

2021-03-09 SB 735 (Support).pdf

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Position: FAV

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March 9, 2021

TO: The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee

FROM: Hannibal G. Williams II Kemerer
Chief Counsel for Legislative Affairs, Office of the Attorney General

RE: SB0735 – State Government – Notarial Acts – Remote Notarizations – **Letter of Support**

The Office of the Attorney General urges the Judicial Proceedings Committee to favorably report Senate Bill 735, Senator West's commons-sense legislation to allow for the remote notarial witnessing of wills and other legal documents.

The Attorney General's COVID-19 Access to Justice Task Force concluded in one of its recommendations (No. 24) for legislative action that we should make remote notarial services permanent beyond the current pandemic to best serve all Marylanders.¹ Indeed, the Task Force recommended that the General Assembly "[m]ake permanent the Governor's COVID-19 Executive Orders that allow for remote witnessing and notarizing certain life planning documents during the state of emergency."²

This legislation is designed to both realize that recommendation *and* to ratify, as lawful, any "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"³ Both provisions should prove beneficial to all Marylanders in need of notarial services.

In conclusion, the Office of Attorney General urges a favorable report on SB 735.

cc: Judicial Proceedings Committee Members

¹ See MD. ATT'Y GEN. BRIAN E. FROSH'S COVID-19 ACCESS TO JUST. TASK FORCE, CONFRONTING THE COVID-19 ACCESS TO JUSTICE CRISIS 33 (Jan. 2021), https://www.marylandattorneygeneral.gov/A2JC%20Documents1/AG_Covid_A2J_TF_Report.pdf.

² *Id.*

³ S.B. 735 at 5:22–27, 2021 Leg., 422d Sess. (Md. 2021).

SB735 - Written Testimony.pdf

Uploaded by: Muff, Michaela

Position: FWA

To: Members of House Judiciary Committee
From: MSBA Estate & Trust Law Section
Date: March 5, 2021
Subject: **HB 1265** – State Government – Notarial Acts – Remote Notarizations
Position: **Favorable with Amendment**

The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **supports** House Bill 1265 – **State Government – Notarial Acts – Remote Notarizations** – with amendment. **House Bill 1265** clarifies the requirements associated with identifying the person who is the subject of the notarial act and develops the procedure for a remote notarization of a tangible record, a "remote ink notarization" or "RIN."

Description of Current Law

At the time the COVID-19 shutdown began in March 2020, Title 18 of the State Government Article of the Maryland Code did not permit remote notarizations. Acting quickly to reduce in-person meetings, Governor Hogan issued Order of the Governor Number 20-03-30-04 which permitted remote notarizations using video conferencing technology (the "Emergency Order"). Practitioners in the Estate and Trust Law Section performed notarial acts under the Emergency Order primarily in two ways:

- By signing counterparts—the remotely located individual (referred to herein as the "individual") and the notary would have duplicate copies of the tangible record and would each sign their copy. The original signatures would then be compiled by the attorney.
- By transmitting the signed record by fax, mail, or email to the notary who would then perform the notarial act.

On October 1, 2020, in the middle of the pandemic, an amendment to Title 18 that had been passed during the 2019 Session became effective. That amendment, the Revised Uniform Law on Notarial Acts ("RULONA"), provided a permanent structure for remote notarizations but specifically excluded wills and trusts from its remote notarization provisions. Governor Hogan passed a second emergency order, Order of the Governor Number 20-09-29-01, which suspended

RULONA's exclusion of wills and trusts so that those documents could be notarized remotely under the terms of RULONA while the state of emergency continued.

There is a substantial difference between how remote notarizations are performed under the Emergency Order and under the terms of RULONA. RULONA, as interpreted by the Secretary of State's binding guidance, does not permit remote notarizations of tangible records. Instead, a remote notarization under RULONA must be done electronically through one of the 11 vendors approved by the Secretary of State. These remote electronic notarizations are known as "remote online notarizations" or "RONs."

RULONA also put in place a highly technical method of confirming an individual's identify when the notary is unable to identify them by personal knowledge or the testimony of a credible witness. This procedure is known as identity proofing and credential analysis.

Problem with the Current Law

There are three ways a notary may identify a person appearing before him or her: personal knowledge, testimony of a credible witness, or presentation of identification. These methods of identification are not specific to remote notarizations, they have been the generally accepted methods of identification in Maryland and other jurisdictions for years. Because it is inherently difficult to examine identification over a video conference, RULONA established the identify proofing and credential analysis process so that an individual's identity could be established through electronic means. Since the identify proofing and credential analysis process was created to address the unique issues present when a notary must identify an otherwise unknown individual over a video conference, it only applies when a notary cannot identify an individual by personal knowledge or testimony of a credible witness.

Even though Section 18-214(a)(1) of the State Government Article states that the identify proofing and credential analysis process is only necessary when the notary identifies an individual through the presentation of identification and *not* by personal knowledge or the testimony of a credible witness, the section setting out the procedures for identity proofing and credential analysis, Section 18-223, can be interpreted to apply to all remote notarizations. This application of identify proofing and credential analysis to every remote notarization would be a departure from the traditional means of identifying an individual and is not consistent with the requirements articulated in Section 18-214(a)(1). This lack of clarity leaves notaries uncertain about the proper procedure for identifying an individual during a remote notarization.

RULONA poses another issue in that it was drafted with RONs in mind, not remote notarizations of a tangible records, or RINs. While acting under the Emergency Order, the members of the Estate and Trust Law Section had become accustomed to using RINs. RINs worked especially well for smaller firms that cannot afford the annual and transaction fees associated with RON vendors (for a summary of these fees, see Appendix attached) and for clients who are not tech-literate.

How the Legislation Solves the Problem

HB 1265 clarifies that the identity proofing and credential analysis procedure is only required when a notary identifies an individual through the presentation of identification, but that it is not necessary when the notary identifies the individual by personal knowledge or testimony of a credible witness.

HB 1265 permanently removes the exclusion of wills and trusts from RULONA's remote notary provisions.

The amendment to HB 1265 also adds Section 18-214.1 to Title 18 to allow for the remote notarization of a tangible record, or RINs. Similar to the Emergency Order, Section 18-214.1 permits a notary to perform a notarial act remotely on a tangible record. There are two acceptable methods to perform a RIN under 18-214.1, both require the notary and the individual to participate in an audio-video session. A notary may notarize the tangible record that the individual has signed and then sent to the notary, or a notary may notarize a counterpart of the tangible record. For either situation, the individual must complete a declaration stating that the tangible record is the same, whether transmitted or in counterpart, that the notary notarized. This notarial act is still subject to the requirements of Section 18-214(a)(2) that the notary be "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."

In addition, the amendment to HB 1265 revises Section 18-107 to permit the Secretary of State to adopt regulations increasing the fees that can be charged for a notarial act from \$4 to \$25 for an original notarial act and from \$4 for \$50 for a notarial act performed under Section 18-214. As reflected in the Appendix, almost all remote notarization platform vendors charge a fee per transaction that exceeds the current amount a notary can recoup from the individual under Section 18-107. These out-of-pocket costs per transaction plus the annual fees place a financial burden on many solo and small firms. Allowing the Secretary of State to adopt regulations increasing the fee will help alleviate this burden.

Finally, at the request of various stakeholders who see an urgent need for this legislation, including members of the Estate and Trust Law Section, the amendment changes the effective date of this legislation, if passed, from October 1, 2021, to June 1, 2021.

Permitting remote notarizations of tangible records, or RINs, is not merely a matter of convenience, nor is it limited in scope to the COVID-19 pandemic. Many individuals, often due to limitations relating to their health or disability, are unable to leave their homes for the purpose of having a document notarized. Those same individuals frequently struggle with the more complex technology involved in RINs. As a result, these individuals effectively do not have access to a notary. This raises access to justice concerns that would be resolved by the passing of HB 1265.



For the reasons stated above, the MSBA **supports HB 1265 with amendment and urges a favorable committee report.**

For Further Information, Please Contact:

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Vendor	Annual Platform Fee	Transaction Fee	Additional Cost	Notes
Digital Delivery, Inc.	Only available for real estate transactions.			
DocuSign	Pricing not published.			
DocVerify	\$780	Credit-based System	\$125 activation, \$100 for digital certificate and seal, \$2.25 for each ID	
eNotaryLog, LLC	\$2,400	\$38 per transaction	\$20 notary set up fee	
Nexsys Technologies LLC	Developed for real estate closing. Price unknown because, due to "overwhelming interest" they are unable to respond to phone/online inquiries.			
Notarize Inc.	\$1,188	\$25		
NotaryCam		\$25 per notarization		No published option for a business account. Individual notaries are on the platform and are available to notarize.
OnlineNotary Inc.		\$25 per notarization		No published option for a business account. Individual notaries are on the platform and are available to notarize.
Pavaso	\$50		\$99 registration fee	No published option for a business account. Individual notaries are on the platform and are available to notarize.
SIGNiX	\$250	\$10 per transaction, \$5 for additional notary seals in that transaction		
Simply Sign LLC	Pricing not published.			

SB 735 Testimony Support with Amendments [3.5.21]

Uploaded by: O'Connell, William

Position: FWA



Real Property Section

To: Members of the Senate Judicial Proceedings Committee

From: William A. O'Connell, Chair, Legislative Committee, Real Property Section

Date: March 5, 2021

Subject: **SB 735** – State Government - Notarial Acts - Remote Notarizations

Position: **Support with Amendments**

The Maryland State Bar Association (MSBA) Real Property Section **supports, with amendments attached hereto, Senate Bill 735** State Government - Notarial Acts - Remote Notarizations. The bill seeks to clarify some provisions in existing law and seeks to allow paper remote online notarizations. Existing law allows for remote online notarization with the record resulting in an electronic document. This bill will allow the resulting document to be in a tangible (i.e. paper) form but still require the protections afforded in connection with execution of documents remotely before a notary.

The attached amendment of Government Code §18-107 will allow much needed relief for Maryland notaries so they may complete online notarizations without having to come out of pocket each time they complete one. The current fee allowed to be charged in connection with a remote online notarization is \$4. This allowable charge is set so low that no notary can do it without losing money each time. As such, Maryland consumers are forced to use out of state notaries to execute their documents because they can use an out of state notary as easily as an in-state notary. But the out of state notary is not subject to Maryland law or regulations promulgated by the Secretary of State. That is not good for Maryland consumers.

The proposed cap on the fee is set at \$50 but it is subject to regulations adopted by the Secretary of State. In other words, the Secretary of State will set the fee after consultation with notary stakeholders and conducting their own independent study to determine what a reasonable fee would be for a notary to charge. And it will allow the fee to be set without having to amend the statute every time the Secretary of State determines the fee should be increased. The same concept applies to in person notarial charges, but that cap is proposed to be \$25.

For these reasons, the MSBA Real Property Section **supports with amendments SB 735** and asks for a **favorable report**. Thank you for your consideration. Please do not hesitate to contact me at (443) 741-4536 or waoconnell@firstam.com.

[Md. STATE GOVERNMENT Code Ann. § 18-107](#)

Statutes current through legislation effective January 1, 2021

MD - Annotated Code of Maryland > STATE GOVERNMENT > TITLE 18. NOTARIAL ACTS > SUBTITLE 1. NOTARIES PUBLIC.

§ 18-107. Notary fees and travel expenses

(a) Limits on fees. --

(1) The Secretary of State shall adopt regulations to establish fees, not to exceed \$ 25 for an original notarial act, and an appropriate lesser amount for the repetition of that original notarial act or to make a copy of the matter addressed by that original notarial act.

(2) A notary public or person acting on behalf of a notary public may charge a fee, not to exceed \$ 50, for the performance of a notarial act under § 18-214 of this title, SUBJECT TO REGULATIONS ADOPTED BY THE SECRETARY OF STATE.

(b) Travel expenses and fees. --

(1) Subject to paragraph (2) of this subsection, a notary public may charge the prevailing rate for mileage established by the Internal Revenue Service for business travel per mile and a fee not to exceed \$ 5, as compensation for travel required for the performance of a notarial act.

(2)

(i) The Secretary of State may set by regulation a different amount that a notary public may charge under paragraph (1) of this subsection.

(ii) An amount set under subparagraph (i) of this paragraph may exceed the amount established under paragraph (1) of this subsection.

West_SB735_FWA.pdf

Uploaded by: West, Christopher

Position: FWA

CHRIS WEST
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Judicial Proceedings Committee

Vice Chair, Baltimore County
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March 9, 2021

Senate Judicial Proceedings Committee
The Honorable William C. Smith
2 East Miller Senate Building
Annapolis, Maryland 21401-1991

RE: SB 735 – State Government – Notarial Acts – Remote Notarizations

Dear Chairman Smith and Members of the Committee:

This is a very technical bill but a very important bill. Let me explain why.

Several years ago, the General Assembly passed a comprehensive bill authorizing the remote notarization of legal documents, so long as various procedures were strictly followed. At the time, the Estates and Trusts Section of the Maryland State Bar Association was concerned that the provisions of that bill did not appropriately deal with wills and trust instruments, so those documents were excluded from coverage under the bill.

Last winter, when the pandemic hit and the State essentially shut down, many elderly citizens and others as well realized that the time had come when they should execute their wills. The problem was that typically a will is executed in a small conference room in an attorney's office with the testator surrounded by the attorney, two witnesses, a Notary Public and frequently one or more other members of the family of the testator. With COVID running rampant, however, the prospect of a number of strangers gathering in a small room was unacceptable.

The leadership of the Estates and Trusts Section of the Maryland State Bar Association therefore met with the Governor's legal counsel, Mike Pedone, and they drafted an Executive Order dated March 30, 2020 under the authority of the Governor's Emergency Declaration, which the Governor promptly signed, that overrode the existing law excluding wills and trust instruments from legal documents that could be notarized remotely in order to enable the notarizations of wills and other trust instruments to be effectuated remotely.

Pursuant to the Executive Order, many Maryland citizens have executed wills and other trust instruments that have been notarized remotely throughout the pandemic. The time will come, however, when the pandemic ends and the Governor's Emergency Declaration is rescinded. At that moment, all Executive Orders issued by the Governor under the authority of the Emergency Declaration will literally evanesce. As soon as the Executive Order dealing with the remote notarizations of wills and other trust instruments ceases to exist, since the Executive Order overrode the existing law excluding wills and other trust instruments from being remotely notarized, all of the wills and other trust instruments which were notarized remotely during the

pandemic in accordance with the Executive Order will be subject to attack on grounds that they were invalidly notarized.

That is why this bill is so important. It parallels the Governor's Executive Order authorizing wills and other trust instruments to be remotely notarized and thus extends the right to remotely notarize wills and other trust instruments into the future. But the bill explicitly is made retroactive to March 30, 2020 and thus will validate all wills executed during the pandemic pursuant to the terms of the Executive Order.

My witnesses will discuss the details of the bill, but let me just provide a brief overview. Under Senate Bill 735, wills and trust instruments may now be remotely notarized just like any other legal document. But the bill makes one modest change to the existing law that applies to all remote notarizations. The current law provides that the notary must either have personal knowledge of the identity of the remotely located individual **or** must obtain a verified oath or affirmation from a credible witness as to the identity of the remotely located individual **or** must obtain satisfactory evidence of the identity of the remotely located individual by remote presentation of an identification credential **and** credential analysis **and** identity proofing of the individual. Senate Bill 735 provides that the third of those alternatives is truly an optional alternative and that the Notary Public may choose to adhere to either of the first two alternatives and not choose to follow the third alternative..

I should add that Senate Bill 735 was drafted in its original form and thoroughly vetted by the members of the Estates and Trusts Section, to whom I now turn for more detailed information about the bill.

I hope the Committee will issue a favorable report on this bill.