

AN ACT concerning civil law.

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

Section 5. The Probate Act of 1975 is amended by changing Sections 1-2.25, 8-1, and 8-2 as follows:

(755 ILCS 5/1-2.25)

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, Electronic Estate Planning Documents, and Remote Witnesses Act satisfies the provisions of this Act.

(Source: P.A. 102-167, eff. 7-26-21.)

(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, Electronic Estate Planning Documents, 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 ~~judgment~~ 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, Electronic Estate Planning Documents, and Remote Witnesses Act, or Section 20-25 of the Electronic Wills, Electronic

Estate Planning Documents, 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. 102-167, eff. 7-26-21.)

(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, Electronic Estate Planning Documents, 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. 102-167, eff. 7-26-21.)

Section 10. The Electronic Wills and Remote Witnesses Act is amended by changing Sections 1-1, 1-5, 1-15, and 1-20 and by adding Article 11 as follows:

(755 ILCS 6/1-1)

Sec. 1-1. Short title. This Act may be cited as the Electronic Wills, Electronic Estate Planning Documents, and Remote Witnesses Act.

(Source: P.A. 102-167, eff. 7-26-21.)

(755 ILCS 6/1-5)

Sec. 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; (2) the valid execution of electronic nontestamentary estate planning documents and validation of electronic signatures on nontestamentary estate planning documents; and (3) ~~(2)~~ the valid execution, attestation, and witnessing of documents, other than wills, through audio-video communication.

(Source: P.A. 102-167, eff. 7-26-21.)

(755 ILCS 6/1-15)

Sec. 1-15. Relation to Probate Act of 1975, other statutes, 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. Nontestamentary estate planning documents executed in accordance with this Act are subject to all requirements of the various statutes applicable thereto, but to the extent the common law or any statute conflicts with or is modified by this Act, the requirements of this Act control.

(Source: P.A. 102-167, eff. 7-26-21.)

(755 ILCS 6/1-20)

Sec. 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" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"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.

"Information" includes data, text, images, codes, computer programs, software, and databases.

"Nontestamentary estate planning document" means a record relating to estate planning that is readable as text at the time of signing and is not a will or contained in a will.

"Nontestamentary estate planning document" includes a record readable as text at the time of signing that creates, exercises, modifies, releases, or revokes: (1) a trust instrument; (2) a trust power that under the terms of the trust

requires a signed record, such as a power to appoint, remove, or designate a trustee or other fiduciary or powerholder, a power to direct a trustee, a power to modify or amend, a power to withdraw assets, a power to decant, a power to waive notice, or any other power granted under this Act, any other statute, the terms of a trust, or any rule of law possessed by a trustee, a grantor, a beneficiary, or a third party; (3) a certification of a trust under Section 1013 of the Illinois Trust Code; (4) a power of attorney that is durable under Article II of the Illinois Power of Attorney Act; (5) an agent's certification under Section 2-8 of the Illinois Power of Attorney Act of the validity of a power of attorney and the agent's authority; (6) a power of appointment; (7) an advance directive, including a health care power of attorney, directive to physicians, natural death statement, living will, and medical or physician order for life-sustaining treatment; (8) a record directing the disposition of an individual's body after death; (9) a nomination of a guardian for the signing individual, including a short-term, temporary, or standby guardian; (10) a nomination of a guardian for a minor child or disabled adult child, including a short-term, temporary, or standby guardian; (11) a supported decision-making agreement under the Supported Decision-Making Agreement Act; (12) a mental health treatment declaration; (13) a community property survivorship agreement; (14) a disclaimer under Section 2-7 of the Probate Act of 1975; and (15) any other record intended to

carry out an individual's intent regarding property or health care while incapacitated or on death. "Nontestamentary estate planning document" does not include a deed of real property or a certificate of title for a vehicle, watercraft, or aircraft.

"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.

"Person" means an individual, estate, business or nonprofit entity, government or governmental subdivision, agency, or instrumentality, or other legal entity.

"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.

"Power of attorney" means a record that grants authority to an agent to act in place of the principal, even if the term is not used in the record.

"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.

"Record" means information: (1) inscribed on a tangible medium; or (2) stored in an electronic or other medium and retrievable in a perceivable form.

"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.

"Security procedure" means a procedure to verify that an electronic signature, record, or performance is that of a specific person or to detect a change or error in an electronic record. "Security procedure" includes a procedure that uses an algorithm, code, identifying word or number, encryption, or callback or other acknowledgment procedure.

"Settlor" means a person, including a testator, that creates or contributes property to a trust.

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

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

"State" means a state of the United States, the District

of Columbia, Puerto Rico, the United States Virgin Islands, or other territory or possession subject to the jurisdiction of the United States. "State" includes a federally recognized Indian tribe.

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

"Terms of trust" means: (1) the manifestation of the settlor's intent regarding a trust's provisions as (i) expressed in the trust instrument or (ii) established by other evidence that would be admissible in a judicial proceeding; or (2) the trust's provisions as established, determined, or amended by (i) a trustee or other person in accordance with applicable law, (ii) a court order, or (iii) a nonjudicial settlement agreement under Section 111 of the Illinois Trust Code.

"Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments.

"Will" includes a codicil and a 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.

(Source: P.A. 102-167, eff. 7-26-21.)

(755 ILCS 6/Art. 11 heading new)

Article 11. Electronic Nontestamentary Estate Planning
Documents

(755 ILCS 6/11-5 new)

Sec. 11-5. Construction. This Article shall be construed and applied to:

(1) facilitate electronic estate planning documents and signatures consistent with other law; and

(2) be consistent with reasonable practices concerning electronic documents and signatures and continued expansion of those practices.

(755 ILCS 6/11-10 new)

Sec. 11-10. Scope.

(a) Except as provided in subsection (b), this Article applies to an electronic nontestamentary estate planning document and an electronic signature on a nontestamentary estate planning document.

(b) This Article does not apply to a nontestamentary estate planning document, will, or terms of a trust governing the document expressly preclude use of an electronic record or electronic signature.

(c) This Article does not affect the validity of an electronic record or electronic signature that is valid under:

(1) the Illinois Uniform Electronic Transactions Act;

(2) any other Section of this Act; or

(3) any other State law relating to nontestamentary estate planning documents.

(755 ILCS 6/11-15 new)

Sec. 11-15. Principles of law and equity. The law of this State and principles of equity applicable to a nontestamentary estate planning document apply to an electronic nontestamentary estate planning document except as modified by this Article.

(755 ILCS 6/11-20 new)

Sec. 11-20. Use of electronic record or signature not required.

(a) This Article does not require a nontestamentary estate planning document or signature on a nontestamentary estate planning document to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(b) A person is not required to have a nontestamentary estate planning document in electronic form or signed electronically even if the person previously created or signed a nontestamentary estate planning document by electronic means.

(c) A person may not waive the provisions of this Section.

(755 ILCS 6/11-25 new)

Sec. 11-25. Recognition of electronic nontestamentary estate planning document and electronic signature.

(a) A nontestamentary estate planning document or a signature on a nontestamentary estate planning document may not be denied legal effect or enforceability solely because it is in electronic form.

(b) If other law of this State or a will or the terms of a trust governing the nontestamentary estate planning document require a nontestamentary estate planning document to be in writing, an electronic record of the document satisfies the requirement.

(c) If other law of this State requires a signature on a nontestamentary estate planning document, an electronic signature satisfies the requirement.

(755 ILCS 6/11-30 new)

Sec. 11-30. Attribution and effect of electronic record and electronic signature.

(a) An electronic nontestamentary estate planning document or electronic signature on an electronic nontestamentary estate planning document is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including by showing the efficacy of a security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of attribution to a person under subsection

(a) of a document or signature is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption and as provided by other law.

(755 ILCS 6/11-35 new)

Sec. 11-35. Notarization and acknowledgment. If other law of this State or a will or the terms of a trust require or permit a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied with respect to an electronic nontestamentary estate planning document if an individual authorized to perform the notarization, acknowledgment, verification, or oath attaches or logically associates the individual's electronic signature on the document together with all other information required to be included under the other law.

(755 ILCS 6/11-40 new)

Sec. 11-40. Witnessing and attestation.

(a) If other law of this State or a will or the terms of a trust base the validity of a nontestamentary estate planning document on whether it is signed, witnessed, or attested by another individual, the signature, witnessing, or attestation of that individual may be electronic.

(b) As used in this subsection (b), "electronic presence" means that 2 or more individuals in different locations are able to communicate in real time to the same extent as if the

individuals were physically present in the same location. If other law of this State bases the validity of a nontestamentary estate planning document on whether it is signed, witnessed, or attested by another individual in the presence of the individual signing the document, the presence requirement is satisfied if the individuals are in each other's electronic presence.

(755 ILCS 6/11-45 new)

Sec. 11-45. Retention of electronic record; original.

(a) Except as provided in subsection (b), if other law of this State requires an electronic nontestamentary estate planning document to be retained, transmitted, copied, or filed, the requirement is satisfied by retaining, transmitting, copying, or filing an electronic record that:

(1) accurately reflects the information in the document after it was first generated in final form as an electronic record or under Section 11-30; and

(2) remains accessible to the extent required by the other law.

(b) A requirement under subsection (a) to retain a record does not apply to information the sole purpose of which is to enable the record to be sent, communicated, or received.

(c) A person may satisfy subsection (a) by using the services of another person.

(d) If other law of this State requires a nontestamentary

estate planning document to be presented or retained in its original form, or provides consequences if a nontestamentary estate planning document is not presented or retained in its original form, an electronic record retained in accordance with subsection (a) satisfies the other law.

(e) This Section does not preclude a governmental agency from specifying requirements for the retention of a record subject to the agency's jurisdiction in addition to those in this Section. In this Section, "governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.

(755 ILCS 6/11-50 new)

Sec. 11-50. Certification of paper copy. An individual may create a certified paper copy of an electronic nontestamentary estate planning document by affirming under penalty of perjury that the paper copy is a complete and accurate copy of the document.

(755 ILCS 6/11-55 new)

Sec. 11-55. Admissibility in evidence. Evidence relating to an electronic nontestamentary estate planning document or an electronic signature on the document may not be excluded in a proceeding solely because it is in electronic form.

(755 ILCS 6/11-60 new)

Sec. 11-60. Relation to the Electronic Signatures in Global and National Commerce Act. This Article modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede 15 U.S.C. Section 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. Section 7003(b).

(755 ILCS 6/11-65 new)

Sec. 11-65. Application. This Article applies to an electronic nontestamentary estate planning document created, signed, generated, sent, communicated, received, or stored before, on, or after the effective date of this amendatory Act of the 103rd General Assembly.

(755 ILCS 6/11-70 new)

Sec. 11-70. Severability. If a provision of this Article or its application to a person or circumstance is held invalid, the invalidity does not affect another provision or application that can be given effect without the invalid provision.

Section 99. Effective date. This Act takes effect January 1, 2024.

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Statutes amended in order of appearance

755 ILCS 5/1-2.25

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

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

755 ILCS 6/1-1

755 ILCS 6/1-5

755 ILCS 6/1-15

755 ILCS 6/1-20

755 ILCS 6/Art. 11 heading

new

755 ILCS 6/11-5 new

755 ILCS 6/11-10 new

755 ILCS 6/11-15 new

755 ILCS 6/11-20 new

755 ILCS 6/11-25 new

755 ILCS 6/11-30 new

755 ILCS 6/11-35 new

755 ILCS 6/11-40 new

755 ILCS 6/11-45 new

755 ILCS 6/11-50 new

755 ILCS 6/11-55 new

755 ILCS 6/11-60 new

755 ILCS 6/11-65 new

755 ILCS 6/11-70 new