

Representative DJ Swearingen

House Bill 339 Sponsor Testimony

Chairman Hillyer, Vice-Chair Grendell, Ranking Member Galonski, and members of the House Civil Justice Committee, thank you for the opportunity to testify today on House Bill 339 which seeks to modernize and update the Ohio Revised Code as it pertains to executing estate planning documents.’

It is hard to comprehend how much has changed in just the past 25 years. We went from a world of landlines, beepers, fax machines and a little online bookstore called Amazon founded out of a garage.

Technology has had a significant impact on almost every aspect of our daily lives. The rate at which today’s devices, platforms, and services evolve can be dizzying. That can be particularly challenging as state laws struggle to keep pace with the changes. It is our charge as law makers to recognize when technology can provide major benefits to our constituents, so we can update and modernize our statutes accordingly.

Online technologies have provided greater access, more choices, increased efficiency, and reduced the costs of goods and services.

And there are many examples where laws and regulations had to be modernized to allow us to benefit from those online technologies.

- We are able to bank online, including opening an account, trading securities, applying for and receiving loans and lines of credit, and initiating wire transfers.
- We can now buy a new car completely online.
- We file our state and federal taxes online.
- We use telehealth for virtual healthcare visits.
- We use electronic prescriptions to get our medicine.
- We can update our voter registration address online.
- This body has recently passed legislation allowing for online sports betting and electronic bingo.
- Last General Assembly saw the passage of legislation that removed all doubt as to the enforceability of electronic signatures, records, and contracts that are secured through encrypted electronic ledgers such as Blockchain.
- We also now allow for online remote notarization of documents.

Online technology is playing a greater role than ever before, given that we have all had our lives upended by the COVID-19 crisis. Businesses, if they are able to even operate, and families have had to weather stay at home orders, social distancing guidelines, and burdensome new regulations.

This crisis has highlighted areas of our statutes where modernization is needed so that people can continue to manage their affairs in this new global environment. One such area is the process of executing estate planning documents. We are acutely aware of the difficulties the existing requirements create at this time. The pandemic has made it almost impossible to create or update these critically important documents without meeting face to face with a stranger as currently required by statute

This is especially burdensome for the elderly population, those with health conditions, those located in rural areas, or those in nursing homes where in-person visitation is prohibited.

Currently, Ohio law allows you to create estate planning documents, such as wills, electronically but does not allow you to execute those documents online. In Ohio, you are unable to have your will signed, witnessed and notarized online by utilizing video conference. You are required to print the documents and find two disinterested witnesses and a notary who you must meet with face to face.

The current process is difficult, burdensome, and presents unnecessary and antiquated barriers impeding Ohioans from executing estate plans, particularly those with lack of means, limited mobility, or those with lack of access to reliable transportation. It is also hardly ideal for those trying to comply with social distancing guidelines or wishing to minimize in person contact with strangers for health reasons during the pandemic. Ohioans are left with an impossible dilemma: risking their health by executing their estate plans in person or risking their families' futures by not executing an estate plan at all.

House Bill 339 would modernize and update the Ohio Revised Code as it pertains to executing estate planning documents (wills, trusts, powers of attorney etc.).

This legislation would allow Ohioans to sign, witness, and notarize wills and other estate planning documents entirely online via electronic and video documentation. The ultimate goal for this bill is to bring the estate planning process in line with the benefits of modern-day technology while maintaining and even enhancing the safeguards in place today.

Online execution of estate planning documents has been successfully implemented in states around the country, such as Nevada, Florida, Arizona, and Indiana, just to name a few. In these

states, people are able to meet with a licensed notary and witnesses via video conference so they can execute these important documents without needing to risk their health or their families' futures.

This bill does not seek to change or remove any of the safeguards currently in place for physical signing of estate planning documents. Just as it has been done in other states, the safeguards for estate planning documents would remain unchanged, and a document signed online would need to meet all the same standards as a document signed physically. For example, witness or sound mind requirements would apply to online execution just as they do with physical execution. We simply want to allow people to do the same physical signing ceremony online.

We utilize the internet for virtually all aspects of our lives. It's only logical for our legal system to become more tech friendly as technology advances and allows for greater capabilities.

Following the trail blazed by remote notarization, allowing estate planning documents to be executed online would provide Ohioans with greater access to the security and peace of mind provided by an estate plan.

Increases Security and Prevents Fraud

Online execution would reduce the likelihood of fraud, as the entire execution session could be recorded on video. If there is a dispute about what transpired during the execution of a document, the parties or the court can review the entire execution ceremony to see what actually happened.

Moreover, the signed documents could be stored on an encrypted cloud server so that they cannot get lost or destroyed. As is done in other states, the documents could be stored using tamper-proof technology so that they also cannot be altered by a third party after signing. This greatly reduces the potential for fraud, as bad actors would have a harder time destroying or altering unfavorable estate plans when stored digitally in this way.

Expands Access and Increasing Financial Literacy

According to a Gallup poll conducted in 2016 of adults 18 years or older in the US, 55% of respondents said they do not have a will that describes how they would like their property to be handled after their deaths.

Another study conducted in 2018 by Merrill Lynch showed that nearly half of adults 55 years or older do not have a will.

This is likely due to the high cost and burdensome requirements associated with creating an estate plan, which creates unnecessary barriers to entry. It is a shame that people may feel something as important as an estate plan is not within their reach or means.

Allowing for online execution would drastically lower the cost of creating an estate plan and remove unnecessary burdens such as accessibility hurdles for the elderly, disabled, or military men and women serving abroad.

Modernizes and Puts Ohio in a Leadership Position

With 70% of the nation's population already able to execute their estate plans online, it only makes sense that we provide Ohioans with the same capabilities. All Ohioans should have equal access to technology that allows them to create and execute documents which will safeguard their families' futures.

As current events have helped us understand, the ability to execute estate plans online can be incredibly important and beneficial to Ohioans.

Creating a will via electronic methods is not necessarily the best route for those with complicated estates, but for the majority who simply want to start planning their financial futures, this option removes the hurdles and roadblocks.

With today's technology, combined with the uncertainty of the ongoing public-health crisis, the timing for this legislation makes perfect sense.