Sixty-seventh Legislative Assembly of North Dakota

HOUSE BILL NO. 1077

Introduced by

Judiciary Committee

(At the request of the Commission on Uniform State Laws)

- 1 A BILL for an Act to create and enact chapter 30.1-37 of the North Dakota Century Code,
- 2 relating to the Uniform Electronic Wills Act; and to provide for application.

3 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

- 4 **SECTION 1.** Chapter 30.1-37 of the North Dakota Century Code is created and enacted as
- 5 follows:
- 6 **30.1-37-01. Definitions.**
- As used in this chapter:
- "Electronic" means relating to technology having electrical, digital, magnetic, wireless,
 optical, electromagnetic, or similar capabilities.
- 10 <u>2.</u> "Electronic will" means a will executed electronically in compliance with subsection 1
 of section 30.1-37-04.
- 12 3. "Record" means information inscribed on a tangible medium or stored in an electronic
 13 or other medium and is retrievable in perceivable form.
- 14 4. "Sign" means, with present intent to authenticate or adopt a record to:
- 15 <u>a. Execute or adopt a tangible symbol; or</u>
- b. Affix to or logically associate with the record an electronic symbol or process.
- 17 5. "State" means a state of the United States, the District of Columbia, Puerto Rico, the
- 18 <u>United States Virgin Islands, or any territory or insular possession subject to the</u>
- jurisdiction of the United States. The term includes a federally recognized Indian tribe.
- 20 <u>6. "Will" includes a codicil and any testamentary instrument that merely appoints an</u>
- 21 <u>executor, revokes or revises another will, nominates a guardian, or expressly excludes</u>
- or limits the right of an individual or class to succeed to property of the decedent
- passing by intestate succession.

1	30.1-37-02. Law applicable to electronic will - Principles of equity.									
2	An electronic will is a will for all purposes of the law of this state. The law of this state									
3	applicable to wills and principles of equity apply to an electronic will, except as modified by this									
4	chapter.									
5	30.1-37-03. Choice of law regarding execution.									
6	<u>A w</u>	A will executed electronically but not in compliance with subsection 1 of section 30.1-37-04								
7	is an ele	is an electronic will under this chapter if executed in compliance with the law of the jurisdiction								
8	where the	where the testator is:								
9	<u>1.</u>	Physically located when the will is signed; or								
10	<u>2.</u>	Doı	Domiciled or resides when the will is signed or when the testator dies.							
11	<u>30.′</u>	0.1-37-04. Execution of electronic will.								
12	<u>1.</u>	<u>Sul</u>	oject t	o subs	section 4 of section 30.1-37-06, an electronic will must be:					
13		<u>a.</u>	a. A record that is readable as text at the time of signing as provided under							
14			subdivision b;							
15		<u>b.</u>	b. Signed by:							
16			<u>(1)</u>	The	testator; or					
17			<u>(2)</u>	<u>Anot</u>	ther individual in the testator's name, in the testator's conscious					
18				pres	ence, and by the testator's direction; and					
19		<u>C.</u>	<u>Eith</u>	er:						
20			<u>(1)</u>	<u>Sign</u>	ed by at least two individuals, each of whom signed within a reasonable					
21				<u>time</u>	after witnessing:					
22				<u>(a)</u>	The signing of the will as provided under subdivision b; or					
23				<u>(b)</u>	The testator's acknowledgment of the signature as provided under					
24					subdivision b or acknowledgment of the will; or					
25			<u>(2)</u>	<u>Ackr</u>	nowledged by the testator before a notary public or other individual					
26				<u>auth</u>	orized by law to take acknowledgments.					
27	<u>2.</u>	<u>Inte</u>	Intent of a testator that the record under subdivision a of subsection 1 be the testator's							
28		electronic will may be established by extrinsic evidence.								
29	30.1-37-05. Revocation.									
30	<u>1.</u>	1. An electronic will may revoke all or part of a previous will.								
31	<u>2.</u>	All or part of an electronic will is revoked by:								

1		<u>a.</u>	A subsequent will that revokes all or part of the electronic will expressly or by								
2			inconsistency; or								
3		<u>b.</u>	A physical act, if it is established by a preponderance of the evidence that the								
4			testator, with the intent of revoking all or part of the will, performed the act or								
5			directed another individual who performed the act in the testator's physical								
6			presence.								
7	<u>30.1</u>	-37-06. Electronic will attested and made self-proving at time of execution.									
8	<u>1.</u>	An e	An electronic will may be simultaneously executed, attested, and made self-proving by								
9		acknowledgment of the testator and affidavits of the witnesses.									
10	<u>2.</u>	The	acknowledgment and affidavits under subsection 1 must be:								
11		<u>a.</u>	Made before an officer authorized to administer oaths under law of the state in								
12			which execution occurs; and								
13		<u>b.</u>	Evidenced by the officer's certificate under official seal affixed to or logically								
14			associated with the electronic will.								
15	<u>3.</u>	<u>The</u>	The acknowledgment and affidavits under subsection 1 must be in substantially the								
16		following form:									
17		<u>s</u>	STATE OF								
18		<u>C</u>	COUNTY OF								
19			I,, the testator, sign my name to this instrument this								
20			day of, and being first sworn, declare to the undersigned								
21		<u>auth</u>	ority that I sign and execute this instrument as my electronic will and that I sign it								
22		willingly or willingly direct another to sign for me, that I execute it as my free and									
23		<u>volu</u>	ntary act for the purposes therein expressed, and that I am 18 years of age or								
24		older, of sound mind, and under no constraint or undue influence.									
25											
26			<u>Testator</u>								
27			We,, the witnesses, sign our								
28		nam	es to this instrument, and being first sworn, declare to the undersigned authority								
29		that the testator signs and executes this instrument as the testator's electronic will and									
30		that the testator signs it willingly or willingly directs another to sign for the testator, and									
31		that	each of us, in the presence and hearing of the testator, signs this electronic will as								

1	witness to the testator's signing, and that to the best of our knowledge the testator is								
2		18 years of age or old	<u>der, of sound mind, and u</u>	nder no constrai	nt or undue influence.				
3			_						
4					Witness				
5			-						
6					<u>Witness</u>				
7		Subscribed, swo	orn to, and acknowledged	before me by _	, the testator,				
8		and subscribed and s	sworn to before me by	and	<u> </u>				
9		witnesses, this	day of	<u>.</u>					
10		(SEAL)	(Signed)						
11			-						
12				(Offici	al capacity of officer)				
13	<u>4.</u>	A signature physically	or electronically affixed	to an affidavit tha	at is affixed to or				
14		logically associated w	vith an electronic will unde	er this chapter is	deemed a signature of				
15		the electronic will und	der subsection 1 of section	n 30.1-37-04.					
16	<u>30.′</u>	1-37-07. Certification of	of paper copy.						
17	An individual may create a certified paper copy of an electronic will by affirming under								
18	penalty of perjury that a paper copy of the electronic will is a complete, true, and accurate copy								
19	of the electronic will. If the electronic will is made self-proving, the certified paper copy of the will								
20	must include the self-proving affidavits.								
21	SECTION 2. APPLICATION. This Act applies to the will of a decedent who dies after								
22	July 31, 2021.								