

HOUSE BILL 663

N2, P1
HB 1265/21 – HGO

2lr2179
CF SB 317

By: **Delegates Kaiser, Holmes, Bartlett, Cardin, Landis, Patterson, Valderrama,
and P. Young**

Introduced and read first time: January 31, 2022

Assigned to: Health and Government Operations

Committee Report: Favorable

House action: Adopted

Read second time: March 9, 2022

CHAPTER _____

1 AN ACT concerning

2 **State Government – Notarial Acts – Fees and Use of Communication Technology**

3 FOR the purpose of increasing the maximum fees for an original notarial act and, subject
4 to certain regulations, performance of a notarial act using communication
5 technology; repealing a certain prohibition on performing a notarial act using
6 communication technology with respect to a will or a trust; authorizing a notary
7 public to use communication technology to take an acknowledgement of a signature
8 remotely under certain circumstances; establishing certain requirements for a
9 notary public to confirm a record remotely; establishing the effective date of a
10 remotely signed declaration; authorizing a notary public to administer an oath of
11 affirmation to a remotely located individual under certain circumstances;
12 establishing that identity proofing and credential analysis are not required under
13 certain circumstances; authorizing the Secretary of State to prescribe by regulation
14 the methods for reasonable confirmation of a tangible record; establishing that
15 remote notarizations completed under certain executive orders are valid
16 notarizations; and generally relating to notarial act fees and the use of
17 communication technology.

18 BY repealing and reenacting, with amendments,

19 Article – State Government

20 Section 18–107, 18–214, 18–222(a), and 18–223(b) through (f)

21 Annotated Code of Maryland

22 (2021 Replacement Volume)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
2 That the Laws of Maryland read as follows:

3 **Article – State Government**

4 18–107.

5 (a) (1) The Secretary of State shall adopt regulations to establish fees, not to
6 exceed ~~[\$4]~~ **\$25** for an original notarial act, and an appropriate lesser amount for the
7 repetition of that original notarial act or to make a copy of the matter addressed by that
8 original notarial act.

9 (2) A notary public or person acting on behalf of a notary public may charge
10 a fee, **SUBJECT TO REGULATIONS ADOPTED BY THE SECRETARY OF STATE**, not to
11 exceed ~~[\$4]~~ **\$50**, for the performance of a notarial act under § 18–214 of this title.

12 (b) (1) Subject to paragraph (2) of this subsection, a notary public may charge
13 the prevailing rate for mileage established by the Internal Revenue Service for business
14 travel per mile and a fee not to exceed \$5, as compensation for travel required for the
15 performance of a notarial act.

16 (2) (i) The Secretary of State may set by regulation a different amount
17 that a notary public may charge under paragraph (1) of this subsection.

18 (ii) An amount set under subparagraph (i) of this paragraph may
19 exceed the amount established under paragraph (1) of this subsection.

20 18–214.

21 (a) [Except for a notarial act being performed with respect to a will, as defined in
22 § 1–101 of the Estates and Trusts Article, or a trust instrument, as defined in § 14.5–103
23 of the Estates and Trusts Article, a] **A** notary public located in this State may perform a
24 notarial act using communication technology for a remotely located individual if:

25 (1) the notary public:

26 (i) has personal knowledge under § 18–206(a) of this subtitle of the
27 identity of the remotely located individual;

28 (ii) has satisfactory evidence of the identity of the remotely located
29 individual by verification on oath or affirmation from a credible witness appearing before
30 and identified by the notary public under § 18–206(b) of this subtitle or as a remotely
31 located individual under this section; or

32 (iii) has obtained satisfactory evidence of the identity of the remotely
33 located individual by:

1 1. remote presentation of an identification credential
2 described in § 18–206(b) of this subtitle;

3 2. credential analysis of the identification credential; and

4 3. identity proofing of the individual;

5 (2) the notary public is reasonably able to confirm that a record before the
6 notary public is the same record in which the remotely located individual made a statement
7 or on which the individual executed a signature;

8 (3) the notary public, or person acting on behalf and at the direction of the
9 notary public, creates an audio–visual recording of the performance of the notarial act; and

10 (4) for a remotely located individual located outside the United States:

11 (i) the record:

12 1. is to be filed with or relates to a matter before a public
13 official or court, governmental entity, or other entity subject to the jurisdiction of the United
14 States; or

15 2. involves property located in the territorial jurisdiction of
16 the United States or involves a transaction substantially connected with the United States;
17 and

18 (ii) the notary public has no actual knowledge that the act of making
19 the statement or signing the record is prohibited by the foreign state in which the remotely
20 located individual is located.

21 **(B) A NOTARY PUBLIC LOCATED IN THIS STATE MAY USE COMMUNICATION**
22 **TECHNOLOGY UNDER SUBSECTION (A) OF THIS SECTION TO TAKE AN**
23 **ACKNOWLEDGEMENT OF A SIGNATURE ON A TANGIBLE RECORD THAT IS**
24 **PHYSICALLY PRESENT BEFORE THE NOTARY PUBLIC, IF THE RECORD IS DISPLAYED**
25 **TO AND IDENTIFIED BY THE REMOTELY LOCATED INDIVIDUAL DURING THE**
26 **AUDIO–VISUAL RECORDING UNDER SUBSECTION (A)(3) OF THIS SECTION.**

27 **(C) THE REQUIREMENT UNDER SUBSECTION (A)(2) OF THIS SECTION FOR**
28 **THE PERFORMANCE OF A NOTARIAL ACT WITH RESPECT TO A TANGIBLE RECORD**
29 **NOT PHYSICALLY PRESENT BEFORE THE NOTARY PUBLIC IS SATISFIED IF:**

30 **(1) THE REMOTELY LOCATED INDIVIDUAL:**

31 **(i) SIGNS, DURING THE AUDIO–VISUAL RECORDING UNDER**
32 **SUBSECTION (A)(3) OF THIS SECTION:**

1 **1. THE TANGIBLE RECORD; AND**

2 **2. A DECLARATION THAT IS PART OF OR SECURELY**
3 **ATTACHED TO THE RECORD; AND**

4 **(II) SENDS THE TANGIBLE RECORD AND DECLARATION TO THE**
5 **NOTARY PUBLIC NOT LATER THAN 3 DAYS AFTER THE NOTARIAL ACT WAS**
6 **PERFORMED; AND**

7 **(2) THE NOTARY PUBLIC:**

8 **(I) RECORDS THE INDIVIDUAL SIGNING THE RECORD AND**
9 **DECLARATION IN THE AUDIO-VISUAL RECORDING UNDER SUBSECTION (A)(3) OF**
10 **THIS SECTION; AND**

11 **(II) AFTER RECEIPT OF THE TANGIBLE RECORD AND**
12 **DECLARATION FROM THE INDIVIDUAL, EXECUTES A CERTIFICATE OF NOTARIAL ACT**
13 **REQUIRED BY § 18-215 OF THIS SUBTITLE WHICH MUST INCLUDE A STATEMENT**
14 **SUBSTANTIALLY IN THE FOLLOWING FORM:**

15 **I (NAME OF NOTARY PUBLIC) WITNESSED, BY MEANS OF COMMUNICATION**
16 **TECHNOLOGY, (NAME OF REMOTELY LOCATED INDIVIDUAL) SIGN THE ATTACHED**
17 **RECORD AND DECLARATION ON (DATE).**

18 **(D) A DECLARATION SUBSTANTIALLY IN THE FOLLOWING FORM SATISFIES**
19 **THE REQUIREMENTS OF SUBSECTION (C)(1)(I)2 OF THIS SECTION:**

20 **I DECLARE UNDER THE PENALTY OF PERJURY THAT THE RECORD OF WHICH**
21 **THIS DECLARATION IS A PART OR TO WHICH IT IS ATTACHED IS THE SAME RECORD**
22 **ON WHICH (NAME OF NOTARY PUBLIC), A NOTARY PUBLIC, PERFORMED A NOTARIAL**
23 **ACT AND BEFORE WHOM I APPEARED BY MEANS OF COMMUNICATION TECHNOLOGY**
24 **ON (DATE).**

25 _____
26 **SIGNATURE OF REMOTELY LOCATED INDIVIDUAL**

27 _____
28 **PRINTED NAME OF THE REMOTELY LOCATED INDIVIDUAL**

29 **(E) A NOTARIAL ACT PERFORMED IN COMPLIANCE WITH SUBSECTION (C)**
30 **OF THIS SECTION COMPLIES WITH THE REQUIREMENTS OF SUBSECTION (A)(2) OF**
31 **THIS SECTION AND IS EFFECTIVE ON THE DATE THE REMOTELY LOCATED**
32 **INDIVIDUAL SIGNED THE DECLARATION UNDER SUBSECTION (D) OF THIS SECTION.**

1 **(F) SUBSECTION (C) OF THIS SECTION DOES NOT PRECLUDE USE OF**
2 **ANOTHER PROCEDURE TO SATISFY THE REQUIREMENTS OF SUBSECTION (A)(2) OF**
3 **THIS SECTION FOR A NOTARIAL ACT PERFORMED WITH RESPECT TO A TANGIBLE**
4 **RECORD.**

5 **(G) A NOTARY PUBLIC LOCATED IN THIS STATE MAY USE COMMUNICATION**
6 **TECHNOLOGY UNDER SUBSECTION (A) OF THIS SECTION TO ADMINISTER AN OATH**
7 **OR AFFIRMATION TO A REMOTELY LOCATED INDIVIDUAL IF, EXCEPT AS OTHERWISE**
8 **PROVIDED BY OTHER LAW OF THIS STATE, THE NOTARY PUBLIC:**

9 **(1) IDENTIFIES THE INDIVIDUAL UNDER SUBSECTION (A)(1) OF THIS**
10 **SECTION;**

11 **(2) CREATES OR CAUSES THE CREATION UNDER SUBSECTION (A)(3)**
12 **OF THIS SECTION OF AN AUDIO-VISUAL RECORDING OF THE INDIVIDUAL TAKING**
13 **THE OATH OR AFFIRMATION; AND**

14 **(3) RETAINS OR CAUSES THE RETENTION OF SUCH AUDIO-VISUAL**
15 **RECORDING UNDER SUBSECTION (J) OF THIS SECTION.**

16 **[(b)] (H)** If a notarial act is performed under subsection (a) of this section, the
17 certificate of notarial act required by § 18–215 of this subtitle must indicate that the
18 notarial act involved a remotely located individual and was performed using
19 communication technology.

20 **[(c)] (I)** A short-form certificate provided in § 18–216 of this subtitle for a
21 notarial act performed under subsection (a) of this section is sufficient if it:

22 (1) complies with any regulations adopted under § 18–222 of this subtitle;
23 or

24 (2) contains a statement substantially as follows: “This notarial act
25 involved a remotely located individual and the use of communication technology.”.

26 **[(d)] (J)** (1) A notary public, a guardian, a conservator, or an agent of a
27 notary public or a personal representative of a deceased notary public shall:

28 (i) retain the audio-visual recording created under subsection (a)(3)
29 of this section; or

30 (ii) cause the audio-visual recording to be retained by a repository
31 designated by or on behalf of the person required to retain the recording.

1 (2) A guardian, a conservator, or an agent of a notary public or personal
2 representative of a deceased notary public who assumes authority over audio–visual
3 recordings created under subsection (a)(3) of this section shall:

4 (i) notify the Secretary of State within 30 days after assuming
5 authority; and

6 (ii) comply with all requirements in this subtitle regarding the
7 maintenance and storage of the audio–visual recordings.

8 (3) Unless a different period is required by regulations adopted under
9 § 18–222 of this subtitle, an audio–visual recording created under subsection (a)(3) of this
10 section shall be retained for a period of at least 10 years after the recording is made.

11 **[(e)] (K)** (1) Before a notary public performs the notary public’s initial
12 notarial act under subsection (a) of this section, the notary public shall notify the Secretary
13 of State:

14 (i) that the notary public will be performing notarial acts facilitated
15 by communication technology; and

16 (ii) of the technologies the notary public intends to use.

17 (2) If the Secretary of State establishes by regulation the standards for
18 approval of communication technology, credential analysis, or identity proofing under
19 § 18–222 of this subtitle, the communication technology, credential analysis, and identity
20 proofing used by a notary public must comply with the standards.

21 **[(f)] (L)** The validity of a notarial act performed under this section shall be
22 determined under the laws of this State regardless of the physical location of the remotely
23 located individual at the time of the notarial act.

24 **[(g)] (M)** This section shall be construed and applied in a manner consistent with
25 Title 21 of the Commercial Law Article.

26 **[(h)] (N)** (1) Nothing in this section shall require any person to accept, agree
27 to, conduct, or complete a transaction where a notarial act is performed using
28 communication technology for a remotely located individual.

29 (2) A person that agrees to accept, agree to, conduct, or complete a
30 transaction where a notarial act is performed using communication technology for a
31 remotely located individual may refuse to do so in any other transaction.

32 **(3) NOTHING IN THIS SECTION SHALL REQUIRE IDENTITY PROOFING**
33 **OR CREDENTIAL ANALYSIS WHEN A NOTARY IDENTIFIES A REMOTELY LOCATED**
34 **INDIVIDUAL IN ACCORDANCE WITH SUBSECTION (A)(1)(I) OR (II) OF THIS SECTION.**

1 18–222.

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

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

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

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

12 (ii) establish standards for communication technology, credential
13 analysis, and identity proofing;

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

17 (iv) establish standards and a period of retention of an audio–visual
18 recording created under § 18–214(a)(3) of this subtitle; AND

19 (V) PRESCRIBE THE METHODS FOR REASONABLE
20 CONFIRMATION OF A TANGIBLE RECORD BY A NOTARY PUBLIC.

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

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

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

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

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

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

3 18–223.

4 (b) **[Identity] WHEN NECESSARY UNDER § 18–214(A)(1)(III) OF THIS**
5 **SUBTITLE, IDENTITY** proofing and credential analysis shall be performed by a reputable
6 third party who has provided evidence to the notary public of the ability to satisfy the
7 requirements of this section.

8 (c) **[Identity] WHEN NECESSARY UNDER § 18–214(A)(1)(III) OF THIS**
9 **SUBTITLE, IDENTITY** proofing shall be performed through a dynamic knowledge–based
10 authentication that meets the following requirements:

11 (1) each remotely located individual must answer a quiz consisting of a
12 minimum of five questions related to the individual’s personal history or identity,
13 formulated from public or private data sources;

14 (2) each question must have a minimum of five possible answer choices;

15 (3) at least 80% of the questions must be answered correctly;

16 (4) all questions must be answered within 2 minutes;

17 (5) if the remotely located individual fails the first attempt, the individual
18 may retake the quiz one time within 24 hours;

19 (6) during a retake of the quiz, a minimum of 40% of the prior questions
20 must be replaced;

21 (7) if the remotely located individual fails the second attempt, the
22 individual is not allowed to retry with the same notary public within 24 hours of the second
23 failed attempt; and

24 (8) the notary public must not be able to see or record the questions or
25 answers.

26 (d) **[Credential] WHEN NECESSARY UNDER § 18–214(A)(1)(III) OF THIS**
27 **SUBTITLE, CREDENTIAL** analysis must use public or private data sources to confirm the
28 validity of an identification credential presented by a remotely located individual and shall,
29 at a minimum:

30 (1) use automated software processes to aid the notary public in verifying
31 the identity of each remotely located individual;

1 (2) ensure that the identification credential passes an authenticity test,
2 consistent with sound commercial practices that:

3 (i) use appropriate technologies to confirm the integrity of visual,
4 physical, or cryptographic security features;

5 (ii) use appropriate technologies to confirm that the identification
6 credential is not fraudulent or inappropriately modified;

7 (iii) use information held or published by the issuing source or an
8 authoritative source, as available, to confirm the validity of personal details and
9 identification credential details; and

10 (iv) provide output of the authenticity test to the notary public; and

11 (3) enable the notary public visually to compare for consistency the
12 information and photo on the identification credential and the remotely located individual
13 as viewed by the notary public in real time through communication technology.

14 (e) (1) Communication technology shall provide reasonable security measures
15 to prevent unauthorized access to:

16 (i) the live transmission of the audio–visual feeds;

17 (ii) the methods used to perform credential analysis and identity
18 proofing, **IF CREDENTIAL ANALYSIS AND IDENTITY PROOFING ARE NECESSARY**
19 **UNDER § 18–214(A)(1)(III) OF THIS SUBTITLE**; and

20 (iii) the electronic record that is the subject of the notarial act, **IF**
21 **THERE IS AN ELECTRONIC RECORD INSTEAD OF A TANGIBLE RECORD.**

22 (2) If a remotely located individual must exit the workflow, the remotely
23 located individual must meet the criteria of this section and restart credential analysis and
24 identity proofing from the beginning.

25 (f) (1) **[A] IF THE NOTARIAL ACT IS REGARDING AN ELECTRONIC**
26 **RECORD, A** notary public shall attach or logically associate the notary public’s electronic
27 signature and official stamp to an electronic record by use of a digital certificate complying
28 with the X.509 standard adopted by the International Telecommunication Union or a
29 similar industry–standard technology.

30 **(2) IF THE NOTARIAL ACT IS REGARDING A TANGIBLE RECORD,**
31 **§ 18–215(B)(1) OF THIS SUBTITLE APPLIES.**

32 **[(2)] (3)** A notary public may not perform a notarial act with respect to an
33 electronic record if the digital certificate:

- 1 (i) has expired;
- 2 (ii) has been revoked or terminated by the issuing or registering
- 3 authority;
- 4 (iii) is invalid; or
- 5 (iv) is incapable of authentication.

6 SECTION 2. AND BE IT FURTHER ENACTED, That, notwithstanding any other
 7 provision of law, the notarization of any document under the requirements of Executive
 8 Order 20.03.30.04, authorizing remote notarizations, or Executive Order 20.09.29.01,
 9 amending the order of March 30, 2020, authorizing remote notarizations, shall be deemed
 10 valid if the notarization occurred during the time that the executive order was in effect.

11 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June
 12 1, 2022.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.