

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1140 (Delegate Chisholm, *et al.*)
Health and Government Operations

Wills - Execution of Wills - Witnesses and Wills Executed Outside the State

This bill specifies that, for the purpose of serving as a witness to the signing of a will, a witness is not *in the presence* of the testator if the witness is in a different physical location than the testator, regardless of whether the testator can observe the witness through electronic audio-video or other technological means. The bill clarifies that a will executed outside the State is properly executed if it is executed in conformity with the law of the place where the testator is physically located when the testator signs the will. The bill also makes technical and clarifying changes.

Fiscal Summary

State Effect: The bill is not anticipated to affect State operations or finances.

Local Effect: The bill is not anticipated to affect local government operations or finances.

Small Business Effect: None.

Analysis

Current Law: Generally, every will must be (1) in writing; (2) signed by the testator, or by another person on behalf of the testator, in the testator's presence and by the testator's express direction; and (3) attested and signed by two or more credible witnesses in the presence of the testator.

A will entirely in the handwriting of a testator who is serving in the U.S. Armed Services is a valid holographic will if signed by the testator outside of the United States, the District of Columbia, or a territory of the United States, even if there are no attesting witnesses.

A holographic will is void one year after the discharge of the testator from the U.S. Armed Services, unless the testator has died prior to expiration of the year or does not then possess testamentary capacity.

A will executed outside of Maryland is properly executed if it is (1) in writing; (2) signed by the testator; and (3) executed in conformity with the writing, signature, and attestation requirements of Maryland, the law of the domicile of the testator, or the place where the will is executed.

Background: In early 2017, several state legislatures began considering bills on *electronic* wills. Arizona, Nevada, and Indiana are the only states that have laws on electronic wills, with the Arizona law becoming effective as of July 1, 2019. The Nevada law, as an example, authorizes “remote witnessing” of wills, by requiring a person to be deemed to be “in the presence of or appearing before another person” as long as the witness and the other person can “communicate with each other by means of audio-video communication.”

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Register of Wills; Nevada Revised Statutes; Texas Tech University School of Law; Department of Legislative Services

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mm/kdm

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