

COMMITTEE ON RULES AND JUDICIARY

01/27/2022-REPORTED OUT TO THE FLOOR

**BILL NO. 34-0156**

**Thirty-Fourth Legislature of the Virgin Islands**

**November 16, 2021**

An Act amending title 15 Virgin Islands Code, part 1, relating to decedents estates by adding chapter 1A enacting the “Virgin Islands Uniform Electronic Wills Act”

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**PROPOSED BY:** Senators Novelle E. Francis, Jr. and Carla J. Joseph

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1 *Be it enacted by the Legislature of the Virgin Islands:*

2 **SECTION 1.** Title 15 Virgin Islands Code, part 1, is amended by inserting chapter 1A  
3 to read as follows:

4 **“Chapter 1A. Virgin Islands Uniform Electronic Wills Act**

5 **§51. Short title**

6 This chapter may be cited as the “Virgin Islands Uniform Electronic Wills Act”.

7 **§52. Definitions**

8 (a) “Electronic” means relating to technology having electrical, digital, magnetic,  
9 wireless, optical, electromagnetic, or similar capabilities.

10 (b) “Electronic presence” means the relationship of two or more individuals in  
11 different locations communicating in real time to the same extent as if the individuals were  
12 physically present in the same location.

1 (c) “Electronic will” means a will executed electronically in compliance with section  
2 55(a).

3 (d) “Record” means information that is inscribed on a tangible medium or that is stored  
4 in an electronic or other medium and is retrievable in perceivable form.

5 (e) “Sign” means, with present intent to authenticate or adopt a record:

6 (A) to execute or adopt a tangible symbol; or

7 (B) to affix to or logically associate with the record an electronic symbol or  
8 process.

9 (f) “State” means a state of the United States, the District of Columbia, Puerto Rico,  
10 the Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United  
11 States. The term includes a federally recognized Indian tribe.

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

### 16 **§53. Law applicable to electronic wills; principles of equity**

17 An electronic will is a will for all purposes of the law of the Virgin Islands. The law of  
18 the Virgin Islands applicable to wills and principles of equity applies to an electronic will,  
19 except as modified by this chapter.

### 20 **§54. Choice of law regarding execution.**

21 A will executed electronically, but not in compliance with section 55(a), is an electronic  
22 will under this chapter if executed in compliance with the law of the jurisdiction where the  
23 testator is:

24 (1) physically located when the will is signed; or

25 (2) domiciled or resides when the will is signed or when the testator dies.

1 **§55. Execution of electronic will**

2 (a) Subject to section 58(e) and except as provided in section 56, an electronic will  
3 must be:

4 (1) a record that is readable as text at the time of signing under paragraph (2);

5 (2) signed by:

6 (A) the testator; or

7 (B) another individual in the testator's name, in the testator's physical  
8 presence, and by the testator's direction; and

9 (3) Either;

10 (A) Signed in the physical or electronic presence of the testator by at least two  
11 attesting individuals, each of whom is a resident of a state and physically located in a  
12 state at the time of signing and within a reasonable time after witnessing:

13 (i) the signing of the will under paragraph (2); or

14 (ii) the testator's acknowledgement of the signing of the will under  
15 paragraph (2) or acknowledgement of the will; or

16 (B) Acknowledged by the testator before and in the physical or electronic  
17 presence of a notary public or other individual authorized by law to notarize records  
18 electronically.

19 (b) Intent of a testator that the record under subsection (a)(1) be the testator's electronic  
20 will may be established by extrinsic evidence.

21 **§56. Harmless Error.**

22 A record readable as text that is not executed in compliance with section 55(a) is deemed  
23 to comply with section 55(a) if the proponent of the record establishes by clear and convincing  
24 evidence that the decedent intended the record to be:

25

- 1 (1) the decedent's will;
- 2 (2) a partial or complete revocation of the decedent's will;
- 3 (3) an addition to or modification of the decedent's will; or
- 4 (4) a partial or complete revival of the decedent's formerly revoked will or part of the
- 5 will.

6 **§57. Revocation.**

- 7 (a) An electronic will may revoke all or part of a previous will.
- 8 (b) All or part of an electronic will is revoked by:
  - 9 (1) a subsequent will that revokes all or part of the electronic will expressly or
  - 10 by inconsistency.; or
  - 11 (2) A physical act, if it established by clear and convincing evidence that the
  - 12 testator, with the intent of revoking all or part of the will, performed the act or directed
  - 13 another individual who performed the act in the testator's physical presence.

14 **§58. Electronic will attested and made self-proving at time of execution**

- 15 (a) An electronic will may be simultaneously executed, attested, and made self-
- 16 proving by acknowledgment of the testator and affidavits of the witnesses.
- 17 (b) If both the attesting witnesses are physically present in the same location as the
- 18 testator at the time of signing under section 55, the acknowledgment and affidavits under
- 19 subsection (a) must be:
  - 20 (1) Made before an officer authorized to administer oaths under law of the state
  - 21 in which execution occurs; and
  - 22 (2) Evidenced by the officer's certificate under official seal affixed to or
  - 23 logically associated with the electronic will.

1 (c) If one or both the attesting witnesses are not physically present in the same location  
2 as the testator at the time of signing under section 55, the acknowledgement and affidavits  
3 under subsection (a) must be:

- 4 (1) Made before an officer authorized under 3 V.I.C. §824; and
- 5 (2) Evidenced by the officer’s certificate under official seal affixed to or  
6 logically associated with the electronic will.

7 (d) The acknowledgement and affidavits under subsection (a) must be in substantially  
8 the following form:

9 I, \_\_\_\_\_ , the testator, and, being sworn, declare to the undersigned officer  
10 that I sign this instrument as my electronic will, I willingly sign it or willingly direct another  
11 to sign for me, I execute it as my voluntary act for the purposes expressed in this instrument,  
12 and I am eighteen years of age or older, of sound mind, and under no constraint or undue  
13 influence.

14 \_\_\_\_\_

15 Testator

16 We, \_\_\_\_\_ , and \_\_\_\_\_, witnesses, being sworn, declare to the undersigned  
17 officer that the testator signed this instrument as the testator’s electronic will, that the testator  
18 willingly signed it or willingly directed another individual to sign for the testator, and that each  
19 of us, in the physical or electronic presence of the testator, signs this instrument as witness to  
20 the testator’s signing, and to the best of our knowledge the testator is eighteen years of age or  
21 older, of sound mind, and under no constraint or undue influence

22 \_\_\_\_\_

23 Witness

24

25

26 \_\_\_\_\_

Witness

1 State of \_\_\_\_\_  
2 Subscribed, sworn to, and acknowledged before me by \_\_\_\_\_  
3 (name)

4 \_\_\_\_\_ (name), witnesses, this \_\_\_\_\_ day of \_\_\_\_\_,  
5 \_\_\_\_\_.

6 (SEAL) \_\_\_\_\_  
7 (signed)

8  
9  
10 \_\_\_\_\_  
11 (Official capacity of officer)

12 (e) A signature physically or electronically affixed to an affidavit affixed to or  
13 logically associated with an electronic will under this act is deemed a signature of the electronic  
14 will for the purpose of section 55(a).

15 **§59. Certification of Paper Copy**

16 An individual may create a certified paper copy of an electronic will by affirming under  
17 penalty of perjury that a paper copy of an electronic will is a complete, true and accurate copy  
18 of the electronic will. If the electronic will was made self-proving, the certified paper copy of  
19 the will must include the self-proving affidavits.

20 **§60. Uniformity of Application and Construction**

21 In applying and construing this uniform act, consideration must be given to the need to  
22 promote uniformity of the law with respect to each subject matter among states that enact it.

23 **§61. Relating to Electronic Signatures in Global and National Commerce Act**

24 This chapter modifies, limits, or supersedes the Electronic Signatures in Global and  
25 National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit Section  
26 101 (c) of that act, 15. U.S.C. Section 70o1 (c) or authorize electronic delivery of any of the  
27 notices described in Section 103(b), 15 U.S.C. Section 7003(b).

1 **§62. Applicability**

2 This chapter applies to the will of a decedent who dies on or after the effective date of  
3 this act.

4 **BILL SUMMARY**

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6 The bill amends Title 15 Virgin Islands Code, part 1 by adding chapter 1A enacting the  
7 “Virgin Islands Uniform Electronic Wills Act”. The bill declares that an electronic will is a  
8 will for all purposes of Virgin Islands law. The bill specifies the requirements for executing  
9 and revoking an electronic will; simultaneously executing, attesting, and making an electronic  
10 will; and certifying a paper copy of an electronic will.

11 **BR21-0299/ October 27, 2021/GC**