

# House Bill 3218

Sponsored by Representative BOWMAN (at the request of Kevin Frazier)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Authorizes remote attestation of certain wills.  
Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to remote attestation of wills; creating new provisions; amending ORS 42.141 and 112.235;  
3 and prescribing an effective date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 42.141 is amended to read:

6 42.141. (1) As used in this section:

7 (a) "Electronic presence" means the relationship of two or more individuals in different lo-  
8 cations communicating in real time to the same extent as if the individuals were physically present  
9 in the same location.

10 (b) "Law" means statutes, administrative rules and any other form of regulation imposed by this  
11 state or a political subdivision of this state.

12 (2) A witness is in the presence of a person for purposes of witnessing the execution or ac-  
13 knowledgment of a writing if the witness is in the physical presence or the electronic presence of  
14 the person.

15 (3) A writing that a person executes or acknowledges in the electronic presence of a witness is  
16 validly witnessed if, in addition to any other execution formalities required by law, all of the fol-  
17 lowing requirements are met:

18 (a) The witness has satisfactory evidence of the identity of the person.

19 (b) While in the electronic presence of the witness, the person executes or acknowledges the  
20 writing and delivers or causes to be delivered by facsimile or electronic mail to the witness a copy  
21 of the executed signature page.

22 (c) While in the electronic presence of the person, the witness:

23 (A) Is located inside the boundaries of the United States;

24 (B) Attests to the execution or acknowledgment of the writing by signing the transmitted copy  
25 of the signature page; and

26 (C) Delivers or causes to be delivered by facsimile or electronic mail to the person the copy of  
27 the executed signature page, signed by the witness.

28 (d) The person signing the writing completes a declaration of electronic presence under penalty  
29 of perjury.

30 (e) The witness completes a declaration of remote attestation under penalty of perjury.

31 (4) A witness has satisfactory evidence of a person's identity for the purposes of subsection (3)(a)

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.  
New sections are in **boldfaced** type.

1 of this section if the person is personally known to the witness or if the witness can identify the  
2 person by means of one of the following forms of identification, presented by the person to the wit-  
3 ness while the person is in the electronic presence of the witness:

4 (a) A United States passport or an officially recognized passport of a foreign country, or a driver  
5 license or identification card issued under ORS 807.400 or a comparable provision in another state,  
6 that is current or that expired not more than three years before the date the person executes or  
7 acknowledges the writing; or

8 (b) A military identification card, an identity card issued by a federally recognized Indian tribe  
9 or other document issued by the federal government or a state, county or local government that is  
10 current or that expired no more than three years before the date the person executes or acknowl-  
11 edges the writing.

12 (5)(a) The declarations under subsection (3)(d) and (e) of this section may be completed  
13 contemporaneously with the execution or acknowledgment of the writing or at any time thereafter.

14 (b) The declaration of electronic presence under subsection (3)(d) of this section must be sub-  
15 stantially in the following form:

16 \_\_\_\_\_

17  
18 **DECLARATION**  
19 (Electronic presence)

20  
21 • “Electronic presence” means the relationship of two or more individuals in different locations  
22 communicating in real time to the same extent as if the individuals were physically present in the  
23 same location.

24 I, \_\_\_\_\_, signed the foregoing \_\_\_\_\_ (title of document) at \_\_\_\_\_ (city), \_\_\_\_  
25 (state), on \_\_\_\_\_ (date) and in the electronic presence of \_\_\_\_\_ (witness name), whom  
26 I requested to become attesting witness.

27 I hereby declare that the above statement is true to the best of my knowledge and belief, and  
28 that I understand it is subject to penalty for perjury.

29 \_\_\_\_\_  
30 Signature  
31 (print name, address, telephone number and e-mail address)

32 \_\_\_\_\_

33  
34 (c) The declaration of remote attestation under subsection (3)(e) of this section must be sub-  
35 stantially in the following form:

36 \_\_\_\_\_

37  
38 **DECLARATION**  
39 (Remote attestation)

40  
41 • “Electronic presence” means the relationship of two or more individuals in different locations  
42 communicating in real time to the same extent as if the individuals were physically present in the  
43 same location.

44 I, \_\_\_\_\_ (witness name), was electronically present on \_\_\_\_\_ (date) when \_\_\_\_\_ (signer  
45 name) in my electronic presence signed the attached signature page to \_\_\_\_\_ (title of document)

1 and, at the request of the foregoing signer, I signed my name as witness at the foregoing date.

2 I hereby declare that the above statement is true to the best of my knowledge and belief, and  
3 that I understand it is subject to penalty for perjury.

4 \_\_\_\_\_  
5 Witness signature

6 (print name, address, telephone number and e-mail address)  
7 \_\_\_\_\_  
8

9 (6) A writing witnessed in compliance with subsection (3) of this section may be executed, ac-  
10 knowledged or witnessed in counterparts, which together shall be considered a single writing.

11 (7)(a) Subsection (3) of this section applies to the witnessing of any writing that is required by  
12 law to be executed or acknowledged in the presence of a witness.

13 (b) Notwithstanding paragraph (a) of this subsection, this section does not apply to:

14 (A) A notarial act performed by a notarial officer, as those terms are defined in ORS 194.215;

15 (B) The witnessing of the execution of [a] **an international** will under ORS 112.232 [or  
16 112.235]; or

17 (C) The witnessing of signatures by the circulator of a petition pursuant to ORS chapter 198,  
18 221, 248, 249, 250, 255, 261 or 545.

19 [(8) *Nothing in this section is intended to affect provisions of law regarding the execution of wills,*  
20 *including the application of ORS 112.238 to writings not executed in compliance with ORS 112.235.*]

21 **SECTION 2.** ORS 112.235 is amended to read:

22 112.235. (1) Except as provided in ORS 112.238, a will shall be in writing and shall be executed  
23 in accordance with the following formalities:

24 (a) The testator, in the **physical or electronic** presence of each of the witnesses, shall:

25 (A) Sign the will;

26 (B) Direct one of the witnesses or some other person to sign the name of the testator and the  
27 signer’s own name on the will; or

28 (C) Acknowledge the signature previously made on the will by the testator or at the testator’s  
29 direction.

30 (b) At least two witnesses shall each:

31 (A)(i) See the testator sign the will;

32 (ii) Hear the testator acknowledge the signature on the will; or

33 (iii) Hear or observe the testator direct some other person to sign the name of the testator; and

34 (B) Attest the will by signing the witness’ name to the will within a reasonable time before the  
35 testator’s death.

36 (2) The signature by a witness on an affidavit executed contemporaneously with execution of a  
37 will is considered a signature by the witness on the will in compliance with subsection (1)(b)(A)(iii)  
38 of this section if necessary to prove the will was duly executed in compliance with this section.

39 (3) A will executed in compliance with the Uniform International Wills Act shall be deemed to  
40 have complied with the formalities of this section.

41 (4) As used in this section[,]:

42 (a) **“Electronic presence” has the meaning given that term in ORS 42.141.**

43 (b) **“Writing” does not include an electronic record, document or image.**

44 **SECTION 3. The amendments to ORS 42.141 and 112.235 by sections 1 and 2 of this 2023**  
45 **Act apply to wills executed on or after the effective date of this 2023 Act.**

1        **SECTION 4. This 2023 Act takes effect on the 91st day after the date on which the 2023**  
2        **regular session of the Eighty-second Legislative Assembly adjourns sine die.**  
3        \_\_\_\_\_