

1 **Draft – February 1, 2019, incorporate Style Comments and Drafting Committee changes**

2 Comments have been removed. A few notes indicate some of the Comments to be added. These
3 notes are in italics even though the Comments will not be in italics.

4
5 **ELECTRONIC WILLS ACT**

6 **ARTICLE 1 – Introductory Sections**

7 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Electronic Wills Act.

8 **SECTION 2. DEFINITIONS.** In this [act]:

9 (1) “Electronic” means relating to technology having electrical, digital, magnetic,
10 wireless, optical, electromagnetic, or similar capabilities.

11 (2) “Electronic presence” refers to individuals in different locations who are able to
12 communicate in real-time by sight and sound, with appropriate supportive services and
13 technological assistance if necessary.

14 ~~Individuals are in each other’s “electronic presence” if they are able to communicate~~
15 ~~simultaneously by sight and sound even though they are in different physical locations.~~
16 ~~Individuals are able to communicate by sight and sound if they can see and hear with~~
17 ~~accommodation through appropriate supportive services and technological assistance.~~

18 (3) “Electronic will” means a will executed electronically ~~and~~ in compliance with Section
19 5.

20 (4) “Electronically logically associated” means electronically connected, electronically
21 cross referenced, or electronically linked in a reliable manner.

22 (5) “Record” means information that is inscribed on a tangible medium or that is stored in
23 an electronic or other medium and is retrievable in perceivable form.

1 (6) “Sign” means, with present intent to authenticate or adopt a record:

2 (A) to execute or adopt a tangible symbol; or

3 (B) to affix to or logically associate with the record an electronic symbol ~~sound,~~
4 or process.

5 (7) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
6 United States Virgin Islands, or any other territory or insular possession subject to the
7 jurisdiction of the United States.

8 (8) “Textual record” means a record readable ~~directly~~ as text, without transcription,
9 ~~whether on screen, paper, or other medium. The term includes a writing, word processing~~
10 ~~document, web page, and email or text message. The term does not include other than~~ an audio
11 or video file, even if transcribable or otherwise convertible to text.

12 *Comments: Physical presence does not mean screen presence.*

13 *Textual record: whether on screen, paper, or other medium. The term includes a writing, word-*
14 *processing document, web page, and email or text message.*

15 **SECTION 3. COMMON LAW AND PRINCIPLES OF EQUITY.** Principles of law
16 and equity supplement this [act] except to the extent modified by this [act] or law of this state
17 other than this [act].

18 **ARTICLE 2 - EXECUTION**

19
20 **SECTION 4. WHO MAY MAKE ELECTRONIC WILL.** An individual who may
21 make a will under law of this state other than this [act] may make an electronic will.

22 23 **SECTION 5. EXECUTION OF ELECTRONIC WILL.**

24 **Alternative A**

25

1 [(a) A will may be executed electronically if it is a textual record at the time of execution

2 that is:

3 (1) signed by:

4 (A) the testator; or

5 (B) another individual in the testator's name, in the testator's ~~conscious~~
6 ~~physical or electronic~~ presence, and at the testator's direction; and

7 (2) signed by at least two individuals, each of whom signed within a reasonable
8 time after witnessing, in the physical or electronic presence of the testator:

9 (A) the signing of the textual record under paragraph (1); or

10 (B) the testator's acknowledgment of the signing of the textual record
11 under paragraph (1) or acknowledgement of the textual record.

12 (b) Intent of a testator that a textual record be the testator's electronic will may be
13 established by extrinsic evidence.]

14 **Alternative B**

15 [(a) A will may be executed electronically if it is a textual record at the time of execution

16 that is:

17 (1) signed by:

18 (A) the testator, or

19 (B) another individual in the testator's name, in the testator's ~~conscious~~
20 ~~physical or electronic~~ presence, and at the testator's direction; and

21 (2) either:

22 (A) signed by at least two individuals, each of whom signed within a
23 reasonable time after witnessing, in the physical or electronic presence of the testator:

1 (i) the signing of the textual record under paragraph (1); or

2 (ii) the testator’s acknowledgment of the signing of the textual
3 record under paragraph (1) or acknowledgement of the textual record; or

4 (B) acknowledged by the testator before a notary public or other
5 individual authorized by law to notarize records electronically.

6 (b) Intent of a testator that a textual record be the testator’s electronic will may be
7 established by extrinsic evidence.]

8 **End of Alternatives**

9 *Legislative Note: A state that has adopted or followed the rule of Uniform Probate Code Section*
10 *2-502 and validates by statute an unattested but notarized will should include Alternative B,*
11 *subsection (a)(2)(B). Other states may also include that provision for an electronic will because*
12 *an electronic notarization may provide more protection for a will than a paper notarization.*

13
14 **SECTION 6. HARMLESS ERROR.**

15 **Alternative A**

16 [A textual record not executed in compliance with Section 4(a) is deemed to comply must
17 ~~be treated as executed in compliance~~ with Section 4(a) if the proponent of the textual record
18 ~~establishes by clear-and-convincing evidence that the decedent intended that the textual record is~~
19 ~~be:~~

20 (1) the decedent’s electronic will;

21 (2) a partial or complete revocation of the decedent’s will ~~including an electronic will;~~

22 (3) an addition to or a modification of the decedent’s will, ~~including an electronic will;~~ or

23 (4) a partial or complete revival of the decedent’s formerly revoked will or a provision of
24 a will, including a revoked electronic will or provision of an electronic will.]

25 *Comment: move “including an electronic will” to the comment.*

26
27 **Alternative B**

1 [[Section 2-503 of the Uniform Probate Code or comparable provision of state law]

2 applies to a will executed electronically.]

3 **End of Alternatives**

4
5 **Legislative Note:** *A state that has enacted the harmless error rule for a non-electronic will,*
6 *Uniform Probate Code Section 2-503, should enact the rule for an electronic will. A state that*
7 *has not enacted a harmless error rule may not want to add one solely for an electronic will.*

8
9 *Move from Legislative Note to Comment:* *A state that does not adopt this act, may want to enact*
10 *a harmless error rule specifically for an electronic will, thereby requiring clear and convincing*
11 *evidence to prove an electronic will with remote attestation.*

12
13 **SECTION 7. CHOICE OF LAW REGARDING EXECUTION.** An electronic will
14 is validly executed if executed in compliance with this [act] or ~~with~~ the law of the jurisdiction
15 ~~place~~ where:

16 (1) the testator is physically located when the testator signs the will; or

17 (2) the testator is domiciled or resides when the testator signs the will or dies.

18 **SECTION 8. REVOCATION.**

19 (a) An electronic will or provision of an electronic will is revoked by:

20 (1) a subsequent will, ~~including an electronic will,~~ that revokes the previous will
21 or provision expressly or by inconsistency; or

22 (2) a revocatory act [other than by a record], if it is established ~~by a~~
23 ~~preponderance of the evidence~~ that the testator performed the act with the intent to revoke ~~and~~
24 ~~for the purpose of revoking~~ the will or provision or that another individual performed the act in
25 the testator's physical or electronic presence and by the testator's direction.

26 (b) An electronic will may revoke an electronic will or a will that is not an electronic will.

27 *Comment:* *If a testator revokes one copy of an electronic will with the intent to revoke the will,*

1 *the will is revoked even if other copies still exist. The Comment will include instructions on*
2 *revocation, including an explanation that simply writing “I revoke” is insufficient, unless the*
3 *writing is executed with wills act formalities.*

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6 **ARTICLE 3 – ELECTRONIC WILLS MADE SELF-PROVING**

7 **SECTION 9. ELECTRONIC WILL MADE SELF-PROVING ~~WHERE~~ IF**
8 **WITNESSES PHYSICALLY PRESENT.**

9 (a) An electronic will executed with attesting witnesses physically present in the same
10 location as the testator may be made self-proving by acknowledgment of the testator and
11 affidavits of the witnesses.

12 (b) The acknowledgment and affidavits under subsection (a) must be:

13 (1) made before an officer authorized to administer oaths under law of the state in
14 which execution occurs; and

15 (2) evidenced by the officer’s certificate under official seal electronically logically
16 associated with the electronic will.

17 (c) The acknowledgment and affidavits under subsection (a) must be in substantially the
18 following form:

19 I, _____, the testator, sign this textual record and, being
20 sworn,
21 (name)

22 declare to the undersigned officer that this textual record is my electronic will, I signed it
23 willingly or willingly directed another individual to sign it for me, I executed it as my voluntary
24 act for the purposes expressed in this textual record, and I am [18] years of age or older, of sound

1 mind, and under no constraint or undue influence.

2 _____
3 Testator

4 We, _____ and _____ ,
5 (name) (name)

6 witnesses, sign this textual record and, being sworn, ~~and~~ declare to the undersigned officer that
7 the testator: signed this textual record as the testator's electronic will, the testator signed it
8 ~~willingly as the testator's electronic will,~~ or willingly directed another individual to sign the
9 electronic will in the testator's name and the other individual did so in the testator's physical
10 presence, the testator executed it as the testator's voluntary act for the purposes expressed in the
11 textual record, and ~~for the testator, that~~ each of us, in the physical presence of the testator,
12 signed this electronic will as witnesses to the testator's signing, and to the best of our knowledge
13 the testator is [18] years of age or older, of sound mind, and under no constraint or undue
14 influence.

15 _____
16 Witness

17 _____
18 Witness

19 State of _____

20 [County] of _____

21 Subscribed, sworn to, and acknowledged before me by _____ ,
22 (name)

23 the testator, and subscribed and sworn to before me by _____ and
24 (name)

25 _____ , witnesses, this _____ day of _____ , ____ .
26 (name)

27 (Seal)

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(Signed)

(Official capacity of officer)

Legislative Note: A state that has not adopted the Uniform Probate Code should conform Sections 6 through 8 to its self-proving affidavit statutes. The statements that the requirements for a valid will are met should conform with the requirements under state law.

**SECTION 10. ELECTRONIC WILL MADE SELF-PROVING ~~WHERE ON~~
EXECUTION IF NOT ALL WITNESSES NOT PHYSICALLY PRESENT.**

(a) In this section “authorized individual person” means:

- (1) an individual licensed to practice law in a state ~~the United States~~;
- (2) a clerk of the [court]; [*note – Style would remove clerk of the court*]
- (3) a commissioned officer of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States; or
- (4) an officer authorized to administer oaths.

(b) ~~An electronic will without~~ If the number of attesting witnesses necessary for a valid will is not physically present in the same location as the testator, an electronic will may be made self-proving by:

- (1) acknowledgment of the testator and affidavits of the witnesses made before an officer authorized ~~to administer oaths and evidenced by the officer’s certificate under official seal,~~ under [insert citation to Revised Uniform Law on Notarial Acts (2018), the Amended Revised Uniform Law on Notarial Acts (2016), or other law ~~of the this state~~ that provides for electronic notarization in this state to administer oaths and evidenced by the officer’s certificate under official seal]; or
- (2) an authorized individual person’s certification in writing under subsection (e)

1 that:

2 (A) the person is an authorized individual person;

3 (B) the testator declared that the textual record is the testator’s electronic
4 will;

5 (C) the testator, in the ~~electronic or physical~~ or electronic presence of each
6 individual who signed the textual record as a witness:

7 (i) signed the electronic will willingly or willingly directed another
8 individual to sign the electronic will in the testator’s name and the other individual did so in the
9 testator’s ~~conscientious physical or electronic~~ presence; or

10 (ii) acknowledged the signing under clause (i) or acknowledged the
11 electronic will; and

12 (D) the authorized individual person is satisfied as to the identity of the
13 testator and witnesses.

14 (c) An heir of the testator or a beneficiary under the testator’s electronic will may not act
15 under this section as an authorized individual person ~~under this section~~.

16 (d) An authorized ~~person~~ individual who acts makes a certification under this section
17 submits to the jurisdiction of the court in the [county] in which the testator executes the
18 electronic will.

19 (e) The certification under subsection (b)(2) must be in substantially the following form:

20 I, _____, an authorized individual person, certify that on
21 (name)

22 _____, at _____, _____, the testator
23 (date) (city) (state)

24 declared the attached textual record to be the electronic will of the testator. ~~and declared that the~~

1 ~~testator understands the contents of the electronic will.~~ I further certify that the testator, in the
2 electronic or physical presence of each individual who signed the electronic will as a witness, (i)
3 willingly signed the electronic will or willingly directed another individual to sign the electronic
4 will in the testator's name and the other individual did so in the testator's physical ~~or electronic~~
5 presence, or (ii) acknowledged the signing under (i) or acknowledged the electronic will. I
6 further certify that I am satisfied as to the identity of the testator and the witnesses and that to the
7 best of my knowledge the testator was, at the time of ~~the signing of the electronic will,~~ [18] years
8 of age or older, of sound mind, and under no constraint or undue influence.

9 _____
10 (Signed)

11 **SECTION 11. ELECTRONIC WILL MADE SELF-PROVING AFTER**
12 **EXECUTION IF WITNESSES PHYSICALLY PRESENT.**

13 (a) An electronic will may be made self-proving at any time after its execution by ~~the~~
14 acknowledgment of the testator and ~~the~~ affidavits of the witnesses.

15 (b) The acknowledgment and affidavits under subsection (a) must be:

16 (1) made before an officer authorized to administer oaths under the law of the
17 state in which the acknowledgment occurs; and

18 (2) evidenced by the officer's certificate under official seal, electronically
19 logically associated with the electronic will, in substantially the following form:

20 I, _____, the testator, and we, _____
21 (name) (name)
22 and _____, witnesses, being sworn, declare to the
23 (name)
24
25

26 undersigned officer that the testator signed the textual record as the testator's electronic will, the

1 testator signed it willingly or willingly directed another individual to sign the electronic will in
2 the testator's name and the other individual did so in the testator's ~~conscious~~ physical or
3 electronic presence; ~~willingly directed another to sign it for the testator~~, the testator executed the
4 electronic will as the testator's voluntary act for the purposes expressed in the textual record, and
5 each of the witnesses, in the physical presence of the testator, signed the electronic will as
6 witnesses to the testator's signing, and to the best of each witness's knowledge the testator was at
7 the time of signing [18] years of age or older, of sound mind, and under no constraint or undue
8 influence.

9 _____
10 Testator

11 _____
12 Witness

13 _____
14 Witness

15 State of _____

16 [County] of _____

17 Subscribed, sworn to, and acknowledged before me by _____
18 (name)

19 the testator, and subscribed and sworn to before me by _____ and
20 (name)

21 _____, witnesses, this _____ day of _____, ____.
22 (name)

23 (Seal)

24 _____
25 (Signed)

26 _____
27 (Official capacity of officer)

28 **SECTION 12. PROOF OF ELECTRONIC WILL.** If necessary to prove the will's

1 execution, a signature physically or electronically affixed to an affidavit electronically logically
2 associated with an electronic will under this [act] is deemed a signature affixed to the electronic
3 will if necessary to prove the will's execution.

4
5 **ARTICLE 4 – Other Stuff**

6 **SECTION 13. CERTIFICATION OF PAPER COPY FOR SUBMISSION TO**
7 **PROBATE.**

8 (a) An individual may create a certified paper copy of an electronic will by affirming
9 under penalty of perjury that a paper copy of an electronic will is a complete, true, and accurate
10 copy of the electronic will. The paper copy to be certified must contain ~~all of the following~~
11 ~~elements:~~

12 (1) the text of the electronic will ~~without alteration or addition;~~

13 (2) the signatures of the testator and witnesses, and notary public, if applicable;

14 (3) a readable copy of any associated document-integrity-evidence that ~~is may be~~
15 a part of or attached to the electronic will; and

16 (4) if the electronic will was made self-proving, the self-proving affidavit.

17 (b) If law of this state other than this [act] requires that a decedent's electronic will be
18 filed with [the court], a certified paper copy must be filed not later than [] days after [the action
19 that commences the proceeding].

20 **SECTION 14. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
21 applying and construing this uniform act, consideration must be given to the need to promote
22 uniformity of the law with respect to its subject matter among states that enact it.

1 **SECTION 15. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
2 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic
3 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not
4 modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize
5 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.
6 Section 7003(b).

7 **SECTION 16. TRANSITIONAL PROVISION.** This [act] applies to the will of a
8 decedent who dies on or after [the effective date of this act].

9
10 **SECTION 17. EFFECTIVE DATE.** This [act] takes effect