

First Supplement to Memorandum 2020-33

2020 Legislative Program (Status Report)

As introduced in 2019, Assembly Bill 1667 (Santiago) would have authorized the use of an “electronic will” (i.e., a will that was executed, stored, signed, and witnessed electronically).¹ The bill proceeded as a two-year bill, with several amendments.

On August 10, 2020, the bill was amended to replace its contents with a provision that would assign the Commission a study of electronic wills:

6110.4. (a) It is the intent of the Legislature to evaluate the merits of electronic wills and whether the Legislature should adopt a statutory scheme that recognizes electronic wills.

(b) On or before September 30, 2022, the California Law Revision Commission shall deliver to the Legislature a study regarding the feasibility of electronic wills. The study shall include, at a minimum, a discussion of all of the following:

(1) How electronic wills are treated by the Uniform Law Commission and by other states and countries.

(2) Case studies involving electronic wills or other electronic testamentary instruments, to the extent that information is accessible and can be feasibly obtained.

(3) Common issues relating to electronic wills, including, but not limited to, all of the following:

(A) Formation, including requirements for electronic signatures.

(B) Authentication, including remote online notarization.

(C) Witnessing, including remote online witnessing.

(D) Storage.

(E) Custodianship.

(F) Delivery and presentation to the court.

(G) The types of evidence a court may consider in authenticating the will.

(H) Codicils.

(I) Revocation.

(J) Any other aspect of probate law and the law of wills that the commission determines to be reasonable to study issues relating to electronic wills, including, but not limited to, all of the following:

(i) The application of the harmless error rule.

(ii) Electronic expressions of testamentary intent that do not meet formalities.

1. See AB 1667 (Santiago) (as amended Mar. 18, 2019).

(iii) Risk of fraud or undue influence when compared to traditional wills.

(c) If the commission determines that adopting a statutory scheme that recognizes electronic wills is prudent and does not pose unnecessary risks of fraud, the study shall recommend a specific legislative proposal for a comprehensive statutory scheme for recognizing electronic wills in California.

(d) A report to be submitted pursuant to subdivision (b) or (c) shall be submitted in compliance with Section 9795 of the Government Code.

(e) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

The bill is set to be heard by the Senate Committee on Judiciary on August 13, 2020.

Emergency-Related Reforms

The proposed study would have an important secondary benefit. The Commission is already discussing how to accomplish emergency-related reforms. In a number of ways, the new study would fill that niche:

- It would allow for remote execution of wills, without requiring the in-person participation of others.
- A workable statute on electronic wills might be adaptable to other estate planning documents.
- The proposed study would specifically require the Commission to examine remote notarization and remote witnessing, two topics that were previously identified as useful emergency-related reforms. If those issues can be addressed in the context of wills, the solutions could perhaps be adapted for other uses (e.g., remote transfer of real property title).

If the Commission is assigned this new study and continues its existing work on emergency-related common interest development reforms, it will be committing a large share of its resources toward emergency-related work.

Respectfully submitted,

Brian Hebert
Executive Director