

HOUSE BILL NO. 5758

February 16, 2022, Introduced by Rep. Lightner and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending section 1202 (MCL 700.1202), as amended by 2020 PA 338.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1202. (1) Notwithstanding anything in this act to the
2 contrary, the act of signing or witnessing the execution of a
3 document or instrument under this act, including, but not limited
4 to, a will under article II, a disclaimer under section 2903, a
5 funeral representative designation, a parental appointment of a

1 guardian of a minor under section 5202, an appointment of a
2 guardian of a legally incapacitated individual under section 5301,
3 a durable power of attorney under section 5501, or a patient
4 advocate designation is satisfied by use of a 2-way real-time
5 audiovisual technology if all of the following requirements are
6 met:

7 (a) The 2-way real-time audiovisual technology must allow
8 direct, contemporaneous interaction by sight and sound between the
9 signatory and the witnesses.

10 (b) The interaction between the signatory and the witnesses
11 must be recorded and preserved by the signatory or the signatory's
12 designee for a period of at least 3 years.

13 (c) The signatory must affirmatively represent either that the
14 signatory is physically situated in this state, or that the
15 signatory is physically located outside the geographic boundaries
16 of this state and that either of the following applies:

17 (i) The document or instrument is intended for filing with or
18 relates to a matter before a court, governmental entity, public
19 official, or other entity subject to the jurisdiction of this
20 state.

21 (ii) The document or instrument involves property located in
22 the territorial jurisdiction of this state or a transaction
23 substantially connected to this state.

24 (d) The signatory must affirmatively state during his or her
25 interaction with the witnesses on the 2-way real-time audiovisual
26 technology what document they are executing.

27 (e) Each title page and signature page of the document or
28 instrument being witnessed must be shown to the witnesses on the 2-
29 way real-time audiovisual technology in a manner clearly legible to

1 the witnesses, and every page of the document or instrument must be
2 numbered to reflect both the page number of the document or
3 instrument and the total number of pages of the document or
4 instrument.

5 (f) Each act of signing the document or instrument must be
6 captured sufficiently up close on the 2-way real-time audiovisual
7 technology for the witnesses to observe.

8 (g) The signatory or the signatory's designee must transmit by
9 facsimile, mail, or electronic means a legible copy of the entire
10 signed document or instrument directly to the witnesses within 72
11 hours after it is executed.

12 (h) Within 72 hours after receipt, the witnesses must sign the
13 transmitted copy of the document or instrument as a witness and
14 return the signed copy of the document or instrument to the
15 signatory or the signatory's designee by facsimile, mail, or
16 electronic means.

17 (i) The document or instrument is either of the following:

18 (i) In writing.

19 (ii) A record that is readable as text at the time of signing.

20 (2) The rights or interests of a person that relies in good
21 faith and without actual notice that a document or instrument
22 described in subsection (1) was executed on or after April 30,
23 2020, ~~and before July 1, 2021,~~ but was not executed in accordance
24 with subsection (1) are not impaired, challenged, or terminated on
25 that basis alone.

26 (3) Compliance with this section is presumed. A person
27 challenging a document or instrument described in and executed in
28 accordance with subsection (1) may overcome the presumption by
29 establishing, by clear and convincing evidence, that the signatory

1 or a witness intentionally failed to comply with the requirements
2 under subsection (1).

3 (4) This section applies to a document or instrument described
4 in subsection (1) executed on or after April 30, 2020. ~~and before~~
5 ~~July 1, 2021.~~

6 (5) As used in this section:

7 (a) "Electronic" means relating to technology having
8 electrical, digital, magnetic, wireless, optical, electromagnetic,
9 or similar capabilities.

10 (b) "Record" means information that is inscribed on a tangible
11 medium or that is stored in an electronic or other medium and is
12 retrievable in perceivable form.

13 (c) "Sign" or "signing" means with present intent to
14 authenticate or adopt a record to do either of the following:

15 (i) Execute or adopt a tangible symbol.

16 (ii) Affix to or logically associate with the record an
17 electronic symbol or process.