

SB0735/528273/1

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL 735
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 5, after “analysis;” insert “establishing certain procedures for certain remote notarial acts;”; in line 10, strike the second “and” and substitute “, 18-222, and”; and after line 12, insert:

“BY adding to

Article - State Government

Section 18-214.1

Annotated Code of Maryland

(2014 Replacement Volume and 2020 Supplement)”.

AMENDMENT NO. 2

On page 3, after line 3, insert:

“18-214.1.

(A) THE REQUIREMENTS IN § 18-214(A) OF THIS SUBTITLE FOR THE PERFORMANCE OF A NOTARIAL ACT REGARDING A TANGIBLE RECORD WHEN THE RECORD IS NOT PHYSICALLY PRESENT BEFORE THE NOTARY MAY BE SATISFIED BY:

(1) THE INDIVIDUAL SIGNING, IN ACCORDANCE WITH § 18-214(A)(3) OF THIS SUBTITLE, AND SENDING TO THE NOTARY WITHIN 3 BUSINESS DAYS AFTER THE PERFORMANCE OF THE NOTARIAL ACT THE FOLLOWING:

(I) THE TANGIBLE RECORD; AND

(Over)

(II) A DECLARATION, SUBSTANTIALLY IN THE FOLLOWING FORM, WHICH IS PART OF OR SECURELY ATTACHED TO THE RECORD, INCLUDING THE FOLLOWING STATEMENT OR WORDS OF SIMILAR IMPORT: “I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAW OF THIS STATE THAT THE RECORD TO WHICH THIS DECLARATION IS ATTACHED IS THE SAME RECORD ON WHICH (NAME OF NOTARY PUBLIC), A NOTARY PUBLIC, PERFORMED A NOTARIAL ACT AND BEFORE WHOM I APPEARED BY MEANS OF COMMUNICATION TECHNOLOGY ON (DATE).

(DATE)

(PRINTED NAME)

(SIGNATURE)”; AND

(2) THE NOTARY:

(I) CAPTURING BY AUDIO-VISUAL RECORDING THE INDIVIDUAL SIGNING THE TANGIBLE RECORD AND THE DECLARATION; AND

(II) COMPLETING THE CERTIFICATE OF NOTARIAL ACT REQUIRED BY § 18-215 OF THIS SUBTITLE, WHICH IS PART OF OR SECURELY ATTACHED TO THE TANGIBLE RECORD, INCLUDING THE FOLLOWING STATEMENT OR WORDS OF SIMILAR IMPORT: “I (NAME OF NOTARY PUBLIC) WITNESSED, BY MEANS OF COMMUNICATION TECHNOLOGY, (NAME OF REMOTELY LOCATED INDIVIDUAL) SIGN THE ATTACHED DECLARATION DURING THE PERFORMANCE OF THE NOTARIAL ACT.”.

(B) THE REQUIREMENTS IN § 18-214(A) OF THIS SUBTITLE FOR THE PERFORMANCE OF A NOTARIAL ACT REGARDING A TANGIBLE RECORD IN COUNTERPART MAY BE SATISFIED BY:

(1) THE INDIVIDUAL SIGNING, DURING THE AUDIO-VISUAL RECORDING IN ACCORDANCE WITH § 18-214(A)(3) OF THIS SUBTITLE:

(I) A COUNTERPART OF THE TANGIBLE RECORD; AND

(II) A COUNTERPART OF A DECLARATION, SUBSTANTIALLY IN THE FOLLOWING FORM, WHICH IS PART OF OR SECURELY ATTACHED TO THE TANGIBLE RECORD, INCLUDING THE FOLLOWING STATEMENT OR WORDS OF SIMILAR IMPORT: “I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAW OF THIS STATE THAT THE RECORD TO WHICH THIS DECLARATION IS ATTACHED IS A COUNTERPART TO THE SAME RECORD ON WHICH (NAME OF NOTARY PUBLIC), A NOTARY PUBLIC, PERFORMED A NOTARIAL ACT AND BEFORE WHOM I APPEARED BY MEANS OF COMMUNICATION TECHNOLOGY ON (DATE).

(DATE)

(PRINTED NAME)

(SIGNATURE)”; AND

(2) (I) THE NOTARY RECORDING THE NOTARIAL ACT IN ACCORDANCE WITH § 18-214(A)(3) OF THIS SUBTITLE; AND

(II) COMPLETING THE CERTIFICATE OF NOTARIAL ACT REQUIRED UNDER § 18-215 OF THIS SUBTITLE, WHICH IS PART OF OR SECURELY

(Over)

ATTACHED TO A COUNTERPART OF THE RECORD EXECUTED AS REQUIRED BY ITEM (1) OF THIS SUBSECTION, INCLUDING THE FOLLOWING STATEMENT OR WORDS OF SIMILAR IMPORT: “I (NAME OF NOTARY PUBLIC) WITNESSED, BY MEANS OF COMMUNICATION TECHNOLOGY, (NAME OF REMOTELY LOCATED INDIVIDUAL) SIGN A COUNTERPART OF THE ATTACHED RECORD AND A COUNTERPART OF THE ATTACHED DECLARATION DURING THE PERFORMANCE OF THE NOTARIAL ACT.”.

(C) A DECLARATION SIGNED BY A REMOTELY LOCATED INDIVIDUAL AND ATTACHED TO A RECORD UNDER SUBSECTION (A)(1) OF THIS SECTION SATISFIES A NOTARY PUBLIC’S OBLIGATIONS UNDER § 18-214(A)(2) OF THIS SUBTITLE.

(D) UPON PERFORMANCE OF THE REQUIREMENTS OF SUBSECTION (A) OF THIS SECTION, THE NOTARIAL ACT SHALL BE DEEMED TO COMPLY WITH § 18-215(A)(2)(I) OF THIS SUBTITLE AND BE EFFECTIVE ON THE DATE ON WHICH THE DECLARATION IS SIGNED.

(E) IF A REMOTELY LOCATED INDIVIDUAL IS PHYSICALLY UNABLE TO SIGN A DECLARATION, THE INDIVIDUAL MAY DIRECT ANOTHER INDIVIDUAL TO SIGN THE INDIVIDUAL’S NAME ON THE DECLARATION, WHICH SHALL BE REVISED BY INSERTING THE FOLLOWING STATEMENT OR WORDS OF SIMILAR IMPORT: “SIGNATURE AFFIXED BY (NAME OF OTHER INDIVIDUAL) AT THE DIRECTION OF (NAME OF INDIVIDUAL).”.

(F) A NOTARY PUBLIC IN THE STATE MAY, BY MEANS OF COMMUNICATION TECHNOLOGY UNDER § 18-214(A)(1) OF THIS SUBTITLE, TAKE AN ACKNOWLEDGMENT OF A SIGNATURE ON A TANGIBLE RECORD PREVIOUSLY DELIVERED TO THE NOTARY.

(G) A NOTARY PUBLIC IN THE STATE MAY ADMINISTER AN OATH TO A REMOTELY LOCATED INDIVIDUAL USING COMMUNICATION TECHNOLOGY BY IDENTIFYING THE INDIVIDUAL UNDER § 18-214(A)(1) OF THIS SUBTITLE, CREATING AN AUDIO-VISUAL RECORDING OF THE INDIVIDUAL TAKING THE OATH UNDER § 18-214(A)(3) OF THIS SUBTITLE, AND PRESERVING A COPY OF THE AUDIO-VISUAL RECORDING UNDER § 18-214(D) OF THIS SUBTITLE.

18-222.

(a) (1) The Secretary of State may adopt regulations to implement this subtitle.

(2) Regulations adopted under paragraph (1) of this subsection regarding the performance of notarial acts with respect to electronic records may not require or accord greater legal status or effect to the implementation or application of a specific technology or technical specification.

(3) Regulations adopted under paragraph (1) of this subsection regarding performance of a notarial act may:

(i) prescribe the means of performing a notarial act involving a remotely located individual using communication technology;

(II) PRESCRIBE THE METHODS FOR REASONABLE CONFIRMATION OF A TANGIBLE RECORD BY A NOTARY PUBLIC;

[(ii)] (III) establish standards for communication technology, credential analysis, and identity proofing;

(Over)

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[(iii)] (IV) establish requirements or procedures to approve providers of communication technology and the processes of credential analysis and identity proofing; and

[(iv)] (V) establish standards and a period of retention of an audio-visual recording created under § 18-214(a)(3) of this subtitle.

(4) Regulations adopted under paragraph (1) of this subsection may:

(i) prescribe the manner of performing notarial acts regarding tangible and electronic records;

(ii) include provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident;

(iii) include provisions to ensure integrity in the creation, transmittal, storage, or authentication of electronic records or signatures;

(iv) if the Governor has delegated authority under § 18-104(b) of this title, prescribe the process of granting, renewing, conditioning, denying, suspending, or revoking a notary public commission and assuring the trustworthiness of an individual holding a commission as a notary public; and

(v) include provisions to prevent fraud or mistake in the performance of notarial acts.

(b) In adopting regulations under subsection (a) of this section regarding notarial acts performed with respect to electronic records or for a remotely located individual, the Secretary of State shall consider, so far as is consistent with this subtitle:

(1) the most recent standards regarding electronic records promulgated by national bodies, such as the National Association of Secretaries of State;

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(2) standards, practices, and customs of other jurisdictions that substantially enact this subtitle; and

(3) the views of government officials and entities and other interested persons.”.

On page 4, in line 24, after “proofing” insert “, IF CREDENTIAL ANALYSIS AND IDENTITY PROOFING ARE NECESSARY UNDER § 18-214(A)(1)(III) OF THIS SUBTITLE”; in line 25, after “act” insert “, IF THERE IS AN ELECTRONIC RECORD INSTEAD OF A TANGIBLE RECORD”; in line 29, strike “A” and substitute “IF THE NOTARIAL ACT IS REGARDING AN ELECTRONIC RECORD, A”; and after line 32, insert:

“(2) IF THE NOTARIAL ACT IS REGARDING A TANGIBLE RECORD, § 18-215(B)(1) OF THIS SUBTITLE APPLIES.”.

On page 5, in line 1, strike “(2)” and substitute “**(3)**”; and in line 29, strike “October” and substitute “June”.