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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/24/2017	.	
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The Committee on Judiciary (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete lines 81 - 360

and insert:

732.521 Short title.—Sections 732.521-732.527 may be cited as the “Florida Electronic Wills Act.”

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

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



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

13 (2) "Electronic signature" means an electronic sound,
14 symbol, or process attached to or logically associated with a
15 record and executed or adopted by a person with the intent to
16 sign the record.

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

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

25 Section 5. Section 732.523, Florida Statutes, is created to
26 read:

27 732.523 Electronic wills.—Notwithstanding s. 732.502:

28 (1) An electronic will must:

29 (a) Exist in an electronic record.

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

33 (c) Be electronically signed by the notary public and the
34 two attesting witnesses in the presence of the testator and, in
35 the case of the witnesses, in the presence of each other. The
36 notary public's signature must be accompanied by a notary public
37 seal that meets the requirements of s. 117.021(3).

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



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40 electronic will that complies with this section must be
41 determined in the same manner as in the case of a will executed
42 in accordance with s. 732.502.

43 Section 6. Section 732.524, Florida Statutes, is created to
44 read:

45 732.524 Self-proof of electronic will.—An electronic will
46 is self-proved if all of the following requirements are met:

47 (1) The electronic will is executed in conformity with this
48 act.

49 (2) The acknowledgment of the electronic will by the
50 testator and the affidavits of the witnesses are made in
51 accordance with s. 732.503 and are part of the electronic record
52 containing the electronic will, or are attached to, or are
53 logically associated with, the electronic will.

54 (3) (a) The electronic will is deposited with the clerk
55 before the death of the testator in accordance with s. 732.901
56 with a certification signed by the testator confirming that the
57 electronic will is a valid will of the testator; or

58 (b)1. The electronic will designates a qualified custodian;
59 and

60 2. The qualified custodian certifies under oath that to its
61 best knowledge the electronic will was at all times under the
62 control of a qualified custodian before being offered to the
63 court and that the electronic will has not be altered in any way
64 since the date of its execution.

65 Section 7. Section 732.525, Florida Statutes, is created to
66 read:

67 732.525 Method and place of execution.—For purposes of this
68 act, the execution and filing of a document with the court as



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

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

74 (a) In the same physical location; or

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

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

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

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

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

92 (c) In the case of a self-proved electronic will, the
93 electronic will designates a qualified custodian who is
94 domiciled in and a resident of this state or incorporated or
95 organized in this state.

96 Section 8. Section 732.526, Florida Statutes, is created to
97 read:



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98 732.526 Probate.—An electronic will that is executed or
99 deemed executed in another state in accordance with the laws of
100 that state or of this state may be offered for and admitted to
101 original probate in this state and is subject to the
102 jurisdiction of the courts of this state. The venue for the
103 probate of electronic wills is as provided in s. 733.101(1) or,
104 in the case of the electronic will of a nonresident, may be the
105 county in which the qualified custodian or attorney for the
106 petitioner or personal representative has his or her domicile or
107 registered office.

108 Section 9. Section 732.527, Florida Statutes, is created to
109 read:

110 732.527 Qualified custodians.—

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

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

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

117 (c) Consistently employ a system for ensuring the
118 safekeeping of electronic records and store electronic records
119 containing electronic wills under such system; and

120 (d) Furnish for any court hearing involving an electronic
121 will that is currently or was previously stored by the qualified
122 custodian any information requested by the court pertaining to
123 the qualified custodian's qualifications, policies, and
124 practices related to the creation, sending, communication,
125 receipt, maintenance, storage, and production of electronic
126 wills.



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127 (2) The qualified custodian of an electronic will shall
128 provide access to or information concerning the electronic will,
129 or the electronic will and the electronic record containing the
130 electronic will, only to the testator and such other persons as
131 directed by the written instructions of the testator. A
132 qualified custodian may also deposit the electronic will with
133 the clerk by complying and in accordance with s. 732.901.

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

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

142 (a) Delivering the electronic will or the electronic record
143 containing the electronic will to the testator, if then living,
144 or, after the death of the testator, to the personal
145 representative;

146 (b) Depositing the electronic will, including an
147 acknowledgement of affidavits made in accordance with s.
148 732.503, with the clerk after complying with s. 732.901; or

149 (c)1. If the outgoing qualified custodian intends to
150 designate a successor qualified custodian, providing written
151 notice to the testator or, after the testator's death, the
152 testator's nominated personal representative of the name,
153 address, and qualifications of the proposed successor qualified
154 custodian. The testator or a testator's nominated personal
155 representative must provide written consent before the



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156 electronic record, including the electronic will, is delivered
157 to a successor qualified custodian;

158 2. Delivering the electronic record containing the
159 electronic will, to the successor qualified custodian; and

160 3. Delivering to the successor qualified custodian an
161 affidavit of the outgoing qualified custodian stating that:

162 a. The outgoing qualified custodian is eligible to act as a
163 qualified custodian in this state;

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

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

170 d. To the best of the qualified custodian's knowledge, the
171 electronic will has not been altered since the time it was
172 created.

173
174 For purposes of making this affidavit, the outgoing qualified
175 custodian may rely conclusively on any affidavits delivered by a
176 predecessor qualified custodian in connection with its
177 designation or appointment as qualified custodian; however, all
178 such affidavits must be delivered to the successor qualified
179 custodian.

180 (5) Upon the written request of the testator, a qualified
181 custodian who at any time controls the electronic record of the
182 testator's electronic will must cease serving in such capacity
183 and must deliver to a successor qualified custodian designated
184 in writing by the testator the electronic will and the affidavit



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

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

189 (7) If a qualified custodian is an entity, an affidavit of
190 a duly authorized officer or agent of such entity shall
191 constitute the affidavit of the qualified custodian.

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

197 (9) The qualified custodian shall be liable for any damages
198 caused by the negligent loss or destruction of the electronic
199 record, including the electronic will, while it is in the
200 possession of the qualified custodian. A qualified custodian may
201 not limit liability for such damages.

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

204 (11) Except as provided herein, a qualified custodian must
205 at all times keep information provided by the testator
206 confidential and may not disclose such information to any third
207 party.

208 Section 10. Section 733.201, Florida Statutes is amended to
209 read:

210 733.201 Proof of wills.—

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

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



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214 to probate upon the oath of any attesting witness taken before
215 any circuit judge, commissioner appointed by the court, or
216 clerk.

217 (3) If it appears to the court that the attesting witnesses
218 cannot be found or that they have become incapacitated after the
219 execution of the will or their testimony cannot be obtained
220 within a reasonable time, a will, other than an electronic will,
221 may be admitted to probate upon the oath of the personal
222 representative nominated by the will as provided in subsection
223 (2), whether or not the nominated personal representative is
224 interested in the estate, or upon the oath of any person having
225 no interest in the estate under the will stating that the person
226 believes the writing exhibited to be the true last will of the
227 decedent.

228 (4) If an electronic will is not self-proved, an electronic
229 will may be admitted to probate upon the oath of the two
230 attesting witnesses for the electronic will taken before any
231 circuit judge, commissioner appointed by the court, or the
232 clerk. If it appears to the court that the attesting witnesses
233 cannot be found, that they have become incapacitated after the
234 execution of the electronic will, or that their testimony cannot
235 be obtained within a reasonable time, an electronic will may be
236 admitted to probate upon the oath of two disinterested witnesses
237 providing all of the following information:

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

240 (b) When and how the electronic will was discovered, and by
241 whom.

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



243 will.

244 (d) The method by which the electronic will was stored and
245 the safeguards that were in place to prevent alterations to the
246 electronic will.

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

249 (f) A statement that the electronic will is a true,
250 correct, and complete tangible manifestation of the testator's
251 will.

252 (5) A paper copy of an electronic will which is a true and
253 correct copy of the electronic will may be offered for and
254 admitted to probate and shall constitute an "original" of the
255 electronic will.

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

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

259

260 ===== T I T L E A M E N D M E N T =====

261 And the title is amended as follows:

262 Delete lines 8 - 53

263 and insert:

264 defining terms; creating s. 732.523, F.S.; specifying
265 requirements that must be satisfied in the execution
266 of electronic wills; creating s. 732.524, F.S.;
267 providing that electronic wills may be made self-
268 proved at the time of execution; providing
269 requirements for self-proof of electronic wills;
270 creating s. 732.525, F.S.; specifying the
271 circumstances under which a person is deemed to be in



272 the presence of another; providing that an electronic
273 signature satisfies the requirement that a document be
274 signed; providing requirements for certain documents
275 to be deemed executed in this state; creating s.
276 732.526, F.S.; authorizing an electronic will that is
277 properly executed in this or another state to be
278 offered for and admitted to probate in this state;
279 providing the venue for the probate of such electronic
280 will; creating s. 732.527, F.S.; specifying
281 requirements for service as a qualified custodian;
282 requiring qualified custodians to provide access to or
283 information concerning the electronic will or the
284 electronic record containing the electronic will, only
285 to specified persons; authorizing the qualified
286 custodian to deposit an electronic will with the clerk
287 of court; authorizing a qualified custodian to destroy
288 the electronic record of an electronic will after a
289 certain date; providing for cessation of service of a
290 qualified custodian; requiring that a qualified
291 custodian who elects to cease serving in such capacity
292 provide written notice to the testator under certain
293 circumstances; requiring a qualified custodian to
294 deliver certain documents to specified persons when he
295 or she ceases to serve in such capacity; requiring a
296 qualified custodian to cease serving in such capacity
297 under certain circumstances; requiring that a
298 successor qualified custodian agree in writing to
299 serve in that capacity for an electronic will before
300 succeeding to office; specifying what constitutes an



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301 affidavit of the qualified custodian; requiring a
302 qualified custodian to deliver certain documents upon
303 request from a testator; providing that a qualified is
304 liable for certain damages under certain
305 circumstances; requiring a qualified custodian to keep
306 certain information confidential; amending s. 733.201,
307 F.S.; providing for the proof of electronic wills;
308 providing requirements for admitting an electronic
309 will that is not self-proved into probate; providing
310 that a paper copy of an electronic will constitutes an
311 "original" of the electronic will subject to certain
312 conditions; providing applicability; providing an
313 effective date.