

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

26 | authorizing a qualified custodian to destroy the
27 | electronic record of an electronic will after a
28 | certain date; requiring a qualified custodian to
29 | cancel, delete, destroy, mark as revoked, or
30 | obliterate an electronic will under certain
31 | circumstances; providing conditions under which a
32 | qualified custodian may cease service as a qualified
33 | custodian; requiring a qualified custodian to cease
34 | serving in such capacity upon the written request of
35 | the testator; requiring that a successor qualified
36 | custodian agree in writing to serve in that capacity
37 | for an electronic will before succeeding to office;
38 | specifying what constitutes an affidavit of a
39 | qualified custodian; requiring a qualified custodian
40 | to deliver certain documents upon request from the
41 | testator; prohibiting a qualified custodian from
42 | charging the testator a fee for such documents under
43 | certain circumstances; providing that a qualified
44 | custodian is liable for certain damages under certain
45 | circumstances; prohibiting a qualified custodian from
46 | terminating or suspending access to, or downloads of,
47 | an electronic will by the testator; prohibiting a
48 | qualified custodian from charging a fee for certain
49 | actions taken upon the death of the testator;
50 | requiring a qualified custodian to keep certain

51 information confidential; amending s. 733.201, F.S.;

52 providing for the proof of electronic wills; providing

53 requirements for admitting an electronic will that is

54 not self-proved into probate; providing that a paper

55 copy of an electronic will constitutes an "original"

56 of the electronic will subject to certain conditions;

57 providing applicability; providing an effective date.

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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

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
 76 to read:

77 732.506 Revocation by act.—

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

83 (2) An electronic will is revoked by the testator, some
 84 other person in the testator's presence and at the testator's
 85 direction, or the qualified custodian of the electronic will
 86 pursuant to a writing signed in accordance with s. 732.502, by
 87 marking it as revoked or canceling, deleting, obliterating, or
 88 destroying it with the intent, and for the purpose, of
 89 revocation.

90 Section 3. Section 732.521, Florida Statutes, is created
 91 to read:

92 732.521 Short title.—Sections 732.521-732.527 may be cited
 93 as the "Florida Electronic Wills Act."

94 Section 4. Section 732.522, Florida Statutes, is created
 95 to read:

96 732.522 Definitions.—As used in ss. 732.521-732.527, the
 97 term:

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

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

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

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

111 Section 5. Section 732.523, Florida Statutes, is created
112 to read:

113 732.523 Electronic wills.—Notwithstanding s. 732.502:

114 (1) An electronic will must meet all of the following
115 requirements:

116 (a) Exist in an electronic record.

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

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

121 If it is electronically signed by a notary public, the notary
122 public's signature must be accompanied by a notary public seal
123 that meets the requirements of s. 117.021(3).

124 (2) Except as otherwise provided in this act, all
125 questions as to the force, effect, validity, and interpretation
126 of an 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
130 to 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
134 this 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; and

142 (b) The qualified custodian certifies under oath that to
143 its best knowledge the electronic will was at all times under
144 the control of the qualified custodian before being offered to
145 the court and that the electronic will has not been altered in
146 any way since the date of its execution.

147 Section 7. Section 732.525, Florida Statutes, is created
148 to read:

149 732.525 Method and place of execution.—For purposes of ss.
 150 732.521-732.527:

151 (1) Any requirement that a document be signed may be
 152 satisfied by an electronic signature.

153 (2) A document that is signed electronically is deemed to
 154 be executed in this state if any one of the following
 155 requirements is met:

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

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

164 (c) In the case of a self-proved electronic will, the
 165 electronic will designates a qualified custodian who is
 166 domiciled in and a resident of this state or incorporated or
 167 organized in this state.

168 Section 8. Section 732.526, Florida Statutes, is created
 169 to read:

170 732.526 Probate.—An electronic will that is executed or
 171 deemed executed in another state in accordance with the laws of
 172 that state or of this state may be offered for and admitted to
 173 original probate in this state and is subject to the

174 jurisdiction of the courts of this state. The venue for the
 175 probate of electronic wills is as provided in s. 733.101(1) or,
 176 in the case of the electronic will of a nonresident, may be the
 177 county in which the qualified custodian or attorney for the
 178 petitioner or personal representative has his or her domicile or
 179 registered office.

180 Section 9. Section 732.527, Florida Statutes, is created
 181 to read:

182 732.527 Qualified custodians.—

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

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

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

189 (c) In the course of its business, regularly employ, and
 190 store electronic records containing electronic wills in, a
 191 system that:

192 1. Protects electronic records from destruction,
 193 alteration, or unauthorized access; and

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

195 (d) Furnish for any court hearing involving an electronic
 196 will that is currently or was previously stored by the qualified
 197 custodian any information requested by the court pertaining to
 198 the qualified custodian's qualifications, policies, and

199 practices related to the creation, sending, communication,
200 receipt, maintenance, storage, and production of electronic
201 wills.

202 (2) The qualified custodian of an electronic will shall
203 provide access to or information concerning the electronic will,
204 or the electronic record containing the electronic will, only:

205 (a) To the testator;

206 (b) To persons authorized by the testator in the
207 electronic will or in written instructions signed by the
208 testator in accordance with s. 732.502;

209 (c) After the death of the testator, to the testator's
210 personal representative; or

211 (d) As directed by a court of competent jurisdiction.

212 (3) The qualified custodian of the electronic record of an
213 electronic will may elect to destroy such record, including any
214 of the documentation required to be created and stored under
215 paragraph (1)(d), at any time after the earlier of the 5th
216 anniversary of the admission of a will of the testator to
217 probate or 20 years after the death of the testator.

218 (4) The qualified custodian of an electronic will shall
219 mark as revoked or cancel, delete, destroy, or obliterate the
220 electronic will at the direction of the testator given in the
221 presence of the qualified custodian, or upon receipt by the
222 qualified custodian of instructions signed by the testator in
223 accordance with s. 732.502.

224 (5) A qualified custodian who at any time controls the
225 electronic record of an electronic will may elect to cease
226 serving in such capacity by:

227 (a) Delivering the electronic will or the electronic
228 record containing the electronic will to the testator, if then
229 living, or, after the death of the testator, to the nominated
230 testator's personal representative; and

231 (b) Doing the following if the outgoing qualified
232 custodian intends to designate a successor qualified custodian:

233 1. Providing written notice to the testator or, after the
234 testator's death, the nominated testator's personal
235 representative of the name, address, and qualifications of the
236 proposed successor qualified custodian. The testator or a
237 testator's nominated personal representative must provide
238 written consent before the electronic record, including the
239 electronic will, is delivered to a successor qualified
240 custodian;

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

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
246 a 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 been in the control of one or
251 more qualified custodians since the time the electronic record
252 was created, and identifying such qualified custodians; and

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

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

263 (6) Upon the written request of the testator, a qualified
264 custodian who at any time controls the electronic record of the
265 testator's electronic will must cease serving in such capacity
266 and must deliver to a successor qualified custodian designated
267 in writing by the testator the electronic will and the affidavit
268 required in subparagraph (5) (b) 3.

269 (7) A qualified custodian may not succeed to office as a
270 qualified custodian of an electronic will unless he or she
271 agrees in writing to serve in such capacity.

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

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

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

288 (11) A qualified custodian may not terminate or suspend
289 access to, or downloads of, the electronic will by the testator.

290 (12) Upon the death of a testator, a qualified custodian
291 may not charge a fee for depositing the electronic will with the
292 clerk, providing the affidavits made in accordance with s.
293 732.503, or furnishing in writing any information requested by a
294 court under paragraph (1) (d).

295 (13) Except as provided herein, a qualified custodian must
296 at all times keep information provided by the testator

297 confidential and may not disclose such information to a third
 298 party.

299 Section 10. Section 733.201, Florida Statutes is amended
 300 to read:

301 733.201 Proof of wills.—

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

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

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

319 (4) If an electronic will is not self-proved, an
 320 electronic will may be admitted to probate upon the oath of the
 321 two attesting witnesses for the electronic will taken before any

322 circuit judge, commissioner appointed by the court, or the
323 clerk. If it appears to the court that the attesting witnesses
324 cannot be found, that they have become incapacitated after the
325 execution of the electronic will, or that their testimony cannot
326 be obtained within a reasonable time, an electronic will may be
327 admitted to probate upon the oath of two disinterested witnesses
328 providing all of the following information:

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

331 (b) When and how the electronic will was discovered, and
332 by whom.

333 (c) All of the people who had access to the electronic
334 will.

335 (d) The method by which the electronic will was stored and
336 the safeguards that were in place to prevent alterations to the
337 electronic will.

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

340 (f) A statement that the electronic will is a true,
341 correct, and complete tangible manifestation of the testator's
342 will.

343 (5) A paper copy of an electronic will which is a true and
344 correct copy of the electronic will may be offered for and
345 admitted to probate and shall constitute an "original" of the
346 electronic will.

CS/HB 277

2017

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

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