

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
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.
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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
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
72 to read:

73 732.506 Revocation by act.—A will or codicil, other than
74 an 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
80 | to 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
84 | to 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,
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
105 to 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
120 of decedents.

121 (5) To discover and make effective the intent of a
122 decedent with respect to the distribution of his or her real and
123 personal 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
 130 to 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
 144 questions as to the force, effect, validity, and interpretation
 145 of an 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
 149 to 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
164 to read:

165 732.526 Method and place of execution.—For purposes of
166 this act, the execution and filing of a document with the court
167 as 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
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
193 to 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
 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,
 214 of 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
231 will, a photocopy, photograph, facsimile, or other visual record
232 of a document provided by the qualified custodian at the time
233 the electronic will is executed which provides reasonable proof
234 of each attesting witness' identity, including any of the forms
235 of identification specified in s. 117.05(5)(b)2.a.-i.

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
257 the 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
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
287 a 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
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
321 certified paper original delivered under s. 732.527(2) must be
322 accompanied by an affidavit that satisfies the following
323 requirements:

324 (1) If the electronic will has always been under the
325 control of a qualified custodian, the qualified custodian shall

326 state in an affidavit that:

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

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

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

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

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

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

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

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

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

350 (b) When and how the electronic will was discovered, and

351 by whom;

352 (c) All of the people who had access to the electronic
 353 will;

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

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

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

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