ELECTRONIC WILLS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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January 22, 2019
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**ELECTRONIC WILLS ACT**

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Electronic Wills Act

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 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, 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 Gratuitous 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 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) Individuals are in each other’s “electronic presence” if they are able to communicate simultaneously by sight and sound even though they are in different physical locations. Individuals are able to communicate by sight and sound if they can see and hear with accommodation through appropriate supportive services and technological assistance.

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

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

(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, sound, 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) “Text record” means a record readable directly as text, whether on screen, paper, or
other medium. The term includes a writing, word-processing document, web page, and email or
text message. The term does not include an audio or video file, even if transcribable or otherwise
convertible to text.

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. 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.

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

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

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

Comment

Wills statutes typically include an age and capacity requirement, but other requirements
for validity may be left to the common law. For example, a will may be challenged based on
allegations of undue influence, duress, or fraud. The 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).

SECTION 4. EXECUTION OF ELECTRONIC WILL.

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

(1) signed by:

(A) the testator, or

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

(2) [either:

(A)] 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:

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

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

[(B) 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 text record be the testator’s electronic will may be established by extrinsic evidence.

Legislative Note: A state that has the rule of Uniform Probate Code Section 2-502 and validates by statute an unattested but notarized will should include Subsection (a)(2)(B). 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.

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 (UPC) § 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.

The Drafting Committee discussed at length whether the Act should impose additional requirements on a will executed electronically 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. One concern was that when a will is challenged for lack of capacity or undue influence, witnesses may be able to testify about the testator’s state of mind. 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. Will substitutes typically do not require witnesses, and even for wills, the harmless error doctrine now allows a court to give effect to a will that was not witnessed, if the proponent of the will can provide adequate evidence of the testator’s intent. 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.

[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.”]

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

Using the defined term, text record, subsection (a)(1) requires that a will be in writing, and an 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.

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 in writing.

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

**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?]

**Notarized Wills.** Subsection 3(B) 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.

Alternative A

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

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

Alternative B

[SECTION 5. HARMLESS ERROR. [Cite to state’s harmless error statute] 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 the rule for an electronic will. A state that has not enacted a harmless error rule may not want to add one solely for an electronic will. A state that does not adopt this act, may want to enact a harmless error rule specifically for an electronic will, thereby requiring clear and convincing evidence to prove an electronic will with remote attestation.

SECTION 6. ELECTRONIC WILL MADE SELF-PROVING WHERE WITNESSES PHYSICALLY PRESENT.

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

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

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

___________________________
Testator

We, ___________________________ and ___________________________ , witnesses, sign this record, being sworn, and declare to the undersigned officer that the testator signed this record willingly as the testator’s electronic will, or willingly directed another to sign for the testator, that each of us, in the physical presence of the testator, signed 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 ______, 20___.
(name)

(Seal)

___________________________________
(Signed)

___________________________________
(Official capacity of officer)

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

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.

SECTION 7. ELECTRONIC WILL MADE SELF-PROVING WHERE ALL
WITNESSES NOT PHYSICALLY PRESENT.

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

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

(2) a clerk of the [court];

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

(4) an officer authorized to administer oaths.

(b) An electronic will without the number of attesting witnesses necessary for a valid will
physically present in the same location as the testator, may be made self-proving by:

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

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

(A) the person is an authorized person;

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

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

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

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

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

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

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

(e) A certification made under subsection (b)(2) must be in substantially the following
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. Section 8 adds the requirement of an authorized person when not all witnesses are in the same physical location with the testator when the testator executes the will. The goal is to have someone who will provide oversight of the process, and who can be called to testify if the will is challenged.

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

An authorized person acting in that role is not engaged in the practice of law.
SECTION 8. ELECTRONIC WILL MADE SELF-PROVING AFTER EXECUTION.

(a) An electronic will may be made self-proving at any time after its execution by the acknowledgment of the testator and the affidavits of the witnesses.

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

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

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

I, ___________________________ , the testator, and we, ___________________________ (name) (name)

and ___________________________ , witnesses, being sworn, declare to the (name)

undersigned officer that the testator signed the record as the testator’s electronic will, the testator signed it willingly or willingly directed another to sign it for the testator, the testator executed it as the testator’s voluntary act for the purposes expressed in the record, each of the witnesses, in the physical presence of the testator, signed the electronic will as witnesses to the testator’s signing, and to the best of each witness’s knowledge the testator was at the time [18] years of age or older, of sound mind, and under no constraint or undue influence.

___________________________
Testator

___________________________
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 ______, 20__.  

(name)

(Seal)

(Signed)

(Official capacity of officer)

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

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

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

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

SECTION 11. REVOCATION.

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

(1) a subsequent will, including an electronic 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 and for the purpose of revoking the will or provision or that another individual performed the act in the testator’s physical or

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electronic presence and by the testator’s direction.

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

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

[Need to discuss the meaning of revocatory act. The drafting committee agreed that it should not include a separate writing, unless the writing was executed with will formalities. The challenge is to say that but to allow anything we want to allow. Things to consider: (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).]

SECTION 12. CERTIFICATION OF PAPER COPY FOR SUBMISSION TO PROBATE.

(1) 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. The paper copy to be certified must contain all of the following elements:

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

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

(C) a readable copy of any associated document integrity evidence that may be a
part of or attached to the electronic will; and

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

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

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

SECTION 13. COMMON LAW AND PRINCIPLES OF EQUITY. Principles of law and equity supplement this [act] except to the extent modified by this [act] or law of this state other than 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. For example, a will can be challenged based on the doctrine of undue influence. If someone influenced the testator to execute a will that did not carry out the testator’s true intent but instead carried out the intent of the influencer, a court can consider the will invalid. Undue influence, duress, and other doctrines developed in the common law continue to apply. See RESTATEMENT (THIRD) OF PROPERTY: WILLS AND OTHER DONATIVE TRANSFERS § 8.1 (Requirement of Mental Capacity); § 8.3 (Undue Influence, Duress, or Fraud).

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

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

SECTION 14. 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 15. 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


(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 16. TRANSITIONAL PROVISION. This [act] applies to the will of a decedent who dies on or after [the effective date of this act].
An electronic will is effective if it meets the requirements of this Act, even if the will was executed before the effective date of the Act. This transitional provision will be helpful if a testator effectively executes an electronic will in a state that has adopted the Act and then moves to another state that has not yet adopted, but later adopts, the Act.

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