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Bill Analysis

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Primary Sponsor: Rep. Swearingen

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SUMMARY

Electronic wills

- Permits a will to be executed electronically in addition to current law's requirement that a will must be in writing.
- Requires the following, regarding an electronic will:
 - It must be a "record" that is readable as text at the time it is "signed";
 - It must be signed at the end by the testator or by another individual in the testator's name, in the testator's physical or "electronic presence," and by the testator's direction; and
 - It must be signed in the physical or electronic presence of the testator by two or more competent witnesses located in this or another state, who must sign the will within a reasonable time after witnessing the testator's signing and must subscribe and attest their signatures.
- Defines the following among other terms used in the bill:
 - "Record" means information that is inscribed in a tangible medium or that is stored in an electronic medium and is retrievable in perceivable form.
 - "Sign" means to do either of the following with the present intent to authenticate or adopt a record: execute or adopt a tangible symbol, or affix to or logically associate with a record an electronic symbol or process.
 - "Electronic presence" means 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.

- Provides that on and after the bill's effective date, Ohio laws applicable to wills apply to electronic wills unless it is clear from the context or meaning of the provision of the law that it applies only to a will in writing or a will other than an electronic will.
- Requires a copy of an electronic will to be deposited by the testator or by some other person for the testator and with the testator's affidavit authorizing such person to make the deposit, in the office of the probate court judge in the county in which the testator lives, before or after the testator's death.
- Provides that a document is to be treated as an electronic will if a probate court finds that the proponent of the document as a purported electronic will has established, by clear and convincing evidence, that the decedent prepared the document or caused it to be prepared, signed the document and intended it to constitute the decedent's will, and the above requirements for making an electronic will are complied with.
- Permits an executor to file an action in the probate court to recover court costs and attorney's fees from the attorney, if any, responsible for the execution of the document as a purported will upon a finding by the court under the preceding dot point.
- Specifies that an electronic will may be revoked by the testator's subsequent will revoking all or part of the will expressly or by inconsistency, or by a "physical act" that the testator, with the intent of revoking all or part of the will, performed the act or directed another individual who performed the act in the testator's physical presence.
- Defines "physical act" as used in the preceding dot point as including the use of a delete or trash function on the computer pertaining to the electronic will or by typing or writing "revoked" on an electronic or printed copy of the electronic will.
- Provides that an oral will, made in the last sickness, is valid in respect to personal property if it is transcribed electronically and subscribed by two competent disinterested witnesses within ten days after the speaking of the testamentary words and who were in the physical or electronic presence of the testator.
- Requires a complaint in the probate court to have an electronic will declared valid to contain the following statements:
 - That a "copy" (copy of the record of an electronic will that is readable as text) of the will has been filed with the probate court and that the will is an electronic will;
 - That the will was signed at the end by the testator or by another individual in the testator's name, in the testator's physical or electronic presence, and at the testator's express direction;
 - That the will was signed in the physical or electronic presence of the testator by two or more competent individuals and that all of the above requirements for the execution of an electronic will are complied with.

Declaration governing the use or continuation, or the withholding or withdrawal, of life-sustaining treatment

- Permits a declaration governing the use or continuation, or the withholding or withdrawal, of life sustaining treatment to be executed electronically by the declarant or another individual at the declarant’s direction by signing the “record” at the end of the declaration, stating the date of its execution, and having it witnessed or acknowledged as follows:
 - The electronic declaration must be witnessed by two individuals with qualifications specified in continuing law and in whose physical or electronic presence the declarant, or another individual at the declarant’s direction, signed the declaration.
 - The electronic declaration must be certified and attested by a notary public through an electronic notarization or as an online notarization under the Ohio Notary Law.

Transfer on death designation affidavit

- Allows a transfer on death designation affidavit to be executed in an electronic manner, provides that a certified copy or a copy of the affidavit that is readable as text must be considered to be a certified copy or a copy of the record of the affidavit, and requires a copy of that affidavit to be offered for recording with the county recorder.

Durable power of attorney for health care

- Permits a durable power of attorney for health care to be executed electronically by which the principal must sign the record associated with, and at the end of, the instrument and state the date of its execution; and requires the instrument to be witnessed by at least two individuals who have the qualifications under continuing law, or are certified and attested by a notary public as follows:
 - If the electronic durable power of attorney for health care is witnessed, requires the principal to sign the instrument and acknowledge the signature at the end of the instrument in the physical or electronic presence of each witness;
 - If the electronic durable power of attorney is certified and attested, requires a notary public to certify and attest the instrument through an electronic notarization or as an online notarization under the Ohio Notary Law.

Power of attorney

- Allows a power of attorney to be executed electronically by the principal signing the instrument or by another individual directed by the principal to sign the principal’s name on the instrument in the electronic presence of the principal.
- Provides that a signature on an electronic power of attorney is presumed to be genuine if the principal or the principal and other individual directed by the principal to sign the principal’s name acknowledges the signature before a notary public performing an electronic notarization or an online notarization pursuant to the Ohio Notary Law.

Recording by county recorder

- Provides that an electronic durable power of attorney for health care or an electronic declaration for the continuation or use, or the withholding or withdrawal, of life-sustaining treatment is recorded by presenting a “copy of the declaration” or the electronic durable power of attorney for health care retrieved and copied in readable text.
- Defines “copy of a declaration” as a printed or electronic copy of a declaration in writing, a copy of the record of a declaration executed electronically that is readable as text, or an electronic copy of the record of a declaration executed electronically.

HISTORY

Action	Date
Introduced	06-08-20
