



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB1930

Introduced 2/9/2023, by Sen. Laura Ellman

SYNOPSIS AS INTRODUCED:

See Index

Amends the Electronic Wills and Remote Witnesses Act. Changes the short title of the Act to the Electronic Wills, Electronic Estate Planning Documents, and Remote Witnesses Act. Defines "electronic", "information", "nontestamentary estate planning document", "person", "record", "security procedure", "settlor", "sign", "state", "terms of trust", "trust instrument", and "will". Creates the Electronic Nontestamentary Estate Planning Documents Article. Sets forth provisions related to: construction; scope; principles of law and equity; use of an electronic record or signature; recognition of an electronic nontestamentary estate planning document and electronic signature; attribution and effect of an electronic record and electronic signature; notarization and acknowledgment; witnessing and attestation; retention of an electronic record; certification of a paper copy; admissibility in evidence; relation to the Electronic Signatures in Global and National Commerce Act; application; and severability. Makes conforming changes in the Probate Act of 1975. Effective January 1, 2024.

LRB103 27862 LNS 54240 b

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; (3) a certification of a trust under
2 Section 1013 of the Illinois Trust Code; (4) a power of
3 attorney that is durable under Article II of the Illinois
4 Power of Attorney Act; (5) an agent's certification under
5 Section 2-8 of the Illinois Power of Attorney Act of the
6 validity of a power of attorney and the agent's authority; (6)
7 a power of appointment; (7) an advance directive, including a
8 health care power of attorney, directive to physicians,
9 natural death statement, living will, and medical or physician
10 order for life-sustaining treatment; (8) a record directing
11 the disposition of an individual's body after death; (9) a
12 nomination of a guardian for the signing individual; (10) a
13 nomination of a guardian for a minor child or disabled adult
14 child; (11) a mental health treatment declaration; (12) a
15 community property survivorship agreement; (13) a disclaimer
16 under Section 2-7 of the Probate Act of 1975; and (14) any
17 other record intended to carry out an individual's intent
18 regarding property or health care while incapacitated or on
19 death. "Nontestamentary estate planning document" does not
20 include a deed of real property or a certificate of title for a
21 vehicle, watercraft, or aircraft.

22 "Paper copy" means a tamper-evident electronic record that
23 is printed and contains the following: (1) the text of the
24 document; (2) the electronic signature of the signer; (3) a
25 readable copy of the evidence of any changes displayed in the
26 electronic record; and (4) any exhibits, attestation clauses,

1 affidavits, or other items forming a part of the document or
2 contained in the electronic record.

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

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

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

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

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

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

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

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

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

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

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

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

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

17 "State" means a state of the United States, the District
18 of Columbia, Puerto Rico, the United States Virgin Islands, or
19 other territory or possession subject to the jurisdiction of
20 the United States. "State" includes a federally recognized
21 Indian tribe.

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

24 "Terms of trust" means: (1) the manifestation of the
25 settlor's intent regarding a trust's provisions as (i)
26 expressed in the trust instrument or (ii) established by other

1 evidence that would be admissible in a judicial proceeding; or
2 (2) the trust's provisions as established, determined, or
3 amended by (i) a trustee or other person in accordance with
4 applicable law, (ii) a court order, or (iii) a nonjudicial
5 settlement agreement under Section 111 of the Illinois Trust
6 Code.

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

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

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

16 (755 ILCS 6/Art. 11 heading new)

17 Article 11. Electronic Nontestamentary Estate Planning
18 Documents

19 (755 ILCS 6/11-5 new)

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

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

24 (2) be consistent with reasonable practices concerning

1 electronic documents and signatures and continued
2 expansion of those practices.

3 (755 ILCS 6/11-10 new)

4 Sec. 11-10. Scope.

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

9 (b) This Article does not apply to a nontestamentary
10 estate planning document if the document precludes use of an
11 electronic record or electronic signature.

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

14 (1) the Illinois Uniform Electronic Transactions Act;

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

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

18 (755 ILCS 6/11-15 new)

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

1 (755 ILCS 6/11-20 new)

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

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

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

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

15 (755 ILCS 6/11-25 new)

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

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

22 (b) If other law of this State requires a nontestamentary
23 estate planning document to be in writing, an electronic
24 record of the document satisfies the requirement.

25 (c) If other law of this State requires a signature on a

1 nontestamentary estate planning document, an electronic
2 signature satisfies the requirement.

3 (755 ILCS 6/11-30 new)

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

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

13 (b) The effect of attribution to a person under subsection
14 (a) of a document or signature is determined from the context
15 and surrounding circumstances at the time of its creation,
16 execution, or adoption and as provided by other law.

17 (755 ILCS 6/11-35 new)

18 Sec. 11-35. Notarization and acknowledgment. If other law
19 of this State requires a signature or record to be notarized,
20 acknowledged, verified, or made under oath, the requirement is
21 satisfied with respect to an electronic nontestamentary estate
22 planning document if an individual authorized to perform the
23 notarization, acknowledgment, verification, or oath attaches
24 or logically associates the individual's electronic signature

1 on the document together with all other information required
2 to be included under the other law.

3 (755 ILCS 6/11-40 new)

4 Sec. 11-40. Witnessing and attestation.

5 (a) If other law of this State bases the validity of a
6 nontestamentary estate planning document on whether it is
7 signed, witnessed, or attested by another individual, the
8 signature, witnessing, or attestation of that individual may
9 be electronic.

10 (b) As used in this subsection (b), "electronic presence"
11 means that 2 or more individuals in different locations are
12 able to communicate in real time to the same extent as if the
13 individuals were physically present in the same location. If
14 other law of this State bases the validity of a
15 nontestamentary estate planning document on whether it is
16 signed, witnessed, or attested by another individual in the
17 presence of the individual signing the document, the presence
18 requirement is satisfied if the individuals are in each
19 other's electronic presence.

20 (755 ILCS 6/11-45 new)

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

22 (a) Except as provided in subsection (b), if other law of
23 this State requires an electronic nontestamentary estate
24 planning document to be retained, transmitted, copied, or

1 filed, the requirement is satisfied by retaining,
2 transmitting, copying, or filing an electronic record that:

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

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

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

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

13 (d) If other law of this State requires a nontestamentary
14 estate planning document to be presented or retained in its
15 original form, or provides consequences if a nontestamentary
16 estate planning document is not presented or retained in its
17 original form, an electronic record retained in accordance
18 with subsection (a) satisfies the other law.

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

1 (755 ILCS 6/11-50 new)

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

7 (755 ILCS 6/11-55 new)

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

12 (755 ILCS 6/11-60 new)

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

20 (755 ILCS 6/11-65 new)

21 Sec. 11-65. Application. This Article applies to an
22 electronic nontestamentary estate planning document created,

1 signed, generated, sent, communicated, received, or stored
2 before, on, or after the effective date of this amendatory Act
3 of the 103rd General Assembly.

4 (755 ILCS 6/11-70 new)

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

10 Section 99. Effective date. This Act takes effect January
11 1, 2024.

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