



## NEW JERSEY STATE BAR ASSOCIATION

November 22, 2023

The Honorable Joseph Pennacchio  
170 Changebridge Road, Unit A1  
Montville, NJ 07045

The Honorable Kim Eulner  
55 N. Gilbert Street, Suite 1203  
Tinton Falls, NJ 07701

Re: S2923 (Pennacchio)/A4492 (Eulner) – The “Uniform Electronic Wills Act”; authorizes electronic wills

Dear Senator Pennacchio and Assemblywoman Eulner:

On behalf of the New Jersey State Bar Association, I write to convey our recommendations regarding S2923/A4492, the Uniform Electronic Wills Act. The NJSBA supports the intent of this legislation to authorize electronic wills, and we offer the enclosed redlined amendments along with an explanation of these amendments, which we believe will help ensure ease of implementation of testator wishes in electronic wills.

Earlier this year, our members met with other stakeholders including the Surrogates and the Administrative Office of the Courts to discuss the various issues related to the implementation of this legislation. Our members shared their concerns for the practicalities of implementing the use of electronic wills. After careful consideration of the proposed legislation, our members drafted recommended language to address some of the issues raised on the stakeholder call.

We shared these amendments with the stakeholders as well in an effort to reconcile our collective concerns. We look forward to working together with you and the stakeholders for the benefit of this important legislation.

We thank you for your work on this bill and consideration of our recommendations. I look forward to speaking with you on this matter. Please feel free to contact me at [lchapland@njsba.com](mailto:lchapland@njsba.com) or 732-214-8510. On behalf of the NJSBA, thank you for your continued leadership.

Very truly yours,

/s/ LISA CHAPLAND

Lisa Chapland, Esq.

Senior Managing Director, Government Affairs

Encl.

cc: Timothy F. McGoughran, NJSBA President  
William H. Mergner, NJSBA President-Elect  
Angela C. Scheck, NJSBA Executive Director

**SENATE, No. 2923**

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**STATE OF NEW JERSEY**

**220th LEGISLATURE**

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INTRODUCED JUNE 27, 2022

**Sponsored by:**

**Senator JOSEPH PENNACCHIO**

**District 26 (Essex, Morris and Passaic)**

**Senator BRIAN P. STACK**

**District 33 (Hudson)**

**SYNOPSIS**

The "Uniform Electronic Wills Act"; authorizes electronic wills.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 6/29/2022)

1 AN ACT concerning electronic wills and supplementing Title 3B of  
2 the New Jersey Statutes.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. This act shall be known and may be cited as the “Uniform  
8 Electronic Wills Act.”

9  
10 2. Definitions.

11 As used in P.L. , c. (C. ) (pending before the Legislature  
12 as this bill):

13 “Communication technology” means an electronic device or  
14 process that:

15  
16 a. Allows a notarial officer and one or more remotely located  
17 individuals engaged in the execution of an electronic will in  
18 accordance with P.L. , c. (C. )(pending before the Legislature  
19 as this bill) each other simultaneously by sight and sound; and

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

23 “Electronic” means relating to technology having electrical,  
24 digital, magnetic, wireless, optical, electromagnetic, or similar  
25 capabilities.

26 “Electronic presence” means the relationship of two or more  
27 individuals in different locations communicating in real time to  
28 the same extent as if the individuals were physically present in  
29 the same location.

30 “Electronic record” has the same meaning as provided in P.L.  
31 2001, c.116, s.1, et seq. the “Uniform Electronic Transactions  
32 Act.”

33 “Electronic will” means a will executed electronically in  
34 accordance with subsection a. of section 5 of P.L. , c. (C. )  
35 (pending before the Legislature as this bill).

36 “Record” means information inscribed on a tangible medium or  
37 stored in an electronic or other medium and is retrievable in  
38 perceivable form.

39 “Remotely located individual” means an individual who is not in the  
40 physical presence of a notarial officer or other individual authorized  
41 by law to take acknowledgments, while performing acts in  
42 accordance with P.L. , c. (C. )(pending before the Legislature as  
43 this bill) to execute or attest an electronic will using communication  
44 technology.

45 “Sign” means, with present intent to authenticate or adopt a  
46 record:

47 (1) to execute or adopt a tangible symbol; or

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S2923 PENNACCHIO, STACK

3

1 (2) to affix to or logically associate with the record an electronic  
2 symbol or process.

3 “State” means a state of the United States, the District of  
4 Columbia, Puerto Rico, the United States Virgin Islands, or any  
5 territory or insular possession subject to the jurisdiction of the United  
6 States. The term includes a federally recognized Indian tribe.

7 “Will” includes a codicil and any testamentary instrument that  
8 merely appoints an executor, revokes or revises another will,  
9 nominates a guardian, or expressly excludes or limits the right of an  
10 individual or class to succeed to property of the decedent passing by  
11 intestate succession.

12

13 3. Law applicable to electronic will; principles of equity.

14 An electronic will is a will for all purposes of the law of this State.  
15 The law of this State applicable to wills and principles of equity apply  
16 to an electronic will, except as modified by P.L. , c. (C. )  
17 (pending before the Legislature as this bill).

18

19 4. Choice of law. ~~regarding execution.~~

20 a. Regarding execution, Aa will executed electronically but not  
21 in compliance with subsection a. of section 5 of P.L. , c. (C. )  
22 (pending before the Legislature as this bill) is an electronic will under  
23 P.L. , c. (C. ) (pending before the Legislature as this bill) if  
24 executed in compliance with the law of the jurisdiction where the  
25 testator is:

26

a. physically located when the will is signed; or

27

b. domiciled or resides when the will is signed or when the testator  
28 dies.

29

b. The law of this State shall govern any disputes regarding an  
30 electronic will under P.L. , c. (C. ) (pending before the Legislature  
31 as this bill) and any such dispute shall be subject to the jurisdiction  
32 of this State.

33

5. Execution of electronic will.

34 a. Subject to subsection d. of section ~~87~~ of P.L. , c. (C. )  
35 (pending before the Legislature as this bill) and except as provided  
36 in section 6 of P.L. , c. (C. ) (pending before the Legislature as this  
37 bill), an electronic will shall be:

38

(1) A record that is readable as text at the time of signing as  
39 provided under subsection b. of this section;

40

(2) Signed by:

41

(i.a) The testator; or

42

(ii.b) Another individual in the testator's name, in the testator's  
43 conscious physical presence, and by the testator's direction; and

44

(3) ~~Either:~~

45

~~(a)~~ Signed in the physical or electronic presence of the testator by  
46 at least two individuals, each of whom signed within a reasonable  
47 time after witnessing:

1 (i) The signing of the will as provided under paragraph (2) of  
2 subsection a. of this section; or

3 (ii) The testator's acknowledgment of the signature as provided  
4 under paragraph (2) of subsection a. of this section or  
5 acknowledgment of the will; ~~or~~

6 ~~(b) Acknowledged by the testator before and in the physical or~~  
7 ~~electronic presence of a notary public or other individual authorized~~  
8 ~~by law to take acknowledgments.~~

9 b. Intent of a testator that the record under paragraph (1) of  
10 subsection a. of this section be the testator's electronic will may be  
11 established by extrinsic evidence.

12  
13 6. Harmless Error.

14 P.L. 1981, c.405, s.3B:3-3, writings intended as wills, applies to a  
15 Record readable as text and executed electronically but not in  
16 compliance with subsection a. of section 5 of P.L. , c. (C. )  
17 (pending before the Legislature as this bill).

18  
19 76. Revocation.

20 a. An electronic will may revoke all or part of a previous will.

21 b. All or part of an electronic will is revoked by:

22 (1) A subsequent will executed with the same formalities required  
23 for the execution of wills that revokes all or part of the electronic will  
24 expressly or by inconsistency that revokes all or part of the electronic  
25 will expressly or by inconsistency; or

26 (2) A writing other than a will that expressly revokes the entire  
27 electronic will if it is established by clear and convincing evidence  
28 that the testator created such writing with the intent of revoking the  
29 electronic will; or

30 (3) A physical act of the testator or some other individual in the  
31 testator's presence and that testator's discretion, by deleting,  
32 canceling, rendering unreadable, or obliterating the electronic will,  
33 with the intent and for the purpose of revocation, if it is established  
34 by clear and convincing evidence that the testator, with the intent of  
35 revoking the electronic will, performed the act or directed another  
36 individual who performed the act in the testator's conscious physical  
37 presence; or

38 (4) Any other revocatory act that fulfills the requirements of P.L.  
39 1981, c.405, s.3B:3-13, Revocation by writing or by act, if it is  
40 established by clear and convincing evidence that the testator, with  
41 the intent of revoking the electronic will, performed the act or  
42 directed another individual who performed the act in the testator's  
43 conscious physical presence; or

44 (5) A qualified custodian deleting, canceling, rendering  
45 unreadable, or obliterating the electronic record if the testator directs  
46 the qualified custodian to do so in a writing executed with the same  
47 formalities required for the execution of an electronic will, if it is  
48 established by a preponderance of the evidence that the testator, with

1 ~~the intent of revoking all or part of the will, performed the act or~~  
2 ~~directed another individual who performed the act in the testator's~~  
3 ~~physical presence.~~

4  
5 87. Electronic will attested and made self-proving at time of  
6 execution.

7 a. An electronic will may be simultaneously executed, attested,  
8 and made self-proving by acknowledgment of the testator and  
9 affidavits of the witnesses and by fulfilling the requirements of  
10 section 9 of P.L. , c. (C. ) (pending before the Legislature as  
11 this bill) .

12 b. The acknowledgment and affidavits under subsection a. of this  
13 section shall be:

14 (1) Made in the physical presence of an officer authorized to  
15 administer oaths pursuant to the law of the state in which the testator  
16 signs pursuant to paragraph (2) of subsection a. of section 5 of P.L.  
17 , c. (C. ) (pending before the Legislature as this bill) or, ~~if~~  
18 ~~fewer than two attesting witnesses are physically present in the same~~  
19 ~~location as the testator at the time of signing,~~ in the ~~physical or~~  
20 electronic presence of a notary public or other individual authorized  
21 by law to take acknowledgements pursuant to and in compliance with  
22 P.L.2021, the New Jersey Law on Notarial Acts; and

23 (2) Evidenced by the officer's certificate under official seal affixed  
24 to or logically associated with the electronic will in compliance with  
25 Section 10 of P.L. 2021, the New Jersey Law on Notarial Acts.

26 c. The acknowledgment and affidavits under subsection a. of this  
27 section shall be in substantially the following form:

28  
29 STATE OF \_\_\_\_\_  
30 COUNTY OF \_\_\_\_\_

31  
32 I, \_\_\_\_\_, the testator, sign my name to this  
33 instrument this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and being duly  
34 ~~first~~ sworn, do hereby declare to the undersigned authority that I sign  
35 and execute this instrument as my ~~electronic~~last will, as an electronic  
36 will, and that I sign it willingly (or willingly direct another to sign  
37 for me), that I execute it as my free and voluntary act for the purposes  
38 therein expressed, and that I am 18 years of age or older, of sound  
39 mind, and under no constraint or undue influence.

40 \_\_\_\_\_  
41 Testator

42  
43 We, \_\_\_\_\_ and \_\_\_\_\_, the witnesses,  
44 sign our names to this instrument, and being duly~~first~~ sworn, do  
45 hereby declare to the undersigned authority that the testator signs and  
46 executes this instrument as the testator's ~~electronic~~last will, as an  
47 electronic will, and that the testator signs it willingly (or willingly  
48 directs another to sign for the testator), and that each of us, in the

1 physical ~~or electronic~~ presence and hearing of the testator, signs this  
2 electronic will as witness to the testator's signing, and that to the best  
3 of our knowledge the testator is 18 years of age or older, of sound  
4 mind, and under no constraint or undue influence.

5  
6 \_\_\_\_\_  
7 Witness

8 \_\_\_\_\_  
9 Witness

10  
11 Subscribed, sworn to, and acknowledged before me by in my  
12 physical presence in my electronic presence by \_\_\_\_\_, the  
13 testator, and subscribed and sworn to before me by \_\_\_\_\_ and  
14 \_\_\_\_\_, witnesses, this \_\_\_\_\_ day of \_\_\_\_\_.

15  
16 This notarial act involved the use of communication technology.

17  
18 (SEAL) (Signed) \_\_\_\_\_  
19 \_\_\_\_\_ (Official capacity of officer)

20 d. A signature physically or electronically affixed to an affidavit  
21 that is affixed to or logically associated with an electronic will  
22 pursuant to this section is deemed a signature of the electronic will  
23 pursuant to subsection a. of section 5 of P.L. , c. (C. )  
24 (pending before the Legislature as this bill).

25  
26 8. Certification of paper copy.

27 ~~—An individual may create a certified paper copy of an electronic~~  
28 ~~will by affirming under penalty of law that a paper copy of the~~  
29 ~~electronic will is a complete, true, and accurate copy of the electronic~~  
30 ~~will. If the electronic will is made self-proving, the certified paper~~  
31 ~~copy of the will shall include the self-proving affidavits.~~

32  
33 9. Self-proving will; additional requirements.

34 In addition to the requirements of section 87 of  
35 P.L. , c. (C. ) (pending before the Legislature as this bill), a  
36 self-proving electronic will also shall:

- 37 a. ~~a.~~ contain the electronic signature of the testator;
- 38 b. Contain the electronic signature of two witnesses who were in  
39 the conscious physical presence of the testator at the time of  
40 witnessing the electronic will;
- 41 c. Contain the electronic signature and electronic seal of a notary  
42 public who was in the physical presence of the testator and  
43 witnesses at the time of the notarial act;
- 44 d. Contain the electronic signature and electronic seal of a notary  
45 public placed on the will in compliance with P.L.2021, the  
46 New Jersey Law on Notarial Acts~~accordance with applicable~~  
47 ~~law;~~

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- 1 e. Be under the exclusive control of a qualified custodian at all
- 2 times before being offered for probate or being reduced to a
- 3 certified paper copy.
- 4 ~~—b. designate a custodian to maintain custody of the electronic will;~~
- 5 ~~and~~
- 6 ~~—c. be under the exclusive control of a custodian at all times prior~~
- 7 ~~to being offered for probate or being reduced to a certified paper copy~~
- 8 ~~pursuant to section 8 of P.L. , c. (C. ) (pending before the~~
- 9 ~~Legislature as this bill).~~
- 10 ~~—d. As used in this section, “a custodian” is any person designated~~
- 11 ~~by the testator to maintain custody of the electronic will.~~

12

13 10. Qualified Custodian.

- 14 a. To serve as a qualified custodian of an electronic will, an entity
- 15 must be incorporated, organized, have its principal place of business
- 16 or be authorized to conduct business in this State.
- 17 b. Subject to subsection d. of this section, a qualified custodian of
- 18 an electronic will:
  - 19 (1) May not be related to the testator by blood, marriage or
  - 20 adoption; and
  - 21 (2) May not be a devisee under the electronic will or related by
  - 22 blood, marriage or adoption to a devisee under the electronic will.
- 23 c. A qualified custodian shall consistently employ and store
- 24 electronic records of electronic wills in a tamper-evident secure
- 25 system that protects electronic records from destruction, alteration or
- 26 unauthorized access and detects any change to an electronic record.
- 27 d. Before a qualified custodian of an electronic will performs any
- 28 services as a qualified custodian, the qualified custodian shall notify
- 29 the State Treasurer that the qualified custodian will be performing
- 30 services as a qualified custodian of an electronic will and identify the
- 31 technology that the qualified custodian intends to use. If the State
- 32 Treasurer has established standards for approval of such technology,
- 33 the technology must conform to those standards. If the technology
- 34 conforms to the standards, the State Treasurer shall approve the use
- 35 of the technology. If the State Treasurer has established standards or
- 36 qualifications for serving as a qualified custodian, the qualified
- 37 custodian must meet and conform to such standards or qualifications
- 38 to the satisfaction of the State Treasurer.
- 39 e. A qualified custodian shall store in the electronic record of an
- 40 electronic will each of the following:
  - 41 (1) The electronic will;
  - 42 (2) Records attached to or logically associated with the electronic
  - 43 will;
  - 44 (3) The acknowledgment of the electronic will by the testator,
  - 45 affidavits of the witnesses, and the records pertaining to the online
  - 46 notarization;
  - 47 (4) An audio-visual recording of the testator, attesting witnesses
  - 48 and notary public, taken at the time the testator, each attesting

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1 witness and the notary public placed the person's electronic signature  
2 on the electronic will.

3 f. A qualified custodian shall provide to any court hearing a matter  
4 involving an electronic will that is currently or was previously stored  
5 by the qualified custodian any information requested by the court  
6 pertaining to the qualified custodian's qualifications, policies, and  
7 practices related to the creation, receipt, maintenance, storage and  
8 production of electronic wills and may be called by an interested  
9 party to serve as a fact witness regarding the creation, receipt,  
10 maintenance, storage and production of electronic wills.

11  
12 11. Qualified Custodian; agreement to serve; ceasing service.

13 a. An individual or entity shall execute a written statement  
14 affirmatively agreeing to serve as the qualified custodian of an  
15 electronic will before they may serve as a qualified custodian, they  
16 must designate a successor qualified custodian in such written  
17 statement.

18 b. Except as provided in subsection c. of this section, a qualified  
19 custodian may not cease serving as a qualified custodian until a  
20 successor qualified custodian executes the written statement  
21 prescribed by subsection a. of this section.

22 c. A qualified custodian may cease to serve as a qualified  
23 custodian by accomplishing the following:

24 (1) If the qualified custodian is an entity and does not designate a  
25 successor qualified custodian, by providing to the testator the  
26 following:

27 (i) A thirty-day written notice that the qualified custodian will  
28 cease to serve as a qualified custodian; and

29 (ii) The certified paper copy of the electronic will and all records  
30 concerning the electronic will.

31 (2) If the qualified custodian designates a successor qualified  
32 custodian, by providing the following:

33 (i) Written notice to the testator of the name, address, and  
34 qualifications of the proposed successor qualified custodian. The  
35 testator must provide written consent before the electronic record,  
36 including the electronic will, is delivered to a successor qualified  
37 custodian;

38 (ii) Delivering the electronic record containing the electronic will  
39 to the successor qualified custodian; and

40 (iii) Delivering to the successor qualified custodian an affidavit of  
41 the outgoing qualified custodian stating that:

42 (A) The individual or entity is eligible to act as a qualified  
43 custodian in this State and is a qualified custodian designated  
44 by the testator in the electronic will or was designated to act in  
45 that capacity by another qualified custodian pursuant to this  
46 subsection.

47 (B) An electronic record was created at the time the testator  
48 executed the electronic will.

1 (C) The electronic record has been in the custody of one or more  
2 qualified custodians since the execution of the electronic will.  
3 (D) The identity of all qualified custodians who have had custody  
4 of the electronic record since the execution of the electronic  
5 will.  
6 (E) To the best of the outgoing qualified custodian's knowledge,  
7 the electronic will has not been altered since the time it was  
8 created. For purposes of making the affidavit prescribed by  
9 this subsection, the qualified custodian may rely conclusively  
10 on any affidavits provided by a predecessor qualified  
11 custodian if all of those affidavits are provided to the successor  
12 qualified custodian.  
13 d. If a testator designates a successor qualified custodian in a  
14 writing executed with the same formalities required for the execution  
15 of an electronic will in this State and the successor qualified  
16 custodian executes the written statement prescribed by subsection a.  
17 of this section, the individual or entity serving as qualified custodian  
18 shall cease serving in that capacity and within thirty days of receiving  
19 the written designation of a successor qualified custodian shall  
20 provide the successor qualified custodian with the following:  
21 (1) The electronic record.  
22 (2) The affidavit prescribed by subsection c. of this section.  
23 e. If a qualified custodian is an entity, an affidavit of a duly  
24 authorized officer or agent of the entity constitutes the affidavit of  
25 the qualified custodian.  
26 f. A qualified custodian maintains an electronic will as a bailee,  
27 and the electronic will is the property of the testator and not the  
28 qualified custodian.  
29  
30 12. Electronic Record; access; destruction.  
31 a. A qualified custodian shall provide access to or information  
32 concerning the electronic will in the electronic record or the certified  
33 paper copy of the electronic will only to:  
34 (1) The testator; or  
35 (2) An individual or entity authorized by the testator in the  
36 electronic will or in written instructions signed by the testator with  
37 the formalities required for the execution of an electronic will in this  
38 State as directed by the written instructions of the testator; or  
39 (3) After the death of the testator to the testator's nominated  
40 personal representative; or  
41 (4) At any time, as directed by a court of competent jurisdiction.  
42 b. The qualified custodian shall be liable for any damages caused  
43 by the negligent loss or destruction of the electronic record, including  
44 the electronic will, while it is in the possession of the qualified  
45 custodian. A qualified custodian may not limit liability for such  
46 damages.  
47 c. A qualified custodian may not terminate or suspend access to,  
48 or downloads of, the electronic will by the testator, provided that a

1 qualified custodian may charge a fee for providing such access and  
2 downloads.

3 d. A qualified custodian may destroy the electronic record of an  
4 electronic will at the earlier of the fifth anniversary of the conclusion  
5 of the administration of the estate of the testator or twenty years after  
6 the death of the testator.

7 e. A qualified custodian shall cancel, render unreadable or  
8 obliterate the electronic record of an electronic will if the testator  
9 directs the qualified custodian to do so in a writing executed with the  
10 same formalities required for execution of an electronic will in the  
11 State.

12 f. Except as provided in this act, a qualified custodian must at all  
13 times keep information provided by the testator confidential and may  
14 not disclose such information to any third party.

15 g. A contractual venue provision between a qualified custodian  
16 and a testator is not valid or enforceable to the extent that it requires  
17 a specific jurisdiction or venue for any proceeding relating to the  
18 probate of an estate or the contest of a will.

19  
20 13. Liability coverage; receivership of qualified custodians.

21 a. A qualified custodian shall:

22 (1) Post and maintain a blanket surety bond of at least \$1,000,000  
23 to secure the faithful performance of all duties and obligations  
24 required under this Section. The bond must be made payable to the  
25 Governor and their successors in office for the benefit of all persons  
26 who store electronic record with a qualified custodian and their  
27 estates, beneficiaries, successors, and heirs and be conditioned on the  
28 faithful performance of all duties and obligations under this chapter.  
29 The terms of the bond must cover the acts or omissions of the  
30 qualified custodian and each agent or employee of the qualified  
31 custodian; or

32 (2) Maintain a liability insurance policy that covers any losses  
33 sustained by any individual who stores electronic records with a  
34 qualified custodian and their estates, beneficiaries, successors, and  
35 heirs which are caused by errors or omissions by the qualified  
36 custodian and each agent or employee of the qualified custodian. The  
37 policy must cover losses of at least \$1,000,000 in the aggregate.

38 b. The Attorney General of this State may petition a court of  
39 competent jurisdiction for the appointment of a receiver to manage  
40 the electronic records of a qualified custodian for proper delivery and  
41 safekeeping if any of the following conditions exist:

42 (1) The qualified custodian is ceasing operation;

43 (2) The qualified custodian is an individual who dies without  
44 appointing any successor that is willing and able to act as a successor  
45 qualified custodian;

46 (3) The qualified custodian intends to close the facility and  
47 adequate arrangements have not been made for proper delivery of the

1 electronic records in accordance with subsection c. of section 11 of  
2 P.L. , c. (C: ) (pending before the Legislature as this bill);

3 (4) The Attorney General of this State determines that conditions  
4 exist which present a danger that electronic records will be lost or  
5 misappropriated; or

6 (5) The qualified custodian fails to maintain and post a surety bond  
7 or maintain insurance as required in this section.

8  
9 14. Probate of an Electronic Will

10 a. An electronic will that is filed electronically with any county  
11 court through a court e-filing portal is deemed to have been deposited  
12 with the court as an original of the electronic will.

13 b. A paper copy of an electronic will which is certified pursuant  
14 to subsection 15 of P.L. , c. (C. ) (pending before the Legislature  
15 as this bill) may be offered for and admitted to probate and shall  
16 constitute an original of the electronic will.

17  
18 15. Certified of paper copy

19 An individual may create a certified paper copy of an electronic  
20 will by affirming under penalty of law that a paper copy of the  
21 electronic will is a complete, true, and accurate copy of the electronic  
22 will.

23 a. If the electronic will is made self-providing, upon creation of a  
24 certified paper copy of an electronic will, if the electronic will has  
25 always been under the exclusive control of a qualified custodian, the  
26 qualified custodian shall state in an affidavit the following:

27 (1) That the qualified custodian is eligible to act as a qualified  
28 custodian in this state and is the qualified custodian designated by  
29 the testator in the electronic will or was designated to act in that  
30 capacity by another qualified custodian pursuant to subsection c. of  
31 section 11 of P.L. , c. (C. ) (pending before the Legislature as this  
32 bill).

33 (2) That an electronic record was created at the time the testator  
34 executed the electronic will.

35 (3) That the electronic record has been under the exclusive control  
36 of one or more qualified custodians since the execution of the  
37 electronic will and has not been altered since the time it was created.

38 (4) The identity of all qualified custodians who have had custody  
39 of the electronic record since the execution of the electronic will.

40 (5) That the certified paper original is a true, correct and complete  
41 tangible manifestation of the electronic will.

42 (6) That the records described in subsection d. of section 10 of  
43 P.L. ,c. (C. ) (pending before the Legislature as this bill), are  
44 under the exclusive control of the qualified custodian.

45 b. Upon creation of a certified paper copy of an electronic will, if  
46 the electronic will has not always been under the exclusive control of  
47 a qualified custodian, the person who discovered the electronic will  
48 and the person who reduced the electronic will to the certified paper

1 original shall each state in an affidavit the following to the best of  
2 each person's knowledge:

3 (1) When the electronic will was created, if not indicated in the  
4 electronic will.

5 (2) When, how and by whom the electronic will was discovered.

6 (3) The identity of each person who has had access to the  
7 electronic will.

8 (4) The method in which the electronic will was stored and the  
9 safeguards in place to prevent alterations to the electronic will.

10 (5) Whether the electronic will has been altered since its  
11 execution.

12 (6) That the certified paper original is a true, correct and complete  
13 tangible manifestation of the electronic will.

14 c. For the purposes of making the affidavit prescribed by  
15 subsection a. of this section, the qualified custodian may rely  
16 conclusively on any affidavits provided by a predecessor qualified  
17 custodian.

18  
19 16. This act shall take effect [on \_\_\_\_\_, 2024] and shall be  
20 applicable to the will of a testator who creates an electronic will on  
21 or after the effective date.

22  
23 This act shall take effect immediately and shall be applicable to the  
24 will of a decedent who dies on or after the effective date.

25  
26  
27 STATEMENT

28  
29 This bill authorizes electronic wills.

30 SECTION 1. This section provides that the bill shall be known and  
31 may be cited as the "Uniform Electronic Wills Act."

32 SECTION 2. This section includes definitions applicable to the bill.  
33 An "electronic will" is a will executed electronically in accordance  
34 with the provisions of the bill. "Electronic" is defined as relating to  
35 technology having electrical, digital, magnetic, wireless, optical,  
36 electromagnetic, or similar capabilities. "Sign" means, with present  
37 intent to authenticate or adopt a record, (1) to execute or adopt a  
38 tangible symbol; or (2) to affix to or logically associate with the  
39 record an electronic symbol or process. "Will" includes a codicil and  
40 any testamentary instrument that merely appoints an executor,  
41 revokes or revises another will, nominates a guardian, or expressly  
42 excludes or limits the right of an individual or class to succeed to  
43 property of the decedent passing by intestate succession.

44 SECTION 3. The section provides that an electronic will is a will  
45 for all purposes of the law of this State, and that the law of this State  
46 applicable to wills and principles of equity apply to an electronic will,  
47 except as modified by the bill.

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1 SECTION 4. A will executed electronically but not in compliance  
2 with the provisions of subsection a. of section 5 of the bill  
3 (summarized below) is deemed an electronic will if executed in  
4 compliance with the law of the jurisdiction where the testator is  
5 physically located when the will is signed, or where the testator is  
6 domiciled or resides when the will is signed or when the testator dies.

7 SUBSECTION a. OF SECTION 5. Subject to the signature requirements  
8 in section 7 of the bill, an electronic will is required to be a record  
9 that is readable as text at the time of signing. The electronic will is to  
10 be signed by the testator, or signed by another individual in the  
11 testator's name, in the physical or electronic presence of the testator  
12 and by the testator's direction. In addition, the electronic will is to  
13 either be:

14 (1) signed by at least two individuals, each of whom signed within  
15 a reasonable time after witnessing the signing of the will, or  
16 witnessing the testator's acknowledgment of the signature or  
17 acknowledgment of the will; or

18 (2) acknowledged by the testator before a notary public or other  
19 individual authorized by law to take acknowledgments.

20 The bill does not allow remote witnesses to the execution of an  
21 electronic will; the witnesses are required to be in the physical  
22 presence of the testator.

23 SUBSECTION b. OF SECTION 5. The intent of a testator that a record  
24 be the testator's electronic will may be established by extrinsic  
25 evidence.

26 SECTION 6. An electronic will may revoke all or part of a previous  
27 will. All or part of an electronic will is revoked by: (1) a subsequent  
28 will that revokes all or part of the electronic will expressly or by  
29 inconsistency; or (2) a physical act, if it is established by a  
30 preponderance of the evidence that the testator, with the intent of  
31 revoking all or part of the will, performed the act or directed another  
32 individual who performed the act in the testator's physical presence.

33 SECTION 7: This section provides that an electronic will may be  
34 simultaneously executed, attested, and made self-proving by  
35 acknowledgment of the testator and affidavits of the witnesses. The  
36 acknowledgment and affidavits are to be: (1) made before an officer  
37 authorized to administer oaths under law of the state in which  
38 execution occurs; and (2) evidenced by the officer's certificate under  
39 official seal affixed to or logically associated with the electronic will.  
40 Section 7 also sets out forms for the acknowledgment and affidavits.  
41 In addition, section 7 provides that a signature physically or  
42 electronically affixed to an affidavit that is affixed to or logically  
43 associated with an electronic will is deemed a signature of the  
44 electronic will.

45 SECTION 8. This section provides that an individual may create a  
46 certified paper copy of an electronic will by affirming under penalty  
47 of law that a paper copy is a complete, true, and accurate copy. If the

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1 electronic will is made self-proving, the certified paper copy of the  
2 will is to include the self-proving affidavits.

3 SECTION 9. This section provides that a self-proving electronic  
4 will also shall contain the electronic signature and electronic seal of  
5 a notary public placed on the will in accordance with applicable law;  
6 designate a custodian to maintain custody of the electronic will; and  
7 be under the exclusive control of a custodian at all times prior to  
8 being offered for probate or being reduced to a certified paper copy  
9 pursuant to the bill. The term "custodian" is defined as any person  
10 designated by the testator to maintain custody of the electronic will.

11 SECTION 10. The bill would take effect immediately and be  
12 applicable to the will of a decedent who dies on or after the effective  
13 date.

14 BACKGROUND. The Uniform Electronic Wills Act was issued by  
15 the Uniform Law Commission in 2019. The commission also is  
16 known as the National Conference of Commissioners on Uniform  
17 State Laws.



We recognize that electronic tools are an embedded part of the legal profession, including the ability to execute electronic documents. Several states have enacted legislation which permit the execution of electronic wills. The NJSBA is supportive of electronic will legislation in the abstract and recognizes that the legislation must be carefully crafted to ensure that it is possible to easily implement the testator's wishes. There are a number of overriding concerns including: how to respect the formalities surrounding a will execution; the tamper-proof storage of an electronic will; the avoidance of undue influence over a testator; and the ability of a testator to revoke an electronic will if the testator determines it is necessary to destroy the document. Further, after a testator has passed away, what is the method for delivering an electronic will to the surrogate for probate, and how is it determined that an electronic will is the "final" will of a testator.

Below is a summary of the primary suggested revisions and also some issues requiring further consideration. It is noted that A4492/S2923 is based upon the Uniform Electronic Wills Act ("UEWA"), approved by the National Conference of Commissioners on Uniform State Laws in 2019, so reference is made below to that uniform act. This resource is also accessible from the Uniform Law Commission's website by clicking [here](#).

1. **Definitions.** The attached suggested revisions include added definitions for "Communication technology," "Electronic Presence" and "remotely located individual." Regarding the term "Electronic presence" the proposed legislation as originally drafted omits the definition of electronic presence found in Section 2. (2) of the UEWA; but references the term electronic presence in a number of places. For example, see Section 5 a. 3, "signed in the physical or electronic presence of the testator by at least two individuals, each of whom signed within a reasonable time after witnessing." Thus, the attached proposed revisions include the definition of "Electronic presence" as meaning "the relationship of two or more individuals in different locations communicating in real time to the same extent as if the individuals were physically present in the same location."

2. **Witnesses.** The NJSBA is supportive of a statute which requires that witnesses must be in the physical presence of the testator in the same physical location as the testator at the time of signing the electronic will. The UEWA provides two options for witnessing an electronic will. The first is in line with traditional will execution, where the witnesses are physically located in the same place as the testator. The second is remote witnessing where the witnesses are in the electronic presence of the testator, i.e., two or more individuals in different locations, including in different states and different locations from each other, communicating in real time as if they were physically present.

The current NJ statute governing execution of a will, NJS 3B:3-2, requires that a will shall be in writing; signed by the testator or in the testator's name by some other individual in the testator's conscious presence and at the testator's direction; and signed by at least two individuals each of whom signed with a reasonable time after each witnessing either the signing of the will or the testator's acknowledgment of that signature or acknowledgment of the will. The general practice for a will execution is that the testator and all witnesses are present in the same room at the same time when the testator signs their will. The presence of witnesses ensures that the testator is executing the will in a fashion reflecting the importance of the act and protects the testator to a certain extent from pressure, duress, undue influence or fraud at the time of the execution. Having two witnesses also helps ensure that there are at least two people who could testify that the testator signed by the Will willingly as the testator's free and voluntary act, being under no constraint or undue influence. It would be difficult for the witnesses to make this assessment if they are remotely located and not in

the physical presence of the testator. The assessment includes the witnesses noting who is in the room with the testator at the time of signing. If family members, friends, caregivers or others are physically present when the testator signs their will, there is a greater possibility of undue influence. The presence of certain people in the room with the testator could pressure the testator to make decisions they would not otherwise make, even if those people remain silent during the signing and stand outside of the scope of a video. Remotely located witnesses might not have the benefit of seeing who else is in the room at the time of signing due to the limited nature of video screens. The NJSBA is concerned that allowing remote witnessing will eliminate the protections that witnesses provide to the testator from duress, fraud, and undue influence since the entire physical environment of the testator cannot be observed by remote witnesses.

Regarding the proposed legislation, the comments in the Statement to the proposed legislation provide: "The bill does not allow remote witnesses to the execution of an electronic will; the witnesses are required to be in the physical presence of the testator." However, the proposed legislation includes certain provisions of the UEWA designed to allow remote witnessing, which is inconsistent with the position that the witnesses are required to be in the physical presence of the testator. The attached suggested revisions seek to correct those inconsistencies and clarify that the witnesses must be in the conscious physical presence of the testator when they sign their electronic will.

**3. Execution of Electronic Will.** The proposed legislation eliminates the requirement that a testator must sign an electronic will in the physical presence of two witnesses. As proposed, the execution provisions in section 5 establish three requirements for execution of an electronic will. All three must be satisfied, namely: (1) a record; (2) a signature; and (3) the manner of execution. The execution requirement in subsection (3) includes two requirements delineated as (a) and (b). But the two requirements are separated by "or" instead of "and." Subdivision (a) requires signing and witnessing by two witnesses, which is in keeping with current NJ law. Subdivision (b), which is drafted as an alternative and not an additional requirement, provides that instead of signing and witnessing by two witnesses, the will may be "[a]cknowledged by the testator before and in the physical or electronic presence of a notary public or other individual authorized by law to take acknowledgments." Thus, the bill as proposed authorizes an electronic will that is notarized even if it is not witnessed, which is not in compliance with the State's current will execution provisions that require two witnesses. NJ law does not require that a will must be notarized, although wills are often notarized to make them "self-proving" (as discussed below). Notarization is an additional option that makes a will self-proving but does not and should not replace the requirement of two witnesses. The NJSBA objects to the provisions of the proposed legislation and permitting a notary public to validate the execution of a will in lieu of two witnesses. The brackets and options of this section of the UEWA are confusing and in modeling the proposed NJ legislation on the UEWA, presumably the drafters of the NJ legislation did not realize they were eliminating the witnessing requirement. To correct this, the attached suggested revisions delete subsection (b), thereby deleting the following words from section 5: "or (b) Acknowledged by the testator before and in the physical or electronic presence of a notary public or other individual authorized by law to take acknowledgments."

**4. Remote Notarization.** The statute as proposed seeks to permit remote notarization, again using the words "electronic presence" which is not defined in the proposed statute. The NJSBA supports electronic notarization of wills, but not without ensuring certain safeguards are in place for the same reasons set forth above regarding remote witnessing. Electronic remote notarization of an electronic

will is acceptable if the witnesses are required to be physically located where the testator is located since the witnesses would be providing the protections needed against undue influence and the notary would be merely attesting to the formalities of the signature of the testator and witnesses. The attached suggested revisions clarify the authorization of remote notarization of electronic wills and refer to the NJ Law on Notarial Acts.

Since the NJ Law on Notarial Acts prohibits remote notarization of an electronic will, Paragraph b. of 52:7-10.10 of the NJ Law on Notarial Acts must be revised to provide that: "This section does not apply to a record to the extent it is governed by a law governing the creation and execution of wills or codicils, except that this section shall apply to a record to the extent it is governed by a law governing the creation and execution of an electronic will in extent it is governed by a law governing the creation and execution of an electronic will in compliance with P.L. \_\_\_\_\_, the NJ Electronic Wills Act, and except that subsections e., f., g., and h. of this section shall apply to notarial acts performed on a tangible record that is governed by a law governing the creation or execution of wills and codicils."

**5. Signature.** Currently, if a wet ink signature on a will is observed to be different from a testator's common signature, it might raise an appropriate inquiry into the formalities of the execution and the testamentary intent. As proposed, the signature required for an electronic will is not that of the testator. In the proposed statute: "sign" means to present intent to authenticate or adopt a record: (1) to execute or adopt a tangible symbol; or (2) to affix to or logically associate with the record an electronic symbol or process. The NJSBA is concerned that use of an electronic signature or symbol instead of an actual signature or mark of the testator could raise issues of potential tampering and fraud. However, that might be an unavoidable issue for an electronic will.

**6. Electronic Will attestation and Self-Proving will; additional requirements.** The Self Proving section in the proposed statute seems to be based on and modified from the UEWA, but there are inconsistencies in the proposed legislation. Pursuant to the proposed statute, an electronic will can be made self-proving if made in the physical presence of an officer authorized to administer oaths, but if fewer than two attesting witnesses are physically present in the same location as the testator at the time of signing, then as drafted, the notary may be either physically or electronically present (electronic presence again is not defined). It seems inconsistent that an electronic notary would be accepted where there are fewer witnesses present in the same physical location to make the document self-proving, but if two witnesses are present in the same location, then as drafted it seems the notary must be physically present. The attached suggested revisions seek to correct and clarify the Self Proving electronic will section.

Further, as originally proposed, the testator must designate a custodian to maintain custody of an electronic will and it must be under the exclusive control of a custodian at all times prior to being offered for probate or being reduced to a certified paper copy in order for it to be a self-proving electronic will. However, no requirements or procedures related to the custodian are included. Certain additional protections should be required for a self-proving electronic will to ensure proper and tamper-proof storage of an electronic will. A number of questions are raised including: How would a custodian be selected; who or what would be qualified to serve as a custodian; what evidence is required that the testator selected the custodian, what evidence is required to prove "exclusive control" (would a hearing be required in all instances - which defeats the self-proving aspect); if an individual is selected who keeps the document on his or her personal computer is that

exclusive control; if a document is saved in the "cloud" is that exclusive control; what if a person designated by the testator dies; what if a corporation is selected to act as custodian and the corporation sells to another company or terminates its business. Requiring a custodian without addressing these issues leaves open many potential problems. Some states that include use of a custodian in the state's electronic wills statute have adopted detailed provisions regarding the custodian. It is possible a custodian could be certain companies, law firms, or individuals that are specially trained and licensed or approved. Another option might be that the Surrogate's Court could serve as the repository of electronic wills in NJ, if they are to adopt uniform software to electronically file, retain and ultimately probate electronic wills. The NJSBA recommends that careful consideration be given to the process of safeguarding electronic wills and are open to further discussions and collaboration regarding incorporating appropriate safeguards and procedures for inclusion of a custodian requirement of an alternative.

7. **Non-self proving electronic will.** Clarification is also needed for procedures