

1 **UNIFORM ELECTRONIC WILLS ACT**

2 2020 SIXTH SPECIAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: V. Lowry Snow**

5 Senate Sponsor: Lyle W. Hillyard

6

7 **LONG TITLE**

8 **General Description:**

9 This bill enacts the Uniform Electronic Wills Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ amends provisions related to disqualifying notarial acts;
- 13 ▶ creates definitions;
- 14 ▶ establishes the applicability of electronic wills;
- 15 ▶ addresses the effect of a will electronically executed in another jurisdiction;
- 16 ▶ sets requirements for executing and revoking an electronic will;
- 17 ▶ addresses records that are not executed in compliance with the requirements for an
- 18 electronic will;
- 19 ▶ provides requirements for an electronic will to be self-proving;
- 20 ▶ allows for certified paper copies of an electronic will;
- 21 ▶ addresses uniformity of the law; and
- 22 ▶ provides that the Uniform Electronic Wills Act applies to wills of decedents who
- 23 die on or after the effective date of this bill.

24 **Money Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 This bill provides a special effective date.

28 **Utah Code Sections Affected:**

29 AMENDS:

30 46-1-7, as last amended by Laws of Utah 2017, Chapter 259

31 ENACTS:

32 75-2-1401, Utah Code Annotated 1953

33 75-2-1402, Utah Code Annotated 1953

34 75-2-1403, Utah Code Annotated 1953

35 75-2-1404, Utah Code Annotated 1953

36 75-2-1405, Utah Code Annotated 1953

37 75-2-1406, Utah Code Annotated 1953

38 75-2-1407, Utah Code Annotated 1953

39 75-2-1408, Utah Code Annotated 1953

40 75-2-1409, Utah Code Annotated 1953

41 75-2-1410, Utah Code Annotated 1953

42 75-2-1411, Utah Code Annotated 1953

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44 *Be it enacted by the Legislature of the state of Utah:*

45 Section 1. Section 46-1-7 is amended to read:

46 **46-1-7. Disqualifications.**

47 A notary may not perform a notarial act if the notary:

48 (1) is a signer of the document that is to be notarized, ~~except [in case of]~~ for:

49 (a) a self-proved will as provided in Section 75-2-504; or

50 (b) a self-proved electronic will as provided in Section 75-2-1408;

51 (2) is named in the document that is to be notarized ~~except [in the case of a]~~ for:

52 (a) a self-proved will as provided in Section 75-2-504;

53 (b) a self-proved electronic will as provided in Section 75-2-1408;

54 ~~[(b)]~~ (c) a licensed attorney that is listed in the document only as representing a signer

55 or another person named in the document; or

56 ~~[(c)]~~ (d) a licensed escrow agent, as defined in Section 31A-1-301, that:

57 (i) acts as the title insurance producer in signing closing documents; and

58 (ii) is not named individually in the closing documents as a grantor, grantee,
59 mortgagor, mortgagee, trustor, trustee, vendor, vendee, lessor, lessee, buyer, or seller;

60 (3) will receive direct compensation from a transaction connected with a financial
61 transaction in which the notary is named individually as a principal; or

62 (4) will receive direct compensation from a real property transaction in which the
63 notary is named individually as a grantor, grantee, mortgagor, mortgagee, trustor, trustee,
64 beneficiary, vendor, vendee, lessor, lessee, buyer, or seller.

65 Section 2. Section 75-2-1401 is enacted to read:

66 **Part 14. Uniform Electronic Wills Act**

67 **75-2-1401. Title.**

68 This part is known as the "Uniform Electronic Wills Act."

69 Section 3. Section 75-2-1402 is enacted to read:

70 **75-2-1402. Definitions.**

71 As used in this part:

72 (1) "Electronic" means relating to technology having electrical, digital, magnetic,
73 wireless, optical, electromagnetic, or similar capabilities.

74 (2) "Electronic presence" means the relationship of two or more individuals in different
75 locations communicating in real time to the same extent as if the individuals were physically
76 present in the same location.

77 (3) "Electronic will" means a will executed electronically in compliance with
78 Subsection 75-2-1405(1).

79 (4) "Record" means information that is inscribed on a tangible medium or that is stored
80 in an electronic or other medium and is retrievable in perceivable form.

81 (5) "Sign" means, with present intent to authenticate or adopt a record:

82 (a) to execute or adopt a tangible symbol; or

83 (b) to affix to or logically associate with the record an electronic symbol or process.

84 (6) (a) "State" means a state of the United States, the District of Columbia, Puerto
85 Rico, the United States Virgin Islands, or any territory or insular possession subject to the

86 jurisdiction of the United States.

87 (b) "State" includes a federally recognized Indian tribe.

88 (7) "Will" includes a codicil and any testamentary instrument that merely appoints an
89 executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits
90 the right of an individual or class to succeed to property of the decedent passing by intestate
91 succession.

92 Section 4. Section 75-2-1403 is enacted to read:

93 **75-2-1403. Law applicable to electronic will -- Principles of equity.**

94 (1) An electronic will is a will for all purposes of the law of this state.

95 (2) The law of this state applicable to wills and principles of equity apply to an
96 electronic will, except as modified by this part.

97 Section 5. Section 75-2-1404 is enacted to read:

98 **75-2-1404. Choice of law regarding execution.**

99 A will executed electronically but not in compliance with Subsection 75-2-1405(1) is
100 an electronic will under this part if executed in compliance with the law of the jurisdiction
101 where the testator is:

102 (1) physically located when the will is signed; or

103 (2) domiciled or resides when the will is signed or when the testator dies.

104 Section 6. Section 75-2-1405 is enacted to read:

105 **75-2-1405. Execution of an electronic will.**

106 (1) Subject to Subsection 75-2-1408(4) and except as provided in Section 75-2-1406,
107 an electronic will shall be:

108 (a) a record that is readable as text at the time of signing under Subsection (1)(b);

109 (b) signed:

110 (i) by the testator; or

111 (ii) in the testator's name by some other individual in the testator's conscious presence
112 and by the testator's direction; and

113 (c) signed in the physical or electronic presence of the testator by at least two

114 individuals within a reasonable time after witnessing:

115 (i) the signing of the will under Subsection (1)(b); or

116 (ii) the testator's acknowledgment of the signing of the will under Subsection (1)(b) or
117 the testator's acknowledgment of the will.

118 (2) Intent of a testator that the record under Subsection (1)(a) be the testator's electronic
119 will may be established by extrinsic evidence.

120 Section 7. Section **75-2-1406** is enacted to read:

121 **75-2-1406. Harmless error.**

122 Section 75-2-503 applies to a will executed electronically.

123 Section 8. Section **75-2-1407** is enacted to read:

124 **75-2-1407. Revocation.**

125 (1) An electronic will may revoke all or part of a previous will.

126 (2) All or part of an electronic will is revoked by:

127 (a) a subsequent will that revokes all or part of the electronic will expressly or by
128 inconsistency; or

129 (b) a physical act if it is established by a preponderance of the evidence that the
130 testator, with the intent of revoking all or part of the will, performed the act or directed another
131 individual who performed the act in the testator's physical presence.

132 Section 9. Section **75-2-1408** is enacted to read:

133 **75-2-1408. Electronic will attested and made self-proving at time of execution.**

134 (1) An electronic will may be simultaneously executed, attested, and made self-proving
135 by acknowledgment of the testator and affidavits of the witnesses.

136 (2) The acknowledgment and affidavits under Subsection (1) shall be:

137 (a) made before an officer authorized to administer oaths under law of the state in
138 which execution occurs, regardless of whether that officer is also a witness to the electronic
139 will; and

140 (b) evidenced by the officer's certificate under official seal affixed to or logically
141 associated with the electronic will.

142 (3) The acknowledgment and affidavits under Subsection (1) shall be in substantially
143 the following form:

144 I, _____, the testator, and, being sworn, declare to the undersigned officer that
145 I sign this instrument as my electronic will, I willingly sign this instrument or willingly direct
146 another individual to sign this instrument for me, I execute it as my voluntary act for the
147 purposes expressed in this instrument, and I am 18 years old or older, of sound mind, and under
148 no constraint or undue influence.

149 _____
150 Testator

151 We, _____ and _____, the witnesses, being sworn, declare to the
152 undersigned officer that the testator signed this instrument as the testator's electronic will, that
153 the testator willingly signed this instrument or willingly directed another individual to sign for
154 the testator, and that each of us, in the physical or electronic presence of the testator, signs this
155 instrument as witness to the testator's signing, and to the best of our knowledge the testator is
156 18 years old or older, of sound mind, and under no constraint or undue influence.

157 _____
158 Witness

159 _____
160 Witness

161 Certificate of officer:

162 State of _____

163 County of _____

164 Subscribed, sworn to, and acknowledged before me by _____, the testator, and
165 subscribed and sworn to before me by _____ and _____, witnesses, this
166 _____ day of _____, _____.

167 _____
168 Signed

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(4) A signature physically or electronically affixed to an affidavit that is affixed to or logically associated with an electronic will under this part is deemed a signature of the electronic will under Subsection 75-2-1405(1).

(5) To the extent that this section conflicts with Title 46, Chapter 1, Notaries Public Reform Act, this section supersedes Title 46, Chapter 1, Notaries Public Reform Act.

Section 10. Section **75-2-1409** is enacted to read:

75-2-1409. Certification of paper copy.

(1) An individual may create a certified paper copy of an electronic will by affirming under penalty of perjury that a paper copy of the electronic will is a complete, true, and accurate copy of the electronic will.

(2) If the electronic will is made self-proving, the certified paper copy of the will shall include the self-proving affidavits.

Section 11. Section **75-2-1410** is enacted to read:

75-2-1410. Uniformity of application and construction.

In applying and construing this part, consideration shall be given to the need to promote uniformity of the law with respect to the subject matter of this uniform act among states that enact this uniform act.

Section 12. Section **75-2-1411** is enacted to read:

75-2-1411. Transitional provision.

This part applies to the will of a decedent who dies on or after the effective date of this part.

Section 13. **Effective date.**

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto override.