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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
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The Committee on Rules (Passidomo) recommended the following:

**Senate Amendment**

Delete lines 163 - 272  
and insert:  
provided in this act or the Florida Probate Rules, the execution  
of a living will under s. 765.302, and the acknowledgment of any  
of the foregoing:

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

(a) In the same physical location; or



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

15           1. The testator or principal may not be in an end-stage  
16 condition as defined in s. 765.101 or a vulnerable adult as  
17 defined in s. 415.102. The contestant of the document has the  
18 burden of proving that the testator or principal was in an end-  
19 stage condition or was a vulnerable adult at the time of  
20 executing the document.

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

22           3. The signal transmission must be secure from interception  
23 through lawful means by anyone other than the persons  
24 communicating.

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

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

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

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

36           6. In the video conference, the persons communicating must  
37 demonstrate awareness of the events taking place, which may be  
38 achieved, without limitation, by stating their names and  
39 identifying any document they intend to sign.

40           7. At least one of the persons communicating must be



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41 either:

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

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

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

45 in this state is indicated adjacent to his or her electronic

46 signature; and

47 (III) Whose electronic signature is accompanied by his or

48 her statement that, to the best of his or her knowledge, the

49 execution of the document complied with the requirements of this

50 section; or

51 b. A Florida notary public:

52 (I) Who electronically signs the document;

53 (II) Whose electronic signature is accompanied by a notary

54 public seal that meets the requirements of s. 117.021(3); and

55 (III) Whose electronic signature and seal are accompanied

56 by his or her certification that, to the best of his or her

57 knowledge, the execution of the document complied with the

58 requirements of this section.

59

60 If a document is required to be witnessed or acknowledged, the

61 witness or notary fulfilling that requirement may be the same

62 witness or notary who fulfills the requirement of this

63 subparagraph. A person presented with a document containing the

64 statement or certification required under this subparagraph may

65 presume that the document was executed in compliance with this

66 paragraph, unless the person has notice that such compliance is

67 contested.

68 8. In the video conference, the testator or principal must

69 provide verbal answers to all of the following questions:



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- 70        a. Are you over the age of 18?
- 71        b. Are you under the influence of any drugs or alcohol that  
72 impairs your ability to make decisions?
- 73        c. Are you of sound mind?
- 74        d. Did anyone assist you in accessing this video  
75 conference? If so, who?
- 76        e. Has anyone forced or influenced you to include anything  
77 in this document which you do not wish to include?
- 78        f. Are you signing this document voluntarily?
- 79        9. A time-stamped recording of the entire video conference  
80 must be identifiable with the document being signed and stored  
81 in the electronic record containing the document by a qualified  
82 custodian in the manner required pursuant to s. 732.527(1)(c)  
83 for the storage of electronic records containing electronic  
84 wills.
- 85        a. Without limitation, a recording is identifiable with a  
86 document if the recording and document share an identification  
87 number.
- 88        b. If the recording is not reasonably accessible by a  
89 person presented with the document, such person may treat the  
90 document as if it does not include the signature of any  
91 signatory who appeared by means of live video conference;  
92 however, an electronic will whose execution included the use of  
93 video conference under this section may be proved as provided in  
94 s. 733.201(4). Without limitation, a recording is reasonably  
95 accessible if it is accessible at no charge over the Internet  
96 pursuant to instructions set forth in the document.
- 97        (2) If a law requires a record to be in writing, an  
98 electronic record satisfies such provision.



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

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

104           (a) The document states that the person creating the  
105 document intends to execute and understands that he or she is  
106 executing the document in, and pursuant to the laws of, this  
107 state.

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

112           (c) In the case of a self-proved electronic will, the  
113 electronic will designates a qualified custodian who is  
114 domiciled in and a resident of this state or incorporated or  
115 organized in this state.

116           Section 8. Section 732.526, Florida Statutes, is created to  
117 read:

118           732.526 Probate.—An electronic will, other than a  
119 holographic or nuncupative will, of a nonresident of