

AMENDED IN SENATE JUNE 28, 2019

AMENDED IN ASSEMBLY APRIL 24, 2019

AMENDED IN ASSEMBLY MARCH 18, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1667**

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**Introduced by Assembly Member Santiago**

February 22, 2019

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An act to amend Section 6113 ~~of~~ *of, and to add Chapter 2.5 (commencing with Section 6115) to Part 1 of Division 6 of, the Probate Code, relating to wills.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1667, as amended, Santiago. Electronic wills.

Existing law governs the execution of wills. Existing law generally requires a will to be in writing and to satisfy specified requirements of the Probate Code, including being signed by a testator, another person at the testator's direction, or a conservator pursuant to court order. A will that fails to meet those requirements may be valid as a holographic will, as specified. Existing law also allows for the execution of a California statutory will.

This bill would provide that an electronic will is validly executed if it is executed in compliance with the provisions applicable to written wills.

*This bill would authorize the execution of an electronic will as an additional type of will that is a writing created, generated, sent, communicated, received, or stored by electronic means and signed electronically, if it meets specified requirements, including, among others, the requirement to be witnessed. The bill would authorize*

*conditions under which an electronic will may be proved. The bill would state the intent of the Legislature that a will executed as an electronic will be given the same status as a will executed as a paper will.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 6113 of the Probate Code is amended to  
2 read:

3 6113. A written or electronic will is validly executed if its  
4 execution complies with any of the following:

5 (a) The will is executed in compliance with Section 6110 or  
6 6111 or Chapter 6 (commencing with Section 6200) (California  
7 statutory will) or Chapter 11 (commencing with Section 6380)  
8 (Uniform International Wills Act).

9 (b) The execution of the will complies with the law at the time  
10 of execution of the place where the will is executed.

11 (c) The execution of the will complies with the law of the place  
12 where at the time of execution or at the time of death the testator  
13 is domiciled, has a place of abode, or is a national.

14 SEC. 2. Chapter 2.5 (commencing with Section 6115) is added  
15 to Part 1 of Division 6 of the Probate Code, to read:

16  
17 CHAPTER 2.5. ELECTRONIC WILLS

18  
19 6115. (a) This chapter shall be known, and may be cited, as  
20 the Electronic Wills Act.

21 (b) (1) It is the intent of the Legislature in enacting this chapter  
22 that a will executed as an electronic will be given the same status  
23 as a will executed as a paper will.

24 (2) A court shall apply the provisions of this part generally  
25 relating to wills to an electronic will, unless the context requires  
26 otherwise.

27 6115.2. (a) "Electronic" means relating to technology having  
28 electrical, digital, magnetic, wireless, optical, electromagnetic, or  
29 similar capabilities.

30 (b) "Electronic presence" refers to two or more individuals in  
31 different locations who are able to communicate in real time by  
32 sight and sound.

1 (c) “Electronic will” means a will executed electronically in  
2 compliance with this chapter.

3 (d) “Electronically logically associated” means electronically  
4 connected, electronically cross-referenced, or electronically linked  
5 in a reliable manner.

6 (e) “Record” means information that is inscribed on a tangible  
7 medium or that is stored in an electronic or other medium and is  
8 retrievable in perceivable form.

9 (f) “Sign” means, with present intent to authenticate or adopt  
10 a record, to do any of the following:

11 (1) Execute or adopt a tangible symbol.

12 (2) Affix to, or logically associate with, the record an electronic  
13 symbol or process.

14 (g) “Textual record” means a record created, generated, sent,  
15 communicated, received, or stored by electronic means that is  
16 readable as text.

17 (h) “Will” includes a codicil and a testamentary record that  
18 appoints a personal representative, revokes or revises another  
19 will, nominates a conservator, or expressly excludes or limits the  
20 right of an individual or class to succeed to property of a testator  
21 passing by intestate succession.

22 (i) “Writing” includes an electronic writing stored in an  
23 electronic or other medium and retrievable in perceivable form.

24 6115.4. (a) (1) An electronic will is a writing in a textual  
25 record, with the intent that the textual record be the testator’s  
26 electronic will, by either the testator or another individual in the  
27 testator’s name, in the testator’s conscious presence, and at the  
28 testator’s direction.

29 (2) A will is an electronic will if it is signed electronically.

30 (b) An electronic will shall be signed electronically by two or  
31 more individuals, each of whom signed within a reasonable time  
32 after the individual, in physical or electronic presence of the  
33 testator and at the testator’s specific direction, who understand  
34 that the instrument that they sign is the testator’s will, and who  
35 witnessed either of the following:

36 (1) The signing of the electronic will under subdivision (a).

37 (2) The testator’s acknowledgment of the signature or of the  
38 electronic will.

39 6115.6. If an electronic will was not witnessed or acknowledged  
40 in compliance with this chapter, the electronic will shall be treated

1 *as if it was witnessed or acknowledged in compliance with this*  
2 *chapter if the proponent of the will establishes by clear and*  
3 *convincing evidence that, at the time the will was signed, the*  
4 *testator intended the will to constitute the testator's will.*

5 *6115.8. An electronic will with all attesting witnesses physically*  
6 *present in the same location as the testator may be proved at the*  
7 *time of its execution as provided in Section 8220.*

8 *6115.10. If attesting witnesses necessary for a valid will are*  
9 *not physically present at the same location as the testator in the*  
10 *number required for a valid will, an electronic will may be proved*  
11 *by acknowledgment of the electronic will by the testator and by*  
12 *the affidavits of the witnesses that were each acknowledged by a*  
13 *notary public.*

14 *6115.12. An electronic will with all attesting witnesses*  
15 *physically present in the same location as the testator may be*  
16 *proved at any time after the execution, as provided in Sections*  
17 *8220 and 8221.*

18 *6115.14. A signature physically or electronically affixed to an*  
19 *affidavit attached to an electronic will created pursuant to this*  
20 *chapter is deemed to be a signature affixed to the electronic will*  
21 *if necessary to prove the will's execution.*

22 *6115.16. (a) An electronic will or part of an electronic will is*  
23 *revoked by either of the following actions:*

24 *(1) A subsequent will that revokes the electronic will, in whole*  
25 *or in part, either expressly or by inconsistency.*

26 *(2) A revocatory act that is not a record, if it is established by*  
27 *a preponderance of the evidence that the testator performed the*  
28 *act with the intent of revoking the will, in whole or in part, or that*  
29 *another individual performed the act in the testator's physical*  
30 *presence and at the testator's direction.*

31 *(b) An electronic will may revoke a previous will or part of a*  
32 *previous will.*

33 *6115.18. In applying and construing this chapter, consideration*  
34 *shall be given to the need to promote uniformity of the law with*  
35 *respect to its subject matter among states that enact the uniform*  
36 *Electronic Wills Act.*

37 *6115.20. This chapter modifies, limits, or supersedes the*  
38 *Electronic Signatures in Global and National Commerce Act (15*  
39 *U.S.C. Sec. 7001 et seq.), but does not modify, limit, or supersede*  
40 *Section 101(c) of that act (15 U.S.C. Sec. 7001(c)) or authorize*

- 1 *electronic delivery of any of the notices described in Section 103(b)*
- 2 *of that act (15 U.S.C. Sec. 7003(b)).*
- 3 *6115.22. This chapter applies to a decedent dying on or after*
- 4 *January 1, 2020.*

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