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January 26, 2018

HOUSE BILL No. 1303

DIGEST OF HB 1303 (Updated January 25, 2018 1:02 pm - DI 123)

Citations Affected: IC 29-1; IC 30-4; IC 30-5.

Synopsis: Electronic powers of attorney, trusts, and wills. Allows a testator to execute an electronic will. Specifies requirements pertaining to the: (1) creation; (2) attestation; and (3) execution; of an electronic will. Allows video recordings of an electronic will's execution to be used for demonstrating: (1) proper execution of a will; (2) testator intent; (3) the mental state of a testator; (4) the absence of undue influence or duress with respect to a testator; and (5) verification of the individual identities involved in the execution of an electronic will. Provides exemplar instructions and advisory language to testators with respect to electronic wills. Specifies how to revoke an electronic will. Allows certain electronic records to be used in place of an electronic will. Specifies how to transfer possession of an electronic will from the current custodian to a successor custodian. Specifies the responsibilities of an electronic will custodian. Specifies how to amend, destroy, and revoke an electronic will. Creates a presumption of regularity for electronic wills. Allows electronic wills to be deposited with the clerk of a probate court in certain instances. Explains the probate process for electronic wills. Allows a settlor to create and execute an electronic trust instrument. Specifies how to create and execute an electronic trust instrument. Specifies how to amend or
(Continued next page)

Effective: July 1, 2018.

Steuerwald

January 11, 2018, read first time and referred to Committee on Judiciary.
January 22, 2018, amended, reported — Do Pass.
January 25, 2018, read second time, amended, ordered engrossed.

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Digest Continued

revoke an electronic trust instrument. Specifies who may act as a custodian for an electronic trust instrument. Specifies how an electronic trust instrument may be delivered or transferred. Specifies how to destroy an electronic trust instrument. Creates a presumption of regularity with respect to electronic trust instruments. Allows a person to create and execute an electronic power of attorney. Specifies how to execute a valid electronic power of attorney. Specifies how to amend or revoke an electronic power of attorney. Specifies who may act as a custodian for an electronic power of attorney. Specifies how to destroy an electronic power of attorney. Creates a presumption of regularity with respect to electronic powers of attorney. Defines certain terms. Makes conforming amendments.

HB 1303—LS 7078/DI 123



Reprinted
January 26, 2018

Second Regular Session of the 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

HOUSE BILL No. 1303

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 29-1-5-5 IS AMENDED TO READ AS FOLLOWS
- 2 [EFFECTIVE JULY 1, 2018]: Sec. 5. A will is legally executed if the
- 3 manner of its execution complies with the law, in force either at the
- 4 time of execution or at the time of the testator's death, of:
- 5 (1) this state; ~~or~~
- 6 (2) ~~the place of execution; the jurisdiction that the testator is~~
- 7 **actually present in at the time the testator executes the will;**
- 8 or
- 9 (3) the domicile of the testator at the time of execution or at the
- 10 time of his death.
- 11 SECTION 2. IC 29-1-21 IS ADDED TO THE INDIANA CODE AS
- 12 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 13 1, 2018]:
- 14 **Chapter 21. Electronic Wills**
- 15 **Sec. 1. The purpose of this chapter is to provide rules for the**

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1 valid execution, attestation, self-proving, and probate of wills that
 2 are prepared and signed electronically. This chapter shall be
 3 applied fairly and flexibly so that a testator whose identity can be
 4 verified, who has testamentary capacity, and who is acting free
 5 from duress and undue influence may execute a valid electronic
 6 will consistent with the testator's intent. If an electronic will is
 7 properly and electronically signed by the testator and by the
 8 witnesses and is maintained as an electronic record or as a
 9 complete converted copy in compliance with this chapter, all the
 10 normal presumptions that apply to a traditional paper will that is
 11 validly signed and executed apply to an electronic will.

12 Sec. 2. (a) Except as provided in subsection (b), electronic wills
 13 are exclusively governed by this chapter.

14 (b) If this chapter does not provide an explicit definition, form,
 15 rule, or statute concerning the creation, execution, probate,
 16 interpretation, storage, or use of an electronic will, the applicable
 17 statute from this article shall apply to the electronic will.

18 Sec. 3. The following terms are defined for this chapter:

19 (1) "Actual presence" means that:

20 (A) a witness; or

21 (B) another individual who observes the execution of the
 22 electronic will;

23 is physically present in the same physical location as the
 24 testator. The term does not include any form of observation
 25 or interaction that is conducted by means of audio, visual, or
 26 audiovisual telecommunication or similar technological
 27 means.

28 (2) "Affidavit of regularity" means an affidavit executed by
 29 a custodian or other person under section 13 of this chapter
 30 with respect to the electronic record for an electronic will or
 31 a complete converted copy of an electronic will.

32 (3) "Complete converted copy" means a document in any
 33 format that:

34 (A) can be visually perceived in its entirety on a monitor or
 35 other display device;

36 (B) can be printed; and

37 (C) contains:

38 (i) the text of the electronic will;

39 (ii) the electronic signatures of the testator and the
 40 witnesses;

41 (iii) a readable copy of any associated document integrity
 42 evidence that may be a part of or attached to the



- 1 electronic will; and
 2 (iv) a self-proving clause concerning the electronic will,
 3 if the electronic will is self-proved.
 4 (4) "Custodian" means a person, other than:
 5 (A) the testator who executed the electronic will;
 6 (B) an attorney;
 7 (C) a person who is named in the electronic will as a
 8 personal representative of the testator's estate; or
 9 (D) a person who is named or defined as a distributee in
 10 the electronic will;
 11 who has authorized possession or control of the electronic
 12 will. The term may include an attorney in fact serving under
 13 a living testator's durable power of attorney who possesses
 14 general authority over records, reports, statements, electronic
 15 records, or estate planning transactions.
 16 (5) "Custody" means the authorized possession and control of
 17 at least one (1) of the following:
 18 (A) A complete copy of the electronic record for the
 19 electronic will, including a self-proving clause if a
 20 self-proving clause is executed.
 21 (B) A complete converted copy of the electronic will, if the
 22 complete electronic record has been lost or destroyed or
 23 the electronic will has been revoked.
 24 (6) "Document integrity evidence" means the part of the
 25 electronic record for the electronic will that:
 26 (A) is created and maintained electronically;
 27 (B) includes digital markers showing that the electronic
 28 will has not been altered after its initial execution and
 29 witnessing;
 30 (C) is logically associated with the electronic will in a
 31 tamper evident manner so that any change made to the
 32 text of the electronic will after its execution is visibly
 33 perceptible when the electronic record is displayed or
 34 printed;
 35 (D) displays any changes made to the text of the electronic
 36 will after its execution; and
 37 (E) displays the following information:
 38 (i) The city, state, date, and time the electronic will was
 39 executed by the testator and the attesting witnesses.
 40 (ii) The text of the self-proving clause, if the electronic
 41 will is electronically self-proved through use of a
 42 self-proving clause executed under section 4(c) of this



- 1 chapter.
- 2 (iii) The name of the testator and attesting witnesses.
- 3 (iv) The name and address of the person responsible for
- 4 marking the testator's signature on the electronic will at
- 5 the testator's direction and in the actual presence of the
- 6 testator and attesting witnesses.
- 7 (v) Copies of or links to the electronic signatures of the
- 8 testator and the attesting witnesses on the electronic will.
- 9 (vi) A general description of the type of identity
- 10 verification evidence used to verify the testator's
- 11 identity.
- 12 (vii) The text of the advisory instruction, if any, that is
- 13 provided to the testator under section 6 of this chapter at
- 14 the time of the execution of the electronic will.
- 15 (viii) The content of the cryptographic hash or unique
- 16 code used by the testator to sign the electronic will in the
- 17 event that public key infrastructure or similar secure
- 18 technology was used to sign or authenticate the
- 19 electronic will.
- 20 Document integrity evidence may, but is not required to,
- 21 contain other information about the electronic will such as a
- 22 unique document number, client number, or other identifier
- 23 that an attorney or custodian assigns to the electronic will or
- 24 a link to a secure Internet web site where a complete copy of
- 25 the electronic will is accessible. The title, heading, or label, if
- 26 any, that is assigned to the document integrity evidence (such
- 27 as "certificate of completion", "audit trail", or "audit log" is
- 28 immaterial).
- 29 (7) "Electronic" has the meaning set forth in IC 26-2-8-102.
- 30 (8) "Electronic record" has the meaning set forth in
- 31 IC 26-2-8-102. The term may include one (1) or both of the
- 32 following:
- 33 (A) The document integrity evidence associated with the
- 34 electronic will.
- 35 (B) The identity verification evidence of the testator who
- 36 executed the electronic will.
- 37 (9) "Electronic signature" has the meaning set forth in
- 38 IC 26-2-8-102.
- 39 (10) "Electronic will" means the will of a testator that:
- 40 (A) is initially created and maintained as an electronic
- 41 record;
- 42 (B) contains the electronic signatures of:



- 1 (i) the testator; and
 2 (ii) the attesting witnesses; and
 3 (C) contains the date and times of the electronic signatures
 4 described by items (i) and (ii).
 5 The term may include a codicil that amends an electronic will
 6 or a traditional paper will if the codicil is executed in
 7 accordance with the requirements of this chapter.
 8 (11) "Executed" means the signing of an electronic will. The
 9 term includes the use of an electronic signature.
 10 (12) "Identity verification evidence" means either:
 11 (A) a copy of the testator's government issued photo
 12 identification card; or
 13 (B) any other information that verifies the identity of the
 14 testator if derived from one (1) or more of the following
 15 sources:
 16 (i) A knowledge based authentication method.
 17 (ii) A physical device.
 18 (iii) A digital certificate using a public key
 19 infrastructure.
 20 (iv) A verification or authorization code sent to or used
 21 by the testator.
 22 (v) Biometric identification.
 23 (vi) Any other commercially reasonable method for
 24 verifying the testator's identity using current or future
 25 technology.
 26 (13) "Logically associated" means electronically connected,
 27 cross referenced, or linked in a reliable manner.
 28 (14) "Sign" means valid use of a properly executed electronic
 29 signature.
 30 (15) "Signature" means the authorized use of the testator's
 31 name to authenticate an electronic will. The term includes an
 32 electronic signature.
 33 (16) "Tamper evident" means the feature of an electronic
 34 record, such as an electronic will or document integrity
 35 evidence for an electronic will, that will cause any alteration
 36 or tampering of the electronic record, after it is created or
 37 signed, to be perceptible to any person viewing the electronic
 38 record when it is printed on paper or viewed on a monitor or
 39 other display device.
 40 (17) "Traditional paper will" means a will or codicil that is
 41 signed by the testator and the attesting witnesses:
 42 (A) on paper; and



6

1 (B) in the manner specified in IC 29-1-5-3 or IC 29-1-5-3.1.

2 (18) "Will" includes all wills, testaments, and codicils. The
3 term includes:

4 (A) an electronic will; and

5 (B) any testamentary instrument that:

6 (i) appoints an executor; or

7 (ii) revives or revokes another will.

8 Sec. 4. (a) To be valid as a will under this article, an electronic
9 will must be executed by the electronic signature of the testator and
10 attested to by the electronic signatures of at least two (2) witnesses
11 in the following manner:

12 (1) The testator and the attesting witnesses must be in each
13 other's actual presence when the electronic signatures are
14 made in or on the electronic will. The testator and witnesses
15 must directly observe one another as the electronic will is
16 being signed by the parties.

17 (2) The testator and attesting witnesses must comply with:

18 (A) the prompts, if any, issued by the software being used
19 to perform the electronic signing; or

20 (B) the instructions by the person, if any, responsible for
21 supervising the execution of the electronic will.

22 (3) The testator must state, in the actual presence of the
23 attesting witnesses, that the instrument to be electronically
24 signed is the testator's will.

25 (4) The testator must:

26 (A) electronically sign the electronic will in the actual
27 presence of the attesting witnesses; or

28 (B) direct another adult individual who is not an attesting
29 witness to sign the electronic will on the testator's behalf in
30 the actual presence of the testator and the attesting
31 witnesses.

32 (5) The attesting witnesses must electronically sign the
33 electronic will in the actual presence of:

34 (A) the testator; and

35 (B) one another;

36 after the testator has electronically signed the electronic will.

37 (6) The:

38 (A) testator; or

39 (B) other adult individual who is:

40 (i) not an attesting witness; and

41 (ii) acting on behalf of the testator;

42 must command the software application or user interface to

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1 **finalize the electronically signed electronic will as an**
2 **electronic record.**
3 **The process described in this section may include as part of the**
4 **electronic record for the electronic will any identity verification**
5 **evidence pertaining to the testator or any document integrity**
6 **evidence for the electronic will.**
7 **(b) An electronic will may be self-proved:**
8 **(1) at the time that it is electronically signed; and**
9 **(2) before it is electronically finalized;**
10 **by incorporating into the electronic record of the electronic will a**
11 **self-proving clause described under subsection (c). An electronic**
12 **will is not required to contain an attestation clause or a**
13 **self-proving clause in order to be a valid electronic will.**
14 **(c) A self-proving clause under subsection (b) must substantially**
15 **be in the following form:**
16 **"We, the undersigned testator and the undersigned witnesses,**
17 **whose names are signed to the attached or foregoing instrument,**
18 **declare:**
19 **(1) That the testator executed the instrument as the testator's**
20 **will.**
21 **(2) That, in the actual and direct physical presence of both**
22 **witnesses, the testator signed the will or directed another**
23 **individual who is not one of the witnesses to sign for the**
24 **testator in the testator's presence and in the witnesses' actual**
25 **and direct physical presence;**
26 **(3) That the testator executed the will as a free and voluntary**
27 **act for the purposes expressed in it;**
28 **(4) That each of the witnesses, in the actual and direct**
29 **physical presence of the testator and each other, signed the**
30 **will as a witness;**
31 **(5) That the testator was of sound mind when the will was**
32 **executed; and**
33 **(6) That, to the best knowledge of each attesting witness, the**
34 **testator was, at the time the will was executed, at least**
35 **eighteen (18) years of age or was a member of the armed**
36 **forces or of the merchant marine of the United States or its**
37 **allies.**
38 _____
39 **(insert date) (insert signature of testator)**
40 _____
41 **(insert date)(insert signature of witness)**
42 _____



- 1 (insert date) (insert signature of witness)".
 2 A single signature from the testator and from each attesting
 3 witness may be provided for any electronic will bearing or
 4 containing a self-proving clause.
 5 (d) An electronic will that is executed in compliance with
 6 subsection (a) shall not be rendered invalid by the existence of any
 7 of the following attributes:
 8 (1) An attestation clause.
 9 (2) Additional signatures.
 10 (3) A self-proving clause that differs in form from the
 11 exemplar provided in subsection (c).
 12 (4) Any additional language that refers to the circumstances
 13 or manner in which the electronic will was executed.
 14 (e) This section shall be construed in a manner that gives effect
 15 to the testator's intent to execute a valid will.
 16 **Sec. 5. Subject to the Indiana Rules of Evidence and the Indiana**
 17 **Rules of Trial Procedure, a video recording of an electronic will's**
 18 **execution or a video recording of a testator either before or after**
 19 **the execution of an electronic will may be admissible as evidence of**
 20 **the following:**
 21 (1) The proper execution of an electronic will in compliance
 22 with section 4 of this chapter.
 23 (2) The intentions of the testator.
 24 (3) The mental state or capacity of the testator.
 25 (4) The absence of undue influence or duress with respect to
 26 the testator.
 27 (5) Verification of the testator's identity.
 28 (6) Evidence that a complete converted copy of an electronic
 29 will should be admitted to probate.
 30 (7) Whether a will whose execution failed to fully comply with
 31 section 4 of this chapter should be admitted to probate as a
 32 valid traditional paper will.
 33 (8) Any other matter the court considers relevant to the
 34 probate of an electronic will.
 35 **Sec. 6. (a) As used in this section, "form vendor" means any**
 36 **person who provides a testator with an electronic will form or a**
 37 **user interface for creating, completing, or executing an electronic**
 38 **will. The term includes:**
 39 (1) an attorney who prepares an electronic will for a testator;
 40 and
 41 (2) any vendor or licensor of estate planning software of
 42 digital estate planning forms.



1 **(b) It is consistent with best practices to provide the following**
2 **advisory instruction with each electronic will:**

3 **"IMPORTANT Instructions to the Signatory of an Electronic**
4 **Will**

5 **A. The procedure for proper execution (electronic signing and**
6 **witnessing) of your electronic will is as follows:**

7 **(1) You (the testator) and the two (2) attesting witnesses**
8 **must be actually present in the same location throughout**
9 **the execution process. Indiana law does not permit**
10 **attesting witnesses to observe or participate in the signing**
11 **process from a location that is apart or separate from the**
12 **testator's location or act as an attesting witness through**
13 **use of remote audio, remote visual, or remote audiovisual**
14 **software or technology.**

15 **(2) Both attesting witnesses must be adults and should not**
16 **be individuals who will be gifted money or other property**
17 **under the terms of your electronic will. If a witness named**
18 **in the electronic will is named as a beneficiary or legatee or**
19 **entitled to money or property under the terms of the**
20 **electronic will, the beneficiary or legatee named in the**
21 **electronic will may only receive money, property, or shares**
22 **reserved for them under state intestacy laws.**

23 **(3) You, as the testator, must inform the attesting witnesses**
24 **that the document you will be signing is your will.**

25 **(4) You (the testator) and the two (2) attesting witnesses**
26 **may use the same computer or device or different**
27 **computers and devices to make your respective electronic**
28 **signatures on the electronic will.**

29 **(5) The online user interface or software application for**
30 **your will may require you and the attesting witnesses to**
31 **use a password, validation code, token, or other security**
32 **feature in order to prevent identity theft or impersonation**
33 **and permanently link each of you, as individuals, to your**
34 **respective electronic signatures.**

35 **(6) You (the testator) and the two (2) attesting witnesses**
36 **should follow the instructions provided by the online user**
37 **interface or software application when making your**
38 **respective electronic signatures on your electronic will.**
39 **You (the testator) should electronically sign the electronic**
40 **will first followed by each of the attesting witnesses. If you**
41 **(the testator) are physically unable to type, press keys, or**
42 **otherwise enter commands on the computer or device**



1 being used to electronically sign the electronic will, you
 2 may instruct another adult who is not an attesting witness
 3 to enter your electronic signature on your electronic will
 4 for you. Any individual who enters your electronic
 5 signature on your electronic will on your behalf must do so
 6 in your actual presence.

7 (7) The software application or online user interface may
 8 create a date and time stamp for your electronic signature
 9 and for the electronic signature of each attesting witness.

10 (8) The execution of your electronic will is complete after
 11 you and the attesting witnesses have completed making
 12 your electronic signatures by clicking or executing a
 13 command that saves or submits your respective electronic
 14 signatures in the software application or online interface.

15 (9) You are strongly encouraged to save a complete copy of
 16 your electronic will in a portable and printable format. An
 17 electronic will preserved in this manner should include all
 18 information related to the execution process of your
 19 electronic will, including information that is compiled or
 20 stored by the software application or online user interface.

21 The related information described in this subdivision
 22 should be viewable and printable as a self-contained and
 23 permanent part of the electronic record for your electronic
 24 will.

25 **B. If you used a software application or an online user**
 26 **interface to generate, finalize, and sign your electronic will,**
 27 **the software or user interface may also offer you the ability to**
 28 **securely store the electronic record of your electronic will.**
 29 **You may be required to create or establish a user**
 30 **identification, password, or other security feature in order to**
 31 **store the electronic record of your electronic will in this way.**
 32 **You should carefully safeguard your user identification,**
 33 **password, security questions, and personal information used**
 34 **to securely save or store your electronic will. The information**
 35 **that you are being asked to safeguard will likely be required**
 36 **in order to:**

- 37 (1) generate;
 38 (2) replace;
 39 (3) retrieve; or
 40 (4) revoke;

41 your electronic will at a later date.

42 **C. The only proper and valid way for you to revoke your**



1 **electronic will is to:**

- 2 **(1) sign a new electronic will or a traditional paper will**
3 **that revokes all previous wills executed by you; or**
4 **(2) permanently and irrevocably make unreadable and**
5 **nonretrievable the electronic record for your electronic**
6 **will.**

7 **If you are holding the electronic record for your electronic**
8 **will on your own computer or digital storage device and not**
9 **making use of a third party custodian or online storage or**
10 **cloud based document storage service to store or safeguard**
11 **your electronic will, you may personally delete permanently**
12 **or make unreadable the electronic record associated with**
13 **your electronic will. Before doing so, you are encouraged to**
14 **make and save a printable, permanent copy of the complete**
15 **electronic record associated with your electronic will,**
16 **including any related information pertaining to the execution**
17 **or signing process of your electronic will, so that the contents**
18 **of your revoked electronic will may be discovered later by a**
19 **probate court or any other interested persons in the event of**
20 **a dispute concerning the validity of any later will that you**
21 **decide to make.**

22 **If you are making use of a third party custodian or online**
23 **or cloud based document storage service to store or safeguard**
24 **your electronic will, the valid revocation of your electronic**
25 **will requires you to personally issue a written or electronic**
26 **revocation document to each third party custodian who has**
27 **custody of a copy of the electronic record associated with your**
28 **electronic will. A valid revocation document must instruct the**
29 **custodian to permanently delete or make unreadable and**
30 **nonretrievable the electronic record associated with your**
31 **electronic will. A valid revocation document must be signed**
32 **by you and two (2) attesting witnesses while following the**
33 **same procedures required for the execution of a new**
34 **traditional paper will or new electronic will."**

35 **(c) A failure to provide the text of the advisory instruction in**
36 **subsection (b) does not affect the validity of the electronic will if the**
37 **electronic will is otherwise properly executed in the manner set**
38 **forth in this chapter.**

39 **(d) A failure to provide the advisory instruction described in**
40 **subsection (b) may not be the predicate for any form of civil or**
41 **other liability.**

42 **Sec. 7. An electronic will is legally executed if the manner of its**



12

1 execution complies with the law of:

- 2 (1) this state;
 3 (2) the jurisdiction that the testator is actually present in at
 4 the time of execution; or
 5 (3) the domicile of the testator at the time of execution or at
 6 the time of the testator's death.

7 **Sec. 8. (a) This section describes the exclusive methods for**
 8 **revoking an electronic will. Before a testator completes or directs**
 9 **the revocation of an electronic will, the testator shall:**

- 10 (1) comply with; or
 11 (2) direct a third party custodian to comply, as applicable,
 12 with;

13 subsection (e).

14 (b) A testator may revoke and supersede a previously executed
 15 electronic will by executing a new electronic will or traditional
 16 paper will that explicitly revokes and supersedes all prior wills.
 17 However, if the revoked or superseded electronic will is held in the
 18 custody or control of more than one (1) custodian, the testator shall
 19 use the testator's best efforts to contact each custodian and to
 20 instruct each custodian to permanently delete and render
 21 nonretrievable each revoked or superseded electronic will in the
 22 manner described in subsection (d).

23 (c) If a testator is not using the services of a custodian to store
 24 the electronic record for an electronic will, the testator may revoke
 25 the electronic will by permanently deleting each copy of the
 26 electronic record associated with the electronic will in the testator's
 27 possession or control or by rendering the electronic record for the
 28 associated electronic will unreadable and nonretrievable.

29 (d) The testator may revoke the testator's electronic will by
 30 executing a revocation document that:

- 31 (1) is signed by the testator and two (2) attesting witnesses in
 32 a manner that complies with IC 29-1-5-3(b) or with section 4
 33 of this chapter;
 34 (2) refers to the date on which the electronic will that is being
 35 revoked was signed; and
 36 (3) states that the testator is revoking the electronic will
 37 described in subdivision (2).

38 A revocation document under this subsection may be signed and
 39 witnessed with the electronic signature of the testator and two (2)
 40 attesting witnesses, or signed and witnessed with signatures on
 41 paper as described in IC 29-1-5-6.

42 (e) If a testator is using the services of an attorney or a

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1 custodian to store the electronic record associated with the
 2 testator's electronic will, the testator may revoke the electronic will
 3 by instructing the custodian or attorney to permanently delete or
 4 make unreadable and nonretrievable the electronic record
 5 associated with the electronic will. An instruction issued under this
 6 subsection must be made in writing to the custodian or attorney as
 7 applicable. A custodian or attorney who receives a written
 8 instruction described in this subsection shall:

9 (1) sign an affidavit of regularity under section 13 of this
 10 chapter with respect to the electronic will to be revoked by the
 11 testator;

12 (2) create a complete converted copy (as defined in section
 13 3(3) of this chapter) of the electronic will being revoked;

14 (3) make the signed affidavit of regularity a permanent
 15 attachment to or part of the complete converted copy;

16 (4) follow the testator's written instruction by:

17 (A) permanently deleting the electronic record for the
 18 revoked electronic will; or

19 (B) rendering the electronic record associated with the
 20 revoked electronic will unreadable and nonretrievable;
 21 and

22 (5) transmit or issue the complete converted copy of the
 23 revoked electronic will to the testator.

24 (f) If the electronic record for a particular electronic will or a
 25 complete converted copy of the electronic will cannot be found
 26 after the testator's death, the presumption that applied to a lost or
 27 missing traditional paper will shall be applied to the lost or missing
 28 electronic will.

29 Sec. 9. (a) If:

30 (1) a person discovers an accurate and substantially complete
 31 copy of an electronic will that:

32 (A) bears the signatures of the testator and attesting
 33 witnesses; and

34 (B) lacks some other portion of the electronic will; or

35 (2) the electronic record for an electronic will becomes lost or
 36 corrupted so that the absence of unauthorized alteration or
 37 tampering cannot be assured by viewing the electronic
 38 record;

39 the attorney, custodian, or living testator with access to a complete
 40 nonelectronic copy of the electronic will or the person described in
 41 subdivision (1) may prepare a complete converted copy of the
 42 electronic will using all available information.



1 **(b) A person who creates a complete converted copy of an**
 2 **electronic will under subsection (a) shall sign an affidavit that**
 3 **specifies the following:**

4 **(1) When the electronic will was created if not specified in the**
 5 **body of the electronic will.**

6 **(2) When the electronic will was discovered.**

7 **(3) How the electronic will was discovered.**

8 **(4) The method and format that the electronic will was stored**
 9 **under (if known).**

10 **(5) The methods (if any) used to:**

11 **(A) prevent alterations to the electronic record; or**

12 **(B) ensure the accuracy and authenticity of the electronic**
 13 **record.**

14 **(6) Whether the electronic will has been altered since its**
 15 **creation.**

16 **(7) Confirmation that an electronic record, including any**
 17 **associated document integrity evidence for the electronic will,**
 18 **was created at the time the testator made the electronic will.**

19 **(8) Confirmation by the person responsible for:**

20 **(A) creating the complete converted copy; and**

21 **(B) signing the affidavit;**

22 **that, to the best of the person's knowledge, the electronic**
 23 **record has not been altered while in the custody of the current**
 24 **custodian or any prior custodian.**

25 **(9) Confirmation that the complete converted copy is a**
 26 **complete and correct duplication of:**

27 **(A) the electronic will; and**

28 **(B) the date, place, and time of the electronic will's**
 29 **execution by the testator and the attesting witnesses.**

30 **(c) A complete converted copy derived from a complete and**
 31 **correct electronic will may be offered for and admitted to probate**
 32 **in the same manner as a traditional paper will.**

33 **(d) A complete converted copy derived from a complete and**
 34 **correct self-proved electronic will shall be presumed to be valid**
 35 **and, absent any objection, admitted to probate without the need for**
 36 **additional proof.**

37 **(e) If a complete converted copy is generated from a complete**
 38 **and intact electronic record associated with an electronic will at or**
 39 **after the time of its execution, the person who generates the**
 40 **complete converted copy is not required to sign the affidavit**
 41 **described in subsection (b).**

42 **Sec. 10. (a) Any person with the written authorization of the**



1 testator may maintain, receive, or transfer custody of:

- 2 (1) the electronic record associated with an electronic will;
 3 (2) any document integrity evidence associated with an
 4 electronic record or electronic will; or
 5 (3) a complete converted copy of the electronic will.

6 A testator may identify and designate an adult individual as the
 7 custodian of the testator's electronic will within the electronic
 8 record of an electronic will.

9 (b) A custodian of an electronic will, any accompanying
 10 self-proving clause, or any document integrity evidence logically
 11 associated with the electronic will, has the following
 12 responsibilities:

13 (1) To use best practices to maintain custody of the electronic
 14 record for the electronic will and any accompanying
 15 document integrity evidence.

16 (2) To use best practices and commercially reasonable means
 17 to:

18 (A) maintain the privacy and security of the electronic
 19 record associated with an electronic will; and

20 (B) exercise reasonable care to guard against
 21 unauthorized:

22 (i) disclosure of; and

23 (ii) alteration or tampering with;

24 the electronic record.

25 (3) To maintain electronic and conceptual separation between
 26 different testators and their respective electronic records and
 27 electronic wills if the custodian maintains custody of two (2)
 28 or more electronic records or electronic wills.

29 (4) To promptly generate a complete converted copy of each
 30 electronic will and all accompanying document integrity
 31 evidence after receiving a written request to do so from a
 32 living testator, the court, or another authorized person.

33 (5) To promptly respond to a written instruction from the
 34 living testator or another person with written authorization
 35 originating from the living testator to transfer custody of the
 36 electronic will to a successor custodian.

37 (6) To transfer the entire electronic record of the electronic
 38 will to a successor custodian upon the receipt of a written
 39 instruction requesting the transfer of the entire electronic
 40 record of an electronic will to a successor custodian.

41 (7) To provide an executed delivery receipt to the outgoing
 42 custodian who transfers:



- 1 (A) the electronic record;
 2 (B) the electronic will;
 3 (C) any accompanying document integrity evidence; or
 4 (D) information pertaining to the format in which the
 5 electronic record or electronic will is received;
 6 if the receiving custodian agrees to assume responsibility for
 7 an electronic record or an electronic will and all associated
 8 documents from an outgoing custodian.
- 9 (8) To perform the following upon the death of the testator:
 10 (A) To relinquish possession and control of the:
 11 (i) electronic record associated with the testator's
 12 electronic will; or
 13 (ii) complete converted copy of the testator's electronic
 14 will (if applicable);
 15 to a person authorized to receive these items under section
 16 11 of this chapter.
- 17 (B) To comply with the court order requiring the
 18 electronic filing or delivery of the electronic will and any
 19 accompanying document integrity evidence or a complete
 20 converted copy of the electronic will, as applicable, with
 21 the court.
- 22 (C) To provide an accurate copy of:
 23 (i) an electronic record; or
 24 (ii) a complete converted copy of the testator's electronic
 25 will;
 26 to any interested person who requests a copy for the
 27 purpose of submitting the electronic will for probate.
- 28 (D) To furnish, for any court hearing or matter involving
 29 an electronic will currently or previously stored by the
 30 custodian, any information requested by the court
 31 pertaining to the custodian's policies, practices, or
 32 qualifications as they relate to the maintenance,
 33 production, or storage of electronic wills.
- 34 (c) A proposed successor custodian has no obligation to accept
 35 delivery of an electronic will from an outgoing custodian or to
 36 accept the responsibility of maintaining custody of an electronic
 37 record associated with an electronic will. A successor custodian's
 38 execution of a delivery receipt under subsection (b)(7) constitutes
 39 acceptance of the appointment as successor custodian.
- 40 (d) If a custodian wishes to discontinue custody of an electronic
 41 will, the custodian must send written notice to the testator or, if the
 42 testator's whereabouts are unknown, to any other person:



- 1 **(1) holding written authority from the testator; or**
 2 **(2) identifiable from the custodian's records.**
 3 **(e) A written notice described in subsection (d) must inform the**
 4 **testator or other person authorized to act on the testator's behalf**
 5 **that the custodian will transfer custody of the electronic record**
 6 **associated with the electronic will to a successor custodian chosen**
 7 **by the current custodian unless the testator or person authorized**
 8 **to act on behalf of the testator provides the custodian with written**
 9 **direction not later than thirty (30) days after the written notice**
 10 **described in subsection (d) was first issued.**
 11 **(f) If the testator or person authorized to act on the testator's**
 12 **behalf does not respond to the current custodian with a contrary**
 13 **written instruction before the end of the thirty (30) day period**
 14 **described in subsection (e), the custodian may, in order of**
 15 **decreasing priority, dispose of the electronic record associated with**
 16 **the electronic will in one (1) of the following ways:**
 17 **(1) The current custodian may transfer custody of the**
 18 **electronic record for the electronic will to a successor**
 19 **custodian previously designated by the testator.**
 20 **(2) The current custodian may transfer custody of the**
 21 **electronic will to a successor custodian selected by the current**
 22 **custodian.**
 23 **(3) The current custodian may transmit a complete converted**
 24 **copy of the electronic will and accompanying affidavit of**
 25 **regularity under section 13 of this chapter to the testator or**
 26 **other person authorized to act on behalf of the testator.**
 27 **Sec. 11. (a) After a testator's death becomes known to a**
 28 **custodian or other person authorized to act on behalf of the**
 29 **testator, custody of the electronic record associated with the**
 30 **testator's will or a complete converted copy of the testator's**
 31 **electronic will shall be delivered to one (1) of the following**
 32 **individuals, in decreasing order of priority, unless the testator has**
 33 **left other written instructions concerning the disposition of the**
 34 **testator's electronic will:**
 35 **(1) A person nominated in the electronic will as a personal**
 36 **representative of the testator's estate and having priority to**
 37 **seek appointment.**
 38 **(2) A surviving spouse of the testator.**
 39 **(3) A living adult child of the testator.**
 40 **(4) A living parent of the testator.**
 41 **(5) A living adult sibling of the testator.**
 42 **(6) A beneficiary named or defined in the electronic will and**



1 entitled to share in the testator's residuary probate estate.

2 (7) The clerk of the probate court having jurisdiction over the
3 testator's estate if the custodian or other person authorized to
4 act on behalf of the testator has knowledge of:

5 (A) the testator's domicile; or

6 (B) the location of the testator's property at the time of the
7 testator's death.

8 The custodian or other person may use any means of delivery,
9 including electronic means, that is commercially reasonable.

10 (b) After the death of a testator, subsection (a) and
11 IC 29-1-7-3(b) and IC 29-1-7-3(c) shall apply to electronic wills and
12 permit the personal representative named in an electronic will or
13 any other interested person to file a verified written application
14 requesting a probate court with subject matter jurisdiction to
15 order the delivery of the electronic will to the clerk of the probate
16 court.

17 (c) If a custodian or other person has possession of both the
18 electronic record for a deceased testator's electronic will and a
19 complete converted copy of the electronic will:

20 (1) the custodian or other person shall deliver only the
21 complete converted copy of the electronic will if delivery is
22 made to the clerk of the probate court under subsection (a)(7);
23 and

24 (2) the custodian or other person shall deliver both the
25 electronic record and the complete converted copy of the
26 electronic will if delivery is made to a person named in the
27 testator's written instructions or to any other person listed in
28 subsection (a).

29 (d) If the custodian or other person delivers the electronic will
30 to the clerk of the probate court under subsection (a)(7) or
31 subsection (b), the custodian or other person shall deliver only a
32 complete converted copy of the electronic will to the clerk, unless
33 the court rules or other applicable laws specifically require
34 otherwise.

35 Sec. 12. (a) As used in this section, "destroy" means any act
36 that:

37 (1) permanently deletes the electronic record associated with
38 an electronic will; or

39 (2) renders the electronic record associated with an electronic
40 will unreadable and nonretrievable.

41 (b) Any custodian or attorney holding an electronic will may
42 destroy the electronic record associated with the electronic will and



1 any accompanying document integrity evidence (as applicable) at
2 any time following the:

- 3 (1) fifth anniversary of a testator's will being admitted to
4 probate;
5 (2) fifth anniversary of the date that the custodian ceases to
6 have custody of the electronic will;
7 (3) tenth anniversary of the testator's death;
8 (4) one hundredth anniversary of an electronic will's
9 execution; or
10 (5) valid revocation of an electronic will.

11 (c) This section does not require a custodian, attorney, or other
12 person to destroy a complete converted copy of an electronic will.

13 **Sec. 13. A custodian or other person required or permitted to**
14 **create an affidavit of regularity under this chapter may use a form**
15 **that substantially complies with the following format:**

16 **"Affidavit of Regularity for Electronic Will**

17 (1) Beginning on (insert date of first possession of the
18 electronic will by the signatory of this affidavit) and
19 continuing to the date and time of this affidavit, the
20 undersigned person has had possession of (circle all that
21 apply):

22 (A) the electronic record for the electronic will;

23 (B) a complete converted copy of the electronic will;

24 of (insert name of testator), which was electronically executed
25 on (insert date of electronic signing and attestation or insert
26 reference to time and date stamp).

27 (2) (Insert client number, customer number, document
28 number, or other unique identifier if any) is the unique
29 identifier that the undersigned person assigned to this
30 electronic will in the undersigned person's records.

31 (3) The undersigned person believes that the testator (circle
32 one (1) of the following):

33 (A) Is currently alive.

34 (B) Died on or about (insert date of testator's death).

35 (4) The undersigned person is (circle all of the following that
36 apply):

37 (A) Transferring custody of the electronic record for the
38 electronic will to the living testator of the electronic will.

39 (B) Transferring custody of the electronic record for the
40 electronic will to (insert name and address of successor
41 custodian).

42 (C) Transferring a complete converted copy of the



- 1 electronic will to (insert the name and address of the
2 authorized recipient).
- 3 **(D) Submitting the electronic record for the electronic will**
4 **to the (insert the name of the court) for probate.**
- 5 **(E) Submitting a complete converted copy for the**
6 **electronic will to the (insert the name of the court) for**
7 **probate.**
- 8 **(5) If the undersigned person is transferring or submitting the**
9 **electronic record for the electronic will, it is in the following**
10 **format (insert description of the format).**
- 11 **(6) If the undersigned person is transferring or submitting the**
12 **electronic record for the electronic will, the undersigned**
13 **person affirms, under penalty of perjury, that the electronic**
14 **record has been in the undersigned person's possession or**
15 **control for the period of time stated in paragraph (1) and that**
16 **during the specified period of time the electronic record**
17 **showed no indication of unauthorized alteration or tampering.**
- 18 **(7) The undersigned person affirms, under penalty of perjury,**
19 **that (circle one (1) of the following):**
- 20 **(A) The undersigned has no knowledge of the testator's**
21 **later execution of a will or codicil that amends, revokes, or**
22 **supersedes the electronic will described in paragraph (1).**
- 23 **(B) The undersigned believes that the testator purportedly**
24 **revoked or amended the electronic will described in**
25 **paragraph (1) on (insert date, if known, or approximate**
26 **time frame if date is not known), by (insert known details**
27 **about the amendment or revocation).**
- 28 **(8) The undersigned person is (circle one (1) if applicable):**
- 29 **(A) The living testator who executed the electronic will.**
- 30 **(B) An attorney admitted to practice law in the state of**
31 **Indiana.**
- 32 **(C) An attorney in fact or other person acting on the**
33 **written authority of the testator.**
- 34 **(D) A personal representative nominated in the electronic**
35 **will.**
- 36 **(E) An interested person (as defined in IC 29-1-1-3) with**
37 **respect to the estate of the testator.**
- 38 **(F) A custodian currently in compliance with all applicable**
39 **requirements under IC 29-1-21-10.**
- 40
- 41 _____
42 (insert date and time of custodian's or other person's
 signature)



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(insert name and signature of custodian or other person signing)

(insert job title or position of signatory if signatory is not an individual)."

Sec. 14. (a) Regardless of the number of custodians or other persons who receive, hold, or transfer copies of an electronic record for an electronic will to other custodians, other authorized persons, or the testator:

(1) the electronic record, including any accompanying document integrity evidence (if applicable), is prima facie evidence of:

- (A) the validity of the electronic will; and**
- (B) freedom from unauthorized alteration or tampering unless evidence of alteration or tampering is evident on the face of the electronic record;**

(2) a complete converted copy of an electronic will is prima facie evidence of:

- (A) the validity of the electronic will; and**
- (B) freedom from unauthorized alteration or tampering; if the electronic will was executed in compliance with this chapter; and**

(3) except as provided in section 16(e)(2) of this chapter, a custodian or other person is not required to make or issue an affidavit regarding the custodian's or other person's custody of the electronic record for an electronic will or custody of a complete converted copy of the electronic will. Any custodian or other person may, however, make an affidavit of regularity under section 13 of this chapter if any objection is asserted or any doubt is raised concerning the validity of the electronic will or about any alleged unauthorized alteration of the electronic will.

(b) The presumption of:

- (1) validity; and**
- (2) freedom from unauthorized alteration or tampering;**

described in subsection (a) may be rebutted by clear and convincing evidence or by evidence that the testator executed another electronic will or traditional paper will at a later date.

Sec. 15. (a) As used in this section, "electronic will copy" means a complete converted copy of an electronic will that is deposited with a circuit court clerk under IC 29-1-7-3.1.



- 1 **(b) The following shall apply to the deposit of an electronic will**
2 **copy with circuit court clerks:**
3 **(1) IC 29-1-7-3.1(a).**
4 **(2) IC 29-1-7-3.1(b).**
5 **(3) IC 29-1-7-3.1(d).**
6 **(4) IC 29-1-7-3.1(e).**
7 **(5) IC 29-1-7-3.1(g).**
8 **(6) IC 29-1-7-3.1(h).**
9 **(7) IC 29-1-7-3.1(i).**
10 **(8) IC 29-1-7-3.1(j).**
11 **(c) A person or depositor may deposit an electronic will copy**
12 **with the circuit court clerk under IC 29-1-7-3.1 by:**
13 **(1) submitting a paper copy of the complete converted copy of**
14 **the electronic will copy to the clerk; or**
15 **(2) electronically filing a readable and printable copy of the**
16 **completed converted copy of the electronic will copy with the**
17 **clerk if permitted by court rules.**
18 **(d) If the circuit court clerk receives a paper copy of a complete**
19 **converted copy, the clerk shall promptly do the following:**
20 **(1) Place the electronic will copy in an envelope.**
21 **(2) Securely seal the envelope.**
22 **(3) Give or send a confirmation receipt verifying reception of**
23 **the electronic will copy to the person or depositor.**
24 **(e) If the circuit court clerk receives an electronic copy of a**
25 **complete converted copy of an electronic will, the clerk shall do the**
26 **following:**
27 **(1) Print the entire complete converted copy.**
28 **(2) Place the printed copy described in subdivision (1) in an**
29 **envelope.**
30 **(3) Securely seal the envelope.**
31 **(4) Give or send a confirmation receipt verifying reception of**
32 **the will to the person or depositor.**
33 **(f) The circuit court clerk, after sealing a complete converted**
34 **copy of an electronic will in an envelope as described in subsection**
35 **(e), shall do the following:**
36 **(1) Designate the:**
37 **(A) date of deposit;**
38 **(B) name of the testator; and**
39 **(C) name and address of the depositor;**
40 **on the envelope.**
41 **(2) Index the electronic will alphabetically by the name of the**
42 **testator.**



1 An envelope and electronic will copy deposited under this section
2 or IC 29-1-7-3.1 is confidential under IC 5-14-3.

3 Sec. 16. (a) As used in this section and for the purpose of
4 offering or submitting an electronic will in probate under
5 IC 29-1-7, the "filing of an electronic will" means the electronic
6 filing of a complete converted copy of the associated electronic will.

7 (b) When filing an electronic will, the filing of any
8 accompanying document integrity evidence or identity verification
9 is not required unless explicitly required by the court.

10 (c) If a person files an electronic will:

11 (1) for the purpose of probating the electronic will; and

12 (2) including accompanying:

13 (A) document integrity evidence;

14 (B) identity verification evidence; or

15 (C) evidence described in both clauses (A) and (B);

16 in the filing or in response to a court order under subsection (e)(2),
17 the person shall file a complete and unredacted copy of the
18 evidence described in clauses (A) and (B) as a nonpublic document
19 under Ind. Administrative Rule 9(G). All personally identifying
20 information pertaining to the testator or the attesting witnesses
21 shall be redacted in the publicly filed copy.

22 (d) If an electronic will includes a self-proving clause that
23 complies with section 4(c) of this chapter, the testator's and
24 witnesses' compliance with the execution requirements shall be
25 presumed upon the filing of the electronic will with the court
26 without the need for any additional testimony or an accompanying
27 affidavit. The presumption described in this subsection may be
28 subject to rebuttal or objection on the grounds of fraud, forgery,
29 or impersonation.

30 (e) After determining that a testator is dead and that the
31 testator's electronic will has been executed in compliance with
32 applicable law, the court may:

33 (1) enter an order, without requiring the submission of
34 additional evidence, admitting the electronic will to probate
35 as the last will of the deceased testator unless objections are
36 filed under IC 29-1-7-16; or

37 (2) require the petitioner to submit additional evidence
38 regarding:

39 (A) the proper execution of the electronic will; or

40 (B) the electronic will's freedom from unauthorized
41 alteration or tampering after its execution.

42 The court may require the submission of additional evidence under



1 subdivision (2) on the court's own motion or in response to an
2 objection filed under IC 29-1-7-16.

3 (f) The additional evidence that the court may require and rely
4 upon under subsection (e)(2) may include one (1) or more of the
5 following:

6 (1) Readable copies of the document integrity evidence or the
7 identity verification evidence associated with the electronic
8 will.

9 (2) All or part of the electronic record (if available) in a native
10 or computer readable form.

11 (3) A sworn or verified affidavit from:

12 (A) an attorney or other person who supervised the
13 execution of the electronic will; or

14 (B) one (1) or more of the attesting witnesses.

15 (4) An affidavit signed under section 9(b) of this chapter by a
16 person who created a complete converted copy of the
17 electronic will.

18 (5) A sworn or verified affidavit from a qualified person that:

19 (A) describes the person's training and expertise;

20 (B) describes the results of the person's forensic
21 examination of the electronic record associated with:

22 (i) the electronic will at issue; or

23 (ii) any other relevant evidence; and

24 (C) affirms that the electronic will was not altered or
25 tampered with after its execution.

26 (6) Any other evidence, including other affidavits or
27 testimony, that the court considers material or probative on
28 the issues of proper execution or unauthorized alteration or
29 tampering.

30 (g) If the court enters an order admitting an electronic will to
31 probate after receiving additional evidence, any of the additional
32 evidence may be disputed through a will contest that is timely filed
33 under IC 29-1-7-17.

34 Sec. 17. (a) This section shall apply to the situation created by:

35 (1) the rejection of a petition to probate a deceased testator's
36 electronic or traditional paper will; or

37 (2) the revocation of a deceased testator's electronic will due
38 to the timely filing of a will contest as described in
39 IC 29-1-7-17.

40 (b) The following terms are defined for this section:

41 (1) "Other electronic will" means:

42 (A) an electronic will that the same testator purportedly



- 1 executed in compliance with applicable laws on a date that
 2 preceded the date of execution seen in the rejected will; or
 3 (B) an electronic will that the same testator purportedly
 4 executed in compliance with applicable laws on a date that
 5 followed the date of execution seen on the rejected will;
 6 where the petitioner or proponent for the electronic will is not
 7 aware of any other paper will or electronic will executed by
 8 the testator at a date later than the date of the testator's
 9 purposed execution of the other electronic will.
 10 (2) "Rejected will" means a will that is rejected for a reason
 11 described in subsection (a).
 12 (c) On or before the end of the time period specified in
 13 IC 29-1-7-15.1(d)(2) or IC 29-1-7-15.1(d)(3), any interested person
 14 may file a petition requesting probate of another electronic will
 15 associated with the testator. A complete converted copy of the
 16 other electronic will and an affidavit of regularity must accompany
 17 any petition filed under this subsection. The complete converted
 18 copy of another electronic will is prima facie evidence of:
 19 (1) the substance of the other electronic will; and
 20 (2) the proper execution of the other electronic will.
 21 (d) Section 18 of this chapter shall apply to any proceeding
 22 concerning the probate of another electronic will of a deceased
 23 testator. In the absence of:
 24 (1) clear and convincing evidence; and
 25 (2) written evidence;
 26 of the testator's contrary intentions, the court shall presume that
 27 the deceased testator would have preferred the probate and
 28 enforcement of the testator's other electronic will to intestacy.
 29 Sec. 18. (a) For purpose of IC 29-3, IC 30-5, and IC 32-39:
 30 (1) the electronic record for an electronic will is a "digital
 31 asset" as that term is defined in IC 32-39-1-10;
 32 (2) the electronic record for an electronic will is not an
 33 "electronic communication" as defined in 18 U.S.C. 2510(12)
 34 or IC 32-39-1-12;
 35 (3) the digital or electronic transfer or transmission of the
 36 electronic record for an electronic will between any two (2)
 37 persons other than the testator and the testator's attorney is
 38 an electronic communication as defined in 18 U.S.C. 2510(12)
 39 or IC 32-39-1-12;
 40 (4) a custodian (as defined in section 3(4) of this chapter) of an
 41 electronic will is a "custodian" as defined in IC 32-39-1-8; and
 42 (5) the following individuals are "users" for purposes of



1 **IC 32-39 if the testator, attorney, or other authorized person**
 2 **contracts with another person to store the electronic record**
 3 **for the electronic will:**

4 **(A) The testator of an electronic will.**

5 **(B) The attorney representing the testator.**

6 **(C) Any other person with authorized possession of or**
 7 **authorized access to the electronic record for the electronic**
 8 **will.**

9 **(b) The execution or revocation of an electronic will is not a**
 10 **contract or a "transaction in or affecting interstate or foreign**
 11 **commerce" for purposes of the federal E-SIGN Act, 15 U.S.C.**
 12 **7001.**

13 **(c) The execution or revocation of an electronic will is not a**
 14 **contract or "transaction" for purposes of IC 26-2-8 and the**
 15 **exclusion stated in IC 26-2-8-103(b)(1) continues in effect with**
 16 **respect to electronic wills and codicils.**

17 SECTION 3. IC 30-4-1.5 IS ADDED TO THE INDIANA CODE
 18 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2018]:

20 **Chapter 1.5. Electronic Trust Instruments**

21 **Sec. 1. The purpose of this chapter is to provide rules for the**
 22 **valid execution, amendment, and revocation of inter vivos trusts**
 23 **that are prepared and signed electronically. This chapter shall be**
 24 **applied fairly and flexibly so that a settlor whose identity can be**
 25 **verified, who has capacity, and who is acting free from undue**
 26 **duress and undue influence may execute a valid electronic trust**
 27 **instrument consistent with the settlor's intent. If an electronic trust**
 28 **instrument is electronically signed by the settlor and is maintained**
 29 **as an electronic record or as a complete converted copy in**
 30 **compliance with the rules of this chapter, the normal presumptions**
 31 **that apply to a traditional paper trust instrument apply to the**
 32 **electronic trust instrument.**

33 **Sec. 2. (a) Except as provided in subsections (b) and (c),**
 34 **electronic trust instruments are exclusively governed by this**
 35 **chapter.**

36 **(b) This chapter does not apply to an entity, arrangement, or**
 37 **relationship that:**

38 **(1) is or may be described as a trust; and**

39 **(2) is excluded from IC 30-4 under IC 30-4-1-1(c).**

40 **(c) The execution, amendment, and revocation of an electronic**
 41 **testamentary trust shall be governed by IC 29-1-21 during the**
 42 **lifetime of a testator or settlor who creates, has created, or intends**



1 to create an electronic testamentary trust.

2 (d) If this chapter does not provide an explicit definition, form,
3 rule, or statute concerning an issue pertaining to electronic trust
4 instruments, applicable statutes from this article that apply to
5 traditional paper trust instruments control.

6 **Sec. 3. The following terms are defined for this chapter:**

7 (1) "Affidavit of regularity" means an affidavit executed by
8 a custodian or other person under section 10 of this chapter
9 with respect to the electronic record for an electronic trust
10 instrument or a complete converted copy of an electronic
11 trust instrument.

12 (2) "Complete converted copy" means a document in any
13 format that:

14 (A) can be visually perceived in its entirety on a monitor or
15 other display device;

16 (B) can be printed; and

17 (C) contains:

18 (i) the text of an electronic trust instrument; and

19 (ii) a readable copy of the document integrity evidence,
20 if any, that is or was part of or attached to the electronic
21 trust instrument.

22 (3) "Custodian" means a person other than:

23 (A) the settlor who executed the electronic trust
24 instrument;

25 (B) an attorney;

26 (C) a person who is named in the electronic trust
27 instrument as a current trustee or successor trustee of the
28 trust; or

29 (D) a person who is named or defined as a beneficiary in
30 the electronic trust instrument;

31 who has authorized possession or control of the electronic
32 trust instrument. The term may include an attorney in fact
33 serving under a living settlor's durable power of attorney who
34 possesses general authority over records, reports, statements,
35 electronic records, or estate planning transactions.

36 (4) "Custody" means the authorized possession and control of
37 at least one (1) of the following:

38 (A) A complete copy of the electronic record for the
39 electronic trust instrument.

40 (B) A complete converted copy of the electronic trust
41 instrument if the complete electronic record has been lost
42 or destroyed or if the electronic trust instrument has been



- 1 revoked.
- 2 **(5) "Document integrity evidence" means the part of the**
- 3 **electronic record for the electronic trust instrument that:**
- 4 **(A) is created and maintained electronically;**
- 5 **(B) includes digital markers showing that the electronic**
- 6 **trust instrument has not been altered after its initial**
- 7 **execution by the settlor;**
- 8 **(C) is logically associated with the electronic trust**
- 9 **instrument in a tamper evident manner so that any change**
- 10 **made to the text of the electronic trust instrument after its**
- 11 **execution is visibly perceptible when the electronic record**
- 12 **is displayed or printed;**
- 13 **(D) displays any changes made to the text of the electronic**
- 14 **trust instrument after its execution; and**
- 15 **(E) displays the following information:**
- 16 **(i) The city, state, date, and time the electronic trust**
- 17 **instrument was executed by the settlor.**
- 18 **(ii) The name of the settlor.**
- 19 **(iii) The name and address of another person, if any,**
- 20 **responsible for marking the settlor's electronic signature**
- 21 **on the electronic trust instrument at the settlor's**
- 22 **direction and in the actual presence of the settlor.**
- 23 **(iv) A copy of or a link to the electronic signature of the**
- 24 **settlor on the electronic trust instrument.**
- 25 **(v) A general description of the type of identity**
- 26 **verification evidence used to verify the settlor's identity.**
- 27 **(vi) The content of the cryptographic hash or unique**
- 28 **code used by the settlor to sign the electronic trust**
- 29 **instrument in the event that public key infrastructure or**
- 30 **a similar secure technology was used to sign or**
- 31 **authenticate the electronic trust instrument.**
- 32 **Document integrity evidence may, but is not required to,**
- 33 **contain other information about the electronic trust**
- 34 **instrument such as a unique document number, client**
- 35 **number, or other identifier that an attorney or custodian**
- 36 **assigns to the electronic trust instrument or a link to a secure**
- 37 **Internet web site where a complete copy of the electronic trust**
- 38 **instrument is accessible. The title, heading, or label, if any,**
- 39 **that is assigned to the document integrity evidence (such as**
- 40 **"certificate of completion", "audit trail", or "audit log" is**
- 41 **immaterial).**
- 42 **(6) "Electronic" has the meaning set forth in IC 26-2-8-102.**



- 1 (7) "Electronic record" has the meaning set forth in
 2 IC 26-2-8-102. The term may include one (1) or both of the
 3 following:
 4 (A) The document integrity evidence associated with the
 5 electronic trust instrument.
 6 (B) The identity verification evidence of the settlor who
 7 executed the electronic trust instrument.
 8 (8) "Electronic signature" has the meaning set forth in
 9 IC 26-2-8-102.
 10 (9) "Electronic trust instrument" means a trust instrument
 11 for an inter vivos trust created by a settlor or other person
 12 that:
 13 (A) is initially created and maintained as an electronic
 14 record;
 15 (B) contains the electronic signature of the settlor or other
 16 person creating the trust; and
 17 (C) contains the date and time of the electronic signature
 18 of the settlor or other person creating the trust.
 19 The term includes an amendment to or a restatement of a
 20 revocable trust instrument when the amendment or
 21 restatement is executed in accordance with the requirements
 22 of section 6 of this chapter.
 23 (10) "Executed" means the signing of an electronic trust
 24 instrument. The term includes the use of an electronic
 25 signature.
 26 (11) "Identity verification evidence" means either:
 27 (A) a copy of the settlor's government issued photo
 28 identification card; or
 29 (B) any other information that verifies the identity of the
 30 settlor if derived from one (1) or more of the following
 31 sources:
 32 (i) A knowledge based authentication method.
 33 (ii) A physical device.
 34 (iii) A digital certificate using a public key
 35 infrastructure.
 36 (iv) A verification or authorization code sent to or used
 37 by the settlor.
 38 (v) Biometric identification.
 39 (vi) Any other commercially reasonable method for
 40 verifying the settlor's identity using current or future
 41 technology.
 42 (12) "Logically associated" means electronically connected,



1 cross referenced, or linked in a reliable manner.

2 (13) "Sign" means valid use of a properly executed electronic
3 signature.

4 (14) "Signature" means the authorized use of the settlor's
5 name to authenticate an electronic trust instrument. The term
6 includes an electronic signature.

7 (15) "Tamper evident" means the feature of an electronic
8 record, such as an electronic trust instrument or document
9 integrity evidence for an electronic trust instrument, that will
10 cause any alteration or tampering of the electronic record,
11 after it is created or signed, to be perceptible to any person
12 viewing the electronic record when it is printed on paper or
13 viewed on a monitor or other display device.

14 (16) "Traditional paper trust instrument" means a trust
15 instrument or an amendment to or a restatement of a trust
16 instrument that is signed by the settlor on paper.

17 **Sec. 4. (a) Any of the following persons may create a valid inter**
18 **vivos trust by electronically signing an electronic trust instrument**
19 **that sufficiently states the terms of the trust in compliance with**
20 **IC 30-4-2-1(b):**

21 (1) A settlor.

22 (2) An agent of a settlor who is an attorney in fact.

23 (3) A person who holds a power of appointment that is
24 exercisable by appointing money or property to the trustee of
25 a trust.

26 **The electronic signature of the settlor or other person creating the**
27 **trust is not required to be acknowledged or witnessed by a notary.**

28 (b) **The following persons may use the electronic record**
29 **associated with an electronic trust instrument to make a complete**
30 **converted copy of an electronic trust instrument immediately after**
31 **its execution or at a later time when a complete and intact**
32 **electronic record is available:**

33 (1) The settlor.

34 (2) A trustee who accepts appointment under the electronic
35 trust instrument.

36 (3) An attorney representing the settlor or the trustee.

37 (4) Any other person authorized by the settlor.

38 **If a complete converted copy is generated from a complete and**
39 **intact electronic record associated with an electronic trust**
40 **instrument, the person who generates the complete converted copy**
41 **is not required to sign the affidavit described in subsection (d).**

42 (c) **If:**



- 1 **(1) a person discovers an accurate but incomplete copy of an**
 2 **electronic trust instrument;**
 3 **(2) the electronic record for the electronic trust instrument**
 4 **becomes:**
 5 **(A) lost; or**
 6 **(B) corrupted; or**
 7 **(3) freedom from tampering or unauthorized alteration**
 8 **cannot be authenticated or verified;**
 9 **a living settlor, attorney, custodian, or person responsible for the**
 10 **discovery of the incomplete electronic trust instrument may**
 11 **prepare a complete converted copy of the electronic trust**
 12 **instrument using all available information if the person creating**
 13 **the complete converted copy of the electronic trust instrument has**
 14 **access to a substantially complete, nonelectronic copy of the**
 15 **electronic trust instrument.**
 16 **(d) A person who creates a complete converted copy of an**
 17 **electronic trust instrument under subsection (c) shall sign an**
 18 **affidavit that affirms or specifies, as applicable, the following:**
 19 **(1) The date the electronic trust instrument was created.**
 20 **(2) The time the electronic trust instrument was created.**
 21 **(3) How the incomplete electronic trust instrument was**
 22 **discovered.**
 23 **(4) The method and format used to store the original**
 24 **electronic record associated with the electronic trust**
 25 **instrument.**
 26 **(5) The methods used, if any, to prevent tampering or the**
 27 **making of unauthorized alterations to the electronic record or**
 28 **electronic trust instrument.**
 29 **(6) Whether the electronic trust instrument has been altered**
 30 **since its creation.**
 31 **(7) Confirmation that an electronic record, including the**
 32 **document integrity evidence, if any, was created at the time**
 33 **the settlor made the electronic trust instrument.**
 34 **(8) Confirmation that the electronic record has not been**
 35 **altered while in the custody of the current custodian or any**
 36 **prior custodian.**
 37 **(9) Confirmation that the complete converted copy is a**
 38 **complete and correct duplication of the electronic trust**
 39 **instrument and the date, place, and time of its execution by**
 40 **the settlor or the settlor's authorized agent.**
 41 **(e) A complete converted copy derived from a complete and**
 42 **correct electronic trust instrument may be docketed under**



1 IC 30-4-6-7 or, absent any objection, offered and admitted as
 2 evidence of the trust's terms in the same manner as the original
 3 and traditional paper trust instrument of the settlor. Whenever
 4 this article permits or requires the trustee of a trust to provide a
 5 copy of a trust instrument to a beneficiary or other interested
 6 person, the trustee may provide a complete converted copy of the
 7 electronic trust instrument. A complete and converted copy is
 8 conclusive evidence of the trust's terms unless otherwise
 9 determined by a court in an order entered upon notice to all
 10 interested persons and after an opportunity for a hearing.

11 Sec. 5. (a) If a settlor creates an inter vivos trust or amends or
 12 restates the trust by electronically signing an electronic trust
 13 instrument, the person named as trustee may:

14 (1) electronically sign the electronic record for the electronic
 15 trust instrument at or about the same time as the settlor's
 16 electronic signature;

17 (2) electronically sign:

18 (A) a separate electronic record referring to the electronic
 19 trust instrument, its date, and the name of the settlor; and

20 (B) a statement that explicitly accepts:

21 (i) the appointment as trustee; and

22 (ii) the trust's terms;

23 (3) make an ordinary signature on a complete converted copy
 24 of the electronic trust instrument in order to signify the
 25 person's acceptance of the trust's terms and the person's
 26 appointment as trustee; or

27 (4) make an ordinary signature on a separate written
 28 acceptance.

29 (b) Except as provided in subsection (d), a person named as
 30 trustee who exercises powers or performs duties under the trust is
 31 presumed to have accepted the trust.

32 (c) The person named as trustee may reject the trust in writing
 33 or in an electronically signed document. A person named as trustee
 34 who rejects a trust in the manner described in this subsection will
 35 incur no liability. If, after being informed of the named person's
 36 appointment as trustee, the named person does not:

37 (1) expressly accept the trust; or

38 (2) exercise powers or perform duties under the trust within
 39 a reasonable time;

40 the named person shall be presumed to have rejected the trust.

41 (d) If there is an immediate risk of damage to the trust estate,
 42 the person named as trustee may act to preserve the trust estate



1 and will not be presumed to have accepted the trust if the named
 2 person delivers a written or electronically signed rejection, at the
 3 time of or shortly after the person acts, to:

- 4 (1) the settlor;
 5 (2) the beneficiary; or
 6 (3) the court having jurisdiction over the administration of the
 7 trust estate.

8 **Sec. 6. (a) If the settlor created or last amended a revocable**
 9 **trust by electronically signing an electronic trust instrument, the**
 10 **settlor may amend or revoke the trust in the following ways:**

11 (1) By complying with a method provided in the terms of the
 12 trust and making either an electronic signature or an
 13 ordinary signature on paper to confirm the amendment or the
 14 revocation.

15 (2) If the terms of the trust do not specify any method or do
 16 not specify an exclusive method for amending or revoking the
 17 trust, the settlor may do the following:

18 (A) Execute a later will or codicil that:

- 19 (i) expressly refers to the trust; or
 20 (ii) specifically devises property that would otherwise
 21 have passed according to the terms of the trust.

22 (B) Sign the settlor's electronic signature on an electronic
 23 record that:

- 24 (i) manifests the clear and convincing intent of the settlor
 25 to amend or revoke the trust; and
 26 (ii) specifies the specific amendments or revocation that
 27 the settlor wishes to make.

28 (C) Sign the settlor's ordinary signature on a paper record
 29 that:

- 30 (i) manifests the clear and convincing intent of the settlor
 31 to amend or revoke the trust; and
 32 (ii) specifies the specific amendments or revocation that
 33 the settlor wishes to make.

34 (D) Permanently delete or render unreadable and
 35 nonretrievable each copy of the electronic record for the
 36 electronic trust instrument that is in the settlor's
 37 possession or control if the settlor is not making use of a
 38 custodian to store the electronic record for the electronic
 39 trust instrument.

40 (E) Transmit or provide to the custodian of the electronic
 41 record for an electronic trust instrument a written or
 42 electronic record of the amendment or revocation that:



- 1 (i) is signed by the settlor; and
 2 (ii) directs the custodian to permanently delete or make
 3 unreadable and nonretrievable the electronic record for
 4 the electronic trust instrument.

5 If the settlor knows that the electronic record for the electronic
 6 trust instrument or a complete converted copy of the electronic
 7 trust instrument is in the possession of a custodian, the settlor has
 8 a duty to use reasonable efforts to provide the custodian with
 9 written or electronic evidence of the amendment or revocation of
 10 the electronic trust instrument.

11 (b) If the settlor has possession of the electronic record for an
 12 electronic trust instrument that the settlor intends to amend or
 13 revoke, the settlor shall save a complete converted copy of the
 14 original electronic trust instrument before making any amendment
 15 or executing any revocation.

16 (c) If a custodian has possession of the electronic record for an
 17 electronic trust instrument that the settlor intends to amend or
 18 revoke, the custodian shall save a complete converted copy of the
 19 original electronic trust instrument before carrying out the
 20 settlor's direction to amend the electronic record or to render the
 21 electronic record unreadable and nonretrievable.

22 (d) A complete converted copy of an electronic trust instrument
 23 that is preserved in the manner described in subsection (b) or (c)
 24 may be used as evidence in the event that the validity of the
 25 settlor's amendment or revocation is later challenged.

26 Sec. 7. (a) Any person with the written authorization of the
 27 settlor may maintain, receive, or transfer custody of:

- 28 (1) the electronic record associated with an electronic trust
 29 instrument;
 30 (2) a complete converted copy of the electronic trust
 31 instrument; or
 32 (3) any document integrity evidence associated with the
 33 electronic trust instrument.

34 A settlor may identify and designate an adult individual or other
 35 person as the custodian of the electronic trust instrument within
 36 the electronic record associated with the electronic trust
 37 instrument.

38 (b) A custodian of an electronic trust instrument and any
 39 accompanying document integrity evidence that is logically
 40 associated with the electronic trust instrument has the following
 41 responsibilities:

- 42 (1) To use best practices to maintain custody of the electronic



- 1 record for the electronic trust instrument and any
2 accompanying document integrity evidence.
- 3 (2) To use best practices and commercially reasonable means
4 to:
- 5 (A) maintain the privacy and security of the electronic
6 record associated with an electronic trust instrument; and
7 (B) exercise reasonable care to guard against
8 unauthorized:
- 9 (i) disclosure; and
10 (ii) alteration or tampering with;
11 the electronic record.
- 12 (3) To maintain electronic and conceptual separation between
13 different settlors and their respective electronic records and
14 electronic trust instruments if the custodian maintains
15 custody of two (2) or more electronic records or electronic
16 trust instruments.
- 17 (4) To promptly generate a complete converted copy of each
18 electronic trust instrument and all accompanying document
19 integrity evidence after receiving a written request to do so
20 from a living settlor, the court, or another authorized person.
- 21 (5) To promptly respond to a written instruction from the
22 living settlor or another person with written authorization
23 originating from the living settlor to transfer custody of the
24 electronic trust instrument to a successor custodian.
- 25 (6) To transfer the entire electronic record of the electronic
26 trust instrument to a successor custodian upon the receipt of
27 a written instruction requesting the transfer of the entire
28 electronic record of an electronic trust instrument to a
29 successor custodian.
- 30 (7) To provide an executed delivery receipt to the outgoing
31 custodian who transfers:
- 32 (A) the electronic record;
33 (B) the electronic trust instrument;
34 (C) any accompanying document integrity evidence; or
35 (D) information pertaining to the format in which the
36 electronic record or electronic trust instrument is received;
37 if the receiving custodian agrees to assume responsibility for
38 an electronic record or an electronic trust instrument and all
39 associated documents from an outgoing custodian.
- 40 (8) To perform the following upon the death of the settlor:
- 41 (A) To relinquish possession and control of the:
42 (i) electronic record associated with the settlor's



- 1 electronic trust instrument; or
 2 (ii) complete converted copy of the testator's electronic
 3 will (if applicable);
 4 to a person authorized to receive these items under section
 5 8 of this chapter.
 6 **(B) To comply with the court's order requiring the**
 7 **electronic filing or delivery of the electronic trust**
 8 **instrument and any accompanying document integrity**
 9 **evidence, as applicable, with the court.**
 10 **(C) To provide an accurate copy of:**
 11 **(i) the electronic record of the settlor's electronic trust**
 12 **instrument; or**
 13 **(ii) a complete converted copy of the settlor's electronic**
 14 **trust instrument;**
 15 to any interested person who is entitled to receive a copy
 16 under the terms of the trust or IC 30-4-3-6(b).
 17 **(D) To furnish, for any court hearing or matter involving**
 18 **an electronic trust instrument currently or previously**
 19 **stored by the custodian, any information requested by the**
 20 **court pertaining to the custodian's policies, practices, or**
 21 **qualifications as they relate to the maintenance,**
 22 **production, or storage of electronic trust instruments.**
 23 **(c) A proposed successor custodian has no obligation to accept**
 24 **delivery of an electronic trust instrument from an outgoing**
 25 **custodian or to accept the responsibility to maintain custody of the**
 26 **electronic record for an electronic trust instrument. A successor**
 27 **custodian's execution of a delivery receipt constitutes acceptance**
 28 **of:**
 29 **(1) the appointment as successor custodian; and**
 30 **(2) the responsibility to maintain and preserve the accepted**
 31 **electronic trust instrument.**
 32 **(d) If a custodian wishes to discontinue custody of an electronic**
 33 **trust instrument, the custodian must send written notice to the**
 34 **settlor or, if the settlor's whereabouts are unknown, to the**
 35 **currently serving trustee or any other person holding written**
 36 **authority from the settlor and identifiable from custodian records.**
 37 **(e) A written notice described in subsection (d) must inform the**
 38 **settlor or other person authorized to act on the settlor's behalf that**
 39 **the custodian will transfer custody of the electronic trust**
 40 **instrument to a successor custodian chosen by the current**
 41 **custodian unless a written instruction is issued to the current**
 42 **custodian by the settlor, current trustee, or other authorized**



1 person not later than thirty (30) days after the written notice
2 described in subsection (d) was first issued.

3 (f) If the settlor, current trustee, or other authorized person
4 does not respond to a written notice described in subsection (d)
5 with a contrary written instruction by the end of the thirty (30) day
6 period described in subsection (e), the custodian may dispose of the
7 electronic record associated with an electronic trust instrument in
8 one (1) of the following ways:

9 (1) The current custodian may transfer custody of the
10 electronic record for the electronic trust instrument to a
11 successor custodian previously designated in writing by the
12 settlor.

13 (2) The current custodian may transfer custody of the
14 electronic trust instrument to a successor custodian selected
15 by the current custodian.

16 (3) The current custodian may transmit a complete converted
17 copy of the electronic trust instrument and an accompanying
18 affidavit of regularity to the person who received the thirty
19 (30) day notice described in subsection (e).

20 Sec. 8. (a) After a settlor's death becomes known to a custodian
21 or other person in possession or control of the electronic record
22 associated with the settlor's electronic trust instrument, or a
23 complete converted copy of the settlor's electronic trust
24 instrument, the custodian or other person in possession of an item
25 described in section 7(a)(1) or 7(a)(2) of this chapter shall deliver
26 an item described in section 7(a)(1) or 7(a)(2) of this chapter to one
27 (1) of the following persons in decreasing order of priority:

28 (1) A person already serving as trustee of the trust.

29 (2) A person nominated in the electronic trust instrument as
30 a successor trustee and who has priority under the terms of
31 the trust to accept appointment and to serve as trustee.

32 (3) The surviving spouse of the settlor.

33 (4) A living adult child of the settlor.

34 (5) A living parent of the settlor.

35 (6) A living adult sibling of the settlor.

36 (7) A beneficiary named or defined in the electronic trust
37 instrument and entitled to a share of the trust's principal
38 assets or income.

39 (8) The clerk of the probate court that would have subject
40 matter jurisdiction of the settlor's estate based on the
41 custodian's or other person's knowledge of the settlor's
42 domicile or the location of the property of the settlor at the



- 1 time of the settlor's death.
- 2 A custodian or other person in possession of an item described in
- 3 section 7(a)(1) or 7(a)(2) of this chapter may use any commercially
- 4 reasonable method of delivery to accomplish the requirements of
- 5 this section.
- 6 (b) If a custodian or other person has possession of both the
- 7 electronic record for a deceased settlor's electronic trust
- 8 instrument and a complete converted copy of the same electronic
- 9 trust instrument, the custodian or other person shall deliver both
- 10 to an authorized person who:
- 11 (1) is described in subsection (a); or
- 12 (2) is specified in written instructions left by the settlor.
- 13 If the custodian or other person delivers the electronic trust
- 14 instrument to the clerk of the probate court under subsection
- 15 (a)(8), the custodian or other person shall deliver only a complete
- 16 converted copy of the electronic trust instrument to the clerk,
- 17 unless the court rules or other applicable laws explicitly require
- 18 otherwise.
- 19 Sec. 9. (a) As used in this section, "destroy" means any action
- 20 that:
- 21 (1) permanently deletes the electronic record associated with
- 22 an electronic trust instrument; or
- 23 (2) renders the electronic record associated with an electronic
- 24 trust instrument unreadable and nonretrievable.
- 25 (b) Any custodian or attorney holding an electronic trust
- 26 instrument may destroy the electronic record associated with the
- 27 electronic trust instrument and any accompanying document
- 28 integrity evidence at any time after the:
- 29 (1) fifth anniversary of any will belonging to the settlor is
- 30 admitted to probate;
- 31 (2) fifth anniversary of the date on which the custodian ceases
- 32 to have custody of the electronic trust instrument;
- 33 (3) tenth anniversary of the settlor's death;
- 34 (4) one hundredth anniversary of the execution of the
- 35 electronic trust instrument; or
- 36 (5) valid revocation of the electronic trust instrument.
- 37 (c) Notwithstanding subsection (b), this section does not require
- 38 a custodian, attorney, or other person in possession of a complete
- 39 converted copy of an electronic trust instrument to destroy the
- 40 complete converted copy of the electronic trust instrument.
- 41 Sec. 10. Whenever this chapter requires or permits a custodian
- 42 or other person to make an affidavit of regularity with respect to



1 an electronic trust instrument or a complete converted copy, the
 2 custodian or other person responsible for the creation of the
 3 affidavit of regularity may use the following format for the
 4 affidavit:

5 **"Affidavit of Regularity for Electronic Trust Instrument**

6 **(1) Beginning on (insert date of first possession of the**
 7 **electronic trust instrument by the signer of this affidavit) and**
 8 **continuing to the date and time of this affidavit, the**
 9 **undersigned person has had possession of (circle all of the**
 10 **following that apply):**

11 (A) The electronic record for the electronic trust
 12 instrument.

13 (B) A complete converted copy of the electronic trust
 14 instrument of (insert name of settlor), which was
 15 electronically executed on (insert date of electronic signing
 16 or insert reference to time stamp).

17 (2) (Insert client number, customer number, document
 18 number, or other unique identifier as applicable) is the unique
 19 identifier that the undersigned person assigned to this
 20 electronic trust instrument in the undersigned person's
 21 records.

22 (3) The undersigned person believes that the settlor (circle one
 23 the following options):

24 (A) Is alive.

25 (B) Died on or about (insert date of death) and believes
 26 that the trust is currently (circle one (1) of the following
 27 options):

28 (i) Revocable.

29 (ii) Irrevocable.

30 (4) The undersigned person is (circle all of the following that
 31 apply):

32 (A) Transferring custody of the electronic record for the
 33 electronic trust instrument to the living settlor of the
 34 electronic trust instrument.

35 (B) Transferring custody of the electronic record for the
 36 electronic trust instrument to (insert name and address of
 37 successor custodian).

38 (C) Transferring a complete converted copy of the
 39 electronic trust instrument to (insert name and address of
 40 authorized recipient).

41 (D) Transferring a complete converted copy of the
 42 electronic trust instrument to the clerk of the (insert name



- 1 the court) that would have subject matter jurisdiction over
2 the trust.
- 3 **(5) The undersigned person is transferring or submitting the**
4 **electronic record in the following format: (specify format).**
- 5 **(6) If the undersigned person is transferring or submitting the**
6 **electronic record for the electronic trust instrument, the**
7 **undersigned person affirms, under penalty of perjury, that**
8 **the electronic record has been in the undersigned person's**
9 **possession or control for the period stated in paragraph (1)**
10 **and that during this period, the electronic record showed no**
11 **indication of unauthorized alteration or tampering.**
- 12 **(7) The undersigned person affirms, under penalty of perjury,**
13 **that (circle one (1) of the following options):**
- 14 **(A) The undersigned person has no knowledge of the**
15 **settlor's later execution of any document that amends,**
16 **revokes, or supersedes the electronic trust instrument**
17 **described in paragraph (1).**
- 18 **(B) The undersigned believes that the settlor purportedly**
19 **amended or revoked the electronic trust instrument**
20 **described in paragraph (1) on (insert date if known or**
21 **approximate time frame if date is not known), by (insert**
22 **known details concerning the settlor's amendment or**
23 **revocation).**
- 24 **(8) The undersigned person is (circle all of the following that**
25 **apply):**
- 26 **(A) The living settlor who executed the electronic trust**
27 **instrument.**
- 28 **(B) An attorney admitted to practice law in the state of**
29 **Indiana.**
- 30 **(C) A currently serving trustee named in or appointed**
31 **under the terms of the trust.**
- 32 **(D) An attorney in fact or other person acting on written**
33 **authority of the settlor.**
- 34 **(E) A successor trustee nominated in the electronic trust**
35 **instrument.**
- 36 **(F) An interested person with respect to the administration**
37 **of the trust.**
- 38 **(G) A custodian currently in compliance with all applicable**
39 **requirements under IC 29-1-21-10.**
- 40 **(9) (Insert date and time of custodian or other person's**
41 **signature).**
- 42 **(10) (Insert name and signature of custodian or other person**



1 signing. Insert job title or position of signatory if signatory is
2 not an individual (natural person)."

3 **Sec. 11. (a) Regardless of the number of custodians or other**
4 **persons who receive, hold, or transfer copies of an electronic**
5 **record for an electronic trust instrument to other custodians, other**
6 **authorized persons, or to the settlor:**

7 (1) the electronic record, including any accompanying
8 document integrity evidence (if applicable) is prima facie
9 evidence of:

10 (A) the validity of the electronic trust instrument; and

11 (B) freedom from unauthorized alteration or tampering
12 unless evidence of alteration or tampering is evident on the
13 face of the electronic record;

14 (2) a complete converted copy of an electronic trust
15 instrument is prima facie evidence of:

16 (A) the validity of the electronic trust instrument; and

17 (B) freedom from unauthorized alteration or tampering;
18 if the electronic trust instrument was executed in compliance
19 with this chapter; and

20 (3) except when required by an order of the court, a custodian
21 or other person is not required to make or issue an affidavit
22 regarding the custodian's or other person's custody of the
23 electronic record for an electronic trust instrument or custody
24 of a complete converted copy of the electronic trust
25 instrument. Any custodian or other person may, however,
26 make an affidavit of regularity under section 10 of this
27 chapter if any objection is asserted or any doubt is raised
28 concerning the validity of the electronic trust instrument or
29 about any alleged unauthorized alteration of or tampering
30 with the electronic trust instrument.

31 (b) The presumption of:

32 (1) validity; and

33 (2) freedom from unauthorized alteration or tampering;

34 described in subsection (a) may be rebutted by clear and
35 convincing evidence of the settlor's execution of another electronic
36 trust instrument or traditional paper trust instrument at a later
37 date.

38 **Sec. 12. Any interested person who petitions or otherwise seeks**
39 **to docket an electronic trust instrument under IC 30-4-6 may file**
40 **with the clerk of the court a complete converted copy of the**
41 **electronic trust instrument.**

42 **Sec. 13. (a) For purposes of IC 29-3, IC 30-5, and IC 32-39:**



- 1 **(1) the electronic record for an electronic trust instrument is**
 2 **a "digital asset" as defined in IC 32-39-1-10;**
 3 **(2) the electronic record for an electronic trust instrument is**
 4 **not an "electronic communication" as defined in 18 U.S.C.**
 5 **2510(12) or IC 32-39-1-12;**
 6 **(3) the digital or electronic transfer of an electronic record for**
 7 **an electronic trust instrument between any two (2) persons**
 8 **other than the settlor and the settlor's attorney is an**
 9 **"electronic communication" as defined in 18 U.S.C. 2510(12)**
 10 **or IC 32-39-1-12;**
 11 **(4) a custodian of an electronic trust instrument is also a**
 12 **"custodian" as defined in IC 32-39-1-8; and**
 13 **(5) the:**
 14 **(A) settlor of an electronic trust instrument;**
 15 **(B) trustee of a trust; or**
 16 **(C) attorney representing the settlor, trustee, or another**
 17 **person with authorized possession of or authorized access**
 18 **to the electronic record for an electronic trust instrument;**
 19 **is a "user" for purposes of IC 32-39 if the settlor, trustee,**
 20 **attorney, or other authorized person contracts with another**
 21 **person to store the electronic record for the electronic trust**
 22 **instrument.**
 23 **(b) The execution or revocation of an electronic trust instrument**
 24 **may be a contract of a "transaction in or affecting interstate or**
 25 **foreign commerce" for purposes of the federal E-sign Act (15**
 26 **U.S.C. 7001).**
 27 **(c) The execution or revocation of an electronic trust instrument**
 28 **is subject to IC 26-2-8 unless there is a conflict between IC 26-2-8**
 29 **and any provision contained in this article. In the event of a conflict**
 30 **between IC 26-2-8 and a provision of this article, the provision in**
 31 **this article shall control.**
 32 **SECTION 4. IC 30-5-11 IS ADDED TO THE INDIANA CODE AS**
 33 **A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY**
 34 **1, 2018]:**
 35 **Chapter 11. Electronic Powers of Attorney**
 36 **Sec. 1. The purpose of this chapter is to provide rules for the**
 37 **valid execution, amendment, and revocation of powers of attorney**
 38 **that are prepared and signed electronically. This chapter shall be**
 39 **applied fairly and flexibly so that a principal whose identity can be**
 40 **verified, who has capacity, and who is acting free from undue**
 41 **duress and undue influence may execute a valid electronic power**
 42 **of attorney consistent with the principal's intent. If an electronic**



1 power of attorney is electronically signed by the principal and is
 2 maintained as an electronic record or as a complete converted copy
 3 in compliance with this chapter, the normal presumptions that
 4 apply to a traditional paper power of attorney apply to the
 5 electronic power of attorney.

6 Sec. 2. (a) Except as provided in subsection (b), electronic
 7 powers of attorney are exclusively governed by this chapter.

8 (b) If this chapter does not provide an explicit definition, form,
 9 rule, or statute concerning the creation, execution, interpretation,
 10 storage, or use of an electronic power of attorney, the applicable
 11 statute from this article applies to the electronic power of attorney.

12 Sec. 3. The following terms are defined for this chapter:

13 (1) "Affidavit of regularity" means an affidavit executed by
 14 a custodian or other person under section 9 of this chapter
 15 with respect to the electronic record for an electronic power
 16 of attorney or a complete converted copy of an electronic
 17 power of attorney.

18 (2) "Complete converted copy" means a document in any
 19 format that:

20 (A) can be visually viewed in its entirety on a monitor or
 21 other display device;

22 (B) can be printed; and

23 (C) contains the text of an electronic power of attorney and
 24 a readable copy of any associated document integrity
 25 evidence that may be a part of or attached to the electronic
 26 power of attorney.

27 (3) "Custodian" means a person other than:

28 (A) the principal who executed the electronic power of
 29 attorney;

30 (B) an attorney; or

31 (C) a person who is named in the electronic power of
 32 attorney as an attorney in fact or successor attorney in fact
 33 under the power of attorney.

34 (4) "Custody" means the authorized possession and control of
 35 at least one (1) of the following:

36 (A) A complete copy of the electronic record for the
 37 electronic power of attorney.

38 (B) A complete converted copy of the electronic power of
 39 attorney if the complete electronic record has been lost or
 40 destroyed or the electronic power of attorney has been
 41 revoked.

42 (5) "Document integrity evidence" means the part of the



- 1 **electronic record for the electronic power of attorney that:**
 2 **(A) is created and maintained electronically;**
 3 **(B) includes digital markers showing that the electronic**
 4 **power of attorney has not been altered after its initial**
 5 **execution by the principal;**
 6 **(C) is logically associated with the electronic power of**
 7 **attorney in a tamper evident manner so that any change**
 8 **made to the text of the electronic power of attorney after**
 9 **its execution is visibly perceptible when the electronic**
 10 **record is displayed or printed;**
 11 **(D) displays any changes made to the text of the electronic**
 12 **power of attorney after its execution; and**
 13 **(E) displays the following information:**
 14 **(i) The city, state, date, and time the electronic power of**
 15 **attorney was executed by the principal.**
 16 **(ii) The name of the principal.**
 17 **(iii) The name and address of the person responsible for**
 18 **marking the principal's signature on the electronic**
 19 **power of attorney at the principal's direction and in the**
 20 **principal's presence, as applicable.**
 21 **(iv) A copy of or a link to the electronic signature of the**
 22 **principal on the electronic power of attorney.**
 23 **(v) A general description of the type of identity**
 24 **verification evidence used to verify the principal's**
 25 **identity.**
 26 **Document integrity evidence may, but is not required to,**
 27 **contain other information about the electronic power of**
 28 **attorney such as a unique document number, client number,**
 29 **or other identifier that an attorney or custodian assigns to the**
 30 **electronic power of attorney or a link to a secure Internet web**
 31 **site where a complete copy of the electronic power of attorney**
 32 **is accessible. The title, heading, or label, if any, that is**
 33 **assigned to the document integrity evidence (such as**
 34 **"certificate of completion", "audit trail", or "audit log" is**
 35 **immaterial).**
 36 **(6) "Electronic" has the meaning set forth in IC 26-2-8-102.**
 37 **(7) "Electronic power of attorney" means a power of attorney**
 38 **created by a principal that:**
 39 **(A) is initially created and maintained as an electronic**
 40 **record;**
 41 **(B) contains the electronic signature of the principal**
 42 **creating the power of attorney;**



- 1 (C) contains the date and time of the electronic signature
 2 of the principal creating the power of attorney; and
 3 (D) is notarized.
 4 The term includes an amendment to or a restatement of the
 5 power of attorney if the amendment or restatement complies
 6 with the requirements described in section 5 of this chapter.
 7 (8) "Electronic record" has the meaning set forth in
 8 IC 26-2-8-102. The term may include one (1) or both of the
 9 following:
 10 (A) The document integrity evidence associated with an
 11 electronic power of attorney.
 12 (B) The identity verification evidence of the principal who
 13 executed the electronic power of attorney.
 14 (9) "Electronic signature" has the meaning set forth in
 15 IC 26-2-8-102.
 16 (10) "Executed" means the signing of a power of attorney.
 17 The term includes the use of an electronic signature.
 18 (11) "Identity verification evidence" means either:
 19 (A) a copy of a government issued photo identification card
 20 belonging to the principal; or
 21 (B) any other information that verifies the identity of the
 22 principal if derived from one (1) or more of the following
 23 sources:
 24 (i) A knowledge based authentication method.
 25 (ii) A physical device.
 26 (iii) A digital certificate using a public key
 27 infrastructure.
 28 (iv) A verification or authorization code sent to or used
 29 by the principal.
 30 (v) Biometric identification.
 31 (vi) Any other commercially reasonable method for
 32 verifying the principal's identity using current or future
 33 technology.
 34 (12) "Logically associated" means electronically connected,
 35 cross referenced, or linked in a reliable manner.
 36 (13) "Sign" means valid use of a properly executed electronic
 37 signature.
 38 (14) "Signature" means the authorized use of the principal's
 39 name to authenticate a power of attorney. The term includes
 40 an electronic signature.
 41 (15) "Tamper evident" means the feature of an electronic
 42 record, such as an electronic power of attorney or document



1 integrity evidence for an electronic power of attorney, that
 2 will cause any alteration or tampering of the electronic
 3 record, after it is created or signed, to be perceptible to any
 4 person viewing the electronic record when it is printed on
 5 paper or viewed on a monitor or other display device.

6 (16) "Traditional paper power of attorney" means a power of
 7 attorney or an amendment to or a restatement of a power of
 8 attorney that is signed by the principal on paper.

9 Sec. 4. (a) A principal, or person acting at the principal's
 10 direction, may, in the presence of a notary, create a valid power of
 11 attorney by electronically signing an electronic power of attorney.

12 (b) The:

- 13 (1) principal;
 14 (2) attorney in fact under the electronic power of attorney;
 15 (3) attorney representing the principal or attorney in fact; or
 16 (4) other person authorized by the principal;

17 may use the electronic record to make a complete converted copy
 18 of the electronic power of attorney on or near the time of its
 19 execution or at a later time when the full electronic record is
 20 available.

21 (c) A complete converted copy derived from a complete and
 22 correct electronic power of attorney may be offered and admitted
 23 into evidence as though it were an original and traditional paper
 24 power of attorney without the need for additional proof or
 25 evidence of authenticity. Whenever this article permits or requires
 26 an attorney in fact to provide a copy of a power of attorney to an
 27 interested person, the attorney in fact may provide a complete
 28 converted copy of the electronic power of attorney. A complete and
 29 converted copy is conclusive evidence of the power of attorney's
 30 terms unless otherwise determined by a court in an order entered
 31 upon notice to all interested persons and after an opportunity for
 32 a hearing.

33 Sec. 5. (a) If the principal created or last amended a power of
 34 attorney by electronically signing an electronic power of attorney,
 35 the principal may amend or revoke the power of attorney as
 36 follows:

37 (1) By complying with a method provided in the terms of the
 38 power of attorney and making either an electronic signature
 39 or an ordinary signature on paper to confirm the amendment
 40 or the revocation.

41 (2) By performing one (1) or more of the following if the terms
 42 of the power of attorney do not specify a method for



1 amendment or revocation or do not specify an exclusive
2 method for amending or revoking the electronic power of
3 attorney:

4 (A) Using the principal's electronic signature on an
5 electronic record to manifest clear and convincing intent
6 on behalf of the principal to amend or revoke the power of
7 attorney and to specify the desired amendments or
8 revocation.

9 (B) Using the principal's written signature on a paper
10 record to manifest clear and convincing intent on behalf of
11 the principal to amend or revoke the power of attorney
12 and to specify the desired amendments or revocation.

13 (C) By:

14 (i) permanently deleting each copy of the electronic
15 record for the electronic power of attorney that is in the
16 principal's possession or control; or

17 (ii) rendering each copy of the electronic record
18 unreadable and nonretrievable;

19 if the principal is not using a custodian to store the
20 electronic record.

21 (D) By transmitting or giving the custodian of the
22 electronic power of attorney a written or electronic record
23 of the desired amendment or revocation that:

24 (i) is signed by the principal; and

25 (ii) directs the custodian to permanently delete the
26 electronic record for the electronic power of attorney or
27 to render that electronic record unreadable and
28 nonretrievable;

29 if the principal is using a custodian to store the electronic
30 record.

31 If the principal knows that the electronic record for the electronic
32 power of attorney or a complete converted copy of the electronic
33 power of attorney is in the possession of a custodian, the principal
34 has a duty to use reasonable efforts to provide the custodian with
35 written electronic evidence of the amendment or revocation of the
36 electronic power of attorney.

37 (b) If the principal has possession of the electronic record for an
38 electronic power of attorney that the principal intends to amend or
39 revoke, the principal shall make and save a complete converted
40 copy of the electronic power of attorney before making and saving
41 an amendment or revocation of the electronic power of attorney
42 under subsection (a). If a custodian has possession of an electronic



1 record for an electronic power of attorney that the principal
 2 intends to amend or revoke, the custodian shall make and save a
 3 complete converted copy of the electronic power of attorney as it
 4 existed originally before rendering the electronic record or
 5 electronic power of attorney unreadable or nonretrievable for
 6 potential use in evidence in the event that the validity of an
 7 amendment or revocation is later challenged.

8 **Sec. 6. (a) Any person, with the written authorization of the**
 9 **principal, may maintain, receive, or transfer custody of:**

- 10 (1) the electronic record for an electronic power of attorney
 11 (and any accompanying document integrity evidence); or
 12 (2) a complete converted copy of the electronic power of
 13 attorney.

14 **A principal may identify and designate an adult individual as the**
 15 **custodian of the electronic power of attorney within the electronic**
 16 **record associated with the electronic power of attorney.**

17 **(b) A custodian of an electronic power of attorney and any**
 18 **associated document integrity evidence has the following**
 19 **responsibilities:**

- 20 (1) To use best practices to maintain custody of the electronic
 21 record for the electronic power of attorney and any associated
 22 document integrity evidence.
 23 (2) To use best practices and commercially reasonable means
 24 to maintain the privacy and security of the electronic record
 25 for the electronic power of attorney.
 26 (3) To guard against unauthorized disclosure or tampering
 27 with the electronic record.
 28 (4) To maintain electronic and conceptual separation of
 29 different electronic records and different electronic powers of
 30 attorney associated with different principals if the custodian
 31 maintains two (2) or more electronic powers of attorney for
 32 different principals.
 33 (5) To maintain the ability to promptly generate a complete
 34 converted copy of each electronic power of attorney and any
 35 associated document integrity evidence upon receipt of a
 36 written request for a complete converted copy by the living
 37 principal, the court, or any other authorized person.
 38 (6) To promptly respond to a written instruction from the
 39 living principal or another person with written authorization
 40 originating from the living principal to transfer custody of the
 41 electronic power of attorney to a successor custodian.
 42 (7) To transfer the entire electronic record of the electronic



- 1 power of attorney to a successor custodian upon the receipt of
 2 a written instruction requesting the transfer of the entire
 3 electronic record of an electronic power of attorney to a
 4 successor custodian.
 5 **(8) To provide an executed delivery receipt to the outgoing**
 6 **custodian who transfers:**
 7 **(A) the electronic record;**
 8 **(B) the electronic power of attorney;**
 9 **(C) any accompanying document integrity evidence; or**
 10 **(D) the information pertaining to the format in which the**
 11 **electronic record or electronic power of attorney is**
 12 **received;**
 13 **if the receiving custodian agrees to assume responsibility for**
 14 **an electronic record or an electronic power of attorney and all**
 15 **associated documents from an outgoing custodian.**
 16 **(9) To relinquish control and possession of:**
 17 **(A) the electronic record;**
 18 **(B) the electronic power of attorney; or**
 19 **(C) a complete converted copy of the electronic power of**
 20 **attorney if the custodian only possesses a complete**
 21 **converted copy;**
 22 **to a person authorized by the principal to receive the items**
 23 **described in clauses (A) through (C).**
 24 **(10) To comply with an order of the court requiring the**
 25 **electronic filing or delivery to the court of:**
 26 **(A) the electronic power of attorney and any associated**
 27 **document integrity evidence; or**
 28 **(B) a complete converted copy.**
 29 **(11) To provide an accurate copy of the electronic record for**
 30 **the principal's electronic power of attorney or a complete**
 31 **converted copy of the electronic power of attorney to an**
 32 **interested person who is entitled to receive a copy under the**
 33 **terms of the power of attorney.**
 34 **(12) To furnish, for any court hearing or matter involving an**
 35 **electronic power of attorney currently or previously stored by**
 36 **the custodian, any information requested by the court**
 37 **pertaining to the custodian's policies, practices, or**
 38 **qualifications as they relate to the maintenance, production,**
 39 **or storage of electronic powers of attorney.**
 40 **(c) A proposed successor custodian has no obligation to accept**
 41 **delivery of an electronic power of attorney from an outgoing**
 42 **custodian or to accept the responsibility to maintain custody of the**



1 electronic record for an electronic power of attorney. A successor
 2 custodian's execution of a delivery receipt constitutes acceptance
 3 of:

- 4 (1) the appointment as successor custodian; and
 5 (2) the responsibility to maintain and preserve the accepted
 6 electronic power of attorney.

7 (d) If a custodian wishes to discontinue custody of an electronic
 8 power of attorney, the custodian must send written notice to the
 9 principal or, if the principal's whereabouts are unknown, to the
 10 current attorney in fact or other person holding written authority
 11 from the principal.

12 (e) A written notice described in subsection (d) must inform the
 13 principal, attorney in fact, or other person holding written
 14 authority from the principal that the custodian will transfer
 15 custody of the electronic record to a successor custodian chosen by
 16 the current custodian unless a written instruction is issued to the
 17 current custodian not later than thirty (30) days after the written
 18 notice described in subsection (d) was first issued.

19 (f) If the principal, current attorney in fact, or person holding
 20 written authority from the principal does not respond to a written
 21 notice described in subsection (d) by the end of the thirty (30) day
 22 period described in subsection (e), the custodian may dispose of the
 23 electronic record associated with an electronic power of attorney
 24 in one (1) of the following ways:

25 (1) The current custodian may transfer custody of the
 26 electronic record for the electronic power of attorney to a
 27 successor custodian previously designated in writing by the
 28 principal.

29 (2) The current custodian may transfer custody of the
 30 electronic power of attorney to a successor custodian selected
 31 by the current custodian.

32 (3) The current custodian may transmit a complete converted
 33 copy of the electronic power of attorney trust instrument and
 34 an accompanying affidavit of regularity to the person who
 35 received the thirty (30) day notice described in subsection (e).

36 Sec. 7. (a) After a principal's death becomes known to a
 37 custodian or other person in possession or control of:

- 38 (1) the electronic record associated with the principal's
 39 electronic power of attorney; or
 40 (2) a complete converted copy of the principal's electronic
 41 power of attorney;

42 the custodian or other person in possession of an item described in



1 subdivision (1) or (2) shall deliver an item described in subdivision
2 (1) or (2) to the attorney in fact.

3 (b) A custodian or other person in possession of an item
4 described in subsection (a)(1) or (a)(2) may use any commercially
5 reasonable method of delivery to comply with this section.

6 Sec. 8. (a) As used in this section, "destroy" means any action
7 that:

8 (1) permanently deletes the electronic record associated with
9 an electronic power of attorney; or

10 (2) renders the electronic record associated with an electronic
11 power of attorney unreadable and nonretrievable.

12 (b) Any custodian or attorney holding an electronic power of
13 attorney may destroy the electronic record associated with an
14 electronic power of attorney and any accompanying document
15 integrity evidence at any time after the fifth anniversary of the
16 principal's death.

17 (c) Notwithstanding subsection (b), this section does not require
18 a custodian, attorney, or other person in possession of a complete
19 converted copy of an electronic power of attorney to destroy the
20 complete converted copy of the electronic power of attorney.

21 Sec. 9. Whenever this chapter requires or permits a custodian
22 or other person to make an affidavit of regularity with respect to
23 an electronic power of attorney or a complete converted copy, the
24 custodian or other person responsible for the creation of the
25 affidavit of regularity may use the following format for the
26 affidavit:

27 "Affidavit of Regularity of Electronic Power of Attorney

28 (1) Beginning on (insert date of first possession of the
29 electronic trust instrument by the signer of this affidavit) and
30 continuing to the date and time of this affidavit, the
31 undersigned person has had possession of (circle all of the
32 following that apply):

33 (A) The electronic record for the electronic power of
34 attorney.

35 (B) A complete converted copy of the electronic power of
36 attorney of (insert name of principal), which was
37 electronically executed on (insert date of electronic signing
38 or insert reference to time stamp).

39 (2) (Insert client number, customer number, document
40 number, or other unique identifier as applicable) is the unique
41 identifier that the undersigned person assigned to this
42 electronic power of attorney in the undersigned person's



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- records.
- (3) The undersigned person believes that the principal (circle one (1) of the following options):
- (A) Is alive.
 - (B) Died on or about (insert date of death) and the undersigned person believes that the power of attorney is currently (circle one (1) of the following options):
 - (i) In effect.
 - (ii) Not in effect.
- (4) The undersigned person is (circle all of the following that apply):
- (A) Transferring custody of the electronic record for the electronic power of attorney to the living principal of the electronic power of attorney.
 - (B) Transferring custody of the electronic record for the electronic power of attorney to (insert name and address of successor custodian).
 - (C) Transferring a complete converted copy of the electronic power of attorney to (insert name and address of authorized recipient).
- (5) The undersigned person is transferring or submitting the electronic record in the following format: (specify format).
- (6) If the undersigned person is transferring or submitting the electronic record for the electronic power of attorney, the undersigned person affirms, under penalty of perjury, that the electronic record has been in the undersigned person's possession or control for the period stated in paragraph (1) and that during this period, the electronic record showed no indication of unauthorized alteration or tampering.
- (7) The undersigned person affirms, under penalty of perjury, that (circle one (1) of the following options):
- (A) The undersigned person has no knowledge of the principal's later execution of any document that amends, revokes, or supersedes the electronic power of attorney described in paragraph (1).
 - (B) The undersigned believes that the principal purportedly amended or revoked the electronic power of attorney described in paragraph (1) on (insert date if known or approximate time frame if date is not known), by (insert known details concerning the principal's amendment or revocation).
- (8) The undersigned person is (circle all of the following that



- 1 apply):
- 2 (A) The living principal who executed the electronic trust
- 3 instrument.
- 4 (B) An attorney admitted to practice law in the state of
- 5 Indiana.
- 6 (C) A currently serving attorney in fact appointed under
- 7 or named in the explicit terms of the power of attorney.
- 8 (D) A successor attorney in fact nominated by the
- 9 electronic trust instrument.
- 10 (E) A custodian currently in compliance with all applicable
- 11 requirements.
- 12 (9) (Insert date and time of the custodian's or other person's
- 13 signature).
- 14 (10) (Insert name and signature of custodian or other person
- 15 signing. Insert job title or position of signatory if signatory is
- 16 not an individual (natural person))."
- 17 **Sec. 10. (a) An electronic record, including any accompanying**
- 18 **document integrity evidence contained in the electronic record, is:**
- 19 (1) prima facie evidence of the validity of the electronic power
- 20 of attorney; and
- 21 (2) prima facie evidence of the absence of unauthorized
- 22 alteration or of tampering with the electronic power of
- 23 attorney.
- 24 (b) If an electronic power of attorney appears to have been
- 25 executed in compliance with this chapter, a complete converted
- 26 copy of an electronic power of attorney is prima facie evidence of:
- 27 (1) the validity of the electronic power of attorney; and
- 28 (2) the absence of unauthorized alteration or tampering.
- 29 (c) Except when required by an order of the court, a custodian
- 30 or other person in possession of an electronic record or electronic
- 31 power of attorney is not required to make or issue an affidavit of
- 32 regularity concerning the custody of the electronic record for:
- 33 (1) an electronic power of attorney; or
- 34 (2) a complete converted copy of an electronic power of
- 35 attorney.
- 36 (d) Notwithstanding subsection (c), any:
- 37 (1) custodian; or
- 38 (2) other person in possession of an electronic record or
- 39 electronic power of attorney;
- 40 may make an affidavit of regularity if any objection is asserted or
- 41 any doubt is raised regarding the validity of the electronic power
- 42 of attorney or about any alleged unauthorized alteration of the



1 electronic power of attorney.

2 (e) The presumption of regularity created by this section shall
3 apply to an electronic record or an electronic power of attorney
4 regardless of the number of custodians or other persons who:

- 5 (1) hold;
6 (2) receive; or
7 (3) transfer;

8 an electronic record or electronic power of attorney to another
9 custodian, authorized person, or principal.

10 (f) The presumption of regularity created by this section for an
11 electronic record or electronic power of attorney may be rebutted
12 by:

- 13 (1) clear and convincing evidence; or
14 (2) evidence that the principal executed another electronic
15 power of attorney.

16 Sec. 11. (a) For purposes of IC 29-3, IC 30-5, and IC 32-39:

17 (1) the electronic record for an electronic power of attorney
18 is a "digital asset" as defined in IC 32-39-1-10;

19 (2) the electronic record for an electronic power of attorney
20 is not an "electronic communication" as defined in 18 U.S.C.
21 2510(12) or IC 32-39-1-12;

22 (3) the digital or electronic transfer of an electronic record for
23 an electronic power of attorney between any two (2) persons
24 other than the principal and principal's attorney or the
25 principal and an attorney in fact is an "electronic
26 communication" as defined in 18 U.S.C. 2510(12) or
27 IC 32-39-1-12;

28 (4) a custodian of an electronic power of attorney is also a
29 "custodian" as defined in IC 32-39-1-8; and

30 (5) the:

- 31 (A) principal of an electronic power of attorney;
32 (B) attorney in fact;
33 (C) attorney representing a principal or attorney in fact;
34 or
35 (D) other person with authorized possession of or
36 authorized access to the electronic record for an electronic
37 power of attorney;

38 is a "user" for purposes of IC 32-39 if the person contracts
39 with another person to store the electronic record for the
40 electronic power of attorney.

41 (b) The execution or revocation of an electronic power of
42 attorney may be a contract of a "transaction in or affecting



1 interstate or foreign commerce" for purposes of the federal E-Sign
2 Act (15 U.S.C. 7001).

3 (c) The execution or revocation of an electronic power of
4 attorney is subject to IC 26-2-8 unless there is a conflict between
5 IC 26-2-8 and any provision contained in this article. In the event
6 of a conflict between IC 26-2-8 and a provision of this article, the
7 provision of this article shall control.



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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1303, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 9, line 1, delete "include" and insert "**provide**".

Page 9, line 2, delete "instruction in" and insert "**instruction with**".

Page 9, line 2, delete "body of an".

Page 9, line 2, delete "will and in each" and insert "**will**".

Page 9, delete line 3.

Page 11, line 36, delete "include" and insert "**provide**".

Page 11, line 37, delete "as a viewable, printable part of a completed".

Page 11, line 38, delete "electronic will".

Page 11, between lines 40 and 41, begin a new paragraph and insert:

"(d) A failure to provide the advisory instruction described in subsection (b) may not be the predicate for any form of civil or other liability."

Page 23, line 1, delete "not a public record" and insert "**confidential**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1303 as introduced.)

STEUERWALD

Committee Vote: yeas 9, nays 1.

 HOUSE MOTION

Mr. Speaker: I move that House Bill 1303 be amended to read as follows:

Page 46, line 20, delete "If a complete converted copy is generated from the full".

Page 46, delete lines 21 through 42.

Page 47, delete lines 1 through 19.

HB 1303—LS 7078/DI 123



57

Page 47, line 20, delete "(e)" and insert "(c)".
Renumber all SECTIONS consecutively.

(Reference is to HB 1303 as printed January 23, 2018.)

WASHBURNE

HB 1303—LS 7078/DI 123



Introduced Version

HOUSE BILL No. 1416

DIGEST OF INTRODUCED BILL

Citations Affected: IC 29-1-21.

Synopsis: Statewide electronic wills registry. Authorizes the supreme court and state office of judicial administration to create a statewide electronic wills registry (registry). Provides the supreme court and the state office of judicial administration with rule making authority. Allows certain individuals to deposit the following items into the registry: (1) Information concerning individual testators, electronic wills, or the execution of an electronic will. (2) The electronic record of an electronic will. (3) Any document integrity evidence associated with an electronic will. (4) A digital and readable copy of a complete converted copy of an electronic will. Requires the administrator of the registry to index submitted items according to the following: (1) The name of the testator. (2) The testator's county of residence. (3) The date of execution for any submitted electronic will. (4) The name of any attorney responsible for the preparation or execution of a submitted electronic will. Requires the registry administrator to make the registry index: (1) available to; and (2) searchable by; the public. Requires the registry administrator to keep the substantive content of: (1) any electronic will; (2) any complete converted copy; or (3) all document integrity evidence; private, secure, and inaccessible to the public. Requires the registry administrator to issue a certified report concerning the existence of certain items associated with a specific testator in certain instances. Requires the registry administrator to issue a certified transcript of: (1) an electronic will; (2) a complete converted copy; and (3) any associated document integrity evidence; in certain instances. Allows the registry administrator to charge fees in certain instances. Defines certain terms.

Effective: July 1, 2019.

Richardson

January 16, 2018, read first time and referred to Committee on Judiciary.



Introduced

Second Regular Session of the 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

HOUSE BILL No. 1416

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

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

SECTION 1. IC 29-1-21 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]:

Chapter 21. Electronic Wills Registry

Sec. 1. The following terms are defined for this chapter:

(1) "Complete converted copy" means a document in any format that:

(A) can be visually perceived in its entirety on a monitor or other display device;

(B) can be printed; and

(C) contains the following:

(i) The text of an electronic will.

(ii) The respective electronic signatures of the testator and attesting witnesses.

(iii) A readable copy of all document integrity evidence, if applicable.

(iv) A self-proving affidavit if the electronic will is

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- 1 self-proved.
- 2 (2) "Document integrity evidence" means the part of an
- 3 electronic will's electronic record that:
- 4 (A) is created and maintained electronically;
- 5 (B) includes digital markers to demonstrate that the
- 6 electronic will has not been altered or tampered with after
- 7 its execution;
- 8 (C) is logically associated with the electronic will; and
- 9 (D) includes the following information:
- 10 (i) The city, state, date, and time of the electronic will's
- 11 execution by the testator and attesting witnesses.
- 12 (ii) The text of the self-proving affidavit if the electronic
- 13 will is self-proved.
- 14 (iii) The name of the testator and all attesting witnesses.
- 15 (iv) The name and address of any person responsible for
- 16 signing the testator's signature on the electronic will at
- 17 the testator's direction and in the testator's presence.
- 18 (v) Copies of or links to the electronic signatures of the
- 19 testator and the attesting witnesses.
- 20 (vi) A general description of the type of identity
- 21 verification evidence used to verify the testator's
- 22 identity.
- 23 (3) "Electronic signature" has the meaning set forth in
- 24 IC 26-2-8-102.
- 25 (4) "Electronic will" means the will of a testator that:
- 26 (A) is initially created and maintained as an electronic
- 27 record;
- 28 (B) contains the electronic signatures of the testator and
- 29 attesting witnesses; and
- 30 (C) contains the date and time of the electronic signatures.
- 31 (5) "Index" means the index created by section 2(d) of this
- 32 chapter.
- 33 (6) "Registry" means the statewide electronic wills registry
- 34 described in section 2(a) of this chapter.
- 35 Sec. 2. (a) The supreme court and the state office of judicial
- 36 administration are authorized to establish and administer a
- 37 statewide electronic wills registry under rules adopted by the
- 38 supreme court.
- 39 (b) If permitted under the rules adopted for the registry, the
- 40 testator, testator's lawyer, or any other custodian of the electronic
- 41 will may deposit one (1) or more of the following items in the
- 42 registry:



- 1 **(1) Information concerning:**
 2 **(A) individual testators;**
 3 **(B) electronic wills; or**
 4 **(C) the execution of an electronic will deposited into the**
 5 **registry.**
 6 **(2) The electronic record for an electronic will.**
 7 **(3) Any document integrity evidence associated with an**
 8 **electronic will.**
 9 **(4) A digital and readable copy of a complete converted copy**
 10 **of an electronic will.**
 11 **An item described in this subsection may be deposited into the**
 12 **registry through digital or online means if permitted by the rules**
 13 **adopted for the registry.**
 14 **(c) The administrator of the registry may collect a one (1) time**
 15 **fee for a deposit described in subsection (b). The amount charged**
 16 **under this subsection must:**
 17 **(1) be set by the state office of judicial administration; and**
 18 **(2) be charged at the time of the deposit.**
 19 **(d) The registry administrator shall index each item deposited**
 20 **into the registry according to the following characteristics:**
 21 **(1) The name of the testator.**
 22 **(2) The testator's county of residence.**
 23 **(3) The date of execution for any submitted electronic will.**
 24 **(4) The name of any attorney responsible for the preparation**
 25 **or execution of a submitted electronic will.**
 26 **The registry administrator shall assign a unique document number**
 27 **or identifier to each electronic will deposited into the registry.**
 28 **(e) The administrator of the registry shall make the index**
 29 **created under subsection (d):**
 30 **(1) available to the public; and**
 31 **(2) searchable through digital or online means.**
 32 **The administrator of the registry may not charge a fee for access**
 33 **to or use of the index described in subsection (d).**
 34 **(f) The administrator of the registry shall insure that any**
 35 **information:**
 36 **(1) contained in an electronic will deposited into the registry;**
 37 **and**
 38 **(2) not described in subsection (e);**
 39 **is not accessible or searchable by the public.**
 40 **(g) The administrator, upon receipt of a digital, online, or**
 41 **written request by any interested person, shall issue a certified**
 42 **report specifying whether or not the registry possesses any items**



1 described in subsection (b) for a specific testator. If the registry
2 possesses any items described in subsection (b) for a specific
3 testator, any certified report issued under this subsection must
4 contain the information described in subsection (d) for the
5 applicable testator. The administrator may charge and collect a fee
6 for each report issued under this subsection. A fee charged under
7 this subsection shall:

- 8 (1) be set by the state office of judicial administration; and
9 (2) be assessed at the time the report described in this
10 subsection is issued.

11 (h) Upon the written, digital, or online request of:

- 12 (1) the living testator;
13 (2) an attorney or other person possessing written
14 authorization from a living testator;
15 (3) a person nominated as the personal representative in the
16 electronic will; or
17 (4) any person who is an interested person with respect to the
18 testator's estate following the testator's death;

19 the administrator of the registry shall prepare and issue a certified
20 transcript of the electronic will and all associated items in a form
21 that is suitable to digitally saving and printing.

22 (i) A certified transcript issued under subsection (h) shall consist
23 of:

- 24 (1) the electronic will or a complete converted copy of the
25 electronic will, as applicable; and
26 (2) any document integrity evidence associated with the
27 electronic will, as applicable.

28 The administrator may charge a fee for each transcript issued
29 under this subsection. The amount charged for the issuance of a
30 transcript described under this subsection must be set by the state
31 office of judicial administration and assessed at the time the
32 transcript is issued.

33 (j) A certified report issued under subsection (g) or a certified
34 transcript issued under subsection (h) constitute prima facie
35 evidence of their respective contents and may be filed with a court
36 without further authentication in any proceeding described under
37 IC 29-1-7.



REFERENCE TITLE: *electronic wills and trusts.*

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

HB 2471

Introduced by
Representative Leach

AN ACT

AMENDING TITLE 14, CHAPTER 2, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-2500; AMENDING SECTION 14-2507, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 2, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 14-2518, 14-2519, 14-2520, 14-2521, 14-2522, 14-2523 AND 14-2524; AMENDING SECTIONS 14-3303 AND 14-10103, 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; RELATING TO WILLS AND TRUSTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Title 14, chapter 2, article 5, Arizona Revised
3 Statutes, is amended by adding section 14-2500, to read:
4 14-2500. Definitions
5 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:
6 1. "CERTIFIED PAPER ORIGINAL" MEANS A TANGIBLE DOCUMENT THAT
7 CONTAINS THE TEXT OF AN ELECTRONIC WILL AND ANY SELF-PROVING AFFIDAVIT
8 CONCERNING THE ELECTRONIC WILL.
9 2. "ELECTRONIC NOTARY PUBLIC" HAS THE SAME MEANING PRESCRIBED IN
10 SECTION 41-351.
11 3. "ELECTRONIC RECORD" MEANS A RECORD THAT IS CREATED, GENERATED,
12 SENT, COMMUNICATED, RECEIVED OR STORED BY ELECTRONIC MEANS.
13 4. "ELECTRONIC WILL" MEANS AN INSTRUMENT, INCLUDING A CODICIL, THAT
14 IS EXECUTED BY A PERSON AS PRESCRIBED IN SECTION 14-2518 AND THAT DISPOSES
15 OF THE PROPERTY OF THE PERSON ON OR AFTER THE DEATH OF THE PERSON.
16 5. "QUALIFIED CUSTODIAN" MEANS A PERSON WHO AGREES TO SERVE AS A
17 QUALIFIED CUSTODIAN OF AN ELECTRONIC WILL.
18 Sec. 2. Section 14-2507, Arizona Revised Statutes, is amended to
19 read:
20 14-2507. Revocation of will or electronic will; requirements
21 A. A testator may revoke a will OR ELECTRONIC WILL in whole or in
22 part:
23 1. By executing a subsequent will OR ELECTRONIC WILL that revokes
24 the previous will OR ELECTRONIC WILL or part expressly or by
25 inconsistency.
26 2. By performing a revocatory act on the will if the testator
27 performs the act with this intent or if another person performs the act in
28 the testator's conscious presence and by the testator's direction. For
29 THE purposes of this paragraph, "revocatory act on the will" includes
30 burning, tearing, canceling, obliterating or destroying the will or any
31 part of it. A burning, tearing or canceling is a revocatory act on the
32 will whether or not the burn, tear or cancellation touched any of the
33 words on the will.
34 3. BY CANCELING, RENDERING UNREADABLE OR OBLITERATING AN ELECTRONIC
35 WILL WITH THE INTENTION OF REVOKING IT BY EITHER OF THE FOLLOWING:
36 (a) THE TESTATOR OR A PERSON IN THE PRESENCE AND AT THE DIRECTION
37 OF THE TESTATOR.
38 (b) IF THE ELECTRONIC WILL IS IN THE CUSTODY OF A QUALIFIED
39 CUSTODIAN, THE QUALIFIED CUSTODIAN AT THE DIRECTION OF THE TESTATOR.
40 B. If a subsequent will OR ELECTRONIC WILL does not expressly
41 revoke a previous will OR ELECTRONIC WILL, the execution of the subsequent
42 will OR ELECTRONIC WILL wholly revokes the previous will OR ELECTRONIC
43 WILL by inconsistency if the testator intended the subsequent will OR
44 ELECTRONIC WILL to replace rather than supplement the previous will OR
45 ELECTRONIC WILL.

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1 C. The testator is presumed to have intended a subsequent will OR
2 ELECTRONIC WILL to replace rather than supplement a previous will OR
3 ELECTRONIC WILL if the subsequent will OR ELECTRONIC WILL makes a complete
4 disposition of the testator's estate. If this presumption arises and is
5 not rebutted by clear and convincing evidence, the previous will OR
6 ELECTRONIC WILL is revoked and only the subsequent will is operative on
7 the testator's death.

8 D. The testator is presumed to have intended a subsequent will OR
9 ELECTRONIC WILL to supplement rather than replace a previous will OR
10 ELECTRONIC WILL if the subsequent will OR ELECTRONIC WILL does not make a
11 complete disposition of the testator's estate. If this presumption arises
12 and is not rebutted by clear and convincing evidence, the subsequent will
13 OR ELECTRONIC WILL revokes the previous will OR ELECTRONIC WILL only to
14 the extent the subsequent will OR ELECTRONIC WILL is inconsistent with the
15 previous will OR ELECTRONIC WILL and each will is fully operative on the
16 testator's death to the extent they are not inconsistent.

17 Sec. 3. Title 14, chapter 2, article 5, Arizona Revised Statutes,
18 is amended by adding sections 14-2518, 14-2519, 14-2520, 14-2521, 14-2522,
19 14-2523 and 14-2524, to read:

20 14-2518. Electronic will; requirements; interpretation;
21 definitions

22 A. AN ELECTRONIC WILL MUST MEET ALL OF THE FOLLOWING REQUIREMENTS:

23 1. BE CREATED AND MAINTAINED IN AN ELECTRONIC RECORD.

24 2. CONTAIN THE DATE, THE ELECTRONIC SIGNATURE OF THE TESTATOR AND

25 AT LEAST ONE OF THE FOLLOWING:

26 (a) AN AUTHENTICATION CHARACTERISTIC OF THE TESTATOR.

27 (b) THE ELECTRONIC SIGNATURE AND ELECTRONIC SEAL OF AN ELECTRONIC
28 NOTARY PUBLIC PLACED ON THE WILL IN THE PRESENCE OF THE TESTATOR AND IN
29 WHOSE PRESENCE THE TESTATOR PLACED THE TESTATOR'S ELECTRONIC SIGNATURE ON
30 THE ELECTRONIC WILL.

31 B. A PERSON WHO IS EIGHTEEN YEARS OF AGE OR OLDER AND WHO IS OF
32 SOUND MIND MAY MAKE AN ELECTRONIC WILL.

33 C. EXCEPT AS PROVIDED IN THIS SECTION AND SECTIONS 14-2519,
34 14-2520, 14-2521, 14-2522 AND 14-2523, ANY QUESTION RAISED ABOUT THE
35 FORCE, EFFECT, VALIDITY AND INTERPRETATION OF AN ELECTRONIC WILL SHALL BE
36 DETERMINED IN THE SAME MANNER AS A QUESTION REGARDING A WILL EXECUTED
37 PURSUANT TO SECTION 14-2502.

38 D. THIS SECTION DOES NOT APPLY TO A TRUST EXCEPT A TRUST CONTAINED
39 IN AN ELECTRONIC WILL.

40 E. FOR THE PURPOSES OF THIS SECTION:

41 1. "AUTHENTICATION CHARACTERISTIC" MEANS A CHARACTERISTIC OF A
42 CERTAIN PERSON THAT IS UNIQUE TO THAT PERSON AND THAT IS CAPABLE OF
43 MEASUREMENT AND RECOGNITION IN AN ELECTRONIC RECORD AS A BIOLOGICAL ASPECT
44 OF OR PHYSICAL ACT PERFORMED BY THAT PERSON. AUTHENTICATION
45 CHARACTERISTIC INCLUDES A FINGERPRINT, A RETINAL SCAN, VOICE RECOGNITION,

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1 FACIAL RECOGNITION, A VIDEO RECORDING, A DIGITIZED SIGNATURE OR ANY OTHER
2 COMMERCIALY REASONABLE AUTHENTICATION USING A UNIQUE CHARACTERISTIC OF
3 THE PERSON.

4 2. "DIGITIZED SIGNATURE" MEANS A GRAPHICAL IMAGE OF A HANDWRITTEN
5 SIGNATURE THAT IS CREATED, GENERATED OR STORED BY ELECTRONIC MEANS.

6 14-2519. Self-proved electronic will

7 IN ADDITION TO THE REQUIREMENTS OF SECTION 14-2504, TO BE
8 SELF-PROVED, AN ELECTRONIC WILL MUST MEET ALL OF THE FOLLOWING
9 REQUIREMENTS:

10 1. THE AFFIDAVITS OF ATTESTING WITNESSES ARE INCORPORATED AS PART
11 OF, ATTACHED TO OR LOGICALLY ASSOCIATED WITH THE ELECTRONIC WILL.

12 2. THE ELECTRONIC WILL DESIGNATES A QUALIFIED CUSTODIAN TO MAINTAIN
13 CUSTODY OF THE ELECTRONIC WILL.

14 3. BEFORE BEING OFFERED FOR PROBATE OR BEING REDUCED TO A CERTIFIED
15 PAPER COPY, THE ELECTRONIC WILL IS UNDER THE CUSTODY OF A QUALIFIED
16 CUSTODIAN AT ALL TIMES.

17 14-2520. Qualified custodian

18 A QUALIFIED CUSTODIAN OF AN ELECTRONIC WILL:

19 1. MAY NOT BE AN HEIR OF THE TESTATOR OR A BENEFICIARY OR DEVISEE
20 UNDER THE ELECTRONIC WILL.

21 2. SHALL CONSISTENTLY EMPLOY AND STORE ELECTRONIC RECORDS OF
22 ELECTONIC WILLS IN A SYSTEM THAT PROTECTS ELECTRONIC RECORDS FROM
23 DESTRUCTION, ALTERATION OR UNAUTHORIZED ACCESS AND DETECTS ANY CHANGE TO
24 AN ELECTRONIC RECORD.

25 3. SHALL STORE IN THE ELECTRONIC RECORD OF AN ELECTRONIC WILL EACH
26 OF THE FOLLOWING:

27 (a) A PHOTOGRAPH OR OTHER VISUAL RECORD OF THE TESTATOR AND THE
28 ATTESTING WITNESSES THAT WAS TAKEN CONTEMPORANEOUSLY WITH THE EXECUTION OF
29 THE ELECTRONIC WILL.

30 (b) A PHOTOCOPY, PHOTOGRAPH, FACSIMILE OR OTHER VISUAL RECORD OF
31 ANY DOCUMENTATION THAT WAS TAKEN CONTEMPORANEOUSLY WITH THE EXECUTION OF
32 THE ELECTRONIC WILL AND PROVIDES SATISFACTORY EVIDENCE OF THE IDENTITIES
33 OF THE TESTATOR AND THE ATTESTING WITNESSES, INCLUDING DOCUMENTATION OF
34 THE METHODS OF IDENTIFICATION USED.

35 (c) AN AUDIO AND VIDEO RECORDING OF THE TESTATOR, ATTESTING
36 WITNESSES AND NOTARY PUBLIC, AS APPLICABLE, TAKEN AT THE TIME THE
37 TESTATOR, EACH ATTESTING WITNESS AND NOTARY PUBLIC, AS APPLICABLE, PLACED
38 THE PERSON'S ELECTRONIC SIGNATURE ON THE ELECTRONIC WILL.

39 4. SHALL PROVIDE TO ANY COURT THAT IS HEARING A MATTER INVOLVING AN
40 ELECTRONIC WILL THAT IS CURRENTLY OR WAS PREVIOUSLY STORED BY THE
41 QUALIFIED CUSTODIAN ANY INFORMATION REQUESTED BY THE COURT PERTAINING TO
42 THE QUALIFICATIONS OF THE QUALIFIED CUSTODIAN AND THE POLICIES AND
43 PRACTICES OF THE QUALIFIED CUSTODIAN CONCERNING THE MAINTENANCE, STORAGE
44 AND PRODUCTION OF ELECTRONIC WILLS.

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1 SHALL PROVIDE THE SUCCESSOR QUALIFIED CUSTODIAN WITH BOTH OF THE
2 FOLLOWING:

3 1. THE ELECTRONIC RECORD.

4 2. THE AFFIDAVIT PRESCRIBED BY SUBSECTION C, PARAGRAPH 2,
5 SUBDIVISION (b) OF THIS SECTION.

6 F. IF A QUALIFIED CUSTODIAN IS AN ENTITY, AN AFFIDAVIT OF A DULY
7 AUTHORIZED OFFICER OR AGENT OF THE ENTITY CONSTITUTES THE AFFIDAVIT OF THE
8 QUALIFIED CUSTODIAN.

9 14-2522. Electronic record; access; destruction

10 A. A QUALIFIED CUSTODIAN SHALL PROVIDE ACCESS TO OR INFORMATION
11 CONCERNING THE ELECTRONIC WILL IN THE ELECTRONIC RECORD OR THE CERTIFIED
12 PAPER ORIGINAL OF THE ELECTRONIC WILL ONLY TO:

13 1. THE TESTATOR OR ANOTHER PERSON AS DIRECTED BY THE WRITTEN
14 INSTRUCTIONS OF THE TESTATOR.

15 2. AFTER THE DEATH OF THE TESTATOR, THE NOMINATED PERSONAL
16 REPRESENTATIVE OF THE TESTATOR OR ANY INTERESTED PERSON.

17 B. A QUALIFIED CUSTODIAN MAY DESTROY THE ELECTRONIC RECORD ANY
18 TIME:

19 1. FIVE OR MORE YEARS AFTER THE ADMISSION OF ANY WILL OF THE
20 TESTATOR TO PROBATE.

21 2. FIVE OR MORE YEARS AFTER THE REVOCATION OF THE ELECTRONIC WILL.

22 3. FIVE OR MORE YEARS AFTER CEASING TO SERVE AS THE QUALIFIED
23 CUSTODIAN OF THE ELECTRONIC RECORD OF THE ELECTRONIC WILL.

24 4. TEN OR MORE YEARS AFTER THE DEATH OF THE TESTATOR.

25 5. ONE HUNDRED FIFTY YEARS AFTER THE EXECUTION OF THE ELECTRONIC
26 WILL.

27 C. A QUALIFIED CUSTODIAN SHALL CANCEL, RENDER UNREADABLE OR
28 OBLITERATE THE ELECTRONIC RECORD IF THE TESTATOR DIRECTS THE QUALIFIED
29 CUSTODIAN TO DO SO IN A WRITING EXECUTED WITH THE SAME FORMALITIES
30 REQUIRED FOR THE EXECUTION OF AN ELECTRONIC WILL.

31 14-2523. Certified paper original of electronic record;
32 affidavits

33 A. ON THE CREATION OF A CERTIFIED PAPER ORIGINAL OF AN ELECTRONIC
34 WILL, IF THE ELECTRONIC WILL HAS ALWAYS BEEN IN THE CUSTODY OF A QUALIFIED
35 CUSTODIAN, THE QUALIFIED CUSTODIAN SHALL STATE IN AN AFFIDAVIT ALL OF THE
36 FOLLOWING:

37 1. THAT THE QUALIFIED CUSTODIAN IS ELIGIBLE TO ACT AS A QUALIFIED
38 CUSTODIAN IN THIS STATE AND IS THE QUALIFIED CUSTODIAN DESIGNATED BY THE
39 TESTATOR IN THE ELECTRONIC WILL OR WAS DESIGNATED TO ACT IN THAT CAPACITY
40 BY ANOTHER QUALIFIED CUSTODIAN PURSUANT TO SECTION 14-2521, SUBSECTION C,
41 PARAGRAPH 2.

42 2. THAT AN ELECTRONIC RECORD WAS CREATED AT THE TIME THE TESTATOR
43 EXECUTED THE ELECTRONIC WILL.

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1 3. THAT THE ELECTRONIC RECORD HAS BEEN IN THE CUSTODY OF ONE OR
2 MORE QUALIFIED CUSTODIANS SINCE THE EXECUTION OF THE ELECTRONIC WILL AND
3 HAS NOT BEEN ALTERED SINCE THE TIME IT WAS CREATED.

4 4. THE IDENTITY OF ALL QUALIFIED CUSTODIANS WHO HAVE HAD CUSTODY OF
5 THE ELECTRONIC RECORD SINCE THE EXECUTION OF THE ELECTRONIC WILL.

6 5. THAT THE CERTIFIED PAPER ORIGINAL IS A TRUE, CORRECT AND
7 COMPLETE TANGIBLE MANIFESTATION OF THE ELECTRONIC WILL.

8 6. THAT THE RECORDS DESCRIBED IN SECTION 14-2520, PARAGRAPH 3 ARE
9 IN THE CUSTODY OF THE QUALIFIED CUSTODIAN.

10 B. ON THE CREATION OF A CERTIFIED PAPER ORIGINAL OF AN ELECTRONIC
11 WILL, IF THE ELECTRONIC WILL HAS NOT ALWAYS BEEN IN THE CUSTODY OF A
12 QUALIFIED CUSTODIAN, THE PERSON WHO DISCOVERED THE ELECTRONIC WILL AND THE
13 PERSON WHO REDUCED THE ELECTRONIC WILL TO THE CERTIFIED PAPER ORIGINAL
14 SHALL EACH STATE IN AN AFFIDAVIT ALL OF THE FOLLOWING TO THE BEST OF EACH
15 PERSON'S KNOWLEDGE:

16 1. WHEN THE ELECTRONIC WILL WAS CREATED, IF NOT INDICATED IN THE
17 ELECTRONIC WILL.

18 2. WHEN, HOW AND BY WHOM THE ELECTRONIC WILL WAS DISCOVERED.

19 3. THE IDENTITY OF EACH PERSON WHO HAS HAD ACCESS TO THE ELECTRONIC
20 WILL.

21 4. THE METHOD IN WHICH THE ELECTRONIC WILL WAS STORED AND THE
22 SAFEGUARDS IN PLACE TO PREVENT ALTERATIONS TO THE ELECTRONIC WILL.

23 5. WHETHER THE ELECTRONIC WILL HAS BEEN ALTERED SINCE ITS
24 EXECUTION.

25 6. THAT THE CERTIFIED PAPER ORIGINAL IS A TRUE, CORRECT AND
26 COMPLETE TANGIBLE MANIFESTATION OF THE ELECTRONIC WILL.

27 C. FOR THE PURPOSES OF MAKING THE AFFIDAVIT PRESCRIBED BY
28 SUBSECTION A OF THIS SECTION, THE QUALIFIED CUSTODIAN MAY RELY
29 CONCLUSIVELY ON ANY AFFIDAVITS PROVIDED BY A PREDECESSOR QUALIFIED
30 CUSTODIAN.

31 14-2524. Video recording or other electronic record;
32 admissibility

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

35 1. THE PROPER EXECUTION OF A WILL.

36 2. THE INTENTIONS OF THE TESTATOR.

37 3. THE MENTAL STATE OR CAPACITY OF THE TESTATOR.

38 4. THE AUTHENTICITY OF THE WILL.

39 5. MATTERS THAT ARE DETERMINED BY THE COURT TO BE RELEVANT TO THE
40 PROBATE OF A WILL.

41 Sec. 4. Section 14-3303, Arizona Revised Statutes, is amended to
42 read:

43 14-3303. Informal probate: proof and findings required

44 A. In an informal proceeding for original probate of a will, the
45 registrar shall determine whether:

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- 1 1. The application is complete.
- 2 2. The applicant has made oath or affirmation that the statements
3 contained in the application are true to the best of his knowledge and
4 belief.
- 5 3. The applicant appears from the application to be a person
6 permitted to apply as provided in section 14-3301, subsection A.
- 7 4. On the basis of the statements in the application, venue is
8 proper.
- 9 5. An original, duly executed and apparently unrevoked will is in
10 the registrar's possession. **AN ORIGINAL WILL INCLUDES A CERTIFIED PAPER**
11 **ORIGINAL OF AN ELECTRONIC WILL.**
- 12 6. Any notice required by section 14-3204 has been given and that
13 the application is not within section 14-3304.
- 14 7. It appears from the application that the time limit for original
15 probate has not expired.
- 16 B. The application shall be denied if it indicates that a personal
17 representative has been appointed in another county of this state or
18 except as provided in subsection D of this section, if it appears that
19 this or another will of the decedent has been the subject of a previous
20 probate order.
- 21 C. A will ~~which~~ **THAT** appears to have the required signatures and
22 ~~which~~ **THAT** contains an attestation clause showing that requirements of
23 execution under chapter 2, article 5 of this title have been met shall be
24 probated without further proof. In other cases, the registrar may assume
25 execution if the will appears to have been properly executed, or he may
26 accept a sworn statement or affidavit of any person having knowledge of
27 the circumstances of execution, whether or not the person was a witness to
28 the will.
- 29 D. Informal probate of a will ~~which~~ **THAT** has been previously
30 probated in another jurisdiction may be granted at any time ~~upon~~ **ON**
31 written application by any interested person, together with deposit of a
32 certified copy of the will and of the statement probating it from the
33 office or court where it was first probated.
- 34 E. A will from a place ~~which~~ **THAT** does not provide for probate of a
35 will after death and ~~which~~ **THAT** is not eligible for probate under
36 subsection A of this section may be probated in this state ~~upon~~ **ON** receipt
37 by the registrar of a duly authenticated copy of the will and a duly
38 authenticated certificate of its legal custodian that the copy filed is a
39 true copy and that the will has become operative under the law of the
40 other place.
- 41 Sec. 5. Section 14-10103, Arizona Revised Statutes, is amended to
42 read:
- 43 14-10103. **Definitions**
- 44 In this chapter, unless the context otherwise requires:

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- 1 1. "Action", with respect to an act of a trustee, includes a
2 failure to act.
- 3 2. "Beneficiary" means a person who either:
4 (a) Has a present or future beneficial interest in a trust, vested
5 or contingent.
6 (b) In a capacity other than that of a trustee, holds a power of
7 appointment over trust property.
- 8 3. "Charitable trust" means a trust, or portion of a trust, created
9 for a charitable purpose described in section 14-10405, subsection A.
- 10 4. "Conservator" means a person appointed by the court to
11 administer the estate of a minor or an adult.
- 12 5. "Distributee" means a person who receives property from a trust
13 other than as a creditor or purchaser.
- 14 6. "ELECTRONIC RECORD" HAS THE SAME MEANING PRESCRIBED IN SECTION
15 44-7002.
- 16 7. "ELECTRONIC SIGNATURE" HAS THE SAME MEANING PRESCRIBED IN
17 SECTION 44-7002.
- 18 8. "ELECTRONIC TRUST INSTRUMENT" MEANS A TRUST INSTRUMENT THAT
19 MEETS THE REQUIREMENTS PRESCRIBED IN SECTION 14-10419.
- 20 ~~6.~~ 9. "Environmental law" means a federal, state or local law,
21 rule, regulation or ordinance relating to protection of the environment.
- 22 ~~7.~~ 10. "Guardian" means a person appointed by the court to make
23 decisions regarding the support, care, education, health and welfare of a
24 minor or an adult. Guardian does not include a guardian ad litem.
- 25 ~~8.~~ 11. "Interests of the beneficiaries" means the beneficial
26 interests provided in the terms of the trust.
- 27 ~~9.~~ 12. "Internal revenue code" has the same meaning prescribed in
28 section 43-105.
- 29 ~~10.~~ 13. "Jurisdiction", with respect to a geographic area,
30 includes a state or country.
- 31 ~~11.~~ 14. "Person" means an individual, corporation, business trust,
32 estate, trust, partnership, limited liability company, association, joint
33 venture, government, governmental subdivision, agency or instrumentality,
34 public corporation or any other legal or commercial entity.
- 35 ~~12.~~ 15. "Power of withdrawal" means a presently exercisable
36 general power of appointment other than a power exercisable either:
37 (a) By a trustee and limited by an ascertainable standard.
38 (b) By a person other than in a fiduciary capacity and only on the
39 consent of the trustee or a person holding an adverse interest.
- 40 ~~13.~~ 16. "Property" means anything that may be the subject of
41 ownership, whether real or personal, legal or equitable, or any interest
42 in anything that may be the subject of ownership.
- 43 ~~14.~~ 17. "Qualified beneficiary" means a beneficiary who, on the
44 date the beneficiary's qualification is determined:

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

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

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

8 ~~15:~~ 18. "Revocable", as applied to a trust or a portion of a
9 trust, means revocable by a settlor without the consent of any person,
10 including the trustee or a person who holds an interest that is either
11 adverse or not adverse.

12 ~~16:~~ 19. "Settlor" means a person, including a testator, who
13 creates or contributes property to a trust. If more than one person
14 creates or contributes property to a trust, each person is a settlor of
15 the portion of the trust property attributable to that person's
16 contribution except to the extent another person has the power to revoke
17 or withdraw that portion.

18 ~~17:~~ 20. "Special needs trust" means a trust established for the
19 benefit of one or more persons with disabilities if one of the purposes of
20 the trust, expressed in the trust instrument or implied from the trust
21 instrument, is to allow the person with a disability to qualify or
22 continue to qualify for public, charitable or private benefits that might
23 otherwise be available to the person with a disability. The existence of
24 one or more remainder beneficiaries without a disability of the trust
25 shall not disqualify it as a special needs trust for the purposes of this
26 paragraph. For the purposes of this paragraph, "person with a disability"
27 means an individual who has a disability pursuant to 42 United States Code
28 section 1382c.

29 ~~18:~~ 21. "Spendthrift provision" means a term of a trust that
30 restrains either voluntary or involuntary transfer of a beneficiary's
31 interest.

32 ~~19:~~ 22. "State" means a state of the United States, the District
33 of Columbia, Puerto Rico, the United States Virgin Islands or any
34 territory or insular possession subject to the jurisdiction of the United
35 States. State includes an Indian tribe or band recognized by federal law
36 or formally acknowledged by a state.

37 ~~20:~~ 23. "Terms of a trust" means the manifestation of the
38 settlor's intent regarding a trust's provisions as expressed in the trust
39 instrument or as may be established by other evidence that would be
40 admissible in a judicial proceeding.

41 ~~21:~~ 24. "Trust instrument" means an instrument executed by the
42 settlor that contains terms of the trust, including any amendments to that
43 trust.

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1 ~~22.~~ 25. "Trustee" includes an original, additional and successor
2 trustee and a cotrustee.

3 26. "WRITING" OR "WRITTEN" INCLUDES THE USE OF AN ELECTRONIC TRUST
4 OR ELECTRONIC WILL.

5 Sec. 6. Title 14, chapter 11, article 2, Arizona Revised Statutes,
6 is amended by adding section 14-10206, to read:

7 14-10206. Video recording or other electronic record;
8 admissibility; execution in this state

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

- 11 1. THE PROPER EXECUTION OF A TRUST INSTRUMENT.
- 12 2. THE INTENTIONS OF THE SETTLOR.
- 13 3. THE MENTAL STATE OR CAPACITY OF THE SETTLOR.
- 14 4. THE AUTHENTICITY OF THE TRUST INSTRUMENT.

15 5. MATTERS THAT ARE DETERMINED BY THE COURT TO BE RELEVANT TO THE
16 ADMINISTRATION OF A TRUST.

17 Sec. 7. Title 14, chapter 11, article 4, Arizona Revised Statutes,
18 is amended by adding section 14-10419, to read:

19 14-10419. Electronic trust instrument requirements; execution
20 in this state

21 A. AN ELECTRONIC TRUST INSTRUMENT MUST:

- 22 1. CONTAIN THE ELECTRONIC SIGNATURE OF THE SETTLOR.
- 23 2. BE WRITTEN, CREATED AND STORED IN AN ELECTRONIC RECORD.
- 24 3. MEET THE REQUIREMENTS OF THIS ARTICLE FOR A VALID TRUST.

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

27 1. THE ELECTRONIC TRUST INSTRUMENT IS MAINTAINED BY THE:

28 (a) SETTLOR AT THE SETTLOR'S PLACE OF BUSINESS IN THIS STATE OR AT
29 THE SETTLOR'S RESIDENCE IN THIS STATE.

30 (b) TRUSTEE AT THE TRUSTEE'S PLACE OF BUSINESS IN THIS STATE OR AT
31 THE TRUSTEE'S RESIDENCE IN THIS STATE.

32 2. TRANSMITTED TO AND MAINTAINED BY A CUSTODIAN DESIGNATED IN THE
33 TRUST INSTRUMENT AT THE CUSTODIAN'S PLACE OF BUSINESS IN THIS STATE OR AT
34 THE CUSTODIAN'S RESIDENCE IN THIS STATE.

35 C. THIS SECTION DOES NOT APPLY TO A TESTAMENTARY TRUST.

2018 SESSION

LEGISLATION NOT PREPARED BY DLS
INTRODUCED

18105203D

HOUSE BILL NO. 1403

Offered January 15, 2018

A BILL to amend and reenact §§ 64.2-100, 64.2-403, 64.2-410, 64.2-443, 64.2-452, and 64.2-4545 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 4 of Title 64.2 a section numbered 64.2-403.1, relating to electronic wills.

Patron—Campbell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 5 of Chapter 38 of title 58.1 a section numbered 58.1-3818.01 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, as defined in § 64.2-403.1.

§ 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:

"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.

"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 document 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, an electronic signature or other commercially reasonable authentication using a unique characteristic of the person.

"Authoritative copy" means the original, unique, identifiable and unalterable electronic document of

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59 *an electronic will.*

60 *"Certified paper original" means a tangible document that contains the text of an electronic will and,*
61 *if applicable, a self-proving affidavit concerning the electronic will.*

62 *"Electronic notary public" or "electronic notary" means a notary public who has been commissioned*
63 *by the Secretary of the Commonwealth with the capability of performing electronic notarial acts under*
64 *§ 47.1-7.*

65 *"Electronic document" means information that is created, generated, sent, communicated, received, or*
66 *stored by electronic means.*

67 *"Electronic notary seal" or "electronic seal" means information within a notarized electronic*
68 *document that confirms the notary's name, jurisdiction, and commission expiration date and general*
69 *corresponds to data in notary seals used on paper documents.*

70 *"Electronic signature" means an electronic sound, symbol, or process attached to or logically*
71 *associated with an electronic document and executed or adopted by a person with the intent to sign the*
72 *document.*

73 *"Qualified custodian" means a person who meets the requirements of subdivision E.*

74 *A. An "Electronic Will" is a will of a testator that:*

75 *1. Is created, and maintained in an electronic document; and*

76 *2. Contains the date and the electronic signature of the testator and which includes, without*
77 *limitation, at least one of the following:*

78 *a) The electronic signature and electronic seal of an electronic notary public, placed thereon in the*
79 *presence of the testator and in whose presence the testator placed his or her electronic signature*
80 *thereon; or*

81 *b) The electronic signatures of two or more attesting witnesses, placed there on, in the presence of*
82 *the testator and in whose presence the testator placed his or her electronic signature thereon.*

83 *B. Every person of sound mind over the age of 18 years may, by last electronic will, dispose of all*
84 *of his or her estate, real and personal, but the estate is chargeable with the payment of the testator's*
85 *debts. Except as otherwise provided by law.*

86 *C. An electronic will is made self-proving pursuant to the requirements of § 64.2-452, or if:*

87 *1. The declarations or affidavits of the attesting witnesses are incorporated as part of, attached to or*
88 *logically associated with the electronic will, as prescribed in § 64.2-452 and § 64.2-453;*

89 *2. The electronic will designates a qualified custodian to maintain custody of the electronic document*
90 *of the electronic will;*

91 *3. Each copy of the authoritative copy is readily identifiable as a copy that is not the authoritative*
92 *copy; and*

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

95 *D. A declaration or affidavit of an attesting witness and an affidavit of a person made pursuant to*
96 *this section must be accepted by a court as if made before the court.*

97 *E. A qualified custodian of an electronic will:*

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

99 *2. Shall consistently employ, and store electronic documents of electronic wills in, a system that*
100 *protects electronic documents from destruction, alteration or unauthorized access and detects any*
101 *change to an electronic document.*

102 *3. Shall store in the electronic document of an electronic will each of the following:*

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

105 *(b) A photocopy, photograph, facsimile or other visual record of any documentation that was taken*
106 *contemporaneously with the execution of the electronic will and provides satisfactory evidence of the*
107 *identities of the testator and the attesting witnesses, including, without limitation, documentation of the*
108 *methods of identification used pursuant to § 47.1-2.*

109 *4. Shall store in the electronic document of an electronic will an audio and video recording of the*
110 *testator, attesting witnesses and notary public, as applicable, taken at the time the testator, each*
111 *attesting witness and notary public, as applicable, placed his or her electronic signature on the*
112 *electronic will, if audio-video communication is utilized for authentication.*

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

117 *F. With regard to an electronic document of an electronic will, a qualified custodian:*

118 *1. Shall provide access to or information concerning the electronic will or the certified paper*
119 *original of the electronic will only to:*

120 *a) The testator or another person as directed by the written instructions of the testator; and*

121 b) After the death of the testator, the nominated personal representative of the testator or any
 122 interested person; and
 123 2. May, in the absolute discretion of the qualified custodian, destroy the electronic document at any
 124 time:
 125 a) Five or more years after the admission of any will of the testator to probate;
 126 b) Five or more years after the revocation of the electronic will;
 127 c) Five or more years after ceasing to serve as the qualified custodian of the electronic
 128 document of the electronic will pursuant to section 13 of this act;
 129 d) Ten or more years after the death of the testator; or
 130 e) One hundred and fifty years after the execution of the electronic will.
 131 3. At the direction of a testator in a writing executed with the same formalities required for the
 132 execution of an electronic will, a qualified custodian shall cancel, render unreadable or obliterate the
 133 electronic document.
 134 G. Qualified custodian may cease serving in such a capacity by:
 135 1. If not designating a successor qualified custodian, providing to the testator:
 136 a) Thirty days' written notice that the qualified custodian has decided to cease serving in such a
 137 capacity; and
 138 b) The certified paper original of, and all records concerning, the electronic will.
 139 2. If designating a successor qualified custodian:
 140 a) Providing 30 days' written notice that the qualified custodian has decided to cease serving in such
 141 a capacity to:
 142 (I) The testator; and
 143 (II) The designated successor qualified custodian; and
 144 b) Providing to the successor qualified custodian the electronic document of the electronic will and
 145 an affidavit which states:
 146 (I) That the qualified custodian ceasing to act in such a capacity is eligible to act as a qualified
 147 custodian in this State and is the qualified custodian designated by the testator in the electronic will or
 148 was designated to act in such a capacity by another qualified custodian pursuant to this paragraph;
 149 (II) That an electronic document was created at the time the testator executed the electronic will;
 150
 151 (III) That the electronic document has been in the custody of one or more qualified custodians since
 152 the execution of the electronic will and has not been altered since the time it was created; and
 153 (IV) The identity of all qualified custodians who have had custody of the electronic document since
 154 the execution of the electronic will.
 155 H. For purposes of making the affidavit, a qualified custodian is entitled to rely conclusively on any
 156 affidavits provided by a predecessor qualified custodian if all such affidavits are provided to the
 157 successor qualified custodian.
 158 1. If the testator designates a successor qualified custodian in a writing executed with the same
 159 formalities required for the execution of an electronic will, a qualified custodian shall cease serving in
 160 such a capacity and provide to the designated successor qualified custodian:
 161 (a) The electronic document; and
 162 (b) The affidavit described in this section.
 163 2. If a qualified custodian is an entity, an affidavit of a duly authorized officer or agent of such
 164 entity constitutes the affidavit of the qualified custodian.
 165 I. A person must execute a written statement affirmatively agreeing to serve as the qualified
 166 custodian of an electronic will before he or she may serve in such a capacity.
 167 Except as otherwise provided in subdivision G, a qualified custodian may not cease serving in such a
 168 capacity until a successor qualified custodian executes the written statement required by subdivision I.
 169 J. Upon the creation of a certified paper original of an electronic will:
 170 1. If the electronic will has always been in the custody of a qualified custodian, the qualified
 171 custodian shall state in an affidavit:
 172 a) That the qualified custodian is eligible to act as a qualified custodian in the Commonwealth;
 173 b) That the qualified custodian is the qualified custodian designated by the testator in the electronic
 174 will or was designated to act in such a capacity pursuant to subdivision G;
 175 c) That an electronic document was created at the time the testator executed the electronic will;
 176 d) That the electronic document has been in the custody of one or more qualified custodians since
 177 the execution of the electronic will, and has not been altered since the time it was created;
 178 e) The identity of all qualified custodians who have had custody of the electronic document since the
 179 execution of the electronic will;
 180 f) That the certified paper original is a true, correct and complete tangible manifestation of the
 181 electronic will; and

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- 182 g) That the records described in subdivision E are in the custody of the qualified custodian.
 183 2. If the electronic will has not always been under the custody of a qualified custodian, the person
 184 who discovered the electronic will and the person who reduced the electronic will to the certified paper
 185 original shall each state in an affidavit the following information, to the best of their knowledge:
 186 a) When the electronic will was created, if not indicated in the electronic will;
 187 b) When, how and by whom the electronic will was discovered;
 188 c) The identities of each person who has had access to the electronic will;
 189 d) The method in which the electronic will was stored and the safeguards in place to prevent
 190 alterations to the electronic will;
 191 e) Whether the electronic will has been altered since its execution; and
 192 f) That the certified paper original is a true, correct and complete tangible manifestation of the
 193 electronic will.
 194 K. For purposes of making an affidavit pursuant to subdivision I, the qualified custodian may rely
 195 conclusively on any affidavits delivered by a predecessor qualified custodian.
 196 L. Notwithstanding any other provision of law, an electronic notary public or other notarial officer
 197 may, for purposes of this section, including, without limitation, all purposes relating to the execution
 198 and filing of any document with the court in any proceeding relating to an electronic will:
 199 1. Notarize the signature or electronic signature of a person, as applicable, who is not in the
 200 physical presence of the electronic notary public or other notarial officer if the person is in his or her
 201 presence within the meaning of subsection M; and
 202 2. Notarize any document relating to a will, codicil or testamentary trust.
 203 M. For purposes of this section, including, without limitation, any declaration or affidavit made by
 204 an attesting witness as described in § 64.2-452 and § 64.2-453, for all purposes relating to the execution
 205 and filing of any document with the court in any proceeding relating to an electronic will and for
 206 purposes of executing a power of attorney, an advance directive or any document relating to an
 207 advance directive:
 208 1. A person shall be deemed to be in the presence of or appearing before another person if such
 209 persons are in:
 210 a) The same physical location; or
 211 b) Different physical locations but can communicate with each other by means of audio-video
 212 communication.
 213 2. An electronic notary public may electronically notarize electronic documents, including, without
 214 limitation, documents constituting or relating to an electronic will, in accordance with § 47.1-7.
 215 3. Any requirement that a document be signed may be satisfied by an electronic signature.
 216 4. If a provision of law requires a written record, an electronic document satisfies such a provision.
 217 N. Notwithstanding the provisions of subdivision M, the validity of a notarial act performed by an
 218 electronic notary public must be determined by applying the laws of the jurisdiction in which the
 219 electronic notary public is commissioned or appointed.
 220 O. If a testator or a witness signing an affidavit or declaration appears by means of audio-video
 221 communication, the form for the affidavit or declaration must be modified to indicate that fact.
 222 P. A certified paper original of an electronic will may be offered for and admitted to probate in the
 223 same manner as if it were a will.
 224 Q. A certified paper original of an electronic will that is self-proving pursuant to this section is
 225 presumed to be valid and, absent any objection, must be admitted to probate expeditiously without
 226 requiring any further proof of validity.
 227 R. An electronic will that is executed or deemed to be executed in or pursuant to the laws of another
 228 state in accordance with the laws of the other state or of the Commonwealth is a valid electronic will in
 229 the Commonwealth.
 230
 231 **§ 64.2-410. Revocation of wills generally.**
 232 A. If a testator with the intent to revoke a will or codicil, or some person at his direction and in his
 233 presence, cuts, tears, burns, obliterates, cancels, or destroys a will or codicil, or the signature thereto, or
 234 some provision thereof, such will, codicil, or provision thereof is void and of no effect.
 235 B. If a testator executes a will in the manner required by law or other writing in the manner in
 236 which a will is required to be executed that expressly revokes a former will, such former will, including
 237 any codicil thereto, is void and of no effect.
 238 C. If a testator executes a will or codicil in the manner required by law that (i) expressly revokes a
 239 part, but not all, of a former will or codicil or (ii) contains provisions inconsistent with a former will or
 240 codicil, such former will or codicil is revoked and superseded to the extent of such express revocation
 241 or inconsistency if the later will or codicil is effective upon the death of the testator.
 242 D. An electronic will may only be revoked by:
 243 1. Another will, codicil, electronic will or other writing, executed as prescribed in this chapter; or

244 2. *Cancelling, rendering unreadable or obliterating the will with the intention of revoking it, by:*
 245 *a) The testator or a person in the presence and at the direction of the testator; or*
 246 *b) If the will is in the custody of a qualified custodian, the qualified custodian at the direction of a*
 247 *testator in an electronic will.*

248
 249 **§ 64.2-443. Jurisdiction of probate of wills.**

250 A. The circuit courts shall have jurisdiction of the probate of wills. A will shall be offered for
 251 probate in the circuit court in the county or city wherein the decedent has a known place of residence; if
 252 he has no such known place of residence, then in a county or city wherein any real estate lies that is
 253 devised or owned by the decedent; and if there is no such real estate, then in the county or city wherein
 254 he dies or a county or city wherein he has estate.

255 B. Where any person has become, either voluntarily or involuntarily, a patient in a nursing home,
 256 convalescent home, or similar institution due to advanced age or impaired health, the place of legal
 257 residence of the person shall be rebuttably presumed to be the same as it was before he became a
 258 patient.

259 C. *An electronic will executed or deemed to be executed in or pursuant to the laws of the*
 260 *Commonwealth may be probated in the county or city in which the decedent was a resident at the time*
 261 *of his or her death or the domicile or registered office of the qualified custodian, if in the*
 262 *Commonwealth.*

263
 264 **§ 64.2-452. How will may be made self-proved; affidavits of witnesses.**

265 A will, *including, without limitation an electronic will,* at the time of its execution or at any
 266 subsequent date, may be made self-proved by the acknowledgment thereof by the testator and the
 267 affidavits of the attesting witnesses, each made before an officer authorized to administer oaths under
 268 the laws of the Commonwealth or the laws of the state where acknowledgment occurred, or before an
 269 officer of the foreign service of the United States, a consular agent, or any other person authorized by
 270 regulation of the United States Department of State to perform notarial acts in the place in which the act
 271 is performed, and evidenced by the officer's certificate, attached or annexed to the will. The officer's
 272 certificate shall be substantially as follows in form and content:

273 STATE OF VIRGINIA
 274 COUNTY/CITY OF _____

275 Before me, the undersigned authority, on this day personally appeared _____,
 276 _____, and _____, known to me to be the testator and the
 277 witnesses, respectively, whose names are signed to the attached or foregoing instrument and, all of these
 278 persons being by me first duly sworn, _____, the testator, declared to me and to the
 279 witnesses in my presence that said instrument is his last will and testament and that he had willingly
 280 signed or directed another to sign the same for him, and executed it in the presence of said witnesses as
 281 his free and voluntary act for the purposes therein expressed; that said witnesses stated before me that
 282 the foregoing will was executed and acknowledged by the testator as his last will and testament in the
 283 presence of said witnesses who, in his presence and at his request, and in the presence of each other, did
 284 subscribe their names thereto as attesting witnesses on the day of the date of said will, and that the
 285 testator, at the time of the execution of said will, was over the age of eighteen years and of sound and
 286 disposing mind and memory.

287 _____ Testator
 288 _____ Witness
 289 _____ Witness

290 Subscribed, sworn and acknowledged before me by _____, the testator, and
 291 subscribed and sworn before me by _____ and _____, witnesses,
 292 this _____ day of _____, A.D., _____.

293 SIGNED _____
 294 _____ (OFFICIAL CAPACITY OF OFFICER)

295 The affidavits of any such witnesses taken as provided by this section, whenever made, shall be
 296 accepted by the court as if it had been taken ore tenus before such court, notwithstanding that the officer
 297 did not attach or affix his official seal thereto. Any codicil that is self-proved under the provisions of
 298 this section that, by its terms, expressly confirms, ratifies, and republishes a will except as altered by
 299 the codicil shall have the effect of self-proving the will whether or not the will was so executed originally.
 300 *If the will is an electronic will, the declaration or affidavit must be in a record incorporated as part of,*
 301 *attached to or logically associated with the electronic will.*

302
 303 **§ 64.2-455. Wills to be recorded; recording copies; effect; transfer to The Library of Virginia.**

304 A. Every will, *certified paper original as defined in § 64.2-403.1,* or authenticated copy admitted to

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305 probate by any circuit court or clerk of any circuit court shall be recorded by the clerk and remain in
306 the clerk's office, except during such time as the same may be carried to another court under a subpoena
307 duces tecum or as otherwise provided in § 17.1-213. A certified copy of such will, *certified paper*
308 *original*, or ~~of any~~ authenticated copy may be recorded in any county or city wherein there is any estate,
309 real or personal, devised or bequeathed by such will.

310 B. The personal representative of the testator shall cause a certified copy of any will, *certified paper*
311 *original*, or ~~of any~~ authenticated copy so admitted to record to be recorded in any county or city
312 wherein there is any real estate of which the testator possessed at the time of his death or that is devised
313 by his will.

314 C. Every will, *certified paper original*, or certified copy when recorded shall have the effect of
315 notice to all persons of any devise or disposal by the will of real estate situated in a county or city in
316 which such will or copy is so recorded.

317 D. With the approval of the judges of a circuit court of any county or city, the clerk of such court
318 may transfer such original wills from his office to the Archives Division of The Library of Virginia. A
319 copy of any will that has been microfilmed or stored in an electronic medium, prepared from such
320 microfilmed or electronic record and certified as authentic by the clerk or his designee, shall constitute a
321 certified copy of the will for any purpose arising under this title for which a certified copy of the will is
322 required.

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**Council of the District of Columbia
Office of the Secretary- Legislation Detail**

B22-0169 - Electronic Signature Authorization Act of 2017 **Under Council Review**

Legislative Summary	
Legislation Number	B22-0169
Introduction Date	Mar 7, 2017
Introduced by	Councilmember Bonds
Co-Sponsor(s)	Councilmember Grosso
Committee Referral	Committee on Judiciary and Public Safety
Additional Information	BILL SUMMARY - As introduced, this bill establishes that a video recording or other electronic record may be admissible as evidence of the following: the proper execution of a will (domestic or international), the intentions and mental capacity of a testator, the authenticity of a will, or matters that are determined by a court to be relevant to the probate of a will. It also provides a method of authentication for electronic signatures.

Bill History	
Mar 7, 2017	B22-0169 Introduced by Councilmember Bonds at Legislative Meeting
Mar 7, 2017	Referred to Committee on Judiciary and Public Safety
Mar 10, 2017	Notice of Intent to Act on B22-0169 Published in the District of Columbia Register
May 12, 2017	Notice of Public Hearing Published in the District of Columbia Register
Jun 1, 2017	Public Hearing on B22-0169

Other Documents	
<ul style="list-style-type: none"> • Memorandum 	