

1 AN ACT concerning civil law.

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

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

6 (755 ILCS 5/1-2.25)

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

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

13 (755 ILCS 5/8-1) (from Ch. 110 1/2, par. 8-1)

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

15 (a) Within 6 months after the admission to probate of a
16 domestic will in accordance with the provisions of Section 6-4
17 or Section 20-20 or 20-25 of the Electronic Wills, Electronic
18 Estate Planning Documents, and Remote Witnesses Act, or of a
19 foreign will in accordance with the provisions of Article VII
20 of this Act, any interested person may file a petition in the
21 proceeding for the administration of the testator's estate or,
22 if no proceeding is pending, in the court in which the will was

1 admitted to probate, to contest the validity of the will.

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

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

1 Estate Planning Documents, and Remote Witnesses Act, is
2 admissible in evidence.

3 (d) The right to institute or continue a proceeding to
4 contest the validity of a will survives and descends to the
5 heir, legatee, representative, grantee or assignee of the
6 person entitled to institute the proceeding.

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

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

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

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

25 (755 ILCS 5/8-2) (from Ch. 110 1/2, par. 8-2)

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

3 (a) Within 6 months after the entry of an order denying
4 admission to probate of a domestic will in accordance with the
5 provisions of Section 6-4 or Section 20-20 or 20-25 of the
6 Electronic Wills, Electronic Estate Planning Documents, and
7 Remote Witnesses Act, or of a foreign will in accordance with
8 the provisions of Article VII of this Act, any interested
9 person desiring to contest the denial of admission may file a
10 petition to admit the will to probate in the proceeding for the
11 administration of the decedent's estate or, if no proceeding
12 is pending, in the court which denied admission of the will to
13 probate. The petition must state the facts required to be
14 stated in Section 6-2 or 6-20, whichever is applicable.

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

1 (c) Any proponent or contestant may demand a trial by
2 jury. An issue shall be made whether or not the instrument
3 produced is the will of the testator. The proponent shall in
4 the first instance proceed with proof to establish the
5 validity of the will and may introduce any evidence competent
6 to establish a will. Any interested person may oppose the
7 petition and may introduce any evidence admissible in a will
8 contest under Section 8-1. At the close of the contestant's
9 case, the proponent may present further evidence to sustain
10 the will.

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

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

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

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

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

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

5 (755 ILCS 6/1-1)

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

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

10 (755 ILCS 6/1-5)

11 Sec. 1-5. Purpose. The purpose of this Act is to provide
12 for: (1) the valid execution, attestation, self-proving, and
13 probate of electronic wills, paper copies of electronic wills,
14 and wills attested to by witnesses through audio-video
15 communication; (2) the valid execution of electronic
16 nontestamentary estate planning documents and validation of
17 electronic signatures on nontestamentary estate planning
18 documents; and (3) ~~(2)~~ the valid execution, attestation, and
19 witnessing of documents, other than wills, through audio-video
20 communication.

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

22 (755 ILCS 6/1-15)

1 Sec. 1-15. Relation to Probate Act of 1975, other
2 statutes, and common law. All electronic wills, paper copies
3 of electronic wills, and wills attested to under this Act are
4 subject to all requirements of the Probate Act of 1975 and the
5 common law, but to the extent the common law or any provision
6 of the Probate Act of 1975 conflicts with or is modified by
7 this Act, the requirements of this Act control.
8 Nontestamentary estate planning documents executed in
9 accordance with this Act are subject to all requirements of
10 the various statutes applicable thereto, but to the extent the
11 common law or any statute conflicts with or is modified by this
12 Act, the requirements of this Act control.

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

14 (755 ILCS 6/1-20)

15 Sec. 1-20. Definitions. As used in this Act:

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

21 "Electronic" means relating to technology having
22 electrical, digital, magnetic, wireless, optical,
23 electromagnetic, or similar capabilities.

24 "Electronic record" means a record generated,
25 communicated, received, or stored by electronic means for use

1 in an information system or for transmission from one
2 information system to another.

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

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

9 "Identity proofing" means a process or service through
10 which a third person affirms the identity of an individual
11 through a review of personal information from public and
12 proprietary data sources, including: (1) by means of dynamic
13 knowledge-based authentication, including a review of personal
14 information from public or proprietary data sources; or (2) by
15 means of an analysis of biometric data, including, but not
16 limited to, facial recognition, voiceprint analysis, or
17 fingerprint analysis.

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

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

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

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

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

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

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

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

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

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

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

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

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

7 "Rule of law" means any statute, ordinance, common law
8 rule, court decision, or other rule of law enacted,
9 established, or promulgated by this State or any agency,
10 commission, department, court, other authority, or political
11 subdivision of this State.

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

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

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

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

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

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

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

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

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

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

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

25 (755 ILCS 6/Art. 11 heading new)

1 Article 11. Electronic Nontestamentary Estate Planning

2 Documents

3 (755 ILCS 6/11-5 new)

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

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

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

11 (755 ILCS 6/11-10 new)

12 Sec. 11-10. Scope.

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

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

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

23 (1) the Illinois Uniform Electronic Transactions Act;

24 (2) any other Section of this Act; or

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

3 (755 ILCS 6/11-15 new)

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

9 (755 ILCS 6/11-20 new)

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

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

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

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

23 (755 ILCS 6/11-25 new)

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

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

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

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

15 (755 ILCS 6/11-30 new)

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

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

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

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

4 (755 ILCS 6/11-35 new)

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

15 (755 ILCS 6/11-40 new)

16 Sec. 11-40. Witnessing and attestation.

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

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

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

8 (755 ILCS 6/11-45 new)

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

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

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

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

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

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

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

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

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

14 (755 ILCS 6/11-50 new)

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

20 (755 ILCS 6/11-55 new)

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

1 (755 ILCS 6/11-60 new)

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

9 (755 ILCS 6/11-65 new)

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

15 (755 ILCS 6/11-70 new)

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

21 Section 99. Effective date. This Act takes effect January
22 1, 2024.

1 INDEX

2 Statutes amended in order of appearance

3 755 ILCS 5/1-2.25

4 755 ILCS 5/8-1 from Ch. 110 1/2, par. 8-1

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

6 755 ILCS 6/1-1

7 755 ILCS 6/1-5

8 755 ILCS 6/1-15

9 755 ILCS 6/1-20

10 755 ILCS 6/Art. 11 heading

11 new

12 755 ILCS 6/11-5 new

13 755 ILCS 6/11-10 new

14 755 ILCS 6/11-15 new

15 755 ILCS 6/11-20 new

16 755 ILCS 6/11-25 new

17 755 ILCS 6/11-30 new

18 755 ILCS 6/11-35 new

19 755 ILCS 6/11-40 new

20 755 ILCS 6/11-45 new

21 755 ILCS 6/11-50 new

22 755 ILCS 6/11-55 new

23 755 ILCS 6/11-60 new

24 755 ILCS 6/11-65 new

25 755 ILCS 6/11-70 new