The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 206

INTRODUCER: Senator Passidomo

SUBJECT: Electronic Wills

DATE: January 23, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	**Pre-meeting**
2.			BI	
3.			RC	

I. Summary:

SB 206 creates the Florida Electronic Wills Act, which expressly permits the use of electronic wills. The Act regulates how electronic wills may be executed, stored, and admitted to probate. Under current law, electronic wills are not expressly allowed or clearly prohibited.

As described in the bill, an electronic will is a will that exists in an electronic record and, like a traditional will, disposes of a person's property after death. The use of an electronic record, electronic signatures of the testator, the role of witnesses or a notary public, and a designated qualified custodian are key features of the Act.

Under the act, a qualified custodian must be capable of storing an electronic will, and must store a number of other electronic records that document the execution of the will. Because of the technology required, most electronic wills appear likely to be created and stored through the use of an Internet-based service provider.

The bill grants the courts of this state jurisdiction over all electronic wills that are executed according to the Act, wherever they are executed. And the bill permits these wills to be executed by residents and nonresidents. Venue for probating an electronic will is proper anywhere current law permits for probating wills. Non-residents have additional venue options, including the county in which the "qualified custodian" of an electronic will is located.

The bill expressly permits the admission to probate of the electronic will or its certified paper original. However, any certified paper original delivered to probate must be accompanied by a qualified custodian's affidavit.

Under current law, traditional wills, living wills, and powers of attorney generally must be signed by the principal[1] to the instrument and by witnesses. The bill allows these individuals to fulfill their duties while in different locations through the use of technology. These individuals may sign with an electronic signature. And they are deemed to be in the presence of each other if they are in communication with each other through a live video and audio conference.

Through the same conferencing technology, coupled with the ability to electronically sign, the bill permits a testator who is not in this state to execute an electronic will in this state. The will is deemed executed in this state if the witnesses or a notary public are located in this state.

II. Present Situation:

A will, very generally, is a legal document that a person (a "testator") may use to determine who gets his or her property when he or she dies. As set forth in the Florida Probate Code, codified as chapters 731-735, F.S., the legal definition of a will is:

> an instrument, including a codicil, executed by a person in the manner prescribed by this code, which disposes of the person's property on or after his or her death and includes an instrument which merely appoints a personal representative or revokes or revises another will.[2]

Wills do not dispose of all of a testator's property, but only his or her "estate"—i.e., those assets that are subject to probate administration.[3] Probate is "a court-supervised process for identifying and gathering the assets of a deceased person (decedent), paying the decedent's debts and distributing the decedent's assets to his or her beneficiaries."[4] Other assets are disposed of outside of probate.[5]

Without a will, a decedent's estate will be passed-on pursuant to the intestacy statutes, which devise a decedent's estate according to what might be described as default rules. With a will, however, a testator may, as a general matter, devise his or her estate to whomever he or she likes. Also, with a will, a testator may designate a person known as a personal representative to carry out the terms of the will. Otherwise, a court will choose the personal representative.

For the foregoing reasons and others, a will is an important tool for estate planning. A will is also by its nature a terribly sensitive document, as it speaks for someone who can no longer speak about distributing his or her estate. Moreover, the assets of an estate may be substantial, and the beneficiaries might not be cooperative or trusting of each other.

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[1] Principal here refers, in the case of a will, to a testator.
[2] Section 731.201(40), F.S.
[3] *See*, s. 731.201(14), F.S.
[4] The Florida Bar, *Probate in Florida*, http://www.floridabar.org/tfb/tfbconsum.nsf/48e76203493b82ad852567090070c9b9/92f75229484644c985256b2f006c5a7a?OpenDocument#Untitled%20Section (last accessed January 16, 2017).
[5] For example, the terms of a decedent's bank account may include a beneficiary clause, giving the account to whomever the decedent names.

Accordingly, the laws pertaining to wills are designed to safeguard the integrity and reliability of each will. These laws do so by subjecting a will's creation, execution, preservation, revocation, filing, and other aspects to certain formalities, as discussed below.

Execution of a Will

A will must be "in writing" and signed at its end by either the testator or by someone else for the testator. If someone else signs for the testator, the person must do so in the testator's presence and at the testator's direction.[6] At least two persons must witness the testator sign the will or must witness the testator's acknowledgement that he or she previously signed the will or that another person subscribed the testator's name to the will.[7] These witnesses must sign the will in the presence of each other and the testator.[8] For wills executed in other states, the requirements may be different.[9] The consequence of failing to strictly comply with these requirements is that the will is not valid.[10] A codicil (amendment) to a will must be executed in the same manner as a will.[11]

Though s. 732.502(1), F.S., specifies that a will must be "in writing" and that certain persons must "sign" or attach their "signature," these terms are not defined in the statutes. Moreover, there is no explicit statement in the Florida Probate Code that an electronic will is invalid, that an electronic signature is invalid, or that a will must be executed on paper.

Some have asserted that an electronically-signed will is not valid in Florida, but s. 668.004, F.S., states that, "[u]nless otherwise provided by law, an electronic signature may be used to sign a writing and shall have the same force and effect as a written signature."[12] An electronic signature, as defined in s. 668.003(4), F.S., is

> any letters, characters, or symbols, manifested by electronic or similar means, executed or adopted by a party with an intent to authenticate a writing. A writing is electronically signed if an electronic signature is logically associated with such writing.

Storing a Will

The Florida Probate Code does not specify how a will must be stored.

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[6] Section 732.502(1)(a), F.S.
[7] Section 732.502(1)(b), F.S.
[8] Section 732.502(1)(c), F.S.
[9] *See*, s. 732.502(2), F.S. A will executed in another state is valid in Florida if the will is executed in accordance with the laws of this state, the laws of the state in which it was executed, or both. This does not apply to nuncupative wills (oral) or holographic wills (written in the hand of the testator, but not properly executed as set forth in section 732.502(1), F.S.), which are not valid in Florida regardless of whether they were executed according to the laws of the state in which they were executed.
[10] *Allen v. Dalk*, 826 So. 2d 245, 247 (Fla. 2002).
[11] Section 732.502(5), F.S.
[12] The Uniform Electronic Transaction Act is set forth in s. 668.50, F.S. It includes a statement that the "section" does not govern, among other things, a transaction that is governed by a law governing the creation and execution of wills. Section 668.004, which provides broad permission to electronically sign a document, is of course a different section. But even if it were not, or even if it did not exist, section 668.50, F.S., would not appear to *prohibit* electronically signing a will.

Probate, and Proving a Will

To acquire a court order passing-on ownership of the testator's estate, a will must be probated.[13] Recall that probate is a court-supervised process for identifying and gathering the assets of a decedent, paying the decedent's debts and distributing the decedent's assets to his or her beneficiaries.

The venue for a probate proceeding is set forth in s. 731.101(1), F.S., which states:

> (1) The venue for probate of wills and granting letters shall be:
> (a) In the county in this state where the decedent was domiciled.
> (b) If the decedent had no domicile in this state, then in any county where the decedent's property is located.
> (c) If the decedent had no domicile in this state and possessed no property in this state, then in the county where any debtor of the decedent resides.

For a will to be admitted to probate in Florida, it must be "proved."[14] No statute explicitly states what it means for a will to be proved, or what it is about the will or purported will that is being proved. However, it is apparent that proving a will means proving that the will is what it purports to be and that it was validly executed.

In this state, a will may be made self-proved. A self-proved will may be admitted to probate without further proof.

For a will to be self-proved in this state, the testator must acknowledge the will before an officer authorized to administer oaths (e.g., a notary public). Also, the attesting witnesses must make affidavits before the officer. Lastly, the officer must evidence the acknowledgement and affidavits by a certificate attached to or following the will.[15]

If a will is not self-proved, it may nonetheless "be admitted to probate upon the oath of any attesting witness taken before any circuit judge, commissioner appointed by the court, or clerk."[16]

Even after a will is proved and admitted to probate, it may be contested.[17] There are several grounds, such as fraud and undue influence, on which a self-proved will might be contested.

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[13] *See* s. 733.103(1), F.S.
[14] Section 733.201(1), F.S.
[15] The officer's certificate must be substantially in the form set forth at section 732.503, F.S. The form requires that the witnesses state that they witnessed the testator *sign* the will. However, the statutory requirements for executing a will do not require witnesses to witness the testator sign the will. Section 732.502, F.S., provides that the witnesses may either witness the testator sign, or the witness the testator acknowledge his or her prior signature.
[16] Section 733.201(2), F.S. See s. 733.201(3), F.S., which addresses how to prove wills with the testimony of an attesting witness.
[17] *See, Powell v. Eberhardt (in Re Estate of Hartman)*, 836 So. 2d 1038, 1039 (Fla. 2d DCA 2002).

Custodian's Duty to File with Court

The custodian of a will must deposit the will with the court within 10 days after receiving information of the testator's death.[18] If the custodian fails to do so without just or reasonable cause, he or she is be subject to liability:

> Upon petition and notice, the custodian of any will may be compelled to produce and deposit the will. All costs, damages, and a reasonable attorney's fee shall be adjudged to petitioner against the delinquent custodian if the court finds that the custodian had no just or reasonable cause for failing to deposit the will.[19]

Living Wills & Powers of Attorney

In addition to a will, many aging persons choose to execute a power of attorney or a living will. A living will, despite its name, is fundamentally different than a will. A living will is a document setting forth a person's desires regarding "providing, withholding, or withdrawal of life-prolonging procedures in the event that such person has a terminal condition, has an end-stage condition, or is in a persistent vegetative state."[20] A living will must be executed as follows, which differs from the requirement for executing a will:

> A living will must be signed by the principal in the presence of two subscribing witnesses, one of whom is neither a spouse nor a blood relative of the principal. If the principal is physically unable to sign the living will, one of the witnesses must subscribe the principal's signature in the principal's presence and at the principal's direction.[21]

A power of attorney is a "writing that grants authority to an agent to act in the place of the principal, whether or not the term is used in that writing."[22] A power of attorney, like other instruments, must be executed and witnessed according to statutory requirements. Under these requirements, a power of attorney generally must be signed by the principal and by two subscribing witnesses and be acknowledged by the principal before a notary public.[23] However, if "the principal is physically unable to sign the power of attorney, the notary public before whom the principal's oath or acknowledgment is made may sign the principal's name on the power of attorney."[24]

Other States' Treatment of Electronic Wills

It appears that Nevada is the only state that, by statute, expressly permits the use of an electronic will.[25] This statute has been in effect since 2001.

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[18] Section 732.901(1), F.S.
[19] Section 732.901(2), F.S.
[20] Section 765.302(1), F.S.
[21] Section 765.302(1), F.S.
[22] Section 709.2102(9), F.S. A "durable" power of attorney is one which survives even if the principal becomes incapacitated. Section 709.2104, F.S.
[23] Section 709.2105(2), F.S.
[24] Section 709.2105(3), F.S.
[25] See Nev. Rev. Stat. §133.085.

Although Virginia's statutes do not expressly permit the use of electronic wills, Virginia allows documents to be notarized through live video and audio technology.[26] In Tennessee, a court held that a testator validly signed his will when he typed his name in cursive font.[27] In Ohio, a court admitted a will to probate that was written and signed with a stylus on an electronic tablet.[28]

III. Effect of Proposed Changes:

This bill creates the Florida Electronic Wills Act, which regulates and expressly permits the use of "electronic wills." The bill also revises several aspects of current law relating to the execution of wills, living wills, and powers of attorney.

The Act defines an electronic will as:

> an instrument, including a codicil, executed by a person in the manner prescribed by this act which disposes of the person's property on or after his or her death and includes an instrument which merely appoints a personal representative or revokes or revises another will or electronic will.[29]

This definition is effectively identical to the definition of a traditional will, which is set forth in the Florida Probate Code.[30]

The bill makes it explicit that a testator may sign and store his or her will electronically, and it removes the requirement that attesting witnesses be in the physical presence of the testator and of each other. However, the bill does not prohibit traditional means of signing, witnessing, and storing wills.

Current law arguably already permits several of the key aspects of the bill, such as electronically signing and electronically storing a will. Other aspects of the bill are clearly not permitted under current law, such as the option for a testator to execute a will in the presence of only a notary public.

"Florida Electronic Wills Act"

In addition to amending several existing sections of the Florida Statutes, the bill creates several new sections within existing chapter 732, F.S. These new sections—ss. 732.521 through 732.529, F.S.—are given the short title, "Florida Electronic Wills Act" (the "Act"). The Act governs the execution, storing, proving, and several other vital aspects of "electronic wills."

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[26] Va. Code Ann. §47.1.
[27] *Taylor v. Holt,* 134 S.W.3d 830, 833 (Tenn. Ct. App. 2003).
[28] *In re Estate of Javier Castro, Deceased*, 2013-ES-00140 (Ct. Comm. Pl. Lorain Cnty., Probate Div., Ohio, June 19, 2013) (James T. Walther, Judge)
[29] Section 732.522(4), F.S.
[30] See s. 731.201(4), F.S., for a definition of "will."

The Act does not replace the existing Florida Probate Code, either in whole or in part. Thus, the Act exists "within," and must be read together with, the rest of the Florida Probate Code. The Act does not, however, pertain only to electronic wills.

Execution of Wills, Electronic Wills, Powers of Attorney, and Living Wills

Execution of Wills

The bill changes several aspects of current statutory law relating to the execution of wills. Also, some concepts that are undefined in the current statutory law (yet might be defined in case law) are defined in the bill. New s. 732.526, F.S, sets forth these changes and definitions.

According to current law, a will must be "signed" at its end by either the testator or by someone else on behalf of the testator and at the testator's direction. No relevant provision of the current Florida Statutes appears to define or describe "signed," "signature" or any similar word. Section 732.526(1), F.S., however, appears to permit a person to sign a traditional will using an electronic signature. An electronic signature is "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record."[31]

Under current law, at least two persons must witness the testator sign the will. Alternatively, at least two persons must witness the testator's acknowledgement that he or she previously signed the will or that another person has subscribed the testator's name to the will.[32] These witnesses must sign the will in the presence of each other and of the testator.[33] However, presence apparently is not defined in the current Florida Probate Code.

The bill provides two options for two or more people to be in each other's presence. One option is for them to be in the same physical location. The other option is for them to be in different physical locations, but still be able to communicate with each other by means of a live video and audio conference.[34]

Execution of Electronic Wills

Most of the above-noted aspects of execution of traditional wills under the bill also apply to electronic wills. Presence means the same thing relative to electronic wills as it does relative to traditional wills. Both electronic wills and traditional wills may be signed electronically. However, there are several differences regarding the execution of electronic wills and traditional wills.

One difference is that electronic wills must be signed by the testator personally,[35] though traditional wills may be signed either by the testator or by someone at the testator's direction. Traditional wills must be signed or acknowledged by the testator in the presence of two attesting witnesses, yet electronic wills need only be signed in the presence of either two attesting

[31] Section 732.522(3), F.S.
[32] Section 732.502(1)(b), F.S.
[33] Section 732.502(1)(c), F.S.
[34] Section 732.526(1), F.S.
[35] Section 732.524(1)(b), F.S.

witnesses *or a notary public*.[36] With traditional wills, the attesting witnesses must sign the will. With an electronic will, the notary public or the witnesses may electronically sign.[37] A traditional will must be signed at its end, yet the bill does not specify what part of an electronic will must be signed.

What appear to be execution requirements are set forth in new s. 732.524, F.S. These requirements pertain only to electronic wills. Under these requirements, an electronic will must be in an electronic record and be electronically signed by the testator while in the presence of a notary public or witnesses. Under case law, the failure to strictly adhere to statutory execution requirements invalidates a traditional will. The bill does not indicate the effect of failing to strictly adhere to these new requirements for electronic wills.

Execution of Powers of Attorney and Living Wills

New s. 732.526, F.S., pertains to the execution of traditional and electronic wills and also to durable powers of attorney and living wills.

Under current law, living wills and powers of attorney must be signed by the person executing the instrument and by witnesses. Current law expressly states that living wills must be signed by the principal in the presence of two witnesses. Current statutory law may effectively provide the same with regard to execution of powers of attorney, though the applicable statute does not expressly state that the witnesses and principal must be in each other's presence.

The bill expressly states that the principal and the subscribing witnesses of these documents are deemed to be in the presence of each other if they are in the same physical location or if they can communicate with each by means of live video and audio conference. The bill also provides that powers of attorney and wills may be signed by electronic signature.

Making Electronic Wills Self-Proved

Recall that under current law, a will may be made self-proved. A self-proved will may be admitted to probate without further proof that it is what it purports to be or that it was executed properly.[38]

The bill provides that an attested electronic will is self-proved, pursuant to new s. 732.525, F.S., if all of the following requirements are met:

- The acknowledgement of the electronic will by the testator and the affidavits of the witnesses are included in the electronic record.
- The electronic will designates a qualified custodian[39] to control the electronic record.

[36] Section 732.524(1)(b), F.S.
[37] Section 732.524(1)(c), F.S.
[38] Recall also that a self-proved will may still be contested after admission to probate.
[39] The bill provides that a qualified custodian is person who meets the requirements of s. 732.528(1), F.S. These requirements are discussed later in this analysis in a section regarding the definition, duties and other relevant aspects of qualified custodians.

- The electronic will at all times was under the control of a qualified custodian before being reduced to the certified paper original that is sought to be probated.

The bill does not expressly permit the admission of a self-proved electronic will to probate *without further proof*.

Neither does the bill explicitly state that a certified paper original of an electronic will may be admitted to probate *without further proof*. The bill does, however, state that the *certified paper original* of an electronic will may be admitted to probate. The bill also provides that *the certified paper original* of a self-proved electronic will is presumed to be valid. Neither of these statements, nor the two statements read together, clearly provides that a certified paper original of a self-proved electronic will may be admitted to probate *without further proof*.

Qualified Custodians

Definition and Essential Duties

The bill defines a qualified custodian of an electronic will as a person who meets the following requirements:
- Is not an heir or devisee of the testator;
- Is domiciled in and a resident of Florida or is incorporated or organized in Florida;
- Consistently employs a system for ensuring the safekeeping of electronic records;
- Creates and stores in the electronic record of any given electronic will documentation of the execution of the will, including photographs of the testator and witnesses or notary public electronically signing the will; and
- Furnishes for any court hearing involving an electronic will that is currently or was previously stored by the qualified custodian any information requested by the court pertaining to the qualified custodian's policies and procedures.[40]

The following are a few of the many observations that could be made about the definition of qualified custodian in the bill. By definition, a person who fails to perform any of the requirements of a qualified custodian above is no longer a qualified custodian, as opposed to a qualified custodian who has failed in some regard. Secondly, a qualified custodian need not be a natural person.

Also, as to the requirement that the qualified custodian "employ a system for ensuring the safekeeping of electronic records," the bill *does not require the custodian to use the system* as to any given electronic record. The bill does not expressly require the custodian to use the system at all. Moreover, even if the custodian was required to use their "system," it is not clear what this would mean. The specific requirements and capabilities of the system are neither defined nor described in the bill. Similarly, the current Florida Probate Code does not appear to specify how a traditional will must be stored.

A qualified custodian apparently need not grant a testator's request to receive or view the electronic record or a copy thereof.

[40] Sections 732.522(5) and 732.528(1), F.S.

Current law requires the custodian of a will to deposit such will with the appropriate court within 10 days of receipt of information of the testator's death. It is not clear that this provision would apply to qualified custodians of electronic wills. The bill includes no requirement that a qualified custodian deposit an electronic will with the court upon notice of the testator's death.

Lastly, the bill does not provide for criminal or civil liability for wrongdoing by qualified custodians.

Qualified Custodian's Taking Office, Passing Office, and Being Removed from Office

The bill provides that one may not serve as a qualified custodian unless the person agrees in writing to serve in this capacity.[41] A person who at any time serves as the qualified custodian of a given electronic record of an electronic will is free to choose to stop serving in this capacity, apparently for any or no reason.[42] Moreover, it appears that the qualified custodian is free to choose whether to designate a successor qualified custodian. Apparently, there is no mechanism for a testator to force the qualified custodian to pass office to a successor qualified custodian.

As mentioned, a qualified custodian who elects to cease serving may also choose a successor qualified custodian. When a qualified custodian chooses this option, the bill does not appear to authorize the testator to direct the qualified custodian to choose a particular successor. However, a testator may require a qualified custodian to step down at any time or pass the electronic will and related records to another qualified custodian chosen by the testator.[43]

If a qualified custodian chooses to step down and does not designate a successor, the bill requires the custodian to provide 30 days' notice to the testator, or to the personal representative if the testator is deceased. The qualified custodian must then deliver the certified paper original and all records of the electronic will to the testator or the personal representative if the testator is deceased.[44]

If a qualified custodian designates a successor qualified custodian, the custodian must give 30 days' notice to both the personal representative and the successor qualified custodian, *but not the testator*. Then, the outgoing qualified custodian must deliver the electronic record of the electronic will to the successor qualified custodian. The outgoing qualified custodian also must give the successor custodian an affidavit stating several things apparently designed to give the successor qualified custodian legal reason to believe that the successor has what is needed to do all that the successor is required to by law.[45]

The bill provides three time frames after which a qualified custodian may elect to destroy the electronic record of an electronic will.[46] However, it is unclear whether the qualified custodian is free to destroy the record as soon as any one of the time frames runs, or if all three must run

[41] Section 732.528(6), F.S.
[42] Section 732.528(4), F.S.
[43] Section 732.528(5), F.S.
[44] Section 732.528(4)(a), F.S.
[45] Section 732.528(4)(b)2., F.S.
[46] Section 732.528(3), F.S.

before the custodian can destroy the record. Also, the bill does not specify that the estate must be probated before the records may be destroyed.

Documents Deemed to be Executed in Florida

The bill includes a provision, in s. 732.526(3), F.S., which specifies when a document is "deemed" to be executed in this state. A document is deemed to be executed in this state if all of the following requirements are met:

- The document states that the person creating the document intends to execute and understands that he or she is executing the document in, and pursuant to the laws of, this state.
- The document provides that its validity, interpretation, and effect are governed by the laws of this state.
- The attesting witnesses or Florida notary public whose electronic signatures are obtained in the execution of the document are physically located within this state at the time the document is executed.
- In the case of an electronic will, the electronic will designates a qualified custodian.

The purpose of deeming a document to be executed in this state is not clear. One may suppose that the purpose is to allow residents of any state, irrespective of whether they have any real connection[47] to Florida, to create an electronic will that could be probated in Florida. However, that purpose seems to be fulfilled in new s. 732.527(1), F.S., which appears to provide that an electronic will may be probated in this state regardless of whether it is executed here.

Perhaps the intent of the provision is to allow a person who has minimal connections to this state to execute a valid Florida electronic will that is admissible to probate in his or her home state upon death.[48] For example, assume a man is a resident of Mississippi and has no real or personal property in Florida and wishes to have an electronic will. But Mississippi law does not expressly permit Mississippi residents to create an electronic will under the laws of that state. However, perhaps Mississippi law recognizes a will executed out-of-state as valid as long as the will was executed according to the law of the state in which it was executed. As a result, this man could create an electronic will "deemed to be executed in Florida" pursuant to s. 732.526(3), F.S., and the electronic will would be valid in Mississippi.[49] This process could allow a qualified custodian in Florida to make electronic wills available to a person in any state.

[47] By real connection, it is meant a connection to Florida that is certainly beyond the connection created by the bulleted list just above, such as having property here, or residing here.

[48] Florida law currently provides that a *will of a non-resident* is valid in Florida whether or not the will was executed in the state, as long as it was executed pursuant to the laws of the state in which it was executed. See section 732.502(2), F.S.

[49] It should be noted that if Mississippi's laws, like this state's, allow only nonresidents to have a will from another state, this maneuver would not appear to work.

Probate of an Electronic Will in Florida

Venue

The bill provides that venue for probate of an electronic will may be anywhere that venue would be proper for a traditional will. The bill provides additional venue options for the electronic will *of a non-resident*.

Currently, venue for probate of a will must be in:
- The county in this state where the decedent was domiciled.
- Any county where the decedent's property is located, if the decedent was not domiciled in this state.
- The county where any debtor of the decedent resides, if the decedent was not domiciled in this state and had no property in this state.[50]

Venue for probating an electronic will is proper as for a traditional will, but venue for a nonresident electronic will is also proper in the county in which the qualified custodian or attorney for the petitioner or personal representative has his or her domicile or registered office.

Jurisdiction

The bill expressly grants the right to admit a will to original probate in this state if the will was "executed or deemed executed in another state in accordance with the laws of that state or of" Florida. Florida courts are expressly granted jurisdiction over these electronic wills.[51]

In contrast, the existing Florida Probate Code does not appear to contain a similar provision broadly granting Florida courts jurisdiction over validly executed wills of non-residents who do not have any property, creditors, or debtors in Florida. Moreover, the venue provision discussed just above does not provide a venue option to probate the will of non-residents having no connection to this state. Together, the lack of clear jurisdiction or a venue option indicates that the courts of this state have no jurisdiction to probate the will of a nonresident decedent with no domicile, no property, and no debtor in this state.

What May Be Admitted to Probate

New s. 732.527, F.S., (entitled "Probate") expressly states that an electronic will or a certified paper original of an electronic will may be admitted to probate.

A certified paper original delivered to probate must be accompanied by an affidavit.[52] Such affidavit must contain different contents depending upon whether the electronic will has always been in the custody of a qualified custodian.[53]

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[50] Section 731.101(1), F.S.
[51] Section 732.527(1), F.S. The way the bill is worded, it is unclear whether this jurisdiction applies to the type of electronic will in question even before such will is offered for and admitted to probate.
[52] Section 732.529, F.S.
[53] Section 732.529, F.S.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may facilitate the creation and storage of wills using an Internet-based service. The associated costs are unknown. Further, if an electronic will can be easily created, many people who do not have a will may decide to execute one. However, some may use the services of an Internet-based service instead of, or in addition to, the services of an attorney.

C. Government Sector Impact:

The bill apparently allows non-Floridians with no property, no creditors, and no debtors in the state to execute a valid Florida electronic will. And Florida courts are given jurisdiction over these electronic wills. Whether or the extent to which the bill will result in an increase in probate cases and associated costs to the judicial branch is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 731.201 and 732.506.

This bill creates the following sections of the Florida Statutes: 732.521, 732.522, 732.523, 732.524, 732.525, 732.526, 732.527, 732.528, and 732.529.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.