

HB 1111

Department of Legislative Services

Maryland General Assembly

2016 Session

FISCAL AND POLICY NOTE

First Reader

House Bill 1111 (Delegates Platt and Miele)
Health and Government Operations

Notary Public - Electronic and Remote Notary Services

This bill authorizes a notary to perform “electronic notarization” and “remote notarization.” A notary must register the capability to perform notarizing electronically with the Secretary of State (SOS) prior to performing electronic notarizations. The bill establishes provisions relating to registration, documenting notary transactions, identifying participants in notary transactions, charging fees, and recordkeeping. SOS must adopt regulations to implement and enforce the bill.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures for SOS, beginning in FY 2017, to establish procedures, research standards, and certify vendors for electronic and remote notarization. Revenues are not affected.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: “Electronic notarization” means a notarial act by an electronic notary that involves an electronic document. “Electronic notary” means a notary public who has been registered by SOS as having the capability of performing electronic notarizations. “Electronic notary seal” means information within a notarized electronic document that corresponds to information contained in standard notarial seals including the notary’s name, county, and commission expiration. “Electronic signature” is an electronic sound, symbol, or process attached to or logically associated with an electronic document and

executed or adopted by a person with the intent to sign the document. “Record of electronic notarizations” is a device for creating and preserving a chronological record of electronic notarizations performed by an electronic notary that includes specified information. “Remote notarization” means an electronic notarization by an electronic notary in which the signer of the electronic document is not in the physical presence of the electronic notary at the time of the notarization.

Registration and Renewal: Electronic notaries must register with SOS their capability of notarizing electronically. SOS must develop a registration form for this purpose, which must include a description of the technology used to create an electronic signature and notary seal, including the name of the technology provider. An electronic notary must re-register with SOS within 90 days whenever the technology used is updated and after renewing a notary public commission.

Electronic Notarization Procedure: An electronic notary must attach to or logically associate with the electronic document the official electronic signature of the notary and the electronic notary seal. Generally, an electronic notary may not perform an electronic notarization if the signer of the electronic document is not in the physical presence of the electronic notary at the time of authorization or, in the case of a remote authorization, is not personally known or identified by the notary through (1) video and audio technology; (2) personal knowledge of the signer; (3) a prior in-person identification; (4) software that relies on high-resolution imaging and document classification to perform a forensic analysis; or (5) any other method of confirming the identity of the signer that is authorized by regulation. An electronic notary may also decline to notarize a document from any signer that shows a demeanor that causes the notary to have a compelling doubt about whether the signer knows the consequences of the transaction requiring the notarial act or if in the notary’s judgment, is not acting of the signer’s own free will.

Fees: An electronic notary may charge a fee that exceeds the prescribed fees for standard notarizations and takes into account the costs of the technology used in electronic notarization.

Recordkeeping Requirements: Electronic notaries must exercise reasonable care in performing electronic notarizations and a high degree of care in obtaining the satisfactory proof of identity of the signer of an electronic document. Records of electronic notarizations must be protected, backed up, and maintained for inspection for at least five years from the date of notarization. The electronic record, electronic signature, and physical and electronic notary seal must be kept secure under the notary’s exclusive control and for the notary’s exclusive use. An electronic signature can only be used for the purpose of performing electronic notarizations. An electronic notary must inform the appropriate law enforcement agency and notify SOS in writing if an electronic record, electronic

signature, or notary seal (physical or electronic) has been lost, stolen, or used by an individual other than the electronic notary.

Applicability: Electronic notaries are subject to the rules set forth in State law for standard notaries and may perform electronic notarizations in any other county or state with the same power and effect as if the notarization was performed in the county for which the notary was appointed.

Current Law: A notary public must (1) be at least age 18; (2) be of good moral character and integrity; (3) live or work in Maryland; and (4) be a resident of the senatorial district in which they are appointed or, if living outside the state, be a resident of a state that allows Maryland residents working in that state to serve as notaries.

A notary public must provide a public notarial seal or stamp with which the notary will authenticate the notary's acts, instruments, and attestations. The seal or stamp must include the name, surname, and office of the notary and the notary's place of residence, which must be designated by the county of the notary's residence or, if the notary is a resident of Baltimore City, Baltimore City.

If a document presented for notarization does not contain a notarial certificate reflecting the taking of an oath or acknowledgment, a notary may nevertheless witness the signing of the document in the notary's official capacity by (1) obtaining satisfactory proof of the identity of the person signing the document; (2) observing the signing of the document; (3) dating, signing, and sealing or stamping the document; and (4) recording the act in the notary's fair register.

There are no provisions in State law regarding electronic and/or remote notarizations.

In June 2000, the U.S. Congress passed the federal Electronic Signatures in Global and National Commerce Act, which states that if a statute, regulation, or other rule of law requires a signature or record relating to a transaction to be notarized, acknowledged, verified, or made under oath, that requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable statute, regulation, or rule of law, is attached to or logically associated with the signature or record.

Background: Several states have laws authorizing notarizations of electronic documents using an electronic notary seal; however, the signer is still required to appear in person for a notary to notarize a document. On July 1, 2012, Virginia became the first state in the country to authorize remote online notarization, which allows an electronic notary to perform a notarization without being in the physical presence of the signer. The bill implements substantially similar requirements and procedures as Virginia.

State Expenditures: General fund expenditures for SOS may increase, potentially significantly, beginning in fiscal 2017. SOS currently has no procedure for developing criteria for, identifying, or certifying electronic notarization software vendors. The process of developing standards for regulating electronic and remote notarizations is anticipated to require substantial resources given the security implications of notarizations performed remotely. In addition, general fund expenditures may increase further for SOS to handle additional complaints and investigations involving electronic and remote notary transactions.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Secretary of State, Secretary of the Commonwealth of Virginia, Department of Legislative Services

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