

AN ACT concerning civil law.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Article 1. General Provisions

Section 1-1. Short title. This Act may be cited as the Electronic Wills and Remote Witnesses Act.

Section 1-5. Purpose. The purpose of this Act is to provide for: (1) the valid execution, attestation, self-proving, and probate of electronic wills, paper copies of electronic wills, and wills attested to by witnesses through audio-video communication; and (2) the valid execution, attestation, and witnessing of documents, other than wills, through audio-video communication.

Section 1-10. Applicability. Any document executed under this Act is executed in this State; however, executing a document under this Act does not automatically confer jurisdiction in the courts of this State.

Section 1-15. Relation to Probate Act of 1975 and common law. All electronic wills, paper copies of electronic wills, and wills attested to under this Act are subject to all

requirements of the Probate Act of 1975 and the common law, but to the extent the common law or any provision of the Probate Act of 1975 conflicts with or is modified by this Act, the requirements of this Act control.

Section 1-20. Definitions. As used in this Act:

"Audio-video communication" means communication by which a person can hear, see, and communicate with another person in real time using electronic means. A person's visual or hearing impairment does not prohibit or limit that person's use of audio-visual communication under this Act.

"Electronic record" means a record generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another.

"Electronic signature" means a signature in electronic form that uses a security procedure under the Electronic Commerce Security Act and attached to or logically associated with an electronic record.

"Electronic will" is a will that is created and maintained as a tamper-evident electronic record.

"Identity proofing" means a process or service through which a third person affirms the identity of an individual through a review of personal information from public and proprietary data sources, including: (1) by means of dynamic knowledge-based authentication, including a review of personal

information from public or proprietary data sources; or (2) by means of an analysis of biometric data, including, but not limited to, facial recognition, voiceprint analysis, or fingerprint analysis.

"Paper copy" means a tamper-evident electronic record that is printed and contains the following: (1) the text of the document; (2) the electronic signature of the signer; (3) a readable copy of the evidence of any changes displayed in the electronic record; and (4) any exhibits, attestation clauses, affidavits, or other items forming a part of the document or contained in the electronic record.

"Paper document" means a document that is written or printed on paper.

"Physical presence" means being in the same physical location as another person and close enough to see and know the other person is signing a document.

"Presence" includes: (1) physical presence; or (2) being in a different physical location from another person, but able, using audio-video communication, to know the person is signing a document in real time.

"Remote witness" means a person attesting to a document who is in the presence of the signer or testator through audio-video communication.

"Rule of law" means any statute, ordinance, common law rule, court decision, or other rule of law enacted, established, or promulgated by this State or any agency,

commission, department, court, other authority, or political subdivision of this State.

"Signature" includes an electronic signature and an ink signature.

"Tamper-evident" means a feature of an electronic record by which any change to the electronic record is displayed.

Article 5. Electronic Wills

Section 5-5. Signing electronic wills.

(a) To be valid under this Act, an electronic will shall be executed by the testator or by some person in the testator's presence and at the testator's direction, and attested to in the testator's presence by 2 or more credible witnesses.

(b) The testator may sign the electronic will with the testator's electronic signature or may direct another person in the presence of the testator to sign the electronic will. A person signing at the testator's direction shall not be an attesting witness, a person receiving a beneficial legacy or interest under the will, or the spouse or child of a person receiving a beneficial legacy or interest under the will.

(c) Each witness shall sign the electronic will with an electronic signature in the presence of the testator after seeing the testator sign, seeing the testator direct another person in the testator's presence to sign, or seeing the testator acknowledge the signature as the testator's act.

(d) If the will is attested to by a remote witness, the requirements for an attestation by a remote witness under Section 15-10 also apply.

Section 5-10. Revocation.

(a) An electronic will may be revoked in the following ways:

(1) execution of a later will declaring the revocation;

(2) execution of a later will to the extent that it is inconsistent with the prior will; or

(3) execution of a written instrument by the testator declaring the revocation.

(b) If there is evidence that a testator signed an electronic will and neither an electronic will nor a certified paper copy of the electronic will can be located after a testator's death, there is a presumption that the testator revoked the electronic will even if no instrument or later will revoking the electronic will can be located.

Section 5-15. Digital assets and electronic commerce.

(a) At any time during the administration of the estate without further notice or, if there is no grant of administration, upon such notice and in such a manner as the court directs, the court may issue an order under the Revised Uniform Fiduciary Access to Digital Assets Act (2015) for a

custodian of an account held under a terms-of-service agreement to disclose digital assets for the purposes of obtaining an electronic will from a deceased user's account. If there is no grant of administration at the time the court issues the order, the court's order shall grant disclosure to the petitioner who is deemed a personal representative under the Revised Uniform Fiduciary Access to Digital Assets Act (2015).

(b) Except as specified in this Act, the Electronic Commerce Security Act does not apply to the execution or revocation of an electronic will.

Article 10. Certified Paper Copies

Section 10-5. Certified paper copy. Where a rule of law requires information to be presented or retained in its original form, or provides consequences for the information not being presented or retained in its original form, that rule of law is satisfied by a certified paper copy of the electronic record.

Section 10-10. Creation of a certified paper copy.

(a) A certified paper copy is a paper copy of an electronic record that has been certified by the person who converts the electronic record to a paper copy.

(b) The person certifying a paper copy shall state the

following:

- (1) the date that the person prepared the paper copy;
- (2) the name of the person who prepared the paper copy;
- (3) the date that the person who prepared the paper copy came into possession of the electronic record;
- (4) a description of how the person who prepared the paper copy came into possession of the electronic record;
- (5) confirmation that the paper copy is a complete and correct copy of the electronic record; and
- (6) confirmation that the electronic record is a tamper-evident electronic record.

(c) The statements by a person who prepares a certified paper copy shall be made by:

- (1) testimony before the court;
 - (2) a written statement certified under Section 1-109 of the Code of Civil Procedure attached to the paper copy;
- or
- (3) an affidavit attached to the paper copy.

(d) A certified paper copy of a tamper-evident electronic record, other than an electronic will, may be created any time after the signer signs the electronic record under the Electronic Commerce Security Act.

(e) A certified paper copy of an electronic will may be created any time after the testator signs the electronic will or directs another person in the testator's presence to sign

the electronic will.

Section 10-15. Witnessing a certified paper copy.

(a) A certified paper copy of an electronic record may be witnessed after it is prepared. The witness shall be in the signer's presence when the signer acknowledges the electronic signature as the signer's act.

(b) If an electronic will is not attested to by 2 or more credible witnesses, a certified paper copy of the electronic will may be attested to by witnesses in the testator's presence after the testator acknowledges the electronic signature as the testator's act.

Article 15. Remote Witnesses

Section 15-5. Remote witness for document other than a will.

(a) A person may witness any document, other than a will, using audio-video communication between the individual signing the document and the witness. The signatures may be contained in a single document or the document may be signed in counterparts. The counterparts of a document may be electronic records, paper copies, or any combination thereof.

(b) During the audio-video communication:

(1) the witness shall determine the identity of the signer;

(2) the signer of the document shall sign the document; if the document is an electronic record, it shall be a tamper-evident electronic record; and

(3) the witness shall sign the document previously signed or acknowledged by the signer, or if signed in counterparts, a separate witness's signature page of the document.

(c) If the witness is signing a document in counterparts, then the witness's signed signature page or a copy of the same shall be attached to the document within 10 business days of the signing and before the signer's death or incapacity. The document becomes effective when the witness's signed signature page or a copy of the same is attached to the document.

Section 15-10. Remote attestation for will.

(a) To be valid under this Act, a will attested to through audio-video communication shall designate this State as its place of execution, be signed by the testator or by some person at the testator's direction and in the testator's presence, and be attested to in the presence of the testator by 2 or more credible witnesses who are located in the United States at the time of the attestation.

(b) The will being attested to by audio-video communication may be an electronic will, a paper copy of an electronic will, or a paper document. An electronic will being attested to shall be a single document containing all the

signature pages, attestation clauses, and affidavits forming a part of the will. A will that is a paper copy of an electronic will or a paper document may have separate signature pages, attestation clauses, or affidavits that are electronic records or paper documents. Separate signature pages, attestation clauses, or affidavits may be distributed to the witness before the audio-video communication.

(c) The testator shall sign the will or direct a person in the testator's presence to sign. A person signing at the testator's direction shall not be an attesting witness, a person receiving a beneficial legacy or interest under the will, or the spouse or child of a person receiving a beneficial legacy or interest under the will.

(d) During an audio-video communication:

(1) the witness shall determine the testator's identity;

(2) the testator shall sign the will, direct another person in the testator's presence to sign the will, or acknowledge the signature as the testator's act; and

(3) the witness shall attest to the will in the testator's presence.

(e) If the will consists of separate signature pages, attestation clauses, or affidavits forming a part of the will, the testator or a person appointed by the testator shall attach the witness's signed signature page, attestation clause, or affidavit forming a part of the will or a copy of

the same to the paper document containing the testator's signature or a paper copy of the electronic will within 10 business days of the attestation.

Section 15-15. Determining a signer's or testator's identity. A witness shall determine a signer's or testator's identity by one or more of the following methods:

- (1) personal knowledge;
- (2) a government-issued identification;
- (3) another form of identification that includes a photograph of the holder; or
- (4) identity proofing.

Section 15-20. Remote witnessing and notarization during the COVID-19 emergency declaration.

(a) The purpose of this Section is to give statutory approval to the notary and witness guidelines provided in Executive Order 2020-14.

(b) Notwithstanding any provision of law or rule, effective March 26, 2020 and ending 30 days after the expiration of the Governor's emergency declaration regarding COVID-19, a notarial act or an act of witnessing, including when a person must "appear before", act "in the presence of", or any variation thereof, may be performed through means of 2-way audio-video communication technology that allows for direct contemporaneous interaction by sight and sound between

the individual signing the document, the witness, and the notary public.

(c) A notarial act satisfies the "appearing before" requirement under Section 6-102 of the Illinois Notary Public Act if the notary public performs a remote notarization via 2-way audio-video communication technology, if the notary public commissioned in this State is physically within the State while performing the notarial act and the transaction follows any guidance or rules provided by the Secretary of State in existence on the date of notarization.

(d) An act of witnessing and the technology used in the audio-video communication shall substantially comply with the following process:

(1) the 2-way audio-video communication shall be recorded and preserved by the signatory or the signatory's designee for a period of at least 3 years;

(2) the signatory shall attest to being physically located in the State during the 2-way audio-video communication;

(3) the witness shall attest to being physically located in the State during the 2-way audio-video communication;

(4) the signatory shall affirmatively state on the 2-way audio-video communication what document the signatory is signing;

(5) each page of the document being witnessed shall be

shown to the witness on the 2-way audio-video communication technology in a means clearly legible to the witness;

(6) the act of signing shall be captured sufficiently up close on the 2-way audio-video communication for the witness to observe;

(7) the signatory shall transmit by overnight mail, fax, electronic, or other means a legible copy of the entire signed document directly to the witness no later than the day after the document is signed;

(8) the witness shall sign the transmitted copy of the document as a witness and transmit the signed copy of the document back via overnight mail, fax, electronic, or other means to the signatory within 24 hours of receipt; and

(9) if necessary, the witness may sign the original signed document as of the date of the original execution by the signatory if the witness receives the original signed document together with the electronically witnessed copy within 30 days from the date of the remote witnessing.

(e) The prohibition on electronic signatures on certain documents in subsection (c) of Section 120 of the Electronic Commerce Security Act remains in full effect.

(f) Notwithstanding any law or rule of this State to the contrary, absent an express prohibition in a document against

signing in counterparts, all legal documents, including, but not limited to, deeds, last wills and testaments, trusts, durable powers of attorney for property, and powers of attorney for health care, may be signed in counterparts by the witnesses and the signatory. A notary public shall be presented with a fax or electronic copy of the document signature pages showing the witness signatures on the same date the document is signed by the signatory if the notary public is being asked to certify to the appearance of the witnesses to a document.

(g) Any technology issues that may occur do not impact the validity or effect of any instrument or document signed under this Section. As used in this Section, "technology issues" include, but are not limited to, problems with the Internet connection, user error related to the use of technology, the file containing a recorded act becoming corrupted, or other temporary malfunctions involving the technology used in an act of witnessing or a notarial act.

Article 20. Admission of Wills to Probate

Section 20-5. Electronic will. In addition to the requirements of Section 6-2 of the Probate Act of 1975, the petitioner shall state in the petition to have an electronic will admitted to probate that the electronic will is a tamper-evident electronic record and it has not been altered

apart from the electronic signatures and other information that arises in the normal course of communication, storage, and display.

Section 20-10. Admission of paper copy of electronic will. Before being admitted to probate, a paper copy of an electronic will shall be:

- (1) certified under Section 10-10; or
- (2) supported by sufficient evidence to overcome the presumption under subsection (b) of Section 5-10 that the testator revoked the electronic will.

Section 20-15. Admission of wills attested to by witnesses who are physically present. An electronic will or paper copy of an electronic will attested to by witnesses who are all in the testator's physical presence at the time of attestation shall be sufficiently proved under Section 6-4 of the Probate Act of 1975 to be admitted to probate.

Section 20-20. Admission of wills attested to by a remote witness.

(a) A will, other than a will signed under Section 15-20, attested to by one or more remote witnesses is sufficiently proved to be admitted to probate when each of at least 2 of the attesting witnesses make the statements described in subsection (b), and if the testator appointed a person to

attach any separate signature pages, attestation clauses, or affidavits forming a part of a paper copy of an electronic will or paper document, each appointed person, other than the testator, makes the statements described in subsection (d).

(b) Each attesting witness shall state that:

(1) the attesting witness was present and saw the testator or some person in the testator's presence and by the testator's direction sign the will in the presence of the witness or the testator acknowledged it to the witness as the testator's act;

(2) the will was attested to by the witness in the presence of the testator;

(3) the witness believed the testator to be of sound mind and memory at the time of signing or acknowledging the will; and

(4) if the attesting witness is a remote witness, the method used to determine the testator's identity.

(c) The statements of an attesting witness under subsection (b) may be made by:

(1) testimony before the court;

(2) an attestation clause signed by the witness and attached to the will within 10 business days of the execution;

(3) an affidavit that is signed by the witness at the time of attestation and is attached to the will within 10 business days; or

(4) an affidavit that is signed after the time of attestation and is attached to an accurate copy of the will.

(d) Any person appointed by the testator to attach to the will the witnesses' signed signature pages, attestation clauses, or affidavits forming a part of the will or copies of the same shall state:

(1) that the signed signature pages, attestation clauses, or affidavits forming a part of the will or copies of the same were attached within 10 business days of each witness's attestation;

(2) that the person attached the signed signature pages, attestation clauses, or affidavits forming a part of the will or copies of the same to the testator's complete and correct will; and

(3) if the signed signature pages, attestation clauses, or affidavits forming a part of the will were signed as electronic records, the statements required to certify the paper copies of the electronic records under Section 10-10.

(e) The statements under subsection (d) by any person, other than the testator, attaching the attesting witnesses signature pages, attestation clauses, affidavits, or copies of the same may be made by:

(1) testimony before the court;

(2) a written statement certified under Section 1-109

of the Code of Civil Procedure that is signed and attached to the will when attaching the signature pages, attestation clauses, affidavits of the witnesses, or copies of the same; or

(3) an affidavit signed at or after the time of attaching the signature pages, attestation clauses, affidavits of the witnesses, or copies of the same and attached to the will or an accurate copy of the will.

Section 20-25. Admission of a will signed during the COVID-19 emergency declaration. A will attested to by a remote witness under Section 15-20 is sufficiently proved to be admitted to probate when each of at least 2 attesting witnesses:

(1) sign an attestation clause or affidavit substantially complying with the statements required under subsection (a) of Section 6-4 of the Probate Act of 1975 within 48 hours of the act of witnessing, and the attestation clause, affidavit, or a copy of the same is attached to the will signed by the testator or an accurate copy of the will;

(2) sign an attestation clause or affidavit at or after the act of witnessing that is attached to the will or an accurate copy of the will stating the testator and remote witness to the will substantially complied with Section 15-20 and the remote witness believed the testator to be of sound mind and memory at the time of the signing; or

(3) testify in court that the testator and remote witness substantially complied with Section 15-20 and that the remote witness believed the testator to be of sound mind and memory at the time of the signing.

Section 20-30. Evidence of fraud, forgery, compulsion, or other improper conduct. Nothing in this Article prohibits any party from introducing evidence of fraud, forgery, compulsion, or other improper conduct that in the opinion of the court is deemed sufficient to invalidate the will when being admitted. The proponent may also introduce any other evidence competent to establish the validity of a will. If the proponent establishes the validity of the will by sufficient competent evidence, it shall be admitted to probate unless there is proof of fraud, forgery, compulsion, or other improper conduct that in the opinion of the court is deemed sufficient to invalidate the will.

Section 20-35. Formal proof of will with remote witness under Section 20-20. If a will has been admitted to probate under Section 20-20 before notice, any person entitled to notice under Section 6-10 of the Probate Act of 1975 may file a petition within 42 days after the effective date of the original order admitting the will to probate to require proof of the will, pursuant to this Section. The court shall set the matter for hearing upon such notice to interested persons as

the court directs. At the hearing, the proponent shall establish the will by testimony of the relevant parties as provided in paragraph (1) of subsection (c) of Section 10-10, paragraph (1) of subsection (c) of Section 20-20, or paragraph (1) of subsection (e) of Section 20-20 or deposition of the relevant parties following the procedures in Section 6-5 of the Probate Act of 1975 or other evidence as provided in the Probate Act of 1975, but not as provided by paragraph (2) or (3) of subsection (c) of Section 10-10, paragraph (2) or (3) of subsection (c) of Section 20-20, or paragraph (2) or (3) of subsection (e) of Section 20-20, as if the will had not originally been admitted to probate. If the proponent establishes the will by sufficient competent evidence, the original order admitting it to probate and the original order appointing the representative shall be confirmed and effective as to all persons, including creditors, as of the dates of their entries, unless there is proof of fraud, forgery, compulsion, or other improper conduct that in the opinion of the court is sufficient to invalidate or destroy the will. The time for filing a petition to contest a will under Section 8-1 of the Probate Act of 1975 is not extended by the filing of the petition under this Section if the order admitting the will to probate is confirmed, but if that order is vacated, the time for filing the petition under Section 8-2 of the Probate Act of 1975 runs from the date of vacation of the order admitting the will to probate.

Section 20-40. Formal proof of an electronic will. If a petition is filed for proof of an electronic will under Section 6-21 of the Probate Act of 1975 or Section 20-35 of this Act, the Court shall determine whether the electronic will is a tamper-evident electronic record and has not been altered apart from the electronic signatures and other information that arises in the normal course of communication, storage, and display.

Section 20-45. Formal proof of will witnessed during the COVID-19 emergency declaration. Testimony or other evidence at a hearing for formal proof of a will under Section 6-21 of the Probate of 1975 by a remote witness who witnessed the will under Section 15-20 shall establish the testator and remote witness substantially complied with the requirements of Section 15-20 and the remote witness believed the testator to be of sound mind and memory at the time of the signing. Formal proof of a will signed under Section 15-20 does not require testimony or other evidence that the remote witness attested to the will in the presence of the testator. Testimony by the remote witness that conflicts with a statement in the attestation clause or affidavit that the remote witness attested to the will in the presence of the testator does not affect proof of the will or the credibility of the remote witness.

Article 95. Amendatory Provisions

Section 95-5. The Electronic Commerce Security Act is amended by changing Sections 5-115, 5-120, 5-125, and 10-130 as follows:

(5 ILCS 175/5-115)

Sec. 5-115. Electronic records.

(a) Where a rule of law requires information to be "written" or "in writing", or provides for certain consequences if it is not, an electronic record satisfies that rule of law.

(b) The provisions of this Section shall not apply:

(1) when its application would involve a construction of a rule of law that is clearly inconsistent with the manifest intent of the lawmaking body or repugnant to the context of the same rule of law, provided that the mere requirement that information be "in writing", "written", or "printed" shall not by itself be sufficient to establish such intent;

(2) to any rule of law governing the creation or execution of a will ~~or trust~~; and

(3) to any record that serves as a unique and transferable instrument of rights and obligations under the Uniform Commercial Code including, without limitation,

negotiable instruments and other instruments of title wherein possession of the instrument is deemed to confer title, unless an electronic version of such record is created, stored, and transferred in a manner that allows for the existence of only one unique, identifiable, and unalterable original with the functional attributes of an equivalent physical instrument, that can be possessed by only one person, and which cannot be copied except in a form that is readily identifiable as a copy.

(Source: P.A. 101-163, eff. 1-1-20.)

(5 ILCS 175/5-120)

Sec. 5-120. Electronic signatures.

(a) Where a rule of law requires a signature, or provides for certain consequences if a document is not signed, an electronic signature satisfies that rule of law.

(a-5) In the course of exercising any permitting, licensing, or other regulatory function, a municipality may accept, but shall not require, documents with an electronic signature, including, but not limited to, the technical submissions of a design professional with an electronic signature.

(b) An electronic signature may be proved in any manner, including by showing that a procedure existed by which a party must of necessity have executed a symbol or security procedure for the purpose of verifying that an electronic record is that

of such party in order to proceed further with a transaction.

(c) The provisions of this Section shall not apply:

(1) when its application would involve a construction of a rule of law that is clearly inconsistent with the manifest intent of the lawmaking body or repugnant to the context of the same rule of law, provided that the mere requirement of a "signature" or that a record be "signed" shall not by itself be sufficient to establish such intent;

(2) to any rule of law governing the creation or execution of a will ~~or trust~~; and

(3) to any record that serves as a unique and transferable instrument of rights and obligations under the Uniform Commercial Code including, without limitation, negotiable instruments and other instruments of title wherein possession of the instrument is deemed to confer title, unless an electronic version of such record is created, stored, and transferred in a manner that allows for the existence of only one unique, identifiable, and unalterable original with the functional attributes of an equivalent physical instrument, that can be possessed by only one person, and which cannot be copied except in a form that is readily identifiable as a copy.

(Source: P.A. 101-163, eff. 1-1-20.)

(5 ILCS 175/5-125)

Sec. 5-125. Original.

(a) Where a rule of law requires information to be presented or retained in its original form, or provides consequences for the information not being presented or retained in its original form, that rule of law is satisfied by an electronic record if there exists reliable assurance as to the integrity of the information from the time when it was first generated in its final form, as an electronic record or otherwise.

(b) The criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement or other information that arises in the normal course of communication, storage and display. The standard of reliability required to ensure that information has remained complete and unaltered shall be assessed in the light of the purpose for which the information was generated and in the light of all the relevant circumstances.

(c) The provisions of this Section do not apply to any record that serves as a unique and transferable instrument of rights and obligations under the Uniform Commercial Code including, without limitation, negotiable instruments and other instruments of title wherein possession of the instrument is deemed to confer title, unless an electronic version of such record is created, stored, and transferred in a manner that allows for the existence of only one unique,

identifiable, and unalterable original with the functional attributes of an equivalent physical instrument, that can be possessed by only one person, and which cannot be copied except in a form that is readily identifiable as a copy.

(Source: P.A. 90-759, eff. 7-1-99.)

(5 ILCS 175/10-130)

Sec. 10-130. Attribution of signature.

(a) Except as provided by another applicable rule of law, a secure electronic signature is attributable to the person to whom it correlates, whether or not authorized, if:

(1) the electronic signature resulted from acts of a person that obtained the signature device or other information necessary to create the signature from a source under the control of the alleged signer, creating the appearance that it came from that party;

(2) the access or use occurred under circumstances constituting a failure to exercise reasonable care by the alleged signer; and

(3) the relying party relied reasonably and in good faith to its detriment on the apparent source of the electronic record.

(b) The provisions of this Section shall not apply to transactions and documents intended primarily for personal, family, or household use, or otherwise defined as consumer transactions by applicable law including, but not limited to,

credit card and automated teller machine transactions except to the extent allowed by applicable consumer law, trust agreements, powers of attorney for property or health care, beneficiary designation forms, and deeds transferring residential real property.

(Source: P.A. 90-759, eff. 7-1-99.)

Section 95-10. The Probate Act of 1975 is amended by changing Sections 1-2.18, 6-5, 6-6, 8-1, and 8-2 and by adding Sections 1-2.25 and 1-2.26 as follows:

(755 ILCS 5/1-2.18) (from Ch. 110 1/2, par. 1-2.18)

Sec. 1-2.18. "Will" includes electronic will, certified paper copy of an electronic will, testament and codicil.

(Source: P.A. 81-213.)

(755 ILCS 5/1-2.25 new)

Sec. 1-2.25. Where this Act requires information to be "written" or "in writing", or provides for certain consequences if it is not, an electronic record under the Electronic Wills and Remote Witnesses Act satisfies the provisions of this Act.

(755 ILCS 5/1-2.26 new)

Sec. 1-2.26. "In the presence of" and any variation thereof includes:

(1) being in the same physical location as another person and close enough to see and know the other person is signing a document; or

(2) being in a different physical location from another person, but able, using electronic means, to see, hear, communicate, and know that the person is signing a document in real time.

(755 ILCS 5/6-5) (from Ch. 110 1/2, par. 6-5)

Sec. 6-5. Deposition of witness.† When a witness to a will or other party who shall testify to have a will admitted to probate resides outside the county in which the will is offered for probate or is unable to attend court and can be found and is mentally and physically capable of testifying, the court, upon the petition of any person seeking probate of the will and upon such notice of the petition to persons interested as the court directs, may issue a commission with the will or a photographic copy thereof attached. The commission shall be directed to any judge, notary public, mayor or other chief magistrate of a city or United States consul, vice-consul, consular agent, secretary of legation or commissioned officer in active service of the armed forces of the United States and shall authorize and require the authorized person ~~him~~ to cause that witness or other party to come before the authorized person ~~him~~ at such time and place as the authorized person ~~he~~ designates and to take the deposition

of the witness or other party on oath or affirmation and upon all such written interrogatories and cross-interrogatories as may be enclosed with the commission. With the least possible delay the person taking the deposition shall certify it, the commission, and the interrogatories to the court from which the commission issued. When the deposition of a witness or other party is so taken and returned to the court, the ~~his~~ testimony of the witness or other party has the same effect as if the witness or other party ~~he~~ testified in the court from which the commission issued. When the commission is issued to the officer by ~~his~~ official title only and not by name, the seal of the ~~his~~ office attached to the officer's ~~his~~ certificate is sufficient evidence of the officer's ~~his~~ identity and official character.

(Source: P.A. 95-331, eff. 8-21-07.)

(755 ILCS 5/6-6) (from Ch. 110 1/2, par. 6-6)

Sec. 6-6. Proof of handwriting of a deceased or inaccessible witness or a witness with a disability.†

(a) If a witness to a will or other party who shall testify to have a will admitted (1) is dead, (2) is blind, (3) is mentally or physically incapable of testifying, (4) cannot be found, (5) is in active service of the armed forces of the United States or (6) is outside this State, the court may admit proof of the handwriting of the witness or other party and such other secondary evidence as is admissible in any court of

record to establish electronic records or written contracts and may admit the will to probate as though it had been proved by the testimony of the witness or other party. On motion of any interested person or on its own motion, the court may require that the deposition of any such witness or other party, who can be found, is mentally and physically capable of testifying and is not in the active service of the armed forces of the United States outside of the continental United States, be taken as the best evidence thereof.

(b) As used in this Section, "continental United States" means the States of the United States and the District of Columbia.

(Source: P.A. 99-143, eff. 7-27-15.)

(755 ILCS 5/8-1) (from Ch. 110 1/2, par. 8-1)

Sec. 8-1. Contest of admission of will to probate; notice.

(a) Within 6 months after the admission to probate of a domestic will in accordance with the provisions of Section 6-4 or Section 20-20 or 20-25 of the Electronic Wills and Remote Witnesses Act, or of a foreign will in accordance with the provisions of Article VII of this Act, any interested person may file a petition in the proceeding for the administration of the testator's estate or, if no proceeding is pending, in the court in which the will was admitted to probate, to contest the validity of the will.

(b) The petitioner shall cause a copy of the petition to be

mailed or delivered to the representative, to his or her attorney of record, and to each heir and legatee whose name is listed in the petition to admit the will to probate and in any amended petition filed in accordance with Section 6-11, at the address stated in the petition or amended petition. Filing a pleading constitutes a waiver of the mailing or delivery of the notice to the person filing the pleading. Failure to mail or deliver a copy of the petition to an heir or a legatee does not extend the time within which a petition to contest the will may be filed under subsection (a) of this Section or affect the validity of the judgement entered in the proceeding.

(c) Any contestant or proponent may demand a trial by jury. An issue shall be made whether or not the instrument produced is the will of the testator. The contestant shall in the first instance proceed with proof to establish the invalidity of the will. At the close of the contestant's case, the proponent may present evidence to sustain the will. An authenticated transcript of the testimony of any witness or other party taken at the time of the hearing on the admission of the will to probate, or an affidavit of any witness or other party received as evidence under subsection 6-4(b), paragraphs (c) and (e) of Section 20-20 of the Electronic Wills and Remote Witnesses Act, or Section 20-25 of the Electronic Wills and Remote Witnesses Act, is admissible in evidence.

(d) The right to institute or continue a proceeding to contest the validity of a will survives and descends to the

heir, legatee, representative, grantee or assignee of the person entitled to institute the proceeding.

(e) It is the duty of the representative to defend a proceeding to contest the validity of the will. The court may order the representative to defend the proceeding or prosecute an appeal from the judgment. If the representative fails or refuses to do so when ordered by the court, or if there is no representative then acting, the court, upon its motion or on application of any interested person, may appoint a special administrator to defend or appeal in his stead.

(f) An action to set aside or contest the validity of a revocable inter vivos trust agreement or declaration of trust to which a legacy is provided by the settlor's will which is admitted to probate shall be commenced within and not after the time to contest the validity of a will as provided in subsection (a) of this Section and Section 13-223 of the Code of Civil Procedure.

(g) This amendatory Act of 1995 applies to pending cases as well as cases commenced on or after its effective date.

(Source: P.A. 89-364, eff. 8-18-95.)

(755 ILCS 5/8-2) (from Ch. 110 1/2, par. 8-2)

Sec. 8-2. Contest of denial of admission of will to probate.

(a) Within 6 months after the entry of an order denying admission to probate of a domestic will in accordance with the

provisions of Section 6-4 or Section 20-20 or 20-25 of the Electronic Wills and Remote Witnesses Act, or of a foreign will in accordance with the provisions of Article VII of this Act, any interested person desiring to contest the denial of admission may file a petition to admit the will to probate in the proceeding for the administration of the decedent's estate or, if no proceeding is pending, in the court which denied admission of the will to probate. The petition must state the facts required to be stated in Section 6-2 or 6-20, whichever is applicable.

(b) The petitioner shall cause a copy of the petition to be mailed or delivered to the representative, to his or her attorney of record, and to each heir and legatee whose name is listed in the petition to admit the will to probate and in any amended petition filed in accordance with Section 6-11, at the address stated in the petition or amended petition. Filing a pleading constitutes a waiver of the mailing or delivery of the notice to the person filing the pleading. Failure to mail or deliver a copy of the petition to an heir or legatee does not extend the time within which a petition to admit the will to probate may be filed under subsection (a) of Section 8-1 or affect the validity of the judgment entered in the proceeding.

(c) Any proponent or contestant may demand a trial by jury. An issue shall be made whether or not the instrument produced is the will of the testator. The proponent shall in the first instance proceed with proof to establish the

validity of the will and may introduce any evidence competent to establish a will. Any interested person may oppose the petition and may introduce any evidence admissible in a will contest under Section 8-1. At the close of the contestant's case, the proponent may present further evidence to sustain the will.

(d) The right to institute or continue a proceeding to contest the denial of admission of a will to probate survives and descends to the heir, legatee, representative, grantee or assignee of the person entitled to institute the proceeding.

(e) The court may order the representative to defend a proceeding to probate the will or prosecute an appeal from the judgment. If the representative fails or refuses to do so when ordered by the court, or if there is no representative then acting, the court, upon its motion or on application of any interested person, may appoint a special administrator to do so in his stead.

(f) A person named as executor in a will that has been denied admission to probate has no duty to file or support a petition under Section 8-2.

(g) This amendatory Act of 1995 applies to pending cases as well as cases commenced on or after its effective date.

(Source: P.A. 89-364, eff. 8-18-95.)

Article 99. Effective Date

Section 99-99. Effective date. This Act takes effect upon

Public Act 102-0167

SB0730 Enrolled

LRB102 04557 LNS 14576 b

becoming law.