

DRAFT
FOR DISCUSSION ONLY

ELECTRONIC WILLS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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ON UNIFORM STATE LAWS

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October 24, 2018

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ELECTRONIC WILLS ACT

TABLE OF CONTENTS

SECTION 1. SHORT TITLE.	4
SECTION 2. DEFINITIONS.....	4
SECTION 3. COMMON LAW AND PRINCIPLES OF EQUITY.....	5
SECTION 4. WHO MAY MAKE ELECTRONIC WILL.	5
SECTION 4. WHO MAY MAKE ELECTRONIC WILL.	5
SECTION 5. EXECUTION OF ELECTRONIC WILL.....	6
[SECTION 6. HARMLESS ERROR.]	8
SECTION 7. ELECTRONIC WILL MADE SELF-PROVING WHERE ALL WITNESSES PHYSICALLY PRESENT.	8
SECTION 8. ELECTRONIC WILL MADE SELF-PROVING WHERE ALL WITNESSES NOT PHYSICALLY PRESENT.	10
SECTION 9. ELECTRONIC WILL MADE SELF-PROVING AFTER EXECUTION.....	13
SECTION 10. PROOF OF ELECTRONIC WILL.....	14
SECTION 11. CHOICE OF LAW AS TO EXECUTION.	14
SECTION 12. REVOCATION.....	15
SECTION 13. UNIFORMITY OF APPLICATION AND CONSTRUCTION.....	15
SECTION 14. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.....	15
SECTION 15. TRANSITIONAL PROVISION	16
SECTION 16. EFFECTIVE DATE.....	16

1 **ELECTRONIC WILLS ACT**

2 **Prefatory Note**

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

9
10 In an Ohio case, *In re Estate of Javier Castro*, Case No. 2013ES00140, Court of
11 Common Pleas Probate Division, Lorain County, Ohio (June 19, 2013), the testator dictated a
12 will to his brother, who wrote the will on a Samsung Galaxy Tablet. The testator then signed the
13 will on the tablet, using a stylus, and two witnesses signed on the tablet. The probate court had to
14 decide whether the electronic writing on the tablet met the statutory requirement that a will be
15 “in writing.” The court concluded that it did, and admitted the will to probate. In *Castro*, the
16 testator and all witnesses were in the same room and signed using a stylus rather than typing a
17 signature. The Drafting Committee concluded that the law should give effect to such a will and
18 that a statute could clarify that such a will meets the writing requirement. In *Castro*, the testator
19 and witnesses had not signed an affidavit, so the will was not self-proving. The Drafting
20 Committee concluded that if a notary were present with the testator and witnesses, it should be
21 possible to make such a will self-proving.

22
23 In Australia courts have used the harmless error doctrine to give effect to wills written on
24 electronic devices. For example, *In re Yu*, [2013] QSC 322, is an Australian case involving a
25 will written on an iphone. There were no witnesses to the will, but the court applied the harmless
26 error doctrine to validate the will. The court found that the testator intended the electronic
27 writing, which began with “This is the Last Will and Testament...,” to be his will.

28
29 Although existing statutes might validate wills like the one in the Castro case, the results
30 will be haphazard if no clear policy exists. States that have adopted harmless error could use that
31 rule to give effect to an electronic will, as the court did in *In re Yu*. However, harmless error
32 requires a judicial decision based on clear and convincing evidence, so relying on harmless error
33 could increase costs for parties and courts. Further, in the U.S., only 11 states have enacted
34 harmless error statutes. In some states, courts have used another doctrine, substantial compliance,
35 to validate wills that did not comply with the execution formalities. *See, e.g., In re Will of*
36 *Ranney*, 124 N.J. 1, 589 A.2d 1339 (1991).

37
38 **Pressure from Companies Wishing to Expand Services.** In addition to these self-help
39 examples, a number of companies are now providing will drafting programs that can be
40 purchased online and used electronically. A purchaser of one of these programs buys the
41 software and then uses it to prepare a will. Lawyers worry that the wills produced through these
42 pro se efforts will lead to problems for the surviving family members of the testators.
43 Nonetheless, many people prepare wills without the assistance of lawyers, using these programs,
44 paper will forms, or simply by writing a will by hand.

1 When a testator uses will drafting software, the testator first prints the completed will and
2 then executes the paper document with will formalities. The companies would like to provide an
3 additional service that would allow the testator to execute the will online, eliminating the use of
4 paper and using witnesses and a notary provided by the company. The companies would also
5 like to be able to offer to store the executed electronic document, for an additional fee.
6

7 Some of the companies that sell will drafting programs are promoting the idea of
8 electronic execution of wills to state legislatures. Bills have been considered in Arizona,
9 California, Florida, Indiana, New Hampshire, and Virginia. Arizona and Indiana have both
10 adopted new electronic wills legislation, and Nevada has revised its existing electronic wills
11 statutes.
12

13 **Goals of the Act.** Given the flurry of activity around this issue, the Uniform Law
14 Commission became concerned that inconsistency will follow if statutes are modified by states
15 without uniformity. The mobile population in the United States makes recognition of wills
16 between states important, and if statutes are not uniform, that recognition will be a significant
17 issue.
18

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

- 22 • To allow a testator to execute a will electronically, while maintaining the protections for
23 the testator that wills law provides for wills executed on paper;
- 24 • To create execution requirements that, if followed, will result in a valid will without a
25 court hearing to determine validity; and
- 26 • To develop a process that would not enshrine a particular company or business model in
27 the statutes.
28

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

- 36 • Evidentiary function – a will provides permanent reliable evidence of the testator's
37 intent.
- 38 • Channeling function – the testator's intent is expressed in a way that is understood by
39 those who will interpret it and the courts and personal representatives can process the
40 will efficiently and without litigation.
- 41 • Ritual (cautionary) function – the testator has a serious intent to dispose of property in
42 the way indicated and the document is final and not a draft.
- 43 • Protective function – the testator has capacity and is protected from undue influence,
44 fraud, delusion and coercion. The documents are not the product of forgery or
45 perjury.
46

1 **UETA.** The Uniform Electronic Transactions Act provides that an electronic document
2 with an electronic signature will be treated the same as paper document. UETA specifically
3 excludes wills, making this Act necessary. UETA does not exclude trusts, so this Act is limited
4 to wills and does not cover trusts or other estate planning documents.

1 **ELECTRONIC WILLS ACT**

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

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

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

6 (2) Two individuals are in each other’s “electronic presence” if they are in different
7 physical locations but able to communicate simultaneously by sight and sound, with
8 accommodation for a testator or witness who has limited ability in sight or hearing.

9 (3) “Electronic will” means a will executed in compliance with Section 5.

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

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

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

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

16 (6) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
17 United States Virgin Islands, or any other territory or insular possession subject to the
18 jurisdiction of the United States.

19 (7) “Will” includes a codicil and a testamentary record that merely appoints a personal
20 representative, revokes or revises another will, nominates a [guardian or conservator], exercises a
21 power of appointment, or expressly excludes or limits the right of an individual or class to
22 succeed to property of a testator passing by intestate succession.

1 **Comment**

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

8
9 **SECTION 3. COMMON LAW AND PRINCIPLES OF EQUITY.** The common law

10 and principles of equity supplement this [act] except to the extent modified by this [act] or law of
11 this state other than this [act].

12 **Comment**

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

20
21 **Alternative A**

22
23 **SECTION 4. WHO MAY MAKE ELECTRONIC WILL.** An individual [18] or

24 more years of age who is of sound mind, is under no constraint or undue influence, and is
25 otherwise qualified under law of this state other than this act may make an electronic will.

26 **Alternative B**

27 **SECTION 4. WHO MAY MAKE ELECTRONIC WILL.** An individual who may

28 make a will under law of this state other than this act may make an electronic will.

29 **End of Alternatives**

30 **Comment**

31 The requirements in most wills statutes include an age and capacity requirement but leave
32 other requirements for a valid will such as lack of undue influence, duress, or fraud, to the
33 common law. The common law requirements that apply to wills in general also apply to

1 electronic wills. *See* RESTATEMENT (THIRD) OF PROPERTY: WILLS AND OTHER DONATIVE
2 TRANSFERS § 8.1 (Requirement of Mental Capacity); § 8.3 (Undue Influence, Duress, or Fraud).

3
4 **SECTION 5. EXECUTION OF ELECTRONIC WILL.**

5 (a) An electronic will must be in a record perceivable as text that is:

6 (1) signed, with the intent that the record be the testator’s electronic will, by

7 (i) the testator or

8 (ii) another individual in the testator’s name, in the testator’s conscious
9 physical or electronic presence, and at the testator’s direction; and

10 (2) [either:

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

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

14 [(ii)][B] the testator’s acknowledgment of the signing or
15 acknowledgement of the record[; or]

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

18 (b) Intent of a testator that a record be the testator’s electronic will may be established by
19 extrinsic evidence.

20 ***Legislative Note:*** *A state that has the rule of Uniform Probate Code Section 2-502 and validates*
21 *by statute an unattested but notarized will should include Subsection (a)(3)(B). Other states may*
22 *also include that provision for an electronic will because an electronic notarization may provide*
23 *more protection for a will than a paper notarization.*

24
25 **Comment**

26 The Drafting Committee concluded that a state’s existing requirements for paper wills
27 should be followed for electronic wills, and Section 5 follows the formalities required in the
28 Uniform Probate Code (UPC) § 2-502. A state with different formalities would want to track its
29 own rules for paper wills. Under Section 5 an electronic will can be valid if executed

1 electronically, even if the testator and witnesses are in different locations. If the testator and
2 witnesses are not in the same place when the will is executed, the will would have to be proved
3 in court, unless the will can be made self-proving under Section 8. Rather than creating extra
4 requirements to validate the will, the Act creates extra requirements to make a will self-proving.
5

6 The Drafting Committee discussed at length whether the Act should impose additional
7 requirements on a will executed electronically with remote witnesses. Wills law includes a
8 witness requirement for several reasons: (1) evidentiary, to answer questions about the
9 voluntariness and coherence of the testator and whether undue influence played a role in the
10 creation and execution of the will, (2) cautionary, to signal to the testator that signing the
11 document has serious consequences, and (3) protective, to deter coercion, fraud, duress, and
12 undue influence. The Drafting Committee discussed whether having witnesses act remotely
13 impairs these purposes. One concern was that when a will is challenged for lack of capacity or
14 undue influence, witnesses may be able to testify about the testator's state of mind. However, in
15 many cases staff members in a lawyer's office act as witnesses to hundreds of wills and are
16 unlikely to remember much about any individual testator. Will substitutes typically do not
17 require witnesses, and even for wills, the harmless error doctrine now allows a court to give
18 effect to a will that was not witnessed, if the proponent of the will can provide adequate evidence
19 of the testator's intent. The Drafting Committee concluded that although the dangers of undue
20 influence and coercion can never be excluded, the current legal standards and procedures address
21 the situation adequately and remote attestation will not create excessive risks. The Drafting
22 Committee also noted that it did not want to create hurdles that result in denying probate to wills
23 that represent the intent of their testators.
24

25 [Add discussion of "reasonable time" required for witnesses to sign, with citations to cases that
26 have addressed this issue.]
27

28 **Requirement of a Writing.** The definition of record includes a writing in electronic
29 format. The Act clarifies that an electronic writing is a writing for purposes of creating a valid
30 will. The court in *Castro* held that writing on an electronic tablet was a writing for purposes of
31 the will execution statute.
32

33 Subsection (a)(1) requires that a will be in writing, and an audio-visual recording of an
34 individual describing the individual's testamentary wishes does not, by itself, constitute a will
35 under this Act. The Drafting Committee concluded that writing emphasizes seriousness of intent.
36 However, an audio-visual recording of the execution of a will can provide valuable evidence
37 concerning the validity of the will. The Drafting Committee encourages the making and retention
38 of such recordings.
39

40 The use of a voice activated computer program can create text that can meet the
41 requirements of a will.
42

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

1 **Electronic Signature.** [Add explanation of how someone would sign electronically. If
2 an “x” is enough for a paper will, is an “x” on a computer keyboard enough?]
3

4 **Notarized Wills.** Subsection 3(B) tracks UPC § 3(B) and provides that a will can be
5 validated if the testator acknowledges the will before a notary, even if the will is not attested by
6 two witnesses. Electronic notarization offers a significant level of protection for a will, because
7 the notarization process uses a tamper seal to “lock” the will and makes tampering much easier
8 to detect than tampering of a paper will or a non-notarized electronic will. Also, electronic
9 notarization involves videotaping the process, so a videotaped record will be available. States
10 may want to encourage electronic notarization, and may want to include electronic notarization
11 as an option for validation of an electronic will, even if the state does not include that option for
12 other wills. Greater protection, and ease of admission of the will to probate, will be provided if
13 two witnesses attest the will and then electronic notarization is used for the self-proving
14 affidavit.
15

16 **[SECTION 6. HARMLESS ERROR.** A record not executed in compliance with
17 Section 5 must be treated as executed in compliance with Section 5 if the proponent of the record
18 establishes by clear-and-convincing evidence that the decedent intended that the record be:

- 19 (1) the decedent’s electronic will;
20 (2) a partial or complete revocation of the decedent’s will, including an electronic will;
21 (3) an addition to or a modification of the decedent’s will, including an electronic will; or
22 (4) a partial or complete revival of the decedent’s formerly revoked will or part of a will,

23 including a revoked electronic will.]

24 ***Legislative Note:** A state that has enacted the harmless error rule for a paper will, Uniform*
25 *Probate Code Section 2-503, should enact the rule for an electronic will. A state that has not*
26 *enacted a harmless error rule may not want to add one solely for an electronic will. A state that*
27 *does not adopt this act, may want to enact a harmless error rule specifically for an electronic*
28 *will, thereby requiring clear and convincing evidence to prove an electronic will with remote*
29 *attestation.*
30

31 **SECTION 7. ELECTRONIC WILL MADE SELF-PROVING WHERE ALL**
32 **WITNESSES PHYSICALLY PRESENT.**

33 (a) An electronic will with all attesting witnesses physically present in the same location
34 as the testator may be made self-proving by acknowledgment of the testator and affidavits of the

1 witnesses.

2 (b) An acknowledgment and the affidavits under subsection (a) must be

3 (1) made before an officer authorized to administer oaths under law of the state in
4 which execution occurs, who is physically present in the same location as the testator and
5 attesting witnesses; and

6 (2) evidenced by the officer's certificate under official seal logically associated
7 with the electronic will.

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

10 I, _____, the testator, sign my name to this record, and being sworn, declare
11 (name)

12 to the undersigned officer that this record is my electronic will, I signed it willingly or willingly
13 directed another to sign for me, I executed it as my voluntary act for the purposes expressed in
14 this record, and I am [18] years of age or older, of sound mind, and under no constraint or undue
15 influence.

16 _____
17 Testator

18 We, _____ and _____,
19 (name) (name)

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

1 _____
2 Witness

3 _____
4 Witness

5 State of _____

6 [County] of _____

7 Subscribed, sworn to, and acknowledged before me by _____, the testator,
8 and subscribed and sworn to before me by _____ and _____,
9 witnesses, this _____ day of _____, 20____.

10 (Seal)

11 _____
12 (Signed)

13 _____
14 (Official capacity of officer)

15 *Legislative Note: A state that has not adopted the Uniform Probate Code should conform*
16 *Sections 7-9 to its self-proving affidavit statutes. The statements that the requirements for a valid*
17 *will are met should conform with the requirements under state law.*

18
19 **SECTION 8. ELECTRONIC WILL MADE SELF-PROVING WHERE ALL**
20 **WITNESSES NOT PHYSICALLY PRESENT.**

21 (a) “Authorized person” means:

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

23 (2) a clerk of the [court].

24 (b) An electronic will without all attesting witnesses physically present in the same
25 location as the testator, may be made self-proving by:

26 (1) acknowledgment of the testator and affidavits of the witnesses:

27 (A) made before an officer authorized to administer oaths under [insert

1 citation to Revised Uniform Law on Notarial Acts (2018), the Amended Revised Uniform Law
2 on Notarial Acts (2016), or other law of the state that provides for electronic notarization]; and

3 (B) evidenced by the officer’s certificate under official seal as provided
4 under [insert citation to Revised Uniform Law on Notarial Acts (2018), the Amended Revised
5 Uniform Law on Notarial Acts (2016), or other law of the state that provides for electronic
6 notarization]; or

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

8 (A) the person is an authorized person;

9 (B) the testator declared that the record is the testator’s electronic will and
10 that the testator understands its contents;

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

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

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

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

20 (E) to the best of the authorized person’s knowledge the testator was, at
21 the time of the signing of the electronic will, [18] years of age or older, of sound mind, and under
22 no constraint or undue influence.

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

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

5 (e) A certification made under subsection (b)(2) must be in substantially the following
6 form:

7 I, _____, an authorized person, certify that on _____,
8 (name) (date)

9 at _____, _____, the testator declared the
10 (city) (state)

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

20 _____
21 (Signed)

22 **Comment**

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

1 called to testify if the will is challenged.

2
3 **Definition of Authorized Person.** An authorized person is someone other than the
4 testator, witnesses, and notary. The authorized person is involved in the execution of the will to
5 provide a sufficient level of confidence in the execution process to allow the will to be self-
6 proving. The authorized person needs to be someone subject to the jurisdiction of the court
7 where the will is executed, so that if the validity of the will is challenged, the authorized person
8 can be required to testify. The Drafting Committee believes that a lawyer would be appropriate
9 as an authorized person, but the Drafting Committee would like to include some other option in
10 the definition. One idea is to permit a company to be an authorized person, if the company meets
11 specified requirements. This idea has yet to be developed.

12
13 **SECTION 9. ELECTRONIC WILL MADE SELF-PROVING AFTER**
14 **EXECUTION.**

15 (a) An electronic will with all attesting witnesses physically present in the same location
16 as the testator may be made self-proving at any time after its execution by the acknowledgment
17 of the testator and the affidavits of the witnesses.

18 (b) An acknowledgment and affidavits under subsection (a) must be:

19 (1) made before an officer authorized to administer oaths under the law of the
20 state in which the acknowledgment occurs; and

21 (2) evidenced by the officer's certificate under official seal, logically associated
22 with the electronic will, in substantially the following form:

23 I, _____, the testator, and we, _____,
24 (name) (name)

25
26 and _____, witnesses, whose names are signed to the attached or
27 (name)

28
29 preceding electronic will, being sworn, declare to the undersigned officer that the testator signed
30 the record as the testator's electronic will, the testator signed it willingly or willingly directed
31 another to sign it for the testator, the testator executed it as the testator's voluntary act for the
32 purposes expressed in the record, each of the witnesses, in the physical presence and hearing of

1 the testator, signed the electronic will as witnesses to the testator's signing, and to the best of
2 each witness's knowledge the testator was at the time [18] years of age or older, of sound mind,
3 and under no constraint or undue influence.

4 _____
5 Testator

6 _____
7 Witness

8 _____
9 Witness

10 State of _____

11 [County] of _____

12 Subscribed, sworn to, and acknowledged before me by _____, the testator,
13 and subscribed and sworn to before me by _____ and _____,
14 witnesses, this _____ day of _____, 20____.

15 (Seal)

16 _____
17 (Signed)

18 _____
19 (Official capacity of officer)

20 **SECTION 10. PROOF OF ELECTRONIC WILL.** A signature physically or
21 electronically affixed to an affidavit attached to an electronic will under this [act] is deemed a
22 signature affixed to the electronic will if necessary to prove the will's execution.

23 **SECTION 11. CHOICE OF LAW AS TO EXECUTION.** An electronic will is
24 validly executed if executed in compliance with the law of the place where:

- 25 (1) at the time of execution, the testator is physically located; or
26 (2) at the time of execution or at the time of death the testator is domiciled, resides, or is a

1 citizen.

2 **SECTION 12. REVOCATION.**

3 (a) An electronic will or part of an electronic will is revoked by:

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

6 (2) a revocatory act, if it is established by clear and convincing evidence that the
7 testator performed the act with the intent and for the purpose of revoking the will or part or that
8 another individual performed the act in the testator’s physical or electronic presence and by the
9 testator’s direction.

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

11 **Comment**

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

24
25 [Add more to this comment describing evidence and proof of revocation.]

26 **SECTION 13. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
27 applying and construing this uniform act, consideration must be given to the need to promote
28 uniformity of the law with respect to its subject matter among states that enact it.

29 **SECTION 14. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
30 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic

1 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not
2 modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize
3 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.
4 Section 7003(b).

5 **SECTION 15. TRANSITIONAL PROVISION.** This [act] applies to the will of a
6 decedent whose death is on or after [the effective date of this act].

7 **Comment**

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

12
13 **SECTION 16. EFFECTIVE DATE.** This [act] takes effect