HOUSE BILL 1265

By: Delegate W. Fisher  
Introduced and read first time: February 8, 2021 
Assigned to: Health and Government Operations

A BILL ENTITLED

AN ACT concerning


FOR the purpose of expanding the availability of remote notarial acts to include certain will and trust documents; clarifying the application of certain provisions of law regarding identity proofing and credential analysis; affirming the validity of the notarization of certain documents in conformance with certain executive orders; and generally relating to remote notarial acts.

BY repealing and reenacting, with amendments,

Article – State Government
Section 18–214(a) and (h) and 18–223
Annotated Code of Maryland
(2014 Replacement Volume and 2020 Supplement)

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

Article – State Government

18–214.

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

(1) the notary public:

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
(ii) has satisfactory evidence of the identity of the remotely located individual by verification on oath or affirmation from a credible witness appearing before and identified by the notary public under § 18–206(b) of this subtitle or as a remotely located individual under this section; or

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

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

2. credential analysis of the identification credential; and

3. identity proofing of the individual;

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

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

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

(i) the record:

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

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

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

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

(2) A person that agrees to accept, agree to, conduct, or complete a transaction where a notarial act is performed using communication technology for a remotely located individual may refuse to do so in any other transaction.
(3) Nothing in this section shall require identity proofing or credential analysis when a notary identifies a remotely located individual in accordance with subsection (a)(1)(i) or (ii) of this section.

18–223.

(a) (1) Unless the Secretary of State adopts an applicable and superseding regulation under § 18–222 of this subtitle in the manner provided in this subsection, a notary public shall comply with the requirements of this section when performing a notarial act with respect to an electronic record or a remotely located individual.

(2) A regulation adopted by the Secretary of State may supersede a requirement of this section if the regulation references this section and specifies the requirement to be superseded.

(b) [Identity] When necessary under § 18–214(a)(1)(iii) of this subtitle, identity proofing and credential analysis shall be performed by a reputable third party who has provided evidence to the notary public of the ability to satisfy the requirements of this section.

(c) [Identity] When necessary under § 18–214(a)(1)(iii) of this subtitle, identity proofing shall be performed through a dynamic knowledge–based authentication that meets the following requirements:

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

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

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

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

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

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

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

(8) the notary public must not be able to see or record the questions or answers.
(d) [Credential] WHEN NECESSARY UNDER § 18–214(A)(1)(III) OF THIS SUBTITLE, CREDENTIAL analysis must use public or private data sources to confirm the validity of an identification credential presented by a remotely located individual and shall, at a minimum:

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

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

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

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

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

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

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

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

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

2. (ii) the methods used to perform credential analysis and identity proofing; and

3. (iii) the electronic record that is the subject of the notarial act.

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

(f) (1) A notary public shall attach or logically associate the notary public’s electronic signature and official stamp to an electronic record by use of a digital certificate complying with the X.509 standard adopted by the International Telecommunication Union or a similar industry–standard technology.
A notary public may not perform a notarial act with respect to an electronic record if the digital certificate:

(i) has expired;

(ii) has been revoked or terminated by the issuing or registering authority;

(iii) is invalid; or

(iv) is incapable of authentication.

(g) (1) A notary public shall retain a journal required under § 18–219 of this subtitle and any audio–visual recordings required under § 18–214 of this subtitle in a computer or other electronic storage device that protects the journal or audio–visual recordings against unauthorized access by password or cryptographic process.

(2) (i) A notary public may, by written contract, engage a third party to act as a repository to provide the storage required by paragraph (1) of this subsection.

(ii) The contract shall:

1. enable the notary public to comply with the retention requirements of this subtitle even if the contract is terminated; or

2. provide that the information will be transferred to the notary public if the contract is terminated.

(3) A third party under contract with a notary public under this subsection shall be deemed a repository approved by the Secretary of State under § 18–219 of this subtitle.

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

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.