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EMERGENCY BILL

2lr1439 CF SB 36

By: Delegates W. Fisher, Cardin, and Williams

Introduced and read first time: January 31, 2022

Assigned to: Judiciary

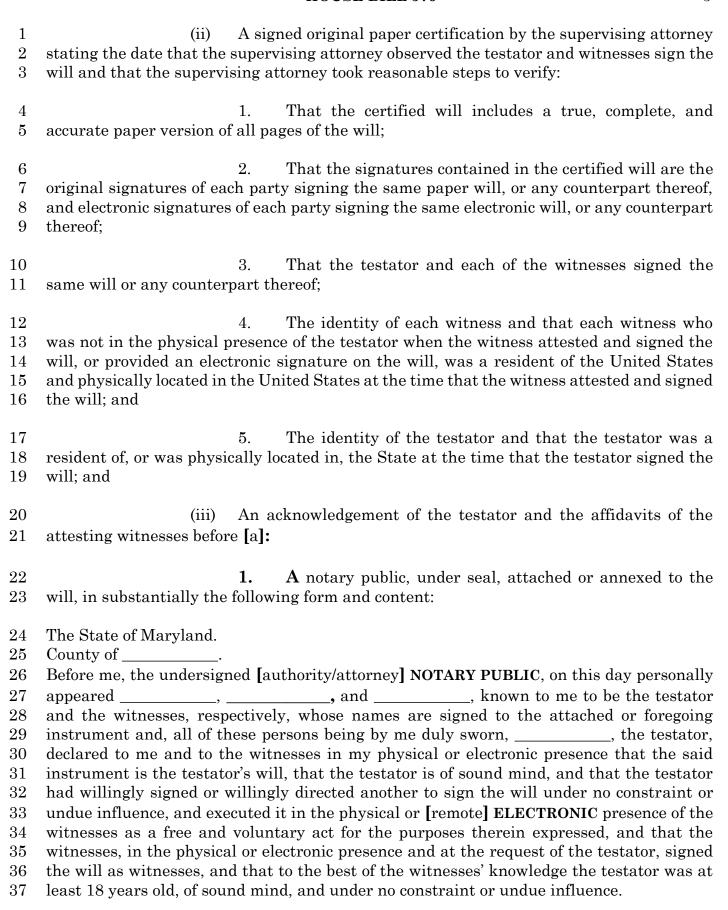
## A BILL ENTITLED

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1	AN ACT	concerning
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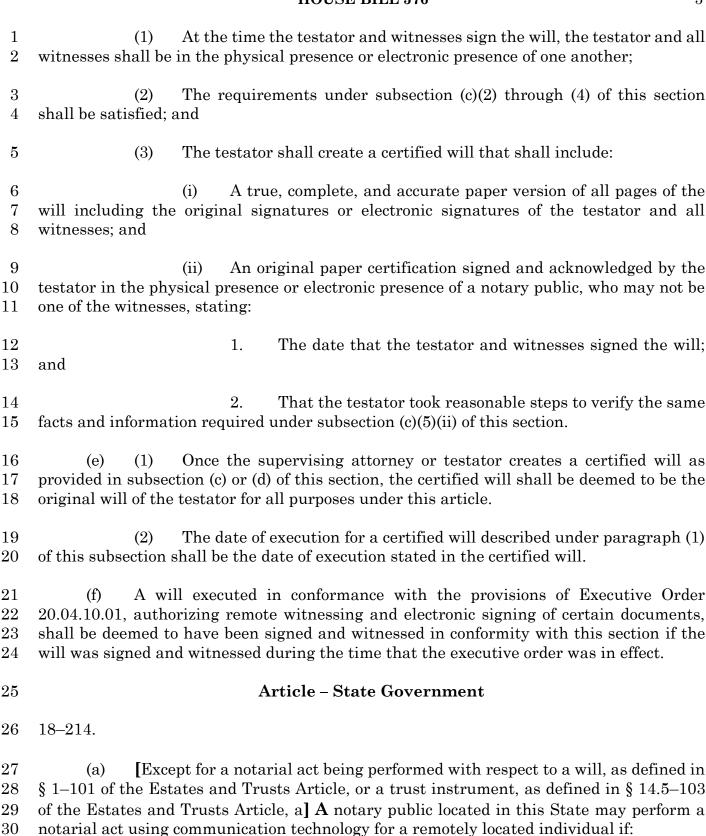
Wills and Trust Instruments – Electro	nic	: Executi	on
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- 3 FOR the purpose of authorizing a person to execute an electronic will or remotely witnessed 4 will without a notary public if the supervising attorney creates a certified will that 5 contains a certain form attached or annexed to the will; prohibiting a supervising 6 attorney from being a witness to an electronic will or remotely witnessed will if the 7 will is executed without a notary public; authorizing a notary public located in the 8 State to perform a notarial act using communication technology for a remotely 9 located individual for a trust instrument; and generally relating to electronically 10 executed wills and trust instruments.
- 11 BY repealing and reenacting, with amendments,
- 12 Article Estates and Trusts
- 13 Section 4–102
- 14 Annotated Code of Maryland
- 15 (2017 Replacement Volume and 2021 Supplement)
- 16 BY repealing and reenacting, with amendments,
- 17 Article State Government
- 18 Section 18–214(a)
- 19 Annotated Code of Maryland
- 20 (2021 Replacement Volume)
- 21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
- 22 That the Laws of Maryland read as follows:
- 23 Article Estates and Trusts
- 24 4–102.

- 1 Any person may make a will if the person is 18 years of age or older, and 2 legally competent to make a will. 3 Except as provided in §§ 4–103 and 4–104 of this subtitle and subsection (f) of this section, every will shall be: 4 5 (1) In writing; 6 Signed by the testator, or by some other person for the testator, in the (2)7 testator's physical presence and by the testator's express direction; and 8 (3)Attested and signed by two or more credible witnesses in: 9 (i) The physical presence of the testator; or 10 (ii) The electronic presence of the testator, provided that an 11 electronic will or remotely witnessed will satisfies the requirements under subsection (c) or 12 (d) of this section. 13 An electronic will or remotely witnessed will executed under this subsection 14 shall satisfy the following requirements: 15 At the time the testator and witnesses sign the will, the testator and all 16 witnesses shall be in the physical presence or electronic presence of one another and a 17 supervising attorney, who may be one of the witnesses UNLESS THE WILL IS SIGNED. 18 ACKNOWLEDGED, AND SWORN TO BEFORE THE SUPERVISING ATTORNEY AS DESCRIBED IN ITEM (5)(III)2 OF THIS SUBSECTION; 19 20 (2)At the time the testator signs the will, the testator shall be a resident 21of, or physically located in, the State; 22Each witness who is in the electronic presence of the testator when the 23witness attests and signs the will, or provides an electronic signature on the will, shall be a resident of the United States and be physically located in the United States at the time 2425 the witness attests and signs the will; 26 **(4)** The testator and witnesses shall sign the same will or any counterpart thereof; and 27 28The supervising attorney shall create a certified will that shall include: (5)29 A true, complete, and accurate paper version of all pages of the
- will including the original signatures or electronic signatures of the testator and all witnesses;



1	Testator
2	Witness
3	Witness
4	Subscribed, sworn and acknowledged before me by, the testator, and
5	subscribed and sworn to before me by and, witnesses, this
6	day of,
7	Seal Notary Public; OR
8	2. THE SUPERVISING ATTORNEY, ATTACHED OR
9	ANNEXED TO THE WILL, IN SUBSTANTIALLY THE FOLLOWING FORM AND CONTENT:
10	BEFORE ME, THE UNDERSIGNED SUPERVISING ATTORNEY, ON THIS DAY
11	PERSONALLY APPEARED,, AND, KNOWN TO
12	ME TO BE THE TESTATOR AND THE WITNESSES, RESPECTIVELY, WHOSE NAMES ARE
13	SIGNED TO THE ATTACHED OR FOREGOING INSTRUMENT, AND THE TESTATOR
14	DECLARED TO ME AND TO THE WITNESSES IN MY PHYSICAL OR ELECTRONIC
15	PRESENCE THAT THE SAID INSTRUMENT IS THE TESTATOR'S WILL, THAT THE
16	TESTATOR IS OF SOUND MIND, AND THAT THE TESTATOR HAD WILLINGLY SIGNED OR
17	WILLINGLY DIRECTED ANOTHER TO SIGN THE WILL UNDER NO CONSTRAINT OR
18	UNDUE INFLUENCE, AND EXECUTED IT IN THE PHYSICAL OR ELECTRONIC PRESENCE
19	OF THE WITNESSES AS A FREE AND VOLUNTARY ACT FOR THE PURPOSES THEREIN
20	EXPRESSED, AND THAT THE WITNESSES, IN THE PHYSICAL OR ELECTRONIC
21	PRESENCE AND AT THE REQUEST OF THE TESTATOR, SIGNED THE WILL AS
22	WITNESSES, AND THAT TO THE BEST OF THE WITNESSES' KNOWLEDGE THE
23	TESTATOR WAS AT LEAST 18 YEARS OLD, OF SOUND MIND, AND UNDER NO
24	CONSTRAINT OR UNDUE INFLUENCE.
25	TESTATOR
26	WITNESS
27	WITNESS
28	SUBSCRIBED, SWORN AND ACKNOWLEDGED BEFORE ME BY, THE
29	TESTATOR, AND SUBSCRIBED AND SWORN TO BEFORE ME BY AND
30	, WITNESSES, THIS DAY OF,
31	SUPERVISING ATTORNEY.
32	(d) An electronic will or remotely witnessed will executed under this subsection
33	shall satisfy the following requirements:



31 (1) the notary public:

32 (i) has personal knowledge under § 18–206(a) of this subtitle of the 33 identity of the remotely located individual;

1 2 3 4	(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 $\S 18-206(b)$ of this subtitle or as a remotely located individual under this section; or
5 6	(iii) has obtained satisfactory evidence of the identity of the remotely located individual by:
7 8	1.  remote  presentation  of  an identification  credential 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 12 13	(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;
14 15	(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
16	(4) for a remotely located individual located outside the United States:
17	(i) the record:
18 19 20	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
21 22 23	2. involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States; and
24 25 26	(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.
27 28 29 30 31	SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three–fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.