

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

1 (c) "Electronic will" means a will executed electronically in compli-
2 ance with paragraph (a) of section 3-6.5.

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

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

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

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

18 § 3-6.3 Law applicable to electronic will; principles of equity

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

22 § 3-6.4 Choice of law regarding execution

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

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

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

29 § 3-6.5 Execution of electronic will

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

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

34 (2) signed by:

35 (A) the testator; or

36 (B) another individual in the testator's name, in the testator's phys-
37 ical presence and by the testator's direction; and

38 (3) either:

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

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

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

45 (B) acknowledged by the testator before and in the physical or elec-
46 tronic presence of a notary public or other individual authorized by law
47 to notarize records electronically.

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

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

55 § 3-6.6 Harmless error

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

7 (a) The decedent's will.

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

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

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

12 § 3-6.7 Revocation

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

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

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

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

21 § 3-6.8 Electronic will attested and made self-proving at time of
22 execution

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

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

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

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

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

40 _____
41 Testator

42 We, _____ and _____,
43 witnesses, being sworn, declare to the undersigned officer that the
44 testator signed this instrument as the testator's electronic will, that
45 the testator willingly signed it or willingly directed another individ-
46 ual to sign for the testator, and that each of us, in the physical or
47 electronic presence of the testator, signs this instrument as witness to
48 the testator's signing, and to the best of our knowledge the testator is
49 18 years of age or older, of sound mind, and under no constraint or
50 undue influence.

51 _____
52 Witness

1 _____
 2 Witness
 3 Certificate of officer:
 4 State of
 5 County of

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

10 (Seal)

11 _____
 12 (Signed)

13 _____
 14 (Capacity of officer)

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

19 § 3-6.9 Certification of paper copy

20 An individual may create a certified paper copy of an electronic will
 21 by affirming under penalty of perjury that a paper copy of the electron-
 22 ic will is a complete, true, and accurate copy of the electronic will.
 23 If the electronic will is made self-proving, the certified paper copy of
 24 the will must include the self-proving affidavits.

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

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

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

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

50 § 4. This act shall take effect immediately.