

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 253

(Senator Hester)

Judicial Proceedings

Judiciary

Estates and Trusts - Registers of Wills - Electronic Filing and Signatures

This bill requires a register of wills to accept any document, except an original will, that is filed electronically through a system established by the register and in accordance with the Maryland Rules; however, the bill does not prohibit the filing of a document in paper form with a register. The bill also prohibits a register from refusing to accept any document based on the manner in which it was signed. For the purposes of the bill, “sign” means, with present intent to authenticate or adopt a record, to (1) execute or adopt a tangible symbol or (2) attach to or logically associate with the record an electronic symbol, sound, or process.

Fiscal Summary

State Effect: General fund revenues increase by a relatively minimal amount beginning in FY 2024. Expenditures are not affected.

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

Small Business Effect: Minimal.

Analysis

Current law:

Registers of Wills

In general, the registers of wills in each of the State’s 24 jurisdictions are responsible for the administration of estates by providing proper forms and direction, assisting, and

advising any person who requests assistance in the preparation of any form for administrative probate, admitting wills to probate and issuing letters of administration, auditing accounts, and maintaining accurate records of all estate matters. The registers also serve as clerks of the orphans' courts.

Prohibition Against Electronic Transmission

Maryland Rule 6-108(c) prohibits filing a paper with the register of wills by electronic transmission.

Registers' Custody of Wills and Other Papers

Pursuant to provisions of the Estates and Trusts Article of the Maryland Code, any will, probate, or any paper filed in the office of the register may not be delivered out of the office to any person. A register may comply with that requirement by retaining a permanent paper file of a probated will and a copy of any other file associated with an estate in paper, photographic, microprocessed, magnetic, mechanical, electronic, digital, or any other medium if the copy is maintained in a specified manner. On or after 180 days following the closing of an estate, a register may dispose of any file associated with the estate, other than the will, if a copy of the file is retained.

Electronic Signatures on Electronic or Remotely Witnessed Wills

In general, every will must be (1) in writing; (2) signed by the testator (person making the will), or by another person on behalf of the testator, in the testator's physical presence and by the testator's express direction; and (3) attested and signed by two or more credible witnesses in the physical presence of the testator or, provided certain requirements are satisfied, the electronic presence of the testator. Electronic signatures of the testator and witnesses may be used for an electronic will or remotely witnessed will (executed in situations where the testator and witnesses are not all in the physical presence of one another); however, a certified will must be created that is a true, complete, and accurate paper version of the electronic will or remotely witnessed will, which is deemed to be the original will of the testator.

State Fiscal Effect: General fund revenues increase by a relatively minimal amount beginning in fiscal 2024 due to reduction of registers' administrative costs associated with paper filings. Registers of wills' salaries and office expenses are paid from fees and inheritance tax revenues collected by the registers, with the remainder of the fees and inheritance tax revenues deposited into the general fund.

For illustrative purposes, the Howard County register estimates that the amount of administrative costs associated with paper filings is at least \$40,000 annually statewide.

The bill does not prohibit the filing of a document in paper form with a register, so the actual impact of electronic filing depends upon the number of current filers who switch from paper to electronic.

The registers do not participate in the Maryland Electronic Courts system of electronic filing and case management. Consequently, the registers are in the process of establishing an independent web-based system of electronic filing so that customers may submit documents online rather than by paper through mail or in person. The registers' electronic filing system is already budgeted. The bill allows for and facilitates the anticipated electronic filing of documents through the registers' new filing system.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 244 (Delegate Terrasa, *et al.*) - Judiciary.

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

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