

HOUSE BILL 1111

P1

6lr1827

By: **Delegates Platt and Miele**

Introduced and read first time: February 11, 2016

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Notary Public – Electronic and Remote Notary Services**

3 FOR the purpose of authorizing a notary public to perform notarial acts electronically;
4 requiring a certain notary public to register with the Secretary of State before
5 performing certain electronic notarizations; requiring the Secretary to develop a
6 certain registration form for an electronic notary; requiring an electronic notary to
7 re-register with the Secretary of State under certain circumstances; specifying
8 certain requirements for electronic notarizations; prohibiting an electronic notary
9 from performing certain electronic notarizations under certain circumstances;
10 authorizing an electronic notary to perform a remote notarization if the notary
11 obtains certain proof of identity; authorizing an electronic notary to charge certain
12 fees and take certain costs into account when charging a fee for electronic
13 notarizations; establishing certain duties of the electronic notary; establishing that
14 certain provisions of law relating to notarial acts are applicable to electronic and
15 remote notarizations under this Act; authorizing an electronic notary to perform
16 electronic notarizations outside the State and the county for which the notary was
17 appointed; giving certain electronic notarizations performed outside the State and
18 the county of the electronic notary the full power and effect as if performed in the
19 State; requiring the Secretary of State to adopt certain regulations; defining certain
20 terms; and generally relating to electronic and remote notarizations.

21 BY adding to

22 Article – State Government

23 New subtitle designation “Subtitle 1. Generally” to immediately precede Section
24 18–101; and 18–201 through 18–207 to be under the new subtitle “Subtitle 2.
25 Electronic and Remote Notarization”

26 Annotated Code of Maryland

27 (2014 Replacement Volume and 2015 Supplement)

28 BY repealing and reenacting, without amendments,

29 Article – State Government

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 18–101(a)(1)
2 Annotated Code of Maryland
3 (2014 Replacement Volume and 2015 Supplement)

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

6 **Article – State Government**

7 **SUBTITLE 1. GENERALLY.**

8 18–101.

9 (a) (1) Except as provided in paragraph (2) of this subsection, the Governor,
10 on approval of the application by a Senator representing the senatorial district and
11 subdistrict in which the applicant resides or on approval by any Senator if the senatorial
12 office representing the senatorial district and subdistrict in which the applicant resides is
13 vacant, may appoint and commission individuals as notaries public as provided in this title.

14 **SUBTITLE 2. ELECTRONIC AND REMOTE NOTARIZATION.**

15 **18–201.**

16 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
17 INDICATED.

18 (B) “ELECTRONIC” MEANS TECHNOLOGY HAVING ELECTRICAL, DIGITAL,
19 MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

20 (C) “ELECTRONIC DOCUMENT” MEANS INFORMATION THAT IS CREATED,
21 GENERATED, SENT, COMMUNICATED, RECEIVED, OR STORED BY ELECTRONIC
22 MEANS.

23 (D) “ELECTRONIC NOTARIZATION” MEANS A NOTARIAL ACT BY AN
24 ELECTRONIC NOTARY THAT INVOLVES AN ELECTRONIC DOCUMENT.

25 (E) “ELECTRONIC NOTARY” MEANS A NOTARY PUBLIC, APPOINTED IN
26 ACCORDANCE WITH SUBTITLE 1 OF THIS TITLE, WHO HAS BEEN REGISTERED BY THE
27 SECRETARY OF STATE AS HAVING THE CAPABILITY OF PERFORMING ELECTRONIC
28 NOTARIZATIONS.

29 (F) “ELECTRONIC NOTARY SEAL” MEANS INFORMATION WITHIN A
30 NOTARIZED ELECTRONIC DOCUMENT THAT:

1 **(1) INCLUDES THE ELECTRONIC NOTARY’S NAME, COUNTY, AND**
2 **COMMISSION EXPIRATION DATE; AND**

3 **(2) GENERALLY CORRESPONDS TO INFORMATION IN NOTARIAL SEALS**
4 **USED ON PAPER DOCUMENTS.**

5 **(G) “ELECTRONIC SIGNATURE” MEANS AN ELECTRONIC SOUND, SYMBOL,**
6 **OR PROCESS ATTACHED TO OR LOGICALLY ASSOCIATED WITH AN ELECTRONIC**
7 **DOCUMENT AND EXECUTED OR ADOPTED BY A PERSON WITH THE INTENT TO SIGN**
8 **THE DOCUMENT.**

9 **(H) “RECORD OF ELECTRONIC NOTARIZATIONS” MEANS A DEVICE FOR**
10 **CREATING AND PRESERVING A CHRONOLOGICAL RECORD OF ELECTRONIC**
11 **NOTARIZATIONS PERFORMED BY AN ELECTRONIC NOTARY THAT INCLUDES, FOR**
12 **EACH ELECTRONIC NOTARIZATION:**

13 **(1) THE DATE AND TIME OF THE ELECTRONIC NOTARIZATION;**

14 **(2) THE TYPE OF ELECTRONIC NOTARIZATION;**

15 **(3) THE TYPE, TITLE, AND DESCRIPTION OF THE ELECTRONIC**
16 **DOCUMENT OR PROCEEDING;**

17 **(4) THE PRINTED NAME AND ADDRESS OF THE SIGNER OF THE**
18 **ELECTRONIC DOCUMENT;**

19 **(5) THE PROOF OF IDENTITY OF THE SIGNER OF THE ELECTRONIC**
20 **DOCUMENT, INCLUDING:**

21 **(I) A STATEMENT THAT THE SIGNER IS PERSONALLY KNOWN TO**
22 **THE ELECTRONIC NOTARY; OR**

23 **(II) IF THE SIGNER IS NOT PERSONALLY KNOWN TO THE**
24 **ELECTRONIC NOTARY, A DESCRIPTION OF THE METHOD USED TO CONFIRM THE**
25 **SIGNER’S IDENTITY, INCLUDING A COPY OF ANY IDENTIFICATION DOCUMENT**
26 **RELIED UPON BY THE NOTARY;**

27 **(6) (I) THE PRINTED NAME AND ADDRESS OF EACH CREDIBLE**
28 **WITNESS SWEARING TO OR AFFIRMING THE SIGNER’S IDENTITY; AND**

29 **(II) A STATEMENT DESCRIBING THE METHOD OF CONFIRMING**
30 **THE IDENTITIES OF THE WITNESSES;**

1 **(7) THE AMOUNT OF THE FEE, IF ANY, CHARGED FOR THE**
2 **ELECTRONIC NOTARIZATION; AND**

3 **(8) IF VIDEO AND AUDIO CONFERENCE TECHNOLOGY AUTHORIZED**
4 **UNDER § 18-203(C)(2) OF THIS SUBTITLE IS THE BASIS FOR SATISFACTORY PROOF**
5 **OF THE IDENTITY OF THE SIGNER OF THE ELECTRONIC DOCUMENT, A COPY OF THE**
6 **RECORDING OF THE VIDEO AND AUDIO CONFERENCE.**

7 **(I) “REMOTE NOTARIZATION” MEANS AN ELECTRONIC NOTARIZATION BY**
8 **AN ELECTRONIC NOTARY IN WHICH THE SIGNER OF THE ELECTRONIC DOCUMENT IS**
9 **NOT IN THE PHYSICAL PRESENCE OF THE ELECTRONIC NOTARY AT THE TIME OF THE**
10 **NOTARIZATION.**

11 **(J) “SATISFACTORY PROOF” MEANS, IN THE CASE OF REMOTE**
12 **NOTARIZATIONS, PROOF OF THE IDENTITY OF THE SIGNER OF THE ELECTRONIC**
13 **DOCUMENT THAT:**

14 **(1) MAY BE BASED ON VIDEO AND AUDIO CONFERENCE TECHNOLOGY**
15 **THAT ENABLES THE ELECTRONIC NOTARY TO COMMUNICATE WITH AND IDENTIFY**
16 **THE SIGNER OF THE ELECTRONIC DOCUMENT; AND**

17 **(2) IS CONFIRMED BY:**

18 **(I) THE ELECTRONIC NOTARY’S PERSONAL KNOWLEDGE OF**
19 **THE SIGNER OF THE ELECTRONIC DOCUMENT;**

20 **(II) A PRIOR IN-PERSON IDENTIFICATION;**

21 **(III) THE USE OF SOFTWARE THAT RELIES ON HIGH RESOLUTION**
22 **IMAGING AND DOCUMENT CLASSIFICATION TO PERFORM A FORENSIC ANALYSIS**
23 **BASED ON THE APPLICABLE PRODUCTION PROCESSES OF THE ISSUER OF THE**
24 **SOFTWARE; OR**

25 **(IV) ANY OTHER METHOD OF CONFIRMING THE IDENTITY OF THE**
26 **SIGNER OF THE ELECTRONIC DOCUMENT THAT IS AUTHORIZED BY REGULATION**
27 **ADOPTED UNDER THIS SUBTITLE.**

28 **18-202.**

29 **(A) (1) BEFORE PERFORMING ELECTRONIC NOTARIZATIONS, A NOTARY**
30 **PUBLIC SHALL REGISTER WITH THE SECRETARY OF STATE THE CAPABILITY OF**
31 **NOTARIZING ELECTRONICALLY.**

1 **(2) AFTER RENEWING A NOTARY PUBLIC COMMISSION UNDER**
2 **SUBTITLE 1 OF THIS TITLE, AND BEFORE PERFORMING ELECTRONIC OR REMOTE**
3 **NOTARIZATIONS DURING THE NEW TERM, AN ELECTRONIC NOTARY SHALL**
4 **RE-REGISTER WITH THE SECRETARY OF STATE THE CAPABILITY OF NOTARIZING**
5 **ELECTRONICALLY.**

6 **(B) (1) THE SECRETARY OF STATE SHALL DEVELOP A REGISTRATION**
7 **FORM TO BE USED TO REGISTER AN ELECTRONIC NOTARY.**

8 **(2) (I) THE REGISTRATION FORM SHALL INCLUDE A DESCRIPTION**
9 **OF THE TECHNOLOGY THE REGISTRANT WILL USE TO CREATE AN ELECTRONIC**
10 **SIGNATURE AND ELECTRONIC NOTARY SEAL IN PERFORMING ELECTRONIC**
11 **NOTARIZATIONS, INCLUDING THE NAME OF THE TECHNOLOGY PROVIDER.**

12 **(II) IF AN ELECTRONIC NOTARY UPDATES THE TECHNOLOGY**
13 **DESCRIBED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE NOTARY SHALL**
14 **RE-REGISTER WITH THE SECRETARY WITHIN 90 DAYS OF THE INSTALLATION OF**
15 **THE UPDATED TECHNOLOGY.**

16 **18-203.**

17 **(A) SUBJECT TO SUBSECTION (C) OF THIS SECTION, NOTARIAL ACTS**
18 **PERFORMED IN ACCORDANCE WITH SUBTITLE 1 OF THIS TITLE MAY BE PERFORMED**
19 **ELECTRONICALLY.**

20 **(B) IN PERFORMING AN ELECTRONIC NOTARIZATION OF AN ELECTRONIC**
21 **DOCUMENT, AN ELECTRONIC NOTARY SHALL ATTACH TO OR LOGICALLY ASSOCIATE**
22 **WITH THE ELECTRONIC DOCUMENT:**

23 **(1) THE OFFICIAL ELECTRONIC SIGNATURE OF THE ELECTRONIC**
24 **NOTARY; AND**

25 **(2) THE ELECTRONIC NOTARY'S ELECTRONIC NOTARY SEAL.**

26 **(C) (1) AN ELECTRONIC NOTARY MAY NOT PERFORM AN ELECTRONIC**
27 **NOTARIZATION IF THE SIGNER OF THE ELECTRONIC DOCUMENT:**

28 **(I) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
29 **SUBSECTION, IS NOT IN THE PHYSICAL PRESENCE OF THE ELECTRONIC NOTARY AT**
30 **THE TIME OF NOTARIZATION;**

31 **(II) IS NOT PERSONALLY KNOWN TO THE ELECTRONIC NOTARY**
32 **OR IDENTIFIED BY THE NOTARY IN ACCORDANCE WITH SUBTITLE 1 OF THIS TITLE;**

1 (III) SHOWS A Demeanor THAT CAUSES THE ELECTRONIC
2 NOTARY TO HAVE A COMPELLING DOUBT ABOUT WHETHER THE SIGNER KNOWS THE
3 CONSEQUENCES OF THE TRANSACTION REQUIRING A NOTARIAL ACT; OR

4 (IV) IN THE ELECTRONIC NOTARY'S JUDGMENT, IS NOT ACTING
5 OF THE SIGNER'S OWN FREE WILL.

6 (2) AN ELECTRONIC NOTARY MAY PERFORM A REMOTE
7 NOTARIZATION IF THE NOTARY OBTAINS SATISFACTORY PROOF OF THE IDENTITY OF
8 THE SIGNER OF THE ELECTRONIC DOCUMENT.

9 (D) AN ELECTRONIC NOTARY MAY CHARGE A FEE FOR AN ELECTRONIC
10 NOTARIZATION THAT:

11 (1) EXCEEDS THE AMOUNT CHARGED FOR NOTARIAL ACTS UNDER
12 SUBTITLE 1 OF THIS TITLE; AND

13 (2) TAKES INTO ACCOUNT THE COSTS OF THE TECHNOLOGY USED IN
14 ELECTRONIC NOTARIZATIONS.

15 18-204.

16 AN ELECTRONIC NOTARY SHALL:

17 (1) EXERCISE REASONABLE CARE IN THE PERFORMANCE OF
18 ELECTRONIC NOTARIZATIONS AND A HIGH DEGREE OF CARE IN OBTAINING
19 SATISFACTORY PROOF OF THE IDENTITY OF THE SIGNER OF THE ELECTRONIC
20 DOCUMENT;

21 (2) TAKE REASONABLE STEPS TO ENSURE:

22 (I) THE INTEGRITY, SECURITY, AND AUTHENTICITY OF
23 ELECTRONIC NOTARIZATIONS; AND

24 (II) THAT ANY REGISTERED DEVICE USED TO CREATE THE
25 ELECTRONIC SIGNATURE AND ELECTRONIC NOTARY SEAL IS CURRENT AND HAS NOT
26 BEEN REVOKED OR TERMINATED BY ITS ISSUING OR REGISTERING AUTHORITY;

27 (3) (I) KEEP, MAINTAIN, PROTECT, AND PROVIDE FOR LAWFUL
28 INSPECTION A RECORD OF ELECTRONIC NOTARIZATIONS; AND

1 (II) MAINTAIN THE RECORD OF ELECTRONIC NOTARIZATIONS
2 FOR AT LEAST 5 YEARS FROM THE DATE OF THE NOTARIZATION;

3 (4) (I) MAINTAIN A BACKUP OF THE RECORD OF ELECTRONIC
4 NOTARIZATIONS; AND

5 (II) TAKE REASONABLE STEPS TO ENSURE PROTECTION OF THE
6 BACKUP RECORD FROM UNAUTHORIZED USE;

7 (5) KEEP THE ELECTRONIC RECORD, ELECTRONIC SIGNATURE, AND
8 PHYSICAL AND ELECTRONIC NOTARY SEALS SECURE UNDER THE NOTARY'S
9 EXCLUSIVE CONTROL AND FOR THE NOTARY'S EXCLUSIVE USE;

10 (6) USE THE ELECTRONIC NOTARY'S ELECTRONIC SIGNATURE ONLY
11 FOR THE PURPOSE OF PERFORMING ELECTRONIC NOTARIZATIONS; AND

12 (7) IF THE ELECTRONIC RECORD, ELECTRONIC SIGNATURE, OR
13 PHYSICAL OR ELECTRONIC NOTARY SEAL HAS BEEN LOST, STOLEN, OR USED BY AN
14 INDIVIDUAL OTHER THAN THE ELECTRONIC NOTARY:

15 (I) INFORM THE APPROPRIATE LAW ENFORCEMENT AGENCY IN
16 THE CASE OF THEFT OR VANDALISM; AND

17 (II) NOTIFY THE SECRETARY OF STATE IN WRITING.

18 **18-205.**

19 ELECTRONIC NOTARIZATIONS ARE SUBJECT TO THE RULES APPLICABLE TO
20 NOTARIAL ACTS UNDER SUBTITLE 1 OF THIS TITLE.

21 **18-206.**

22 AN ELECTRONIC NOTARY MAY PERFORM ELECTRONIC NOTARIZATIONS IN ANY
23 OTHER COUNTY OR STATE, WITH THE SAME POWER AND EFFECT IN ALL RESPECTS
24 AS IF THE ELECTRONIC NOTARIZATION WAS PERFORMED IN THE COUNTY FOR
25 WHICH THE ELECTRONIC NOTARY WAS APPOINTED.

26 **18-207.**

27 THE SECRETARY OF STATE SHALL ADOPT REGULATIONS TO IMPLEMENT AND
28 ENFORCE THE PROVISIONS OF THIS SUBTITLE.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2016.