STATE OF NEW YORK

7702--A

2023-2024 Regular Sessions

IN ASSEMBLY

June 6, 2023

Introduced by M. of A. LAVINE, JACKSON -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the estates, powers and trusts law and the state technology law, in relation to electronic wills

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article 3 of the estates, powers and trusts law is amended by adding a new part 6 to read as follows:

PART 6. ELECTRONIC WILLS

Section 3-6.1 Short title
3-6.2 Definitions
3-6.3 Law applicable to electronic will; principles of equity
3-6.4 Choice of law regarding execution
3-6.5 Execution of electronic will
3-6.6 Harmless error
3-6.7 Revocation
3-6.8 Electronic will attested and made self-proving at time of execution
3-6.9 Certification of paper copy

§ 3-6.1 Short title

This part may be cited as the New York electronic wills act.

§ 3-6.2 Definitions

For purposes of this part the following terms shall have the following meanings:

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

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

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD11398-03-4

(c) "Electronic will" means a will executed electronically in compliance with paragraph (a) of section 3-6.5.

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

(e) "Sign" means, with present intent to authenticate or adopt a record: (1) to execute or adopt a tangible symbol; or (2) to affix to or logically associate with the record an electronic symbol or process.

(f) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term shall also include a federally recognized Indian tribe.

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

§ 3-6.3 Law applicable to electronic will; principles of equity

An electronic will is a will for all purposes of the law of this state. The law of this state applicable to wills and principles of equity apply to an electronic will, except as modified by this act.

§ 3-6.4 Choice of law regarding execution

A will executed electronically but not in compliance with paragraph (a) of section 3-6.5 is an electronic will under this act if executed in compliance with the law of the jurisdiction where the testator is:

(a) physically located when the will is signed; or

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

§ 3-6.5 Execution of electronic will

(a) Subject to paragraph (d) of section 3-6.8 and except as provided in section 3-6.6, an electronic will must be:

(1) a record that is readable as text at the time of signing under subparagraph two;

(2) signed by:

(A) the testator; or

(B) another individual in the testator's name, in the testator's physical presence and by the testator's direction; and

(3) either:

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

(i) the signing of the will under subparagraph two; or

(ii) the testator's acknowledgment of the signing of the will under subparagraph two or acknowledgement of the will; or

(B) acknowledged by the testator before and in the physical or electronic presence of a notary public or other individual authorized by law to notarize records electronically.

(b) Intent of a testator that the record under subparagraph one of paragraph (a) be the testator's electronic will may be established by extrinsic evidence.

(c) Notwithstanding paragraph (d) of subdivision one of section one hundred thirty-five-c of the executive law, for purposes of this section electronic wills may be notarized by notary publics that are not physically present in the state of New York.

§ 3-6.6 Harmless error

Although a document or writing added upon a document was not executed in compliance with section 3-2.1, the document or writing shall be treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute any of the following:

(a) The decedent's will.

(b) A partial or complete revocation of the decedent's will.

(c) An addition to or an alteration of the decedent's will.

(d) A partial or complete revival of the decedent's formerly revoked will or of a formerly revoked portion of the decedent's will.

§ 3-6.7 Revocation

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

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

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

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

§ 3-6.8 Electronic will attested and made self-proving at time of execution

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

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

(1) made before and in the physical or electronic presence of an officer authorized to administer oaths under law of the state in which the officer is located; and

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

(c) The acknowledgment and affidavits under paragraph (a) must be in substantially the following form: I, _____, the testator, being sworn, declare to the undersigned officer that I sign this instrument as my electronic will, I willingly sign it or willingly direct another individual to sign it for me, I execute it as my voluntary act for the purposes expressed in this instrument, and I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

_____

Testator

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

_____

Witness

_____

Witness
Certificate of officer:
State of _____
County of _____

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

(Seal)

_____
(Signed)

_____
(Capacity of officer)

(d) A signature physically or electronically affixed to an affidavit that is affixed to or logically associated with an electronic will under this act is deemed a signature of the electronic will under paragraph (a) of section 3-6.5.

§ 3-6.9 Certification of paper copy

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. If the electronic will is made self-proving, the certified paper copy of the will must include the self-proving affidavits.

§ 2. The opening paragraph of paragraph (a) of section 3-2.1 of the estates, powers and trusts law is amended to read as follows:

Except for nuncupative and holographic wills authorized by 3-2.2 and electronic wills authorized by part six of this article, every will must be in writing, and executed and attested in the following manner:

§ 3. Subdivision 1 of section 307 of the state technology law, as amended by chapter 543 of the laws of 2023, is amended to read as follows:

1. To any document providing for the disposition of an individual's person or property upon death or incompetence, or appointing a fiduciary of an individual's person or property, including, without limitation, wills, unless such will is executed pursuant to part six of article three of the estates, powers and trusts law, trusts, decisions consenting to orders not to resuscitate, powers of attorney and health care proxies, with the exception of: (a) contractual beneficiary designations; (b) the registration of making, amending, or revoking an anatomical gift under section forty-three hundred ten of the public health law; (c) documents and forms authorizing or accepting funeral, cemetery and cremation services; and (d) the execution of a valid power of attorney for the purpose of transferring a salvage certificate of title and the execution of an odometer and damage disclosure statement in connection with such title whenever a loss in connection with a private automobile is determined by an insurer to be a total loss or constructive total loss under section three thousand four hundred twelve of the insurance law.

§ 4. This act shall take effect immediately.