

CS FOR SENATE BILL NO. 90(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/19/21

Referred: Labor & Commerce

Sponsor(s): SENATOR MYERS

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

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

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

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

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

13 (1) this state;

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

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

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

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

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

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

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

1 signature or the will.

2 (b) Except as provided in AS 13.06.068, a will that does not comply with (a)
 3 of this section is valid as a holographic will, whether or not witnessed, if the signature
 4 and material portions of the **record** [DOCUMENT] are in the testator's handwriting,
 5 **which may be in electronic form but not electronically generated.**

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

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

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

20 _____
 21 Testator

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

31 _____

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

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

6 _____
7 Testator

8 _____
9 Witness

10 _____
11 Witness

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

16 (Seal)

17 _____
18 (Signed)

19 _____
20 (Official capacity of officer)

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

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

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

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

31 (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; **the evidence to show the testator's intent**
 6 **and purpose must be clear and convincing;** in this paragraph, "revocatory act on the
 7 will" includes burning, tearing, canceling, obliterating, **deleting,** or destroying the will
 8 or any part of it; a "revocatory act on the will" includes a burning, tearing, or
 9 canceling whether or not the burn, tear, or cancellation touched any of the words on
 10 the will.

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

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

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

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

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

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

27 (1) a statement that a copy of the will has been filed with the court; **the**
 28 **copy of the will may be a paper copy of an electronic will certified under**
 29 **AS 13.12.518;**

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

31 (3) a statement that the will was signed by the testator, or was signed

1 in the testator's name by another person in the testator's conscious **physical or**
 2 **electronic** presence and at the testator's direction;

3 (4) in the case of a witnessed will, a statement that the will was signed
 4 by at least two individuals, each of whom signed within a reasonable time after
 5 witnessing the signing of the will or the testator's acknowledgment of the signature on
 6 the will;

7 (5) in the case of a holographic will, a statement that the signature and
 8 material portions of the will are in the testator's handwriting, **which may be in**
 9 **electronic form but not electronically generated**;

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

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

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

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

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

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

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

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

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

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

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

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

2 (B) the name and age of the decedent, the date of death of the
3 decedent, the judicial district and state of the decedent's domicile at the time of
4 death, and the names and addresses of the spouse, children, heirs, and devisees
5 and the ages of any who are minors so far as known or ascertainable with
6 reasonable diligence by the applicant;

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

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

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

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

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

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

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

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

1 will;

2 (3) an application for informal appointment of a personal
3 representative to administer an estate under a will must describe the will by date of
4 **signing** [EXECUTION] and state the time and place of probate or the pending
5 application or petition for probate; the application for appointment must adopt the
6 statements in the application or petition for probate and state the name, address, and
7 priority for appointment of the person whose appointment is sought;

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

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

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

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

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

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

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

- 1 (1) the application is complete;
- 2 (2) the applicant has made oath or affirmation that the statements
3 contained in the application are true to the best of the applicant's knowledge and
4 belief;
- 5 (3) the applicant appears from the application to be an interested
6 person as defined in AS 13.06.050;
- 7 (4) on the basis of the statements in the application, venue is proper;
- 8 (5) an original, **or a paper copy certified under AS 13.12.518, of the**
9 **decedent's** duly executed and apparently unrevoked will is in the registrar's
10 possession;
- 11 (6) any notice required by AS 13.16.070 has been given and that the
12 application is not within AS 13.16.095; and
- 13 (7) it appears from the application that the time limit for original
14 probate has not expired.

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

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

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

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

26 (3) state whether the original, **or a paper copy certified under**
27 **AS 13.12.518,** of the last will of the decedent is in the possession of the court or
28 accompanies the petition.

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

30 (b) If the original will, **or a paper copy of the will certified under**
31 **AS 13.12.518,** is neither in the possession of the court nor accompanies the petition

1 and no authenticated copy of a will probated in another jurisdiction accompanies the
2 petition, the petition also must state the contents of the will, and indicate that it is lost,
3 destroyed, or otherwise unavailable.

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

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

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