

SENATE BILL 735

P1, P3

11r2850
CF HB 1265

By: **Senator West**

Introduced and read first time: February 5, 2021

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 27, 2021

CHAPTER _____

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; establishing certain procedures
6 for certain remote notarial acts; affirming the validity of the notarization of certain
7 documents in conformance with certain executive orders; and generally relating to
8 remote notarial acts.

9 BY repealing and reenacting, with amendments,
10 Article – State Government
11 Section 18–214(a) and (h) ~~and, 18–222, and 18–223~~
12 Annotated Code of Maryland
13 (2014 Replacement Volume and 2020 Supplement)

14 BY adding to
15 Article – State Government
16 Section 18–214.1
17 Annotated Code of Maryland
18 (2014 Replacement Volume and 2020 Supplement)

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

21 **Article – State Government**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 18–214.

2 (a) [Except for a notarial act being performed with respect to a will, as defined in
3 § 1–101 of the Estates and Trusts Article, or a trust instrument, as defined in § 14.5–103
4 of the Estates and Trusts Article, a] **A** notary public located in this State may perform a
5 notarial act using communication technology for a remotely located individual if:

6 (1) the notary public:

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

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

13 (iii) has obtained satisfactory evidence of the identity of the remotely
14 located individual by:

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

17 2. credential analysis of the identification credential; and

18 3. identity proofing of the individual;

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

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

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

25 (i) the record:

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

29 2. involves property located in the territorial jurisdiction of
30 the United States or involves a transaction substantially connected with the United States;
31 and

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

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

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

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

13 **18-214.1.**

14 (A) **THE REQUIREMENTS IN § 18-214(A) OF THIS SUBTITLE FOR THE
15 PERFORMANCE OF A NOTARIAL ACT REGARDING A TANGIBLE RECORD WHEN THE
16 RECORD IS NOT PHYSICALLY PRESENT BEFORE THE NOTARY MAY BE SATISFIED BY:**

17 (1) **THE INDIVIDUAL SIGNING, IN ACCORDANCE WITH § 18-214(A)(3)
18 OF THIS SUBTITLE, AND SENDING TO THE NOTARY WITHIN 3 BUSINESS DAYS AFTER
19 THE PERFORMANCE OF THE NOTARIAL ACT THE FOLLOWING:**

20 (I) **THE TANGIBLE RECORD; AND**

21 (II) **A DECLARATION, SUBSTANTIALLY IN THE FOLLOWING
22 FORM, WHICH IS PART OF OR SECURELY ATTACHED TO THE RECORD, INCLUDING
23 THE FOLLOWING STATEMENT OR WORDS OF SIMILAR IMPORT: “I DECLARE UNDER
24 PENALTY OF PERJURY UNDER THE LAW OF THIS STATE THAT THE RECORD TO
25 WHICH THIS DECLARATION IS ATTACHED IS THE SAME RECORD ON WHICH (NAME OF
26 NOTARY PUBLIC), A NOTARY PUBLIC, PERFORMED A NOTARIAL ACT AND BEFORE
27 WHOM I APPEARED BY MEANS OF COMMUNICATION TECHNOLOGY ON (DATE).**

28 **(DATE)**

29 **(PRINTED NAME)**

30 **(SIGNATURE)”; AND**

31 (2) **THE NOTARY:**

1 (I) CAPTURING BY AUDIO-VISUAL RECORDING THE
2 INDIVIDUAL SIGNING THE TANGIBLE RECORD AND THE DECLARATION; AND

3 (II) COMPLETING THE CERTIFICATE OF NOTARIAL ACT
4 REQUIRED BY § 18-215 OF THIS SUBTITLE, WHICH IS PART OF OR SECURELY
5 ATTACHED TO THE TANGIBLE RECORD, INCLUDING THE FOLLOWING STATEMENT OR
6 WORDS OF SIMILAR IMPORT: “I (NAME OF NOTARY PUBLIC) WITNESSED, BY MEANS
7 OF COMMUNICATION TECHNOLOGY, (NAME OF REMOTELY LOCATED INDIVIDUAL)
8 SIGN THE ATTACHED DECLARATION DURING THE PERFORMANCE OF THE NOTARIAL
9 ACT.”.

10 (B) THE REQUIREMENTS IN § 18-214(A) OF THIS SUBTITLE FOR THE
11 PERFORMANCE OF A NOTARIAL ACT REGARDING A TANGIBLE RECORD IN
12 COUNTERPART MAY BE SATISFIED BY:

13 (1) THE INDIVIDUAL SIGNING, DURING THE AUDIO-VISUAL
14 RECORDING IN ACCORDANCE WITH § 18-214(A)(3) OF THIS SUBTITLE:

15 (I) A COUNTERPART OF THE TANGIBLE RECORD; AND

16 (II) A COUNTERPART OF A DECLARATION, SUBSTANTIALLY IN
17 THE FOLLOWING FORM, WHICH IS PART OF OR SECURELY ATTACHED TO THE
18 TANGIBLE RECORD, INCLUDING THE FOLLOWING STATEMENT OR WORDS OF
19 SIMILAR IMPORT: “I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAW OF
20 THIS STATE THAT THE RECORD TO WHICH THIS DECLARATION IS ATTACHED IS A
21 COUNTERPART TO THE SAME RECORD ON WHICH (NAME OF NOTARY PUBLIC), A
22 NOTARY PUBLIC, PERFORMED A NOTARIAL ACT AND BEFORE WHOM I APPEARED BY
23 MEANS OF COMMUNICATION TECHNOLOGY ON (DATE).

24 (DATE)

25 (PRINTED NAME)

26 (SIGNATURE)”; AND

27 (2) (I) THE NOTARY RECORDING THE NOTARIAL ACT IN
28 ACCORDANCE WITH § 18-214(A)(3) OF THIS SUBTITLE; AND

29 (II) COMPLETING THE CERTIFICATE OF NOTARIAL ACT
30 REQUIRED UNDER § 18-215 OF THIS SUBTITLE, WHICH IS PART OF OR SECURELY
31 ATTACHED TO A COUNTERPART OF THE RECORD EXECUTED AS REQUIRED BY ITEM
32 (1) OF THIS SUBSECTION, INCLUDING THE FOLLOWING STATEMENT OR WORDS OF
33 SIMILAR IMPORT: “I (NAME OF NOTARY PUBLIC) WITNESSED, BY MEANS OF
34 COMMUNICATION TECHNOLOGY, (NAME OF REMOTELY LOCATED INDIVIDUAL) SIGN

1 A COUNTERPART OF THE ATTACHED RECORD AND A COUNTERPART OF THE
2 ATTACHED DECLARATION DURING THE PERFORMANCE OF THE NOTARIAL ACT.”.

3 (C) A DECLARATION SIGNED BY A REMOTELY LOCATED INDIVIDUAL AND
4 ATTACHED TO A RECORD UNDER SUBSECTION (A)(1) OF THIS SECTION SATISFIES A
5 NOTARY PUBLIC’S OBLIGATIONS UNDER § 18-214(A)(2) OF THIS SUBTITLE.

6 (D) UPON PERFORMANCE OF THE REQUIREMENTS OF SUBSECTION (A) OF
7 THIS SECTION, THE NOTARIAL ACT SHALL BE DEEMED TO COMPLY WITH §
8 18-215(A)(2)(I) OF THIS SUBTITLE AND BE EFFECTIVE ON THE DATE ON WHICH THE
9 DECLARATION IS SIGNED.

10 (E) IF A REMOTELY LOCATED INDIVIDUAL IS PHYSICALLY UNABLE TO SIGN
11 A DECLARATION, THE INDIVIDUAL MAY DIRECT ANOTHER INDIVIDUAL TO SIGN THE
12 INDIVIDUAL’S NAME ON THE DECLARATION, WHICH SHALL BE REVISED BY
13 INSERTING THE FOLLOWING STATEMENT OR WORDS OF SIMILAR IMPORT:
14 “SIGNATURE AFFIXED BY (NAME OF OTHER INDIVIDUAL) AT THE DIRECTION OF
15 (NAME OF INDIVIDUAL).”.

16 (F) A NOTARY PUBLIC IN THE STATE MAY, BY MEANS OF COMMUNICATION
17 TECHNOLOGY UNDER § 18-214(A)(1) OF THIS SUBTITLE, TAKE AN
18 ACKNOWLEDGMENT OF A SIGNATURE ON A TANGIBLE RECORD PREVIOUSLY
19 DELIVERED TO THE NOTARY.

20 (G) A NOTARY PUBLIC IN THE STATE MAY ADMINISTER AN OATH TO A
21 REMOTELY LOCATED INDIVIDUAL USING COMMUNICATION TECHNOLOGY BY
22 IDENTIFYING THE INDIVIDUAL UNDER § 18-214(A)(1) OF THIS SUBTITLE, CREATING
23 AN AUDIO-VISUAL RECORDING OF THE INDIVIDUAL TAKING THE OATH UNDER §
24 18-214(A)(3) OF THIS SUBTITLE, AND PRESERVING A COPY OF THE AUDIO-VISUAL
25 RECORDING UNDER § 18-214(D) OF THIS SUBTITLE.

26 18-222.

27 (a) (1) The Secretary of State may adopt regulations to implement this
28 subtitle.

29 (2) Regulations adopted under paragraph (1) of this subsection regarding
30 the performance of notarial acts with respect to electronic records may not require or accord
31 greater legal status or effect to the implementation or application of a specific technology
32 or technical specification.

33 (3) Regulations adopted under paragraph (1) of this subsection regarding
34 performance of a notarial act may:

1 (i) prescribe the means of performing a notarial act involving a
2 remotely located individual using communication technology;

3 (II) PRESCRIBE THE METHODS FOR REASONABLE
4 CONFIRMATION OF A TANGIBLE RECORD BY A NOTARY PUBLIC;

5 [(ii)] (III) establish standards for communication technology,
6 credential analysis, and identity proofing;

7 [(iii)] (IV) establish requirements or procedures to approve providers
8 of communication technology and the processes of credential analysis and identity proofing;
9 and

10 [(iv)] (V) establish standards and a period of retention of an
11 audio–visual recording created under § 18–214(a)(3) of this subtitle.

12 (4) Regulations adopted under paragraph (1) of this subsection may:

13 (i) prescribe the manner of performing notarial acts regarding
14 tangible and electronic records;

15 (ii) include provisions to ensure that any change to or tampering
16 with a record bearing a certificate of a notarial act is self–evident;

17 (iii) include provisions to ensure integrity in the creation,
18 transmittal, storage, or authentication of electronic records or signatures;

19 (iv) if the Governor has delegated authority under § 18–104(b) of this
20 title, prescribe the process of granting, renewing, conditioning, denying, suspending, or
21 revoking a notary public commission and assuring the trustworthiness of an individual
22 holding a commission as a notary public; and

23 (v) include provisions to prevent fraud or mistake in the
24 performance of notarial acts.

25 (b) In adopting regulations under subsection (a) of this section regarding notarial
26 acts performed with respect to electronic records or for a remotely located individual, the
27 Secretary of State shall consider, so far as is consistent with this subtitle:

28 (1) the most recent standards regarding electronic records promulgated by
29 national bodies, such as the National Association of Secretaries of State;

30 (2) standards, practices, and customs of other jurisdictions that
31 substantially enact this subtitle; and

32 (3) the views of government officials and entities and other interested
33 persons.

1 18–223.

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

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

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

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

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

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

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

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

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

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

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

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

31 (d) **[Credential] WHEN NECESSARY UNDER § 18–214(A)(1)(III) OF THIS**
32 **SUBTITLE, CREDENTIAL** analysis must use public or private data sources to confirm the

1 validity of an identification credential presented by a remotely located individual and shall,
2 at a minimum:

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

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

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

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

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

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

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

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

20 (i) the live transmission of the audio–visual feeds;

21 (ii) the methods used to perform credential analysis and identity
22 proofing, **IF CREDENTIAL ANALYSIS AND IDENTITY PROOFING ARE NECESSARY**
23 **UNDER § 18–214(A)(1)(III) OF THIS SUBTITLE**; and

24 (iii) the electronic record that is the subject of the notarial act, **IF**
25 **THERE IS AN ELECTRONIC RECORD INSTEAD OF A TANGIBLE RECORD**.

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) ~~**IF THE NOTARIAL ACT IS REGARDING AN ELECTRONIC RECORD,**~~
30 **A** notary public shall attach or logically associate the notary public's electronic signature
31 and official stamp to an electronic record by use of a digital certificate complying with the
32 X.509 standard adopted by the International Telecommunication Union or a similar
33 industry–standard technology.

1 **(2) IF THE NOTARIAL ACT IS REGARDING A TANGIBLE RECORD, §**
2 **18-215(B)(1) OF THIS SUBTITLE APPLIES.**

3 ~~(2)~~ **(3)** A notary public may not perform a notarial act with respect to an
4 electronic record if the digital certificate:

5 (i) has expired;

6 (ii) has been revoked or terminated by the issuing or registering
7 authority;

8 (iii) is invalid; or

9 (iv) is incapable of authentication.

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

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

16 (ii) The contract shall:

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

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

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

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

30 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 ~~October~~ June 1, 2021.