D R A F T

FOR DISCUSSION ONLY

ELECTRONIC WILLS ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

April 27-28, 2019 Drafting Committee Meeting

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April 16, 2019

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Prefatory Note

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

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

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

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

Pressure from Companies Wishing to Expand Services. A number of companies provide will-drafting programs that can be purchased online and used electronically. A purchaser of one of these programs buys the software and then uses it to prepare a will, without legal assistance. Lawyers worry that the wills produced through these drafting programs without the guidance of lawyers may lead to problems for the surviving family members of the testators. Of course, people have always prepared wills without the assistance of lawyers, using paper will

forms or simply writing the wills by hand. If a testator follows a state's rules in executing a will, the will is valid and depending on the estate may or may not carry out the testator's wishes.

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

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

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

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

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

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

- Evidentiary function – a will provides permanent reliable evidence of the testator's intent.
- Channeling function – the testator's intent is expressed in a way that is understood by those who will interpret it so that the courts and personal representatives can process the will efficiently and without litigation.

- Ritual (cautionary) function – the testator has a serious intent to dispose of property in the way indicated and the document is final and not a draft.
- Protective function – the testator has capacity and is protected from undue influence, fraud, delusion and coercion. The documents are not the product of forgery or perjury.

UETA. The Uniform Electronic Transactions Act provides that "[a] record or signature may not be denied legal effect or enforceability solely because it is in electronic form." UETA§ 7(a). UETA specifically excludes wills and testamentary trusts, making this Act necessary. UETA does not exclude inter vivos trusts, so this Act is limited to wills and does not cover inter vivos trusts or other estate planning documents. Indeed, many nonprobate documents are executed electronically.

ELECTRONIC WILLS ACT

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

SECTION 2. DEFINITIONS. In this [act]:

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

(2) "Electronic presence" exists if individuals in different locations are able to communicate in real-time by sight and sound to the same extent as if the individuals were physically present in the same location.

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

(4) "Electronic will" means a will executed electronically in compliance with Section 5(a).

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

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

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

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

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

(8) "Textual record" means an electronic record that is readable as text.

(9) "Will" includes a codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

Comment

Subsection 3. Electronic Presence. An electronic will may be executed with all of the necessary people present in one physical location. In that case the state's rules concerning presence for non-electronic wills, which may require line-of-sight presence or conscious presence, will apply. The Act does not provide a separate definition of physical presence, and a state's existing rules for presence will apply to determine physical presence.

An electronic will is also valid if the witnesses are in the electronic presence of the testator, *see* Section 4, and the definition provides the rules for electronic presence. Electronic presence will make it easier for testators in remote locations and testators with mobility difficulties to execute their wills. The witnesses and testator must be able to communicate in "real-time," a term that means [describe here and cite to other statutes using the term].

In the definition of electronic presence "to the same extent" includes accommodations for people who are differently-abled. The Drafting Committee did not include specific accommodations in the definition because we worried that any attempt would be too restrictive.

Subsection 6. Sign. The term "logically associated" is used in the definition of sign and in this Act without definition. The Uniform Electronic Transfers Act (UETA) and the Revised Uniform Law on Notarial Acts (RULONA) use the term without defining it, due to concern that an attempt at definition would be over- or under-inclusive, especially as technology changes over time. The term has a meaning among those who use technology, and that meaning is sufficient for purposes of this Act. The current meaning may evolve as the technology changes, and the Drafting Committee did not want to limit the term to current technologies. Although often used with a signature (a signature may be logically associated with a document), the term is used in RULONA to refer to a document and not just a signature.

Although the Drafting Committee concluded that the term should not be defined, Indiana included a definition of logically associated in its version of UETA. Indiana used that definition in its statute governing electronic wills: "Logically associated" means electronically connected, cross referenced, or linked in a reliable manner. IC 29-1-21-3(13).

Subsection 9. Will. The Act follows the UPC definition of will, simply saying that will includes uses that do not involve the disposition of property.

SECTION 3. LAW APPLICABLE TO WILLS. The law of this state applicable to wills applies to electronic wills, except to the extent modified by this [act].

Comment

In this Section "law" means both common law and statutory law. Law other than this Act continues to supply rules and guidance related to wills, unless the Act modifies a state's other law related to wills.

Wills statutes typically include an age and capacity requirement, while other requirements for validity may be left to the common law. The common law requires that a testator intend that the writing be the testator's will. Intent may be challenged directly, for example by arguing that the testator was providing instructions concerning testamentary wishes but did not intend the writing itself to be a will.

A writing that appears to be a will may be challenged based on allegations of undue influence, duress, or fraud, which relate to the testator's intent to make a will. The statutory and common law requirements that apply to wills in general also apply to electronic wills. *See* RESTATEMENT (THIRD) OF PROPERTY: WILLS AND OTHER DONATIVE TRANSFERS § 8.1 (Requirement of Mental Capacity); § 8.3 (Undue Influence, Duress, or Fraud).

Law related to requirements to serve as a witness also apply to electronic wills. *See., e.g.*, Uniform Probate Code § 2-505.

SECTION 4. CHOICE OF LAW REGARDING EXECUTION. An electronic will is validly executed if executed in compliance with this [act] or the law of the jurisdiction where:

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

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

Comment

[Comment needed here discussing rules applicable to non-electronic wills and explaining why the Drafting Committee chose to make this provision more restrictive.]

SECTION 5. EXECUTION OF ELECTRONIC WILL.

(a) An electronic will must be:

(1) a textual record at the time of signing under paragraph (2);

(2) signed by:

(A) the testator, or

(B) another individual in the testator's name, in the testator's physical presence, and by the testator's direction; and

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

(A) the signing under paragraph (2) of the textual record; or

(B) the testator's acknowledgment of the signing under paragraph (2) of the textual record or acknowledgement of the textual record[or;

(4) as an alternative to paragraph (3), acknowledged by the testator before a notary public or other individual authorized by law to notarize records electronically].

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

Legislative Note: *A state that has adopted or followed the rule of Uniform Probate Code Section 2-502 and validates by statute an unattested but notarized will should include paragraph (a)(4). Other states may also include that provision for an electronic will because an electronic notarization may provide more protection for a will than a paper notarization.*

A jurisdiction that wishes to permit an electronic will only when the testator and witnesses are in the same physical location should omit the words "or electronic" in Section 5(a)(3) and Section 8(d) and should omit Section 8(c).

Comment

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

Requirement of a Writing. Statutes that apply to non-electronic wills require that a will be "in writing." The RESTATEMENT (THIRD) OF PROPERTY: WILLS AND DONATIVE TRANSFERS § 3.1 cmt. i explains:

> *i. The writing requirement.* All the statutes, including the original and revised versions of the Uniform Probate Code, require a will to be in writing. The requirement of a writing does not require that the will be written on sheets of paper, but it does require a medium that allows the markings to be detected. A will, for example, scratched in the paint on the fender of a car would be in writing, but one "written" by waving a finger in the air would not be.

Uniform Probate Code §2-502 requires that a will be "in writing" and a comment to that section says, "Any reasonably permanent record is sufficient." The Drafting Committee considered different forms of electronic writing to determine what type of electronic "writing" would be appropriate for an electronic will. The Drafting Committee concluded that the Act should require that the provisions of the will should be readable as text (and not as computer code) at the time the testator executed the will. The Act incorporates the requirement of writing by requiring that an electronic will be a "textual record," defined as a record readable as text.

One example of a textual record is [stylus on a tablet - discuss *Castro* here.]

An electronic will may also be a word processing document that exists on a computer but has not been printed. [discuss further, including documents on phones].

The use of a voice activated computer program can create text that can meet the requirements of a will. For example, a testator could dictate the will to a computer using voice recognition software. If the computer converts the spoken words to text before the testator executes a will, the will meets that requirement that it be a textual record. The Act requires that the conversion to text occur before the testator executes the will.

An audio or audio-visual recording of an individual describing the individual's testamentary wishes does not, by itself, constitute a will under this Act. The Drafting Committee concluded that writing emphasizes seriousness of intent. However, an audio-visual recording of the execution of a will can provide valuable evidence concerning the validity of the will.

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

Requirement of Witnesses. The Drafting Committee discussed whether the Act should omit the requirement of witnesses for a will executed electronically. Will substitutes typically do not require witnesses, and a testator acting without legal assistance may not realize that witnesses are necessary for an electronic will. The harmless error doctrine has been used to give effect to an electronic will executed under circumstances in which witnesses were unavailable and the intent was clear [cite to cases], but only 11 states have adopted the doctrine. The Drafting Committee concluded that a witness requirement should be included in the statute and that a

legislature concerned with electronic wills invalidated due to lack of witnesses should consider adopting the harmless error provision in Section 6 of the Act.

The Drafting Committee also considered whether the Act should include additional requirements for electronic wills executed with remote witnesses. Wills law includes a witness requirement for several reasons: (1) evidentiary, to answer questions about the voluntariness and coherence of the testator and whether undue influence played a role in the creation and execution of the will, (2) cautionary, to signal to the testator that signing the document has serious consequences, and (3) protective, to deter coercion, fraud, duress, and undue influence. The Drafting Committee discussed whether having witnesses act remotely impairs these purposes.

The Drafting Committee discussed the benefit of having witnesses who can testify about the testator's state of mind if a will is challenged for lack of capacity or undue influence. However, in many cases staff members in a lawyer's office act as witnesses to hundreds of wills and are unlikely to remember much about any individual testator. The usefulness of witnesses for this purpose may be limited. Further, the harmless error doctrine may be used to allow the probate of a will without witnesses. The Drafting Committee concluded that although the dangers of undue influence and coercion can never be excluded, the current legal standards and procedures address the situation adequately and remote attestation will not create excessive risks. The Drafting Committee also noted that it did not want to create hurdles that result in denying probate to wills that represent the intent of their testators.

Reasonable Time. [Add discussion of "reasonable time" required for witnesses to sign, with citations to cases that have addressed this issue. Note that UPC uses "reasonable time."]

Notarized Wills. Subsection (4) tracks UPC § 2-502(a)(3)(B) and provides that a will can be validated if the testator acknowledges the will before a notary, even if the will is not attested by two witnesses. Electronic notarization offers a significant level of protection for a will, because the notarization process uses a tamper seal to "lock" the will and makes tampering much easier to detect than tampering of a paper will or a non-notarized electronic will. Also, electronic notarization involves videotaping the process, so a videotaped record will be available. States may want to encourage electronic notarization, and may want to include electronic notarization as an option for validation of an electronic will, even if the state does not include that option for other wills. Greater protection, and ease of admission of the will to probate, will be provided if two witnesses attest the will and then electronic notarization is used for the self-proving affidavit.

[SECTION 6. HARMLESS ERROR.

Alternative A

A textual record not executed in compliance with Section 5(a) is deemed to comply with Section 5(a) if the proponent of the textual record establishes by clear and convincing evidence that the decedent intended the textual record to be:

(1) the decedent's will;

(2) a partial or complete revocation of a will;

(3) an addition to or modification of a will; or

(4) a partial or complete revival of a formerly revoked will or part of a will.

Alternative B

[Section 2-503 of the Uniform Probate Code or comparable provision of state law] applies to a will executed electronically.

End of Alternatives]

Legislative Note: *A state that has enacted the harmless error rule for a non-electronic will, Uniform Probate Code Section 2-503, should enact Alternative B. A state that has not enacted a harmless error rule may not want to add one solely for an electronic will, but otherwise should enact Alternative A.*

Comment

[The comment will explain the benefit of the harmless error rule in situations in which a person acting without counsel thinks an electronic will is valid even if not witnessed. The comment will include a discussion of the cases involving electronic wills followed by suicide and will explain the use of harmless error to validate electronic wills in those situations.]

SECTION 7. REVOCATION.

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

(1) a subsequent will that revokes the previous will or part expressly or by inconsistency; or

(2) a revocatory act other than a record, if it is established by a preponderance of the evidence that the testator performed the act with the intent of revoking the will or part or that another individual performed the act in the testator's physical or electronic presence and by the testator's direction.

(b) An electronic will may revoke a previous will or part of a previous will.

Comment

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

[Need to discuss examples of revocatory acts and the types of evidence likely to be effective to show intent to revoke. The Drafting Committee agreed that revocation by physical act should not include a separate writing, unless the writing was executed with will formalities. Situations to discuss: (1) hitting the delete button on a website where the will is stored, with witnesses to confirm the intent to revoke, (2) telling Alexa to delete the will (is this comparable to telling someone to destroy a paper will?), (3) printing the will and writing "cancelled" on it, and (4) writing "revoked" on an electronic copy of the will (one that hasn't been e-notarized and isn't locked).]

[Cite to the Restatement discussion of revocation by physical act:

> "If the testator executed more than one copy of the same will, each duplicate is considered to be the testator's will. The will is revoked if the testator, with intent to revoke, performs a revocatory act on one of the duplicates. The testator need not perform a revocatory act on all the duplicates." Restatement (Third) of Property: Wills and Other Donative Transfers § 4.1, cmt f, ¶ 2 (1999).

SECTION 8. ELECTRONIC WILL ATTESTED AND MADE SELF-PROVING AT TIME OF EXECUTION.

(a) An electronic will may be simultaneously executed, attested, and made self-proving by acknowledgment of the testator and affidavits of the witnesses.

(b) If all the attesting witnesses necessary for a valid will are physically present in the same location as the testator at the time of signing under Section 5(a)(2), the acknowledgment and affidavits under subsection (a) must be:

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

(2) evidenced by the officer's certificate under official seal affixed to or logically associated with the electronic will.

(c) [If not all the attesting witnesses necessary for a valid will are physically present in the same location as the testator at the time of signing under Section 5(a)(2), the acknowledgment and affidavits under subsection (a) must be:

(1) made before an officer authorized under [insert citation to Revised Uniform Law on Notarial Acts (2018) or other law that provides for electronic notarization in this state]; and

(2) evidenced by the officer's certificate under official seal affixed to or logically associated with the electronic will.

(d)] The acknowledgment and affidavits under subsection (a) must be in substantially the following form:

I, _____, the testator, sign this instrument and, being
(name)

sworn, declare to the undersigned officer that I sign this instrument as my electronic will, I sign it willingly or willingly direct another individual to sign it for me, I execute it as my voluntary act for the purposes expressed in this instrument, and I am [18] years of age or older, of sound mind, and under no constraint or undue influence.

_____
Testator

We, _____ and _____ ,
(name) (name)

witnesses, sign this instrument and, being sworn, declare to the undersigned officer that the

testator signed this instrument as the testator's electronic will, that the testator signed it willingly or willingly directed another individual to sign for the testator, and that each of us, in the physical [or electronic] presence of the testator, signs this electronic will as witness to the testator's signing, and to the best of our knowledge the testator is [18] years of age or older, of sound mind, and under no constraint or undue influence.

_____
Witness

_____
Witness

State of _____

[County] of _____

Subscribed, sworn to, and acknowledged before me by _____,
(name)

the testator, and subscribed and sworn to before me by _____ and
(name)

_____, witnesses, this _____ day of _____, ___.
(name)

(Seal)

_____
(Signed)

_____
(Official capacity of officer)

[d][e] A signature physically or electronically affixed to an affidavit affixed to or logically associated with an electronic will under this [act] is deemed a signature of the electronic will for the purpose of Section 5(a).

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

A state that does not permit an electronic will to be executed without all witnesses physically present should omit paragraph (c) and should omit the words "or electronic" in paragraph (d) and Section 5(a)(3).

Comment

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

The Drafting Committee decided that an electronic will should be valid even if witnesses acted remotely, but thought that additional protection should be required to make a will with remote attestation self-proving. If everyone is in the same physical location, the will can be made self-proving using a notary not authorized to act electronically. However, if anyone necessary to the execution of the will is not in the same physical location as the testator, the will can be made self-proving only if electronic notarization is used.

The process of electronic notarization provides additional protection. [Describe the process here and explain why it provides additional protection.]

Signatures on Affidavit Used to Execute Will. Subsection [d][e] addresses the problem that arises when a testator and witnesses sign an affidavit, mistakenly thinking they are signing the will itself. UPC § 2-504(c) incorporated this provision into the UPC in 1990 to counteract judicial interpretations in some states that had invalidated wills where this mistake had occurred.

[The Comment will explain that the Act does not permit an electronic will to be made self-proving at a time later than execution.]

SECTION 9. CERTIFICATION OF PAPER COPY FOR SUBMISSION TO PROBATE. An individual may create a certified paper copy of an electronic will by affirming under penalty of perjury that a paper copy of an electronic will is a complete, true, and accurate copy of the electronic will. If the electronic will was made self-proving, the certified paper copy of the will must include the self-proving affidavit.

Legislative Note: *A state may need to change its probate court rules to expand the definition of what may be filed with the court to include electronic filings.*

Court procedural rules may require that a certified paper copy be filed within a prescribed number of days of the filing of the application for probate. A state may want to include procedural rules specifically for electronic wills.

SECTION 10. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 11. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

Comment

In 2000, Congress enacted the "Electronic Signatures in Global and National Commerce Act", 106 PUB.L.NO. 229, 114 Stat. 464, 15 U.S.C. § 7001 *et seq*. (popularly known as "E-Sign"). E-Sign largely tracks the Uniform Electronic Transactions Act (UETA). Section 102 of E-Sign, entitled "Exemption to preemption," provides in pertinent part that:

> (a) A State statute, regulation, or other rule of law may modify, limit, or supersede the provisions of section 101 with respect to State law only if such statute, regulation, or rule of law—
>
> > (1) constitutes an enactment or adoption of the Uniform Electronic Transactions Act as approved and recommended for enactment in all the States by the National Conference of Commissioners on Uniform State Laws in 1999" [with certain exceptions] or
> >
> > (2)(A) specifies the alternative procedures or requirements for the use or acceptance (or both) of electronic records or electronic signatures to establish the legal effect, validity, or enforceability of contracts or other records, if [they meet certain criteria] and
> >
> > (B) if enacted or adopted after the date of the enactment of this Act, makes specific reference to this Act.

15 U.S.C. § 7002(a). The inclusion of this section is necessary to comply with the requirement that the act "make[] specific reference to this Act" pursuant to 15 U.S.C. § 7002(a)(2)(B) if the uniform or model act contains a provision authorizing electronic records or signatures in place of writings or written signatures.

SECTION 12. TRANSITIONAL PROVISION. This [act] applies to the will of a decedent who dies on or after [the effective date of this act].

Comment

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

SECTION 13. EFFECTIVE DATE. This [act] takes effect . . . .