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H.B. 172
**(with AM1322, AM1655,
and AM1656)**
135th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 172's Bill Analysis](#)

Version: In House Civil Justice

Primary Sponsor: Rep. Swearingen

Local Impact Statement Procedure Required: Yes

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Highlights

- The bill may generate significant annual expenses for the probate divisions of certain courts of common pleas to establish and maintain an electronic will filing system and to adjudicate potentially complex cases to confirm a will's validity. The payment of costs and allowable fees to the probate division for filings and hearings will likely generate some offsetting revenue.
- The Secretary of State may incur some minimal administrative costs associated with developing and implementing rules pertaining to electronic documents under the bill. There may also be costs associated with updating the database of notaries public on the Secretary of State's publicly accessible website.
- The bill will not significantly increase the ongoing work for the Attorney General's Consumer Protection Section to investigate and enforce some, presumably small, number of additional violations of the Consumer Sales Practices Act. Civil penalties deposited into the Consumer Protection Enforcement Fund (Fund 6310) may, to some degree, offset related costs.

Detailed Analysis

The bill allows for the electronic notarization and execution of a will, a living will, a power of attorney, a durable power of attorney for health care, and a transfer on death designation affidavit for real property.

Court-related costs

Probate courts and clerks of court could realize increased expenses to accept, maintain, protect, and archive these electronic documents. Technology-related expenses will likely vary

from court to court depending on current systems, capacity, and volume of electronic documents submitted. Some courts may be capable of handling the bill's requirements while others may need to implement a new system or upgrade an outdated file management or storage system. For the latter courts, expenses could be significant, while additional costs related to data storage, and especially ongoing data storage, could prove more than minimal for all courts depending on the volume of electronic documents to be stored.

In addition, through the Judicial Conference, judges have expressed concerns that cases based on electronic documents may be more complex, requiring additional court time and investigation, as well as forensic accounting of the electronic documents to determine their validity. Increased costs due to this added complexity will likely vary by jurisdiction and by case.

Costs may be offset to some degree by the collection of a \$25 fee which, under continuing law, is assessed for the deposit of a will with the probate court. The bill permits a copy of an electronic will to be deposited in the office of the judge of the probate court. Though a testator is not required to deposit a copy of the electronic will to the probate court, if they choose to do so, the court is required to accept it. In the case that a person other than the testator deposits the electronic will, they must attach an affidavit attested to by the testator authorizing the person to deposit such a copy. Probate courts may charge other fees for and assess costs for the affected processes and resultant hearings as under continuing law.

Notary provisions

The bill specifies that a notary is prohibited from notarizing certain electronic documents unless the notary has filed with the Secretary of State (SOS) evidence that the notary or the notary's employer has obtained a \$25,000 bond or obtained errors and omissions insurance. The bill requires the SOS to adopt rules pertaining to which electronic documents will require a bond and errors and omissions insurance as well as any other terms and conditions the SOS determines is reasonably necessary. The SOS may incur some minimal administrative costs associated with developing and implementing these rules.

The bill also expands the types of information in the database of notaries public on a publicly accessible website maintained by the Secretary of State to include whether the notary has filed evidence satisfactory to the Secretary that the notary has obtained the necessary bond and errors and omissions insurance to notarize electronic estate planning documents as described above. There may also be costs associated with updating the database of notaries public on the Secretary of State's publicly accessible website.

Additionally, the bill requires the notary public who acknowledges the electronic will to send a certified copy of the will to the testator and allows the testator to send a certified copy of the will to any person. Under the bill, a notary public who acknowledges an electronic will is required to provide a warning on the notary's website that any person who intends to execute an electronic will is executing a legal document and is strongly encouraged to seek the assistance of an attorney.

Any costs related to these provisions would likely be paid from the Notary Commission Fund (Fund 4120) appropriation item 050609, Notary Commission.

Consumer Sales Protection Act (CSPA)

The bill (1) expands the definition of “consumer transaction” for purposes of the CSPA,¹ to also mean services provided by a notary public to a testator in the acknowledgement, certification, and attestation pertaining to the testator’s electronic will under the bill’s provisions, and (2) specifies that electronic wills are subject to the CSPA.

The Attorney General has broad authority to enforce the CSPA, including suing for injunctive relief and civil penalties. Depending upon the nature of the violation, the court is permitted to impose a civil penalty of up to between \$5,000 and \$25,000, some of which could be levied daily. Pursuant to current law, the civil penalties are distributed as follows: three-fourths, or 75%, to the state’s Consumer Protection Enforcement Fund (Fund 6310) and one-fourth, or 25%, to the treasury of the county where the Attorney General’s action is brought. The timing and magnitude of this potential revenue stream is uncertain.²

If complaints are not resolved by the Attorney General’s Consumer Protection Section, some number of civil cases may be generated in courts of common pleas, municipal, and county courts. The number of new case filings are likely to be small statewide.

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¹ The CSPA prohibits a supplier from committing unfair or deceptive acts or practices or unconscionable acts or practices in connection with consumer transactions. The prohibitions apply to acts occurring before, during, or after a transaction.

² Typically, the Attorney General will try to negotiate a settlement and will take a matter to trial as a last resort. Additionally, under the bill and the CSPA, a consumer has a private right of action and can sue the supplier to rescind the transaction or to recover the consumer’s actual economic damages plus up to \$5,000 in noneconomic damages. If the supplier’s violation is an act or practice that has already been declared unconscionable by the Attorney General or by a court, then the consumer may sue to rescind the transaction or recover three times the amount of the consumer’s actual economic damages.