

D R A F T  
FOR DISCUSSION ONLY

## **ELECTRONIC WILLS ACT**

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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February 1-2, 2019 Drafting Committee Meeting

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January 22, 2019

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**ELECTRONIC WILLS ACT**

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1 **ELECTRONIC WILLS ACT**

2 **Prefatory Note**

3 **Electronic Wills Under Existing Statutes.** People increasingly turn to electronic tools  
4 to accomplish life’s tasks, including legal tasks. They use electronic execution for a variety of  
5 estate planning documents, including beneficiary designations and powers of attorney. Some  
6 people assume that they will be able to use electronic execution for all their needs, and they  
7 prefer to do so for efficiency, cost savings, or other reasons. Indeed, a few cases involving wills  
8 executed on electronic devices have already surfaced.  
9

10 In an Ohio case, *In re Estate of Javier Castro*, Case No. 2013ES00140, Court of  
11 Common Pleas Probate Division, Lorain County, Ohio (June 19, 2013), the testator dictated a  
12 will to his brother, who wrote the will on a Samsung Galaxy Tablet. The testator then signed the  
13 will on the tablet, using a stylus, and two witnesses signed on the tablet. The probate court had to  
14 decide whether the electronic writing on the tablet met the statutory requirement that a will be  
15 “in writing.” The court concluded that it did, and admitted the will to probate. In *Castro*, the  
16 testator and all witnesses were in the same room and signed using a stylus rather than typing a  
17 signature. The Drafting Committee concluded that the law should give effect to such a will and  
18 that a statute could clarify that such a will meets the writing requirement. In *Castro*, the testator  
19 and witnesses had not signed an affidavit, so the will was not self-proving. The Drafting  
20 Committee concluded that if a notary were present with the testator and witnesses, it should be  
21 possible to make such a will self-proving.  
22

23 In Australia, courts have used the harmless error doctrine to give effect to wills written on  
24 electronic devices. For example, *In re Yu*, [2013] QSC 322, involves a will written on an iphone.  
25 There were no witnesses to the will, but the court applied the harmless error doctrine to validate  
26 the will. The court found that the testator intended the electronic writing, which began with  
27 “This is the Last Will and Testament...,” to be his will.  
28

29 Although existing statutes might validate wills like the one in *Castro*, the results will be  
30 haphazard if no clear policy exists. States that have adopted harmless error could use that rule to  
31 give effect to an electronic will, as the court did in *In re Yu*. However, harmless error requires a  
32 judicial decision based on clear and convincing evidence, so relying on harmless error could  
33 increase costs for parties and courts. Further, in the U.S., only 11 states have enacted harmless  
34 error statutes. In some states, courts have used another doctrine, substantial compliance, to  
35 validate wills that did not comply with the execution formalities. *See, e.g., In re Will of Ranney*,  
36 589 A.2d 1339 (N.J. 1991). (Note that New Jersey has now adopted the harmless error rule.)  
37

38 **Pressure from Companies Wishing to Expand Services.** A number of companies  
39 provide will drafting programs that can be purchased online and used electronically. A  
40 purchaser of one of these programs buys the software and then uses it to prepare a will, without  
41 legal assistance. Lawyers worry that the wills produced through these drafting programs without  
42 the guidance of lawyers may lead to problems for the surviving family members of the testators.  
43 Of course, people have always prepared wills without the assistance of lawyers, using paper will  
44 forms or simply writing the wills by hand. If a testator follows a state’s rules in executing a will,

1 the will is valid. and depending on the estate may or may not carry out the testator's wishes.

2  
3 When a testator uses will-drafting software, the testator prints the completed will and  
4 then executes the paper document with will formalities. As people get used to doing all sorts of  
5 business transactions electronically, the people using will-drafting software may expect to be  
6 able to execute their wills online. A number of companies would like to provide a service that  
7 would allow the testator to execute the will online, eliminating the use of paper and using  
8 witnesses and a notary provided by the company. Some companies would also like to be able to  
9 offer to store the executed electronic document, for an additional fee.

10  
11 Some of the companies interested in offering services in electronic execution of wills and  
12 storage of electronic wills are promoting the idea of electronic execution of wills to state  
13 legislatures. Bills have been considered in Arizona, California, Florida, Indiana, New  
14 Hampshire, and Virginia. Arizona and Indiana have both adopted new electronic wills  
15 legislation, and Nevada has revised its existing electronic wills statutes.

16  
17 **Goals of the Act.** Given the flurry of activity around this issue, the Uniform Law  
18 Commission became concerned that inconsistency will follow if statutes are modified by states  
19 without uniformity. The Uniform Law Commission was also interested in updating the Uniform  
20 Probate Code to address electronic wills. The mobile population in the United States makes  
21 recognition of wills between states important, and if statutes are not uniform, that recognition  
22 will be a significant issue.

23  
24 The Drafting Committee has heard from estate planning lawyers, notaries, software  
25 companies, and others in developing this Act. The Drafting Committee's work has been guided  
26 by several goals:

- 27 • To allow a testator to execute a will electronically, while maintaining protections for the
- 28 testator that wills law provides for wills executed on something tangible (usually paper);
- 29 • To create execution requirements that, if followed, will result in a valid will without a
- 30 court hearing to determine validity, if no one contests the will; and
- 31 • To develop a process that would not enshrine a particular company or business model in
- 32 the statutes.

33  
34 In thinking about how to address these goals, the Drafting Committee was guided by the  
35 four functions served by will formalities, as described in John H. Langbein, *Substantial*  
36 *Compliance with the Wills Act*, 88 HARV. L. REV. 489 (1975) (citing Lon Fuller, *Consideration*  
37 *and Form*, 41 COL. L. REV. 799 (1941), which discussed the channeling function in connection  
38 with contract law, and Ashbel G. Gulliver & Catherine J. Tilson, *Classification of Gratuitous*  
39 *Transfers*, 51 YALE L.J. 1, 5-13 (1941), which identified the other functions):

- 40  
41 • Evidentiary function – a will provides permanent reliable evidence of the testator's
- 42 intent.
- 43 • Channeling function – the testator's intent is expressed in a way that is understood by
- 44 those who will interpret it so that the courts and personal representatives can process
- 45 the will efficiently and without litigation.
- 46 • Ritual (cautionary) function – the testator has a serious intent to dispose of property in

1 the way indicated and the document is final and not a draft.

- 2 • Protective function – the testator has capacity and is protected from undue influence,  
3 fraud, delusion and coercion. The documents are not the product of forgery or  
4 perjury.

5  
6 **UETA.** The Uniform Electronic Transactions Act provides that “[a] record or signature  
7 may not be denied legal effect or enforceability solely because it is in electronic form.”

8 UETA§ 7(a). UETA specifically excludes wills and testamentary trusts, making this Act  
9 necessary. UETA does not exclude inter vivos trusts, so this Act is limited to wills and does not  
10 cover inter vivos trusts or other estate planning documents. Indeed, many nonprobate documents  
11 are executed electronically.

1 **ELECTRONIC WILLS ACT**

2 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Electronic Wills Act.

3 **SECTION 2. DEFINITIONS.** In this [act]:

4 (1) “Electronic” means relating to technology having electrical, digital, magnetic,  
5 wireless, optical, electromagnetic, or similar capabilities.

6 (2) Individuals are in each other’s “electronic presence” if they are able to communicate  
7 simultaneously by sight and sound even though they are in different physical locations.

8 Individuals are able to communicate by sight and sound if they can see and hear with  
9 accommodation through appropriate supportive services and technological assistance.

10 (3) “Electronic will” means a will executed electronically and in compliance with Section  
11 4.

12 (4) “Logically associated” means electronically connected, cross referenced, or linked in  
13 a reliable manner.

14 (5) “Record” means information that is inscribed on a tangible medium or that is stored in  
15 an electronic or other medium and is retrievable in perceivable form.

16 (6) “Sign” means, with present intent to authenticate or adopt a record:

17 (A) to execute or adopt a tangible symbol; or

18 (B) to affix to or logically associate with the record an electronic symbol, sound,  
19 or process.

20 (7) “State” means a state of the United States, the District of Columbia, Puerto Rico, the  
21 United States Virgin Islands, or any other territory or insular possession subject to the  
22 jurisdiction of the United States.

23 (8) “Text record” means a record readable directly as text, whether on screen, paper, or

1 other medium. The term includes a writing, word-processing document, web page, and email or  
2 text message. The term does not include an audio or video file, even if transcribable or otherwise  
3 convertible to text.

4 **Comment**

5 **Subsection 3. Electronic Presence.** An electronic will may be executed with all of the  
6 necessary people present in one physical location. In that case the state’s rules concerning  
7 presence for non-electronic wills, which may require line-of-sight presence or conscious  
8 presence, will apply. An electronic will is also valid if the witnesses are in the electronic  
9 presence of the testator, *see* Section 4, and the definition provides the rules for electronic  
10 presence. Electronic presence will make it easier for testators in remote locations and testators  
11 with mobility difficulties to execute their wills.

12  
13 [Explain why there is no definition of Will in the Act. A definition would be both  
14 overinclusive and underinclusive. UPC does not define Will except to include a couple of uses  
15 for a will that do not involve disposing of property.]

16  
17 [The definition of “logically associated” comes from the Indiana statute.]

18  
19  
20 **SECTION 3. WHO MAY MAKE ELECTRONIC WILL.** An individual who may  
21 make a will under law of this state other than this act may make an electronic will.

22 **Comment**

23 Wills statutes typically include an age and capacity requirement, but other requirements  
24 for validity may be left to the common law. For example, a will may be challenged based on  
25 allegations of undue influence, duress, or fraud. The common law requirements that apply to  
26 wills in general also apply to electronic wills. *See* RESTATEMENT (THIRD) OF PROPERTY: WILLS  
27 AND OTHER DONATIVE TRANSFERS § 8.1 (Requirement of Mental Capacity); § 8.3 (Undue  
28 Influence, Duress, or Fraud).

29  
30 **SECTION 4. EXECUTION OF ELECTRONIC WILL.**

31 (a) A will may be executed electronically if it is a text record that is:

32 (1) signed by:

33 (A) the testator, or

34 (B) another individual in the testator’s name, in the testator’s conscious

1 physical or electronic presence, and at the testator's direction; and

2 (2) [either:

3 (A)] signed by at least two individuals, each of whom signed within a  
4 reasonable time after witnessing, in the physical or electronic presence of the testator:

5 [(i)][A] the signing of the record under paragraph (1); or

6 [(ii)][B] the testator's acknowledgment of the signing or  
7 acknowledgement of the record[; or]

8 [(B) acknowledged by the testator before a notary public or other  
9 individual authorized by law to notarize records electronically].

10 (b) Intent of a testator that a text record be the testator's electronic will may be  
11 established by extrinsic evidence.

12 **Legislative Note:** *A state that has the rule of Uniform Probate Code Section 2-502 and validates*  
13 *by statute an unattested but notarized will should include Subsection (a)(2)(B). Other states may*  
14 *also include that provision for an electronic will because an electronic notarization may provide*  
15 *more protection for a will than a paper notarization.*

16  
17

### Comment

18 The Drafting Committee concluded that a state's existing requirements for valid wills  
19 should be followed for electronic wills. Section 5 follows the formalities required in the  
20 Uniform Probate Code (UPC) § 2-502. A state with different formalities should modify this  
21 Section to conform to its requirements. Under Section 5 an electronic will can be valid if  
22 executed electronically, even if the testator and witnesses are in different locations. Although  
23 any will requires proof of valid execution, most states create a presumption that a will was  
24 validly executed if the testator and witnesses execute a self-proving affidavit. Rather than  
25 creating extra requirements to validate the will, the Act creates extra requirements to make a will  
26 self-proving when the testator and witnesses are in different locations.

27

28 The Drafting Committee discussed at length whether the Act should impose additional  
29 requirements on a will executed electronically with remote witnesses. Wills law includes a  
30 witness requirement for several reasons: (1) evidentiary, to answer questions about the  
31 voluntariness and coherence of the testator and whether undue influence played a role in the  
32 creation and execution of the will, (2) cautionary, to signal to the testator that signing the  
33 document has serious consequences, and (3) protective, to deter coercion, fraud, duress, and  
34 undue influence. The Drafting Committee discussed whether having witnesses act remotely

1 impairs these purposes. One concern was that when a will is challenged for lack of capacity or  
2 undue influence, witnesses may be able to testify about the testator’s state of mind. However, in  
3 many cases staff members in a lawyer’s office act as witnesses to hundreds of wills and are  
4 unlikely to remember much about any individual testator. Will substitutes typically do not  
5 require witnesses, and even for wills, the harmless error doctrine now allows a court to give  
6 effect to a will that was not witnessed, if the proponent of the will can provide adequate evidence  
7 of the testator’s intent. The Drafting Committee concluded that although the dangers of undue  
8 influence and coercion can never be excluded, the current legal standards and procedures address  
9 the situation adequately and remote attestation will not create excessive risks. The Drafting  
10 Committee also noted that it did not want to create hurdles that result in denying probate to wills  
11 that represent the intent of their testators.

12  
13 [Add discussion of “reasonable time” required for witnesses to sign, with citations to cases that  
14 have addressed this issue. Note that UPC uses “reasonable time.”]  
15

16 **Requirement of a Writing.** The definition of record includes a writing in electronic  
17 format. The Act clarifies that an electronic writing is a writing for purposes of creating a valid  
18 will. [Discuss *Castro* here.]  
19

20 Using the defined term, text record, subsection (a)(1) requires that a will be in writing,  
21 and an audio-visual recording of an individual describing the individual’s testamentary wishes  
22 does not, by itself, constitute a will under this Act. The Drafting Committee concluded that  
23 writing emphasizes seriousness of intent. However, an audio-visual recording of the execution of  
24 a will can provide valuable evidence concerning the validity of the will.  
25

26 The use of a voice activated computer program can create text that can meet the  
27 requirements of a will. For example, a testator could dictate the will to a computer using voice  
28 recognition software. If the computer converts the spoken words to text before the testator  
29 executes a will, the will meets that requirement that it be in writing.  
30

31 **Intent of the Testator.** In subsection (a)(2), the requirement that the testator intend the  
32 record to be the testator’s will is made explicit. That requirement exists in the common law and  
33 is included in Section 5 for clarity. Subsection (b) adds that the intent can be proved using  
34 extrinsic evidence, reflecting the modern trend to use evidence beyond the will itself.  
35

36 **Electronic Signature.** [Add explanation of how someone would sign electronically. If  
37 an “x” is enough for a non-electronic will, is an “x” on a computer keyboard enough?]  
38

39 **Notarized Wills.** Subsection 3(B) tracks UPC § 2-502(a)(3)(B) and provides that a will  
40 can be validated if the testator acknowledges the will before a notary, even if the will is not  
41 attested by two witnesses. Electronic notarization offers a significant level of protection for a  
42 will, because the notarization process uses a tamper seal to “lock” the will and makes tampering  
43 much easier to detect than tampering of a paper will or a non-notarized electronic will. Also,  
44 electronic notarization involves videotaping the process, so a videotaped record will be available.  
45 States may want to encourage electronic notarization, and may want to include electronic  
46 notarization as an option for validation of an electronic will, even if the state does not include

1 that option for other wills. Greater protection, and ease of admission of the will to probate, will  
2 be provided if two witnesses attest the will and then electronic notarization is used for the self-  
3 proving affidavit.

4  
5 **Alternative A**  
6

7 **[SECTION 5. HARMLESS ERROR.** A text record not executed in compliance with  
8 Section 4 must be treated as executed in compliance with Section 4 if the proponent of the record  
9 establishes by clear-and-convincing evidence that the decedent intended that the record be:

- 10 (1) the decedent’s electronic will;  
11 (2) a partial or complete revocation of the decedent’s will, including an electronic will;  
12 (3) an addition to or a modification of the decedent’s will, including an electronic will; or  
13 (4) a partial or complete revival of the decedent’s formerly revoked will or provision of a  
14 will, including a revoked electronic will.]

15 **Alternative B**

16 **[SECTION 5. HARMLESS ERROR.** [Cite to state’s harmless error statute] applies to  
17 a will executed electronically.]

18 **End of Alternatives**

19 ***Legislative Note:** A state that has enacted the harmless error rule for a non-electronic will,  
20 Uniform Probate Code Section 2-503, should enact the rule for an electronic will. A state that  
21 has not enacted a harmless error rule may not want to add one solely for an electronic will. A  
22 state that does not adopt this act, may want to enact a harmless error rule specifically for an  
23 electronic will, thereby requiring clear and convincing evidence to prove an electronic will with  
24 remote attestation.*

25  
26 **SECTION 6. ELECTRONIC WILL MADE SELF-PROVING WHERE**  
27 **WITNESSES PHYSICALLY PRESENT.**

28 (a) An electronic will executed with attesting witnesses physically present in the same  
29 location as the testator may be made self-proving by acknowledgment of the testator and  
30 affidavits of the witnesses.

1 (b) The acknowledgment and affidavits under subsection (a) must be:  
2 (1) made before an officer authorized to administer oaths under law of the state in  
3 which execution occurs; and  
4 (2) evidenced by the officer's certificate under official seal logically associated  
5 with the electronic will.

6 (c) The acknowledgment and affidavits under subsection (a) must be in substantially the  
7 following form:

8 I, \_\_\_\_\_, the testator, sign this record, and being sworn,  
9 (name)  
10 declare to the undersigned officer that this record is my electronic will, I signed it willingly or  
11 willingly directed another to sign for me, I executed it as my voluntary act for the purposes  
12 expressed in this record, and I am [18] years of age or older, of sound mind, and under no  
13 constraint or undue influence.

14 \_\_\_\_\_  
15 Testator

16 We, \_\_\_\_\_ and \_\_\_\_\_ ,  
17 (name) (name)

18 witnesses, sign this record, being sworn, and declare to the undersigned officer that the testator  
19 signed this record willingly as the testator's electronic will, or willingly directed another to sign  
20 for the testator, that each of us, in the physical presence of the testator, signed this electronic will  
21 as witness to the testator's signing, and to the best of our knowledge the testator is [18] years of  
22 age or older, of sound mind, and under no constraint or undue influence.

23 \_\_\_\_\_  
24 Witness

25 \_\_\_\_\_  
26 Witness

1 State of \_\_\_\_\_

2 [County] of \_\_\_\_\_

3 Subscribed, sworn to, and acknowledged before me by \_\_\_\_\_,  
4 (name)

5 the testator, and subscribed and sworn to before me by \_\_\_\_\_ and  
6 (name)

7 \_\_\_\_\_, witnesses, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
8 (name)

9 (Seal)

10 \_\_\_\_\_  
11 (Signed)

12 \_\_\_\_\_  
13 (Official capacity of officer)

14 **Legislative Note:** A state that has not adopted the Uniform Probate Code should conform  
15 Sections 6 through 8 to its self-proving affidavit statutes. The statements that the requirements  
16 for a valid will are met should conform with the requirements under state law.

17  
18 **Comment**

19  
20 If an officer authorized to administer oaths (a notary) is in a state that has adopted  
21 RULONA, the notary need not be physically present. If the state has not adopted RULONA, the  
22 notary must be physically present in order to administer the oath under the law of that state.

23  
24 **SECTION 7. ELECTRONIC WILL MADE SELF-PROVING WHERE ALL**  
25 **WITNESSES NOT PHYSICALLY PRESENT.**

26 (a) In this section “authorized person” means:

27 (1) an individual licensed to practice law in the United States;

28 (2) a clerk of the [court];

29 (3) a commissioned officer of the United States Armed Forces; or

30 (4) an officer authorized to administer oaths.

31 (b) An electronic will without the number of attesting witnesses necessary for a valid will

1 physically present in the same location as the testator, may be made self-proving by:

2 (1) acknowledgment of the testator and affidavits of the witnesses made before an  
3 officer authorized to administer oaths and evidenced by the officer’s certificate under official  
4 seal, under [insert citation to Revised Uniform Law on Notarial Acts (2018), the Amended  
5 Revised Uniform Law on Notarial Acts (2016), or other law of the state that provides for  
6 electronic notarization]; or

7 (2) an authorized person’s certification in writing under subsection (e) that:

8 (A) the person is an authorized person;

9 (B) the testator declared that the record is the testator’s electronic will;

10 (C) the testator, in the electronic or physical presence of each individual  
11 who signed the record as a witness:

12 (i) signed the electronic will or directed another individual to sign  
13 the electronic will in the testator’s name and the other individual did so in the testator’s  
14 conscious physical or electronic presence; or

15 (ii) acknowledged the signing under clause (i) or acknowledged the  
16 electronic will; and

17 (D) the authorized person is satisfied as to the identity of the testator and  
18 witnesses.

19 (c) An heir of the testator or a beneficiary under an electronic will may not act as an  
20 authorized person under this section.

21 (d) An authorized person who acts under this section submits to the jurisdiction of the  
22 court in the [county] in which the testator executes the electronic will.

23 (e) A certification made under subsection (b)(2) must be in substantially the following

1 form:

2 I, \_\_\_\_\_, an authorized person, certify that on  
3 (name)

4 \_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_, the testator  
5 (date) (city) (state)

6 declared the attached record to be the electronic will of the testator and declared that the testator  
7 understands the contents of the electronic will. I further certify that the testator, in the electronic  
8 or physical presence of each individual who signed the electronic will as a witness, (i) signed the  
9 electronic will, (ii) directed another individual to sign the electronic will in the testator's name  
10 and the other individual did so in the testator's physical or electronic presence, or (iii)  
11 acknowledged the signing or acknowledged the electronic will. I further certify that I am  
12 satisfied as to the identity of the testator and the witnesses and that to the best of my knowledge  
13 the testator was, at the time of the signing of the electronic will, [18] years of age or older, of  
14 sound mind, and under no constraint or undue influence.

15 \_\_\_\_\_  
16 (Signed)

17 **Comment**

18 The Drafting Committee decided that an electronic will should be valid even if witnesses  
19 acted remotely, but thought that additional protection should be required to make a will with  
20 remote attestation self-proving. Section 8 adds the requirement of an authorized person when  
21 not all witnesses are in the same physical location with the testator when the testator executes the  
22 will. The goal is to have someone who will provide oversight of the process, and who can be  
23 called to testify if the will is challenged.

24  
25 **Definition of Authorized Person.** An authorized person is someone other than the  
26 testator, witnesses, and notary. The authorized person is involved in the execution of the will to  
27 provide a sufficient level of confidence in the execution process to allow the will to be self-  
28 proving. The authorized person needs to be someone subject to the jurisdiction of the court  
29 where the will is executed, so that if the validity of the will is challenged, the authorized person  
30 can be required to testify.

31  
32 An authorized person acting in that role is not engaged in the practice of law.



1 [County] of \_\_\_\_\_

2 Subscribed, sworn to, and acknowledged before me by \_\_\_\_\_  
3 (name)

4 the testator, and subscribed and sworn to before me by \_\_\_\_\_ and  
5 (name)

6 \_\_\_\_\_, witnesses, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
7 (name)

8 (Seal)

9 \_\_\_\_\_  
10 (Signed)

11 \_\_\_\_\_  
12 (Official capacity of officer)

13 **SECTION 9. PROOF OF ELECTRONIC WILL.** A signature physically or  
14 electronically affixed to an affidavit logically associated with an electronic will under this [act] is  
15 deemed a signature affixed to the electronic will if necessary to prove the will’s execution.

16 **SECTION 10. CHOICE OF LAW REGARDING EXECUTION.** An electronic will  
17 is validly executed if executed in compliance with this [act] or with the law of the place where:

18 (1) the testator is physically located when the testator signs the will; or

19 (2) the testator is domiciled or resides when the testator signs the will or dies.

20 **SECTION 11. REVOCATION.**

21 (a) An electronic will or provision of an electronic will is revoked by:

22 (1) a subsequent will, including an electronic will, that revokes the previous will  
23 or part expressly or by inconsistency; or

24 (2) a revocatory act [other than a record], if it is established by a preponderance of  
25 the evidence that the testator performed the act with the intent and for the purpose of revoking  
26 the will or provision or that another individual performed the act in the testator’s physical or

1 electronic presence and by the testator’s direction.

2 (b) An electronic will may revoke a will that is not an electronic will.

3 **Comment**

4 Revocation by physical act is permitted for non-electronic wills. The difficulty with  
5 physical revocation of an electronic will is that multiple copies of an electronic will may exist.  
6 The Drafting Committee discussed whether to require a single, authenticated will, but concluded  
7 that doing so was likely to invalidate wills that should be valid. The Drafting Committee also  
8 discussed whether to require the use of a subsequent will to revoke an electronic will, but  
9 concluded that a person might assume that a will could be deleted by using a delete or trash  
10 function on the computer. The Drafting Committee decided to permit revocation by revocatory  
11 act but require clear and convincing evidence of the testator’s intent to revoke the will. The Act  
12 does not define revocatory act, which could include an electronic act, such as deleting a file, or a  
13 physical act, such as smashing a flashdrive with a hammer. If a company is storing an electronic  
14 will, a revocatory act could include selecting “revoke” on the appropriate page on the company’s  
15 website.

16  
17 [Add more to this comment describing evidence and proof of revocation.]

18 [Need to discuss the meaning of revocatory act. The drafting committee agreed that it  
19 should not include a separate writing, unless the writing was executed with will formalities. The  
20 challenge is to say that but to allow anything we want to allow. Things to consider: (1) hitting  
21 the delete button on a website where the will is stored, with witnesses to confirm the intent to  
22 revoke, (2) telling Alexa to delete the will (is this comparable to telling someone to destroy a  
23 paper will?), (3) printing the will and writing “cancelled” on it, and (4) writing “revoked” on an  
24 electronic copy of the will (one that hasn’t been e-notarized and isn’t locked).]

25  
26 **SECTION 12. CERTIFICATION OF PAPER COPY FOR SUBMISSION TO**  
27 **PROBATE.**

28 (1) An individual may create a certified paper copy of an electronic will by affirming  
29 under penalty of perjury that a paper copy of an electronic will is a complete, true, and accurate  
30 copy of the electronic will. The paper copy to be certified must contain all of the following  
31 elements:

32 (A) the text of the electronic will, without alteration or addition;

33 (B) the signatures of the testator and witnesses, and notary, if applicable;

34 (C) a readable copy of any associated document integrity evidence that may be a

1 part of or attached to the electronic will; and

2 (D) if the electronic will was made self-proving, the self-proving affidavit.

3 (2) Whenever law of this state other than this [act] requires that a decedent’s electronic  
4 will be filed with [the court], a certified paper copy must be filed within [ ] days of [the action  
5 that commences the proceeding.]

6 **Legislative Note:** [Describe what the state should insert in the brackets at the end of subsection  
7 (2). For example, the state might require that the certified paper copy be filed within a  
8 prescribed number of days of the filing of the application for probate.]  
9

10 **SECTION 13. COMMON LAW AND PRINCIPLES OF EQUITY.** Principles of  
11 law and equity supplement this [act] except to the extent modified by this [act] or law of this  
12 state other than this [act].

13 **Comment**

14 In this Section “law” means both common law and statutory law. Law other than this Act  
15 continues to supply rules and guidance related to wills. For example, a will can be challenged  
16 based on the doctrine of undue influence. If someone influenced the testator to execute a will  
17 that did not carry out the testator’s true intent but instead carried out the intent of the influencer,  
18 a court can consider the will invalid. Undue influence, duress, and other doctrines developed in  
19 the common law continue to apply. *See* RESTATEMENT (THIRD) OF PROPERTY: WILLS AND OTHER  
20 DONATIVE TRANSFERS § 8.1 (Requirement of Mental Capacity); § 8.3 (Undue Influence, Duress,  
21 or Fraud).

22  
23 [Add as example that a witness must meet the requirements of other law to be a witness.]  
24

25 [Here is UPC 1-103: Unless displaced by the particular provisions of this [code], the principles  
26 of law and equity supplement its provisions.]  
27

28 **SECTION 14. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In  
29 applying and construing this uniform act, consideration must be given to the need to promote  
30 uniformity of the law with respect to its subject matter among states that enact it.



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**Comment**

An electronic will is effective if it meets the requirements of this Act, even if the will was executed before the effective date of the Act. This transitional provision will be helpful if a testator effectively executes an electronic will in a state that has adopted the Act and then moves to another state that has not yet adopted, but later adopts, the Act.

**SECTION 17. EFFECTIVE DATE.** This [act] takes effect . . . .