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A Bill

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Chapter 1 and Chapter 7 of Title 18 of the District of Columbia Official Code to authorize the use of electronic signatures for testamentary documents and provide a method of authentication for an electronic signatures; to amend Chapter 11 and Chapter 13 of Title 19 to authorize the use of electronic signatures and provide a method of authentication for an electronic signature.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Electronic Signature Authorization Act of 2017”.

Sec. 2. Chapter 1 of Title 18 of the D.C. Official Code is amended as follows:

(a) Section 18-101 is amended to read as follows:

“§ 18-101. Definitions.

“As used in this title, unless the context requires a different meaning:

words importing a the singular include the plural, and words importing the plural include the singular; the present tense includes the future as well as the present;

““Authentication method” means (a) both (i) a copy of settlor’s valid driver’s license, Passport, or other government issued ID card, and (ii) a knowledge-based authentication method, a digital certificate using a public key infrastructure (PKI), a physical device such as smart cards, USB plug-in or other types of “token”, a biometric identification (fingerprint, a retinal scan, voice or facial recognition, or video recording of the testator), or other commercially reasonable method; or (b) electronic notarization in accordance with applicable law;

29 ““Court” means the Superior Court of the District of Columbia;

30 ““District Court” means the United States District Court for the District of Columbia;

31 ““Electronic” means relating to technology having electrical, digital, magnetic, wireless,
32 optical, electromagnetic, or similar capabilities;

33 ““Electronic record” means a record created, generated, sent, communicated, received, or
34 stored by electronic means;

35 ““Electronic signature” means an electronic sound, symbol, or process attached to or
36 logically associated with a record and executed or adopted by a person with the intent to sign the
37 record;

38 ““Electronic will” (or codicil thereto) is a will of a testator that is created and maintained
39 as an electronic record; contains the electronic signature of the testator; contains the date and
40 time of the electronic signature; includes an authentication method which is attached to or
41 logically associated with the electronic will to identify the testator; is created and maintained in
42 such a manner that any alteration of the electronic will is detectable; and otherwise is subject to
43 the provisions of the Uniform Electronic Transactions Act of 2001.

44 ““Executed”, “Signed” or “Subscribed” includes the use of an electronic signature.

45 ““Probate Court” means the Probate Division of the Superior Court of the District of
46 Columbia.

47 ““Trust” means and includes an electronic trust or trust instrument.

48 ““Will” means and shall include an electronic will

49 ““Writing” or “Written” mean and shall include the use of an electronic record.”

50 (b) A new section 18-111a is added to read as follows:

51 “§ 18-111a. Video Recording or Other Electronic Record

52 “Subject to the applicable District of Columbia laws and regulations governing the
53 admissibility of evidence, a video recording or other electronic record may be admissible as
54 evidence of the following: the proper execution of a will; the intentions of a testator; the mental
55 state or capacity of a testator; the authenticity of a will; or matters that are determined by a court
56 to be relevant to the probate of a will.”

57 Sec. 3. Chapter 7 of Title 18 of the D.C. Official Code is amended as follows:

58 (a) Section 18-701 is amended to read as follows:

59 “D.C. Official Code § 18-701. Definitions.

60 “For the purposes of this chapter, the term:

61 “(1) “Authorized person” or “person authorized to act in connection with international
62 wills” means a person who by section 18-709, or by the laws of the United States, including
63 members of the diplomatic and consular service of the United States designated by Foreign
64 Service Regulations, is empowered to supervise the execution of international wills.

65 “(2) “International will” means a will, including an electronic will as defined in section
66 18-101, executed in conformity with sections 18-702 through 18-705.”

67 (b) Section 18-704 is amended to read as follows:

68 “D.C. Official Code § 18-704. International will; other points of form.

69 “(a) The signatures shall be placed at the end of the will. If the will, other than an
70 electronic will, consists of several sheets, each sheet shall be signed by the testator or, if he or
71 she is unable to sign, by the person signing on his or her behalf or, if there is no such person, by
72 the authorized person. In addition, each sheet shall be numbered.”

73 (c) Section 18-705 is amended as follows:

74 (1) Strike the phrase “The authorized person shall attach to the will a
75 certificate” and insert the phrase “The authorized person shall attach to, or, in the case of an
76 electronic will, logically associate with, the will a certificate” in its place.

77 (2) Strike the phrase “The authorized person shall keep a copy of the
78 certificate” and insert the phrase “The authorized person shall keep a copy of the certificate
79 (including a certificate in the form of an electronic record)” in its place.

80 (3) Strike the phrase “has declared that the attached document is his or her
81 will” and insert the phrase “has declared that the attached or associated document is his or her
82 will”.

83 (4) Strike the word “affixed” wherever it appears, and insert the word
84 “executed” in its place.

85 (d) A new section 18-711 to read as follows:

86 “D.C. Official Code § 18-711. Video Recording or Other Electronic Record

87 “Subject to the applicable District of Columbia laws and regulations governing the
88 admissibility of evidence, a video recording or other electronic record may be admissible as
89 evidence of the proper execution of an international will; the intentions of a testator; the mental
90 state or capacity of a testator; the authenticity of an international will; or matters that are
91 determined by a court to be relevant to the probate of an international will.”

92 Sec. 3. Chapter 11 of Title 19 of the D.C. Official Code is amended as follows:

93 (a) Section 19-1101 is amended as follows:

94 (1) A new paragraph (1A) is added to read as follows:

95 “(1A) “Authentication method” means (a) both (i) a copy of settlor’s valid driver’s
96 license, Passport, or other government issued ID card, and (ii) a knowledge-based authentication

97 method, a digital certificate using a public key infrastructure (PKI), a physical device such as
98 smart cards, USB plug-in or other types of “token”, a biometric identification (fingerprint, a
99 retinal scan, voice or facial recognition, or video recording of the testator), or other commercially
100 reasonable method; or (b) electronic notarization in accordance with applicable law.”

101 (2) Paragraph (5) is amended to read as follows:

102 “(5) “Custodial trust property” means an interest in property transferred to or held under
103 a declaration of trust including an electronic custodial trust by a custodial trustee under this
104 chapter and the income from and proceeds of that interest.”

105 (3) New paragraphs (6B)-(6F) are added to read as follows:

106 “(6B) “Electronic” means electronic as defined in § 28-4901(5).

107 “(6C) “Electronic record” means electronic record as defined in § 28-4901(7).

108 “(6D) “Electronic signature” means electronic signature as defined in § 28-4901(8).

109 “(6E) “Electronic custodial trust” means a trust, executed by the transferor that:

110 “(a) Is created and maintained as an electronic record;

111 “(b) Contains the terms of the trust, including any amendments to the terms of the
112 trust;

113 “(c) The date and time of the electronic signature;

114 “(d) Includes an authentication method which is attached to or logically
115 associated with the electronic trust instrument to identify the transferor;

116 “(e) Is created and maintained in such a manner that any alteration of the electronic
117 trust is detectable; and

118 “(f) Otherwise is subject to the provisions of Chapter 49 of Title 28.

119 “(6F) “Executed” or “Signed” includes the use of an electronic signature.”

120 (4) A new paragraph (16) is added to read as follows:

121 “(16) “Written”, “writing” or “instrument” includes the use of an electronic record.”

122 (b) A new subsection 19-1118a is added to read as follows:

123 “D.C. Official Code 19-1118a. Video Recording or Other Electronic Record.

124 “Subject to the applicable District of Columbia laws and regulations governing the
125 admissibility of evidence, a video recording or other electronic record may be admissible as
126 evidence of the proper execution of a custodial trust; the intentions of a transferor; the mental
127 state or capacity of a transferor; the authenticity of a custodial trust; or matters that are
128 determined by a court to be relevant to the probate of a will or the creation of a custodial trust.”

129 Sec. 4. Chapter 13 of Title 19 of the D.C. Official Code is amended as follows:

130 (a) Section 19-1301.03 is amended as follows:

131 (1) A new paragraph (2) is added to read as follows:

132 “(2) “Authentication method” means:

133 “(A) Both (i) a copy of settlor’s valid driver’s license, Passport, or other
134 government issued ID card, and (ii) a knowledge-based authentication method, a digital
135 certificate using a public key infrastructure (PKI), a physical device such as smart cards, USB
136 plug-in or other types of “token”, a biometric identification (fingerprint, a retinal scan, voice or
137 facial recognition, or video recording of the testator), or other commercially reasonable method;
138 or

139 “(B) Electronic notarization in accordance with applicable law.”

140 (2) New paragraphs (5A)-(5D) are added to read as follows:

141 “(5A) “Electronic” means relating to technology having electrical, digital, magnetic,
142 wireless, optical, electromagnetic, or similar capabilities.

143 “(5B) “Electronic signature” means an electronic sound, symbol, or process attached to or
144 logically associated with a record and executed or adopted by a person with the intent to sign the
145 record.

146 “(5C) “Electronic record” means a record created, generated, sent, communicated,
147 received, or stored by electronic means.

148 “(5D) “Electronic trust instrument” means a trust instrument created pursuant to this
149 Chapter 19, executed by the transferor that:

150 “(A) Is created and maintained as an electronic record;

151 “(B) Contains the terms of the trust, including any amendments to the terms of the
152 trust;

153 “(C) The date and time of the electronic signature;

154 “(D) Includes an authentication method which is attached to or logically
155 associated with the electronic trust instrument to identify the transferor;

156 “(E) Is created and maintained in such a manner that any alteration of the electronic
157 trust instrument is detectable; and

158 “(F) Otherwise is subject to the provisions of the Uniform Electronic Transactions
159 Act of 2001.

160 (3) A new paragraph (6A) is added to read as follows:

161 “(6A) “Executed” or Signed” includes the use of an electronic signature.

162 (4) Paragraph (21) is amended to read as follows:

163 “(21) “Trust instrument” means a trust created pursuant to this Chapter 19 and includes a
164 instrument executed by the settlor that contains terms of the trust, including any amendments
165 thereto, and also includes an electronic trust instrument.

166 (5) A new paragraph (23) is added to read as follows:

167 “(23) “Written” or “writing” includes the use of an electronic record.”

168 (b) A new section 19-1301.12 is added to read as follows:

169 “§ 19-1301.12. Video Recording or Other Electronic Record

170 “Subject to the applicable District of Columbia Superior Court Rules of Civil Procedure,

171 a video recording or other Electronic Record may be admissible as evidence of the following:

172 “(1) The proper execution of a trust.

173 “(2) The intentions of a settlor.

174 “(3) The mental state or capacity of a settlor,

175 “(4) The authenticity of a trust instrument.

176 “(5) Matters that are determined by a court to be relevant to the administration of the

177 trust.

178 Sec. 4. Uniform Electronic Transaction Act Amendment.

179 Section 28-4902(b)(1) is amended by inserting “except as otherwise provided in Chapter 1

180 of Title 18, Chapter 7 of Title 18, Chapter 11 of Title 19, or Chapter 13 of Title 19” after the

181 following phrase “a law governing the creation and execution of wills, codicils or testamentary

182 trusts”.

183 Sec. 5. Fiscal Impact Statement

184 The Council adopts the fiscal impact statement in the committee report as the fiscal

185 impact statement required by section 4a of the General Legislative Procedures Act of 1975,

186 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

187 Sec. 6. Effective Date

188 This act shall take effect following approval of the Mayor (or in the event of a veto by the
189 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
190 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
191 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.22(c)(1)), and publication in the District of
192 Columbia Register.