

IN THE SENATE

SENATE BILL NO. 1077

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO THE UNIFORM ELECTRONIC WILLS ACT; AMENDING CHAPTER 16, TITLE 15,
2 IDAHO CODE, BY THE ADDITION OF A NEW PART 1, CHAPTER 16, TITLE 15, IDAHO
3 CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE FOR THE LAW
4 APPLICABLE TO AN ELECTRONIC WILL, TO PROVIDE FOR CHOICE OF LAW REGARDING
5 EXECUTION, TO PROVIDE FOR THE EXECUTION OF AN ELECTRONIC WILL, TO PRO-
6 VIDE FOR REVOCATION OF AN ELECTRONIC WILL, TO PROVIDE THAT AN ELECTRONIC
7 WILL MAY BE ATTESTED AND MADE SELF-PROVING AT THE TIME OF EXECUTION, TO
8 PROVIDE FOR CERTIFICATION OF A PAPER COPY, TO PROVIDE FOR UNIFORMITY OF
9 APPLICATION AND CONSTRUCTION, AND TO PROVIDE APPLICABILITY.
10

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

12 SECTION 1. That Chapter 16, Title 15, Idaho Code, be, and the same is
13 hereby amended by the addition thereto of a NEW PART, to be known and desig-
14 nated as Part 1, Chapter 16, Title 15, Idaho Code, and to read as follows:

15 PART 1

16 UNIFORM ELECTRONIC WILLS ACT

17 15-16-101. SHORT TITLE. This chapter shall be known and may be cited as
18 the "Uniform Electronic Wills Act."

19 15-16-102. DEFINITIONS. As used in this chapter:

20 (1) "Electronic" means relating to technology having electrical, dig-
21 ital, magnetic, wireless, optical, electromagnetic, or similar capabili-
22 ties.

23 (2) "Electronic presence" means the relationship of two (2) or more in-
24 dividuals in different locations communicating in real time to the same ex-
25 tent as if the individuals were physically present in the same location.

26 (3) "Electronic will" means a will executed electronically in compli-
27 ance with section 15-16-105(1), Idaho Code.

28 (4) "Record" means information that is inscribed on a tangible medium
29 or that is stored in an electronic or other medium and is retrievable in per-
30 ceivable form.

31 (5) "Sign" means, with present intent to authenticate or adopt a
32 record:

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

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

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

1 (7) "Will" is a testamentary instrument and includes a codicil and any
 2 testamentary instrument which merely appoints an executor or revokes or re-
 3 vises another will.

4 15-16-103. LAW APPLICABLE TO ELECTRONIC WILL -- PRINCIPLES OF EQ-
 5 UITY. An electronic will is a will for all purposes of the law of this state.
 6 The law of this state applicable to wills and principles of equity apply to an
 7 electronic will, except as modified by this chapter.

8 15-16-104. CHOICE OF LAW REGARDING EXECUTION. A will executed elec-
 9 tronically but not in compliance with section 15-16-105(1), Idaho Code, is
 10 an electronic will under this chapter if its execution complies with the law
 11 at the time of execution of the place where the will is executed, or of the law
 12 of the place where at the time of execution or at the time of death the testa-
 13 tor is domiciled, has a place of abode, or is a national.

14 15-16-105. EXECUTION OF ELECTRONIC WILL. (1) Subject to section
 15 15-16-107(4), Idaho Code, an electronic will must be:

16 (a) A record that is readable as text at the time of signing under para-
 17 graph (b) of this subsection;

18 (b) Signed by:

19 (i) The testator; or

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

22 (c) Either:

23 (i) Signed by at least two (2) individuals, each of whom is a res-
 24 ident of a state and physically located in a state at the time of
 25 signing and after such individual, while in the physical or elec-
 26 tronic presence of the testator, witnessed:

27 1. The signing of the will under paragraph (b) of this sub-
 28 section; or

29 2. The testator's acknowledgment of the signing of the will
 30 under paragraph (b) of this subsection or acknowledgment of
 31 the will; or

32 (ii) Acknowledged by the testator before and in the physical or
 33 electronic presence of a notary public or other individual autho-
 34 rized by law to notarize records electronically.

35 (2) Intent of a testator that the record under subsection (1) (a) of this
 36 section be the testator's electronic will may be established by extrinsic
 37 evidence.

38 15-16-106. REVOCATION. (1) An electronic will may revoke all or part
 39 of a previous will.

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

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

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

1 15-16-107. ELECTRONIC WILL ATTESTED AND MADE SELF-PROVING AT TIME OF
2 EXECUTION. (1) An electronic will may be simultaneously executed, attested,
3 and made self-proving by acknowledgment of the testator and affidavits of
4 the witnesses.

5 (2) The acknowledgment and affidavits under subsection (1) of this sec-
6 tion must be:

7 (a) Made before an officer authorized to administer oaths under law of
8 the state in which execution occurs or, if fewer than two (2) attesting
9 witnesses are physically present in the same location as the testator at
10 the time of signing under section 15-16-105(1) (b), Idaho Code, before
11 an officer authorized under section 51-114A, Idaho Code; and

12 (b) Evidenced by the officer's certificate under official seal affixed
13 to or logically associated with the electronic will.

14 (3) The acknowledgment and affidavits under subsection (1) of this sec-
15 tion must be in substantially the following form:

16 I, _____ (name), the testator, sign my name to this in-
17 strument this _____ day of _____, _____, and being
18 first duly sworn, do hereby declare to the undersigned authority that I
19 sign and execute this instrument as my electronic will and that I sign it
20 willingly (or willingly direct another to sign for me), that I execute it as
21 my free and voluntary act for the purposes therein expressed, and that I am
22 eighteen (18) years of age or older, of sound mind, and under no constraint
23 or undue influence.

24 _____ Testator

25 We, _____ (name) and _____ (name),
26 the witnesses, sign our names to this instrument, being first duly sworn,
27 and do hereby declare to the undersigned authority that the testator signs
28 and executes this instrument as his electronic will and that he signs it
29 willingly (or willingly directs another to sign for him), and that each of
30 us, in the physical or electronic presence of the testator, hereby signs
31 this will as witness to the testator's signing, and that to the best of his
32 knowledge the testator is eighteen (18) years of age or older, of sound
33 mind, and under no constraint or undue influence.

34 _____ Witness

35 _____ Witness

36 Certificate of officer:

37 State of _____

38 County of _____

1 Subscribed, sworn to, and acknowledged before me by _____
2 (name), the testator, and subscribed and sworn to before me by
3 _____ (name) and _____ (name), witnesses, this
4 _____ day of _____, _____.

5 (Seal)

6 _____ (Signed)
7 _____ (Capacity of officer)

8 (4) A signature physically or electronically affixed to an affidavit
9 that is affixed to or logically associated with an electronic will under this
10 chapter is deemed a signature of the electronic will under section 15-16-
11 105(1), Idaho Code.

12 15-16-108. CERTIFICATION OF PAPER COPY. (1) An individual may create a
13 certified paper copy of an electronic will by affirming under penalty of per-
14 jury that a paper copy of the electronic will is a complete, true, and accu-
15 rate copy of the electronic will. If the electronic will is made self-prov-
16 ing, the certified paper copy of the will must include the self-proving affi-
17 davits.

18 (2) A certified paper copy of an electronic will created in compliance
19 with subsection (1) of this section may be submitted to the court as an origi-
20 nal of the last will of the decedent as part of an application for informal
21 probate of a will, a petition for formal probate of an electronic will, or a
22 petition for summary administration of the decedent's estate.

23 15-16-109. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying
24 and construing this uniform act, consideration must be given to the need to
25 promote uniformity of the law with respect to its subject matter among states
26 that enact it.

27 15-16-110. APPLICABILITY. This chapter applies to the will of a dece-
28 dent who dies on or after July 1, 2021.