

IN THE SENATE

SENATE BILL NO. 1092

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO THE UNIFORM ELECTRONIC WILLS ACT; AMENDING CHAPTER 2, TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW PART 11, CHAPTER 2, TITLE 15, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE FOR APPLICABLE LAW AND PRINCIPLES OF EQUITY, TO PROVIDE FOR CHOICE OF LAW REGARDING EXECUTION, TO PROVIDE FOR THE EXECUTION OF AN ELECTRONIC WILL, TO PROVIDE FOR REVOCATION, TO PROVIDE THAT AN ELECTRONIC WILL SHALL BE ATTESTED AND MADE SELF-PROVED AT THE TIME OF EXECUTION, TO PROVIDE FOR CERTIFICATION OF A PAPER COPY AND TO PROVIDE THAT A WILL ELECTRONICALLY FILED WILL BE DEEMED ORIGINAL, TO PROVIDE FOR UNIFORMITY OF APPLICATION AND CONSTRUCTION, AND TO PROVIDE A TRANSITIONAL PROVISION; AND DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 2, Title 15, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW PART, to be known and designated as Part 11, Chapter 2, Title 15, Idaho Code, and to read as follows:

PART 11

UNIFORM ELECTRONIC WILLS ACT

15-2-1101. SHORT TITLE. This chapter shall be known and may be cited as the "Uniform Electronic Wills Act."

15-2-1102. DEFINITIONS. As used in this chapter:

(1) "Communication technology" means an electronic device or process that:

(a) Allows two (2) or more individuals to communicate with each other simultaneously by sight and sound; or

(b) When necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment.

(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) "Electronic presence" means the relationship of two (2) or more individuals in different locations communicating in real time by means of communication technology.

(4) "Electronic will" means a will executed electronically in compliance with section 15-2-1105(1), Idaho Code.

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

1 (6) "Sign" means, with present intent to authenticate or adopt a  
2 record:

3 (a) To execute or adopt a tangible symbol; or

4 (b) To affix to or logically associate with the record an electronic  
5 symbol or process.

6 (7) "State" means a state of the United States, the District of Colum-  
7 bia, Puerto Rico, the United States Virgin Islands, or any territory or in-  
8 sular possession subject to the jurisdiction of the United States. The term  
9 includes a federally recognized Indian tribe.

10 (8) "Tamper-evident" means a feature of an electronic record whereby  
11 evidence of any change to the electronic record is preserved. The term in-  
12 cludes a digital certificate or similar technology that satisfies the re-  
13 quirements of section 51-120, Idaho Code.

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

18 15-2-1103. LAW APPLICABLE TO ELECTRONIC WILL -- PRINCIPLES OF EQ-  
19 UITY. An electronic will is a will for all purposes of the law of this state.  
20 The law of this state applicable to wills and principles of equity applies to  
21 an electronic will, except as modified by this chapter.

22 15-2-1104. CHOICE OF LAW REGARDING EXECUTION. A will executed elec-  
23 tronically but not in compliance with section 15-2-1105(1), Idaho Code, is  
24 an electronic will under this chapter if executed in compliance with the law  
25 of the jurisdiction where the testator is:

26 (1) Physically located when the will is signed; or

27 (2) Domiciled or resides when the will is signed or when the testator  
28 dies.

29 15-2-1105. EXECUTION OF ELECTRONIC WILL. (1) An electronic will must  
30 be:

31 (a) A tamper-evident electronic record that is readable as text at the  
32 time of signing under paragraph (b) of this subsection;

33 (b) Signed by:

34 (i) The testator; or

35 (ii) Another individual in the testator's name, in the testator's  
36 physical presence, and by the testator's direction; and

37 (c) Signed in the physical or electronic presence of the testator by at  
38 least two (2) individuals, each of whom is a resident of a state at the  
39 time of signing, within a reasonable time after witnessing:

40 (i) The signing of the will under paragraph (b) of this subsec-  
41 tion; or

42 (ii) The testator's acknowledgment of the signing of the will  
43 under paragraph (b) of this subsection or acknowledgment of the  
44 will.

45 (2) Intent of a testator that a record under subsection (1) (a) of this  
46 section be the testator's electronic will, or that a record affixed to or

1 logically associated with an electronic will forms a part thereof, may be es-  
2 tablished by extrinsic evidence.

3 (3) A signature affixed to an acknowledgment or affidavit under section  
4 15-2-1108(1), Idaho Code, that is affixed to or logically associated with  
5 an electronic will, or a record that would constitute an electronic will but  
6 for lack of a signature or signatures described in this sentence, is deemed a  
7 signature of the electronic will under subsection (1) of this section.

8 15-2-1107. REVOCATION. (1) An electronic will may revoke all or part  
9 of a previous will.

10 (2) All or part of an electronic will is revoked by:

11 (a) A subsequent will that revokes all or part of the electronic will  
12 expressly or by inconsistency; or

13 (b) A physical act, if it is established by a preponderance of the evi-  
14 dence that the testator, with the intent of revoking all or part of the  
15 will, performed the act or directed another individual who performed  
16 the act in the testator's physical presence.

17 15-2-1108. ELECTRONIC WILL ATTESTED AND MADE SELF-PROVED AT TIME OF  
18 EXECUTION. (1) An electronic will may be simultaneously executed, attested,  
19 and made self-proved by acknowledgment of the testator and affidavits of  
20 the witnesses, in the same manner as other wills, in accordance with section  
21 15-2-504(1), Idaho Code.

22 (2) The provisions of section 15-2-504(2), Idaho Code, shall not apply  
23 with respect to an electronic will.

24 (3) The form of the affidavits of the witnesses under subsection (1) of  
25 this section, as set forth in section 15-2-504(1), Idaho Code, may be modi-  
26 fied by replacing the phrase "presence and hearing" with "physical or elec-  
27 tronic presence."

28 (4) An acknowledgment or affidavit under subsection (1) of this section  
29 must be a tamper-evident electronic record and must be affixed to or logi-  
30 cally associated with the electronic will to which it refers at the time of or  
31 within a reasonable time after execution of the acknowledgment or affidavit.

32 15-2-1109. CERTIFICATION OF PAPER COPY -- ELECTRONICALLY FILED WILL  
33 DEEMED ORIGINAL. (1) An individual may create a certified paper copy of an  
34 electronic will by affirming under penalty of perjury that a paper copy of  
35 the electronic will is a complete, true, and accurate copy of the electronic  
36 will. The certified paper copy of the will must include all records affixed  
37 to or logically associated with the electronic will.

38 (2) For purposes of sections 15-3-303(a) (5) and 15-3-402, Idaho Code,  
39 and any related provisions under Idaho rules for electronic filing and ser-  
40 vice or other applicable rules, an electronic will transmitted to the reg-  
41 istrar or court via electronic filing or other electronic means constitutes  
42 the original of the electronic will.

43 (3) An application or petition for probate of an electronic will filed  
44 with the court must state:

45 (a) That the electronic will filed with the court is a tamper-evident  
46 electronic record;

1 (b) That the petition or application includes all records affixed to or  
2 logically associated with the electronic will or an explanation of any  
3 omitted items; and

4 (c) If known, facts regarding the provenance of the electronic will  
5 and all records affixed to or logically associated with the electronic  
6 will.

7 15-2-1110. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying  
8 and construing this uniform act, consideration must be given to the need to  
9 promote uniformity of the law with respect to its subject matter among states  
10 that enact it.

11 15-2-1111. TRANSITIONAL PROVISION. The provisions of this chapter ap-  
12 ply to the will of a decedent who dies on or after January 1, 2020.

13 SECTION 2. An emergency existing therefor, which emergency is hereby  
14 declared to exist, this act shall be in full force and effect on and after its  
15 passage and approval, and retroactively to January 1, 2020.