

# HOUSE BILL 1265

P1, P3

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CF SB 735

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By: **Delegate W. Fisher**

Introduced and read first time: February 8, 2021

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **State Government – Notarial Acts – Remote Notarizations**

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

8 BY repealing and reenacting, with amendments,  
9 Article – State Government  
10 Section 18–214(a) and (h) and 18–223  
11 Annotated Code of Maryland  
12 (2014 Replacement Volume and 2020 Supplement)

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

15 **Article – State Government**

16 18–214.

17 (a) [Except for a notarial act being performed with respect to a will, as defined in  
18 § 1–101 of the Estates and Trusts Article, or a trust instrument, as defined in § 14.5–103  
19 of the Estates and Trusts Article, a] **A** notary public located in this State may perform a  
20 notarial act using communication technology for a remotely located individual if:

21 (1) the notary public:

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

9 2. credential analysis of the identification credential; and

10 3. identity proofing of the individual;

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

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

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

17 (i) the record:

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

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

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

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

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

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

4 18–223.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (i) the live transmission of the audio-visual feeds;

23 (ii) the methods used to perform credential analysis and identity  
24 proofing; and

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

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

29 (f) (1) A notary public shall attach or logically associate the notary public's  
30 electronic signature and official stamp to an electronic record by use of a digital certificate  
31 complying with the X.509 standard adopted by the International Telecommunication Union  
32 or a similar industry-standard technology.

1           (2) A notary public may not perform a notarial act with respect to an  
2 electronic record if the digital certificate:

3                   (i) has expired;

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

6                   (iii) is invalid; or

7                   (iv) is incapable of authentication.

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

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

14                   (ii) The contract shall:

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

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

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

22           SECTION 2. AND BE IT FURTHER ENACTED, That, notwithstanding any other  
23 provision of law, the notarization of any document in conformance with the provisions of  
24 Executive Order 20.03.30.04, authorizing remote notarizations, or Executive Order  
25 20.09.29.01, amending the order of March 30, 2020, authorizing remote notarizations, shall  
26 be deemed valid if the notarization occurred during the time that the executive order was  
27 in effect.

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