

SENATE BILL NO. 90

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - FIRST SESSION

BY SENATOR MYERS

Introduced: 2/22/21

Referred: Judiciary, Labor & Commerce

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to wills and the probate of wills; relating to the making, witnessing,
2 self-proving, revocation, and probate of wills by electronic means; relating to the choice
3 of law for execution of wills; relating to the certification of copies of wills; relating to the
4 establishment of the validity of a will before death; and providing for an effective date."

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** AS 13.06.050(62) is amended to read:

7 (62) "will" includes an electronic will, a codicil, and a testamentary
8 instrument that merely appoints an executor, revokes or revises another will,
9 nominates a guardian, or expressly excludes or limits the right of an individual or class
10 to succeed to property of the decedent passing by intestate succession.

11 * **Sec. 2.** AS 13.06.050 is amended by adding new paragraphs to read:

12 (63) "electronic presence," with respect to two or more individuals in
13 different locations, means the use of electronic means that enables the individuals,
14 during the actual time when the individuals are engaging in the activities, to

communicate, to maintain visual and audio contact, and, when applicable, to facilitate communication between or among individuals, including individuals who have a visual, hearing, or speech impairment;

(64) "electronic will" means a will in which the text, the signature of the testator, or the signature of a witness is provided by electronic means.

* **Sec. 3.** AS 13.06.068(c) is amended to read:

(c) A will disposing of personal property, wherever situated, or real property situated in this state made within or outside this state by a domiciliary or nondomiciliary of the state where the property is situated, is formally valid and admissible to probate in this state if the will is **a record that is readable as text at the time of signing** [IN WRITING] and signed by the testator and otherwise executed and attested to under the local law of

(1) this state;

(2) the jurisdiction where the **testator was physically located when the testator signed the** will [WAS EXECUTED AT THE TIME OF EXECUTION]; or

(3) the jurisdiction where the testator was domiciled, either at the time **the testator signed the will** [OF EXECUTION] or at death.

* **Sec. 4.** AS 13.12.502 is amended to read:

Sec. 13.12.502. Execution; witnessed wills; holographic wills. (a) Except as provided in (b) of this section, AS 13.06.068, AS 13.12.506, and 13.12.513, a will must be

(1) **a record that is readable as text at the time of signing under (2) of this subsection** [IN WRITING];

(2) signed by the testator or in the testator's name by another individual in the testator's conscious **physical or electronic** presence and by the testator's direction; and

(3) signed by at least two individuals, each of whom **is in the physical or electronic presence of the testator at the time of signing and** signs within a reasonable time after **witnessing** [THE WITNESS WITNESSES] either the signing of the will as described in (2) of this subsection or the testator's acknowledgment of that

signature or the will.

(b) Except as provided in AS 13.06.068, a will that does not comply with (a) of this section is valid as a holographic will, whether or not witnessed, if the signature and material portions of the **record** [DOCUMENT] are in the testator's handwriting **or readable as text**.

* **Sec. 5.** AS 13.12.504(a) is amended to read:

(a) A will may be simultaneously executed, attested, and made self-proved, by acknowledgment of the will by the testator and affidavits of the witnesses, each made **in the physical or electronic presence of** [BEFORE] an officer authorized to administer oaths under the laws of the state **where the testator is physically located or in this state** [IN WHICH EXECUTION OCCURS] and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, _____, the testator, sign my name to this instrument this ____ day of _____, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes expressed in the will, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Testator

We, _____, _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as the testator's will and that the testator signs it willingly (or willingly directs another to sign for the testator), and that each of us, in the **physical or electronic** presence [AND HEARING] of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Witness

Witness

State of _____

_____ Judicial District

Subscribed, sworn to, and acknowledged **in my physical or electronic presence** [BEFORE ME] by _____, the testator, and subscribed and sworn to before me by _____, and _____, **witnesses** [WITNESS], this ____ day of ____.

(Seal)

(Signed)

(Official capacity of officer)

* **Sec. 6.** AS 13.12.504(b) is amended to read:

(b) An attested will may be made self-proved at any time after its execution by the acknowledgment of the will by the testator and the affidavits of the witnesses, each made **in the physical or electronic presence of** [BEFORE] an officer authorized to administer oaths under the laws of the state in which the **testator is physically located or in this state** [ACKNOWLEDGMENT OCCURS] and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

State of _____

_____ Judicial District

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as the testator's will and that the testator had signed willingly (or willingly directed another to sign for the testator), and that the testator executed it as the testator's free and

voluntary act for the purposes expressed in the will, and that each of the witnesses, in the **physical or electronic** presence [AND HEARING] of the testator, signed the will as witness and that to the best of the witnesses' knowledge the testator was at that time eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Testator

Witness

Witness

Subscribed, sworn to, and acknowledged **in my physical or electronic presence** [BEFORE ME] by _____, the testator, and subscribed and sworn to before me by _____, and _____, witnesses, this _____ day of _____.

(Seal)

(Signed)

(Official capacity of officer)

* **Sec. 7.** AS 13.12.506 is amended to read:

Sec. 13.12.506. Choice of law as to execution. Except as provided by AS 13.06.068, a [WRITTEN] will is valid if executed in compliance with AS 13.12.502 or if its execution complies with the law at the time of execution of the place where the will is executed, **which is the place where the testator is physically located when the testator signs the will,** or of the law of the place where, at the time of execution or at the time of death, the testator is domiciled, has a place of abode, or is a national.

* **Sec. 8.** AS 13.12.507(a) is amended to read:

(a) A will or a part of a will is revoked

(1) by executing a subsequent will that revokes the previous will or

1 part expressly or by inconsistency; or

2 (2) by performing a revocatory act on the will, if the testator performed
3 the act with the intent and for the purpose of revoking the will or part of the will or if
4 another individual performed the act in the testator's conscious **physical or electronic**
5 presence and by the testator's direction; in this paragraph, "revocatory act on the will"
6 includes burning, tearing, canceling, obliterating, **deleting**, or destroying the will or
7 any part of it; a "revocatory act on the will" includes a burning, tearing, or canceling
8 whether or not the burn, tear, or cancellation touched any of the words on the will.

9 * **Sec. 9.** AS 13.12 is amended by adding a new section to article 5 to read:

10 **Sec. 13.12.518. Certification of will copy.** (a) An individual may create a
11 certified paper copy of a will by affirming under penalty of perjury that a paper copy
12 of the will is a complete, true, and accurate copy of the will. If the will is made self-
13 proving, the certified paper copy of the will must include a copy of the self-proving
14 affidavits.

15 (b) A certification that is substantially similar to the following qualifies as a
16 certification under (a) of this section:

17 I, _____ (name of person making the certification) certify under penalty
18 of perjury that the paper copy of the will of _____ (name of testator) dated
19 _____ (date) attached to this certification is a complete, true, and
20 accurate copy of the will of _____ (name of testator), and that I personally
21 compared this paper copy to the nonelectronic or electronic original of the will.

22 * **Sec. 10.** AS 13.12.545 is amended to read:

23 **Sec. 13.12.545. Contents of petition for will validity.** A petition under
24 AS 13.12.530 must contain

25 (1) a statement that a copy of the will has been filed with the court; **the**
26 **copy may be an electronic record;**

27 (2) a statement that the will is in writing **or is an electronic will;**

28 (3) a statement that the will was signed by the testator, or was signed
29 in the testator's name by another person in the testator's conscious **physical or**
30 **electronic** presence and at the testator's direction;

31 (4) in the case of a witnessed will, a statement that the will was signed

by at least two individuals, each of whom signed within a reasonable time after witnessing the signing of the will or the testator's acknowledgment of the signature on the will;

(5) in the case of a holographic will, a statement that the signature and material portions of the will are in the testator's handwriting **or in a record that is readable as text**;

(6) a statement that the will was executed with testamentary intent;

(7) a statement that the testator had testamentary capacity;

(8) a statement that the testator was free from undue influence and duress and executed the will in the exercise of the testator's free will;

(9) a statement that the execution of the will was not the result of fraud or mistake;

(10) the names and addresses of the testator, the testator's spouse, the testator's children, the testator's heirs, the personal representatives nominated in the will, and the devisees under the will;

(11) if minors, the ages of the testator's children, the testator's heirs, and the devisees under the will, as far as known or ascertainable with reasonable diligence by the petitioner;

(12) a statement that the will has not been revoked or modified; and

(13) a statement that the testator is familiar with the contents of the will.

* **Sec. 11.** AS 13.16.080(a) is amended to read:

(a) Applications for informal probate or informal appointment shall be directed to the registrar, and verified by the applicant to be accurate and complete to the best of the applicant's knowledge and belief as to the following information:

(1) every application for informal probate of a will or for informal appointment of a personal representative other than a special or successor representative, must contain the following:

(A) a statement of the interest of the applicant;

(B) the name and age of the decedent, the date of death of the decedent, the judicial district and state of the decedent's domicile at the time of

1 death, and the names and addresses of the spouse, children, heirs, and devisees
 2 and the ages of any who are minors so far as known or ascertainable with
 3 reasonable diligence by the applicant;

4 (C) if the decedent was not domiciled in the state at the time of
 5 death, a statement showing venue;

6 (D) a statement identifying and indicating the address of any
 7 personal representative of the decedent appointed in this state or elsewhere
 8 whose appointment has not been terminated;

9 (E) a statement indicating whether the applicant has received a
 10 demand for notice, or is aware of any demand for notice of any probate or
 11 appointment proceeding concerning the decedent that may have been filed in
 12 this state or elsewhere;

13 (F) a statement that the time limit for informal probate as
 14 provided in AS 13.16.080 - 13.16.130 has not expired either because three
 15 years or less have passed since the decedent's death, or, if more than three
 16 years from death have passed, that circumstances as described by
 17 AS 13.16.040 authorizing tardy probate or appointment have occurred;

18 (2) an application for informal probate of a will must state the
 19 following in addition to the statements required by (1) of this subsection:

20 (A) that the original of the decedent's last will **or a paper copy**
 21 **certified under AS 13.12.518 of the decedent's last will** is in the possession
 22 of the court, or accompanies the application, or that an authenticated copy of a
 23 will probated in another jurisdiction accompanies the application;

24 (B) that the applicant, to the best of the applicant's knowledge,
 25 believes the will to have been validly executed;

26 (C) that after the exercise of reasonable diligence, the applicant
 27 is unaware of any instrument revoking the will, and that the applicant believes
 28 that the instrument that is the subject of the application is the decedent's last
 29 will;

30 (3) an application for informal appointment of a personal
 31 representative to administer an estate under a will must describe the will by date of

1 **signing** [EXECUTION] and state the time and place of probate or the pending
 2 application or petition for probate; the application for appointment must adopt the
 3 statements in the application or petition for probate and state the name, address, and
 4 priority for appointment of the person whose appointment is sought;

5 (4) an application for informal appointment of an administrator in
 6 intestacy must state in addition to the statements required by (1) of this subsection:

7 (A) that after the exercise of reasonable diligence the applicant
 8 is unaware of any unrevoked testamentary instrument relating to property
 9 having a situs in this state under AS 13.06.060, or a statement why any such
 10 instrument of which the applicant may be aware is not being probated;

11 (B) the priority of the person whose appointment is sought and
 12 the names of any other persons having a prior or equal right to the appointment
 13 under AS 13.16.065;

14 (5) an application for appointment of a personal representative to
 15 succeed a personal representative appointed under a different testacy status must refer
 16 to the order in the most recent testacy proceeding, state the name and address of the
 17 person whose appointment is sought and of the person whose appointment will be
 18 terminated if the application is granted, and describe the priority of the applicant;

19 (6) an application for appointment of a personal representative to
 20 succeed a personal representative who has tendered a resignation as provided in
 21 AS 13.16.290(c), or whose appointment has been terminated by death or removal,
 22 must adopt the statements in the application or petition that led to the appointment of
 23 the person being succeeded except as specifically changed or corrected, state the name
 24 and address of the person who seeks appointment as successor, and describe the
 25 priority of the applicant.

26 * **Sec. 12.** AS 13.16.090(a) is amended to read:

27 (a) In an informal proceeding for original probate of a will, the registrar shall
 28 determine whether

29 (1) the application is complete;

30 (2) the applicant has made oath or affirmation that the statements
 31 contained in the application are true to the best of the applicant's knowledge and

1 belief;

2 (3) the applicant appears from the application to be an interested
3 person as defined in AS 13.06.050;

4 (4) on the basis of the statements in the application, venue is proper;

5 (5) an original, or a paper copy certified under AS 13.12.518, of the
6 decedent's duly executed and apparently unrevoked will is in the registrar's
7 possession;

8 (6) any notice required by AS 13.16.070 has been given and that the
9 application is not within AS 13.16.095; and

10 (7) it appears from the application that the time limit for original
11 probate has not expired.

12 * **Sec. 13.** AS 13.16.145(a) is amended to read:

13 (a) Petitions for formal probate of a will, or for adjudication of intestacy with
14 or without request for appointment of a personal representative, must be directed to
15 the court, request a judicial order after notice and hearing, and contain further
16 statements as indicated in this section. A petition for formal probate of a will must

17 (1) request an order as to the testacy of the decedent in relation to a
18 particular instrument which may or may not have been informally probated and
19 determining the heirs;

20 (2) contain the statements required for informal applications as stated
21 in AS 13.16.080(a)(1)(A)-(E), the statements required by AS 13.16.080(a)(2)(B) and
22 (C); and

23 (3) state whether the original, or a paper copy certified under
24 AS 13.12.518, of the last will of the decedent is in the possession of the court or
25 accompanies the petition.

26 * **Sec. 14.** AS 13.16.145(b) is amended to read:

27 (b) If the original will, or a paper copy of the will certified under
28 AS 13.12.518, is neither in the possession of the court nor accompanies the petition
29 and no authenticated copy of a will probated in another jurisdiction accompanies the
30 petition, the petition also must state the contents of the will, and indicate that it is lost,
31 destroyed, or otherwise unavailable.

1 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 **APPLICABILITY.** This Act applies to a will that is executed on or after the effective
4 date of this Act. In this section, "will" has the meaning given in AS 13.06.050.

5 * **Sec. 16.** This Act takes effect immediately under AS 01.10.070(c).