

By Senator Passidomo

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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.; excepting electronic wills from  
6           revocation provisions; creating s. 732.521, F.S.;  
7           providing a short title; creating s. 732.522, F.S.;  
8           defining terms; creating s. 732.523, F.S.; providing a  
9           statement of legislative intent and purpose; creating  
10          s. 732.524, F.S.; specifying requirements that must be  
11          satisfied in the preparation and execution of  
12          electronic wills; providing the extent to which  
13          electronic wills are subject to other statutory  
14          requirements relating to execution of a will; creating  
15          s. 732.525, F.S.; providing that electronic wills may  
16          be made self-proved at the time of execution;  
17          providing requirements for self-proof of electronic  
18          wills; requiring a qualified custodian to store an  
19          electronic will in an electronic record; creating s.  
20          732.526, F.S.; specifying the circumstances under  
21          which a person is deemed to be in the presence of  
22          another; providing requirements for certain documents  
23          to be deemed executed in this state; creating s.  
24          732.527, F.S.; authorizing an electronic will that is  
25          properly executed in this or another state, or a  
26          certified paper original of such properly executed  
27          electronic will, to be offered for and admitted to  
28          probate in this state; providing the venue for the  
29          probate of such electronic wills or certified paper  
30          originals; providing that a certified paper original  
31          of a self-proved electronic will is presumed to be  
32          valid; creating s. 732.528, F.S.; specifying

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33 requirements for service as a qualified custodian;  
34 requiring qualified custodians to provide access to,  
35 information concerning, or the certified paper  
36 original of the electronic will only to specified  
37 persons; authorizing a qualified custodian to destroy  
38 an electronic record subject to specified conditions;  
39 providing for cessation of service of a qualified  
40 custodian; requiring that a qualified custodian who  
41 elects to cease serving in such capacity provide  
42 written notice to the testator; requiring a qualified  
43 custodian to deliver certain documents to specified  
44 persons when he or she ceases to serve in such  
45 capacity; requiring that a successor qualified  
46 custodian agree in writing to serve in that capacity  
47 for an electronic will before succeeding to office;  
48 creating s. 732.529, F.S.; providing that a certified  
49 paper original must be delivered to specified persons  
50 with an affidavit of the qualified custodian or the  
51 persons who discovered the electronic will and reduced  
52 it to paper; providing requirements for such  
53 affidavits; providing an effective date.

54  
55 Be It Enacted by the Legislature of the State of Florida:

56  
57 Section 1. Subsection (40) of section 731.201, Florida  
58 Statutes, is amended to read:

59 731.201 General definitions.—Subject to additional  
60 definitions in subsequent chapters that are applicable to  
61 specific chapters or parts, and unless the context otherwise

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62 requires, in this code, in s. 409.9101, and in chapters 736,  
63 738, 739, and 744, the term:

64 (40) "Will" means an instrument, including a codicil,  
65 executed by a person in the manner prescribed by this code,  
66 which disposes of the person's property on or after his or her  
67 death and includes an instrument which merely appoints a  
68 personal representative or revokes or revises another will. The  
69 term "will" includes an electronic will as defined in s.  
70 732.522.

71 Section 2. Section 732.506, Florida Statutes, is amended to  
72 read:

73 732.506 Revocation by act.—A will or codicil, other than an  
74 electronic will, is revoked by the testator, or some other  
75 person in the testator's presence and at the testator's  
76 direction, by burning, tearing, canceling, defacing,  
77 obliterating, or destroying it with the intent, and for the  
78 purpose, of revocation.

79 Section 3. Section 732.521, Florida Statutes, is created to  
80 read:

81 732.521 Short title.—Sections 732.521-732.529 may be cited  
82 as the "Florida Electronic Wills Act."

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

85 732.522 Definitions.—As used in ss. 732.521-732.529, the  
86 term:

87 (1) "Certified paper original" means a tangible document  
88 that contains the text of an electronic will, including a self-  
89 proving affidavit concerning that will if applicable.

90 (2) "Electronic record" means a record created, generated,

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91 sent, communicated, received, or stored by electronic means.

92 (3) "Electronic signature" means an electronic sound,  
93 symbol, or process attached to or logically associated with a  
94 record and executed or adopted by a person with the intent to  
95 sign the record.

96 (4) "Electronic will" means an instrument, including a  
97 codicil, executed by a person in the manner prescribed by this  
98 act which disposes of the person's property on or after his or  
99 her death and includes an instrument that merely appoints a  
100 personal representative or revokes or revises another will or  
101 electronic will.

102 (5) "Qualified custodian" means a person who meets the  
103 requirements of s. 732.528(1).

104 Section 5. Section 732.523, Florida Statutes, is created to  
105 read:

106 732.523 Statement of legislative intent and purpose.—The  
107 Legislature intends that this act be liberally construed and  
108 applied to promote the following purposes and policies:

109 (1) To facilitate and expand access to individuals' right  
110 to testamentary freedom of disposition.

111 (2) To facilitate end-of-life planning for individuals and  
112 families, particularly members of vulnerable or marginalized  
113 groups and those for whom end-of-life planning services are  
114 often unaffordable, unavailable, or otherwise inaccessible.

115 (3) To facilitate the use and enforcement of established  
116 and widely used technology in memorializing and accomplishing  
117 the intent and wishes of a decedent with regard to the  
118 distribution of his or her real and personal property.

119 (4) To simplify and clarify the law concerning the affairs

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120 of decedents.

121 (5) To discover and make effective the intent of a decedent  
122 with respect to the distribution of his or her real and personal  
123 property.

124 (6) To promote a speedy and efficient system for the  
125 settlement and distribution of estates.

126 (7) To harmonize the law of wills with other laws that  
127 recognize the legal and functional equivalence of electronic and  
128 paper signatures and transactions.

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

131 732.524 Electronic wills.—Notwithstanding s. 732.502:

132 (1) An electronic will must:

133 (a) Exist in an electronic record.

134 (b) Be electronically signed by the testator in the  
135 presence of either a notary public or at least two attesting  
136 witnesses.

137 (c) Be electronically signed by the notary public or both  
138 of the attesting witnesses in the presence of the testator and,  
139 in the case of the witnesses, in the presence of each other. If  
140 it is electronically signed by a notary public, the signature  
141 must be accompanied by a notary public seal that meets the  
142 requirements of s. 117.021(3).

143 (2) Except as otherwise provided in this act, all questions  
144 as to the force, effect, validity, and interpretation of an  
145 electronic will that complies with this section must be  
146 determined in the same manner as in the case of a will formally  
147 executed in accordance with s. 732.502.

148 Section 7. Section 732.525, Florida Statutes, is created to

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149 read:

150 732.525 Self-proof of electronic will.—An attested  
151 electronic will is self-proved if all of the following  
152 requirements are met:

153 (1) The acknowledgment of the electronic will by the  
154 testator and the affidavits of the witnesses must be made in  
155 accordance with s. 732.503 and included in the electronic  
156 record.

157 (2) The electronic will must designate a qualified  
158 custodian to control the electronic record of the electronic  
159 will.

160 (3) The electronic will at all times must have been under  
161 the control of a qualified custodian before being reduced to the  
162 certified paper original that is sought to be probated.

163 Section 8. Section 732.526, Florida Statutes, is created to  
164 read:

165 732.526 Method and place of execution.—For purposes of this  
166 act, the execution and filing of a document with the court as  
167 provided in this act or the Florida Probate Rules, and the  
168 execution of a durable power of attorney under s. 709.2105 and a  
169 living will under s. 765.302:

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

172 (a) In the same physical location; or

173 (b) In different physical locations, but can communicate  
174 with each other by means of live video and audio conference.

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

177 (3) A document is deemed to be executed in this state if

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178 all of the following requirements are met:

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

183 (b) The document provides that its validity,  
184 interpretation, and effect are governed by the laws of this  
185 state.

186 (c) The attesting witnesses or Florida notary public whose  
187 electronic signatures are obtained in the execution of the  
188 document are physically located within this state at the time  
189 the document is executed.

190 (d) In the case of an electronic will, the electronic will  
191 designates a qualified custodian.

192 Section 9. Section 732.527, Florida Statutes, is created to  
193 read:

194 732.527 Probate.-

195 (1) An electronic will that is executed or deemed executed  
196 in another state in accordance with the laws of that state or of  
197 this state may be offered for and admitted to original probate  
198 in this state and is subject to the jurisdiction of the courts  
199 of this state. The venue for the probate of electronic wills is  
200 as provided in s. 733.101(1) or, in the case of the electronic  
201 will of a nonresident, may be the county in which the qualified  
202 custodian or attorney for the petitioner or personal  
203 representative has his or her domicile or registered office.

204 (2) A certified paper original of the electronic will may  
205 be offered for and admitted to probate.

206 (3) A certified paper original of a self-proved electronic

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207 will is presumed to be valid.

208 Section 10. Section 732.528, Florida Statutes, is created  
209 to read:

210 732.528 Qualified custodians.—

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

213 (a) Not be an heir or devisee, as defined in s. 731.201, of  
214 the testator.

215 (b) Be domiciled in and a resident of this state or be  
216 incorporated or organized in this state.

217 (c) Consistently employ a system for ensuring the  
218 safekeeping of electronic records.

219 (d) Create and store in the electronic record of any given  
220 electronic will all of the following concerning such electronic  
221 will:

222 1. A photograph or other visual record of the testator and  
223 the attesting witnesses, if any, taken by the qualified  
224 custodian at the time the electronic will is executed.

225 2. A photocopy, photograph, facsimile, or other visual  
226 record of a document provided to the qualified custodian at the  
227 time the electronic will is executed which establishes the  
228 testator's identity, including without limitation any of the  
229 forms of identification set forth in s. 117.05(5)(b)2.a.-i.

230 3. If there are attesting witnesses to the electronic will,  
231 a photocopy, photograph, facsimile, or other visual record of a  
232 document provided by the qualified custodian at the time the  
233 electronic will is executed which provides reasonable proof of  
234 each attesting witness' identity, including any of the forms of  
235 identification specified in s. 117.05(5)(b)2.a.-i.

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236 4. An audio and video recording of the testator and the  
237 attesting witnesses or notary public electronically signing the  
238 electronic will as provided in s. 732.524(1)(c).

239 (e) Furnish for any court hearing involving an electronic  
240 will that is currently or was previously stored by the qualified  
241 custodian any information requested by the court pertaining to  
242 the qualified custodian's qualifications, policies, and  
243 practices related to the creation, sending, communication,  
244 receipt, maintenance, storage, and production of electronic  
245 wills.

246 (2) The qualified custodian of an electronic will shall  
247 provide access to, information concerning, or the certified  
248 paper original of the electronic will only to the testator and  
249 such other persons as directed by the written instructions of  
250 the testator, and, after the testator's death, any interested  
251 person, upon request.

252 (3) The qualified custodian of the electronic record of an  
253 electronic will may elect to destroy such record, including any  
254 of the documentation required to be created and stored under  
255 paragraph (1)(d), at any time after:

256 (a) The 5th anniversary of the admission of the will of the  
257 testator to probate.

258 (b) The 10th anniversary of the testator's death.

259 (c) The 100th anniversary of the execution of the  
260 electronic will.

261 (4) A qualified custodian who at any time controls the  
262 electronic record of an electronic will may elect to cease  
263 serving in such capacity by:

264 (a)1. If the outgoing qualified custodian is not

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265 designating a successor qualified custodian, providing 30 days'  
266 written notice to the testator, if then living, or, after the  
267 death of the testator, to the testator's duly appointed personal  
268 representative or an interested person that he or she has  
269 elected to cease serving as a qualified custodian; and

270 2. Delivering the certified paper original of, and all  
271 records concerning, the electronic will to the testator, if then  
272 living, or, after the death of the testator, to the personal  
273 representative or such interested person; or

274 (b)1. If the outgoing qualified custodian is designating a  
275 successor qualified custodian, providing 30 days' written notice  
276 to the testator's duly appointed personal representative and to  
277 a successor qualified custodian designated by the outgoing  
278 qualified custodian that the outgoing qualified custodian of the  
279 electronic will has elected to cease serving in such capacity to  
280 the testator, if then living, or, after the death of the  
281 testator;

282 2. Delivering the electronic record of the electronic will  
283 to the successor qualified custodian; and

284 3. Delivering to the successor qualified custodian an  
285 affidavit of the outgoing qualified custodian stating that:

286 a. The outgoing qualified custodian is eligible to act as a  
287 qualified custodian in this state;

288 b. The outgoing qualified custodian is the qualified  
289 custodian designated by the testator in the electronic will or  
290 appointed to act in such capacity under paragraph (4) (b);

291 c. An electronic record was created at the time the  
292 testator made the electronic will;

293 d. The electronic record has been in the control of one or

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294 more qualified custodians since the time the electronic record  
295 was created, and identifying such qualified custodians; and

296 e. To the best of his, her, or its knowledge, the  
297 electronic record has not been altered since the time it was  
298 created.

299  
300 For purposes of making this affidavit, the outgoing qualified  
301 custodian may rely conclusively on any affidavits delivered by a  
302 predecessor qualified custodian in connection with his or her  
303 designation or appointment as qualified custodian; however, all  
304 such affidavits must be delivered to the successor qualified  
305 custodian.

306 (5) Upon the written request of the testator, a qualified  
307 custodian who at any time controls the electronic record of the  
308 testator's electronic will must cease serving in such capacity  
309 and must deliver to a successor qualified custodian designated  
310 in writing by the testator the electronic record and the  
311 affidavit required in subparagraph (4) (b) 3.

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

315 (7) If a qualified custodian is an entity, an affidavit of  
316 a duly authorized officer or agent of such entity shall  
317 constitute the affidavit of the qualified custodian.

318 Section 11. Section 732.529, Florida Statutes, is created  
319 to read:

320 732.529 Affidavit for certified paper original.—A certified  
321 paper original delivered under s. 732.527(2) must be accompanied  
322 by an affidavit that satisfies the following requirements:

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323 (1) If the electronic will has always been under the  
324 control of a qualified custodian, the qualified custodian shall  
325 state in an affidavit that:

326 (a) The qualified custodian is eligible to act as a  
327 qualified custodian in this state;

328 (b) The qualified custodian is the qualified custodian  
329 designated by the testator in the electronic will or appointed  
330 to act in such capacity under s. 732.528(4)(b);

331 (c) An electronic record was created at the time the  
332 testator made the electronic will;

333 (d) The electronic record has been in the control of one or  
334 more qualified custodians since its creation, and the identity  
335 of such qualified custodians;

336 (e) To the best of his, her, or its knowledge, the  
337 electronic record has not been altered since its creation;

338 (f) The certified paper original is a true, correct, and  
339 complete tangible manifestation of the electronic will; and

340 (g) The qualified custodian has in its custody the records  
341 required under s. 732.528(1)(d).

342 (2) If the electronic will has not always been under the  
343 control of a qualified custodian, the person who discovered the  
344 electronic will and the person who reduced the electronic will  
345 to paper shall each state in an affidavit to the best of their  
346 knowledge:

347 (a) When the electronic will was created, if not indicated  
348 in the electronic will itself;

349 (b) When and how the electronic will was discovered, and by  
350 whom;

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

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352 will;

353 (d) The method in which the electronic will was stored and  
354 what safeguards were in place to prevent alterations to the  
355 electronic will;

356 (e) Whether the electronic will has been altered since its  
357 creation; and

358 (f) That the certified paper original is a true, correct,  
359 and complete tangible manifestation of the electronic will.

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