

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 317

(Senators West and Waldstreicher)

Judicial Proceedings

Health and Government Operations

State Government – Notarial Acts – Fees and Use of Communication Technology

This bill (1) increases the maximum fees for an original notarial act and performance of a remote notarial act; (2) repeals an exception to remote notarization provisions that applies to wills and trust instruments; (3) clarifies the application of specified requirements for credential analysis and identity proofing as they pertain to remote notarial acts; (4) establishes requirements and procedures for remote notarial acts involving a tangible record; (5) specifies procedures by which a notary public may administer an oath or affirmation to a remotely located individual; (6) authorizes the Secretary of State (SOS) to adopt regulations prescribing the methods for reasonable confirmation of a tangible record; and (7) makes clarifying changes to communication technology requirements applicable to remote notarizations. Finally, the bill specifies that the notarization of any document under the requirements of specified executive orders authorizing remote notarizations must be deemed valid if the notarization occurred during the time that the orders were in effect. **The bill takes effect June 1, 2022.**

Fiscal Summary

State Effect: SOS can adopt regulations as necessary and notify notaries of the bill's changes with existing budgeted resources. Revenues are not directly affected.

Local Effect: The bill does not directly affect local government finances or operations.

Small Business Effect: Potential meaningful for small businesses that provide notary services, as discussed below.

Analysis

Bill Summary:

Fees

The bill increases the maximum fee that SOS may establish for an original notarial act from \$4 to \$25. In addition, the bill increases the maximum fee that a notary public or person acting on behalf of a notary public may charge for the performance of a remote notarial act, subject to regulation by SOS, from \$4 to \$50.

Remote Notarization Involving Tangible Records

A notary public located in the State may use communication technology to take an acknowledgement of a signature on a tangible record that is physically present before the notary if the record is displayed to and identified by the remotely located individual during the audio-visual recording.

For the performance of a notarial act regarding a tangible record not physically present before the notary public, the requirement to reasonably confirm the record may be satisfied if:

- the remotely located individual (1) signs, during the audio-visual recording, the tangible record and a specified declaration that is part of or securely attached to the record and (2) sends the tangible record and declaration to the notary within three business days after the performance of the notarial act; and
- the notary (1) records the individual signing the record and declaration in the audio-visual recording and (2) after receipt of the tangible record and declaration from the individual, executes a certificate of notarial act that includes a specified statement.

A notarial act performed in accordance with the above procedures (1) fulfills the notary public's obligation to reasonably confirm the record and (2) is effective on the date the remotely located individual signed the declaration. However, the above procedures do not preclude the use of another procedure to reasonably confirm a tangible record.

Administering of Oaths and Affirmations to Remotely Located Individuals

The bill specifies that a notary public located in the State may use communication technology to administer an oath or affirmation to a remotely located individual if, except as otherwise provided by State law, the notary public (1) identifies the individual;

(2) creates an audio-visual recording of the individual taking the oath or affirmation; and
(3) retains the audio-visual recording.

Current Law:

Fees

SOS is responsible for adopting regulations to establish fees, not to exceed \$4, for an original notarial act. The Budget Reconciliation and Financing Act of 2013 (Chapter 425) increased the maximum fee SOS may establish for an original notarial act from \$2 to \$4. Under current SOS regulations, a notary public may charge a fee of up to \$4 for the performance of an original notarial act or remote notarial act.

For the performance of a remote notarial act, a notary public or person acting on behalf of a notary public may charge a fee of up to \$4. (*Under the bill*, the maximum fee for the performance of a remote notarial act is subject to regulations adopted by SOS.)

In addition, a notary public may charge the prevailing rate for mileage established by the Internal Revenue Service for business travel per mile and a fee of up to \$5 as compensation for travel required for the performance of a notarial act.

Remote Notarizations

Chapter 407 of 2019, which took effect October 1, 2020, authorized a notary public located in the State to perform a notarial act using communication technology for a remotely located individual; however, Chapter 407 did not authorize remote notarization with respect to wills and trust instruments. When performing a remote notarization, a notary public may identify a remotely located individual (1) by personal knowledge; (2) on oath or affirmation from a credible witness, as specified; or (3) by remote presentation of satisfactory evidence of identification, credential analysis of the identification credential, and identity proofing of the individual. Identity proofing and credential analysis must be performed by a reputable third party in accordance with specified requirements as set forth under Section 18-223 of the State Government Article. (The bill clarifies that these requirements for identity proofing and credential analysis apply only when a notary public identifies a remotely located individual by remote presentation of identification.)

Chapter 407 specifies other various requirements that apply to the performance of a remote notarial act. Among these, a notary public must be reasonably able to confirm that the record before the notary public is the same record on which the remotely located individual made a statement or on which the individual executed a signature. In addition, a notary public must create an audio-visual recording of the performance of the notarial act and retain the recording, as specified. Communication technology used by a notary public

to perform remote notarial acts must provide reasonable security measures to prevent unauthorized access to (1) the live transmission of the audio-visual feeds; (2) the methods used to perform credential analysis and identity proofing; and (3) the electronic record that is the subject of the notarial act. A notary public must attach or logically associate the notary public's electronic signature and official stamp to an electronic record by use of a digital certificate in compliance with specified standards (the bill specifies that requirements relating to digital certificates apply *if the notarial act is regarding an electronic record*).

Temporary Authorization for Remote Notarization during COVID-19 Emergency

On March 30, 2020, prior to the effective date of Chapter 407, the Governor issued [Executive Order 20.03.30.04](#) authorizing remote notarizations for the duration of the COVID-19 state of emergency and catastrophic health emergency. The order was subsequently amended by [Executive Order 20.09.29.01](#) (which took effect October 1, 2020, concurrent with the effective date of Chapter 407) specifically authorizing notaries public in the State to perform remote notarial acts with respect to wills and trust instruments for the duration of the emergency (and thereby suspending the provisions of Chapter 407 that preclude remote notarization of wills and trust instruments). Under the bill, a notarial act performed in accordance with either of these orders is deemed valid if the notarization occurred while the order was in effect.

Electronic Wills and Remote Witnessing

Chapter 686 of 2021, which applies retroactively to any will or power of attorney (POA) executed on or after March 10, 2020, authorizes the electronic execution and remote witnessing of wills and POAs in accordance with specified requirements and procedures and provides for remote notarization of wills and POAs. (In conformance with the changes enacted under Chapter 686, the bill repeals language that excludes wills from remote notarization provisions under State Government Article § 18-214.) The Act specifies that a will or POA executed in conformance with [Executive Order 20.04.10.01](#), which authorized remote witnessing and electronic signing of wills and POAs during the COVID-19 state of emergency, must be deemed to be in conformity with the Act's provisions if the will or POA was signed and witnessed during the time that the executive order was in effect.

Chapter 686 further specifies that the notarization of a POA in conformance with Executive Order 20.03.30.04 (Authorizing Remote Notarizations) must be deemed to have been signed and witnessed in conformity with the Act's provisions if the POA was signed and witnessed during the time that the executive order was in effect, and the notary public acting under the order may have served as one of the witnesses.

Small Business Effect: The bill significantly increases, from \$4 to \$25, the maximum fee SOS may establish by regulation for an original notarial act. In addition, the bill authorizes SOS to establish a fee of up to \$50 for performance of a remote notarial act. (Under current law, a fee for performance of a remote notarial act may not exceed \$4.) Small businesses that provide notary services benefit to the extent that SOS adopts regulations authorizing notaries public to charge higher fees for original notarial acts and remote notarial acts. Consequently, small businesses that obtain notary services may be subject to increased fees for original notarial acts. According to SOS, there are approximately 90,000 commissioned notaries in the State.

Additional Information

Prior Introductions: SB 735 of 2021, a bill with similar provisions as amended, passed the Senate and was referred to the House Health and Government Operations Committee, but no further action was taken. Its cross file, HB 1265, received a hearing in the House Health and Government Operations Committee, but no further action was taken.

Designated Cross File: HB 663 (Delegate Kaiser, *et al.*) - Health and Government Operations.

Information Source(s): Department of Information Technology; Secretary of State; Judiciary (Administrative Office of the Courts); Register of Wills; Department of Legislative Services

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