

By the Committees on Banking and Insurance; and Judiciary; and
Senator Passidomo

597-03982-17

2017206c2

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.; excluding electronic wills from
6 specified methods to revoke a will; creating s.
7 732.521, F.S.; providing a short title; creating s.
8 732.522, F.S.; defining terms; creating s. 732.523,
9 F.S.; specifying requirements that must be satisfied
10 in the execution of electronic wills; creating s.
11 732.524, F.S.; providing requirements for self-proof
12 of electronic wills; creating s. 732.525, F.S.;
13 specifying the circumstances under which a person is
14 deemed to be in the presence of or appearing before
15 another person; providing that an electronic record
16 satisfies the requirement that a record be in writing;
17 providing that an electronic signature satisfies the
18 requirement that a document be signed; providing
19 requirements for certain documents to be deemed
20 executed in this state; creating s. 732.526, F.S.;
21 authorizing an electronic will of a nonresident of
22 this state which is properly executed in this or
23 another state to be offered for and admitted to
24 probate in this state; providing the venue for the
25 probate of such electronic will; creating s. 732.527,
26 F.S.; specifying requirements for service as a
27 qualified custodian; requiring qualified custodians to
28 provide access to or information concerning the
29 electronic will, or the electronic record containing

597-03982-17

2017206c2

30 the electronic will, only to specified persons or as
31 directed by a court; authorizing a qualified custodian
32 to destroy the electronic record of an electronic will
33 after a certain date; providing conditions under which
34 a qualified custodian may cease serving as a qualified
35 custodian; requiring a qualified custodian to cease
36 serving in such capacity upon the written request of
37 the testator; requiring that a successor qualified
38 custodian agree in writing to serve in that capacity
39 for an electronic will before succeeding to office;
40 specifying what constitutes an affidavit of a
41 qualified custodian; requiring a qualified custodian
42 to deliver certain documents upon request from the
43 testator; prohibiting a qualified custodian from
44 charging the testator a fee for such documents under
45 certain circumstances; providing that a qualified
46 custodian is liable for certain damages under certain
47 circumstances; prohibiting a qualified custodian from
48 terminating or suspending access to, or downloads of,
49 an electronic will by the testator; requiring a
50 qualified custodian to deposit an electronic will with
51 the court upon receiving information that the testator
52 is dead; prohibiting a qualified custodian from
53 charging a fee for certain actions taken upon the
54 death of the testator; requiring a qualified custodian
55 to keep certain information confidential; amending s.
56 733.201, F.S.; providing for the proof of electronic
57 wills; providing requirements for admitting an
58 electronic will that is not self-proved into probate;

597-03982-17

2017206c2

59 providing that a paper copy of an electronic will
60 constitutes an "original" of the electronic will
61 subject to certain conditions; amending s. 736.0403,
62 F.S.; providing that, for purposes of establishing the
63 validity of the testamentary aspects of a revocable
64 trust, the qualified custodian of the trust instrument
65 may not also be a trustee of the trust; providing
66 applicability; providing an effective date.

67
68 Be It Enacted by the Legislature of the State of Florida:

69
70 Section 1. Subsection (40) of section 731.201, Florida
71 Statutes, is amended to read:

72 731.201 General definitions.—Subject to additional
73 definitions in subsequent chapters that are applicable to
74 specific chapters or parts, and unless the context otherwise
75 requires, in this code, in s. 409.9101, and in chapters 736,
76 738, 739, and 744, the term:

77 (40) "Will" means an instrument, including a codicil,
78 executed by a person in the manner prescribed by this code,
79 which disposes of the person's property on or after his or her
80 death and includes an instrument which merely appoints a
81 personal representative or revokes or revises another will. The
82 term "will" includes an electronic will as defined in s.
83 732.522.

84 Section 2. Section 732.506, Florida Statutes, is amended to
85 read:

86 732.506 Revocation by act.—A will or codicil, other than an
87 electronic will, is revoked by the testator, or some other

597-03982-17

2017206c2

88 person in the testator's presence and at the testator's
89 direction, by burning, tearing, canceling, defacing,
90 obliterating, or destroying it with the intent, and for the
91 purpose, of revocation.

92 Section 3. Section 732.521, Florida Statutes, is created to
93 read:

94 732.521 Short title.—Sections 732.521-732.527 may be cited
95 as the "Florida Electronic Wills Act."

96 Section 4. Section 732.522, Florida Statutes, is created to
97 read:

98 732.522 Definitions.—As used in ss. 732.521-732.527, the
99 term:

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

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

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

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

113 Section 5. Section 732.523, Florida Statutes, is created to
114 read:

115 732.523 Electronic wills.—Notwithstanding s. 732.502:

116 (1) An electronic will must meet all of the following

597-03982-17

2017206c2

117 requirements:

118 (a) Exist in an electronic record that is unique and
119 identifiable.

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

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

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

129 Section 6. Section 732.524, Florida Statutes, is created to
130 read:

131 732.524 Self-proof of electronic will.—An electronic will
132 is self-proved if all of the following requirements are met:

133 (1) The electronic will is executed in conformity with this
134 act.

135 (2) The acknowledgment of the electronic will by the
136 testator and the affidavits of the witnesses are made in
137 accordance with s. 732.503 and are part of the electronic record
138 containing the electronic will, or are attached to, or are
139 logically associated with, the electronic will.

140 (3) (a) The electronic will designates a qualified
141 custodian;

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

145 (c) The qualified custodian who has custody of the

597-03982-17

2017206c2

146 electronic will at the time of the testator's death:

147 1. Certifies under oath that, to the best knowledge of the
148 qualified custodian, the electronic record that contains the
149 electronic will was at all times before being offered to the
150 court in the custody of a qualified custodian in compliance with
151 s. 732.527 and that the electronic will has not been altered in
152 any way since the date of its execution; and

153 2. If the execution of the electronic will included the use
154 of video conference under s. 732.525(1)(b), certifies under oath
155 that the audio and video recording required under s.

156 732.525(1)(b)9. is in the qualified custodian's custody in the
157 electronic record that contains the electronic will and is
158 available for inspection by the court.

159 Section 7. Section 732.525, Florida Statutes, is created to
160 read:

161 732.525 Method and place of execution.—For purposes of this
162 act, the execution and filing of a document with the court as
163 provided in this act or the Florida Probate Rules, the execution
164 of a durable power of attorney under s. 709.2105, and the
165 execution of a living will under s. 765.302:

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

169 (a) In the same physical location; or

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

173 1. The testator or principal may not be in an end-stage
174 condition as defined in s. 765.101 or a vulnerable adult as

597-03982-17

2017206c2

175 defined in s. 415.102. The contestant of the document has the
176 burden of proving that the testator or principal was in an end-
177 stage condition or was a vulnerable adult at the time of
178 executing the document.

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

180 3. The signal transmission must be secure from interception
181 through lawful means by anyone other than the persons
182 communicating.

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

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

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

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

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

198 7. At least one of the persons communicating must be
199 either:

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

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

202 (II) Whose status as an attorney licensed to practice law
203 in this state is indicated adjacent to his or her electronic

597-03982-17

2017206c2

204 signature; and

205 (III) Whose electronic signature is accompanied by his or
206 her statement that, to the best of his or her knowledge, the
207 execution of the document complied with the requirements of this
208 section; or

209 b. A Florida notary public:

210 (I) Who electronically signs the document;

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

213 (III) Whose electronic signature and seal are accompanied
214 by his or her certification that, to the best of his or her
215 knowledge, the execution of the document complied with the
216 requirements of this section.

217
218 If a document is required to be witnessed or acknowledged, the
219 witness or notary fulfilling that requirement may be the same
220 witness or notary who fulfills the requirement of this
221 subparagraph.

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

224 a. Are you over the age of 18?

225 b. Are you under the influence of any drugs or alcohol that
226 impairs your ability to make decisions?

227 c. Are you of sound mind?

228 d. Did anyone assist you in accessing this video
229 conference? If so, who?

230 e. Has anyone forced or influenced you to include anything
231 in this document which you do not wish to include?

232 f. Are you signing this document voluntarily?

597-03982-17

2017206c2

233 9. A time-stamped recording of the entire video conference
234 must be identifiable with the document being signed and stored
235 in the electronic record containing the document by a qualified
236 custodian in the manner required pursuant to s. 732.527(1)(c)
237 for the storage of electronic records containing electronic
238 wills.

239 a. Without limitation, a recording is identifiable with a
240 document if the recording and document share an identification
241 number.

242 b. If the recording is not reasonably accessible by a
243 person presented with the document, such person may treat the
244 document as if it does not include the signature of any
245 signatory who appeared by means of live video conference;
246 however, an electronic will whose execution included the use of
247 video conference under this section may be proved as provided in
248 s. 733.201(4). Without limitation, a recording is reasonably
249 accessible if it is accessible at no charge over the Internet
250 pursuant to instructions set forth in the document.

251 (2) If a law requires a record to be in writing, an
252 electronic record satisfies such provision.

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

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

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

597-03982-17

2017206c2

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

266 (c) In the case of a self-proved electronic will, the
267 electronic will designates a qualified custodian who is
268 domiciled in and a resident of this state or incorporated or
269 organized in this state.

270 Section 8. Section 732.526, Florida Statutes, is created to
271 read:

272 732.526 Probate.—An electronic will of a nonresident of
273 this state which is executed or deemed executed in another state
274 in accordance with the laws of that state or of this state may
275 be offered for and admitted to original probate in this state
276 and is subject to the jurisdiction of the courts of this state.
277 The venue for the probate of electronic wills is as provided in
278 s. 733.101(1) or, in the case of the electronic will of a
279 nonresident, may be the county in which the qualified custodian
280 or attorney for the petitioner or personal representative has
281 his or her domicile or registered office.

282 Section 9. Section 732.527, Florida Statutes, is created to
283 read:

284 732.527 Qualified custodians.—

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

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

290 (b) Be domiciled in and a resident of this state or be

597-03982-17

2017206c2

291 incorporated or organized in this state;

292 (c) In the course of maintaining custody of electronic
293 wills, regularly employ, and store electronic records containing
294 electronic wills in, a system that:

295 1. Protects electronic records from destruction,
296 alteration, or unauthorized access; and

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

298 (d) Furnish for any court hearing involving an electronic
299 will that is currently or was previously stored by the qualified
300 custodian any information requested by the court pertaining to
301 the qualified custodian's qualifications, policies, and
302 practices related to the creation, sending, communication,
303 receipt, maintenance, storage, and production of electronic
304 wills.

305 (2) The qualified custodian of an electronic will shall
306 provide access to or information concerning the electronic will,
307 or the electronic record containing the electronic will, only:

308 (a) To the testator;

309 (b) To persons authorized by the testator in the electronic
310 will or in written instructions signed by the testator in
311 accordance with s. 732.502;

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

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

316 (3) The qualified custodian of the electronic record of an
317 electronic will may elect to destroy such record, including any
318 of the documentation required to be created and stored under
319 paragraph (1) (d), at any time after the earlier of the fifth

597-03982-17

2017206c2

320 anniversary of the conclusion of the administration of the
321 estate of the testator or 20 years after the death of the
322 testator.

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

326 (a) Delivering the electronic will or the electronic record
327 containing the electronic will to the testator, if then living,
328 or, after the death of the testator, by filing the will with the
329 court in accordance with s. 732.901; and

330 (b) If the outgoing qualified custodian intends to
331 designate a successor qualified custodian, by doing the
332 following:

333 1. Providing written notice to the testator of the name,
334 address, and qualifications of the proposed successor qualified
335 custodian. The testator must provide written consent before the
336 electronic record, including the electronic will, is delivered
337 to a successor qualified custodian;

338 2. Delivering the electronic record containing the
339 electronic will to the successor qualified custodian; and

340 3. Delivering to the successor qualified custodian an
341 affidavit of the outgoing qualified custodian stating that:

342 a. The outgoing qualified custodian is eligible to act as a
343 qualified custodian in this state;

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

347 c. The electronic will has at all times been in the custody
348 of one or more qualified custodians in compliance with this

597-03982-17

2017206c2

349 section since the time the electronic record was created, and
350 identifying such qualified custodians; and

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

354
355 For purposes of making this affidavit, the outgoing qualified
356 custodian may rely conclusively on any affidavits delivered by a
357 predecessor qualified custodian in connection with its
358 designation or appointment as qualified custodian; however, all
359 such affidavits must be delivered to the successor qualified
360 custodian.

361 (5) Upon the request of the testator which is made in a
362 writing signed in accordance with s. 732.502, a qualified
363 custodian who at any time maintains custody of the electronic
364 record of the testator's electronic will must cease serving in
365 such capacity and must deliver to a successor qualified
366 custodian designated in writing by the testator the electronic
367 record containing the electronic will and the affidavit required
368 in subparagraph (4) (b) 3.

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

372 (7) If a qualified custodian is an entity, an affidavit, or
373 an appearance by the testator in the presence of a duly
374 authorized officer or agent of such entity, acting in his or her
375 own capacity as such, shall constitute an affidavit, or an
376 appearance by the testator in the presence of the qualified
377 custodian.

597-03982-17

2017206c2

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

383 (9) The qualified custodian shall be liable for any damages
384 caused by the negligent loss or destruction of the electronic
385 record, including the electronic will, while it is in the
386 possession of the qualified custodian. A qualified custodian may
387 not limit liability for such damages.

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

390 (11) Upon receiving information that the testator is dead,
391 a qualified custodian must deposit the electronic will with the
392 court in accordance with s. 732.901. A qualified custodian may
393 not charge a fee for depositing the electronic will with the
394 clerk, providing the affidavit is made in accordance with s.
395 732.503, or furnishing in writing any information requested by a
396 court under paragraph (1) (d).

397 (12) Except as provided in this act, a qualified custodian
398 must at all times keep information provided by the testator
399 confidential and may not disclose such information to any third
400 party.

401 Section 10. Section 733.201, Florida Statutes is amended to
402 read:

403 733.201 Proof of wills.—

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

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

597-03982-17

2017206c2

407 to probate upon the oath of any attesting witness taken before
408 any circuit judge, commissioner appointed by the court, or
409 clerk.

410 (3) If it appears to the court that the attesting witnesses
411 cannot be found or that they have become incapacitated after the
412 execution of the will or their testimony cannot be obtained
413 within a reasonable time, a will, other than an electronic will,
414 may be admitted to probate upon the oath of the personal
415 representative nominated by the will as provided in subsection
416 (2), whether or not the nominated personal representative is
417 interested in the estate, or upon the oath of any person having
418 no interest in the estate under the will stating that the person
419 believes the writing exhibited to be the true last will of the
420 decedent.

421 (4) If an electronic will, including an electronic will
422 whose execution included the use of a video conference under s.
423 732.525(1)(b), is not self-proved, an electronic will may be
424 admitted to probate upon the oath of the two attesting witnesses
425 for the electronic will taken before any circuit judge, any
426 commissioner appointed by the court, or the clerk. If it appears
427 to the court that the attesting witnesses cannot be found, that
428 they have become incapacitated after the execution of the
429 electronic will, or that their testimony cannot be obtained
430 within a reasonable time, an electronic will may be admitted to
431 probate upon the oath of two disinterested witnesses providing
432 all of the following information:

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

435 (b) When and how the electronic will was discovered, and by

597-03982-17

2017206c2

436 whom.

437 (c) All of the people who had access to the electronic
438 will.

439 (d) The method by which the electronic will was stored and
440 the safeguards that were in place to prevent alterations to the
441 electronic will.

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

444 (f) A statement that the electronic will is a true,
445 correct, and complete tangible manifestation of the testator's
446 will.

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

452 (5) A paper copy of an electronic will which is a true and
453 correct copy of the electronic will may be offered for and
454 admitted to probate and shall constitute an "original" of the
455 electronic will.

456 Section 11. Paragraph (b) of subsection (2) of section
457 736.0403, Florida Statutes, is amended to read:

458 736.0403 Trusts created in other jurisdictions; formalities
459 required for revocable trusts.—

460 (2) Notwithstanding subsection (1):

461 (b) The testamentary aspects of a revocable trust, executed
462 by a settlor who is a domiciliary of this state at the time of
463 execution, are invalid unless the trust instrument is executed
464 by the settlor with the formalities required for the execution

597-03982-17

2017206c2

465 of a will under s. 732.502 or an electronic will under s.
466 732.523 which is self-proved; however, the qualified custodian
467 of the trust instrument may not also be a trustee of the trust
468 ~~in this state~~. For purposes of this subsection, the term
469 "testamentary aspects" means those provisions of the trust
470 instrument that dispose of the trust property on or after the
471 death of the settlor other than to the settlor's estate.

472 Section 12. This act applies to electronic wills executed
473 on or after July 1, 2017.

474 Section 13. This act shall take effect July 1, 2017.