

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; creating s. 732.528, F.S.;

52 providing indemnity requirements for qualified

53 custodians; providing the Attorney General standing to

54 petition a court for the appointment of a receiver to

55 manage electronic records of a qualified custodian

56 under certain conditions; amending s. 733.201, F.S.;

57 providing for the proof of electronic wills; providing

58 requirements for admitting an electronic will that is

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

60 copy of an electronic will constitutes an "original"

61 of the electronic will subject to certain conditions;

62 providing applicability ; providing an effective date.

63

64 Be It Enacted by the Legislature of the State of Florida:

65

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

67 Statutes, is amended to read:

68 731.201 General definitions.—Subject to additional

69 definitions in subsequent chapters that are applicable to

70 specific chapters or parts, and unless the context otherwise

71 requires, in this code, in s. 409.9101, and in chapters 736,

72 738, 739, and 744, the term:

73 (40) "Will" means an instrument, including a codicil,

74 executed by a person in the manner prescribed by this code,

75 which disposes of the person's property on or after his or her

76 death and includes an instrument which merely appoints a
 77 personal representative or revokes or revises another will. The
 78 term "will" includes an electronic will as defined in s.
 79 732.522.

80 Section 2. Section 732.506, Florida Statutes, is amended
 81 to read:

82 732.506 Revocation by act.—

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

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

95 Section 3. Section 732.521, Florida Statutes, is created
 96 to read:

97 732.521 Short title.—Sections 732.521-732.528 may be cited
 98 as the "Florida Electronic Wills Act."

99 Section 4. Section 732.522, Florida Statutes, is created
 100 to read:

101 732.522 Definitions.—As used in ss. 732.521-732.527, the
 102 term:

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

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

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

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

116 Section 5. Section 732.523, Florida Statutes, is created
 117 to read:

118 732.523 Electronic wills.—Notwithstanding s. 732.502:

119 (1) An electronic will must meet all of the following
 120 requirements:

121 (a) Exist in an electronic record.

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

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

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

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

134 Section 6. Section 732.524, Florida Statutes, is created
135 to read:

136 732.524 Self-proof of electronic will.—An electronic will
137 is self-proved if all of the following requirements are met:

138 (1) The electronic will is executed in conformity with
139 this act.

140 (2) The acknowledgment of the electronic will by the
141 testator and the affidavits of the witnesses are made in
142 accordance with s. 732.503 and are part of the electronic record
143 containing the electronic will, or are attached to, or are
144 logically associated with, the electronic will.

145 (3) (a) The electronic will designates a qualified
146 custodian; and

147 (b) The qualified custodian certifies under oath that to
148 its best knowledge the electronic will was at all times under
149 the control of the qualified custodian before being offered to

150 the court and that the electronic will has not been altered in
151 any way since the date of its execution.

152 Section 7. Section 732.525, Florida Statutes, is created
153 to read:

154 732.525 Method and place of execution.—For purposes of ss.
155 732.521–732.527:

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

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

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

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

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

173 Section 8. Section 732.526, Florida Statutes, is created
174 to read:

175 732.526 Probate.—An electronic will that is executed or
 176 deemed executed in another state in accordance with the laws of
 177 that state or of this state may be offered for and admitted to
 178 original probate in this state and is subject to the
 179 jurisdiction of the courts of this state. The venue for the
 180 probate of electronic wills is as provided in s. 733.101(1) or,
 181 in the case of the electronic will of a nonresident, may be the
 182 county in which the qualified custodian or attorney for the
 183 petitioner or personal representative has his or her domicile or
 184 registered office.

185 Section 9. Section 732.527, Florida Statutes, is created
 186 to read:

187 732.527 Qualified custodians.—

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

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

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

194 (c) In the course of its business, regularly employ, and
 195 store electronic records containing electronic wills in, a
 196 system that:

197 1. Protects electronic records from destruction,
 198 alteration, or unauthorized access; and

199 2. Detects any change to an electronic record; 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.

207 (2) The qualified custodian of an electronic will shall
208 provide access to or information concerning the electronic will,
209 or the electronic record containing the electronic will, only:

210 (a) To the testator;

211 (b) To persons authorized by the testator in the
212 electronic will or in written instructions signed by the
213 testator in accordance with s. 732.502;

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

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

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

223 (4) The qualified custodian of an electronic will shall
224 mark as revoked or cancel, delete, destroy, or obliterate the

225 electronic will at the direction of the testator given in the
226 presence of the qualified custodian, or upon receipt by the
227 qualified custodian of instructions signed by the testator in
228 accordance with s. 732.502.

229 (5) A qualified custodian who at any time controls the
230 electronic record of an electronic will may elect to cease
231 servicing in such capacity by:

232 (a) Delivering the electronic will or the electronic
233 record containing the electronic will to the testator, if then
234 living, or, after the death of the testator, to the nominated
235 testator's personal representative; and

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

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

246 2. Delivering the electronic record containing the
247 electronic will to the successor qualified custodian; and

248 3. Delivering to the successor qualified custodian an
249 affidavit of the outgoing qualified custodian stating that:

250 a. The outgoing qualified custodian is eligible to act as
251 a qualified custodian in this state;

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

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

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

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

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

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

277 (8) If a qualified custodian is an entity, an affidavit,
278 or an appearance by the testator in the presence of a duly
279 authorized officer or agent of such entity, acting in his or her
280 own capacity as such, shall constitute an affidavit, or an
281 appearance by the testator in the presence of the qualified
282 custodian.

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

288 (10) The qualified custodian shall be liable for any
289 damages caused by the negligent loss or destruction of the
290 electronic record, including the electronic will, while it is in
291 the possession of the qualified custodian. A qualified custodian
292 may not limit liability for such damages.

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

295 (12) Upon the death of a testator, a qualified custodian
296 may not charge a fee for depositing the electronic will with the
297 clerk, providing the affidavits made in accordance with s.

298 732.503, or furnishing in writing any information requested by a
299 court under paragraph (1) (d).

300 (13) Except as provided herein, a qualified custodian must
301 at all times keep information provided by the testator
302 confidential and may not disclose such information to a third
303 party.

304 Section 10. Section 732.528, Florida Statutes, is created
305 to read:

306 732.528 Indemnity Requirements of Qualified Custodians.—

307 (1) A qualified custodian must meet one of the following
308 requirements:

309 (a) Post and maintain a blanket surety bond of at least
310 \$250,000 to secure the faithful performance of all duties and
311 obligations required under this act. The bond shall be made
312 payable to the Governor and his or her successors in office for
313 the benefit of all persons who store electronic records with a
314 qualified custodian and their estates, beneficiaries,
315 successors, and heirs and conditioned on the faithful
316 performance of all duties and obligations under this act. The
317 terms of the bond must cover the acts or omissions of the
318 qualified custodian, and each agent or employee of the qualified
319 custodian; or

320 (b) Maintain a liability insurance policy that covers any
321 losses sustained by any person who stores electronic records
322 with a qualified custodian and their estates, beneficiaries,

323 successors, and heirs caused by errors, omissions, or any
324 intentional misconduct committed by the qualified custodian, and
325 each agent or employee of the qualified custodian. The policy
326 must cover losses up to \$250,000 for each incident.

327 (2) The Attorney General may petition a court of competent
328 jurisdiction for the appointment of a receiver to manage the
329 electronic records of a qualified custodian for proper delivery
330 and safekeeping, when any of the following conditions exist:

331 (a) The qualified custodian is ceasing operation.

332 (b) The qualified custodian intends to close the facility
333 and adequate arrangements have not been made for proper delivery
334 of the electronic records in accordance with this act.

335 (c) The Attorney General determines that conditions exist
336 which present a danger that electronic records will be lost or
337 misappropriated.

338 (d) The qualified custodian fails to maintain and post a
339 surety bond or maintain insurance required by this section.

340 Section 11. Section 733.201, Florida Statutes is amended
341 to read:

342 733.201 Proof of wills.—

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

345 (2) A will, other than an electronic will, may be admitted
346 to probate upon the oath of any attesting witness taken before

347 any circuit judge, commissioner appointed by the court, or
348 clerk.

349 (3) If it appears to the court that the attesting
350 witnesses cannot be found or that they have become incapacitated
351 after the execution of the will or their testimony cannot be
352 obtained within a reasonable time, a will, other than an
353 electronic will, may be admitted to probate upon the oath of the
354 personal representative nominated by the will as provided in
355 subsection (2), whether or not the nominated personal
356 representative is interested in the estate, or upon the oath of
357 any person having no interest in the estate under the will
358 stating that the person believes the writing exhibited to be the
359 true last will of the decedent.

360 (4) If an electronic will is not self-proved, an
361 electronic will may be admitted to probate upon the oath of the
362 two attesting witnesses for the electronic will taken before any
363 circuit judge, commissioner appointed by the court, or the
364 clerk. If it appears to the court that the attesting witnesses
365 cannot be found, that they have become incapacitated after the
366 execution of the electronic will, or that their testimony cannot
367 be obtained within a reasonable time, an electronic will may be
368 admitted to probate upon the oath of two disinterested witnesses
369 providing all of the following information:

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

372 (b) When and how the electronic will was discovered, and
 373 by whom.

374 (c) All of the people who had access to the electronic
 375 will.

376 (d) The method by which the electronic will was stored and
 377 the safeguards that were in place to prevent alterations to the
 378 electronic will.

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

381 (f) A statement that the electronic will is a true,
 382 correct, and complete tangible manifestation of the testator's
 383 will.

384 (5) A paper copy of an electronic will which is a true and
 385 correct copy of the electronic will may be offered for and
 386 admitted to probate and shall constitute an "original" of the
 387 electronic will.

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

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