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## Sponsor Testimony Senate Bill 46 Ohio Senate Judiciary Committee April 26, 2023

Chair Manning, Vice-Chair Reynolds, Ranking Hicks-Hudson, and Members of the Senate Judiciary Committee, thank you for the opportunity to provide sponsor testimony on S.B. 46, which will modernize the Ohio Revised Code as it pertains to executing estate planning documents. Specifically, S.B. 46 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 safely and securely.

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, S.B. 263 of the 132<sup>nd</sup> GA (Which passed the Senate unanimously<sup>2</sup>) created the e-notary so we can now get a deed or mortgage notarized electronically. Unfortunately currently Ohioans still may not execute a will in Ohio electronically. S.B. 46 will remedy that.

Support for electronic notarization, or “e-notary”, came in from far and wide. Then-Secretary of State Jon Husted supported S.B. 263 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)

<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)

At a time when only 3 states had adopted e-notary, both Lt. Gov. Husted and the OSBA recognized that e-notary offered a real opportunity to improve Ohioan's lives. We were a leader in implementing that technology and we have a similar opportunity now with "e-wills". Currently, ten states: Arizona, Colorado, Florida, Illinois, Indiana, Maryland, Nevada, North Dakota, Utah and Washington allow some manner of executing an electronic will. S.B. 46 would make us state number eleven to allow "e-wills".

Recently, society has seen an explosion in the utilization of internet and video communication to conduct business: US Congressional testimony is heard via video and votes are taken via electronic means, the usage of telehealth has increased, multiple Ohio Bar examinations have been conducted using remote technology, and entire court cases are now being conducted via Zoom. Ohio's drivers can request a license and title their vehicle online<sup>5</sup>. Here in the legislature, we find ourselves using Zoom and other platforms to connect with our constituents on a daily basis. With Ohio set to face a 33% growth in the number of residents 60 and up by 2030<sup>6</sup>, it is time to update the will-making process to better accommodate our aging and less-mobile population by passing S.B. 46.

Under S.B. 46, 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. Since the entire remote will execution is recorded on video that can be monitored, this communication process is arguably more secure than the current process of estate planning. Additionally, the will and the video recording are submitted to the probate court. This audio/video record of the entire proceedings is not required under current law and can be used later on to validate the wishes of the testator.

Before the wishes of the testator can be validated (upon their passing), the witnesses must first be validated when the will is executed. The procedure for validating witnesses is the same as what takes place under current law, only with "electronic presence"<sup>7</sup>. 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. Modeled after S.B. 263 (e-notary), and similar to what was first developed for Patriot Act-compliant online banking<sup>8</sup>, wills executed under the process in S.B.46 must be signed in the physical or electronic presence of the testator by two or more competent witnesses who are located in Ohio. The witnesses must sign the will after witnessing the testator's signing and must attest their signatures. 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.

S.B. 46 is not a new idea – this legislation is the same as the S.B. 230 substitute bill accepted without objection by this committee less than a year ago (5/31/2022)<sup>9</sup>, as well as H.B. 339 which passed out of House Civil Justice in December<sup>10</sup>.

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<sup>5</sup> <https://governor.ohio.gov/media/news-and-media/governor-dewine-lt-governor-husted-announce-new-online-bmv-services-06232022>

<sup>6</sup> <https://www.ohio.edu/news/2023/02/how-ohio-university-improving-health-ohios-aging-population#:~:text=Ohio%20is%20experiencing%20a%20large,in%20this%20population%20by%202030.>

<sup>7</sup> [Lines 369-370 of S.B. 46 "As Introduced"](#)

<sup>8</sup> <https://www.fincen.gov/resources/statutes-regulations/usa-patriot-act>

<sup>9</sup> <https://www.ohiochannel.org/video/ohio-senate-judiciary-committee-5-31-2022?start=1115&end=1130>

<sup>10</sup> <https://www.legislature.ohio.gov/legislation/134/hb339/votes>

The passage of S.B. 46 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.

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