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Reps. Terwilleger, Harris, Tiberi, Amstutz, DePiero, Corbin, Cates, Calvert, Netzley, Damschroder, Olman, Callender, Peterson, Trakas, Schuring, Jolivette, Womer Benjamin, Clancy, Mead, Stapleton, Taylor, Allen, Redfern, D. Miller, Flannery, Jones

BILL SUMMARY

- Allows various actions relating to the registration of motor vehicles, titling of motor vehicles, and creation and cancellation of security interests in motor vehicles to be completed by electronic means, in addition to the methods authorized by current law.
- Requires the Registrar of Motor Vehicles to appoint certain motor vehicle dealers and court of common pleas clerks to act as limited authority deputy registrars, and requires the Registrar to designate certain dealers as electronic motor vehicle dealers.
- Requires the issuance of a physical certificate of title to a motor vehicle only if the applicant for the certificate requests one.

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CONTENT AND OPERATION

Overview of the bill

The bill allows various actions relating to the registration of motor vehicles, titling of motor vehicles, and creation of security interests in motor vehicles to be completed by electronic means, in addition to the methods authorized by current law. In order to facilitate the performance of these actions by electronic means, the bill requires the Registrar of Motor Vehicles to appoint certain motor vehicle dealers and court of common pleas clerks to act as limited authority deputy registrars, and requires the Registrar to designate certain dealers as electronic motor vehicle dealers. The bill further requires the issuance of a physical certificate of title to a motor vehicle only if the applicant for the certificate requests one.

Electronic motor vehicle dealers and limited authority deputy registrars: in general

The bill requires the Registrar of Motor Vehicles to designate as an *electronic motor vehicle dealer* a motor vehicle dealer who meets all of the following criteria: (1) the dealer holds a current, valid dealer license issued under the Motor Vehicle Dealer Licensing Law, (2) the dealer participates in the Title Defect Recision Fund created under existing law, (3) the dealer has the capability, via electronic means, to send motor vehicle title and registration information, as specified by the Registrar, to the Registrar and court of common pleas clerks, and (4) the dealer meets other criteria for electronic motor vehicle dealers that the

Registrar may establish by rule adopted under the Administrative Procedure Act (secs. 4503.01(RR) and 4503.034).

The bill also requires the Registrar to appoint as a *limited authority deputy registrar* (1) every motor vehicle dealer that the Registrar designates as an electronic motor vehicle dealer and (2) every court of common pleas clerk, except for a clerk who does not accept an appointment as described under "*Evaluation required when there is only one deputy registrar in a county*," below (sec. 4503.035(A)).

Powers and duties of limited authority deputy registrars

License placards

Any limited authority deputy registrar may issue temporary license placards as permitted under existing law. The limited authority deputy registrar must transmit all information relating to the issuance of these placards to the Bureau of Motor Vehicles via electronic means. (Sec. 4503.035(B).)

Dealer powers

A limited authority deputy registrar *who is an electronic motor vehicle dealer* may perform either of the following functions relating to the registration of motor vehicles (sec. 4503.035(C)):

(1) In a transaction in which a person purchases a motor vehicle from the dealer and at the same time trades a motor vehicle to the dealer, transfer the license plates that are removed from the traded vehicle and are attached to the purchased vehicle, if the license plates are eligible to be displayed on the purchased vehicle. The dealer must transmit all the information relating to the transfer of the license plates to the Bureau via electronic means. The Bureau must send the person a new certificate of registration for the purchased motor vehicle that reflects the transfer of these plates.

(2) In a transaction in which a person purchases a motor vehicle from the dealer but does not trade a motor vehicle to the dealer, perform the initial registration process for the motor vehicle. The dealer must collect all the required registration information and send it to the Bureau via electronic means. The Bureau must send the person a new license plate or license plates, and a new certificate of registration, for the purchased motor vehicle.

Clerk powers

A *court of common pleas clerk* whom the Registrar of Motor Vehicles appoints as a limited authority deputy registrar may perform either of the following functions relating to the registration of motor vehicles (sec. 4503.035(D)):

(1) In the case of the sale of a motor vehicle for which the purchaser needs to acquire new license plates, perform the initial registration process for the motor vehicle. The clerk must collect all the required registration information and send it to the Bureau via electronic means. The Bureau must send the purchaser a new license plate or license plates, and a new certificate of registration, for the motor vehicle.

(2) In the case of the sale of a motor vehicle between two persons neither of whom is a licensed motor vehicle dealer, transfer any license plates from any person involved in the sale that the person desires to have transferred, if the license plates are eligible to be displayed on the subject vehicle. The clerk must transmit all the information relating to the transfer of the license plates to the Bureau via electronic means. The Bureau must send the person a new certificate of registration that reflects the transfer of the license plates.

The bill prohibits clerks whom the Registrar does not appoint as either a deputy registrar or a limited authority deputy registrar from exercising any powers relating to the registration of motor vehicles (sec. 4303.035(F)).

Service fees and rules

For performing any function described above (other than under "**License placards**"), a limited authority deputy registrar may collect and retain a service fee of \$2.25 (sec. 4503.035(E)). The bill requires the Registrar, in accordance with the Administrative Procedure Act, to adopt any rules governing limited authority deputy registrars that the Registrar determines necessary to implement the provisions described in this portion of the analysis and any other statutory provisions relating to limited authority deputy registrars (sec. 4503.035(G)).

Evaluation required when there is only one deputy registrar in a county

Under the bill, if a deputy registrar is the only deputy registrar within a county, the Registrar of Motor Vehicles must evaluate the finances of the deputy registrar not later than nine months prior to the end of the contract between the Registrar and the deputy registrar. The Registrar then must determine whether the appointment of a limited authority deputy registrar within that county in the person of the *clerk of the court of common pleas* of that county will make the future

existence of that deputy registrar economically untenable. If the Registrar so determines, the Registrar must inquire of the clerk whether the clerk wishes to be appointed a deputy registrar. Except as described in the next paragraph, such an appointment would be conditioned upon the clerk agreeing to abide by all terms and conditions that govern deputy registrars generally, including staffing requirements and hours of operation, and also agreeing to oversight by the Registrar in the same manner and to the same degree as deputy registrars generally. (Sec. 4503.036, first paragraph.)

The Registrar may adopt rules excluding from applicability to clerks any terms and conditions that the Registrar reasonably determines should not be applicable to a clerk because of the inherent differences between a clerk as an elected public official and a deputy registrar as an independent contractor (sec. 4503.036, second paragraph).

If the *clerk agrees* to the terms and conditions that would govern the clerk as a deputy registrar, the Registrar must appoint the clerk as the only deputy registrar in the county effective the first business day on which the contract of the existing deputy registrar expires, and the clerk must be subject to the agreed-upon terms and conditions. If the *clerk does not agree* to the terms and conditions that would govern the clerk as a deputy registrar, the Registrar cannot appoint the clerk as either a deputy registrar or a limited authority deputy registrar but must appoint a deputy registrar for that county pursuant to current law. (Sec. 4503.036, third paragraph.)

Limited authority deputy registrars: campaign contributions

The bill exempts an *electronic motor vehicle dealer* whom the Registrar has appointed as a limited authority deputy registrar from (1) being disqualified from serving as a deputy registrar because of campaign contributions made to certain candidates or political entities by the person, the person's spouse, or a member of the person's immediate family within a specified period of time and (2) being required to file annual statements with the Registrar of Motor Vehicles and the Secretary of State related to these contributions. The bill also appears to exempt a clerk of a court of common pleas who the Registrar appoints as a deputy registrar or as a limited authority deputy registrar from being disqualified under the campaign contributions limitation mentioned in (1) above. (Secs. 4503.03(B) and 4503.033(F).)¹

¹ Under current law, the Registrar cannot contract with any person to act as a deputy registrar if that person, that person's spouse, or a member of that person's immediate family has made one or more contributions totaling in excess of \$100 to specified candidates or political entities within the current calendar year or any one of the

Motor vehicle registration by electronic means

Renewal of registration

The bill allows a motor vehicle owner to elect to renew a motor vehicle registration by electronic means to the office of the Registrar of Motor Vehicles using electronic signatures in accordance with rules the Registrar must adopt (see below), as an *alternative* to renewing the registration by the means authorized by current law (secs. 4503.10(A) and 4503.102(A), (B)(1), (C), and (E)(1)). If the owner elects to renew the motor vehicle registration with the Registrar by electronic means, the owner's manual signature is not required, but an electronic signature is required (sec. 4503.10(A)(6)).

The bill specifically requires the Registrar to adopt rules establishing a *centralized system* of motor vehicle registration renewal by electronic means, in addition to renewal by mail as provided in current law (sec. 4503.102(A)). It further requires the Registrar to adopt rules governing (1) the renewal of motor vehicle registrations by electronic means and (2) the completion and submission by electronic means of statements relating to proof of financial responsibility that, under current law, must accompany an application for registration. The Registrar must adopt these rules in accordance with the Administrative Procedure Act. (Sec. 4503.20(H).) The bill relatedly specifically allows the financial responsibility statements to be signed either manually or by electronic signature (sec. 4503.20(B) and (F)).

Under current law, if the owner of a motor vehicle submits an application for registration and the Registrar is prohibited by certain provisions of law from accepting the application, the Registrar must return the application and fee submitted to the owner. Under the bill, if the owner of a motor vehicle submits a registration renewal application to the Registrar *by electronic means* and the Registrar is prohibited from accepting the application for these same reasons, the Registrar must notify the owner of this fact, deny the application, and return the payment or give a credit on the credit card account of the owner in the manner the Registrar prescribes in the rules mentioned above. (Sec. 4503.102(E)(2).)

Definitions of terms related to electronic registration

The bill defines (1) "electronic signature" as a signature in electronic form attached to or logically associated with an electronic record, (2) "electronic

previous three calendar years. These contribution limitation provisions currently do not apply to a county auditor who the Registrar appoints as a deputy registrar. (Sec. 4503.03(B).)

record" as a record generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another, and (3) "electronic" as including electrical, digital, magnetic, optical, electromagnetic, or any other form of technology that entails capabilities similar to these technologies (sec. 4501.01(OO), (PP), and (QQ)).²

Temporary placards and fees

Dealer provisions. Current law authorizes the Registrar of Motor Vehicles to issue to a motorized bike dealer or a licensed motor vehicle dealer temporary license placards to be issued to *purchasers* for use on vehicles sold by the dealer. The dealer currently must notify the Registrar *within 48 hours* of the issuance of a temporary license placard, on a form prescribed by the Registrar. The bill instead requires that the dealer notify the Registrar of the issuance of a placard by electronic means via computer equipment purchased and maintained by the dealer. (Sec. 4503.182(B).)

Current law also fixes the fee for each placard issued by the Registrar to a "motor vehicle dealer" at \$2 plus a fee of \$2.25; the bill instead fixes the fee at \$2. The bill additionally specifies that, when a "licensed dealer" issues a placard to the purchaser of a vehicle the dealer sells, the *dealer* must collect and retain a fee of \$4.25. (Sec. 4503.182(B).)

Other purchaser provisions. The bill provides that, in the case of the sale of a motor vehicle between two persons in which *neither is a licensed motor vehicle dealer*, the purchaser may apply to a clerk of a court of common pleas for issuance of a temporary license placard for the motor vehicle. The purchaser must submit a completed application and proof of purchase to the clerk and also must sign a statement indicating that, during the current registration year, the purchaser previously has not been issued license plates that could be transferred legally to the vehicle. The placard must be issued only for the purchaser's use of the vehicle to enable the purchaser to operate it legally while proper title, license plates, and a certificate of registration are being obtained, and the placard cannot be displayed on any other motor vehicle. (Sec. 4503.182(C).)

The fee for each placard issued by the Registrar to a clerk is \$2. When the clerk issues a placard to a purchaser, the clerk must collect and retain a fee of \$4.25. The clerk must notify the Registrar of the issuance of a placard to a purchaser by electronic means via computer equipment maintained by the clerk. (Sec. 4503.182(C).)

² *These definitions apply not only to the bill's registration of motor vehicle provisions but also to its subsequently analyzed motor vehicle certificate of title provisions.*

Motor vehicle certificates of title

Application for a certificate of title: in general

The bill allows an application for a certificate of title to a motor vehicle to be filed electronically by any electronic means approved by the Registrar of Motor Vehicles, as an *alternative* to applying for a certificate of title by the means authorized by current law. It also provides that the owner of a motor vehicle must apply for a certificate of title for the vehicle when required by the Motor Vehicle Certificate of Title Law, but, except as otherwise specifically required in that law, the owner may elect whether or not to have the clerk of the court of common pleas to whom the application is submitted issue a *physical certificate of title* for the motor vehicles as provided by current law. It further provides that, except as otherwise specifically provided in that law, any provision of that law relating to the *cancellation, issuance, or surrender* of a certificate of title (including, but not limited to, provisions that contain a phrase such as "when a certificate of title is issued," "the clerk shall issue a certificate of title," or "the person shall obtain a certificate of title to the motor vehicle," and all other phrases of similar import) includes those circumstances when a clerk enters certificate of title information into the automated title processing system but does not take any further action relating to a physical certificate of title for the motor vehicle. (Secs. 4505.021 and 4505.06(A).)

Issuance of physical certificate of title only if applicant requests one

The bill requires that a clerk of a court of common pleas issue a physical certificate to title to an applicant only if the applicant specifically requests the clerk to issue one. The fact that a physical certificate of title is not issued for a motor vehicle does not affect ownership of the vehicle. In that case, when the clerk completes the process of entering certificate of title application information into the automated title processing system, the effect of the completion of the process is the same as if the clerk actually issued a physical certificate of title for the motor vehicle. (Secs. 4505.06(A) and 4505.08(F).)

An *electronic motor vehicle dealer* who applies for a certificate of title on behalf of a customer who purchases a motor vehicle from the dealer may print a "non-negotiable evidence of ownership" for the customer if the customer so requests. The authorization to print the non-negotiable evidence of ownership must come from the clerk with whom the dealer makes application for the certificate of title for the customer, but the printing by the dealer does not create an agency relationship of any kind between the dealer and the clerk. (Secs. 4505.06(A) and 4505.08(G).)

Processing of applications for certificates of title

Any clerk. Current law requires that an application for a certificate of title (1) be filed with the clerk of the court of common pleas of the county in which the applicant resides if the applicant is an Ohio resident or of the county in which the transaction is consummated if the applicant is not an Ohio resident and (2) be sworn to before a notary public or other officer empowered to administer oaths. The bill removes the swearing requirement described in item (2) above and, in the case of item (1) above, instead requires that the application be filed with *any* clerk, rather than only with the clerk of the county in which the applicant resides or of the county in which the transaction is consummated. The latter requirement will apply whether the application is filed electronically or by other permissible means with a clerk. (Sec. 4505.06(A).) The bill further allows *any* clerk to perform certain other actions relating to certificates of title that current law permits only the clerk of the county in which the last certificate of title was issued to perform (secs. 4505.10(A), 4505.102(B)(5), 4505.11(A), 4505.12, and 4505.13(B)).

Retained matter. Existing law requires that a clerk retain the physical evidence of title presented by an applicant and on which a certificate of title is issued. The bill generally continues that requirement but provides that, if an application for a certificate of title is filed *electronically* by an *electronic motor vehicle dealer* on behalf of the purchaser of a motor vehicle, the clerk must retain the completed electronic record to which the dealer converted the certificate of title application and other required documents. The dealer then is required (1) to retain the actual application and all other documents relating to the sale for a time period specified by the Registrar of Motor Vehicles and (2) to make all of the documents available for inspection upon the Registrar's request. (Sec. 4505.06(A).)

Time period provisions. Under the bill, the process of entering certificate of title application information into the *automated title processing system*, if a physical certificate of title is *not* to be issued, must be completed within five business days after the application for title is filed with a clerk. Existing law, unchanged by the bill, requires that a physical certificate of title be issued within this five-day period. (Sec. 4505.06(A).)

The bill requires a clerk to "retain on file" an *electronic record* to which a dealer converted a certificate of title application and other required documents (as described above) for the same time periods as existing law requires the clerk to retain on file records relating to a physical certificate of title. These time periods are seven years for current records, and five years for inactive records, after the date of filing. (Sec. 4505.08(A).)

Required capability. The bill requires every clerk to have capability to transact by electronic means all procedures and transactions relating to the issuance of motor vehicle certificates of title that are described in the Revised Code as being accomplished by electronic means (sec. 4505.06(I)).

Repealed provisions. The bill repeals provisions that (1) authorize a clerk and the clerk's authorized deputies to administer oaths on any application or affidavit required by the Motor Vehicle Certificate of Title Law (sec. 4505.16) and (2) allow a licensed motor vehicle dealer or licensed motor vehicle salesman whom the dealer employs to act as a witness to the signature of a principal designating another as the principal's attorney in fact (sec. 4505.071).

Physical versus electronic certificates of title in specific circumstances

Under the bill, if a person who is not an electronic motor vehicle dealer owns a motor vehicle for which a physical certificate of title *has not been issued* by a clerk of a court of common pleas and the person sells the motor vehicle *to an electronic motor vehicle dealer*, the person is not required to obtain a physical certificate of title to the motor vehicle in order to transfer ownership to the dealer. The person must present the dealer with sufficient proof of the person's identity and complete and sign a form prescribed by the Registrar of Motor Vehicles that attests to the person's identity and assigns the motor vehicle to the dealer. The dealer then must inform the clerk via electronic means of the sale of the motor vehicle and assignment of ownership of the vehicle to the dealer. The clerk must enter the information relating to the assignment into the automated title processing system, and ownership of the vehicle passes to the dealer when the clerk enters this information into the system. The bill does not require the dealer to obtain a certificate of title to the vehicle in the dealer's name. (Sec. 4505.032(A).)³

The ownership of a motor vehicle may be assigned *between* electronic motor vehicle *dealers* without any of the dealers obtaining a certificate of title to the motor vehicle in the name of any of the dealers (sec. 4505.032(B)). If a person who is not an electronic motor vehicle dealer owns a motor vehicle for which a physical certificate of title *has not been issued* by a clerk and the person sells the motor vehicle to a person *who is not an electronic motor vehicle dealer*, the person must obtain a physical certificate to title to the motor vehicle in order to transfer ownership to the person who is not an electronic motor vehicle dealer (sec. 4505.032(C)).

³ *The bill contains erroneous cross-references in lines 1,551, 1,604, and 1,617 to a "section 4505.103" (nonexistent) which should be cross-references to "section 4505.032" as discussed in this portion of the analysis. (Secs. 4505.03 and 4505.04(A) and (B)(1).)*

When an electronic motor vehicle dealer sells a motor vehicle and the dealer transmits the certificate of title application and accompanying documents to a clerk by electronic means, the bill allows the dealer to charge and collect from the motor vehicle purchaser a fee not in excess of the fee the clerk charges for issuing a certificate of title under existing law (sec. 4505.09(E)).

Collection of sales and use tax by court of common pleas clerks

Existing law generally prohibits a clerk of a court of common pleas from accepting an application for a certificate of title unless payment of the applicable sales or use tax accompanies the application. For receiving and disbursing these taxes, the clerk *may retain* a poundage fee of one and one-hundredth percent, which must be paid into the Certificate of Title Administration Fund created under current law in each county treasury. (Sec. 4505.06(B).)

The bill instead *requires* the clerk to *collect* this poundage fee and requires that it be paid into the Automated Title Processing Fund, created under current law in the state treasury, for payment to the clerk of the court of common pleas of the county in which the motor vehicle owner resides, if the owner is an Ohio resident. If the owner is not an Ohio resident, the clerk *must retain* the poundage fee and pay it into the Certificate of Title Administration Fund of the county in which the clerk is located. (Sec. 4505.06(B); related sec. 4505.09(B)(3).)

Amounts available to clerks from the Automated Title Processing Fund

For a period of time after the bill's effective date as determined by the Registrar of Motor Vehicles, a clerk of a court of common pleas who needs money to pay expenses incurred in the issuance of certificates of title may apply to the Registrar for money from the Automated Title Processing Fund to pay those expenses. If the Registrar determines that good cause exists for the payment of money from the Fund to the clerk, the amount the Registrar approves must be paid to the clerk to pay those expenses. Money paid to a clerk under this provision need not be repaid. (Sec. 4505.25.)

Access to motor vehicle title information

The bill requires the Registrar of Motor Vehicles to enable the public to access motor vehicle title information via electronic means. The bill requires the Registrar, in accordance with the Administrative Procedure Act, to adopt rules governing this access. In adopting these rules, the Registrar must confer with the clerks of the court of common pleas. Access by the public to the information must comply with the provisions of current law that limit the disclosure of personal information to the public from various motor vehicle records. (Sec. 4505.141; related sec. 4501.27--not in the bill.)

Prohibitions relating to certificates of title

Current law prohibits any person from operating a motor vehicle for which a certificate of title is required without having such a certificate. The bill continues that prohibition and also prohibits any person from operating a motor vehicle for which a certificate of title is required (1) if the ownership information relating to the vehicle has not been entered into the automated data processing system by a clerk of a court of common pleas and a physical certificate of title has not been issued for the vehicle or (2) if the certificate of title to the vehicle or ownership of the vehicle as otherwise reflected in the automated title processing system has been canceled. (Sec. 4505.18(A)(1) and (7).)

Existing law also prohibits any person from procuring or attempting to procure a certificate of title to a motor vehicle, or from passing or attempting to pass a certificate of title or any assignment to a motor vehicle, knowing or having reason to believe that the motor vehicle or any part of it has been acquired through commission of a theft offense. The bill adds to this offense a prohibition against gaining or attempting to gain in any other manner ownership to a motor vehicle by any means with that knowledge or reason to believe. (Sec. 4505.19(A).)

Security interests in motor vehicles

Priority provisions

The bill amends current law to provide that, if a physical certificate of title has *not been issued*, the entry of a clerk of a court of common pleas of a notation of a security interest agreement into the *automated title processing system* has the same effect as when a notation of such an agreement is made on the face of a physical certificate of title. The effect under current law, unchanged by the bill, is that the security interest is valid as against the creditors of the debtor and subsequent purchasers, secured parties, and other lienholders or claimants. (Sec. 4505.13(B).)

The bill also provides that a security interest in a motor vehicle held as *inventory for sale* by a dealer has priority over creditors of the dealer without entry of a notation of the security interest into the automated title processing system if a physical certificate of title has *not been issued*. Current law provides that such a security interest has that priority without notation of the security interest on a physical certificate of title or retention of a manufacturer's or importer's certificate. (Sec. 4505.13(A)(2).)

Presentation and discharge provisions

The bill provides that, in all cases, a secured party may choose to present the clerk with evidence of a security interest *via electronic means*, and the clerk must enter the lien noting the security interest into the automated title processing system. A secured party also may choose to notify the clerk of the discharge of the security interest via electronic means, and the clerk must enter the cancellation into the automated system. (Sec. 4505.13(C).)

In all cases, a secured party must notify the clerk regarding the discharge of its security interest not later than five business days after receipt by the secured party of "good funds." If the secured party holds a *physical certificate of title* to the motor vehicle, the secured party must surrender it to the owner not later than five days after the receipt of good funds and note the fact of the security interest's discharge on the certificate's face or another prescribed form. If the owner of a motor vehicle suffers an economic loss because a secured party either fails to notify the clerk regarding the discharge of its security interest or to surrender a certificate of title within this five-day period, the bill grants the owner a civil cause of action against the secured party for the amount of that economic loss plus reasonable attorney's fees. (Sec. 4505.13(B) and (C)(4).)⁴

The bill requires the Registrar of Motor Vehicles, in accordance with the Administrative Procedure Act, to adopt rules governing the electronic transmission of security interest and related information. In adopting these rules, the Registrar must confer with the clerks of the courts of common pleas. (Sec. 4505.13(E).)

Evaluation of the bill and submission of report

The bill requires the Bureau of Motor Vehicles, during the period of 18 months after the bill's effective date, to evaluate whether the bill's enactment results in increases in efficiency in the motor vehicle titling and registration process. If those increases result, the Bureau then must evaluate the existing motor vehicle titling and registration fee structures to determine whether reductions in any of these fees can be made without endangering the fiscal integrity of the funding of the Bureau or the clerks of courts of common pleas. The Bureau also must evaluate whether the redistribution of any excess moneys to the public would be both possible and fiscally prudent. (Section 3, first paragraph.)

⁴ *The bill generally continues existing law requiring a clerk to issue a new physical certificate of title indicating a security interest and its date, but specifies as an exception that this is not required if the secured party requests that the clerk not issue the physical certificate of title (sec. 4505.13(B)).*

The bill requires the Bureau to submit a report containing its evaluations to the Governor and General Assembly not later than 24 months after the bill's effective date. (Section 3, second paragraph.)

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