

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO.

Uniform electronic wills act.

Sponsored by: Representative(s) Olsen

A BILL

for

1 AN ACT relating to wills; incorporating the uniform
2 electronic wills act into Wyoming law; providing for
3 modification or revocation of existing wills by electronic
4 wills; providing definitions; making conforming amendments;
5 providing applicability; and providing for an effective
6 date.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 *****
11 *****

12 **STAFF COMMENT**

13 This version of the bill draft incorporates the
14 Uniform Electronic Wills Act (UEWA) into Wyoming law. It
15 does not include several sections of the UEWA as outlined

1 below. These sections could be incorporated should the
2 Committee so desire:

3
4 "SECTION 1. SHORT TITLE. This [act] may be cited as the
5 Uniform Electronic Wills Act."

6
7 "SECTION 6. HARMLESS ERROR.

8 A record readable as text not executed in compliance with
9 Section 5(a) is deemed to comply with Section 5(a) if the
10 proponent of the record establishes by clear-and-convincing
11 evidence that the decedent intended the record to be:

- 12 (1) the decedent's will;
13 (2) a partial or complete revocation of the decedent's
14 will;
15 (3) an addition to or modification of the decedent's
16 will; or
17 (4) a partial or complete revival of the decedent's
18 formerly revoked will or part of the will."

19
20 Wyoming law does not currently have a harmless error
21 provision. Commentary on this section of the UEWA explains
22 the reasoning for a harmless error provision as follows:

23
24 "The focus of the harmless error doctrine is
25 the testator's intent. A court can excuse a
26 defect in the execution formalities if the
27 proponent of the defective will can establish by
28 clear and convincing evidence that the testator
29 intended the writing to be the testator's will.
30 The will formalities serve as proxies for
31 testamentary intent, and harmless error doctrine
32 replaces strict compliance with the formalities
33 with direct evidence of that intent.

34
35 The harmless error doctrine may be
36 particularly important in connection with
37 electronic wills because a testator executing an
38 electronic will without legal assistance may
39 assume that an electronic will is valid even if
40 not witnessed. The high standard of proof that
41 the testator intended the writing to serve as a
42 will should protect against abuse."

43
44

1 "SECTION 10. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In
2 applying and construing this uniform act, consideration
3 must be given to the need to promote uniformity of the law
4 with respect to its subject matter among states that enact
5 it."
6

7 The language from Section 8(d) is incorporated into W.S. 2-
8 6-114. If the Committee prefers the language in Section 8
9 (a) through (c) over the amendments made to the remainder
10 of W.S. 6-2-114 that language could be incorporated as
11 well.

12 *****
13 *****
14

15 Section 1. W.S. 2-6-125 through 2-6-129 are created
16 to read:

17

18 2-6-125. Execution of electronic will.

19

20 (a) Subject to W.S. 2-6-114(d), an electronic will
21 shall be:

22

23 (i) A record that is readable as text at the time
24 of signing under paragraph (ii) of this section;

25

26 (ii) Signed by:

27

28 (A) The testator; or

29

1 (B) Another individual in the testator's
2 name, in the testator's physical presence and by the
3 testator's direction; and

4

5 (iii) Signed in the physical or remote presence
6 of the testator by at least two (2) competent witnesses
7 within a reasonable time after witnessing:

8

9 (A) The signing of the will under paragraph
10 (ii) of this section; or

11

12 (B) The testator's acknowledgment of the
13 signing of the will under paragraph (ii) of this section or
14 acknowledgement of the will.

15

16 (b) Intent of a testator that the record under
17 paragraph (a)(i) of this section be the testator's
18 electronic will may be established by extrinsic evidence.

19

20 **2-6-126. Law applicable to electronic will;**
21 **principles of equity.**

22

1 An electronic will is a will for all purposes of the law of
2 this state. The law of this state applicable to wills and
3 principles of equity apply to an electronic will, except as
4 provided in W.S. 2-6-125 through 2-6-129.

5

6 **2-6-127. Choice of law regarding execution.**

7

8 *****
9 *****
10 STAFF COMMENT
11 The catch title for this section is used by the UEWA, but
12 may not capture the meaning of the legislation. The
13 Committee may wish to consider an alternative title.
14 *****
15 *****
16

17 (a) A will executed electronically but not in
18 compliance with W.S. 2-6-125 is an electronic will under
19 this chapter if executed in compliance with the law of the
20 jurisdiction where the testator is:

21

22 (i) Physically located when the will is signed;
23 or

24

25 (ii) Domiciled or resides when the will is signed
26 or when the testator dies.

27

1 **2-6-128. Revocation of electronic will.**

2

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

5

6 (b) All or part of an electronic will is revoked by:

7

8 (i) A subsequent will that revokes all or part of
9 the electronic will expressly or by inconsistency; or

10

11 (ii) A physical act, if it is established by a
12 preponderance of the evidence that the testator, with the
13 intent of revoking all or part of the will, performed the
14 act or directed another individual who performed the act in
15 the testator's physical presence.

16

17 **2-6-129. Certification of paper copy.**

18

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

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

3

4 **Section 2.** W.S. 2-1-301(a) by creating new paragraphs
5 (xxxv) through (xxxix), W.S. 2-6-112 and W.S. 2-6-114 are
6 amended to read:

7

8 **2-1-301. Generally.**

9

10 (a) When used in this code, unless otherwise defined
11 or required by the context, the following words and phrases
12 shall be construed as follows:

13

14 (xxxv) "Electronic" means relating to technology
15 having electrical, digital, magnetic, wireless, optical,
16 electromagnetic or similar capabilities;

17

18 (xxxvi) "Remote presence" means the relationship
19 of two (2) or more individuals in different locations
20 communicating in real time to the same extent as if the
21 individuals were physically present in the same location;

22

1 (xxxvii) "Electronic will" means a will executed
2 electronically in compliance with W.S. 2-6-125;

3
4 (xxxviii) "Record" means information that is
5 inscribed on a tangible medium or that is stored in an
6 electronic or other medium and is retrievable in
7 perceivable form;

8
9 (xxxix) "Sign" means, with present intent to
10 authenticate or adopt a record:

11
12 (A) To execute or adopt a tangible
13 symbol; or

14
15 (B) To affix to or logically associate
16 with the record an electronic symbol or process;

17
18 **2-6-112. Will to be in writing; number and competency**
19 **of witnesses; signature of testator; subscribing witness**
20 **not to benefit; exception.**

21
22 Except as provided in ~~the next section~~ W.S. 2-6-113 and 2-
23 6-125, all wills to be valid shall be in writing, or

1 typewritten, witnessed by two (2) competent witnesses and
2 signed by the testator or by some person in his presence
3 and by his express direction. If the witnesses are
4 competent at the time of attesting the execution of the
5 will, their subsequent incompetency shall not prevent the
6 probate and allowance of the will. No subscribing witness
7 to any will can derive any benefit therefrom unless there
8 are two (2) disinterested and competent witnesses to the
9 same, but if without a will the witness would be entitled
10 to any portion of the testator's estate, the witness may
11 still receive the portion to the extent and value of the
12 amount devised.

13

14 **2-6-114. Self-proving wills.**

15

16 (b) The execution of the acknowledgment by the
17 testator and the affidavits of the witnesses as provided
18 for in this section shall be sufficient to satisfy the
19 requirements of the signing of the will by the testator and
20 the witnesses under W.S. 2-6-112 or 2-6-125.

21

22 (d) A signature physically or electronically affixed
23 to an affidavit that is affixed to or logically associated

