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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2017	.	
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The Committee on Banking and Insurance (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete lines 93 - 335
and insert:

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

(3) "Electronic will" means a will, including a codicil, executed in accordance with s. 732.523 by a person in the manner prescribed by this act, which disposes of the person's property



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11 on or after his or her death and includes an instrument that
12 appoints a personal representative or revokes or revises another
13 will or electronic will.

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

16 Section 5. Section 732.523, Florida Statutes, is created to
17 read:

18 732.523 Electronic wills.—Notwithstanding s. 732.502:

19 (1) An electronic will must meet all of the following
20 requirements:

21 (a) Exist in an electronic record that is unique and
22 identifiable.

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

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

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

32 Section 6. Section 732.524, Florida Statutes, is created to
33 read:

34 732.524 Self-proof of electronic will.—An electronic will
35 is self-proved if all of the following requirements are met:

36 (1) The electronic will is executed in conformity with this
37 act.

38 (2) The acknowledgment of the electronic will by the
39 testator and the affidavits of the witnesses are made in



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40 accordance with s. 732.503 and are part of the electronic record
41 containing the electronic will, or are attached to, or are
42 logically associated with, the electronic will.

43 (3) (a) The electronic will designates a qualified
44 custodian;

45 (b) The electronic record that contains the electronic will
46 is held in the custody of a qualified custodian at all times
47 before being offered to the court for probate; and

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

50 1. Certifies under oath that, to the best knowledge of the
51 qualified custodian, the electronic record that contains the
52 electronic will was at all times before being offered to the
53 court in the custody of a qualified custodian in compliance with
54 s. 732.527 and that the electronic will has not been altered in
55 any way since the date of its execution; and

56 2. If the execution of the electronic will included the use
57 of video conference under s. 732.525(1) (b), certifies under oath
58 that the audio and video recording required under s.
59 732.525(1) (b) 9. is in the qualified custodian's custody in the
60 electronic record that contains the electronic will and is
61 available for inspection by the court.

62 Section 7. Section 732.525, Florida Statutes, is created to
63 read:

64 732.525 Method and place of execution.—For purposes of this
65 act, the execution and filing of a document with the court as
66 provided in this act or the Florida Probate Rules, the execution
67 of a durable power of attorney under s. 709.2105, and the
68 execution of a living will under s. 765.302:



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69 (1) An individual is deemed to be in the presence of or
70 appearing before another individual if the individuals are
71 either:

72 (a) In the same physical location; or

73 (b) In different physical locations, but can communicate
74 with each other by means of live video conference, if the
75 following requirements are met:

76 1. The testator or principal may not be in an end-stage
77 condition as defined in s. 765.101 or a vulnerable adult as
78 defined s. 415.102. The contestant of the document has the
79 burden of proving that the testator or principal was in an end-
80 stage condition or was a vulnerable adult at the time of
81 executing the document.

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

83 3. The signal transmission must be secure from interception
84 through lawful means by anyone other than the persons
85 communicating.

86 4. The persons communicating must simultaneously see and
87 speak to one another with reasonable clarity.

88 5. In the video conference, the persons communicating must
89 establish the identity of the testator or principal by:

90 a. Personal knowledge, if the person asserting personal
91 knowledge explains how the identity of the testator or principal
92 has come to be known to, and the length of time for which it has
93 been known by, such person; or

94 b. Presentation of any of the forms of identification of
95 the testator or principal, as set forth in s. 117.05(5)(b)2.a.-
96 i.

97 6. In the video conference, the persons communicating must



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98 demonstrate awareness of the events taking place, which may be
99 achieved, without limitation, by stating their names and
100 identifying any document they intend to sign.

101 7. At least one of the persons communicating must be
102 either:

103 a. An attorney licensed to practice law in this state:

104 (I) Who electronically signs the document as a witness;

105 (II) Whose status as an attorney licensed to practice law

106 in this state is indicated adjacent to his or her electronic
107 signature; and

108 (III) Whose electronic signature is accompanied by his or
109 her statement that, to the best of his or her knowledge, the
110 execution of the document complied with the requirements of this
111 section; or

112 b. A Florida notary public:

113 (I) Who electronically signs the document;

114 (II) Whose electronic signature is accompanied by a notary
115 public seal that meets the requirements of s. 117.021(3); and

116 (III) Whose electronic signature and seal are accompanied
117 by his or her certification that, to the best of his or her
118 knowledge, the execution of the document complied with the
119 requirements of this section.

120
121 If a document is required to be witnessed or acknowledged, the
122 witness or notary fulfilling that requirement may be the same
123 witness or notary who fulfills the requirement of this
124 subparagraph.

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



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- 127 a. Are you over the age of 18?
- 128 b. Are you under the influence of any drugs or alcohol that
129 impairs your ability to make decisions?
- 130 c. Are you of sound mind?
- 131 d. Did anyone assist you in accessing this video
132 conference? If so, who?
- 133 e. Has anyone forced or influenced you to include anything
134 in this document which you do not wish to include?
- 135 f. Are you signing this document voluntarily?
- 136 9. A time-stamped recording of the entire video conference
137 must be identifiable with the document being signed and stored
138 in the electronic record containing the document by a qualified
139 custodian in the manner required pursuant to s. 532.527(1)(c)
140 for the storage of electronic records containing electronic
141 wills.
- 142 a. Without limitation, a recording is identifiable with a
143 document if the recording and document share an identification
144 number.
- 145 b. If the recording is not reasonably accessible by a
146 person presented with the document, such person may treat the
147 document as if it does not include the signature of any
148 signatory who appeared by means of live video conference;
149 however, an electronic will whose execution included the use of
150 video conference under this section may be proved as provided in
151 s. 733.201(4). Without limitation, a recording is reasonably
152 accessible if it is accessible at no charge over the internet
153 pursuant to instructions set forth in the document.
- 154 (2) If a law requires a record to be in writing, an
155 electronic record satisfies such provision.



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

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

161 (a) The document states that the person creating the
162 document intends to execute and understands that he or she is
163 executing the document in, and pursuant to the laws of, this
164 state.

165 (b) The person creating the document is, or the attesting
166 witnesses or Florida notary public whose electronic signatures
167 are obtained in the execution of the document are, physically
168 located within this state at the time the document is executed.

169 (c) In the case of a self-proved electronic will, the
170 electronic will designates a qualified custodian who is
171 domiciled in and a resident of this state or incorporated or
172 organized in this state.

173 Section 8. Section 732.526, Florida Statutes, is created to
174 read:

175 732.526 Probate.—An electronic will of a nonresident of
176 this state which is executed or deemed executed in another state
177 in accordance with the laws of that state or of this state may
178 be offered for and admitted to original probate in this state
179 and is subject to the jurisdiction of the courts of this state.
180 The venue for the probate of electronic wills is as provided in
181 s. 733.101(1) or, in the case of the electronic will of a
182 nonresident, may be the county in which the qualified custodian
183 or attorney for the petitioner or personal representative has
184 his or her domicile or registered office.



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185 Section 9. Section 732.527, Florida Statutes, is created to
186 read:

187 732.527 Qualified custodians.—

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

190 (a) Not be named as a fiduciary under the electronic will
191 or an heir or devisee, as defined in s. 731.201, of the
192 testator;

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

195 (c) In the course of maintaining custody of electronic
196 wills, regularly employ, and store electronic records containing
197 electronic wills in, a system that:

198 1. Protects electronic records from destruction,
199 alteration, or unauthorized access; and

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

201 (d) Furnish for any court hearing involving an electronic
202 will that is currently or was previously stored by the qualified
203 custodian any information requested by the court pertaining to
204 the qualified custodian's qualifications, policies, and
205 practices related to the creation, sending, communication,
206 receipt, maintenance, storage, and production of electronic
207 wills.

208 (2) The qualified custodian of an electronic will shall
209 provide access to or information concerning the electronic will,
210 or the electronic record containing the electronic will, only:

211 (a) To the testator;

212 (b) To persons authorized by the testator in the electronic
213 will or in written instructions signed by the testator in



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214 accordance with s. 732.502;

215 (c) After the death of the testator, to the testator's
216 nominated personal representative; or

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

219 (3) The qualified custodian of the electronic record of an
220 electronic will may elect to destroy such record, including any
221 of the documentation required to be created and stored under
222 paragraph (1)(d), at any time after the earlier of the 5th
223 anniversary of the conclusion of the administration of the
224 estate of the testator or 20 years after the death of the
225 testator.

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

229 (a) Delivering the electronic will or the electronic record
230 containing the electronic will to the testator, if then living,
231 or, after the death of the testator, by filing the will with the
232 court in accordance with s. 732.901; and

233 (b) If the outgoing qualified custodian intends to
234 designate a successor qualified custodian, by doing the
235 following:

236 1. Providing written notice to the testator of the name,
237 address, and qualifications of the proposed successor qualified
238 custodian. The testator must provide written consent before the
239 electronic record, including the electronic will, is delivered
240 to a successor qualified custodian;

241 2. Delivering the electronic record containing the
242 electronic will to the successor qualified custodian; and



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243 3. Delivering to the successor qualified custodian an
244 affidavit of the outgoing qualified custodian stating that:

245 a. The outgoing qualified custodian is eligible to act as a
246 qualified custodian in this state;

247 b. The outgoing qualified custodian is the qualified
248 custodian designated by the testator in the electronic will or
249 appointed to act in such capacity under this paragraph;

250 c. The electronic will has at all times been in the custody
251 of one or more qualified custodians in compliance with this
252 section since the time the electronic record was created, and
253 identifying such qualified custodians; and

254 d. To the best of the outgoing qualified custodian's
255 knowledge, the electronic will has not been altered since the
256 time it was created.

257
258 For purposes of making this affidavit, the outgoing qualified
259 custodian may rely conclusively on any affidavits delivered by a
260 predecessor qualified custodian in connection with its
261 designation or appointment as qualified custodian; however, all
262 such affidavits must be delivered to the successor qualified
263 custodian.

264 (5) Upon the request of the testator which is made in a
265 writing signed in accordance with s. 732.502, a qualified
266 custodian who at any time maintains custody of the electronic
267 record of the testator's electronic will must cease serving in
268 such capacity and must deliver to a successor qualified
269 custodian designated in writing by the testator the electronic
270 record containing the electronic will and the affidavit required
271 in subparagraph (4) (b) 3.



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

275 (7) If a qualified custodian is an entity, an affidavit, or
276 an appearance by the testator in the presence of a duly
277 authorized officer or agent of such entity, acting in his or her
278 own capacity as such, shall constitute an affidavit, or an
279 appearance by the testator in the presence of the qualified
280 custodian.

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

286 (9) The qualified custodian shall be liable for any damages
287 caused by the negligent loss or destruction of the electronic
288 record, including the electronic will, while it is in the
289 possession of the qualified custodian. A qualified custodian may
290 not limit liability for such damages.

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

293 (11) Upon receiving information that the testator is dead,
294 a qualified custodian must deposit the electronic will with the
295 court in accordance with s. 732.901. A qualified custodian may
296 not charge a fee for depositing the electronic will with the
297 clerk, providing the affidavits made in accordance with s.
298 732.503, or furnishing in writing any information requested by a
299 court under paragraph (1) (d).

300 (12) Except as provided in this act, a qualified custodian



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301 must at all times keep information provided by the testator
302 confidential and may not disclose such information to any third
303 party.

304 Section 10. Section 733.201, Florida Statutes is amended to
305 read:

306 733.201 Proof of wills.—

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

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

313 (3) If it appears to the court that the attesting witnesses
314 cannot be found or that they have become incapacitated after the
315 execution of the will or their testimony cannot be obtained
316 within a reasonable time, a will, other than an electronic will,
317 may be admitted to probate upon the oath of the personal
318 representative nominated by the will as provided in subsection
319 (2), whether or not the nominated personal representative is
320 interested in the estate, or upon the oath of any person having
321 no interest in the estate under the will stating that the person
322 believes the writing exhibited to be the true last will of the
323 decedent.

324 (4) If an electronic will, including an electronic will
325 whose execution included the use of a video conference under s.
326 732.525(1)(b), is not self-proved, an electronic will may be
327 admitted to probate upon the oath of the two attesting witnesses
328 for the electronic will taken before any circuit judge, any
329 commissioner appointed by the court, or the clerk. If it appears



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330 to the court that the attesting witnesses cannot be found, that
331 they have become incapacitated after the execution of the
332 electronic will, or that their testimony cannot be obtained
333 within a reasonable time, an electronic will may be admitted to
334 probate upon the oath of two disinterested witnesses providing
335 all of the following information:

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

338 (b) When and how the electronic will was discovered, and by
339 whom.

340 (c) All of the people who had access to the electronic
341 will.

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

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

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

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

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



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359 Section 11. Paragraph (b) of subsection (2) of section
360 736.0403, Florida Statutes, is amended to read:

361 736.0403 Trusts created in other jurisdictions; formalities
362 required for revocable trusts.—

363 (2) Notwithstanding subsection (1):

364 (b) The testamentary aspects of a revocable trust, executed
365 by a settlor who is a domiciliary of this state at the time of
366 execution, are invalid unless the trust instrument is executed
367 by the settlor with the formalities required for the execution
368 of a will under s. 732.502 or an electronic will under s.

369 732.523 which is self-proved; however, the qualified custodian
370 of the trust instrument may not also be a trustee of the trust
371 ~~in this state~~. For purposes of this subsection, the term
372 "testamentary aspects" means those provisions of the trust
373 instrument that dispose of the trust property on or after the
374 death of the settlor other than to the settlor's estate.

375
376 ===== T I T L E A M E N D M E N T =====

377 And the title is amended as follows:

378 Delete lines 5 - 56

379 and insert:

380 732.506, F.S.; excluding electronic wills from
381 specified methods to revoke a will; creating s.
382 732.521, F.S.; providing a short title; creating s.
383 732.522, F.S.; defining terms; creating s. 732.523,
384 F.S.; specifying requirements that must be satisfied
385 in the execution of electronic wills; creating s.
386 732.524, F.S.; providing requirements for self-proof
387 of electronic wills; creating s. 732.525, F.S.;



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388 specifying the circumstances under which a person is
389 deemed to be in the presence of or appearing before
390 another person; providing that an electronic record
391 satisfies the requirement that a record be in writing;
392 providing that an electronic signature satisfies the
393 requirement that a document be signed; providing
394 requirements for certain documents to be deemed
395 executed in this state; creating s. 732.526, F.S.;
396 authorizing an electronic will of a nonresident of
397 this state which is properly executed in this or
398 another state to be offered for and admitted to
399 probate in this state; providing the venue for the
400 probate of such electronic will; creating s. 732.527,
401 F.S.; specifying requirements for service as a
402 qualified custodian; requiring qualified custodians to
403 provide access to or information concerning the
404 electronic will, or the electronic record containing
405 the electronic will, only to specified persons or as
406 directed by a court; authorizing a qualified custodian
407 to destroy the electronic record of an electronic will
408 after a certain date; providing conditions under which
409 a qualified custodian may cease serving as a qualified
410 custodian; requiring a qualified custodian to cease
411 serving in such capacity upon the written request of
412 the testator; requiring that a successor qualified
413 custodian agree in writing to serve in that capacity
414 for an electronic will before succeeding to office;
415 specifying what constitutes an affidavit of a
416 qualified custodian; requiring a qualified custodian



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417 to deliver certain documents upon request from the
418 testator; prohibiting a qualified custodian from
419 charging the testator a fee for such documents under
420 certain circumstances; providing that a qualified
421 custodian is liable for certain damages under certain
422 circumstances; prohibiting a qualified custodian from
423 terminating or suspending access to, or downloads of,
424 an electronic will by the testator; requiring a
425 qualified custodian to deposit an electronic will with
426 the court upon receiving information that the testator
427 is dead; prohibiting a qualified custodian from
428 charging a fee for certain actions taken upon the
429 death of the testator; requiring a qualified custodian
430 to keep certain information confidential; amending s.
431 733.201, F.S.; providing for the proof of electronic
432 wills; providing requirements for admitting an
433 electronic will that is not self-proved into probate;
434 providing that a paper copy of an electronic will
435 constitutes an "original" of the electronic will
436 subject to certain conditions; amending s. 736.0403,
437 F.S.; providing that, for purposes of establishing the
438 validity of the testamentary aspects of a revocable
439 trust, the qualified custodian of the trust instrument
440 may not also be a trustee of the trust; providing
441 applicability; providing an