

SENATE BILL 36

N2

EMERGENCY BILL
(PRE-FILED)

2lr0768
CF 2lr1439

By: **Senator West**

Requested: October 15, 2021

Introduced and read first time: January 12, 2022

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Wills and Trust Instruments – Electronic Execution**

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.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) 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 (b) Except as provided in §§ 4–103 and 4–104 of this subtitle and subsection (f) of
4 this section, every will shall be:

5 (1) In writing;

6 (2) Signed by the testator, or by some other person for the testator, in the
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 (c) An electronic will or remotely witnessed will executed under this subsection
14 shall satisfy the following requirements:

15 (1) 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**
19 **DESCRIBED IN ITEM (5)(III)2 OF THIS SUBSECTION;**

20 (2) At the time the testator signs the will, the testator shall be a resident
21 of, or physically located in, the State;

22 (3) Each witness who is in the electronic presence of the testator when the
23 witness attests and signs the will, or provides an electronic signature on the will, shall be
24 a resident of the United States and be physically located in the United States at the time
25 the witness attests and signs the will;

26 (4) The testator and witnesses shall sign the same will or any counterpart
27 thereof; and

28 (5) The supervising attorney shall create a certified will that shall include:

29 (i) A true, complete, and accurate paper version of all pages of the
30 will including the original signatures or electronic signatures of the testator and all
31 witnesses;

1 (ii) A signed original paper certification by the supervising attorney
2 stating the date that the supervising attorney observed the testator and witnesses sign the
3 will and that the supervising attorney took reasonable steps to verify:

4 1. That the certified will includes a true, complete, and
5 accurate paper version of all pages of the will;

6 2. That the signatures contained in the certified will are the
7 original signatures of each party signing the same paper will, or any counterpart thereof,
8 and electronic signatures of each party signing the same electronic will, or any counterpart
9 thereof;

10 3. That the testator and each of the witnesses signed the
11 same will or any counterpart thereof;

12 4. The identity of each witness and that each witness who
13 was not in the physical presence of the testator when the witness attested and signed the
14 will, or provided an electronic signature on the will, was a resident of the United States
15 and physically located in the United States at the time that the witness attested and signed
16 the will; and

17 5. The identity of the testator and that the testator was a
18 resident of, or was physically located in, the State at the time that the testator signed the
19 will; and

20 (iii) An acknowledgement of the testator and the affidavits of the
21 attesting witnesses before [a]:

22 1. A notary public, under seal, attached or annexed to the
23 will, in substantially the following form and content:

24 The State of Maryland.

25 County of _____.

26 Before me, the undersigned [authority/attorney] **NOTARY PUBLIC**, on this day personally
27 appeared _____, _____, and _____, known to me to be the testator
28 and the witnesses, respectively, whose names are signed to the attached or foregoing
29 instrument and, all of these persons being by me duly sworn, _____, the testator,
30 declared to me and to the witnesses in my physical or electronic presence that the said
31 instrument is the testator's will, that the testator is of sound mind, and that the testator
32 had willingly signed or willingly directed another to sign the will under no constraint or
33 undue influence, and executed it in the physical or [remote] **ELECTRONIC** presence of the
34 witnesses as a free and voluntary act for the purposes therein expressed, and that the
35 witnesses, in the physical or electronic presence and at the request of the testator, signed
36 the will as witnesses, and that to the best of the witnesses' knowledge the testator was at
37 least 18 years old, of sound mind, and under no constraint or undue influence.

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:

1 (1) At the time the testator and witnesses sign the will, the testator and all
2 witnesses shall be in the physical presence or electronic presence of one another;

3 (2) The requirements under subsection (c)(2) through (4) of this section
4 shall be satisfied; and

5 (3) The testator shall create a certified will that shall include:

6 (i) A true, complete, and accurate paper version of all pages of the
7 will including the original signatures or electronic signatures of the testator and all
8 witnesses; and

9 (ii) An original paper certification signed and acknowledged by the
10 testator in the physical presence or electronic presence of a notary public, who may not be
11 one of the witnesses, stating:

12 1. The date that the testator and witnesses signed the will;
13 and

14 2. That the testator took reasonable steps to verify the same
15 facts and information required under subsection (c)(5)(ii) of this section.

16 (e) (1) Once the supervising attorney or testator creates a certified will as
17 provided in subsection (c) or (d) of this section, the certified will shall be deemed to be the
18 original will of the testator for all purposes under this article.

19 (2) The date of execution for a certified will described under paragraph (1)
20 of this subsection shall be the date of execution stated in the certified will.

21 (f) A will executed in conformance with the provisions of Executive Order
22 20.04.10.01, authorizing remote witnessing and electronic signing of certain documents,
23 shall be deemed to have been signed and witnessed in conformity with this section if the
24 will was signed and witnessed during the time that the executive order was in effect.

25 Article – State Government

26 18–214.

27 (a) [Except for a notarial act being performed with respect to a will, as defined in
28 § 1–101 of the Estates and Trusts Article, or a trust instrument, as defined in § 14.5–103
29 of the Estates and Trusts Article, a] A notary public located in this State may perform a
30 notarial act using communication technology for a remotely located individual if:

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 (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 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
28 measure, is necessary for the immediate preservation of the public health or safety, has
29 been passed by a ye and nay vote supported by three–fifths of all the members elected to
30 each of the two Houses of the General Assembly, and shall take effect from the date it is
31 enacted.