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**Sponsor Testimony**  
Senate Bill 230  
Ohio Senate Judiciary Committee  
October 19, 2021

Chair Manning, Vice-Chair McColley, Ranking Member Thomas, and Members of the Senate Judiciary Committee, thank you for the opportunity to provide sponsor testimony on S.B. 230, which will modernize the Ohio Revised Code as it pertains to executing estate planning documents. Specifically, SB 230 authorizes the execution of the following by electronic means: wills, declarations or living wills, durable powers of attorney for health care and transfer on death designation affidavits- all in a safe and secure way.

We all understand the importance of estate planning. Estate plans, even simple ones, ease the stress on families while minimizing the cost and confusion born by those left behind. Without the clarity that an estate plan provides, assets can get tied up in “legal limbo” or “probate purgatory”. Unfortunately it is estimated that only 46% of adults in the United States have even a basic will<sup>1</sup> and even fewer have the other recommended legacy plan essentials such as a durable power of attorney, living will etc..

Both the process of notarizing documents and formalizing estate planning documents had been conducted the same way in Ohio for years - in person. Fortunately SB 263 of the 132<sup>nd</sup> GA (Which passed the Senate unanimously<sup>2</sup>) created the e-notary so you can now get a deed or mortgage notarized electronically. Unfortunately currently Ohioans still may not execute a will in Ohio electronically. SB230 will remedy that.

Support for electronic notarization, or “e-notary”, came in from far and wide. Then-Secretary of State Jon Husted supported SB263 of the 132<sup>nd</sup> GA, saying:

- “Innovations like these are what will ensure our state is more competitive in the 21st century. Businesses and financial institutions are increasingly using electronic means to conduct business, and this effort to modernize our operations will and better position Ohio to meet this growing demand”<sup>3</sup>

Similarly, the Ohio State Bar Association supported e-notary bill, saying:

- “The prospect of electronic notarization is a positive step forward for Ohio and its business community. With this increasingly digital world we’re excited that Ohio will become one of the nationwide leaders in this area.”<sup>4</sup>

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<sup>1</sup> <https://news.gallup.com/poll/351500/how-many-americans-have-will.aspx>

<sup>2</sup> <https://www.legislature.ohio.gov/legislation/legislation-votes?id=GA132-SB-263>

<sup>3</sup> [https://search-prod.lis.state.oh.us/cm\\_pub\\_api/api/unwrap/chamber/132nd\\_ga/ready\\_for\\_publication/committee\\_docs/cmte\\_s\\_insurance\\_1/testimony/cmte\\_s\\_insurance\\_1\\_2018-04-17-0930\\_1324/letterofsupport-sb263.pdf](https://search-prod.lis.state.oh.us/cm_pub_api/api/unwrap/chamber/132nd_ga/ready_for_publication/committee_docs/cmte_s_insurance_1/testimony/cmte_s_insurance_1_2018-04-17-0930_1324/letterofsupport-sb263.pdf)

Both Lt. Gov. Husted and the OSBA recognized that e-notary offered a real opportunity to improve Ohioan's lives, at a time when only 3 states had adopted e-notary, and that we could be a leader in implementing technology. We have the same opportunity now with "e-wills". Currently, ten states: Arizona, Colorado, Florida, Illinois, Indiana, Maryland, Nevada, North Dakota, Utah and Washington already allow some manner of executing an electronic will. SB230 would make us state number eleven to allow "e-wills".

Under SB230, electronic estate planning documents would have the same legal effect as physical estate planning documents. Current law surrounding witness requirements would not change, except that witnesses would be able to verify remotely during the time of the signature via audio-video conferencing. This means that the witness and notary requirements for wills could be satisfied by having the witnesses/notaries attend the signing session concurrently through the use of real-time, live, audio-video communication.

With the COVID-19 pandemic, we all experienced increased usage of internet and video communication to conduct business: US Congressional testimony is heard via video and votes are taken via electronic means, Telehealth has increased, multiple Ohio Bar examinations have been conducted using remote technology, it seems whole court cases are now being conducted via Zoom and we in the legislature found ourselves using Zoom and other platforms to connect with our constituents. The process created through this legislation is much more buttoned-up than a simple Zoom or Facetime, and arguably more secure than the current process of estate planning. Under the proposal within SB230, the entire remote will execution is recorded on video that can be monitored. This record of the entire proceedings is not required under current law and can be used later on to validate the wishes of the testator.

The procedure for validating witnesses is the same as what takes place under current law, only with "electronic presence". This means the relationship of two or more individuals in different locations communicating in real time to the same extent as if the individuals were physically present in the same location remotely. As stated earlier this is on video: "preserved and stored in a safe, secure, and appropriate manner." Modeled after SB263 (e-notary), and similar to what was first developed for Patriot Act-compliant online banking, under SB230 wills must be signed in the physical or electronic presence of the testator by two or more competent witnesses located in Ohio. The witnesses must sign the will after witnessing the testator's signing and must subscribe and attest their signatures and, just as with traditional wills, the e-will and these signatures are then transmitted to the probate court judge of the county in which the testator lives.

The passage of SB230 and adoption of e-wills could lower the cost of creating an estate plan for the average Ohioan. The lower cost and ease of access offered by e-wills should increase the rate at which individuals put thought to action and actually complete wills, thus growing the number of Ohioans who enjoy the comfort and security of having an estate plan. The availability of e-wills would also remove accessibility hurdles for many, those such as the disabled, people in nursing homes, the elderly or military service men and women serving abroad.

SB230 is not a new idea, and has a companion bill in the House, HB339, sponsored by Rep. Swearingen. HB339 has had 3 hearings so far, and is a reintroduction of HB 692 from the 133<sup>rd</sup> (which had 5 hearings).

I thank you for the opportunity to testify today and would be happy to answer any questions at this time.

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<sup>4</sup> [https://search-prod.lis.state.oh.us/cm\\_pub\\_api/api/unwrap/chamber/132nd\\_ga/ready\\_for\\_publication/committee\\_docs/cmte\\_s\\_insurance\\_1/testimony/cmte\\_s\\_insurance\\_1\\_2018-04-17-0930\\_1324/sb263ohiostatebar.docx](https://search-prod.lis.state.oh.us/cm_pub_api/api/unwrap/chamber/132nd_ga/ready_for_publication/committee_docs/cmte_s_insurance_1/testimony/cmte_s_insurance_1_2018-04-17-0930_1324/sb263ohiostatebar.docx)