

House Bill 940

By: Representatives Scott of the 76th, Davis of the 87th, Schofield of the 60th, and Burnough of the 77th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 4 of Title 53 of the Official Code of Georgia Annotated, relating to wills,
2 so as to provide for electronic wills; to provide for applicable law; to provide for execution
3 of electronic wills; to provide for revocation; to provide for attestation and self-proving wills;
4 to provide for certified paper copies; to provide for definitions; to provide for related matters;
5 to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 4 of Title 53 of the Official Code of Georgia Annotated, relating to wills, is amended
9 by adding a new article to read as follows:

10 "ARTICLE 7

11 53-4-80.

12 (a) As used in this article, the term:

13 (1) 'Electronic' means relating to technology having electrical, digital, magnetic,
14 wireless, optical, electromagnetic, or similar capabilities.

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15 (2) 'Electronic presence' means the relationship of two or more individuals in different
16 locations communicating in real time to the same extent as if such individuals were
17 physically present in the same location.

18 (3) 'Electronic will' means a will executed electronically in compliance with Code
19 Section 53-4-83.

20 (4) 'Record' means information that is inscribed on a tangible medium or that is sorted
21 in an electronic or other medium and is retrieval in perceivable form.

22 (5) 'Sign' means, relative to the intent to authenticate or adopt a record, to execute or
23 adopt a tangible symbol or to affix to or logically associate with the record an electronic
24 symbol or process.

25 (6) 'State' means a state of the United States, the District of Columbia, Puerto Rico, the
26 United States Virgin Islands, or any territory or insular possession subject to the
27 jurisdiction of the United States. Such term includes any federally recognized Indian
28 tribe.

29 (7) 'Will' has the same meaning as in Code Section 53-1-2.

30 53-4-81.

31 An electronic will is a will for all purposes of the law of this state. Laws of this state
32 applicable to wills and principles of equity shall apply to an electronic will, except as
33 modified by this article.

34 53-4-82.

35 A will executed electronically but not in compliance with Code Section 53-4-83 is an
36 electronic will under this article if executed in compliance with the law of the jurisdiction
37 where the testator is:

38 (a) Physically located when the will is signed; or

39 (b) Domiciled or residing when the will is signed or when the testator dies.

40 53-4-83.

41 Subject to Code Section 53-4-85, and except as provided for in Code Section 53-4-84, an
42 electronic will shall be:

43 (a) A record that is readable as text at the time of signing under subsection (b) of this Code
44 section;

45 (b) Signed by:

46 (1) The testator; or

47 (2) Another individual in the testator's name, in the testator's physical presence, and by
48 the testator's direction; and

49 (c) Either:

50 (1) Signed in the physical or electronic presence of the testator by at least two
51 individuals, each of whom is a resident of this state and physically located in this state
52 at the time of signing and within a reasonable time after witnessing:

53 (A) The signing of the will under subsection (b) of this Code section; or

54 (B) The testator's acknowledgment of the signing of the will under subsection (b) of
55 this Code section or acknowledgment of the will; or

56 (2) Acknowledged by the testator before and in the physical or electronic presence of a
57 notary public or other individual who is authorized by the laws of this state to notarize
58 records and who is located in Georgia at the time the notarial act is performed.

59 (d) An electronic symbol of a testator or witness shall consist of an electronic image of the
60 testator's or witness's signature in his or her handwriting affixed to the electronic will.

61 (e) A testator's intent that the record made under this Code section be the testator's
62 electronic will may be established by extrinsic evidence.

63 53-4-84.

64 (a) An electronic will may revoke all or part of a previous will.

65 (b) All or part of an electronic will may be revoked by:

66 (1) A subsequent will that revokes all or part of the electronic will expressly or by
67 inconsistency; or

68 (2) A physical act, if it is established by clear and convincing evidence that the testator,
69 with the intent of revoking all or part of the will, performed the act or directed another
70 individual who performed the act in the testator's physical presence.

71 53-4-85.

72 (a) An electronic will may be simultaneously executed, attested, and made self-proving
73 as provided for in Code Section 53-4-24.

74 (b) The acknowledgment and affidavits under subsection (a) of this Code section shall be:

75 (1) Made in the physical presence of an officer authorized to administer oaths under law
76 of the state in which the testator signs pursuant to subsection (b) of Code Section 53-4-83
77 or, if fewer than two attesting witnesses are physically present in the same location as the
78 testator at the time of signing pursuant to subsection (b) of Code Section 53-4-83, in the
79 physical or electronic presence of a notary public or other individual who is authorized
80 by the laws of this state to notarize records and who is located in Georgia at the time the
81 notarial act is performed; and

82 (2) Evidenced by the officer's certificate under official seal affixed to or logically
83 associated with the electronic will.

84 (c) The acknowledgment and affidavits under subsection (a) of this Code section shall be
85 in substantially the following form:

86 I _____, the testator, and, being sworn, declare to the undersigned officer that I sign
87 this instrument as my electronic will, I willingly sign it or willingly direct another to sign
88 for me, I execute it as my voluntary act for the purposes expressed in this instrument, and
89 I am eighteen years of age or older, of sound mind, and under no constraint or undue
90 influence.

91

92

Testator

93

We, _____, and _____, witnesses, being sworn, declare to the undersigned

94

officer that the testator signed this instrument as the testator's electronic will, that the

95

testator willingly signed it or willingly directed another individual to sign for the testator,

96

and that each of us, in the physical or electronic presence of the testator, signs this

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instrument as witness to the testator's signing, and to the best of our knowledge the testator

98

is eighteen years of age or older, of sound mind, and under no constraint or undue

99

influence.

100

101

Witness

102

103

Witness

104

State of _____

105

County of _____

106

Subscribed, sworn to, and acknowledged before me by _____, the testator,

107

and subscribed and sworn to before me by _____ and _____,

108

witnesses, this _____ day of _____, _____.

109

(SEAL)

110

111

(Signed)

112

113

(Official Capacity of Officer)'

114 (d) A signature physically or electronically affixed to an affidavit that is affixed to or
 115 logically associated with an electronic will under this article is deemed a signature of the
 116 electronic will under subsection (a) of Code Section 53-4-83.

117 53-4-86.

118 An individual may create a certified paper copy of an electronic will by affirming under
 119 penalty of perjury that a paper copy of the electronic will is a complete, true, and accurate
 120 copy of the electronic will. If the electronic will is made self-proving, the certified paper
 121 copy of the will shall include the self-proving affidavits."

122

SECTION 2.

123 All laws and parts of laws in conflict with this Act are repealed.