

By the Committee on Judiciary; and Senator Passidomo

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1 A bill to be entitled
2 An act relating to electronic wills; amending s.
3 731.201, F.S.; revising the definition of the term
4 "will" to include electronic wills; amending s.
5 732.506, F.S.; excepting electronic wills from
6 revocation provisions; creating s. 732.521, F.S.;
7 providing a short title; creating s. 732.522, F.S.;
8 defining terms; creating s. 732.523, F.S.; specifying
9 requirements that must be satisfied in the execution
10 of electronic wills; creating s. 732.524, F.S.;
11 providing that electronic wills may be made self-
12 proved at the time of execution; providing
13 requirements for self-proof of electronic wills;
14 creating s. 732.525, F.S.; specifying the
15 circumstances under which a person is deemed to be in
16 the presence of another; providing that an electronic
17 signature satisfies the requirement that a document be
18 signed; providing requirements for certain documents
19 to be deemed executed in this state; creating s.
20 732.526, F.S.; authorizing an electronic will that is
21 properly executed in this or another state to be
22 offered for and admitted to probate in this state;
23 providing the venue for the probate of such electronic
24 will; creating s. 732.527, F.S.; specifying
25 requirements for service as a qualified custodian;
26 requiring qualified custodians to provide access to or
27 information concerning the electronic will or the
28 electronic record containing the electronic will, only
29 to specified persons; authorizing the qualified
30 custodian to deposit an electronic will with the clerk
31 of court; authorizing a qualified custodian to destroy
32 the electronic record of an electronic will after a

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33 certain date; providing for cessation of service of a
34 qualified custodian; requiring that a qualified
35 custodian who elects to cease serving in such capacity
36 provide written notice to the testator under certain
37 circumstances; requiring a qualified custodian to
38 deliver certain documents to specified persons when he
39 or she ceases to serve in such capacity; requiring a
40 qualified custodian to cease serving in such capacity
41 under certain circumstances; requiring that a
42 successor qualified custodian agree in writing to
43 serve in that capacity for an electronic will before
44 succeeding to office; specifying what constitutes an
45 affidavit of the qualified custodian; requiring a
46 qualified custodian to deliver certain documents upon
47 request from a testator; providing that a qualified is
48 liable for certain damages under certain
49 circumstances; requiring a qualified custodian to keep
50 certain information confidential; amending s. 733.201,
51 F.S.; providing for the proof of electronic wills;
52 providing requirements for admitting an electronic
53 will that is not self-proved into probate; providing
54 that a paper copy of an electronic will constitutes an
55 "original" of the electronic will subject to certain
56 conditions; providing applicability; providing an
57 effective date.

58
59 Be It Enacted by the Legislature of the State of Florida:

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61 Section 1. Subsection (40) of section 731.201, Florida

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62 Statutes, is amended to read:

63 731.201 General definitions.—Subject to additional
64 definitions in subsequent chapters that are applicable to
65 specific chapters or parts, and unless the context otherwise
66 requires, in this code, in s. 409.9101, and in chapters 736,
67 738, 739, and 744, the term:

68 (40) "Will" means an instrument, including a codicil,
69 executed by a person in the manner prescribed by this code,
70 which disposes of the person's property on or after his or her
71 death and includes an instrument which merely appoints a
72 personal representative or revokes or revises another will. The
73 term "will" includes an electronic will as defined in s.
74 732.522.

75 Section 2. Section 732.506, Florida Statutes, is amended to
76 read:

77 732.506 Revocation by act.—A will or codicil, other than an
78 electronic will, is revoked by the testator, or some other
79 person in the testator's presence and at the testator's
80 direction, by burning, tearing, canceling, defacing,
81 obliterating, or destroying it with the intent, and for the
82 purpose, of revocation.

83 Section 3. Section 732.521, Florida Statutes, is created to
84 read:

85 732.521 Short title.—Sections 732.521-732.527 may be cited
86 as the "Florida Electronic Wills Act."

87 Section 4. Section 732.522, Florida Statutes, is created to
88 read:

89 732.522 Definitions.—As used in ss. 732.521-732.527, the
90 term:

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

93 (2) "Electronic signature" means an electronic sound,
94 symbol, or process attached to or logically associated with a
95 record and executed or adopted by a person with the intent to
96 sign the record.

97 (3) "Electronic will" means a will, including a codicil,
98 executed in accordance with s. 732.523 by a person in the manner
99 prescribed by this act, which disposes of the person's property
100 on or after his or her death and includes an instrument that
101 appoints a personal representative or revokes or revises another
102 will or electronic will.

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

105 Section 5. Section 732.523, Florida Statutes, is created to
106 read:

107 732.523 Electronic wills.—Notwithstanding s. 732.502:

108 (1) An electronic will must:

109 (a) Exist in an electronic record.

110 (b) Be electronically signed by the testator in the
111 presence of a notary public who is, or at least two attesting
112 witnesses who are, in the same room as the testator.

113 (c) Be electronically signed by the notary public and the
114 two attesting witnesses in the presence of the testator and, in
115 the case of the witnesses, in the presence of each other. The
116 notary public's signature must be accompanied by a notary public
117 seal that meets the requirements of s. 117.021(3).

118 (2) Except as otherwise provided in this act, all questions
119 as to the force, effect, validity, and interpretation of an

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120 electronic will that complies with this section must be
121 determined in the same manner as in the case of a will executed
122 in accordance with s. 732.502.

123 Section 6. Section 732.524, Florida Statutes, is created to
124 read:

125 732.524 Self-proof of electronic will.—An electronic will
126 is self-proved if all of the following requirements are met:

127 (1) The electronic will is executed in conformity with this
128 act.

129 (2) The acknowledgment of the electronic will by the
130 testator and the affidavits of the witnesses are made in
131 accordance with s. 732.503 and are part of the electronic record
132 containing the electronic will, or are attached to, or are
133 logically associated with, the electronic will.

134 (3) (a) The electronic will is deposited with the clerk
135 before the death of the testator in accordance with s. 732.901
136 with a certification signed by the testator confirming that the
137 electronic will is a valid will of the testator; or

138 (b)1. The electronic will designates a qualified custodian;
139 and

140 2. The qualified custodian certifies under oath that to its
141 best knowledge the electronic will was at all times under the
142 control of a qualified custodian before being offered to the
143 court and that the electronic will has not be altered in any way
144 since the date of its execution.

145 Section 7. Section 732.525, Florida Statutes, is created to
146 read:

147 732.525 Method and place of execution.—For purposes of this
148 act, the execution and filing of a document with the court as

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149 provided in this act or the Florida Probate Rules, the execution
150 of a durable power of attorney under s. 709.2105, and the
151 execution of a living will under s. 765.302:

152 (1) An individual is deemed to be in the presence of
153 another individual if the individuals are either:

154 (a) In the same physical location; or

155 (b) In different physical locations, but can communicate
156 with each other by means of live video and audio conference,
157 provided that a video transcript of the execution of the
158 document is recorded and stored in, or attached to or logically
159 associated with, the electronic record of the document.

160 (2) Any requirement that a document be signed may be
161 satisfied by an electronic signature.

162 (3) A document that is signed electronically is deemed to
163 be executed in this state if any one of the following
164 requirements is met:

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

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

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

176 Section 8. Section 732.526, Florida Statutes, is created to
177 read:

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

188 Section 9. Section 732.527, Florida Statutes, is created to
189 read:

190 732.527 Qualified custodians.—

191 (1) To serve as a qualified custodian of an electronic
192 will, a person must:

193 (a) Not be an heir or devisee, as defined in s. 731.201, of
194 the testator;

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

197 (c) Consistently employ a system for ensuring the
198 safekeeping of electronic records and store electronic records
199 containing electronic wills under such system; and

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

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207 (2) The qualified custodian of an electronic will shall
208 provide access to or information concerning the electronic will,
209 or the electronic will and the electronic record containing the
210 electronic will, only to the testator and such other persons as
211 directed by the written instructions of the testator. A
212 qualified custodian may also deposit the electronic will with
213 the clerk by complying and in accordance with s. 732.901.

214 (3) The qualified custodian of the electronic record of an
215 electronic will may elect to destroy such record, including any
216 of the documentation required to be created and stored under
217 paragraph (1)(d), at any time after the 5th anniversary of the
218 admission of the will of the testator to probate.

219 (4) A qualified custodian who at any time controls the
220 electronic record of an electronic will may elect to cease
221 servicing in such capacity by:

222 (a) Delivering the electronic will or the electronic record
223 containing the electronic will to the testator, if then living,
224 or, after the death of the testator, to the personal
225 representative;

226 (b) Depositing the electronic will, including an
227 acknowledgement of affidavits made in accordance with s.
228 732.503, with the clerk after complying with s. 732.901; or

229 (c)1. If the outgoing qualified custodian intends to
230 designate a successor qualified custodian, providing written
231 notice to the testator or, after the testator's death, the
232 testator's nominated personal representative of the name,
233 address, and qualifications of the proposed successor qualified
234 custodian. The testator or a testator's nominated personal
235 representative must provide written consent before the

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236 electronic record, including the electronic will, is delivered
237 to a successor qualified custodian;

238 2. Delivering the electronic record containing the
239 electronic will, to the successor qualified custodian; and

240 3. Delivering to the successor qualified custodian an
241 affidavit of the outgoing qualified custodian stating that:

242 a. The outgoing qualified custodian is eligible to act as a
243 qualified custodian in this state;

244 b. The outgoing qualified custodian is the qualified
245 custodian designated by the testator in the electronic will or
246 appointed to act in such capacity under paragraph (4) (c);

247 c. The electronic will has been in the control of one or
248 more qualified custodians since the time the electronic record
249 was created, and identifying such qualified custodians; and

250 d. To the best of the qualified custodian's knowledge, the
251 electronic will has not been altered since the time it was
252 created.

253
254 For purposes of making this affidavit, the outgoing qualified
255 custodian may rely conclusively on any affidavits delivered by a
256 predecessor qualified custodian in connection with its
257 designation or appointment as qualified custodian; however, all
258 such affidavits must be delivered to the successor qualified
259 custodian.

260 (5) Upon the written request of the testator, a qualified
261 custodian who at any time controls the electronic record of the
262 testator's electronic will must cease serving in such capacity
263 and must deliver to a successor qualified custodian designated
264 in writing by the testator the electronic will and the affidavit

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265 required in this subparagraph (4)(c)3.

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

269 (7) If a qualified custodian is an entity, an affidavit of
270 a duly authorized officer or agent of such entity shall
271 constitute the affidavit of the qualified custodian.

272 (8) A qualified custodian must provide a paper copy of an
273 electronic will and the electronic record, including the
274 electronic will, to the testator immediately upon request. For
275 the first such request in any 365-day period, the testator may
276 not be charged a fee for being provided with these documents.

277 (9) The qualified custodian shall be liable for any damages
278 caused by the negligent loss or destruction of the electronic
279 record, including the electronic will, while it is in the
280 possession of the qualified custodian. A qualified custodian may
281 not limit liability for such damages.

282 (10) A qualified custodian may not terminate or suspend
283 access to the electronic will by the testator.

284 (11) Except as provided herein, a qualified custodian must
285 at all times keep information provided by the testator
286 confidential and may not disclose such information to any third
287 party.

288 Section 10. Section 733.201, Florida Statutes is amended to
289 read:

290 733.201 Proof of wills.—

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

293 (2) A will, other than an electronic will, may be admitted

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294 to probate upon the oath of any attesting witness taken before
295 any circuit judge, commissioner appointed by the court, or
296 clerk.

297 (3) If it appears to the court that the attesting witnesses
298 cannot be found or that they have become incapacitated after the
299 execution of the will or their testimony cannot be obtained
300 within a reasonable time, a will, other than an electronic will,
301 may be admitted to probate upon the oath of the personal
302 representative nominated by the will as provided in subsection
303 (2), whether or not the nominated personal representative is
304 interested in the estate, or upon the oath of any person having
305 no interest in the estate under the will stating that the person
306 believes the writing exhibited to be the true last will of the
307 decedent.

308 (4) If an electronic will is not self-proved, an electronic
309 will may be admitted to probate upon the oath of the two
310 attesting witnesses for the electronic will taken before any
311 circuit judge, commissioner appointed by the court, or the
312 clerk. If it appears to the court that the attesting witnesses
313 cannot be found, that they have become incapacitated after the
314 execution of the electronic will, or that their testimony cannot
315 be obtained within a reasonable time, an electronic will may be
316 admitted to probate upon the oath of two disinterested witnesses
317 providing all of the following information:

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

320 (b) When and how the electronic will was discovered, and by
321 whom.

322 (c) All of the people who had access to the electronic

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323 will.

324 (d) The method by which the electronic will was stored and
325 the safeguards that were in place to prevent alterations to the
326 electronic will.

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

329 (f) A statement that the electronic will is a true,
330 correct, and complete tangible manifestation of the testator's
331 will.

332 (5) A paper copy of an electronic will which is a true and
333 correct copy of the electronic will may be offered for and
334 admitted to probate and shall constitute an "original" of the
335 electronic will.

336 Section 11. This act applies to electronic wills executed
337 on or after July 1, 2017.

338 Section 12. This act shall take effect July 1, 2017.