

ASSEMBLY, No. 4492

STATE OF NEW JERSEY

220th LEGISLATURE

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Sponsored by:

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District 11 (Monmouth)

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SYNOPSIS

The “Uniform Electronic Wills Act”; authorizes electronic wills.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning electronic wills and supplementing Title 3B of
2 the New Jersey Statutes.

3

4 BE IT ENACTED *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. This act shall be known and may be cited as the “Uniform
8 Electronic Wills Act.”

9

10 2. Definitions.

11 As used in P.L. , c. (C.) (pending before the Legislature
12 as this bill):

13 “Electronic” means relating to technology having electrical,
14 digital, magnetic, wireless, optical, electromagnetic, or similar
15 capabilities.

16 “Electronic will” means a will executed electronically in
17 accordance with subsection a. of section 5 of P.L. , c. (C.)
18 (pending before the Legislature as this bill).

19 “Record” means information inscribed on a tangible medium or
20 stored in an electronic or other medium and is retrievable in
21 perceivable form.

22 “Sign” means, with present intent to authenticate or adopt a
23 record:

24 (1) to execute or adopt a tangible symbol; or

25 (2) to affix to or logically associate with the record an electronic
26 symbol or process.

27 “State” means a state of the United States, the District of
28 Columbia, Puerto Rico, the United States Virgin Islands, or any
29 territory or insular possession subject to the jurisdiction of the
30 United States. The term includes a federally recognized Indian
31 tribe.

32 “Will” includes a codicil and any testamentary instrument that
33 merely appoints an executor, revokes or revises another will,
34 nominates a guardian, or expressly excludes or limits the right of an
35 individual or class to succeed to property of the decedent passing by
36 intestate succession.

37

38 3. Law applicable to electronic will; principles of equity.

39 An electronic will is a will for all purposes of the law of this
40 State. The law of this State applicable to wills and principles of
41 equity apply to an electronic will, except as modified by P.L. ,
42 c. (C.) (pending before the Legislature as this bill).

43

44 4. Choice of law regarding execution.

45 A will executed electronically but not in compliance with
46 subsection a. of section 5 of P.L. , c. (C.) (pending before
47 the Legislature as this bill) is an electronic will under P.L. ,
48 c. (C.) (pending before the Legislature as this bill) if

1 executed in compliance with the law of the jurisdiction where the
2 testator is:

- 3 a. physically located when the will is signed; or
4 b. domiciled or resides when the will is signed or when the
5 testator dies.

6

7 5. Execution of electronic will.

8 a. Subject to subsection d. of section 7 of P.L. , ,

9 c. (C.) (pending before the Legislature as this bill), an
10 electronic will shall be:

11 (1) A record that is readable as text at the time of signing as
12 provided under subsection b. of this section;

13 (2) Signed by:

14 (a) The testator; or

15 (b) Another individual in the testator's name, in the testator's
16 conscious presence, and by the testator's direction; and

17 (3) Either:

18 (a) Signed in the physical or electronic presence of the testator
19 by at least two individuals, each of whom signed within a
20 reasonable time after witnessing:

21 (i) The signing of the will as provided under paragraph (2) of
22 subsection a. of this section; or

23 (ii) The testator's acknowledgment of the signature as provided
24 under paragraph (2) of subsection a. of this section or
25 acknowledgment of the will; or

26 (b) Acknowledged by the testator before and in the physical or
27 electronic presence of a notary public or other individual authorized
28 by law to take acknowledgments.

29 b. Intent of a testator that the record under paragraph (1) of
30 subsection a. of this section be the testator's electronic will may be
31 established by extrinsic evidence.

32

33 6. Revocation.

34 a. An electronic will may revoke all or part of a previous will.

35 b. All or part of an electronic will is revoked by:

36 (1) A subsequent will that revokes all or part of the electronic
37 will expressly or by inconsistency; or

38 (2) A physical act, if it is established by a preponderance of the
39 evidence that the testator, with the intent of revoking all or part of
40 the will, performed the act or directed another individual who
41 performed the act in the testator's physical presence.

42

43 7. Electronic will attested and made self-proving at time of
44 execution.

45 a. An electronic will may be simultaneously executed, attested,
46 and made self-proving by acknowledgment of the testator and
47 affidavits of the witnesses and by fulfilling the requirements of

1 section 9 of P.L. , c. (C.) (pending before the Legislature
2 as this bill) .

3 b. The acknowledgment and affidavits under subsection a. of
4 this section shall be:

5 (1) Made in the physical presence of an officer authorized to
6 administer oaths pursuant to the law of the state in which the
7 testator signs pursuant to paragraph (2) of subsection a. of section 5
8 of P.L. , c. (C.) (pending before the Legislature as this
9 bill) or, if fewer than two attesting witnesses are physically present
10 in the same location as the testator at the time of signing, in the
11 physical or electronic presence of a notary public or other
12 individual authorized by law to take acknowledgements; and

13 (2) Evidenced by the officer's certificate under official seal
14 affixed to or logically associated with the electronic will.

15 c. The acknowledgment and affidavits under subsection a. of
16 this section shall be in substantially the following form:

17

18 STATE OF _____

19 COUNTY OF _____

20

21 I, _____, the testator, sign my name to this
22 instrument this _____ day of _____, _____, and being first
23 sworn, declare to the undersigned authority that I sign and execute
24 this instrument as my electronic will and that I sign it willingly or
25 willingly direct another to sign for me, that I execute it as my free
26 and voluntary act for the purposes therein expressed, and that I am
27 18 years of age or older, of sound mind, and under no constraint or
28 undue influence.

29 _____

30 Testator

31

32 We, _____, _____, the witnesses,
33 sign our names to this instrument, and being first sworn, declare to
34 the undersigned authority that the testator signs and executes this
35 instrument as the testator's electronic will and that the testator signs
36 it willingly or willingly directs another to sign for the testator, and
37 that each of us, in the physical or electronic presence of the testator,
38 signs this electronic will as witness to the testator's signing, and that
39 to the best of our knowledge the testator is 18 years of age or older,
40 of sound mind, and under no constraint or undue influence.

41

42 _____

43 Witness

44 _____

45 Witness

46

47 Subscribed, sworn to, and acknowledged before me by _____,
48 the testator, and subscribed and sworn to before me by

1 _____ and _____, witnesses, this _____ day of
2 _____.

3 (SEAL) (Signed) _____
4 _____ (Official capacity of officer)

5 d. A signature physically or electronically affixed to an
6 affidavit that is affixed to or logically associated with an electronic
7 will pursuant to this section is deemed a signature of the electronic
8 will pursuant to subsection a. of section 5 of P.L. _____, c. _____ (C. _____)
9 (pending before the Legislature as this bill).

10

11 8. Certification of paper copy.

12 An individual may create a certified paper copy of an electronic
13 will by affirming under penalty of law that a paper copy of the
14 electronic will is a complete, true, and accurate copy of the
15 electronic will. If the electronic will is made self-proving, the
16 certified paper copy of the will shall include the self-proving
17 affidavits.

18

19 9. Self-proving will; additional requirements.

20 In addition to the requirements of section 7 of P.L. _____,
21 c. _____ (C. _____) (pending before the Legislature as this bill), a self-
22 proving electronic will also shall:

23 a. contain the electronic signature and electronic seal of a
24 notary public placed on the will in accordance with applicable law;

25 b. designate a custodian to maintain custody of the electronic
26 will; and

27 c. be under the exclusive control of a custodian at all times
28 prior to being offered for probate or being reduced to a certified
29 paper copy pursuant to section 8 of P.L. _____, c. _____ (C. _____) (pending
30 before the Legislature as this bill).

31 d. As used in this section, “custodian” means any person
32 designated by the testator to maintain custody of the electronic will.

33

34 10. This act shall take effect immediately and shall be applicable
35 to the will of a decedent who dies on or after the effective date.

36

37

38

STATEMENT

39

40 This bill authorizes electronic wills.

41 SECTION 1. This section provides that the bill shall be known and
42 may be cited as the “Uniform Electronic Wills Act.”

43 SECTION 2. This section includes definitions applicable to the
44 bill. An “electronic will” is a will executed electronically in
45 accordance with the provisions of the bill. “Electronic” is defined
46 as relating to technology having electrical, digital, magnetic,
47 wireless, optical, electromagnetic, or similar capabilities. “Sign”
48 means, with present intent to authenticate or adopt a record, (1) to

1 execute or adopt a tangible symbol; or (2) to affix to or logically
2 associate with the record an electronic symbol or process. "Will"
3 includes a codicil and any testamentary instrument that merely
4 appoints an executor, revokes or revises another will, nominates a
5 guardian, or expressly excludes or limits the right of an individual
6 or class to succeed to property of the decedent passing by intestate
7 succession.

8 SECTION 3. The section provides that an electronic will is a will
9 for all purposes of the law of this State, and that the law of this
10 State applicable to wills and principles of equity apply to an
11 electronic will, except as modified by the bill.

12 SECTION 4. A will executed electronically but not in compliance
13 with the provisions of subsection a. of section 5 of the bill
14 (summarized below) is deemed an electronic will if executed in
15 compliance with the law of the jurisdiction where the testator is
16 physically located when the will is signed, or where the testator is
17 domiciled or resides when the will is signed or when the testator
18 dies.

19 SUBSECTION a. OF SECTION 5. Subject to the signature
20 requirements in section 7 of the bill, an electronic will is required to
21 be a record that is readable as text at the time of signing. The
22 electronic will is to be signed by the testator, or signed by another
23 individual in the testator's name, in the physical or electronic
24 presence of the testator and by the testator's direction. In addition,
25 the electronic will is to either be:

26 (1) signed by at least two individuals, each of whom signed
27 within a reasonable time after witnessing the signing of the will, or
28 witnessing the testator's acknowledgment of the signature or
29 acknowledgment of the will; or

30 (2) acknowledged by the testator before a notary public or other
31 individual authorized by law to take acknowledgments.

32 The bill does not allow remote witnesses to the execution of an
33 electronic will; the witnesses are required to be in the physical
34 presence of the testator.

35 SUBSECTION b. OF SECTION 5. The intent of a testator that a
36 record be the testator's electronic will may be established by
37 extrinsic evidence.

38 SECTION 6. An electronic will may revoke all or part of a
39 previous will. All or part of an electronic will is revoked by: (1) a
40 subsequent will that revokes all or part of the electronic will
41 expressly or by inconsistency; or (2) a physical act, if it is
42 established by a preponderance of the evidence that the testator,
43 with the intent of revoking all or part of the will, performed the act
44 or directed another individual who performed the act in the
45 testator's physical presence.

46 SECTION 7: This section provides that an electronic will may be
47 simultaneously executed, attested, and made self-proving by
48 acknowledgment of the testator and affidavits of the witnesses. The

1 acknowledgment and affidavits are to be: (1) made before an officer
2 authorized to administer oaths under law of the state in which
3 execution occurs; and (2) evidenced by the officer's certificate
4 under official seal affixed to or logically associated with the
5 electronic will.

6 Section 7 also sets out forms for the acknowledgment and
7 affidavits.

8 In addition, section 7 provides that a signature physically or
9 electronically affixed to an affidavit that is affixed to or logically
10 associated with an electronic will is deemed a signature of the
11 electronic will.

12 SECTION 8. This section provides that an individual may create a
13 certified paper copy of an electronic will by affirming under penalty
14 of law that a paper copy is a complete, true, and accurate copy. If
15 the electronic will is made self-proving, the certified paper copy of
16 the will is to include the self-proving affidavits.

17 SECTION 9. This section provides that a self-proving electronic
18 will also is required to contain the electronic signature and
19 electronic seal of a notary public placed on the will in accordance
20 with applicable law;

21 designate a custodian to maintain custody of the electronic will;
22 and

23 be under the exclusive control of a custodian at all times prior to
24 being offered for probate or being reduced to a certified paper copy
25 pursuant to the bill. The term "custodian" is defined as any person
26 designated by the testator to maintain custody of the electronic will.

27 SECTION 10. The bill would take effect immediately and be
28 applicable to the will of a decedent who dies on or after the
29 effective date.

30 BACKGROUND. The Uniform Electronic Wills Act was issued by
31 the Uniform Law Commission in 2019. The commission also is
32 known as the National Conference of Commissioners on Uniform
33 State Laws.