NEW YORK STATE BAR ASSOCIATION
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August 5, 2025

The Honorable Kathy Hochul
Governor of New York State
Executive Chamber
State Capitol
Albany, New York 12224

Re: Support for A.7856-A (Lavine)/S. 7416-A (Hoylman-Sigal)

Dear Governor Hochul,

The New York State Bar Association's Trust and Estate's Law Section supports this bill which would amend the EPTL and State Technology law to create a framework under which electronic wills can be executed in the State of New York. Presently, thirteen states[1] and the District of Columbia have legislation that permits testators to execute wills electronically, rather than by paper. The bill was crafted by reviewing those jurisdictions' legislation, as well as the Uniform Electronic Wills Act ("UEWA"), incorporating those provisions that comport with preexisting New York law, and tailoring the remainder of the bill to ensure that electronic wills would be secure.

For nearly two hundred years, the substantive law of wills has required that all wills be executed in writing, and that the will must be executed in the physical presence of at least two attesting witnesses.[2] During the Covid-19 pandemic, Governor Cuomo passed Executive Order 202.14, which permitted wills to be executed utilizing audio-visual technology. This meant that during the pandemic, a paper will could be validly executed

[1] Arizona, Colorado, Florida, Idaho, Illinois, Indiana, Maryland, Minnesota, Nevada, North Dakota, Oklahoma, Utah, and Washington.

[2] EPTL §3-2.1.

even if the testator and attesting witnesses were in separate physical locations so long as they were communicating in real time by the proper technology (Facetime, Zoom, etc.) and the will execution comported with EPTL §3-2.1.[3] While Executive Order 202.14 was in effect, countless wills were executed in this manner. Yet, in the four years since the Executive Order's enactment and repeal, practitioners and the Surrogates have not observed that this resulted in an increase in wills that were invalidly or fraudulently executed.

This bill goes a step further and sets forth a mechanism that allows wills to be executed electronically. Much like the Covid-19 will executions, the legislation requires that the testator and the attesting witnesses be in each other's "presence" (if not in the same physical location) by using audio-visual technology that enables them to interact in real time. Unlike the Covid-19 will executions, electronic wills would be signed electronically, and the "original will" would be an electronic document, rather than a paper instrument. To ensure that the original electronic will is genuine and is found after the testator dies, the bill requires that the electronic will is filed with the New York Unified Court System within thirty (30) days of its execution, or else it is deemed invalid.[4]

Despite these differences, an electronic will execution would have the same requirements as a paper will execution. This ensures that paper and electronic wills are treated the same, rather than creating a two-tiered system for estate planning and will executions. It would also continue to promote the primary functions served by will execution formalities, including that the will provides permanent and reliable evidence of the testator's intent, expresses the testator's intent in a manner that can be easily interpreted by the courts and executors, and that the will was not the product of forgery, perjury, fraud, or undue influence.[5]

Some concerns that have been raised regarding the legislation are that it does not comport with the Uniform Electronic Wills Act ("UEWA") – and permits a "wet ink" executed will to be deemed an electronic will. Both of these concerns are unfounded. Unlike states that have crafted bespoke electronic wills legislation (such as Florida and Illinois), the text of the proposed legislation largely draws from the UEWA. For example, EPTL §3-6.1, §3-6.2(e)-(g), §3-6.3, §3-6.4, and §3-6.8 are virtually identical to their corresponding provisions in the UEWA. EPTL §3-6.6, which sets forth the manner in which an electronic will is executed, is identical to Section 5 of the UEWA with two changes that allow the statute to comport with existing New York law: removing the UEWA's

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[3] *See Matter of Holmgren*, 74 Misc. 3d 917 (Sur. Ct. Queens Co. 2022) ("The [Executive] Order...did not, as many wrongfully assume, replace the formal execution requirements of EPTL 3-2.1. Rather, it solely authorized the use of audio-visual technology to satisfy the 'presence' requirements contained in the statute.")

[4] The Office of Court Administration ("OCA") has been consulted regarding this bill, and has advised that it is willing and able to create a filing system for electronic wills. To enable OCA to do so, the bill would not become effective until 18 months after its passage.

[5] *See*, *e.g.*, John H. Langbein, "Substantial Compliance with the Wills Act," 88 Harv. L. Rev. 489 (1975).

language that would permit a will to be acknowledged, rather than witnessed and adding EPTL §3-6.6(2)(B)(i) and (ii), which are identical to EPTL §3-2.1(a)(1)(A) and (B), and serve to ensure that to the extent possible, electronic will executions mirror paper will executions.

The largest deviation from the UEWA is the requirement that within thirty days of its execution[6], an electronic will must be filed with the Office of Court Administration ("OCA"). The legislation further provides that if an electronic will is removed from OCA's custody, it is deemed revoked.[7] This ensures that electronic wills are found after the testator's death, eliminates confusion about what file would serve as the "original" electronic will[8], and ensures that the electronic wills offered for probate are genuine. Additionally, to emphasize the importance and solemnity of making an electronic will, the legislation adds a requirement that it contain "Caution to the Testator" language that mirrors a similar requirement in the power of attorney statute.[9]

Any concerns that the proposed legislation provides that "a paper will, manually signed by the testator in wet ink and witnessed, may qualify as an electronic will" are unfounded. Proposed EPTL §3-6.2(d) expressly defines an electronic will as one that is "executed electronically," a term that is not ambiguous and does not encompass wet ink signatures. The idea that "Section 3-6.6(a) expressly permits an 'electronic will' to be in paper format and to be manually signed and witnessed" is a misrepresentation of the legislation.

By modernizing New York's substantive law of wills, the bill would improve access to justice for the millions of New Yorkers who presently do not have a will. Electronic wills would be easier and less expensive to create and execute than a paper will and would enable New Yorkers to create an estate plan without needing to make multiple visits to an attorney's office. They also enable underserved communities to have additional access to legal help.

For the reasons set forth above, the New York State Bar Association Trust and Estates Law Section **SUPPORTS** this legislation and urges that it be signed into law. If you have any questions, or seek

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[6] The New York City Bar's Report on the Proposed Electronic Wills Act in NY (The Report)'s claim that it is unclear when an electronic will is executed (starting the 30-day clock to file the will with OCA) (¶11) is unfounded. A will is executed when a testator signs it.

[7] *See* EPTL §3-6.7(b)(2). EPTL §3-6.7(b)(1) states that an electronic will is revoked by a "a subsequent will that revokes all or part of the electronic will." In accordance with EPTL §3-6.3, this encompasses paper and electronic wills.

[8] The Report's concerns about whether the "will filed with the OCA constitutes the sole 'original' electronic will" (¶4) is misplaced. One of the rationales for requiring the electronic will to be filed with OCA is so there are no duplicate originals, as in New York, if there are multiple originals of a will and one is not offered for probate, it may be deemed that the will was revoked. *See Matter of Lewis*, 114 A.D.3d 203 (4th Dep't 2014).

[9] *See* General Obligations Law §5-1513(a). Section 5-1501B of the General Obligations Law provides that "to be valid," a power of attorney "must...substantially conform to the wording" of §5-1513(a). Notably, the statute does not set forth "what the consequences are of such a failure or who suffers those consequences."

further information please contact NYSBA's General Counsel, David Miranda, who can be reached at dmiranda@nysba.org.

Respectfully,
NYSBA's Trust and Estates Law Section