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Assembly Bill No. 413-Committee on Judiciary

CHAPTER.....

AN ACT relating to electronic documents; establishing provisions relating to electronic wills and trusts; revising provisions governing electronic notaries public; authorizing electronic notaries public to perform authorized electronic notarial acts remotely using audio-video communication; establishing provisions concerning electronic documents relating to real property located in this State; authorizing the Secretary of State to require notaries public registering as electronic notaries public to complete an online course on electronic notarization; increasing the amount of the fees authorized to be charged by an electronic notary public for the performance of certain electronic notarial acts and authorizing the collection of a fee to recover certain costs; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law establishes provisions relating to electronic wills. (NRS 132.119, 133.085, 136.185) **Sections 10-17** of this bill establish various other provisions relating to electronic wills. **Sections 8 and 19** of this bill revise the description of an electronic will and **section 10** establishes the circumstances in which an electronic will is self-proving. **Sections 11 and 12** establish the qualifications and duties of a qualified custodian of an electronic will, who is required to store electronic records of electronic wills in a system that protects electronic records from destruction, alteration or unauthorized access and detects any change to an electronic record. **Sections 13 and 14** set forth the circumstances in which a qualified custodian is authorized to cease serving in such a capacity. **Section 15** establishes provisions concerning affidavits relating to the creation of a certified paper original of an electronic will, which **section 3** of this bill generally defines as a tangible document containing the text of an electronic will. **Section 16** sets forth provisions relating to the ability of an electronic notary public or other notarial officer to perform certain notarial acts. **Section 17** establishes various provisions for purposes relating to the execution and filing of any document with a court in any proceeding relating to an electronic will and for certain other purposes.

Section 18 of this bill establishes requirements relating to a declaration or affidavit of a witness to an electronic will. **Section 20** of this bill provides the methods by which an electronic will may be revoked. **Section 21** of this bill sets forth provisions relating to the jurisdiction in which an electronic will may be proved and the admittance of a certified paper original of an electronic will to probate.

Sections 23-28 of this bill revise provisions relating to trusts. **Section 24** provides that a video recording or other electronic record may be admissible in court as evidence of certain issues relating to a trust, and **section 28** revises the description of an electronic trust.

Existing law establishes the Electronic Notary Public Authorization Act pursuant to which an electronic notary public appointed by the Secretary of State is authorized to perform electronic notarial acts. (NRS 240.181-240.206) **Section 39** of this bill renames the act as the Electronic Notarization Enabling Act and **section**



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45 of this bill requires electronic notaries public to register with, instead of be appointed by, the Secretary of State. **Section 35** of this bill: (1) authorizes an electronic notary public to perform authorized electronic notarial acts remotely using audio-video communication, which **section 30** of this bill generally defines as communication by which a person is able to see, hear and communicate with another person in real time using electronic means; and (2) sets forth certain requirements relating to such electronic notarial acts. **Section 36** of this bill authorizes an electronic notary public to perform an electronic notarial act using audio-video communication for a person located: (1) in this State; (2) outside this State but within the United States; or (3) in certain circumstances, outside the United States.

Section 37 of this bill requires an electronic notary public to arrange for a recording to be made of each electronic notarial act performed using audio-video communication and to give all participating persons advance notice of the recording. **Section 37** also requires the recording to be kept for not less than 7 years. **Section 51** of this bill requires an electronic notary public to keep an electronic journal of each notarial act which he or she performs and to maintain and protect the electronic journal at all times. **Section 51** also provides that, except as otherwise provided by law, an electronic notary public is required to keep all required notarial records for a period of 7 years after the termination of the registration of the electronic notary public.

Section 38 of this bill establishes provisions relating to the confirmation of the identity of a person for whom an electronic notarial act is performed using audio-video communication. **Section 50** of this bill requires an electronic notary public to render an electronic document that is the subject of an electronic notarial act tamper-evident.

Section 38.3 of this bill establishes provisions concerning electronic documents relating to real property located in this State.

Section 46.5 of this bill authorizes the Secretary of State to require a notary public who registers with the Secretary of State as an electronic notary public to complete an online course of study on electronic notarization. **Section 38.7** of this bill establishes provisions relating to the completion of such a course of study.

Section 48 of this bill increases the amount of fees which an electronic notary public may charge for performing certain electronic notarial acts and authorizes an electronic notary public to charge a reasonable fee to recover any cost of providing a copy of an entry or a recording of an audio-video communication in the electronic journal maintained by the electronic notary public. **Section 48** also prohibits an electronic notary public who is an officer or employee of the State or a local government from charging a fee for an electronic notarial act that the electronic notary public performs within the scope of such employment.

Sections 56-60 of this bill delete certain provisions of Assembly Bill No. 476 of this session that are replaced with the provisions of **sections 45, 46, 46.5, 51 and 52** of this bill, and **section 61** of this bill provides that the provisions of this bill are intended to supersede any provisions of Assembly Bill No. 476 that conflict with the provisions of this bill.



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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted-material] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 132 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

Sec. 2. *Except as otherwise specifically provided in this title, the provisions of this title must be construed in a manner consistent with the provisions of chapter 719 of NRS.*

Sec. 3. *“Certified paper original” means a tangible document that contains the text of an electronic will and, if applicable, a self-proving affidavit concerning the electronic will.*

Sec. 4. *“Electronic notary public” has the meaning ascribed to it in NRS 240.186.*

Sec. 5. *“Qualified custodian” means a person who meets the requirements of section 11 of this act.*

Sec. 6. NRS 132.025 is hereby amended to read as follows:

132.025 As used in this title, unless the context otherwise requires, the words and terms defined in NRS 132.030 to 132.370, inclusive, *and sections 3, 4 and 5 of this act* have the meanings ascribed to them in those sections.

Sec. 7. NRS 132.117 is hereby amended to read as follows:

132.117 “Electronic record” means a record created, generated, *sent, communicated, received* or stored by electronic means.

Sec. 8. NRS 132.119 is hereby amended to read as follows:

132.119 “Electronic will” means ~~{a testamentary document that complies}~~ *an instrument, including, without limitation, a codicil, that is executed by a person in accordance* with the requirements of NRS 133.085 ~~{}~~ *and which disposes of the property of the person upon or after his or her death.*

Sec. 9. Chapter 133 of NRS is hereby amended by adding thereto the provisions set forth as sections 10 to 17, inclusive, of this act.

Sec. 10. 1. *An electronic will is self-proving if:*

(a) The declarations or affidavits of the attesting witnesses are incorporated as part of, attached to or logically associated with the electronic will, as described in NRS 133.050;

(b) The electronic will designates a qualified custodian to maintain custody of the electronic record of the electronic will; and



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(c) Before being offered for probate or being reduced to a certified paper original that is offered for probate, the electronic will was at all times under the custody of a qualified custodian.

2. A declaration or affidavit of an attesting witness made pursuant to NRS 133.050 and an affidavit of a person made pursuant to section 15 of this act must be accepted by a court as if made before the court.

Sec. 11. A qualified custodian of an electronic will:

1. Must not be an heir of the testator or a beneficiary or devisee under the electronic will.

2. Shall consistently employ, and store electronic records of electronic wills in, a system that protects electronic records from destruction, alteration or unauthorized access and detects any change to an electronic record.

3. Shall store in the electronic record of an electronic will each of the following:

(a) A photograph or other visual record of the testator and the attesting witnesses that was taken contemporaneously with the execution of the electronic will;

(b) A photocopy, photograph, facsimile or other visual record of any documentation that was taken contemporaneously with the execution of the electronic will and provides satisfactory evidence of the identities of the testator and the attesting witnesses, including, without limitation, documentation of the methods of identification used pursuant to subsection 4 of NRS 240.1655; and

(c) An audio and video recording of the testator, attesting witnesses and notary public, as applicable, taken at the time the testator, each attesting witness and notary public, as applicable, placed his or her electronic signature on the electronic will, as required pursuant to paragraph (b) of subsection 1 of NRS 133.085.

4. Shall provide to any court that is hearing a matter involving an electronic will which is currently or was previously stored by the qualified custodian any information requested by the court pertaining to the qualifications of the qualified custodian and the policies and practices of the qualified custodian concerning the maintenance, storage and production of electronic wills.

Sec. 12. 1. With regard to an electronic record of an electronic will, a qualified custodian:

(a) Shall provide access to or information concerning the electronic will or the certified paper original of the electronic will only to:



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(1) The testator or another person as directed by the written instructions of the testator; and

(2) After the death of the testator, the nominated personal representative of the testator or any interested person; and

(b) May, in the absolute discretion of the qualified custodian, destroy the electronic record at any time:

(1) Five or more years after the admission of any will of the testator to probate;

(2) Five or more years after the revocation of the electronic will;

(3) Five or more years after ceasing to serve as the qualified custodian of the electronic record of the electronic will pursuant to section 13 of this act;

(4) Ten or more years after the death of the testator; or

(5) One hundred and fifty years after the execution of the electronic will.

2. At the direction of a testator in a writing executed with the same formalities required for the execution of an electronic will, a qualified custodian shall cancel, render unreadable or obliterate the electronic record.

Sec. 13. 1. A qualified custodian may cease serving in such a capacity by:

(a) If not designating a successor qualified custodian, providing to the testator:

(1) Thirty days' written notice that the qualified custodian has decided to cease serving in such a capacity; and

(2) The certified paper original of, and all records concerning, the electronic will.

(b) If designating a successor qualified custodian:

(1) Providing 30 days' written notice that the qualified custodian has decided to cease serving in such a capacity to:

(I) The testator; and

(II) The designated successor qualified custodian; and

(2) Providing to the successor qualified custodian the electronic record of the electronic will and an affidavit which states:

(I) That the qualified custodian ceasing to act in such a capacity is eligible to act as a qualified custodian in this State and is the qualified custodian designated by the testator in the electronic will or was designated to act in such a capacity by another qualified custodian pursuant to this paragraph;

(II) That an electronic record was created at the time the testator executed the electronic will;



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(III) That the electronic record has been in the custody of one or more qualified custodians since the execution of the electronic will and has not been altered since the time it was created; and

(IV) The identity of all qualified custodians who have had custody of the electronic record since the execution of the electronic will.

2. For purposes of making the affidavit pursuant to subparagraph (2) of paragraph (b) of subsection 1, a qualified custodian is entitled to rely conclusively on any affidavits provided by a predecessor qualified custodian if all such affidavits are provided to the successor qualified custodian.

3. Subject to the provisions of section 14 of this act, if the testator designates a successor qualified custodian in a writing executed with the same formalities required for the execution of an electronic will, a qualified custodian shall cease serving in such a capacity and provide to the designated successor qualified custodian:

(a) The electronic record; and

(b) The affidavit described in subparagraph (2) of paragraph (b) of subsection 1.

4. If a qualified custodian is an entity, an affidavit of a duly authorized officer or agent of such entity constitutes the affidavit of the qualified custodian.

Sec. 14. 1. *A person must execute a written statement affirmatively agreeing to serve as the qualified custodian of an electronic will before he or she may serve in such a capacity.*

2. Except as otherwise provided in paragraph (a) of subsection 1 of section 13 of this act, a qualified custodian may not cease serving in such a capacity until a successor qualified custodian executes the written statement required by subsection 1.

Sec. 15. 1. *Upon the creation of a certified paper original of an electronic will:*

(a) If the electronic will has always been in the custody of a qualified custodian, the qualified custodian shall state in an affidavit:

(1) That the qualified custodian is eligible to act as a qualified custodian in this State;

(2) That the qualified custodian is the qualified custodian designated by the testator in the electronic will or was designated to act in such a capacity pursuant to paragraph (b) of subsection 1 of section 13 of this act;



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(3) That an electronic record was created at the time the testator executed the electronic will;

(4) That the electronic record has been in the custody of one or more qualified custodians since the execution of the electronic will, and has not been altered since the time it was created;

(5) The identity of all qualified custodians who have had custody of the electronic record since the execution of the electronic will;

(6) That the certified paper original is a true, correct and complete tangible manifestation of the electronic will; and

(7) That the records described in subsection 3 of section 11 of this act are in the custody of the qualified custodian.

(b) If the electronic will has not always been under the custody of a qualified custodian, the person who discovered the electronic will and the person who reduced the electronic will to the certified paper original shall each state in an affidavit the following information, to the best of their knowledge:

(1) When the electronic will was created, if not indicated in the electronic will;

(2) When, how and by whom the electronic will was discovered;

(3) The identities of each person who has had access to the electronic will;

(4) The method in which the electronic will was stored and the safeguards in place to prevent alterations to the electronic will;

(5) Whether the electronic will has been altered since its execution; and

(6) That the certified paper original is a true, correct and complete tangible manifestation of the electronic will.

2. For purposes of making an affidavit pursuant to paragraph (a) of subsection 1, the qualified custodian may rely conclusively on any affidavits delivered by a predecessor qualified custodian.

Sec. 16. 1. Notwithstanding any other provision of law, an electronic notary public or other notarial officer may, for purposes of this title, including, without limitation, all purposes relating to the execution and filing of any document with the court in any proceeding relating to an electronic will:

(a) Notarize the signature or electronic signature of a person, as applicable, who is not in the physical presence of the electronic notary public or other notarial officer if the person is in his or her presence within the meaning of section 17 of this act; and



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(b) Notarize any document relating to a will, codicil or testamentary trust.

2. This section must be liberally construed and applied to promote the purposes of NRS 133.085 and sections 10 to 17, inclusive, of this act.

Sec. 17. 1. For purposes of this title, including, without limitation, any declaration or affidavit made by an attesting witness as described in NRS 133.050, for all purposes relating to the execution and filing of any document with the court in any proceeding relating to an electronic will and for purposes of executing a power of attorney pursuant to NRS 162A.220, an advance directive or any document relating to an advance directive:

(a) A person shall be deemed to be in the presence of or appearing before another person if such persons are in:

(1) The same physical location; or

(2) Different physical locations but can communicate with each other by means of audio-video communication.

(b) An electronic notary public may electronically notarize electronic documents, including, without limitation, documents constituting or relating to an electronic will, in accordance with NRS 240.181 to 240.206, inclusive, and sections 30 to 38.7, inclusive, of this act.

(c) Any requirement that a document be signed may be satisfied by an electronic signature.

(d) If a provision of law requires a written record, an electronic record satisfies such a provision.

(e) Except as otherwise provided in subparagraph (3), regardless of the physical location of the person executing a document or of any witness, if a document is executed electronically, the document shall be deemed to be executed in this State and will be governed by the laws of this State and subject to the jurisdiction of the courts of this State if:

(1) The person executing the document states that he or she understands that he or she is executing, and that he or she intends to execute, the document in and pursuant to the laws of this State;

(2) The document states that the validity and effect of its execution are governed by the laws of this State;

(3) Any attesting witnesses or an electronic notary public whose electronic signatures are contained in the document were physically located within this State at the time the document was executed in accordance with this section; or



to be his or her last will and testament in their presence; that they thereafter subscribed the will as witnesses in the presence of the testator and in the presence of each other and at the request of the testator; and that the testator at the time of the execution of the will appeared to them to be of full age and of sound mind and memory.

.....
Affiant
.....
Affiant

Subscribed and sworn to before me
this day of the month of of the year

.....
Notary Public

3. The declaration described in subsection 1 may be in substantially the following form:

Under penalty of perjury pursuant to the law of the State of Nevada, the undersigned, and, declare that the following is true of their own knowledge: That they witnessed the execution of the foregoing will of the testator,; that the testator subscribed the will and declared it to be his or her last will and testament in their presence; that they thereafter subscribed the will as witnesses in the presence of the testator and in the presence of each other and at the request of the testator; and that the testator at the time of the execution of the will appeared to them to be of full age and of sound mind and memory.

Dated this day of,

..... Declarant
..... Declarant

4. If a testator or a witness signing an affidavit or declaration described in subsection 1 appears by means of audio-video communication, the form for the affidavit or declaration, as set forth in subsections 2 and 3, respectively, must be modified to indicate that fact.

5. As used in this section, "audio-video communication" has the meaning ascribed to it in section 17 of this act.



Sec. 19. NRS 133.085 is hereby amended to read as follows:

133.085 1. An electronic will is a will of a testator that:

(a) Is ~~{written,}~~ created and ~~{stored}~~ ***maintained*** in an electronic record; ***and***

(b) Contains the date and the electronic signature of the testator and which includes, without limitation, at least one ***of the following:***

(1) An authentication characteristic of the testator; {and

~~—(c) Is created and stored in such a manner that:~~

~~—(1) Only one authoritative copy exists;}~~

~~(2) The {authoritative copy is maintained and controlled by the testator or a custodian designated by the testator in the electronic {will;}~~ ***signature and electronic seal of an electronic notary public, placed thereon in the presence of the testator and in whose presence the testator placed his or her electronic signature thereon; or***

~~(3) {Any attempted alteration of the authoritative copy is readily identifiable; and~~

~~—(4) Each copy of the authoritative copy is readily identifiable as a copy that is not the authoritative copy.}~~ ***The electronic signatures of two or more attesting witnesses, placed thereon in the presence of the testator and in whose presence the testator placed his or her electronic signature thereon.***

2. Every person of sound mind over the age of 18 years may, by last electronic will, dispose of all of his or her estate, real and personal, but the estate is chargeable with the payment of the testator's debts.

3. ~~{An electronic will that meets the requirements of this section is subject to no other form, and may be made in or out of this State. An electronic will is valid and has the same force and effect as if formally executed.~~

~~—4. An electronic will shall be deemed to be executed in this State if the authoritative copy of the electronic will is:~~

~~—(a) Transmitted to and maintained by a custodian designated in the electronic will at the custodian's place of business in this State or at the custodian's residence in this State; or~~

~~—(b) Maintained by the testator at the testator's place of business in this State or at the testator's residence in this State.~~

~~—5.}~~ ***Except as otherwise provided in this section and sections 10 to 17, inclusive, of this act, all questions relating to the force, effect, validity and interpretation of an electronic will that complies with the provisions of this section and sections 10 to 17, inclusive, of this act must be determined in the same manner as a will executed in accordance with NRS 133.040.***



4. The provisions of this section do not apply to a trust other than a trust contained in an electronic will.

~~6.~~ 5. As used in this section:

(a) "Authentication characteristic" means a characteristic of a certain person that is unique to that person and that is capable of measurement and recognition in an electronic record as a biological aspect of or physical act performed by that person. Such a characteristic may consist of a fingerprint, a retinal scan, voice recognition, facial recognition, *video recording*, a digitized signature or other *commercially reasonable* authentication using a unique characteristic of the person.

(b) ~~["Authoritative copy" means the original, unique, identifiable and unalterable electronic record of an electronic will.~~

~~(c)~~ "Digitized signature" means a graphical image of a handwritten signature that is created, generated or stored by electronic means.

(c) "*Electronic seal*" has the meaning ascribed to it in *NRS 240.187*.

Sec. 20. NRS 133.120 is hereby amended to read as follows:

133.120 1. A written will *other than an electronic will* may only be revoked by:

(a) Burning, tearing, cancelling or obliterating the will, with the intention of revoking it, by the testator, or by some person in the presence and at the direction of the testator; ~~or~~

(b) Another will or codicil in writing, executed as prescribed in this chapter ~~;~~ *or*

(c) *An electronic will, executed as prescribed in this chapter.*

2. *An electronic will may only be revoked by:*

(a) *Another will, codicil, electronic will or other writing, executed as prescribed in this chapter; or*

(b) *Cancelling, rendering unreadable or obliterating the will with the intention of revoking it, by:*

(1) *The testator or a person in the presence and at the direction of the testator; or*

(2) *If the will is in the custody of a qualified custodian, the qualified custodian at the direction of a testator in an electronic will.*

3. This section does not prevent the revocation implied by law from subsequent changes in the condition or circumstances of the testator.

Sec. 21. NRS 136.185 is hereby amended to read as follows:

136.185 1. An electronic will *executed or deemed to be executed in or pursuant to the laws of this State* may be proved ~~by~~



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~~authentication satisfactory to the court.] and letters granted in the county in which the decedent was a resident at the time of his or her death or the domicile or registered office of the qualified custodian exists.~~

2. *A certified paper original of an electronic will may be offered for and admitted to probate in the same manner as if it were a will executed in accordance with NRS 133.040.*

3. *A certified paper original of an electronic will that is self-proving pursuant to section 10 of this act is presumed to be valid and, absent any objection, must be admitted to probate expeditiously without requiring any further proof of validity.*

4. *An electronic will that is executed or deemed to be executed in or pursuant to the laws of another state in accordance with the laws of the other state or of this State is a valid electronic will in this State.*

Sec. 22. Chapter 163 of NRS is hereby amended by adding thereto the provisions set forth as sections 23 and 24 of this act.

Sec. 23. *As used in this chapter, unless the context otherwise requires, when the terms “execute” or “sign” are used in reference to a will, trust or instrument to convey property, the terms include the use of an electronic signature.*

Sec. 24. *Subject to the provisions of any applicable court rules, a video recording or other electronic record may be admissible as evidence of:*

1. *The proper execution of a trust.*
2. *The intentions of a settlor.*
3. *The mental state or capacity of a settlor.*
4. *The authenticity of a trust.*
5. *Matters that are determined by a court to be relevant to the administration of a trust.*

Sec. 25. NRS 163.0016 is hereby amended to read as follows:
163.0016 “Nontestamentary trust” means a trust , *including, without limitation, an electronic trust*, that is created and takes effect during the lifetime of the settlor.

Sec. 26. NRS 163.0018 is hereby amended to read as follows:
163.0018 “Testamentary trust” means a trust that is created by the terms of the will , *including, without limitation, the electronic will*, of a person.

Sec. 27. NRS 163.00185 is hereby amended to read as follows:

163.00185 “Trust instrument” means a will, trust agreement, declaration, or other instrument , *including, without limitation, an electronic trust*, that creates or defines the duties and powers of a



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trustee and shall include a court order or any instrument that modifies a trust instrument or, in effect, alters the duties and powers of a trustee or other terms of a trust instrument.

Sec. 28. NRS 163.0095 is hereby amended to read as follows:

163.0095 1. An electronic trust is a trust instrument that:

(a) Is ~~{written,}~~ created and ~~{stored}~~ ***maintained*** in an electronic record ~~{;}~~ ***in such a manner that any alteration thereto is detectable;***

(b) Contains the electronic signature of the settlor ~~{;}~~ and ***the date and time thereof;***

(c) ***Includes, without limitation, an authentication method which is attached to or logically associated with the trust instrument to identify the settlor or is electronically notarized in accordance with all applicable provisions of law;***

(d) ***Is subject to the provisions of chapter 719 of NRS; and***

(e) Meets the requirements set forth in this chapter for a valid trust.

2. ~~{An}~~ ***Regardless of the physical location of the settlor, an electronic trust shall be deemed to be executed in this State and will be governed by the laws of this State and subject to the jurisdiction of the courts of this State*** if the electronic trust is:

(a) Transmitted to and maintained by a custodian designated in the trust instrument at the custodian's place of business in this State or at the custodian's residence in this State; or

(b) Maintained by the settlor at the settlor's place of business in this State or at the settlor's residence in this State, or by the trustee at the trustee's place of business in this State or at the trustee's residence in this State.

3. ***Notwithstanding the provisions of subsection 2, the validity of a notarial act performed by an electronic notary public must be determined by applying the laws of the jurisdiction in which the electronic notary public is commissioned or appointed.***

4. The provisions of this section do not apply to a testamentary trust.

5. ***As used in this section:***

(a) ***"Authentication characteristic" has the meaning ascribed to it in NRS 133.085.***

(b) ***"Authentication method" means a method of identification using any applicable method authorized or required by law, including, without limitation, a digital certificate using a public key or a physical device, including, without limitation, a smart card, flash drive or other type of token, an authentication characteristic or another commercially reasonable method.***



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(c) *“Public key” has the meaning ascribed to it in NRS 720.110.*

Sec. 29. Chapter 240 of NRS is hereby amended by adding thereto the provisions set forth as sections 30 to 38.7, inclusive, of this act.

Sec. 30. *“Audio-video communication” means communication by which a person is able to see, hear and communicate with another person in real time using electronic means.*

Sec. 31. *“Credential” means a tangible record evidencing the identity of a person.*

Sec. 32. *“Dynamic knowledge-based authentication assessment” means an identity assessment that is based on a set of questions formulated from public or private data sources for which the person taking the assessment has not previously provided an answer and that meets any rules or regulations adopted by the Secretary of State.*

Sec. 33. *“Electronic” means of or relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.*

Sec. 34. *“In the presence of” or “appear before” means being:*

1. In the same physical location as another person and close enough to see, hear, communicate with and exchange credentials with that person; or

2. In a different physical location from another person but able to see, hear and communicate with the person by means of audio-video communication that meets any rules or regulations adopted by the Secretary of State.

Sec. 35. *1. An electronic notary public may perform any of the acts set forth in NRS 240.196 using audio-video communication in accordance with NRS 240.181 to 240.206, inclusive, and sections 30 to 38.7, inclusive, of this act and any rules or regulations adopted by the Secretary of State.*

2. Before an electronic notary public performs electronic notarial acts using audio-video communication, he or she must register with the Secretary of State pursuant to NRS 240.192 and identify the technology that the electronic notary public intends to use, which must conform to any rules or regulations adopted by the Secretary of State.

3. If an electronic notarial act is performed using audio-video communication:



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- (a) The technology used must allow the persons communicating to see and speak to each other simultaneously;*
- (b) The signal transmission must be in real time; and*
- (c) The electronic notarial act must be recorded in accordance with section 37 of this act.*

Sec. 36. 1. *An electronic notary public may perform an electronic notarial act using audio-video communication in accordance with NRS 240.181 to 240.206, inclusive, and sections 30 to 38.7, inclusive, of this act and any rules or regulations adopted by the Secretary of State for a person who is physically located:*

- (a) In this State;*
- (b) Outside this State but within the United States; or*
- (c) Outside the United States if:*

(1) The electronic notary public has no actual knowledge of the electronic notarial act being prohibited in the jurisdiction in which the person is physically located; and

(2) The person placing his or her electronic signature on the electronic document confirms to the electronic notary public that the requested electronic notarial act and the electronic document:

(I) Are part of or pertain to a matter that is to be filed with or is currently before a court, governmental entity or other entity in the United States;

(II) Relate to property located in the United States; or

(III) Relate to a transaction substantially connected to the United States.

2. *An electronic notary public who is registered with the Secretary of State pursuant to NRS 240.192 may perform an electronic notarial act using audio-video communication in accordance with NRS 240.181 to 240.206, inclusive, and sections 30 to 38.7, inclusive, of this act and any rules or regulations adopted by the Secretary of State if the electronic notary public is physically present in this State at the time of performing the electronic notarial act, regardless of whether the person who placed the electronic signature on the electronic document is physically located in another jurisdiction at the time of the electronic notarial act. The validity of the notarial act will be determined by applying the laws of this State.*

Sec. 37. 1. *An electronic notary public shall arrange for a recording to be made of each electronic notarial act performed using audio-video communication. Before performing any electronic notarial act using audio-video communication, the*



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electronic notary public must inform all participating persons that the electronic notarization will be electronically recorded.

2. If the person for whom the electronic notarial act is being performed is identified by personal knowledge, the recording of the electronic notarial act must include an explanation by the electronic notary public as to how he or she knows the person and how long he or she has known the person.

3. If the person for whom the electronic notarial act is being performed is identified by a credible witness:

(a) The credible witness must appear before the electronic notary public; and

(b) The recording of the electronic notarial act must include:

(1) A statement by the electronic notary public as to whether he or she identified the credible witness by personal knowledge or satisfactory evidence; and

(2) An explanation by the credible witness as to how he or she knows the person for whom the electronic notarial act is being performed and how long he or she has known the person.

4. An electronic notary public shall keep a recording made pursuant to this section for a period of not less than 7 years, regardless of whether the electronic notarial act was actually completed.

Sec. 38. 1. For the purposes of performing an electronic notarial act for a person using audio-video communication, an electronic notary public has satisfactory or documentary evidence of the identity of the person if the electronic notary public confirms the identity of the person by:

(a) Personal knowledge;

(b) Each of the following:

(1) Remote presentation by the person of a government-issued identification credential that contains a photograph and the signature of the person;

(2) Credential analysis of the government-issued identification credential and the data thereon; and

(3) A dynamic knowledge-based authentication assessment;

(c) Any other method that complies with any rules or regulations adopted by the Secretary of State; or

(d) A valid certificate that complies with any rules or regulations adopted by the Secretary of State.

2. As used in this section:

(a) "Certificate" has the meaning ascribed to it in NRS 720.030.



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(b) "Credential analysis" means a process or service that complies with any rules or regulations adopted by the Secretary of State through which a third party affirms the validity of a government-issued identification credential or any data thereon through the review of data sources.

(c) "Remote presentation" means the transmission of a quality image of a government-issued identification credential to an electronic notary public through communication technology for the purpose of enabling the electronic notary public to identify the person appearing before the electronic notary public and to perform a credential analysis.

Sec. 38.3. 1. If an electronic document relating to real property located in this State contains an electronic acknowledgment, notwithstanding any omission or error in the certificate of acknowledgment or failure of the document to show an acknowledgment in compliance with applicable law, upon the document being recorded with the county recorder of the county in which the real property is located or filed with the Secretary of State:

(a) The electronic document shall be deemed to be lawfully recorded or filed; and

(b) All persons, including, without limitation, any creditor, encumbrancer, mortgagee, subsequent purchaser for valuable consideration or any other subsequent transferee thereof or of any interest therein, are deemed to have notice of its contents.

2. For the purposes of this section, a document is deemed to comply with all applicable requirements upon the acceptance for recording by the county recorder of the county in which the real property is located or the filing of the document with the Secretary of State, as required by law.

Sec. 38.7. 1. Except as otherwise provided in this section, a notary public who registers with the Secretary of State as an electronic notary public pursuant to NRS 240.192 for the first time must successfully complete any required course of study on electronic notarization required pursuant to NRS 240.195 before filing such registration with the Secretary of State.

2. A notary public may register with the Secretary of State as an electronic notary public pursuant to NRS 240.192 and thereafter perform the functions of an electronic notary public pursuant to this chapter without completing any course of study on electronic notarization required pursuant to NRS 240.195 if, at the time of registration, the course of study is not yet offered by the Secretary of State or a vendor approved by the Secretary of State.



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3. If a notary public registers and performs the functions of an electronic notary public without first completing any required course of study on electronic notarization pursuant to subsection 2, he or she must complete the required course of study and pass any required examination within 120 days after the course of study is first offered by the Secretary of State or a vendor approved by the Secretary of State. The registrant shall thereafter complete any required course of study in accordance with paragraph (b) or (c) of subsection 3 of NRS 240.195, as applicable.

Sec. 39. NRS 240.181 is hereby amended to read as follows:

240.181 NRS 240.181 to 240.206, inclusive, **and sections 30 to 38.7, inclusive, of this act** may be cited as the Electronic ~~Notary Public Authorization~~ **Notarization Enabling Act.**

Sec. 40. NRS 240.182 is hereby amended to read as follows:

240.182 As used in NRS 240.181 to 240.206, inclusive, **and sections 30 to 38.7, inclusive, of this act**, unless the context otherwise requires, the words and terms defined in NRS 240.183 to 240.188, inclusive, **and sections 30 to 34, inclusive, of this act** have the meanings ascribed to them in those sections.

Sec. 40.5. NRS 240.185 is hereby amended to read as follows:

240.185 “Electronic notarial act” means an act that an electronic notary public of this State is authorized to perform. The term includes:

1. Taking an acknowledgment;
2. Administering an oath or affirmation;
3. Executing a jurat; ~~and~~
4. **Certifying a true and correct copy; and**
5. Performing such other duties as may be prescribed by a specific statute.

Sec. 41. NRS 240.186 is hereby amended to read as follows:

240.186 “Electronic notary public” means a person ~~appointed by~~ **registered with** the Secretary of State pursuant to NRS 240.181 to 240.206, inclusive, **and sections 30 to 38.7, inclusive, of this act** to perform electronic notarial acts.

Sec. 42. NRS 240.187 is hereby amended to read as follows:

240.187 “Electronic seal” means information within a notarized electronic document that includes the name, jurisdiction and expiration date of the ~~appointment~~ **registration** of an electronic notary public and generally includes the information required to be set forth in a mechanical stamp pursuant to NRS 240.040.



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Sec. 43. NRS 240.189 is hereby amended to read as follows:

240.189 An electronic notary public shall comply with those provisions of NRS 240.001 to 240.169, inclusive, which are not inconsistent with NRS 240.181 to 240.206, inclusive ~~{;}~~ , **and sections 30 to 38.7, inclusive, of this act.** To the extent that the provisions of NRS 240.001 to 240.169, inclusive, conflict with the provisions of NRS 240.181 to 240.206, inclusive, **and sections 30 to 38.7, inclusive, of this act,** the provisions of NRS 240.181 to 240.206, inclusive, **and sections 30 to 38.7, inclusive, of this act** control.

Sec. 44. NRS 240.191 is hereby amended to read as follows:

240.191 1. ~~{The Secretary of State may appoint electronic notaries public in this State.~~

~~2. The Secretary of State shall not appoint as an electronic notary public a person who submits an application containing a substantial and material misstatement or omission of fact.~~

~~3. An electronic notary public may cancel his or her appointment by submitting a written notice to the Secretary of State.~~

~~4.} It is unlawful for a person to:~~

(a) Represent himself or herself as an electronic notary public ~~{appointed pursuant to this section}~~ if the person has not ~~{received a certificate of appointment from}~~ **registered with** the Secretary of State pursuant to NRS 240.192.

(b) Submit ~~{an application for appointment}~~ **a registration** as an electronic notary public that contains a substantial and material misstatement or omission of fact.

~~{5.} 2. The Secretary of State may request that the Attorney General bring an action to enjoin any violation of paragraph (a) of subsection {4.} 1.~~

Sec. 45. NRS 240.192 is hereby amended to read as follows:

240.192 1. Each person ~~{applying for appointment}~~ **registering** as an electronic notary public must:

(a) At the time of ~~{application,}~~ **registration,** be a notarial officer in this State ~~{and}~~ **who has complied with the requirements pertaining to taking an oath and filing a bond set forth in NRS 240.030 and 240.033,** have been a notarial officer in this State for not less than 4 years ~~{;}~~ **and have complied with all applicable notarial requirements set forth in this chapter;**

(b) ~~{Submit to}~~ **Register with** the Secretary of State **by submitting** an electronic ~~{application}~~ **registration** pursuant to subsection 2;



(c) Pay to the Secretary of State ~~{an application}~~ **a registration fee of \$50 ~~{;}~~, which is in addition to the application fee required pursuant to NRS 240.030 to be a notarial officer in this State; and**

~~(d) {Take and subscribe to the oath set forth in Section 2 of Article 15 of the Constitution of the State of Nevada as if the applicant were a public officer;~~

~~—(e) Submit to the Secretary of State **with the registration** proof satisfactory to the Secretary of State that the ~~{applicant}~~ **registrant** has ~~{successfully}~~ :~~

~~(1) **Successfully** completed ~~{a}~~ **any required** course of study **on electronic notarization** provided pursuant to NRS 240.195; and~~

~~{(f) Enter into a bond to the State of Nevada in the sum of \$10,000, to be filed with the clerk of the county in which the applicant resides or, if the applicant is a resident of an adjoining state, with the clerk of the county in this State in which the applicant maintains a place of business or is employed. The applicant must submit to the Secretary of State a certificate issued by the appropriate county clerk which indicates that the applicant filed the bond required pursuant to this paragraph.}~~

~~(2) **Complied with the requirements pertaining to taking an oath and filing a bond set forth in NRS 240.030 and 240.033.**~~

2. ~~{The application for an appointment}~~ **Unless the Secretary of State establishes a different process for submitting a registration as an electronic notary public, the registration as an electronic notary public must be submitted as an electronic document by electronic mail to nvnotary@sos.nv.gov or, if another electronic mail address is designated by the Secretary of State, to such other designated electronic mail address,** and must contain, without limitation, the following information:

~~(a) {The applicant's full legal name, and the name to be used for appointment, if different.}~~ **All information required to be included in an application for appointment as a notary public pursuant to NRS 240.030.**

~~(b) {The county in which the applicant resides.~~

~~—(c) The electronic mail address of the applicant.~~

~~—(d) A description of the technology or device ~~{, approved by the Secretary of State,}~~ that the ~~{applicant}~~ **registrant** intends to use to create his or her electronic signature in performing electronic notarial acts.~~

~~{(e) (c) The electronic signature of the ~~{applicant}~~.~~

~~—(f) **registrant.**~~

~~(d) Any other information ~~{requested}~~ **required pursuant to any rules or regulations adopted** by the Secretary of State.~~



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3. ~~{An applicant for appointment as an electronic notary public who resides in an adjoining state, in addition to the requirements set forth in subsections 1 and 2, must submit to the Secretary of State with the application:~~

~~—(a) An affidavit setting forth the adjoining state in which the applicant resides, the applicant's mailing address and the address of the applicant's place of business or employment that is located within the State of Nevada;~~

~~—(b) A copy of the applicant's state business registration issued pursuant to chapter 76 of NRS and any business license required by the local government where the applicant's business is located, if the applicant is self-employed; and~~

~~—(c) Unless the applicant is self-employed, a copy of the state business registration of the applicant's employer issued pursuant to chapter 76 of NRS, a copy of any business license of the applicant's employer that is required by the local government where the business is located and an affidavit from the applicant's employer setting forth the facts which show that the employer regularly employs the applicant at an office, business or facility which is located within the State of Nevada.~~

~~4. In completing an application, bond, oath or other document necessary to apply for appointment as an electronic notary public, an applicant must not be required to disclose his or her residential address or telephone number on any such document which will become available to the public.~~

~~5. The bond, together with the oath, must be filed and recorded in the office of the county clerk of the county in which the applicant resides when the applicant applies for appointment or, if the applicant is a resident of an adjoining state, with the clerk of the county in this State in which the applicant maintains a place of business or is employed. On a form provided by the Secretary of State, the county clerk shall immediately certify to the Secretary of State that the required bond and oath have been filed and recorded. Upon receipt of the application, fee and certification that the required bond and oath have been filed and recorded, the Secretary of State shall issue a certificate of appointment as an electronic notary public to the applicant.~~

~~6. The term of an electronic notary public commences on the effective date of the bond required pursuant to paragraph (f) of subsection 1. An electronic notary public shall not perform an electronic notarial act after the effective date of the bond unless the electronic notary public has been issued a certificate of appointment pursuant to subsection 5.~~



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~~7. Except as otherwise provided in this subsection, the Secretary of State shall charge a fee of \$10 for each duplicate or amended certificate of appointment which is issued to an electronic notary public. If the electronic notary public does not receive an original certificate of appointment, the Secretary of State shall provide a duplicate certificate of appointment without charge if the electronic notary public requests such a duplicate within 60 days after the date on which the original certificate was issued.} **Unless the Secretary of State establishes a different process for the payment of the registration fee required pursuant to paragraph (c) of subsection 1, the registration fee must be paid by check or draft, made payable to the Secretary of State and transmitted to the Office of the Secretary of State.**~~

4. Registration as an electronic notary public shall be deemed effective upon the payment of the registration fee required pursuant to paragraph (c) of subsection 1 if the registrant has satisfied all other applicable requirements.

Sec. 46. NRS 240.194 is hereby amended to read as follows:

240.194 1. The ~~{initial term}~~ **period** of ~~{appointment}~~ **registration** ~~{as}~~ of an electronic notary public is ~~{2 years. Each}~~ **coterminous with his or her term of appointment as a notary public pursuant to NRS 240.010. Registration** as an electronic notary public ~~{subsequent to the initial term is 4 years.}~~ **must be renewed at the same time a person renews his or her appointment as a notary public.**

2. The ~~{appointment}~~ **registration** of an electronic notary public is suspended by operation of law when the electronic notary public is no longer appointed as a notary public in this State. If the ~~{appointment}~~ **registration** of an electronic notary public has expired or been revoked or suspended, the Secretary of State shall immediately notify the electronic notary public in writing that his or her ~~{appointment}~~ **registration** as an electronic notary public will be suspended by operation of law until he or she is appointed as a notary public in this State.

3. If, at any time ~~{during his or her appointment, an}~~ , **a registered** electronic notary public changes his or her electronic mail address, county of residence, name, electronic signature or the technology or device used to create his or her electronic signature, the electronic notary public shall, within 10 days after making the change, submit to the Secretary of State:

(a) An electronic document, signed with the electronic signature submitted by the electronic notary public pursuant to subsection 2 of NRS 240.192, that includes the change of information; and



(b) A fee of \$10.

Sec. 46.5. NRS 240.195 is hereby amended to read as follows:
240.195 1. *In addition to any courses of study a notary*

public is required to complete pursuant to NRS 240.018, the Secretary of State may, by rule or regulation, require a notary public who registers with the Secretary of State as an electronic notary public pursuant to NRS 240.192 to complete an additional course of study on electronic notarization in accordance with this section.

2. Except as otherwise provided in subsection ~~{2, an applicant for appointment}~~ 3, *a registrant* as an electronic notary public must successfully:

(a) Complete ~~{a}~~ *any* course of study *on electronic notarization* that is *required pursuant to subsection 1* in accordance with the requirements of subsection ~~{5;}~~ 6; and

(b) Pass an examination at the completion of the course.

~~{2;}~~ 3. The following persons are required to enroll in and successfully complete ~~{a}~~ *any* course of study ~~{as}~~ *on electronic notarization that is* required pursuant to subsection 1:

(a) A person ~~{applying}~~ *registering* for ~~{his or her}~~ *the* first ~~{appointment}~~ *time* as an electronic notary public;

(b) A person renewing his or her ~~{appointment}~~ *registration* as an electronic notary public; and

(c) A person who has committed a violation of this chapter or whose ~~{appointment}~~ *registration* as an electronic notary public has been suspended, and who has been required by the Secretary of State to enroll in a course of study provided pursuant to this section.

~~{3;}~~ 4. A course of study required to be completed pursuant to subsection 1 must:

(a) ~~{Include at least}~~ *Be taken online and be of a duration of not more than 3 hours* ~~{of instruction;}~~ *, including instruction and completion of an examination of the course content;*

(b) Provide instruction in electronic notarization, including, without limitation, notarial law and ethics, technology and procedures;

(c) ~~{Include an examination of the course content;}~~

~~{d)}~~ Comply with ~~{the}~~ *any* regulations adopted pursuant to NRS 240.206 ~~{;}~~ *relating to courses of study on electronic notarization;* and

~~{e)}~~ (d) Be approved by the Secretary of State.

~~{4;}~~ 5. The Secretary of State may, with respect to a course of study required to be completed pursuant to subsection 1 ~~{:~~

~~{a)}~~ Provide such a course of study; and



~~—(b) Charge~~, **charge** a reasonable fee to each person who enrolls in such a course of study.

~~{5.}~~ **6.** A course of study provided pursuant to this section:

(a) Must satisfy the criteria set forth in subsection ~~{3}~~ **4** and comply with ~~{the}~~ **any** requirements set forth in the regulations adopted pursuant to NRS 240.206 ~~{-} relating to courses of study on electronic notarization.~~

(b) May be provided ~~{in person or online}~~ by the Secretary of State or a vendor approved by the Secretary of State.

~~{6.}~~ **7.** The Secretary of State shall deposit the fees collected pursuant to ~~{paragraph (b) of}~~ subsection ~~{4}~~ **5** in the Notary Public Training Account created pursuant to NRS 240.018.

Sec. 47. NRS 240.196 is hereby amended to read as follows:

240.196 A person ~~{appointed}~~ **registered** as an electronic notary public pursuant to NRS 240.181 to 240.206, inclusive, **and sections 30 to 38.7, inclusive, of this act** may ~~{during normal business hours,}~~ perform the following electronic notarial acts for a person who requests the electronic notarial act and tenders ~~{the appropriate}~~ **any authorized** fee:

1. Taking an acknowledgment;
2. Executing a jurat; ~~{and}~~
3. Administering an oath or affirmation ~~{-}~~;
4. **Certifying a true and correct copy; and**
5. **Performing such other duties as prescribed by law.**

Sec. 48. NRS 240.197 is hereby amended to read as follows:

240.197 1. **Except as otherwise provided in this section:**

~~{and no more:}~~
~~—(a)}~~ **(1)** An electronic notary public may charge the following fees :

- ~~{(a)}~~ **(1)** For taking an acknowledgment, for each signature..... ~~{\$10}~~ **\$25**
- ~~{(b)}~~ **(2)** For executing a jurat, for each signature..... ~~{\$10}~~ **\$25**
- ~~{(c)}~~ **(3)** For administering an oath or affirmation without a signature..... ~~{\$10}~~ **\$25**

~~{2.}~~ **(b)** An electronic notary public shall not charge a fee to perform ~~{a service}~~ **an electronic notarial act** unless he or she is authorized to charge a fee for such ~~{a service}~~ **an electronic notarial act** pursuant to this section.

~~{3.}~~ **(c)** All fees prescribed in this section are payable in advance, if demanded.

~~{4.}~~ **(d)** An electronic notary public may charge an additional fee for traveling to perform an electronic notarial act if:

~~{(a)}~~ **(1)** The person requesting the electronic notarial act asks the electronic notary public to travel;



~~[(b)]~~ (2) The electronic notary public explains to the person requesting the electronic notarial act that the fee for travel is in addition to the fee authorized in ~~[subsection 4]~~ **paragraph (a)** and is not required by law;

~~[(e)]~~ (3) The person requesting the electronic notarial act agrees in advance upon the hourly rate that the electronic notary public will charge for the additional fee for travel; and

~~[(d)]~~ (4) The additional fee for travel does not exceed:

~~[(1)]~~ (I) If the person requesting the electronic notarial act asks the electronic notary public to travel between the hours of 6 a.m. and 7 p.m., \$10 per hour.

~~[(2)]~~ (II) If the person requesting the electronic notarial act asks the electronic notary public to travel between the hours of 7 p.m. and 6 a.m., \$25 per hour.

↳ The electronic notary public may charge a minimum of 2 hours for such travel and shall charge on a pro rata basis after the first 2 hours.

~~[(5)]~~ (e) An electronic notary public is entitled to charge the amount of the additional fee for travel agreed to in advance by the person requesting the electronic notarial act pursuant to ~~[subsection 4]~~ **paragraph (d)** if:

~~[(a)]~~ (1) The person requesting the electronic notarial act cancels the request after the electronic notary public begins traveling to perform the requested electronic notarial act.

~~[(b)]~~ (2) The electronic notary public is unable to perform the requested electronic notarial act as a result of the actions of the person who requested the electronic notarial act or any other person who is necessary for the performance of the electronic notarial act.

~~[(6)]~~ (f) For each additional fee for travel that an electronic notary public charges pursuant to ~~[subsection 4]~~ **paragraph (d)**, the electronic notary public shall enter in the *electronic* journal that he or she keeps pursuant to NRS 240.201:

~~[(a)]~~ (1) The amount of the fee; and

~~[(b)]~~ (2) The date and time that the electronic notary public began and ended such travel.

~~[(7)]~~ (g) *An electronic notary public may charge a reasonable fee to recover any cost of providing a copy of an entry or a recording of an audio-video communication in an electronic journal maintained pursuant to NRS 240.201.*

2. A person who employs an electronic notary public may prohibit the electronic notary public from charging a fee for an electronic notarial act that the electronic notary public performs within the scope of the employment. Such a person shall not require



the electronic notary public whom the person employs to surrender to the person all or part of a fee charged by the electronic notary public for an electronic notarial act performed outside the scope of the employment of the electronic notary public.

3. An electronic notary public who is an officer or employee of the State or a local government shall not charge a fee for an electronic notarial act that the electronic notary public performs within the scope of such employment.

4. This section does not apply to any compensation for services provided by an electronic notary public which do not constitute electronic notarial acts or comply with the other requirements of this chapter.

Sec. 49. NRS 240.198 is hereby amended to read as follows:

240.198 Except as otherwise specifically provided by law:

1. An electronic notary public shall not willfully electronically notarize the signature or electronic signature of a person unless the person is in the presence of the electronic notary public at the time of notarization and:

(a) Is known to the electronic notary public; or

(b) If unknown to the electronic notary public, provides a credible witness or documentary evidence of identification to the electronic notary public.

2. A person who:

(a) Violates the provisions of subsection 1; or

(b) Aids and abets an electronic notary public to commit a violation of subsection 1,

is guilty of a gross misdemeanor.

~~3. [An electronic notary public shall not electronically notarize any electronic document related to the following:~~

~~(a) A will, codicil or testamentary trust; and~~

~~(b) Any transaction governed by the Uniform Commercial Code other than NRS 104.1306, 104.2101 to 104.2725, inclusive, and 104A.2101 to 104A.2532, inclusive.~~

~~4. An appointment} **Registration** as an electronic notary public pursuant to NRS 240.181 to 240.206, inclusive, **and sections 30 to 38.7, inclusive, of this act** does not authorize the electronic notary public to perform notarial acts in another state.~~

4. A notarial act performed by an electronic notary public in this State for a person located outside this State by means of audio-video communication in accordance with the provisions of this chapter shall not be deemed to be performed outside this State.



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Sec. 50. NRS 240.199 is hereby amended to read as follows:

240.199 **1.** An electronic notarial act must be evidenced by the following, which must be attached to or logically associated with the electronic document that is the subject of the electronic notarial act and which must be immediately perceptible and reproducible:

~~{1.}~~ **(a)** The electronic signature of the electronic notary public;

~~{2.}~~ **(b)** The electronic seal of the electronic notary public; and

~~{3.}~~ **(c)** The wording of a notarial certificate pursuant to NRS 240.1655, 240.166 to 240.167, inclusive, 240.1685 or 240.169 ~~{}~~, ***including, without limitation, language explicitly stating that the notarial act was performed using audio-video communication, if applicable.***

2. ***Upon the completion of an electronic notarial act in accordance with subsection 1, an electronic notary public shall use technology to render the electronic document tamper-evident.***

Sec. 51. NRS 240.201 is hereby amended to read as follows:

240.201 **1.** An electronic notary public shall keep ~~{a}~~ ***an electronic journal*** of each electronic notarial act which includes, without limitation, the requirements of subsections 1 and 5 of NRS 240.120 ~~{}~~, ***but does not include the electronic signatures of the person for whom the electronic notarial act was performed and any witnesses.***

2. ***An electronic notary public who performs electronic notarial acts shall:***

(a) Describe each electronic notarial act in the electronic journal and specify whether the electronic notarial act was performed using audio-video communication;

(b) Maintain and protect the electronic journal at all times under his or her sole control; and

(c) Provide for lawful inspection and copying of the electronic journal.

3. ***An electronic notary public may maintain more than one electronic journal to record electronic notarial acts.***

4. ***The fact that the employer or contractor of an electronic notary public keeps a record of electronic notarial acts does not relieve the electronic notary public of the duties required by this section.***

5. ***An electronic journal must:***

(a) Enable access by a password or other secure means of authentication; and

(b) Be capable of providing tangible or electronic copies of any entry made therein.



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6. The Secretary of State may suspend the ~~{appointment}~~ **registration** of an electronic notary public who fails to produce any **electronic** journal entry within 10 days after receipt of a request from the Secretary of State.

~~{3-}~~ 7. Upon ~~{resignation,}~~ **surrender**, revocation or expiration of ~~{an appointment}~~ **a registration** as an electronic notary public, all notarial records required pursuant to NRS 240.001 to 240.206, inclusive, **and sections 30 to 38.7, inclusive, of this act** must, **except as otherwise provided by law**, be ~~{delivered to the Secretary of State.}~~ **kept by the electronic notary public for a period of 7 years after the termination of the registration of the electronic notary public.**

8. **As used in this section, “sole control” means being in the direct physical custody of or safeguarded by an electronic notary public with a password or other secure means of authentication.**

Sec. 52. NRS 240.202 is hereby amended to read as follows:

240.202 1. The electronic signature and electronic seal of an electronic notary public must be used only for the purposes of performing electronic notarial acts.

2. An electronic notary public shall safeguard his or her electronic signature, the electronic seal and all notarial records maintained by the electronic notary public as follows:

(a) When not in use, the electronic notary public shall keep the electronic signature, electronic seal and all notarial records secure, under the exclusive control of the electronic notary public and protected by a password where applicable.

(b) An electronic notary public shall not permit his or her electronic signature or electronic seal to be used by any other person.

(c) An electronic notary public shall not surrender or destroy his or her notarial records except as otherwise required by the order of a court or as allowed pursuant to NRS 240.001 to 240.206, inclusive, **and sections 30 to 38.7, inclusive, of this act** or any regulations adopted pursuant thereto.

(d) Except as otherwise provided in subsection 3, an electronic notary public, within 10 days after discovering that his or her electronic signature or electronic seal has been stolen, lost, damaged or otherwise rendered incapable of affixing a legible image, shall:

(1) Inform the appropriate law enforcement agency in the case of theft or vandalism; and

(2) Notify the Secretary of State **and the entity from which the electronic notary public obtained the electronic signature or electronic seal** in writing, including, without limitation, a signature



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using the name ~~{on the certificate of appointment issued}~~ **under which the electronic notary public is registered** pursuant to ~~{subsection 5 of}~~ NRS 240.192.

3. An electronic notary public shall take reasonable steps to maintain the technology or device used to create his or her electronic signature, and to ensure that the technology or device has not been recalled, revoked, terminated or otherwise rendered ineffective or insecure by the entity that created the technology or device. Upon learning that the technology or device used to create his or her electronic signature has been rendered ineffective or insecure, an electronic notary public shall cease performing electronic notarial acts until:

(a) A new technology or device is acquired; and

(b) The electronic notary public sends an electronic notice to the Secretary of State that includes ~~{, without limitation,}~~ the ~~{information}~~ **electronic signature of the electronic notary public** required pursuant to ~~{paragraphs (d) and (e)}~~ **paragraph (c)** of subsection 2 of NRS 240.192 relating to the new technology or device.

Sec. 53. NRS 240.203 is hereby amended to read as follows:

240.203 1. Except as otherwise provided in subsection 3, if an electronic notary public dies ~~{or resigns}~~ during his or her ~~{appointment,}~~ **period of registration**, or if the ~~{appointment}~~ **registration** of the electronic notary public is **surrendered or** revoked or expires, the electronic notary public, the executor of his or her estate or an authorized representative of the electronic notary public, as appropriate, shall:

(a) Notify the Secretary of State of the resignation or death; and

(b) Erase, delete, destroy or otherwise render ineffective the technology or device used to create his or her electronic signature.

2. Upon receipt of the notice required by subsection 1, the Secretary of State shall cancel the ~~{appointment}~~ **registration** of the electronic notary public, effective on the date on which the notice was received.

3. A former electronic notary public whose previous ~~{appointment}~~ **registration** as an electronic notary public was not revoked and whose previous ~~{application for appointment}~~ **registration** as an electronic notary public was not denied is not required to erase, delete, destroy or otherwise render ineffective the technology or device used to create his or her electronic signature if the former electronic notary public renews his or her ~~{appointment,}~~ **registration**, using the same electronic signature, within 3 months



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- 31 -

after the expiration of his or her previous ~~{appointment}~~ **registration** as an electronic notary public.

Sec. 54. NRS 240.204 is hereby amended to read as follows:

240.204 1. A person who knowingly creates, manufactures or distributes software or hardware for the purpose of allowing a person to act as an electronic notary public without being ~~{appointed}~~ **registered** in accordance with NRS 240.181 to 240.206, inclusive, **and sections 30 to 38.7, inclusive, of this act** is guilty of a gross misdemeanor.

2. A person who wrongfully obtains, conceals, damages or destroys the technology or device used to create the electronic signature of an electronic notary public is guilty of a gross misdemeanor.

Sec. 55. NRS 719.200 is hereby amended to read as follows:

719.200 1. Except as otherwise provided in subsection 2, the provisions of this chapter apply to electronic records and electronic signatures relating to a transaction.

2. The provisions of this chapter do not apply to a transaction to the extent it is governed by:

(a) ~~{A}~~ **Except as otherwise specifically provided by law, a law governing the creation and execution of wills, codicils or testamentary trusts;**

(b) The Uniform Commercial Code other than NRS 104.1306, 104.2101 to 104.2725, inclusive, and 104A.2101 to 104A.2532, inclusive; or

(c) The provisions of NRS 439.581 to 439.595, inclusive, and the regulations adopted pursuant thereto.

3. The provisions of this chapter apply to an electronic record or electronic signature otherwise excluded from the application of this chapter under subsection 2 to the extent it is governed by a law other than those specified in subsection 2.

4. A transaction subject to the provisions of this chapter is also subject to other applicable substantive law.

Sec. 56. Section 4 of Assembly Bill No. 476 of this session is hereby amended to read as follows:

Sec. 4. (Deleted by amendment.)

Sec. 57. Section 5 of Assembly Bill No. 476 of this session is hereby amended to read as follows:

Sec. 5. (Deleted by amendment.)

Sec. 58. Section 6 of Assembly Bill No. 476 of this session is hereby amended to read as follows:

Sec. 6. (Deleted by amendment.)



Sec. 59. Section 8 of Assembly Bill No. 476 of this session is hereby amended to read as follows:

Sec. 8. (Deleted by amendment.)

Sec. 60. Section 9 of Assembly Bill No. 476 of this session is hereby amended to read as follows:

Sec. 9. (Deleted by amendment.)

Sec. 61. The provisions of this act are intended to supersede any provisions of Assembly Bill No. 476 of this session that conflict with the provisions of this act.

Sec. 62. NRS 240.193 is hereby repealed.

Sec. 63. 1. This section and sections 56 to 60, inclusive, of this act become effective upon passage and approval.

2. Sections 1 to 28, inclusive, and 61 of this act become effective on July 1, 2017.

3. Sections 29 to 55, inclusive, and 62 of this act become effective:

(a) Upon passage and approval for the purpose of adopting any rules and regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On July 1, 2018, for all other purposes.



Nevada - enacted in 2001 - amended in 2017 by Assembly Bill 413

NRS 133.085 (2013) Electronic will.

1. An electronic will is a will of a testator that:
 - (a) Is written, created and stored in an electronic record;
 - (b) Contains the date and the electronic signature of the testator and which includes, without limitation, at least one authentication characteristic of the testator; and
 - (c) Is created and stored in such a manner that:
 - (1) Only one authoritative copy exists;
 - (2) The authoritative copy is maintained and controlled by the testator or a custodian designated by the testator in the electronic will;
 - (3) Any attempted alteration of the authoritative copy is readily identifiable; and
 - (4) Each copy of the authoritative copy is readily identifiable as a copy that is not the authoritative copy.
2. Every person of sound mind over the age of 18 years may, by last electronic will, dispose of all of his or her estate, real and personal, but the estate is chargeable with the payment of the testator's debts.
3. An electronic will that meets the requirements of this section is subject to no other form, and may be made in or out of this State. An electronic will is valid and has the same force and effect as if formally executed.
4. An electronic will shall be deemed to be executed in this State if the authoritative copy of the electronic will is:
 - (a) Transmitted to and maintained by a custodian designated in the electronic will at the custodian's place of business in this State or at the custodian's residence in this State; or
 - (b) Maintained by the testator at the testator's place of business in this State or at the testator's residence in this State.
5. The provisions of this section do not apply to a trust other than a trust contained in an electronic will.
6. As used in this section:

(a) "Authentication characteristic" means a characteristic of a certain person that is unique to that person and that is capable of measurement and recognition in an electronic record as a biological aspect of or physical act performed by that person. Such a characteristic may consist of a fingerprint, a retinal scan, voice recognition, facial recognition, a digitized signature or other authentication using a unique characteristic of the person.

(b) "Authoritative copy" means the original, unique, identifiable and unalterable electronic record of an electronic will.

(c) "Digitized signature" means a graphical image of a handwritten signature that is created, generated or stored by electronic means.

(Added to NRS by 2001, 2340)

NRS 133.090 Holographic will.

1. A holographic will is a will in which the signature, date and material provisions are written by the hand of the testator, whether or not it is witnessed or notarized. It is subject to no other form, and may be made in or out of this State.

2. Every person of sound mind over the age of 18 years may, by last holographic will, dispose of all of the estate, real or personal, but the estate is chargeable with the payment of the testator's debts.

3. Such wills are valid and have the same force and effect as if formally executed.

[Part 1:111:1895; A 1941, 389; 1931 NCL § 9926] + [2:111:1895; C § 3093; RL § 6224; NCL § 9927]—(NRS A 1959, 21; 1999, 2256)

NRS 133.100 Nuncupative or oral will invalid. A nuncupative or oral will is not valid.

[5:61:1862; B § 816; BH § 3004; C § 3075; RL § 6206; NCL § 9909]—(NRS A 1999, 2256)

DC-Pending (Legal Zoom)



Councilmember Anita Bonds

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A Bill

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Chapter 1 and Chapter 7 of Title 18 of the District of Columbia Official Code to authorize the use of electronic signatures for testamentary documents and provide a method of authentication for an electronic signatures; to amend Chapter 11 and Chapter 13 of Title 19 to authorize the use of electronic signatures and provide a method of authentication for an electronic signature.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Electronic Signature Authorization Act of 2017".

Sec. 2. Chapter 1 of Title 18 of the D.C. Official Code is amended as follows:

(a) Section 18-101 is amended to read as follows:

“§ 18-101. Definitions.

“As used in this title, unless the context requires a different meaning:

words importing a the singular include the plural, and words importing the plural include the singular; the present tense includes the future as well as the present;

““Authentication method” means (a) both (i) a copy of settlor’s valid driver’s license, Passport, or other government issued ID card, and (ii) a knowledge-based authentication method, a digital certificate using a public key infrastructure (PKI), a physical device such as smart cards, USB plug-in or other types of “token”, a biometric identification (fingerprint, a retinal scan, voice or facial recognition, or video recording of the testator), or other commercially reasonable method; or (b) electronic notarization in accordance with applicable law;

28

29 ““Court” means the Superior Court of the District of Columbia;

30 ““District Court” means the United States District Court for the District of Columbia;

31 ““Electronic” means relating to technology having electrical, digital, magnetic, wireless,
32 optical, electromagnetic, or similar capabilities;

33 ““Electronic record” means a record created, generated, sent, communicated, received, or
34 stored by electronic means;

35 ““Electronic signature” means an electronic sound, symbol, or process attached to or
36 logically associated with a record and executed or adopted by a person with the intent to sign the
37 record;

38 ““Electronic will” (or codicil thereto) is a will of a testator that is created and maintained
39 as an electronic record; contains the electronic signature of the testator; contains the date and
40 time of the electronic signature; includes an authentication method which is attached to or
41 logically associated with the electronic will to identify the testator; is created and maintained in
42 such a manner that any alteration of the electronic will is detectable; and otherwise is subject to
43 the provisions of the Uniform Electronic Transactions Act of 2001.

44 ““Executed”, “Signed” or “Subscribed” includes the use of an electronic signature.

45 ““Probate Court” means the Probate Division of the Superior Court of the District of
46 Columbia.

47 ““Trust” means and includes an electronic trust or trust instrument.

48 ““Will” means and shall include an electronic will

49 ““Writing” or “Written” mean and shall include the use of an electronic record.”

50 (b) A new section 18-111a is added to read as follows:

51 “§ 18-111a. Video Recording or Other Electronic Record

52 “Subject to the applicable District of Columbia laws and regulations governing the
53 admissibility of evidence, a video recording or other electronic record may be admissible as
54 evidence of the following: the proper execution of a will; the intentions of a testator; the mental
55 state or capacity of a testator; the authenticity of a will; or matters that are determined by a court
56 to be relevant to the probate of a will.”

57 Sec. 3. Chapter 7 of Title 18 of the D.C. Official Code is amended as follows:

58 (a) Section 18-701 is amended to read as follows:

59 “D.C. Official Code § 18-701. Definitions.

60 “For the purposes of this chapter, the term:

61 “(1) “Authorized person” or “person authorized to act in connection with international
62 wills” means a person who by section 18-709, or by the laws of the United States, including
63 members of the diplomatic and consular service of the United States designated by Foreign
64 Service Regulations, is empowered to supervise the execution of international wills.

65 “(2) “International will” means a will, including an electronic will as defined in section
66 18-101, executed in conformity with sections 18-702 through 18-705.”

67 (b) Section 18-704 is amended to read as follows:

68 “D.C. Official Code § 18-704. International will; other points of form.

69 “(a) The signatures shall be placed at the end of the will. If the will, other than an
70 electronic will, consists of several sheets, each sheet shall be signed by the testator or, if he or
71 she is unable to sign, by the person signing on his or her behalf or, if there is no such person, by
72 the authorized person. In addition, each sheet shall be numbered.”

73 (c) Section 18-705 is amended as follows:

74 (1) Strike the phrase “The authorized person shall attach to the will a
75 certificate” and insert the phrase “The authorized person shall attach to, or, in the case of an
76 electronic will, logically associate with, the will a certificate” in its place.

77 (2) Strike the phrase “The authorized person shall keep a copy of the
78 certificate” and insert the phrase “The authorized person shall keep a copy of the certificate
79 (including a certificate in the form of an electronic record)” in its place.

80 (3) Strike the phrase “has declared that the attached document is his or her
81 will” and insert the phrase “has declared that the attached or associated document is his or her
82 will”.

83 (4) Strike the word “affixed” wherever it appears, and insert the word
84 “executed” in its place.

85 (d) A new section 18-711 to read as follows:

86 “D.C. Official Code § 18-711. Video Recording or Other Electronic Record

87 “Subject to the applicable District of Columbia laws and regulations governing the
88 admissibility of evidence, a video recording or other electronic record may be admissible as
89 evidence of the proper execution of an international will; the intentions of a testator; the mental
90 state or capacity of a testator; the authenticity of an international will; or matters that are
91 determined by a court to be relevant to the probate of an international will.”

92 Sec. 3. Chapter 11 of Title 19 of the D.C. Official Code is amended as follows:

93 (a) Section 19-1101 is amended as follows:

94 (1) A new paragraph (1A) is added to read as follows:

95 “(1A) “Authentication method” means (a) both (i) a copy of settlor’s valid driver’s
96 license, Passport, or other government issued ID card, and (ii) a knowledge-based authentication

97 method, a digital certificate using a public key infrastructure (PKI), a physical device such as
98 smart cards, USB plug-in or other types of “token”, a biometric identification (fingerprint, a
99 retinal scan, voice or facial recognition, or video recording of the testator), or other commercially
100 reasonable method; or (b) electronic notarization in accordance with applicable law.”

101 (2) Paragraph (5) is amended to read as follows:

102 “(5) “Custodial trust property” means an interest in property transferred to or held under
103 a declaration of trust including an electronic custodial trust by a custodial trustee under this
104 chapter and the income from and proceeds of that interest.”

105 (3) New paragraphs (6B)-(6F) are added to read as follows:

106 “(6B) “Electronic” means electronic as defined in § 28-4901(5).

107 “(6C) “Electronic record” means electronic record as defined in § 28-4901(7).

108 “(6D) “Electronic signature” means electronic signature as defined in § 28-4901(8).

109 “(6E) “Electronic custodial trust” means a trust, executed by the transferor that:

110 “(a) Is created and maintained as an electronic record;

111 “(b) Contains the terms of the trust, including any amendments to the terms of the
112 trust;

113 “(c) The date and time of the electronic signature;

114 “(d) Includes an authentication method which is attached to or logically
115 associated with the electronic trust instrument to identify the transferor;

116 “(e) Is created and maintained in such a manner that any alteration of the electronic
117 trust is detectable; and

118 “(f) Otherwise is subject to the provisions of Chapter 49 of Title 28.

119 “(6F) “Executed” or “Signed” includes the use of an electronic signature.”

120 (4) A new paragraph (16) is added to read as follows:

121 “(16) “Written”, “writing” or “instrument” includes the use of an electronic record.”

122 (b) A new subsection 19-1118a is added to read as follows:

123 “D.C. Official Code 19-1118a. Video Recording or Other Electronic Record.

124 “Subject to the applicable District of Columbia laws and regulations governing the
125 admissibility of evidence, a video recording or other electronic record may be admissible as
126 evidence of the proper execution of a custodial trust; the intentions of a transferor; the mental
127 state or capacity of a transferor; the authenticity of a custodial trust; or matters that are
128 determined by a court to be relevant to the probate of a will or the creation of a custodial trust.”

129 Sec. 4. Chapter 13 of Title 19 of the D.C. Official Code is amended as follows:

130 (a) Section 19-1301.03 is amended as follows:

131 (1) A new paragraph (2) is added to read as follows:

132 “(2) “Authentication method” means:

133 “(A) Both (i) a copy of settlor’s valid driver’s license, Passport, or other
134 government issued ID card, and (ii) a knowledge-based authentication method, a digital
135 certificate using a public key infrastructure (PKI), a physical device such as smart cards, USB
136 plug-in or other types of “token”, a biometric identification (fingerprint, a retinal scan, voice or
137 facial recognition, or video recording of the testator), or other commercially reasonable method;
138 or

139 “(B) Electronic notarization in accordance with applicable law.”

140 (2) New paragraphs (5A)-(5D) are added to read as follows:

141 “(5A) “Electronic” means relating to technology having electrical, digital, magnetic,
142 wireless, optical, electromagnetic, or similar capabilities.

143 “(5B) “Electronic signature” means an electronic sound, symbol, or process attached to or
144 logically associated with a record and executed or adopted by a person with the intent to sign the
145 record.

146 “(5C) “Electronic record” means a record created, generated, sent, communicated,
147 received, or stored by electronic means.

148 “(5D) “Electronic trust instrument” means a trust instrument created pursuant to this
149 Chapter 19, executed by the transferor that:

150 “(A) Is created and maintained as an electronic record;

151 “(B) Contains the terms of the trust, including any amendments to the terms of the
152 trust;

153 “(C) The date and time of the electronic signature;

154 “(D) Includes an authentication method which is attached to or logically
155 associated with the electronic trust instrument to identify the transferor;

156 “(E) Is created and maintained in such a manner that any alteration of the electronic
157 trust instrument is detectable; and

158 “(F) Otherwise is subject to the provisions of the Uniform Electronic Transactions
159 Act of 2001.

160 (3) A new paragraph (6A) is added to read as follows:

161 “(6A) “Executed” or Signed” includes the use of an electronic signature.

162 (4) Paragraph (21) is amended to read as follows:

163 “(21) “Trust instrument” means a trust created pursuant to this Chapter 19 and includes a
164 instrument executed by the settlor that contains terms of the trust, including any amendments
165 thereto, and also includes an electronic trust instrument.

166 (5) A new paragraph (23) is added to read as follows:

167 “(23) “Written” or “writing” includes the use of an electronic record.”

168 (b) A new section 19-1301.12 is added to read as follows:

169 “§ 19-1301.12. Video Recording or Other Electronic Record

170 “Subject to the applicable District of Columbia Superior Court Rules of Civil Procedure,

171 a video recording or other Electronic Record may be admissible as evidence of the following:

172 “(1) The proper execution of a trust.

173 “(2) The intentions of a settlor.

174 “(3) The mental state or capacity of a settlor,

175 “(4) The authenticity of a trust instrument.

176 “(5) Matters that are determined by a court to be relevant to the administration of the

177 trust.

178 Sec. 4. Uniform Electronic Transaction Act Amendment.

179 Section 28-4902(b)(1) is amended by inserting “except as otherwise provided in Chapter 1

180 of Title 18, Chapter 7 of Title 18, Chapter 11 of Title 19, or Chapter 13 of Title 19” after the

181 following phrase “a law governing the creation and execution of wills, codicils or testamentary

182 trusts”.

183 Sec. 5. Fiscal Impact Statement

184 The Council adopts the fiscal impact statement in the committee report as the fiscal

185 impact statement required by section 4a of the General Legislative Procedures Act of 1975,

186 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

187 Sec. 6. Effective Date

188 This act shall take effect following approval of the Mayor (or in the event of a veto by the
189 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
190 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
191 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.22(c)(1)), and publication in the District of
192 Columbia Register.

AZ - Not enacted

REFERENCE TITLE: electronic documents; signatures; wills; trusts

State of Arizona
 Senate
 Fifty-third Legislature
 First Regular Session
 2017

SB 1298

Introduced by
 Senators Worsley; Borrelli, Brophy McGee, Burges, Fann; Representative Shope

AN ACT

AMENDING TITLE 14, CHAPTER 2, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-2500; AMENDING SECTIONS 14-2502, 14-2504, 14-2510, 14-2511 AND 14-2513, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 2, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 14-2518 AND 14-2519; AMENDING SECTIONS 14-10103 AND 14-10109, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 11, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-10206; AMENDING TITLE 14, CHAPTER 11, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-10419; AMENDING SECTIONS 44-7002 AND 44-7003, ARIZONA REVISED STATUTES; RELATING TO ELECTRONIC DOCUMENTS AND SIGNATURES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 14, chapter 2, article 5, Arizona Revised Statutes, is amended by adding section 14-2500, to read:

14-2500. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "AUTHENTICATION METHOD" MEANS A METHOD OF AUTHENTICATING AN ELECTRONIC WILL THAT MEETS THE REQUIREMENTS PRESCRIBED IN SECTION 14-2519.
2. "ELECTRONIC RECORD" HAS THE SAME MEANING PRESCRIBED IN SECTION 44-7002.
3. "ELECTRONIC SIGNATURE" HAS THE SAME MEANING PRESCRIBED IN SECTION 44-7002.
4. "ELECTRONIC WILL" MEANS A WILL OR CODICIL THAT IS CREATED AND MAINTAINED AS AN ELECTRONIC RECORD AND THAT MEETS THE REQUIREMENTS PRESCRIBED IN SECTION 14-2519.
5. "EXECUTED" OR "SIGNED" INCLUDES THE USE OF AN ELECTRONIC SIGNATURE.
6. "TRUST" INCLUDES AN ELECTRONIC TRUST INSTRUMENT AS DEFINED IN SECTION 14-10103.
7. "WILL" INCLUDES AN ELECTRONIC WILL.
8. "WRITING" OR "WRITTEN" INCLUDES THE USE OF AN ELECTRONIC RECORD.

Sec. 2. Section 14-2502, Arizona Revised Statutes, is amended to read:

14-2502. Execution; witnessed wills; holographic wills

- A. Except as provided in sections 14-2503, 14-2506 and 14-2513, a will shall be:
1. In writing.

2. Signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction.

3. Signed by at least two people, each of whom signed within a reasonable time after that person witnessed either the signing of the will as described in paragraph 2 OF THIS SUBSECTION or the testator's acknowledgment of that signature or acknowledgment of the will. THE SIGNATURE OR ACKNOWLEDGEMENT MAY BE WITNESSED IN PERSON OR BY MEANS OF A TWO-WAY AUDIO AND VIDEO CONFERENCE.

B. Intent that the document constitute the testator's will can be established by extrinsic evidence, including, for holographic wills under section 14-2503, portions of the document OR RECORD that are not in the testator's handwriting.

Sec. 3. Section 14-2504, Arizona Revised Statutes, is amended to read:

14-2504. Self-proved wills; sample form; signature requirements

A. A will may be simultaneously executed, attested and made self-proved by its acknowledgment by the testator and by affidavits of the witnesses if the acknowledgment and affidavits are made before an officer authorized to administer oaths under the laws of the state in which execution occurs and are evidenced by the officer's certificate, under official seal, in substantially the following form:

I, _____, the testator, sign my name to this instrument this ____ day of _____, and being first duly sworn, do declare to the undersigned authority that I sign and execute this instrument as my will and that I sign it willingly, or willingly direct another to sign for me, that I execute it as my free and voluntary act for the purposes expressed in that document and that I am eighteen years of age or older, of sound mind and under no constraint or undue influence.

Testator

We, _____, _____, the witnesses, sign our names to this instrument being first duly sworn and do declare to the undersigned authority that the testator signs and executes this instrument as his/her will and that he/she signs it willingly, or willingly directs another to sign for him/her, and that each of us, in the presence and hearing of the testator, signs this will as witness to the testator's signing and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind and under no constraint or undue influence.

Witness

Witness

The State of _____
County of _____

Subscribed, sworn to and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____ and _____, witnesses, this ____ day of _____.

(Seal)
(Signed) _____

(Official capacity of officer)

B. An attested will may be made self-proved at any time after its execution by its acknowledgment by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will OR LOGICALLY ASSOCIATED WITH AN ELECTRONIC WILL in substantially the following form:

The State of _____
County of _____

We, _____, _____ and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument being first duly sworn do declare to the undersigned authority that the testator signed and executed the instrument as the testator's will and that he/she signed willingly, or willingly directed another to sign for him/her, and that he/she executed it as his/her free and voluntary act for the purposes expressed in that document, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his/her knowledge the testator was at that time eighteen years of age or older, of sound mind and under no constraint or undue influence.

Testator

 Witness

 Witness

Subscribed, sworn to and acknowledged before me by _____, the testator, and
 subscribed and sworn to before me by _____ and _____, witnesses, this _____ day of

(Seal)
 (Signed) _____

 (Official capacity of officer)

C. A signature affixed to OR LOGICALLY ASSOCIATED WITH a self-proving affidavit attached to a will OR LOGICALLY ASSOCIATED WITH AN ELECTRONIC WILL is considered a signature affixed to OR LOGICALLY ASSOCIATED WITH the will, if necessary to prove the will's due execution.

Sec. 4. Section 14-2510, Arizona Revised Statutes, is amended to read:

14-2510. Incorporating outside document into a will; requirements

A testator may incorporate a written document OR RECORD into the testator's will by reference if the following requirements are met:

1. The document OR RECORD exists at the time the testator executes the will.
2. The will's language manifests the testator's intent to incorporate this document OR RECORD.
3. The will's language describes the document OR RECORD with enough specificity to allow its identification.

Sec. 5. Section 14-2511, Arizona Revised Statutes, is amended to read:

14-2511. Testamentary additions to trusts; requirements; effect of revocation

A. A will may validly devise property to the trustee of a trust established or to be established:

1. During the testator's lifetime by the testator alone, by the testator and some other person or by some other person, including a funded or unfunded life insurance trust, even if the settlor has reserved any or all rights of ownership of the insurance contracts.
2. At the testator's death by the testator's devise to the trustee if the trust is identified in the testator's will and its terms are set forth in a written instrument OR OTHER RECORD other than a will executed before, concurrently with or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size or character of the corpus of the trust. The devise is not invalid because the trust is amendable or revocable or because the trust was amended after the execution of the will or after the testator's death.

B. Unless the testator's will provides otherwise, property devised to a trust described in subsection A OF THIS SECTION is not held under a testamentary trust of the testator but becomes a part of the trust to which it is devised and must be administered and disposed of in accordance with the provisions of the governing instrument that states the terms of the trust, including any amendments made before or after the testator's death.

C. Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse.

Sec. 6. Section 14-2513, Arizona Revised Statutes, is amended to read:

14-2513. References to separate lists; requirements

A. Notwithstanding section 14-2503 relating to holographic wills, a will may refer to a written statement or list OR AN ELECTRONIC RECORD OF A WRITTEN STATEMENT OR LIST to dispose of items of tangible personal property other than money and not otherwise specifically disposed of by the will.

B. To be admissible under this section as evidence of the intended disposition, the writing shall either be in the testator's handwriting or be signed by the testator and shall describe the items and the devisees with reasonable certainty.

C. The writing may be:

1. Referred to as one to be in existence at the time of the testator's death.
2. Prepared before or after the execution of the will.
3. Altered by the testator after its preparation.
4. A writing that has no significance apart from its effect on the dispositions made by the will.

Sec. 7. Title 14, chapter 2, article 5, Arizona Revised Statutes, is amended by adding sections 14-2518 and 14-2519, to read:

14-2518. Video recording or other electronic record; admissibility

SUBJECT TO COURT RULE, A VIDEO RECORDING OR OTHER ELECTRONIC RECORD IS ADMISSIBLE AS EVIDENCE OF THE FOLLOWING:

1. THE PROPER EXECUTION OF A WILL.
2. THE INTENTIONS OF THE TESTATOR.
3. THE MENTAL STATE OR CAPACITY OF THE TESTATOR.
4. THE AUTHENTICITY OF THE WILL.
5. MATTERS THAT ARE DETERMINED BY THE COURT TO BE RELEVANT TO THE PROBATE OF A WILL.

14-2519. Electronic will requirements; authentication; execution in this state

A. AN ELECTRONIC WILL MUST:

1. CONTAIN THE ELECTRONIC SIGNATURE OF THE TESTATOR.
2. CONTAIN THE DATE AND TIME OF THE ELECTRONIC SIGNATURE.
3. INCLUDE AN AUTHENTICATION METHOD THAT IS ATTACHED TO OR LOGICALLY ASSOCIATED WITH THE ELECTRONIC WILL TO IDENTIFY THE TESTATOR.
4. BE CREATED AND MAINTAINED IN SUCH A MANNER THAT ANY ALTERATION OF THE ELECTRONIC WILL IS DETECTABLE.

5. OTHERWISE MEET THE REQUIREMENTS OF TITLE 44, CHAPTER 26.

B. THE AUTHENTICATION METHOD OF AN ELECTRONIC WILL MUST INCLUDE A COPY OF THE TESTATOR'S VALID DRIVER LICENSE, PASSPORT OR OTHER GOVERNMENT-ISSUED IDENTIFICATION CARD AND AT LEAST ONE OF THE FOLLOWING:

1. A KNOWLEDGE-BASED AUTHENTICATION METHOD.
2. A DIGITAL CERTIFICATE USING A PUBLIC KEY INFRASTRUCTURE.
3. A PHYSICAL DEVICE SUCH AS A SMART CARD, A UNIVERSAL SERIAL BUS PLUG-IN OR SOME OTHER TYPE OF TOKEN.
4. A BIOMETRIC IDENTIFICATION, INCLUDING A FINGERPRINT, A RETINAL SCAN, VOICE OR FACIAL RECOGNITION OR A VIDEO RECORDING OF THE TESTATOR.
5. ELECTRONIC NOTARIZATION THAT IS IN ACCORDANCE WITH APPLICABLE LAW.
6. SOME OTHER COMMERCIALY REASONABLE METHOD.

C. AN ELECTRONIC WILL IS DEEMED TO BE EXECUTED IN THIS STATE IF EITHER OF THE FOLLOWING APPLIES:

1. THE ELECTRONIC WILL STATES THAT IT IS GOVERNED BY THE LAWS OF THIS STATE.
2. THE PERSON WHO EXECUTES THE ELECTRONIC WILL STATES THAT IT IS BEING EXECUTED PURSUANT TO THE LAWS OF THIS STATE.

Sec. 8. Section 14-10103, Arizona Revised Statutes, is amended to read:

14-10103. Definitions

In this chapter, unless the context otherwise requires:

1. "Action", with respect to an act of a trustee, includes a failure to act.
2. "AUTHENTICATION METHOD" MEANS A METHOD OF AUTHENTICATING AN ELECTRONIC TRUST INSTRUMENT THAT MEETS THE REQUIREMENTS PRESCRIBED IN SECTION 14-10419.

3. "Beneficiary" means a person who either:

- (a) Has a present or future beneficial interest in a trust, vested or contingent.
- (b) In a capacity other than that of a trustee, holds a power of appointment over trust property.

4. "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in section 14-10405, subsection A.

5. "Conservator" means a person appointed by the court to administer the estate of a minor or an adult.

6. "Distributee" means a person who receives property from a trust other than as a creditor or purchaser.

7. "ELECTRONIC RECORD" HAS THE SAME MEANING PRESCRIBED IN SECTION 44-7002.

8. "ELECTRONIC SIGNATURE" HAS THE SAME MEANING PRESCRIBED IN SECTION 44-7002.

9. "ELECTRONIC TRUST INSTRUMENT" MEANS A TRUST INSTRUMENT THAT IS CREATED AND MAINTAINED AS AN ELECTRONIC RECORD AND THAT MEETS THE REQUIREMENTS PRESCRIBED IN SECTION 14-10419.

10. "Environmental law" means a federal, state or local law, rule, regulation or ordinance relating to protection of the environment.

11. "EXECUTED" OR "SIGNED" INCLUDES THE USE OF AN ELECTRONIC SIGNATURE.

12. "Guardian" means a person appointed by the court to make decisions regarding the support, care, education, health and welfare of a minor or an adult. □ Guardian does not include a guardian ad litem.

13. "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

14. "Internal revenue code" has the same meaning prescribed in section 43-105.

~~10.~~ 15. "Jurisdiction", with respect to a geographic area, includes a state or country.

~~11.~~ 16. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity.

~~12.~~ 17. "Power of withdrawal" means a presently exercisable general power of appointment other than a power exercisable either:

(a) By a trustee and limited by an ascertainable standard.

(b) By a person other than in a fiduciary capacity and only on the consent of the trustee or a person holding an adverse interest.

~~13.~~ 18. "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest in anything that may be the subject of ownership.

~~14.~~ 19. "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

(a) Is a distributee or permissible distributee of trust income or principal.

(b) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subdivision (a) of this paragraph terminated on that date.

(c) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

~~15.~~ 20. "Revocable", as applied to a trust or a portion of a trust, means revocable by a settlor without the consent of any person, including the trustee or a person who holds an interest that is either adverse or not adverse.

~~16.~~ 21. "Settlor" means a person, including a testator, who creates or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

~~17.~~ 22. "Special needs trust" means a trust established for the benefit of one or more persons with disabilities if one of the purposes of the trust, expressed in the trust instrument or implied from the trust instrument, is to allow the person with a disability to qualify or continue to qualify for public, charitable or private benefits that might otherwise be available to the person with a disability. The existence of one or more remainder beneficiaries without a disability of the trust shall not disqualify it as a special needs trust for the purposes of this paragraph. □ For the purposes of this paragraph, "person with a disability" means an individual who has a disability pursuant to 42 United States Code section 1382c.

~~18.~~ 23. "Spendthrift provision" means a term of a trust that restrains either voluntary or involuntary transfer of a beneficiary's interest.

~~19.~~ 24. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. □ State includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

~~20.~~ 25. "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

~~21.~~ 26. "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments to that trust, AND INCLUDES AN ELECTRONIC TRUST INSTRUMENT.

~~22.~~ 27. "Trustee" includes an original, additional and successor trustee and a cotrustee.

28. "WRITING" OR "WRITTEN" INCLUDES THE USE OF AN ELECTRONIC RECORD.

Sec. 9. Section 14-10109, Arizona Revised Statutes, is amended to read:

14-10109. Methods and waiver of notice

A. Notice to a person under this chapter or the sending of a document OR AN ELECTRONIC DOCUMENT to a person under this chapter must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice, ~~or~~ document OR ELECTRONIC RECORD. □ Permissible methods of notice or for sending a document include first class mail, personal delivery, delivery to the person's last known place of residence or place of business or a properly directed electronic message OR RECORD.

B. Notice otherwise required under this chapter or a document OR AN ELECTRONIC RECORD otherwise required to be sent under this chapter need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

C. Notice under this chapter or the sending of a document OR AN ELECTRONIC RECORD under this chapter may be waived by the person to be notified or sent the document.

D. Notice of a judicial proceeding must be given pursuant to section 14-1401.

Sec. 10. Title 14, chapter 11, article 2, Arizona Revised Statutes, is amended by adding section 14-10206, to read:

14-10206. Video recording or other electronic record; admissibility; execution in this state
SUBJECT TO COURT RULE, A VIDEO RECORDING OR OTHER ELECTRONIC RECORD IS
ADMISSIBLE AS EVIDENCE OF THE FOLLOWING:

- 1. THE PROPER EXECUTION OF A TRUST INSTRUMENT.**
- 2. THE INTENTIONS OF THE SETTLOR.**
- 3. THE MENTAL STATE OR CAPACITY OF THE SETTLOR.**
- 4. THE AUTHENTICITY OF THE TRUST INSTRUMENT.**
- 5. MATTERS THAT ARE DETERMINED BY THE COURT TO BE RELEVANT TO THE**

ADMINISTRATION OF A TRUST.

Sec. 11. Title 14, chapter 11, article 4, Arizona Revised Statutes, is amended by adding section 14-10419, to read:

14-10419. Electronic trust instrument requirements; authentication; execution in this state

A. AN ELECTRONIC TRUST INSTRUMENT MUST:

- 1. CONTAIN THE ELECTRONIC SIGNATURE OF THE SETTLOR.**
- 2. CONTAIN THE DATE AND TIME OF THE ELECTRONIC SIGNATURE.**
- 3. CONTAIN THE TERMS OF THE TRUST, INCLUDING ANY AMENDMENTS TO THE TERMS OF THE TRUST.**

4. INCLUDE AN AUTHENTICATION METHOD THAT IS ATTACHED TO OR LOGICALLY ASSOCIATED WITH THE ELECTRONIC TRUST INSTRUMENT TO IDENTIFY THE SETTLOR.

5. BE CREATED AND MAINTAINED IN SUCH A MANNER THAT ANY ALTERATION OF THE ELECTRONIC TRUST INSTRUMENT IS DETECTABLE.

6. OTHERWISE MEET THE REQUIREMENTS OF TITLE 44, CHAPTER 26.

B. THE AUTHENTICATION METHOD OF AN ELECTRONIC TRUST INSTRUMENT MUST INCLUDE A COPY OF THE SETTLOR'S VALID DRIVER LICENSE, PASSPORT OR OTHER GOVERNMENT-ISSUED IDENTIFICATION CARD AND AT LEAST ONE OF THE FOLLOWING:

- 1. A KNOWLEDGE-BASED AUTHENTICATION METHOD.**
- 2. A DIGITAL CERTIFICATE USING A PUBLIC KEY INFRASTRUCTURE.**
- 3. A PHYSICAL DEVICE SUCH AS A SMART CARD, A UNIVERSAL SERIAL BUS PLUG-IN OR SOME OTHER TYPE OF TOKEN.**
- 4. A BIOMETRIC IDENTIFICATION, INCLUDING A FINGERPRINT, A RETINAL SCAN, VOICE OR FACIAL RECOGNITION OR A VIDEO RECORDING OF THE TESTATOR.**
- 5. SOME OTHER COMMERCIALLY REASONABLE METHOD.**

C. AN ELECTRONIC TRUST INSTRUMENT IS DEEMED TO BE EXECUTED IN THIS STATE IF EITHER OF THE FOLLOWING APPLIES:

- 1. THE ELECTRONIC TRUST INSTRUMENT STATES THAT IT IS GOVERNED BY THE LAWS OF THIS STATE.**
- 2. THE PERSON EXECUTING THE ELECTRONIC TRUST INSTRUMENT STATES THAT IT IS BEING EXECUTED PURSUANT TO THE LAWS OF THIS STATE.**

Sec. 12. Section 44-7002, Arizona Revised Statutes, is amended to read:

44-7002. Definitions

In this chapter, unless the context otherwise requires:

- 1. "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations and procedures that are given the effect of agreements under laws otherwise applicable to a particular transaction.**
- 2. "Automated transaction" means a transaction that is conducted or performed, in whole or in part, by electronic means or electronic records and in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract or fulfilling an obligation that is required by the transaction.**
- 3. "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.**
- 4. "Contract" means the total legal obligation resulting from the parties' agreement as affected by this chapter and any other applicable law.**
- 5. "Electronic" means relating to technology that has electrical, digital, magnetic, wireless, optical or electromagnetic capabilities or similar capabilities.**
- 6. "Electronic agent" means a computer program or an electronic or other automated means that is used independently to initiate an action or respond to electronic records or performances, in whole or in part, without review or action by an individual.**
- 7. "Electronic record" means a record that is created, generated, sent, communicated, received or stored by electronic means.**

8. "Electronic signature" means an electronic sound, symbol or process that is attached to or logically associated with a record and that is executed or adopted by an individual with the intent to sign the record.

9. "Governmental agency" means an executive, legislative or judicial agency, department, board, commission, authority, institution or instrumentality of the federal government or a state or of a county or municipality or other political subdivision of a state.

10. "Information" means data, text, images, sounds, codes, computer programs, software or databases or similar items.

11. "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying or processing information.

12. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency or public corporation or any other legal or commercial entity.

13. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and that is retrievable in perceivable form.

14. "Security procedure" means a procedure that is employed to verify that an electronic signature, record or performance is that of a specific person or to detect changes or errors in the information in an electronic record. □ Security procedure includes a procedure that requires the use of algorithms or other codes, identifying words or numbers or encryption, callback or other acknowledgment procedures.

15. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. □ State includes an Indian tribe or band or Alaskan native village that is recognized by federal law or formally acknowledged by another state.

16. "State agency" means any department, commission, board, institution or other agency of the THIS state that receives, expends or disburses state funds or incurs obligations of the THIS state, including the Arizona board of regents but excluding the universities under the jurisdiction of the Arizona board of regents, the community college districts and the legislative or judicial branches.

17. "Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial or governmental affairs, INCLUDING THE APPOINTMENT OF AN ATTORNEY IN FACT UNDER A POWER OF ATTORNEY TO THE EXTENT OTHERWISE AUTHORIZED BY THE LAWS OF THIS STATE.

Sec. 13. Section 44-7003, Arizona Revised Statutes, is amended to read:

44-7003. Scope

A. Except as otherwise provided in subsection B of this section, this chapter applies to any electronic record and electronic signature relating to a transaction.

B. This chapter does not apply to a transaction to the extent the transaction is governed by:

1. Title 14 as it relates to the creation and execution of wills, codicils or testamentary trusts, EXCEPT AS PROVIDED IN TITLE 14, CHAPTER 2, ARTICLE 5 AND CHAPTER 11.

2. Title 47, other than chapters 2 and 2A and section 47-1306 and as otherwise provided in section 44-7016.

C. This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under subsection B of this section to the extent the record or signature is governed by a law other than those laws described in subsection B of this section.

D. Any transaction subject to this chapter is also subject to any other applicable substantive law.

FLORIDA HOUSE OF REPRESENTATIVES

FLORIDA, Passed but Vetoed by Gov. Scott (see veto letter)

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INTRO (PP1-6):

1 An act relating to wills and trusts; amending s.
 2 731.201, F.S.; revising the definition of the term
 3 "will" to include electronic wills; amending s.
 4 732.506, F.S.; excluding electronic wills from
 5 specified methods to revoke a will; creating s.
 6 732.521, F.S.; providing a short title; creating s.
 7 732.522, F.S.; defining terms; creating s. 732.523,
 8 F.S.; specifying requirements that must be satisfied
 9 in the execution of electronic wills; creating s.
 10 732.524, F.S.; providing requirements for self-proof
 11 of electronic wills; creating s. 732.525, F.S.;
 12 specifying the circumstances under which a person is
 13 deemed to be in the presence of or appearing before
 14 another person; providing that an electronic record
 15 satisfies the requirement that a record be in writing;
 16 providing that an electronic signature satisfies the
 17 requirement that a document be signed; providing
 18 requirements for certain documents to be deemed
 19 executed in this state; creating s. 732.526, F.S.;
 20 authorizing an electronic will of a nonresident of
 21 this state which is properly executed in this or
 22 another state to be offered for and admitted to
 23 probate in this state; providing the venue for the
 24 probate of such electronic will; creating s. 732.527,
 25

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[I have omitted 25-46]

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26 F.S.; specifying requirements for service as a
27 qualified custodian; requiring qualified custodians to
28 provide access to or information concerning the
29 electronic will, or the electronic record containing
30 the electronic will, only to specified persons or as
31 directed by a court; authorizing a qualified custodian
32 to destroy the electronic record of an electronic will
33 after a certain date; providing conditions under which
34 a qualified custodian may cease serving as a qualified
35 custodian; requiring a qualified custodian to cease
36 serving in such capacity upon the written request of
37 the testator; requiring that a successor qualified
38 custodian agree in writing to serve in that capacity
39 for an electronic will before succeeding to office;
40 specifying what constitutes an affidavit of a
41 qualified custodian; requiring a qualified custodian
42 to deliver certain documents upon request from the
43 testator; prohibiting a qualified custodian from
44 charging the testator a fee for such documents under
45 certain circumstances; providing that a qualified
46 custodian is liable for certain damages under certain
47 circumstances; prohibiting a qualified custodian from
48 terminating or suspending access to, or downloads of,
49 an electronic will by the testator; requiring a
50 qualified custodian to deposit an electronic will with

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51 the court upon receiving information that the testator
52 is dead; prohibiting a qualified custodian from
53 charging a fee for certain actions taken upon the
54 death of the testator; requiring a qualified custodian
55 to keep certain information confidential; prohibiting
56 certain requirements regarding venue; amending s.
57 732.528, F.S.; requiring a qualified custodian to post
58 and maintain a blanket surety bond, subject to certain
59 requirements, or to maintain a certain liability
60 insurance policy; authorizing the Attorney General to
61 petition a court for the appointment of a receiver to
62 manage certain records under certain conditions;
63 amending s. 732.901, F.S.; providing that an
64 electronic will that is filed electronically with the
65 clerk is deemed to have been deposited as an original
66 of the electronic will; amending s. 733.201, F.S.;
67 providing for the proof of electronic wills; providing
68 requirements for admitting an electronic will that is
69 not self-proved into probate; providing that a paper
70 copy of an electronic will constitutes an "original"
71 of the electronic will subject to certain conditions;
72 amending s. 736.0103, F.S.; redefining the term
73 "interests of the beneficiaries"; amending s.
74 736.0105, F.S.; deleting a requirement that a trust be
75 for the benefit of the trust's beneficiaries; amending

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76 s. 736.0109, F.S.; revising provisions relating to
77 notice or sending of electronic trust documents;
78 providing requirements for such documents to be deemed
79 sent; requiring a certain authorization to specify
80 documents subject to electronic posting; revising
81 requirements for a recipient to electronically access
82 such documents; prohibiting the termination of a
83 recipient's electronic access to such documents from
84 invalidating certain notice or sending of electronic
85 trust documents; tolling specified limitations periods
86 under certain circumstances; providing requirements
87 for electronic access to such documents to be deemed
88 terminated by a sender; providing applicability;
89 amending s. 736.0110, F.S.; providing that the
90 Attorney General has standing to assert certain rights
91 in certain proceedings; amending s. 736.0403, F.S.;
92 providing that, for purposes of establishing the
93 validity of the testamentary aspects of a revocable
94 trust, the qualified custodian of the trust instrument
95 may not also be a trustee of the trust; amending s.
96 736.0404, F.S.; deleting a restriction on the purpose
97 for which a trust is created; amending s. 736.04117,
98 F.S.; defining and redefining terms; authorizing an
99 authorized trustee to appoint all or part of the
100 principal of a trust to a second trust under certain

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101 | circumstances; providing requirements for the second
102 | trust and its beneficiaries; providing that the second
103 | trust may retain, omit, or create specified powers;
104 | authorizing the term of the second trust to extend
105 | beyond the term of the first trust; providing
106 | requirements for distributions to a second trust when
107 | the authorized trustee does not have absolute power;
108 | providing requirements for such second trust;
109 | providing requirements for grants of power by the
110 | second trust; authorizing a second trust created by an
111 | authorized trustee without absolute power to grant
112 | absolute power to the second trust's trustee;
113 | authorizing an authorized trustee to appoint the
114 | principal of a first trust to a supplemental needs
115 | trust under certain circumstances; providing
116 | requirements for such supplemental needs trust;
117 | prohibiting an authorized trustee from distributing
118 | the principal of a trust in a manner that would reduce
119 | specified tax benefits; prohibiting the distribution
120 | of S corporation stock from a first trust to a second
121 | trust under certain circumstances; prohibiting a
122 | settlor from being treated as the owner of a second
123 | trust if he or she was not treated as the owner of the
124 | first trust; prohibiting an authorized trustee from
125 | distributing a trust's interest in property to a

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126 second trust if it is subject to specified rules of
127 the Internal Revenue Code; prohibiting the exercise of
128 power to invade a trust's principal to increase an
129 authorized trustee's compensation or relieve him or
130 her from certain liability; specifying who an
131 authorized trustee must notify when he or she
132 exercises his or her power to invade the trust's
133 principal; specifying the documents that the
134 authorized trustee must provide with such notice;
135 amending s. 736.08135, F.S.; revising applicability;
136 amending s. 736.1008, F.S.; clarifying that certain
137 knowledge by a beneficiary does not cause a claim to
138 accrue for breach of trust or commence the running of
139 a period of limitations or laches; providing
140 legislative intent; providing for retroactive
141 application; amending s. 736.1201, F.S.; defining the
142 term "delivery of notice"; conforming a provision to
143 changes made by the act; amending s. 736.1205, F.S.;
144 requiring an authorized trustee to provide certain
145 notice to the Attorney General rather than the state
146 attorney; providing applicability; amending ss.
147 736.1206, 736.1207, 736.1208, and 736.1209, F.S.;
148 conforming provisions to changes made by the act;
149 providing effective dates.

150

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BILL STARTS HERE:

151 Be It Enacted by the Legislature of the State of Florida:

152

153 Section 1. Subsection (40) of section 731.201, Florida
154 Statutes, is amended to read:

155 731.201 General definitions.—Subject to additional
156 definitions in subsequent chapters that are applicable to
157 specific chapters or parts, and unless the context otherwise
158 requires, in this code, in s. 409.9101, and in chapters 736,
159 738, 739, and 744, the term:

160 (40) "Will" means an instrument, including a codicil,
161 executed by a person in the manner prescribed by this code,
162 which disposes of the person's property on or after his or her
163 death and includes an instrument which merely appoints a
164 personal representative or revokes or revises another will. The
165 term "will" includes an electronic will as defined in s.
166 732.522.

167 Section 2. Section 732.506, Florida Statutes, is amended
168 to read:

169 732.506 Revocation by act.—A will or codicil, other than
170 an electronic will, is revoked by the testator, or some other
171 person in the testator's presence and at the testator's
172 direction, by burning, tearing, canceling, defacing,
173 obliterating, or destroying it with the intent, and for the
174 purpose, of revocation.

175 Section 3. Section 732.521, Florida Statutes, is created

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176 to read:

177 732.521 Short title.—Sections 732.521-732.528 may be cited
178 as the "Florida Electronic Wills Act."

179 Section 4. Section 732.522, Florida Statutes, is created
180 to read:

181 732.522 Definitions.—As used in ss. 732.521-732.528, the
182 term:

183 (1) "Electronic record" means a record created, generated,
184 sent, communicated, received, or stored by electronic means.

185 (2) "Electronic signature" means an electronic mark
186 visibly manifested in a record as a signature and executed or
187 adopted by a person with the intent to sign the record.

188 (3) "Electronic will" means a will, including a codicil,
189 executed in accordance with s. 732.523 by a person in the manner
190 prescribed by this act, which disposes of the person's property
191 on or after his or her death and includes an instrument that
192 appoints a personal representative or revokes or revises another
193 will or electronic will.

194 (4) "Qualified custodian" means a person who meets the
195 requirements of s. 732.527(1).

196 Section 5. Section 732.523, Florida Statutes, is created
197 to read:

198 732.523 Electronic wills.—Notwithstanding s. 732.502:

199 (1) An electronic will must meet all of the following
200 requirements:

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201 (a) Exist in an electronic record that is unique and
202 identifiable.

203 (b) Be electronically signed by the testator in the
204 presence of at least two attesting witnesses.

205 (c) Be electronically signed by the attesting witnesses in
206 the presence of the testator and in the presence of each other.

207 (2) Except as otherwise provided in this act, all
208 questions as to the force, effect, validity, and interpretation
209 of an electronic will that complies with this section must be
210 determined in the same manner as in the case of a will executed
211 in accordance with s. 732.502.

212 Section 6. Section 732.524, Florida Statutes, is created
213 to read:

214 732.524 Self-proof of electronic will.—An electronic will
215 is self-proved if all of the following requirements are met:

216 (1) The electronic will is executed in conformity with
217 this act.

218 (2) The acknowledgment of the electronic will by the
219 testator and the affidavits of the witnesses are made in
220 accordance with s. 732.503 and are part of the electronic record
221 containing the electronic will, or are attached to, or are
222 logically associated with, the electronic will.

223 (3)(a) The electronic will designates a qualified
224 custodian;

225 (b) The electronic record that contains the electronic

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226 will is held in the custody of a qualified custodian at all
227 times before being offered to the court for probate; and

228 (c) The qualified custodian who has custody of the
229 electronic will at the time of the testator's death:

230 1. Certifies under oath that, to the best knowledge of the
231 qualified custodian, the electronic record that contains the
232 electronic will was at all times before being offered to the
233 court in the custody of a qualified custodian in compliance with
234 s. 732.527 and that the electronic will has not been altered in
235 any way since the date of its execution; and

236 2. If the execution of the electronic will included the
237 use of video conference under s. 732.525(1)(b), certifies under
238 oath that the audio and video recording required under s.
239 732.525(1)(b)9. is in the qualified custodian's custody in the
240 electronic record that contains the electronic will and is
241 available for inspection by the court.

242 Section 7. Effective April 1, 2018, section 732.525,
243 Florida Statutes, is created to read:

244 732.525 Method and place of execution.—For purposes of
245 this act, the execution and filing of a document with the court
246 as provided in this act, s. 732.503, or the Florida Probate
247 Rules; the execution of a living will under s. 765.302; and the
248 acknowledgment of any of the foregoing:

249 (1) An individual is deemed to be in the presence of or
250 appearing before another individual if the individuals are

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251 either:

252 (a) In the same physical location; or

253 (b) In different physical locations, but can communicate

254 with each other by means of live video conference, and all of

255 the following requirements are met:

256 1. The testator or principal may not be in an end-stage

257 condition as defined in s. 765.101 or a vulnerable adult as

258 defined in s. 415.102. The contestant of the document has the

259 burden of proving that the testator or principal was in an end-

260 stage condition or was a vulnerable adult at the time of

261 executing the document.

262 2. The signal transmission must be live and in real time.

263 3. The signal transmission must be secure from

264 interception through lawful means by anyone other than the

265 persons communicating.

266 4. The persons communicating must simultaneously see and

267 speak to one another with reasonable clarity.

268 5. In the video conference, the persons communicating must

269 establish the identity of the testator or principal by:

270 a. Personal knowledge, if the person asserting personal

271 knowledge explains how the identity of the testator or principal

272 has come to be known to, and the length of time for which it has

273 been known by, such person; or

274 b. Presentation of any of the forms of identification of

275 the testator or principal, as set forth in s. 117.05(5)(b)2.a.-

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276 i.
277 6. In the video conference, the persons communicating must
278 demonstrate awareness of the events taking place, which may be
279 achieved, without limitation, by stating their names and
280 identifying any document they intend to sign.
281 7. At least one of the persons communicating must be
282 either:
283 a. An attorney licensed to practice law in this state:
284 (I) Who electronically signs the document as a witness;
285 (II) Whose status as an attorney licensed to practice law
286 in this state is indicated adjacent to his or her electronic
287 signature; and
288 (III) Whose electronic signature is accompanied by his or
289 her statement that, to the best of his or her knowledge, the
290 execution of the document complied with the requirements of this
291 section; or
292 b. A Florida notary public:
293 (I) Who electronically signs the document;
294 (II) Whose electronic signature is accompanied by a notary
295 public seal that meets the requirements of s. 117.021(3); and
296 (III) Whose electronic signature and seal are accompanied
297 by his or her certification that, to the best of his or her
298 knowledge, the execution of the document complied with the
299 requirements of this section.
300

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301 If a document is required to be witnessed or acknowledged, the
302 witness or notary fulfilling that requirement may be the same
303 witness or notary who fulfills the requirement of this
304 subparagraph. A person presented with a document containing the
305 statement or certification required under this subparagraph may
306 presume that the document was executed in compliance with this
307 paragraph, unless the person has notice that such compliance is
308 contested.

309 8. In the video conference, the testator or principal must
310 provide verbal answers to all of the following questions:

311 a. Are you over the age of 18?

312 b. Are you under the influence of any drugs or alcohol
313 that impairs your ability to make decisions?

314 c. Are you of sound mind?

315 d. Did anyone assist you in accessing this video
316 conference? If so, who?

317 e. Has anyone forced or influenced you to include anything
318 in this document which you do not wish to include?

319 f. Are you signing this document voluntarily?

320 9. A time-stamped recording of the entire video conference
321 must be identifiable with the document being signed and stored
322 in the electronic record containing the document by a qualified
323 custodian in the manner required pursuant to s. 732.527(1)(c)
324 for the storage of electronic records containing electronic
325 wills.

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326 a. Without limitation, a recording is identifiable with a
327 document if the recording and document share an identification
328 number.

329 b. If the recording is not reasonably accessible by a
330 person presented with the document, such person may treat the
331 document as if it does not include the signature of any
332 signatory who appeared by means of live video conference;
333 however, an electronic will whose execution included the use of
334 video conference under this section may be proved as provided in
335 s. 733.201(4). Without limitation, a recording is reasonably
336 accessible if it is accessible at no charge over the Internet
337 pursuant to instructions set forth in the document.

338 (2) If a law requires a record to be in writing, an
339 electronic record satisfies such provision.

340 (3) Any requirement that a document be signed may be
341 satisfied by an electronic signature.

342 (4) A document that is signed electronically is deemed to
343 be executed in this state if all of the following requirements
344 are met:

345 (a) The document states that the person creating the
346 document intends to execute and understands that he or she is
347 executing the document in, and pursuant to the laws of, this
348 state.

349 (b) The person creating the document is, or the attesting
350 witnesses or Florida notary public whose electronic signatures

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351 are obtained in the execution of the document are, physically
352 located within this state at the time the document is executed.

353 (c) In the case of a self-proved electronic will, the
354 electronic will designates a qualified custodian who is
355 domiciled in and a resident of this state or incorporated or
356 organized in this state.

357 Section 8. Effective April 1, 2018, section 732.526,
358 Florida Statutes, is created to read:

359 732.526 Probate.—An electronic will, other than a
360 holographic or nuncupative will, of a nonresident of this state
361 which is executed or deemed executed in another state in
362 accordance with the laws of that state or of this state may be
363 offered for and admitted to original probate in this state and
364 is subject to the jurisdiction of the courts of this state. The
365 venue for the probate of electronic wills is as provided in s.
366 733.101(1) or, in the case of the electronic will of a
367 nonresident, may be the county in which the qualified custodian
368 or attorney for the petitioner or personal representative has
369 his or her domicile or registered office.

370 Section 9. Section 732.527, Florida Statutes, is created
371 to read:

372 732.527 Qualified custodians.—

373 (1) To serve as a qualified custodian of an electronic
374 will, a person or entity must:

375 (a) Not be named as a fiduciary under the electronic will

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376 or an heir or devisee, as defined in s. 731.201, of the
377 testator;

378 (b) Be domiciled in and a resident of this state or be
379 incorporated or organized in this state;

380 (c) In the course of maintaining custody of electronic
381 wills, regularly employ, and store electronic records containing
382 electronic wills in, a system that:

383 1. Protects electronic records from destruction,
384 alteration, or unauthorized access; and

385 2. Detects any change to an electronic record; and

386 (d) Furnish for any court hearing involving an electronic
387 will that is currently or was previously stored by the qualified
388 custodian any information requested by the court pertaining to
389 the qualified custodian's qualifications, policies, and
390 practices related to the creation, sending, communication,
391 receipt, maintenance, storage, and production of electronic
392 wills.

393 (2) The qualified custodian of an electronic will shall
394 provide access to or information concerning the electronic will,
395 or the electronic record containing the electronic will, only:

396 (a) To the testator;

397 (b) To persons authorized by the testator in the
398 electronic will or in written instructions signed by the
399 testator in accordance with s. 732.502;

400 (c) After the death of the testator, to the testator's

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401 nominated personal representative; or

402 (d) At any time, as directed by a court of competent
403 jurisdiction.

404 (3) The qualified custodian of the electronic record of an
405 electronic will may elect to destroy such record, including any
406 of the documentation required to be created and stored under
407 paragraph (1)(d), at any time after the earlier of the fifth
408 anniversary of the conclusion of the administration of the
409 estate of the testator or 20 years after the death of the
410 testator.

411 (4) A qualified custodian who at any time maintains
412 custody of the electronic record of an electronic will may elect
413 to cease serving in such capacity by:

414 (a) Delivering the electronic will or the electronic
415 record containing the electronic will to the testator, if then
416 living, or, after the death of the testator, by filing the will
417 with the court in accordance with s. 732.901; and

418 (b) If the outgoing qualified custodian intends to
419 designate a successor qualified custodian, by doing the
420 following:

421 1. Providing written notice to the testator of the name,
422 address, and qualifications of the proposed successor qualified
423 custodian. The testator must provide written consent before the
424 electronic record, including the electronic will, is delivered
425 to a successor qualified custodian;

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426 2. Delivering the electronic record containing the
427 electronic will to the successor qualified custodian; and
428 3. Delivering to the successor qualified custodian an
429 affidavit of the outgoing qualified custodian stating that:
430 a. The outgoing qualified custodian is eligible to act as
431 a qualified custodian in this state;
432 b. The outgoing qualified custodian is the qualified
433 custodian designated by the testator in the electronic will or
434 appointed to act in such capacity under this paragraph;
435 c. The electronic will has at all times been in the
436 custody of one or more qualified custodians in compliance with
437 this section since the time the electronic record was created,
438 and identifying such qualified custodians; and
439 d. To the best of the outgoing qualified custodian's
440 knowledge, the electronic will has not been altered since the
441 time it was created.

442
443 For purposes of making this affidavit, the outgoing qualified
444 custodian may rely conclusively on any affidavits delivered by a
445 predecessor qualified custodian in connection with its
446 designation or appointment as qualified custodian; however, all
447 such affidavits must be delivered to the successor qualified
448 custodian.

449 (5) Upon the request of the testator which is made in a
450 writing signed in accordance with s. 732.502 or s. 732.523, a

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451 qualified custodian who at any time maintains custody of the
452 electronic record of the testator's electronic will must cease
453 servicing in such capacity and must deliver to a successor
454 qualified custodian designated in writing by the testator the
455 electronic record containing the electronic will and the
456 affidavit required in subparagraph (4)(b)3.

457 (6) A qualified custodian may not succeed to office as a
458 qualified custodian of an electronic will unless he or she
459 agrees in writing to serve in such capacity.

460 (7) If a qualified custodian is an entity, an affidavit,
461 or an appearance by the testator in the presence of a duly
462 authorized officer or agent of such entity, acting in his or her
463 own capacity as such, shall constitute an affidavit, or an
464 appearance by the testator in the presence of the qualified
465 custodian.

466 (8) A qualified custodian must provide a paper copy of an
467 electronic will and the electronic record containing the
468 electronic will to the testator immediately upon request. For
469 the first such request in any 365-day period, the testator may
470 not be charged a fee for being provided with these documents.

471 (9) The qualified custodian shall be liable for any
472 damages caused by the negligent loss or destruction of the
473 electronic record, including the electronic will, while it is in
474 the possession of the qualified custodian. A qualified custodian
475 may not limit liability for such damages.

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476 (10) A qualified custodian may not terminate or suspend
477 access to, or downloads of, the electronic will by the testator.

478 (11) Upon receiving information that the testator is dead,
479 a qualified custodian must deposit the electronic will with the
480 court in accordance with s. 732.901. A qualified custodian may
481 not charge a fee for depositing the electronic will with the
482 clerk, providing the affidavit is made in accordance with s.
483 732.503, or furnishing in writing any information requested by a
484 court under paragraph (1)(d).

485 (12) Except as provided in this act, a qualified custodian
486 must at all times keep information provided by the testator
487 confidential and may not disclose such information to any third
488 party.

489 (13) A contractual venue provision between a qualified
490 custodian and a testator is not valid or enforceable to the
491 extent that it requires a specific jurisdiction or venue for any
492 proceeding relating to the probate of an estate or the contest
493 of a will.

494 Section 10. Section 732.528, Florida Statutes, is created
495 to read:

496 732.528 Liability coverage; receivership of qualified
497 custodians.—

498 (1) A qualified custodian shall:

499 (a) Post and maintain a blanket surety bond of at least
500 \$250,000 to secure the faithful performance of all duties and

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501 obligations required under this act. The bond must be made
502 payable to the Governor and his or her successors in office for
503 the benefit of all persons who store electronic records with a
504 qualified custodian and their estates, beneficiaries,
505 successors, and heirs and be conditioned on the faithful
506 performance of all duties and obligations under this act. The
507 terms of the bond must cover the acts or omissions of the
508 qualified custodian and each agent or employee of the qualified
509 custodian; or

510 (b) Maintain a liability insurance policy that covers any
511 losses sustained by any person who stores electronic records
512 with a qualified custodian and their estates, beneficiaries,
513 successors, and heirs which are caused by errors or omissions by
514 the qualified custodian and each agent or employee of the
515 qualified custodian. The policy must cover losses of up to at
516 least \$250,000 in the aggregate.

517 (2) The Attorney General may petition a court of competent
518 jurisdiction for the appointment of a receiver to manage the
519 electronic records of a qualified custodian for proper delivery
520 and safekeeping if any of the following conditions exist:

521 (a) The qualified custodian is ceasing operation.

522 (b) The qualified custodian intends to close the facility
523 and adequate arrangements have not been made for proper delivery
524 of the electronic records in accordance with this act.

525 (c) The Attorney General determines that conditions exist

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526 which present a danger that electronic records will be lost or
527 misappropriated.

528 (d) The qualified custodian fails to maintain and post a
529 surety bond or maintain insurance required by this section.

530 Section 11. Present subsection (5) of section 732.901,
531 Florida Statutes, is redesignated as subsection (6) of that
532 section, and a new subsection (5) is added to that section, to
533 read:

534 732.901 Production of wills.—

535 (5) An electronic will that is filed electronically with
536 the clerk through the Florida Courts E-Filing Portal is deemed
537 to have been deposited with the clerk as an original of the
538 electronic will.

539 Section 12. Section 733.201, Florida Statutes, is amended
540 to read:

541 733.201 Proof of wills.—

542 (1) Self-proved wills executed in accordance with this
543 code may be admitted to probate without further proof.

544 (2) A will, other than an electronic will, may be admitted
545 to probate upon the oath of any attesting witness taken before
546 any circuit judge, commissioner appointed by the court, or
547 clerk.

548 (3) If it appears to the court that the attesting
549 witnesses cannot be found or that they have become incapacitated
550 after the execution of the will or their testimony cannot be

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551 | obtained within a reasonable time, a will, other than an
552 | electronic will, may be admitted to probate upon the oath of the
553 | personal representative nominated by the will as provided in
554 | subsection (2), whether or not the nominated personal
555 | representative is interested in the estate, or upon the oath of
556 | any person having no interest in the estate under the will
557 | stating that the person believes the writing exhibited to be the
558 | true last will of the decedent.

559 | (4) If an electronic will, including an electronic will
560 | whose execution included the use of a video conference under s.
561 | 732.525(1)(b), is not self-proved, an electronic will may be
562 | admitted to probate upon the oath of the two attesting witnesses
563 | for the electronic will taken before any circuit judge, any
564 | commissioner appointed by the court, or the clerk. If it appears
565 | to the court that the attesting witnesses cannot be found, that
566 | they have become incapacitated after the execution of the
567 | electronic will, or that their testimony cannot be obtained
568 | within a reasonable time, an electronic will may be admitted to
569 | probate upon the oath of two disinterested witnesses providing
570 | all of the following information:

571 | (a) The date on which the electronic will was created, if
572 | the date is not indicated in the electronic will itself.

573 | (b) When and how the electronic will was discovered, and
574 | by whom.

575 | (c) All of the people who had access to the electronic

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will.

(d) The method by which the electronic will was stored and the safeguards that were in place to prevent alterations to the electronic will.

(e) A statement as to whether the electronic will has been altered since its creation.

(f) A statement that the electronic will is a true, correct, and complete tangible manifestation of the testator's true last will.

(g) If the execution of an electronic will included the use of a video conference under s. 732.525(1)(b), a statement as to whether a recording of the video conference is available for inspection by the court or cannot be found after a diligent search.

(5) A paper copy of an electronic will which is a true and correct copy of the electronic will may be offered for and admitted to probate and shall constitute an "original" of the electronic will.

Section 13. Subsection (11) of section 736.0103, Florida Statutes, is amended to read:

736.0103 Definitions.—Unless the context otherwise requires, in this code:

(11) "Interests of the beneficiaries" means the beneficial interests intended by the settlor as provided in the terms of a ~~the~~ trust.

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(next page 1347)

[omitted pp 25-46] - unrelated to e-wills

CODING: Words stricken are deletions; words underlined are additions.

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1151 required by s. 736.0813 or former s. 737.303 and does not
1152 commence the running of any period of limitations or laches for
1153 such a claim, and paragraph (a) and chapter 95 do not bar any
1154 such claim.

1155 Section 22. The changes to ss. 736.08135 and 736.1008,
1156 Florida Statutes, made by this act are intended to clarify
1157 existing law, are remedial in nature, and apply retroactively to
1158 all cases pending or commenced on or after July 1, 2017.

1159 Section 23. Present subsections (2), (3), and (4) of
1160 section 736.1201, Florida Statutes, are redesignated as
1161 subsections (3), (4), and (5), respectively, present subsection
1162 (5) of that section is amended, and a new subsection (2) is
1163 added to that section, to read:

1164 736.1201 Definitions.—As used in this part:

1165 (2) "Delivery of notice" means delivery of a written
1166 notice required under this part using any commercial delivery
1167 service requiring a signed receipt or by any form of mail
1168 requiring a signed receipt.

1169 ~~(5) "State attorney" means the state attorney for the~~
1170 ~~judicial circuit of the principal place of administration of the~~
1171 ~~trust pursuant to s. 736.0108.~~

1172 Section 24. Section 736.1205, Florida Statutes, is amended
1173 to read:

1174 736.1205 Notice that this part does not apply.—In the case
1175 of a power to make distributions, if the trustee determines that

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1176 the governing instrument contains provisions that are more
 1177 restrictive than s. 736.1204(2), or if the trust contains other
 1178 powers, inconsistent with the provisions of s. 736.1204(3) that
 1179 specifically direct acts by the trustee, the trustee shall
 1180 notify the ~~state~~ Attorney General by delivery of notice when the
 1181 trust becomes subject to this part. Section 736.1204 does not
 1182 apply to any trust for which notice has been given pursuant to
 1183 this section unless the trust is amended to comply with the
 1184 terms of this part. *e-wills eff. date*

1185 Section 25. Sections 1 through 12 and section 17 of this
 1186 act apply to electronic wills executed on or after July 1, 2017.

1187 Section 26. Subsection (2) of section 736.1206, Florida
 1188 Statutes, is amended to read:

1189 736.1206 Power to amend trust instrument.—

1190 (2) In the case of a charitable trust that is not subject
 1191 to ~~the provisions of~~ subsection (1), the trustee may amend the
 1192 governing instrument to comply with ~~the provisions of~~ s.
 1193 736.1204(2) after delivery of notice to, and with the consent
 1194 of, the state Attorney General.

1195 Section 27. Section 736.1207, Florida Statutes, is amended
 1196 to read:

1197 736.1207 Power of court to permit deviation.—This part
 1198 does not affect the power of a court to relieve a trustee from
 1199 any restrictions on the powers and duties that are placed on the
 1200 trustee by the governing instrument or applicable law for cause

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1201 shown and on complaint of the trustee, the ~~state~~ Attorney
1202 General, or an affected beneficiary and notice to the affected
1203 parties.

1204 Section 28. Paragraph (b) of subsection (4) of section
1205 736.1208, Florida Statutes, is amended to read:

1206 736.1208 Release; property and persons affected; manner of
1207 effecting.—

1208 (4) Delivery of a release shall be accomplished as
1209 follows:

1210 (b) If the release is accomplished by reducing the class
1211 of permissible charitable organizations, by delivery of notice a
1212 ~~copy~~ of the release to the ~~state~~ Attorney General, including a
1213 copy of the release.

1214 Section 29. Section 736.1209, Florida Statutes, is amended
1215 to read:

1216 736.1209 Election to come under this part.—With the
1217 consent of that organization or organizations, a trustee of a
1218 trust for the benefit of a public charitable organization or
1219 organizations may come under s. 736.1208(5) by delivery of
1220 notice to filing ~~with the~~ ~~state~~ Attorney General of the ~~an~~
1221 election, accompanied by the proof of required consent.
1222 Thereafter the trust shall be subject to s. 736.1208(5).

1223 Section 30. Except as otherwise provided in this act and
1224 except for this section, which shall take effect upon becoming a
1225 law, this act shall take effect July 1, 2017.



RICK SCOTT
GOVERNOR

June 26, 2017

Secretary Ken Detzner
Secretary of State
Florida Department of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399

2017 JUN 26 PM 7:11
RECEIVED
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Dear Secretary Detzner:

By the authority vested in me as Governor of the State of Florida, under the provisions of Article III, Section 8, of the Constitution of Florida, I do hereby veto and transmit my objections to Committee Substitute for Committee Substitute for House Bill 277, enacted during the 119th Session of the Legislature of Florida, during the Regular Session of 2017 and entitled:

An act relating to wills and trusts...

The bill creates the "Florida Electronic Wills Act" which authorizes the creation of electronic wills, and provides that the execution of electronic wills may be witnessed and notarized through the use of remote technology. The bill also specifies that electronic wills of residents and nonresidents may be probated in Florida.

This bill has generated much debate among stakeholders who seek to find the right balance between providing safeguards to protect the will-making process from exploitation and fraud while also incorporating technological options that make wills financially accessible to a greater number of Florida's citizens. While the idea of electronic wills is innovative and may transform estate planning for Floridians, I believe this bill fails to strike the proper balance between competing concerns.

As Governor, I oversee the appointment of notaries public in the State of Florida and have a responsibility to ensure that notaries safeguard the most vulnerable Floridians against fraud and exploitation. While the concept of remote notarization is meant to provide increased access to legal services like estate planning, the remote notarization provisions in the bill do not adequately ensure authentication of the identity of the parties to the transaction and are not cohesive with the notary provisions set forth in Chapter 117, Florida Statutes.

Secretary Ken Detzner
June 26, 2017
Page Two

Furthermore, providing an additional Florida venue for the probate of nonresident wills based only upon the qualified custodian's location in this state could burden Florida's court system with the probate of estates that may have no Florida nexus other than that the wills were created and stored here. Additionally, if the state where the decedent is domiciled does not recognize electronic wills as a valid declaration of intent, the individual could be left intestate.

Furthermore, I have concerns with the delayed implementation of the remote witnessing, remote notarization, and nonresident venue provisions of this bill. The Legislature delayed these provisions to April 1, 2018, in order to address "substantive changes and outstanding questions" during the next legislative session. Rather than sign an imperfect bill into law, I encourage the Legislature to continue to work on answering these outstanding questions and address the issues comprehensively during the next legislative session.

For the reasons stated above, I withhold my approval of Committee Substitute for Committee Substitute for House Bill 277 and do hereby veto the same.

Sincerely,

A handwritten signature in black ink, appearing to be "Rick Scott", written in a cursive style.

Rick Scott
Governor

Indiana - Not enacted

Introduced Version

HOUSE BILL No. 1107

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-18-2; IC 16-36; IC 26-2-8-103; IC 29-1; IC 30-4; IC 30-5-4-1; IC 32-39-2.

Synopsis: Electronic signatures. Provides that a person may create an electronic will and an electronic trust document if certain conditions are met, and provides that a power of attorney (including a living will and health care power of attorney) may be signed electronically and created or stored in an electronic format. Makes conforming amendments.

Effective: July 1, 2017.

Steuerwald

January 5, 2017, read first time and referred to Committee on Judiciary.



Introduced

First Regular Session of the 120th General Assembly (2017)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2016 Regular Session of the General Assembly.

HOUSE BILL No. 1107

A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-18-2-106.2 IS ADDED TO THE INDIANA
 2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 3 [EFFECTIVE JULY 1, 2017]: **Sec. 106.2. "Electronic record", for**
 4 **purposes of IC 16-36-1 and IC 16-36-4, has the meaning set forth**
 5 **in IC 26-2-8-102.**
 6 SECTION 2. IC 16-18-2-106.3, AS ADDED BY P.L.204-2005,
 7 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2017]: Sec. 106.3. **(a) "Electronic signature", for purposes**
 9 **of IC 16-36-1 and IC 16-36-4, has the meaning set forth in**
 10 **IC 26-2-8-102.**
 11 **(b) "Electronic signature", for purposes of IC 16-42-3 and**
 12 **IC 16-42-22, "electronic signature" means an electronic sound, symbol,**
 13 **or process:**
 14 (1) attached to or logically associated with an electronically
 15 transmitted prescription or order; and
 16 (2) executed or adopted by a person;
 17 with the intent to sign the electronically transmitted prescription or

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1 order.

2 SECTION 3. IC 16-36-1-7, AS AMENDED BY P.L.81-2015,
3 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2017]: Sec. 7. (a) An individual who may consent to health
5 care under section 3 of this chapter may appoint another representative
6 to act for the appointor in matters affecting the appointor's health care.

7 (b) An appointment and any amendment must meet the following
8 conditions:

9 (1) Be in writing, **including an electronic record.**

10 (2) Be signed by the appointor or by a designee in the appointor's
11 presence. **The use of an electronic signature constitutes being
12 signed under this subdivision.**

13 (3) Be witnessed by an adult other than the representative.

14 (c) The appointor may specify in the appointment appropriate terms
15 and conditions, including an authorization to the representative to
16 delegate the authority to consent to another.

17 (d) The authority granted becomes effective according to the terms
18 of the appointment.

19 (e) The appointment does not commence until the appointor
20 becomes incapable of consenting. The authority granted in the
21 appointment is not effective if the appointor regains the capacity to
22 consent.

23 (f) Unless the appointment provides otherwise, a representative
24 appointed under this section who is reasonably available and willing to
25 act has priority to act in all matters of health care for the appointor,
26 except when the appointor is capable of consenting.

27 (g) In making all decisions regarding the appointor's health care, a
28 representative appointed under this section shall act as follows:

29 (1) In the best interest of the appointor consistent with the
30 purpose expressed in the appointment.

31 (2) In good faith.

32 (h) A health care representative who resigns or is unwilling to
33 comply with the written appointment may not exercise further power
34 under the appointment and shall so inform the following:

35 (1) The appointor.

36 (2) The appointor's legal representative if one is known.

37 (3) The health care provider if the representative knows there is
38 one.

39 (i) An individual who is capable of consenting to health care may
40 revoke:

41 (1) the appointment at any time by notifying the representative
42 orally or in writing, **including by means of an electronic record;**



1 or
 2 (2) the authority granted to the representative by notifying the
 3 health care provider orally or in writing, **including by means of**
 4 **an electronic record.**
 5 SECTION 4. IC 16-36-4-8 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 8. (a) A person who is
 7 of sound mind and is at least eighteen (18) years of age may execute a
 8 life prolonging procedures will declaration under section 11 of this
 9 chapter or a living will declaration under section 10 of this chapter.
 10 (b) A declaration under section 10 or 11 of this chapter must meet
 11 the following conditions:
 12 (1) Be voluntary.
 13 (2) Be:
 14 (A) in writing; or
 15 (B) in the form of an electronic record.
 16 (3) Be signed by the person making the declaration or by another
 17 person in the declarant's presence and at the declarant's express
 18 direction. **A person may sign a declaration under this**
 19 **subdivision by means of an electronic signature.**
 20 (4) Be dated.
 21 (5) Be signed in the presence of at least two (2) competent
 22 witnesses who are at least eighteen (18) years of age.
 23 (c) A witness to a living will declaration under subsection (b)(5)
 24 may not meet any of the following conditions:
 25 (1) Be the person who signed the declaration on behalf of and at
 26 the direction of the declarant.
 27 (2) Be a parent, spouse, or child of the declarant.
 28 (3) Be entitled to any part of the declarant's estate whether the
 29 declarant dies testate or intestate, including whether the witness
 30 could take from the declarant's estate if the declarant's will is
 31 declared invalid.
 32 (4) Be directly financially responsible for the declarant's medical
 33 care.
 34 For the purposes of subdivision (3), a person is not considered to be
 35 entitled to any part of the declarant's estate solely by virtue of being
 36 nominated as a personal representative or as the attorney for the estate
 37 in the declarant's will.
 38 (d) The living will declaration of a person diagnosed as pregnant by
 39 the attending physician has no effect during the person's pregnancy.
 40 (e) The life prolonging procedures will declarant or the living will
 41 declarant shall notify the declarant's attending physician of the
 42 existence of the declaration. An attending physician who is notified



1 shall make the declaration or a copy of the declaration a part of the
 2 declarant's medical records.

3 (f) A living will declaration under section 10 of this chapter:

4 (1) does not require the physician to use, withhold, or withdraw
 5 life prolonging procedures but is presumptive evidence of the
 6 patient's desires concerning the use, withholding, or withdrawal
 7 of life prolonging procedures under this chapter; and

8 (2) shall be given great weight by the physician in determining the
 9 intent of the patient who is mentally incompetent.

10 (g) A life prolonging procedures will declaration under section 11
 11 of this chapter does require the physician to use life prolonging
 12 procedures as requested.

13 SECTION 5. IC 16-36-4-12 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 12. (a) A living will
 15 declaration or a life prolonging procedures will declaration may be
 16 revoked at any time by the declarant by any of the following:

17 (1) A signed, dated writing, **including:**

18 (A) **an electronic record; or**

19 (B) **other writing;**

20 **signed with an electronic signature.**

21 (2) Physical cancellation or destruction of the declaration by the
 22 declarant or another in the declarant's presence and at the
 23 declarant's direction.

24 (3) An oral expression of intent to revoke.

25 (b) A revocation is effective when communicated to the attending
 26 physician.

27 (c) No civil or criminal liability is imposed upon a person for failure
 28 to act upon a revocation unless the person had actual knowledge of the
 29 revocation.

30 (d) The revocation of a life prolonging procedures will declaration
 31 is not evidence that the declarant desires to have life prolonging
 32 procedures withheld or withdrawn.

33 SECTION 6. IC 26-2-8-103 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 103. (a) Except as
 35 otherwise provided in subsection (b), this chapter applies to electronic
 36 records and electronic signatures that relate to a transaction.

37 (b) This chapter does not apply to transactions subject to the
 38 following laws:

39 (1) A law governing the creation and execution of wills, codicils,
 40 or testamentary trusts, **except as otherwise provided in**
 41 **IC 29-1-5 or IC 30-4.**

42 (2) IC 26-1 (other than IC 26-1-1-107, IC 26-1-1-206, IC 26-1-2,



1 and IC 26-1-2.1).
 2 (3) Laws specifically excluded by a governmental agency under
 3 sections 201 and 202 of this chapter.
 4 (c) This chapter applies to an electronic record or electronic
 5 signature otherwise excluded from the application of this chapter under
 6 subsection (b) when used for transactions subject to a law other than
 7 those specified in subsection (b).
 8 (d) A transaction subject to this chapter is also subject to other
 9 applicable substantive law.
 10 SECTION 7. IC 29-1-1-3, AS AMENDED BY P.L.190-2016,
 11 SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2017]: Sec. 3. (a) The following definitions apply throughout
 13 this article, unless otherwise apparent from the context:
 14 (1) "Authentication method" means:
 15 (A) both:
 16 (i) a copy of the testator's government issued photo
 17 identification card, including a passport; and
 18 (ii) a knowledge based authentication method; a digital
 19 certificate using a public key infrastructure; a physical
 20 device, including a smart card, a USB device, or another
 21 token; biometric identification, including fingerprint
 22 identification, a retinal scan, voice or facial recognition,
 23 or a video recording of the testator; or another
 24 commercially reasonable method; or
 25 (B) electronic notarization, in accordance with
 26 IC 26-2-8-110 or other applicable law.
 27 (†) (2) "Child" includes an adopted child but does not include a
 28 grandchild or other more remote descendants, nor, except as
 29 provided in IC 29-1-2-7, a child born out of wedlock.
 30 (‡) (3) "Claims" includes liabilities of a decedent which survive,
 31 whether arising in contract or in tort or otherwise, expenses of
 32 administration, and all taxes imposed by reason of the person's
 33 death. However, for purposes of IC 29-1-2-1 and IC 29-1-3-1, the
 34 term does not include taxes imposed by reason of the person's
 35 death.
 36 (‡) (4) "Court" means the court having probate jurisdiction.
 37 (‡) (5) "Decedent" means one who dies testate or intestate.
 38 (‡) (6) "Devise" or "legacy", when used as a noun, means a
 39 testamentary disposition of either real or personal property or
 40 both.
 41 (‡) (7) "Devise", when used as a verb, means to dispose of either
 42 real or personal property or both by will.



- 1 ~~(7)~~ **(8)** "Devisee" includes legatee, and "legatee" includes devisee.
- 2 ~~(8)~~ **(9)** "Distributee" denotes those persons who are entitled to the
- 3 real and personal property of a decedent under a will, under the
- 4 statutes of intestate succession, or under IC 29-1-4-1.
- 5 **(10) "Electronic" has the meaning set forth in IC 26-2-8-102.**
- 6 **(11) "Electronic record" has the meaning set forth in**
- 7 **IC 26-2-8-102.**
- 8 **(12) "Electronic signature" has the meaning set forth in**
- 9 **IC 26-2-8-102.**
- 10 **(13) "Electronic will" means a will of a testator that:**
 - 11 **(A) is created and maintained as an electronic record;**
 - 12 **(B) contains the electronic signature of the testator;**
 - 13 **(C) contains the date and time of the electronic signature;**
 - 14 **(D) includes an authentication method that is attached to**
 - 15 **or logically associated with the electronic will to identify**
 - 16 **the testator;**
 - 17 **(E) is created and maintained in such a manner that any**
 - 18 **alteration of the electronic will is detectable; and**
 - 19 **(F) is otherwise subject to IC 26-2-8.**
- 20 **The term includes a codicil.**
- 21 **(14) "Executed" includes the use of an electronic signature.**
- 22 ~~(9)~~ **(15) "Estate" denotes the real and personal property of the**
- 23 decedent or protected person, as from time to time changed in
- 24 form by sale, reinvestment, or otherwise, and augmented by any
- 25 accretions and additions thereto and substitutions therefor and
- 26 diminished by any decreases and distributions therefrom.
- 27 ~~(10)~~ **(16) "Expenses of administration" includes expenses**
- 28 incurred by or on behalf of a decedent's estate in the collection of
- 29 assets, the payment of debts, and the distribution of property to
- 30 the persons entitled to the property, including funeral expenses,
- 31 expenses of a tombstone, expenses incurred in the disposition of
- 32 the decedent's body, executor's commissions, attorney's fees, and
- 33 miscellaneous expenses.
- 34 ~~(11)~~ **(17) "Fiduciary" includes a:**
 - 35 **(A) personal representative;**
 - 36 **(B) guardian;**
 - 37 **(C) conservator;**
 - 38 **(D) trustee; and**
 - 39 **(E) person designated in a protective order to act on behalf of**
 - 40 **a protected person.**
- 41 ~~(12)~~ **(18) "Heirs" denotes those persons, including the surviving**
- 42 spouse, who are entitled under the statutes of intestate succession



- 1 to the real and personal property of a decedent on the decedent's
- 2 death intestate, unless otherwise defined or limited by the will.
- 3 ~~(13)~~ **(19)** "Incapacitated" has the meaning set forth in
- 4 IC 29-3-1-7.5.
- 5 ~~(14)~~ **(20)** "Interested persons" means heirs, devisees, spouses,
- 6 creditors, or any others having a property right in or claim against
- 7 the estate of a decedent being administered. This meaning may
- 8 vary at different stages and different parts of a proceeding and
- 9 must be determined according to the particular purpose and
- 10 matter involved.
- 11 ~~(15)~~ **(21)** "Issue" of a person, when used to refer to persons who
- 12 take by intestate succession, includes all lawful lineal descendants
- 13 except those who are lineal descendants of living lineal
- 14 descendants of the intestate.
- 15 ~~(16)~~ **(22)** "Lease" includes an oil and gas lease or other mineral
- 16 lease.
- 17 ~~(17)~~ **(23)** "Letters" includes letters testamentary, letters of
- 18 administration, and letters of guardianship.
- 19 ~~(18)~~ **(24)** "Minor" or "minor child" or "minority" refers to any
- 20 person under the age of eighteen (18) years.
- 21 ~~(19)~~ **(25)** "Mortgage" includes deed of trust, vendor's lien, and
- 22 chattel mortgage.
- 23 ~~(20)~~ **(26)** "Net estate" refers to the real and personal property of
- 24 a decedent less the allowances provided under IC 29-1-4-1 and
- 25 enforceable claims against the estate.
- 26 ~~(21)~~ **(27)** "Person" means:
- 27 (A) an individual;
- 28 (B) a corporation;
- 29 (C) a trust;
- 30 (D) a limited liability company;
- 31 (E) a partnership;
- 32 (F) a business trust;
- 33 (G) an estate;
- 34 (H) an association;
- 35 (I) a joint venture;
- 36 (J) a government or political subdivision;
- 37 (K) an agency;
- 38 (L) an instrumentality; or
- 39 (M) any other legal or commercial entity.
- 40 ~~(22)~~ **(28)** "Personal property" includes interests in goods, money,
- 41 choses in action, evidences of debt, and chattels real.
- 42 ~~(23)~~ **(29)** "Personal representative" includes executor,



1 administrator, administrator with the will annexed, administrator
 2 de bonis non, and special administrator.
 3 ~~(24)~~ **(30)** "Probate estate" denotes the property transferred at the
 4 death of a decedent under the decedent's will or under IC 29-1-2,
 5 in the case of a decedent dying intestate.
 6 ~~(25)~~ **(31)** "Property" includes both real and personal property.
 7 ~~(26)~~ **(32)** "Protected person" has the meaning set forth in
 8 IC 29-3-1-13.
 9 ~~(27)~~ **(33)** "Real property" includes estates and interests in land,
 10 corporeal or incorporeal, legal or equitable, other than chattels
 11 real.
 12 **(34) "Signature" includes an electronic signature.**
 13 **(35) "Signed" includes the use of an electronic signature.**
 14 **(36) "Trust" includes an electronic trust or an electronic trust**
 15 **instrument (as defined in IC 30-4-1-2).**
 16 ~~(28)~~ **(37)** "Will" includes all wills, testaments, and codicils,
 17 **including an electronic will.** The term also includes a
 18 testamentary instrument which merely appoints an executor or
 19 revokes or revives another will.
 20 **(38) "Written" or "writing" includes the use of an electronic**
 21 **record.**
 22 (b) The following rules of construction apply throughout this article
 23 unless otherwise apparent from the context:
 24 (1) The singular number includes the plural and the plural number
 25 includes the singular.
 26 (2) The masculine gender includes the feminine and neuter.
 27 SECTION 8. IC 29-1-5-3.1 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 3.1. (a) This section
 29 applies to a will executed before, on, or after July 1, 2003. When a will
 30 is executed, the will may be:
 31 (1) attested; and
 32 (2) made self-proving;
 33 by incorporating into, ~~or~~ attaching to, **or logically associating with** the
 34 will a self-proving clause that meets the requirements of subsection (c)
 35 or (d). If the testator and witnesses sign a self-proving clause that meets
 36 the requirements of subsection (c) or (d) at the time the will is
 37 executed, no other signatures of the testator and witnesses are required
 38 for the will to be validly executed and self-proved.
 39 (b) If a will is executed by the signatures of the testator and
 40 witnesses on an attestation clause under section 3(b) of this chapter, the
 41 will may be made self-proving at a later date by attaching to ~~or~~
 42 **logically associating with** the will a self-proving clause signed by the



1 testator and witnesses that meets the requirements of subsection (c) or
2 (d).

3 (c) A self-proving clause must contain the acknowledgment of the
4 will by the testator and the statements of the witnesses, each made
5 under the laws of Indiana and evidenced by the signatures of the
6 testator and witnesses (which may be made under the penalties for
7 perjury) attached **to, logically associated with**, or annexed to the will
8 in form and content substantially as follows:

9 We, the undersigned testator and the undersigned witnesses,
10 respectively, whose names are signed to the attached or foregoing
11 instrument declare:

- 12 (1) that the testator executed the instrument as the testator's will;
- 13 (2) that, in the presence of both witnesses, the testator signed or
- 14 acknowledged the signature already made or directed another to
- 15 sign for the testator in the testator's presence;
- 16 (3) that the testator executed the will as a free and voluntary act
- 17 for the purposes expressed in it;
- 18 (4) that each of the witnesses, in the presence of the testator and
- 19 of each other, signed the will as a witness;
- 20 (5) that the testator was of sound mind when the will was
- 21 executed; and
- 22 (6) that to the best knowledge of each of the witnesses the testator
- 23 was, at the time the will was executed, at least eighteen (18) years
- 24 of age or was a member of the armed forces or of the merchant
- 25 marine of the United States or its allies.

26
27 _____
Testator

28 _____
Date

29 _____
Witness

30 _____
31 Witness

32 (d) A will is attested and self-proved if the will includes, **is logically**
33 **associated with**, or has attached a clause signed by the testator and the
34 witnesses that indicates in substance that:

- 35 (1) the testator signified that the instrument is the testator's will;
- 36 (2) in the presence of at least two (2) witnesses, the testator
- 37 signed the instrument or acknowledged the testator's signature
- 38 already made or directed another to sign for the testator in the
- 39 testator's presence;
- 40 (3) the testator executed the instrument freely and voluntarily for
- 41 the purposes expressed in it;
- 42 (4) each of the witnesses, in the testator's presence and in the



1 presence of all other witnesses, is executing the instrument as a
 2 witness;
 3 (5) the testator was of sound mind when the will was executed;
 4 and
 5 (6) the testator is, to the best of the knowledge of each of the
 6 witnesses, either:
 7 (A) at least eighteen (18) years of age; or
 8 (B) a member of the armed forces or the merchant marine of
 9 the United States or its allies.
 10 (e) This section shall be construed in favor of effectuating the
 11 testator's intent to make a valid will.
 12 SECTION 9. IC 29-1-5-3.2 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 3.2. Subject to the
 14 applicable Indiana Rules of Trial Procedure, a **videotape video**
 15 **recording or other electronic record** may be admissible as evidence
 16 of the following:
 17 (1) The proper execution of a will.
 18 (2) The intentions of a testator.
 19 (3) The mental state or capacity of a testator.
 20 (4) The authenticity of a will.
 21 (5) Matters that are determined by a court to be relevant to the
 22 probate of a will.
 23 SECTION 10. IC 30-4-1-2, AS AMENDED BY P.L.51-2014,
 24 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2017]: Sec. 2. As used in this article:
 26 (1) "Adult" means any person eighteen (18) years of age or older.
 27 (2) "Affiliate" means a parent, descendant, spouse, spouse of a
 28 descendant, brother, sister, spouse of a brother or sister,
 29 employee, director, officer, partner, joint venturer, a corporation
 30 subject to common control with the trustee, a shareholder, or
 31 corporation who controls the trustee or a corporation controlled
 32 by the trustee other than as a fiduciary, an attorney, or an agent.
 33 **(3) "Authentication method" has the meaning set forth in**
 34 **IC 29-1-1-3.**
 35 ~~(3)~~ **(4)** "Beneficiary" has the meaning set forth in IC 30-2-14-2.
 36 ~~(4)~~ **(5)** "Breach of trust" means a violation by the trustee of any
 37 duty which is owed to the settlor or beneficiary.
 38 ~~(5)~~ **(6)** "Charitable trust" means a trust in which all the
 39 beneficiaries are the general public or organizations, including
 40 trusts, corporations, and associations, and that is organized and
 41 operated wholly for religious, charitable, scientific, public safety
 42 testing, literary, or educational purposes. The term does not



1 include charitable remainder trusts, charitable lead trusts, pooled
 2 income funds, or any other form of split-interest charitable trust
 3 that has at least one (1) noncharitable beneficiary.
 4 ~~(6)~~ (7) "Court" means a court having jurisdiction over trust
 5 matters.
 6 **(8) "Electronic" has the meaning set forth in IC 26-2-8-102.**
 7 **(9) "Electronic record" has the meaning set forth in**
 8 **IC 26-2-8-102.**
 9 **(10) "Electronic signature" has the meaning set forth in**
 10 **IC 26-2-8-102.**
 11 **(11) "Electronic trust instrument" means a trust instrument**
 12 **executed by a settlor that:**
 13 **(A) is created and maintained as an electronic record;**
 14 **(B) contains the terms of the trust, including any**
 15 **amendments to the terms of the trust;**
 16 **(C) includes the date and time of the electronic signature;**
 17 **(D) includes an authentication method that is attached to**
 18 **or logically associated with the electronic trust instrument**
 19 **to identify the settlor;**
 20 **(E) is created and maintained in such a manner that any**
 21 **alteration of the electronic trust instrument is detectable;**
 22 **and**
 23 **(F) is otherwise subject to IC 26-2-8.**
 24 **(12) "Executed" includes the use of an electronic signature.**
 25 ~~(7)~~ **(13) "Income", except as otherwise stated in a trust agreement,**
 26 **has the meaning set forth in IC 30-2-14-4.**
 27 ~~(8)~~ **(14) "Income beneficiary" has the meaning set forth in**
 28 **IC 30-2-14-5.**
 29 ~~(9)~~ **(15) "Inventory value" means the cost of property to the settlor**
 30 **or the trustee at the time of acquisition or the market value of the**
 31 **property at the time it is delivered to the trustee, or the value of**
 32 **the property as finally determined for purposes of an estate or**
 33 **inheritance tax.**
 34 ~~(10)~~ **(16) "Minor" means any person under the age of eighteen**
 35 **(18) years.**
 36 ~~(11)~~ **(17) "Person" has the meaning set forth in IC 30-2-14-9.**
 37 ~~(12)~~ **(18) "Personal representative" means an executor or**
 38 **administrator of a decedent's or absentee's estate, guardian of the**
 39 **person or estate, guardian ad litem or other court appointed**
 40 **representative, next friend, parent or custodian of a minor,**
 41 **attorney in fact, or custodian of an incapacitated person (as**
 42 **defined in IC 29-3-1-7.5).**



- 1 ~~(13)~~ **(19)** "Principal" has the meaning set forth in IC 30-2-14-10.
- 2 ~~(14)~~ **(20)** "Qualified beneficiary" means:
- 3 (A) a beneficiary who, on the date the beneficiary's
- 4 qualification is determined:
- 5 (i) is a distributee or permissible distributee of trust income
- 6 or principal;
- 7 (ii) would be a distributee or permissible distributee of trust
- 8 income or principal if the interest of the distributee
- 9 described in item (i) terminated on that date;
- 10 (iii) would be a distributee or permissible distributee of trust
- 11 income or principal if the trust terminated on that date;
- 12 (iv) is a charitable organization expressly designated to
- 13 receive distributions under the terms of a charitable trust;
- 14 (v) is a person appointed to enforce a trust for the care of an
- 15 animal under IC 30-4-2-18; or
- 16 (vi) is a person appointed to enforce a trust for a
- 17 noncharitable purpose under IC 30-4-2-19; or
- 18 (B) the attorney general, if the trust is a charitable trust having
- 19 its principal place of administration in Indiana.
- 20 ~~(15)~~ **(21)** "Remainderman" means a beneficiary entitled to
- 21 principal, including income which has been accumulated and
- 22 added to the principal.
- 23 ~~(16)~~ **(22)** "Settlor" means a person who establishes a trust
- 24 including the testator of a will under which a trust is created.
- 25 **(23) "Signature" includes an electronic signature.**
- 26 **(24) "Signed" includes the use of an electronic signature.**
- 27 ~~(17)~~ **(25)** "Terms of a trust", "terms of the trust", or "terms of a
- 28 charitable trust" means the manifestation of the intent of a settlor
- 29 or decedent with respect to the trust, expressed in a manner that
- 30 admits of its proof in a judicial proceeding, whether by written or
- 31 spoken words or by conduct.
- 32 ~~(18)~~ **(26)** "Trust estate" means the trust property and the income
- 33 derived from its use.
- 34 ~~(19)~~ **(27)** "Trust for a benevolent public purpose" means a
- 35 charitable trust (as defined in subdivision (5)), a split-interest
- 36 trust (as defined in Section 4947 of the Internal Revenue Code),
- 37 a perpetual care fund or an endowment care fund established
- 38 under IC 23-14-48-2, a prepaid funeral plan or funeral trust
- 39 established under IC 30-2-9, a funeral trust established under
- 40 IC 30-2-10, a trust or an escrow account created from payments
- 41 of funeral, burial services, or merchandise in advance of need
- 42 described in IC 30-2-13, and any other form of split-interest



1 charitable trust that has both charitable and noncharitable
 2 beneficiaries, including but not limited to charitable remainder
 3 trusts, charitable lead trusts, and charitable pooled income funds.
 4 ~~(20)~~ **(28)** "Trust instrument" means an instrument, agreement, or
 5 other written document executed by the settlor that contains the
 6 terms of the trust, including any amendments to the terms of the
 7 trust. **The term includes an electronic trust instrument.**
 8 ~~(21)~~ **(29)** "Trust property" means property either placed in trust or
 9 purchased or otherwise acquired by the trustee for the trust
 10 regardless of whether the trust property is titled in the name of the
 11 trustee or the name of the trust.
 12 ~~(22)~~ **(30)** "Trustee" has the meaning set forth in IC 30-2-14-13.
 13 **(31) "Written" or "writing" includes the use of an electronic**
 14 **record.**
 15 SECTION 11. IC 30-4-2-2, AS AMENDED BY P.L.238-2005,
 16 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2017]: Sec. 2. (a) This section applies to the acceptance of a
 18 trust by a person named as trustee.
 19 (b) The appearance of the named person's signature on the writing,
 20 **or attached to or logically associated with the writing**, which is the
 21 evidence of the trust or on a separate written acceptance will be
 22 conclusive that the named person accepted the trust.
 23 (c) Except as provided in subsection (e), if the named person
 24 exercises powers or performs duties under the trust, the named person
 25 will be presumed to have accepted the trust.
 26 (d) The named person may reject the trust in writing and, if the
 27 named person does so, will incur no liability. If, after being informed
 28 that the named person has been named as trustee, the named person
 29 neither expressly accepts the trust nor exercises powers or performs
 30 duties under the trust within a reasonable time, the named person will
 31 be presumed to have rejected the trust.
 32 (e) If there is an immediate risk of damage to the trust estate, the
 33 named person may act to preserve the trust estate and will not be
 34 presumed to have accepted the trust, provided the named person
 35 delivers a written rejection to the settlor at or within a reasonable time
 36 after the named person acts, or, if the settlor is dead, to the beneficiary
 37 or the court having jurisdiction over the administration of the trust
 38 estate.
 39 SECTION 12. IC 30-4-2-20 IS ADDED TO THE INDIANA CODE
 40 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 41 1, 2017]: **Sec. 20. Subject to the applicable Indiana rules of trial**
 42 **procedure, a video recording or other electronic record may be**



1 **admissible as evidence of the following:**

- 2 (1) **The proper execution of a trust.**
- 3 (2) **The intentions of a settlor.**
- 4 (3) **The mental state or capacity of a settlor.**
- 5 (4) **The authenticity of a trust instrument.**
- 6 (5) **Matters that are determined by a court to be relevant to**
- 7 **the administration of the trust.**

8 SECTION 13. IC 30-5-4-1, AS AMENDED BY P.L.101-2008,
9 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2017]: Sec. 1. (a) To be valid, a power of attorney must meet
11 the following conditions:

- 12 (1) Be in writing.
- 13 (2) Name an attorney in fact.
- 14 (3) Give the attorney in fact the power to act on behalf of the
- 15 principal.
- 16 (4) Be signed by the principal or at the principal's direction in the
- 17 presence of a notary public.
- 18 (5) In the case of a power of attorney signed at the direction of the
- 19 principal, the notary must state that the individual who signed the
- 20 power of attorney on behalf of the principal did so at the
- 21 principal's direction.

22 **(b) Notwithstanding subsection (a) or any other law, a power of**
23 **attorney, including:**

- 24 (1) **appointment of a health care representative under**
- 25 **IC 16-36-1-7;**
- 26 (2) **a medical advance directive created under IC 16-36;**
- 27 (3) **a living will or life prolonging procedures will declaration**
- 28 **under IC 16-36-4; and**
- 29 (4) **a durable power of attorney created under IC 30-5 or any**
- 30 **other law;**

31 **may not be denied legal effect or enforceability because an**
32 **electronic record or electronic signature was used in its formation.**
33 **However, if the other law requires the power of attorney to be in**
34 **writing, the power of attorney must include an authentication**
35 **method (as defined in IC 29-1-1-3) that is attached to or logically**
36 **associated with the power of attorney to identify the principal.**

37 SECTION 14. IC 32-39-2-4, AS ADDED BY P.L.137-2016,
38 SECTION 14, IS AMENDED TO READ AS FOLLOWS [JULY 1,
39 2017]: Sec. 4. If a deceased user consented to, or a court directs,
40 disclosure of the contents of electronic communications of the user, the
41 custodian shall disclose to the personal representative of the estate of
42 the user the content of an electronic communication sent or received by

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NH. Not enacted

SB 40 - AS INTRODUCED

2017 SESSION

17-0788

01/05

SENATE BILL **40**

AN ACT relative to electronic wills.

SPONSORS: Sen. Bradley, Dist 3; Sen. Innis, Dist 24; Sen. Carson, Dist 14; Sen. Woodburn, Dist 1; Sen. D'Allesandro, Dist 20; Rep. Hunt, Ches. 11; Rep. Danielson, Hills. 7; Rep. Wall, Straf. 6

COMMITTEE: Commerce

ANALYSIS

This bill establishes the New Hampshire electronic wills act which authorizes an additional method of creating valid wills that are written, created, and stored in an electronic format and executed using electronic signatures.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struck through.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

17-0788

01/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Seventeen

AN ACT relative to electronic wills.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Statement of Purpose. This act shall be liberally construed and applied to promote the following purposes and policies:

- I. To facilitate and expand access to individuals' right to testamentary freedom of disposition.

- II. To facilitate end-of-life planning for individuals and families, particularly members of vulnerable or marginalized groups and those for whom end-of-life planning services are often unaffordable, unavailable, or otherwise inaccessible.
- III. To facilitate the use and enforcement of established and widely used technology in memorializing and accomplishing the intent and wishes of a decedent with regard to the distribution of his or her real and personal property.
- IV. To simplify and clarify the law concerning the affairs of decedents.
- V. To discover and make effective the intent of a decedent with respect to the distribution of his or her property.
- VI. To promote a speedy and efficient system for the settlement and distribution of estates.
- VII. To harmonize the law of wills with other laws that recognize the legal and functional equivalence of electronic and paper signatures and transactions.

2 New Chapter; New Hampshire Electronic Wills Act. Amend RSA by inserting after chapter 551-A the following new chapter:

CHAPTER 551-B

NEW HAMPSHIRE ELECTRONIC WILLS ACT

551-B:1 Definitions. In this chapter:

- I. "Certified paper original" means a tangible document that contains the text of an electronic will, including a self-proving affidavit concerning that will if applicable.
- II. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
- III. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. "Electronic signature" includes an electronic notary seal.
- IV. "Electronic will" means an instrument, including a codicil, executed by a person in the manner prescribed by this chapter which disposes of the person's property on or after his or her death.
- V. "Qualified custodian" means a person who meets the requirements of RSA 551 B:8, I.

551-B:2 Electronic Wills.

- I. Every person of the age of 18 years and married persons under that age, of sane mind, may devise and dispose of their property, real and personal, and of any right or interest they may have in any property, by electronic will.
- II. Except as otherwise provided in this chapter, all questions as to the force, effect, validity and interpretation of an electronic will that complies with this chapter shall be determined in the same manner as in the case of a will formally executed in accordance with RSA 551:3.

551-B:3 Requirements for Electronic Wills. To be valid, an electronic will shall:

- I. Be made by a testator qualifying under RSA 551-B:2.
- II. Exist in an electronic record.
- III. Contain the electronic signature of the testator.
- IV. Be electronically signed by a notary public commissioned in this state or by 2 or more credible witnesses, who shall, at the request of the testator and in the testator's presence, attest to the testator's electronic signature by placing their electronic signatures on the electronic will; provided that, the electronic signature of a notary public shall contain the words "notary public, New Hampshire" and the expiration date of the notary public's commission.

551-B:4 Self-Proved Electronic Wills. An electronic will is self proved if all of the following requirements are met.

- I. The signatures of the testator and the attesting witnesses shall be followed by or logically associated with a sworn acknowledgment made in the presence of a notary public or justice of the peace or other official authorized to administer oaths in the place of execution, as follows:

The foregoing instrument was acknowledged before me this _____ (day) by ____, the testator; ____ and ____, the witnesses (if any), who under oath do swear as follows:

1. *The testator placed his or her electronic signature on the record as the testator's electronic will.*
2. *This was the testator's free and voluntary act for the purposes expressed in the electronic will.*
3. *Each witness (if applicable) placed his electronic signature on the electronic will at the request of the testator, in the testator's presence, and in the presence of the other witness(es).*
4. *To the best of my knowledge, at the time of the signing the testator was at least 18 years of age, or if under 18 years was a married person, and was of sane mind and under no constraint or undue influence.*

- II. The electronic will shall designate a qualified custodian to control the electronic record of the electronic will.

- III. The electronic record containing the electronic will shall remain under the control of a qualified custodian.

- IV. If probate of a certified paper original is sought, the electronic will shall have always been under the control of a qualified custodian before being reduced to such certified paper original.

551-B:5 Revocation of Electronic Wills.

- I. Except as provided in paragraph II, no electronic will or clause in such will shall be revoked unless by some other valid will or codicil, or by some writing executed in accordance with the requirements of RSA 551:2, or by another electronic will executed in accordance with this chapter.

- II. Divorce or annulment of the testator's marriage shall operate to revoke any provision of an electronic will as provided in RSA 551:13, II in the same manner as if such provisions were contained in a will formally executed in accordance with RSA 551:2.

- III. Paragraphs I and II shall not control or affect any revocation of an electronic will, implied by law, from any change in the circumstances of the testator, or his or her family, devisees, legatees or estate, occurring between the time of making the will and the death of the testator.

551-B:6 Method and Place of Execution. Notwithstanding the provisions of Title XLII to the contrary, for purposes of this chapter including the acknowledgment described in RSA 551-B:4, I and for all purposes relating to the execution and filing of any document with any court in any proceeding involving or relating to an electronic will, and for purposes of executing a durable power of attorney under RSA 477:9 and an advance directive under RSA 137-J:14:

I. An individual shall be deemed to be in the presence of or appearing before another individual if:

- (a) Such individuals are in the same physical location; or
- (b) Such individuals are in remote physical locations but can communicate with each other by means of live video and audio conference.

II. Any requirement that a document be signed may be satisfied by an electronic signature.

III. If a law requires a document to be presented in its original form, or provides consequences if the document is not presented in its original form, that law is satisfied by a tangible record that accurately reflects the information set forth in the electronic record of an electronically-created document.

IV. A document shall be deemed to be executed in this state if all of the following requirements are met:

- (a) The person creating the document states that he or she is executing, and that he or she intends to execute, the document in and pursuant to the laws of this state;
- (b) The person creating the document states that the validity and effect of the execution of the document are governed by the laws of this state;
- (c) The attesting witnesses or the notary public whose electronic signatures are contained in the electronic will were physically located within this state at the time the electronic will was executed in accordance with RSA 551-B:2; and
- (d) In the case of an electronic will, the electronic will designates a qualified custodian who, at the time of execution, is domiciled in this state or who is incorporated or organized under the laws of this state.

551-B:7 Probate of Electronic Wills.

I. An electronic will deemed to be executed in this state may be proved and allowed in the court of probate, in common form or solemn form, and the courts of this state shall have jurisdiction over such wills. The venue for the probate of electronic wills shall be as provided in RSA 547:8 and 547:9 or in the county in which the qualified custodian or executor has its domicile or registered office.

II. A certified paper original of the electronic will may be offered for and admitted to probate in the same manner as if it were the original will formally executed in accordance with RSA 551:2.

III. A certified paper original of a self-proved electronic will shall be presumed to be valid.

IV. During his or her life, an individual may commence a judicial proceeding to determine the validity of his or her electronic will, subject only to the electronic will's subsequent modification or revocation, in accordance with RSA 552:18, in the same manner as if it were the original will formally executed in accordance with RSA 551:2. For purposes of commencing the proceeding under this section, the individual shall be domiciled in this state or own real property in this state or the individual's electronic will shall be deemed to be executed in this state under RSA 551-B:6.

V. An electronic will that is executed or deemed executed in another state in accordance with the laws of such other state or of this state shall be a valid electronic will in this state.

551-B:8 Qualified Custodians; Requirements.

I. To serve as a qualified custodian of an electronic will, a person shall:

- (a) For a given testator and electronic will, not be an heir, beneficiary, or devisee.
- (b) Be domiciled in and a resident of this state or be incorporated or organized in the state.
- (c) Consistently employ a system for ensuring the safekeeping of electronic records.
- (d) Create and store in the electronic record of the electronic will each of the following:
 - (1) A photocopy, photograph, facsimile or other visual record of a document taken by the qualified custodian contemporaneously to the execution of the electronic will that provides, the for the testator and each of the attesting witnesses, satisfactory proof of the identity within the meaning of RSA 456-B:2, VI.
 - (2) An audio and video recording of the testator and attesting witnesses taking the actions described in RSA 551-B:3, I(d).
- (e) Furnish for any court hearing a matter involving an electronic will that is currently or was previously stored by the qualified custodian any information requested by the court pertaining to the qualified custodian's qualifications, policies, and practices related to the creation, sending, communication, receipt, maintenance, storage, and production of electronic wills.

II. In dealing with the electronic record of an electronic will, the qualified custodian:

- (a) Shall provide access or information concerning or the certified paper original of such electronic will only to the testator and such other persons as directed by the written instructions of the testator and, after the testator's death, the executor or any person beneficially interested; and
- (b) May, in its absolute discretion, elect to destroy such electronic record at any time following:
 - (1) The 5th anniversary of the admission of any will of the testator to probate;
 - (2) The 10th anniversary of the testator's death; or
 - (3) The 100th anniversary of the execution of such electronic will.

III. A qualified custodian who at any time or from time to time controls the electronic record of an electronic will may elect to cease to serve in such capacity by:

- (a) If the outgoing qualified custodian is not designating a successor qualified custodian:
 - (1) Delivering 30 days' written notice that the outgoing qualified custodian of the electronic will has elected to cease serving in such capacity to the testator, if then living, or, after the death of the testator, to the testator's executor or a person beneficially interested; and
 - (2) Delivering the certified paper original of, and all records concerning, the electronic will to the testator, if then living, or, after the death of the testator, to the executor or such person beneficially interested.
- (b)(1) If the outgoing qualified custodian is designating a successor qualified custodian:
 - (A) Delivering 30 days' written notice that the outgoing qualified custodian of the electronic will has elected to cease to serve in such capacity to the testator (if then living, or, after the testator's death, to the duly appointed administrator of the testator's estate) and to a successor qualified custodian designated by the outgoing qualified custodian.

- (B) Delivering the electronic record of the electronic will to such successor qualified custodian.
- (C) Delivering to such successor qualified custodian an affidavit of the outgoing qualified custodian stating that:
- (i) The outgoing qualified custodian is eligible to act as a qualified custodian in this state;
 - (ii) The outgoing qualified custodian is the qualified custodian designated by the testator in the electronic will or otherwise duly appointed to act in such capacity;
 - (iii) An electronic record was created at the time the testator made the electronic will;
 - (iv) The electronic record has been in the control of one or more qualified custodians since the time the electronic record was created, and the identity of such qualified custodians; and
 - (v) The electronic record has not been altered since the time the electronic record was created.
- (2) For the purposes of making the affidavit under this subparagraph, the outgoing qualified custodian shall be entitled to rely conclusively on any affidavits delivered by a predecessor qualified custodian in connection with its designation or appointment as qualified custodian provided that all such affidavits are delivered to the successor qualified custodian.

IV. Upon the written request of the testator during his or her life, a qualified custodian who at any time controls the electronic record of the testator's electronic will shall cease to serve in such capacity and shall deliver either to the testator, the certified paper original, or to a successor qualified custodian designated in writing by the testator:

- (a) The electronic record; and
- (b) The affidavit of the outgoing qualified custodian as described in RSA 551-B:8, III(b)(3).

V. No qualified custodian shall effectively succeed to office as a qualified custodian of an electronic will, and no outgoing qualified custodian shall be effectively discharged from office, unless and until such successor shall affirmatively agree in writing to serve in such capacity.

VI. If a qualified custodian is an entity, an affidavit of a duly authorized officer or agent of such entity shall constitute the affidavit of the qualified custodian.

551-B:9 Affidavit for Certified Paper Original. A person who creates a certified paper original shall make an affidavit that satisfies the following requirements.

I.(a) If the electronic will has always been under the control of a qualified custodian, the qualified custodian shall state in an affidavit that:

- (1) The qualified custodian is eligible to act as a qualified custodian in this state;
- (2) The qualified custodian is the qualified custodian designated by the testator in the electronic will or appointed to act in such capacity under RSA 551 B:8, III(b) or IV;
- (3) An electronic record was created at the time the testator made the electronic will;
- (4) The electronic record has been in the control of one or more qualified custodians since its creation, and the identity of such qualified custodians;
- (5) To the best of his, her or its knowledge, the electronic record has not been altered since its creation;
- (6) The certified paper original is a true, correct, and complete tangible manifestation of the electronic will; and

(7) The qualified custodian has in its custody the records required under 551 B:8, I(d).

(b) For purposes of making this affidavit, the qualified custodian shall be entitled to rely conclusively on any affidavits delivered by a predecessor qualified custodian in connection with its designation or appointment as qualified custodian.

II. If the electronic will has not always been under the control of a qualified custodian, the person who discovered the electronic will and the person who reduced the electronic will to paper shall each state in an affidavit to the best of their knowledge:

(a) When the electronic will was created, if not indicated in the electronic will itself;

(b) When and how the electronic will was discovered, and by whom;

(c) All of the people who had access to the electronic will;

(d) The method in which the electronic will was stored and what safeguards were in place to prevent alterations to the electronic will;

(e) Whether the electronic will has been altered since its creation; and

(f) That the certified paper original is a true, correct, and complete tangible manifestation of the electronic will.

3 Effective Date. This act shall take effect July 1, 2017.

2017 SESSION
17101826D

HOUSE BILL NO. 1643

Offered January 11, 2017

Prefiled January 4, 2017

A BILL to amend and reenact §§ 64.2-100, 64.2-403, 64.2-410, 64.2-443, and 64.2-455 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 64.2-403.1, relating to electronic wills.

Patron-- Loupassi

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 64.2-100, 64.2-403, 64.2-410, 64.2-443, and 64.2-455 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 64.2-403.1 as follows:

§ 64.2-100. Definitions.

As used in this title, unless the context otherwise requires:

"Bona fide purchaser" means a purchaser of property for value who has acted in the transaction in good faith. Notice of a seller's marital status, or notice of the existence of a premarital or marital agreement, does not affect the status of a bona fide purchaser. A "purchaser" is one who acquires property by sale, lease, discount, negotiation, mortgage, pledge, or lien or who otherwise deals with property in a voluntary transaction, other than a gift. A purchaser gives "value" for property acquired in return for a binding commitment to extend credit to the transferor or another as security for or in total or partial satisfaction of a pre-existing claim, or in return for any other consideration sufficient to support a simple contract.

"Fiduciary" includes a guardian, committee, trustee, executor, conservator, or personal representative.

"Personal representative" includes the executor under a will or the administrator of the estate of a decedent, the administrator of such estate with the will annexed, the administrator of such estate unadministered by a former representative, whether there is a will or not, any person who is under the order of a circuit court to take into his possession the estate of a decedent for administration, and every other curator of a decedent's estate, for or against whom suits may be brought for causes of action that accrued to or against the decedent.

"Trustee" means a trustee under a probated will or an inter vivos trust instrument.

"Will" includes any testament, codicil, exercise of a power of appointment by will or by a writing in the nature of a will, or any other testamentary disposition. *"Will" includes an electronic will.*

§ 64.2-403. Execution of wills; requirements.

A. No will shall be valid unless it is in writing and signed by the testator, or by some other person in the testator's presence and by his direction, in such a manner as to make it manifest that the name is intended as a signature.

B. A will wholly in the testator's handwriting is valid without further requirements, provided that the fact that a will is wholly in the testator's handwriting and signed by the testator is proved by at least two disinterested witnesses.

C. A will not wholly in the testator's handwriting is not valid unless the signature of the testator is made, or the will is acknowledged by the testator, in the presence of at least two competent witnesses who are present at the same time and who subscribe the will in the presence of the testator. No form of attestation of the witnesses shall be necessary.

D. *All electronic wills shall be executed in accordance with § 64.2-403.1.*

§ 64.2-403.1. *Electronic wills; requirements.*

A. As used in this section, unless the context requires a different meaning:

"Authoritative electronic record" means an electronic record created, sent, communicated, received, maintained, and stored in such a manner that (i) a single authoritative electronic record exists that is unique, identifiable, and unalterable; (ii) each copy of the authoritative electronic record and any copy of a copy is readily identifiable as a copy that is not the authoritative electronic record; and (iii) any attempted alteration of the authoritative electronic record is readily identifiable.

"Certified paper original" means a tangible document that contains the text of an electronic will and any self-proving acknowledgments or affidavits, together with an affidavit of the qualified custodian designated or otherwise serving as provided therein pursuant to subsection D.

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the document. "Electronic signature" includes an electronic notary seal.

"Qualified custodian" means a person who, if an individual, is domiciled in the Commonwealth or that, if an entity, is incorporated or organized under the laws of the Commonwealth and that has filed an affidavit with the court having jurisdiction over the probate of wills in the county where such person is domiciled, or in which such person's registered office is located, affirming that such person (i) intends to serve as a qualified custodian under this section; (ii) will consistently employ a system for creating, sending, communicating, receiving, maintaining, storing, and producing electronic wills in a manner that complies with the requirements of this section; and (iii) will furnish to the court upon request such information as the court shall require with regard to its qualifications, policies, and practices with regard to creating, sending, communicating, receiving, maintaining, storing, and producing electronic wills.

B. An electronic will that meets the requirements of this section (i) is subject to no other formalities with respect to execution, (ii) may be made in or out of the Commonwealth, and (iii) is valid and has the same force and effect, and shall be interpreted in the same manner, as a will formally executed in accordance with § 64.2-403.

A certified paper original of an electronic will satisfies any requirement for an original will.

C. No electronic will is valid unless it:

1. Is written, created, and stored in an authoritative electronic record under the control of the qualified custodian designated therein; and

2. Contains the electronic signatures of the testator and either:

a. At least two competent witnesses who shall, at the request of the testator and in the testator's presence, attest to the testator's electronic signature by placing their electronic signatures on the electronic will; or

b. A notary public who shall, at the request of the testator and in the testator's presence, attest to the testator's electronic signature by placing his electronic signature on the electronic will.

D. The testator shall designate a qualified custodian in the electronic will to control the authoritative electronic record of the electronic will. The qualified custodian shall prepare an affidavit to be stored with the certified paper original that states that (i) the qualified custodian is eligible to act as a qualified custodian in the Commonwealth, (ii) the qualified custodian is the qualified custodian designated by the testator in the electronic will or otherwise duly appointed to act in such capacity, (iii) an authoritative electronic record was created at the time the testator made the electronic will, (iv) the authoritative electronic record has been in the control of one or more qualified custodians since the time the authoritative electronic record was created and that identifies each such qualified custodian, (v) the authoritative electronic record has not been altered since the time the authoritative electronic record was created, and (vi) the text of the electronic will set forth therein is a true, correct, and complete tangible manifestation of the electronic will. For purposes of making such an affidavit, the qualified custodian shall be entitled to rely conclusively on any affidavits delivered by a predecessor qualified custodian in connection with its designation or appointment as qualified custodian.

E. The qualified custodian designated in the electronic will shall create and store in the authoritative electronic record each of the following:

1. A photograph or other visual record of the testator taken by the qualified custodian contemporaneously to the execution of the electronic will;

2. A photocopy, photograph, facsimile, or other visual record of a document taken or made by the qualified custodian contemporaneously to the execution of the electronic will that provides satisfactory evidence of the testator's identity;

3. If there are attesting witnesses to the electronic will, a photocopy, photograph, facsimile, or other visual record of a document taken or made by the qualified custodian contemporaneously to the execution of the electronic will that provides satisfactory evidence of the attesting witnesses' identities; and

4. An audio and video recording of the testator and the attesting witnesses or notary taking the actions described in subdivision C 2.

The items set forth in subdivisions E 1 through 4 shall be attached to or logically associated with the electronic will but shall not be deemed to be a part of the electronic will itself, and in no respect does the presence or absence of any such item affect any question relating to whether the electronic will was validly executed or whether the electronic will is admissible to probate.

Notwithstanding any provisions to the contrary, for purposes of this section an individual shall be deemed to be in the presence of another individual if (i) such individuals are in the same physical location or (ii) such individuals are in remote physical locations but can communicate with each other by means of live video and audio conference.

For the purposes of this subsection, "satisfactory evidence of identity" means one or more of the following unexpired documents bearing a photographic image of the individual's face and signature: a United States Passport Book, a United States Passport Card, a certificate of United States citizenship, a certificate of naturalization, a foreign passport, an alien registration card with photograph, a state-issued driver's license, a state-issued identification card, or a United States military identification card.

F. A certified paper copy original of an electronic will validly executed under this section may be proved and allowed in the circuit court. The jurisdiction for the probate of electronic wills shall be as provided in § 64.2-443.

G. An electronic will may be made self-proved in the same manner as prescribed in §§ 64.2-452 and 64.2-453. Any self-proving affidavit shall be part of the authoritative electronic record. Any electronic will notarized as prescribed in subdivision C 2 b shall be automatically self-proved.

H. In dealing with the authoritative electronic record of an electronic will, the qualified custodian (i) shall provide access or information concerning such electronic will only to the testator and such other persons as directed by the written instructions of the testator and, after the testator's death, the personal representative designated in such electronic will and (ii) may, in its discretion, elect to destroy such authoritative electronic record at any time following (a) the fifth anniversary of the admission of any will of the testator to probate, (b) the tenth anniversary of the testator's death, or (c) the one hundredth anniversary of the execution of such electronic will.

I. A qualified custodian who at any time or from time to time controls the authoritative electronic record of an electronic will may elect to cease to serve in such capacity by:

1. Delivering 30 days' written notice to (i) the testator or, if the testator is deceased, to the duly appointed personal representative of the testator and (ii) a successor qualified custodian designated by the outgoing qualified custodian, that the outgoing qualified custodian has elected to cease to serve in such capacity;

2. Delivering the authoritative electronic record of the electronic will to such successor qualified custodian; and

3. Delivering to such successor qualified custodian an affidavit of the outgoing qualified custodian stating that:

a. The outgoing qualified custodian is eligible to act as a qualified custodian in the Commonwealth;

b. The outgoing qualified custodian is the qualified custodian designated by the testator in the electronic will or otherwise duly appointed to act in such capacity;

c. An authoritative electronic record was created at the time the testator made the electronic will;

d. The authoritative electronic record has been in the control of one or more qualified custodians since the time the authoritative electronic record was created and identifying such qualified custodians; and

e. The authoritative electronic record has not been altered since the time the authoritative electronic record was created.

For purposes of making such affidavit, the outgoing qualified custodian is entitled to rely conclusively on any affidavits delivered by a predecessor qualified custodian in connection with its designation or appointment as qualified custodian, provided that all such affidavits are delivered to the successor qualified custodian.

Upon the written request of the testator during his life, a qualified custodian who at any time controls the authoritative electronic record of the testator's electronic will shall cease to serve in such capacity and shall deliver to a successor qualified custodian designated in writing by the testator (i) such authoritative electronic record and (ii) the affidavit of the outgoing qualified custodian as described in subdivision 3.

No qualified custodian may effectively succeed to office as a qualified custodian of an electronic will, and no outgoing qualified custodian may be effectively discharged from office, unless and until such successor shall affirmatively agree in writing to serve in such capacity.

J. An electronic will shall be deemed to be executed in the Commonwealth if all of the following requirements are met:

1. The electronic will states that the testator understands that he is executing, and that he intends to execute, an electronic will in and pursuant to the laws of the Commonwealth;

2. The electronic will provides that its validity, interpretation, and effect are governed by the laws of the Commonwealth;

3. The attesting witnesses whose electronic signatures are contained in the electronic will were physically located within the Commonwealth at the time the electronic will was executed in accordance with this section; and

4. The electronic will designates a qualified custodian who, if an individual, is domiciled in the Commonwealth at the time of execution or that, if an entity, is incorporated or organized under the laws of the Commonwealth at the time of execution.

§ 64.2-410. Revocation of wills generally.

A. If a testator with the intent to revoke a will or codicil, or some person at his direction and in his presence, cuts, tears, burns, obliterates, cancels, or destroys a will or codicil, or the signature thereto, or some provision thereof, such will, codicil, or provision thereof is void and of no effect.

B. If a testator executes a will in the manner required by law or other writing in the manner in which a will is required to be executed that expressly revokes a former will, such former will, including any codicil thereto, is void and of no effect.

C. If a testator executes a will or codicil in the manner required by law that (i) expressly revokes a part, but not all, of a former will or codicil or (ii) contains provisions inconsistent with a former will or codicil, such former will or codicil is revoked and superseded to the extent of such express revocation or inconsistency if the later will or codicil is effective upon the death of the testator.

D. No electronic will or clause thereof shall be revoked unless by some other valid will or codicil or by some other writing executed in the manner in which a will is required to be executed.

§ 64.2-443. Jurisdiction of probate of wills.

A. The circuit courts shall have jurisdiction of the probate of wills. A will shall be offered for probate in the circuit court in the county or city wherein the decedent has a known place of residence; if he has no such known place of residence, then in a county or city wherein any real estate lies that is devised or owned by the decedent; and if there is no such real estate, then *either (i) in the county or city ~~wherein~~ in which he dies or a county or city ~~wherein~~ in which he has estate or (ii) in the county or city in which the qualified custodian has filed an affidavit pursuant to § 64.2-403.1.*

B. Where any person has become, either voluntarily or involuntarily, a patient in a nursing home, convalescent home, or similar institution due to advanced age or impaired health, the place of legal residence of the person shall be rebuttably presumed to be the same as it was before he became a patient.

§ 64.2-455. Wills to be recorded; recording copies; effect; transfer to The Library of Virginia.

A. Every will, *certified paper original as defined in § 64.2-403.1*, or authenticated copy admitted to probate by any circuit court or clerk of any circuit court shall be recorded by the clerk and remain in the clerk's office, except during such time as the same may be carried to another court under a subpoena duces tecum or as otherwise provided in § 17.1-213. A certified copy of such will, *certified paper original*, or ~~of any~~ authenticated copy may be recorded in any county or city wherein there is any estate, real or personal, devised or bequeathed by such will.

B. The personal representative of the testator shall cause a certified copy of any will, *certified paper original*, or ~~of any~~ authenticated copy so admitted to record to be recorded in any county or city wherein there is any real estate of which the testator possessed at the time of his death or that is devised by his will.

C. Every will, *certified paper original*, or certified copy when recorded shall have the effect of notice to all persons of any devise or disposal by the will of real estate situated in a county or city in which such will or copy is so recorded.

D. With the approval of the judges of a circuit court of any county or city, the clerk of such court may transfer such original wills from his office to the Archives Division of The Library of Virginia. A copy of any will that has been microfilmed or stored in an electronic medium, prepared from such microfilmed or electronic record and certified as authentic by the clerk or his designee, shall constitute a certified copy of the will for any purpose arising under this title for which a certified copy of the will is required.