an ability to bring complaints for review.
- Building technology tools to provide business services staff with greater investigative abilities of non-compliant actions.

IX. Contact Information of Staff to Answer Substantive Questions

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317-775-1769

X. Redline Draft of Proposed Rules

Please provide a link or attachment to the proposed rule that includes a redline of the changes made by the proposed rule from existing regulations, or an alternative form of identifying changes approved in advance by OMB. This draft can include annotations with other sources of requirements as discussed in Section IV above.

XI. Resubmission Information (if applicable)

Pursuant to IC 4-22-2-22.8(e), if an agency revises a proposed rule after it has been approved by OMB and SBA, the agency must submit the revised proposed rule and a revised regulatory analysis for review. If applicable, this section should include (1) a list of the changes in the revised rule from the previously approved version, (2) an explanation for the reason(s) for the changes, and (3) a description of how those changes impact the regulatory analysis previously submitted.