

## **BILL ANALYSIS**

H.B. 3848  
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Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

It has been noted that electronic signatures have developed into a secure, verifiable, and auditable means of validating documents, making the use of this and other technologies compatible with the traditional formalities of making a will while also potentially being more accessible to the average citizen. H.B. 3848 seeks to modernize current law to incorporate these benefits by setting out procedures relating to making and executing electronic wills.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

H.B. 3848 amends the Estates Code to authorize an individual who is otherwise authorized to make a will under state law to make an electronic will. The bill requires an electronic will to be in a record perceivable as text that is:

- signed, with the intent that the record be the testator's electronic will, by the testator or another individual in the testator's name, in the testator's conscious physical or electronic presence, and at the testator's direction; and
- signed by at least two credible individuals who are at least 14 years of age, each of whom signed in the physical or electronic presence of the testator.

The bill establishes that a testator's intent that a record be the testator's electronic will may be established by extrinsic evidence.

H.B. 3848 establishes that an electronic will with all attesting witnesses physically present in the same location as the testator may be made self-proving by acknowledgment of the testator and affidavits of the witnesses, sets out requirements for the acknowledgement and affidavits, and prescribes the form in which they must substantially be made. The bill establishes that an electronic will that meets the same criteria as regards physical presence may be made self-proving at any time after its execution in the same way, subject to the same requirements, and prescribes the form of acknowledgement and affidavits for that purpose.

H.B. 3848 establishes that an electronic will without all attesting witnesses physically present in the same location as the testator may be made self-proving either by acknowledgment of the testator and affidavits of the witnesses made before an online notary public and evidenced by the notary public's electronic notarial certificate or by an authorized person's certification in writing

of specified facts regarding the testator's identity, actions, legal status and state of mind. The bill defines "authorized person" as an individual licensed to practice law in the United States or a court clerk, prohibits an heir of the testator or a beneficiary under an electronic will from acting as such an authorized person, and establishes that an authorized person submits to the jurisdiction of the court in the county in which the testator executes the will. The bill prescribes the form of the authorized person's certification.

H.B. 3848 establishes that a signature physically or electronically affixed to an affidavit attached to an electronic will is considered a signature affixed to the electronic will if necessary to prove the will's execution. The bill establishes that an electronic will is validly executed if executed in compliance with the law of the place where the testator is physically located at the time of execution or the place where, at the time of execution or of death, the testator is domiciled, resides, or is a citizen. The bill establishes that an electronic will or part of an electronic will is revoked by the following means:

- a subsequent will, including an electronic will, that revokes the previous will or part of the previous will expressly or by inconsistency; or
- a revocatory act, if it is established by clear and convincing evidence that the testator performed the act with the intent and for the purpose of revoking the will or part of the will or that another individual performed the act in the testator's physical or electronic presence and by the testator's direction.

An electronic will may revoke a will that is not an electronic will.

H.B. 3848 requires that, in applying and construing the bill's provisions, consideration be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. The bill's provisions modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act except for certain provisions of that act, and the bill's provisions do not authorize electronic delivery of certain notices described in that act.

**EFFECTIVE DATE**

September 1, 2019.