

THE FLORIDA SENATE
2017 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

CS/CS/HB 277 — Wills and Trusts

by Judiciary Committee; Civil Justice and Claims Subcommittee; and Reps. Grant, J., White, and others (CS/CS/CS/SB 206 by Rules Committee; Banking and Insurance Committee; Judiciary Committee; and Senators Passidomo and Brandes)

This bill creates the Florida Electronic Wills Act, permitting and regulating the use of electronic wills. Current law does not expressly permit the use of electronic wills or clearly prohibit it. Additionally, the bill makes several significant changes to the Florida Trust Code.

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.

Under current law, traditional wills and living wills generally must be signed by the principal to the instrument and by witnesses. The bill allows these individuals to sign, witness, and otherwise fulfill their duties while in different locations by using video conferencing and other technology. An electronic will may be stored by a "qualified custodian," which must be capable of storing an electronic will, and must store electronic records of electronic wills, including documents related to the execution of an electronic will. The bill substantially regulates qualified custodians and includes several consumer protections for testators who choose to employ a qualified custodian.

In addition to electronic wills executed in this state, the bill grants the courts of this state jurisdiction over electronic wills that are executed by nonresident testators according to the Act or according to the laws of the testator's state. During probate proceedings, the bill expressly permits the admission to probate of the electronic will or its "true and correct copy."

Additionally, the bill modifies the Florida Trust Code to:

- Protect the trust creator's intent as paramount in trust interpretation;
- Expressly permit co-trustees to be compensated in a manner that is aggregately more than would be permissible for each individually;
- Expand certain trustees' ability to place the principal of the "first trust" into one or more second trusts in order to protect and maximize the beneficiaries' interests; and
- Address current case law that some believe to have misconstrued the timeframes in which a beneficiary may bring an action against a trustee who fails deliver a trust accounting.

If approved by the Governor, these provisions take effect July 1, 2017, except where otherwise provided in the bill.

Vote: Senate 34-0; House 73-44