

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 735

(Senator West)

Judicial Proceedings

Health and Government Operations

State Government - Notarial Acts - Remote Notarizations

This bill (1) authorizes remote notarial acts with respect to wills and trust instruments; (2) clarifies the application of specified requirements for credential analysis and identity proofing as they pertain to remote notarial acts; (3) establishes requirements and procedures for remote notarial acts involving a tangible record; (4) specifies procedures by which a notary public may administer an oath to a remotely located individual; (5) authorizes the Secretary of State to adopt regulations prescribing the methods for reasonable confirmation of a tangible record; and (6) makes clarifying changes to communication technology requirements applicable to remote notarizations. Finally, the bill specifies that the notarization of any document in conformance with specified executive orders authorizing remote notarization must be deemed valid if the notarization occurred during the time that the orders were in effect. **The bill takes effect June 1, 2021.**

Fiscal Summary

State Effect: The bill does not directly affect State finances or operations.

Local Effect: The bill does not directly affect local government finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Remote Notarization Involving Tangible Records

Existing requirements relating to remote notarial acts, as they apply to the performance of a notarial act regarding a tangible record when the record is not physically present before the notary, may be satisfied by:

- the individual signing and sending to the notary, within three business days after the performance of the notarial act, (1) the tangible record and (2) a specified declaration; and
- the notary (1) capturing by audio-visual recording the individual signing the tangible record and the declaration and (2) completing the required certificate of notarial act, as specified.

A declaration signed by a remotely located individual and attached to a record, as specified under the bill, satisfies a notary public's obligation to reasonably confirm the record. Upon performance of the above requirements, the notarial act must (1) be deemed to comply with the requirement that a certificate of a notarial act be executed contemporaneously with the performance of the notarial act and (2) be effective on the date on which the declaration is signed.

For the performance of a remote notarial act regarding a tangible record in counterpart, specified requirements may be satisfied by (1) the individual signing, during the audio-visual recording, a counterpart of the tangible record and a counterpart of a specified declaration and (2) the notary recording the notarial act and completing the required certificate of notarial act, as specified.

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 must be revised by inserting a specified statement.

A notary public in the State may, by means of communication technology, take an acknowledgement of a signature on a tangible record previously delivered to the notary.

Administering of Oaths to Remotely Located Individuals

The bill specifies that a notary public in the State may administer an oath to a remotely located individual using communication technology by identifying the individual, creating

an audio-visual recording of the individual taking the oath, and preserving a copy of the audio-visual recording, as specified.

Current Law: Chapter 407 of 2019, which took effect October 1, 2020, authorized a notary public located in the State to perform a notarial act using communication technology for a remotely located individual; however, Chapter 407 did not authorize remote notarization with respect to wills and trust instruments. When performing a remote notarization, a notary public may identify a remotely located individual (1) by personal knowledge; (2) on oath or affirmation from a credible witness, as specified; or (3) by remote presentation of satisfactory evidence of identification, credential analysis of the identification credential, and identity proofing of the individual. Identity proofing and credential analysis must be performed by a reputable third party in accordance with specified requirements as set forth under Section 18-223 of the State Government Article. (The bill clarifies that these requirements for identity proofing and credential analysis apply only when a notary public identifies a remotely located individual by remote presentation of identification.)

Chapter 407 specifies other various requirements that apply to the performance of a remote notarial act. Among these, a notary public must be reasonably able to confirm that the record before the notary public is the same record on which the remotely located individual made a statement or on which the individual executed a signature. In addition, a notary public must create an audio-visual recording of the performance of the notarial act and retain the recording, as specified. Communication technology used by a notary public to perform remote notarial acts must provide reasonable security measures to prevent unauthorized access to (1) the live transmission of the audio-visual feeds; (2) the methods used to perform credential analysis and identity proofing; and (3) the electronic record that is the subject of the notarial act. A notary public must attach or logically associate the notary public's electronic signature and official stamp to an electronic record by use of a digital certificate in compliance with specified standards (the bill specifies that requirements relating to digital certificates apply *if the notarial act is regarding an electronic record*).

On March 30, 2020, prior to the effective date of Chapter 407, the Governor issued [Executive Order 20.03.30.04](#) authorizing remote notarizations for the duration of the COVID-19 state of emergency and catastrophic health emergency. The order was subsequently amended by [Executive Order 20.09.29.01](#) (which took effect October 1, 2020, concurrent with the effective date of Chapter 407) specifically authorizing notaries public in the State to perform remote notarial acts with respect to wills and trust instruments for the duration of the emergency (and thereby suspending the provisions of Chapter 407 that preclude remote notarization of wills and trust instruments).

Under the bill, a notarial act performed in accordance with either of these orders is deemed valid if the notarization occurred while the order was in effect.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1265 (Delegate W. Fisher) - Health and Government Operations.

Information Source(s): Secretary of State; Judiciary (Administrative Office of the Courts); Register of Wills; Maryland State Bar Association; Department of Legislative Services

Fiscal Note History: First Reader - March 5, 2021
rh/mcr Third Reader - March 26, 2021
Revised - Amendment(s) - March 26, 2021

Analysis by: Elizabeth J. Allison

Direct Inquiries to:
(410) 946-5510
(301) 970-5510