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:

16

6 <u>30.1-37-01. Definitions.</u>

7 <u>As used in this chapter:</u>

- 8 <u>1.</u> "Electronic" means relating to technology having electrical, digital, magnetic, wireless,
 9 optical, electromagnetic, or similar capabilities.
- 10 <u>2.</u> "Electronic will" means a will executed electronically in compliance with subsection 1
 11 <u>of section 30.1-37-04.</u>
- <u>"Record" means information inscribed on a tangible medium or stored in an electronic</u>
 <u>or other medium and is retrievable in perceivable form.</u>
- 14 <u>4.</u> "Sign" means, with present intent to authenticate or adopt a record to:
- 15 <u>a.</u> Execute or adopt a tangible symbol; or
 - b. Affix to or logically associate with the record an electronic symbol or process.
- 17 <u>5.</u> "State" means a state of the United States, the District of Columbia, Puerto Rico, the
- 18 United States Virgin Islands, or any territory or insular possession subject to the
- 19 jurisdiction of the United States. The term includes a federally recognized Indian tribe.
- 20 <u>6.</u> <u>"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>

22 <u>or limits the right of an individual or class to succeed to property of the decedent</u>

23 passing by intestate succession.

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1	<u>30.1</u>	-37-	<u>02. La</u>	w ap	olicable 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	A will executed electronically but not in compliance with subsection 1 of section 30.1-37-04								
7	is an electronic will under this chapter if executed in compliance with the law of the jurisdiction								
8	where the testator is:								
9	<u>1.</u>	Physically located when the will is signed; or							
10	<u>2.</u>	Domiciled or resides when the will is signed or when the testator dies.							
11	<u>30.1</u>	-37-	04. Ex	<u>kecuti</u>	on of electronic will.				
12	<u>1.</u>	Subject to subsection 4 of section 30.1-37-06, an electronic will must be:							
13		<u>a.</u>	<u>A re</u>	cord t	nat is readable as text at the time of signing as provided under				
14			<u>subo</u>	divisio	<u>n b:</u>				
15		<u>b.</u>	<u>Sigr</u>	ned by	<u>:</u>				
16			<u>(1)</u>	The [·]	testator; or				
17			<u>(2)</u>	<u>Anot</u>	her 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>	owledged by the testator before a notary public or other individual				
26				<u>auth</u>	prized by law to take acknowledgments.				
27	<u>2.</u>	Inte	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	<u>30.1</u>	-37-	05. Re	evoca	tion.				
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:							

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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>	0.1-37-06. Electronic will attested and made self-proving at time of execution.								
8	<u>1.</u>	<u>An e</u>	electronic will may be simultaneously executed, attested, and made self-proving by							
9		<u>ackr</u>	nowledgment of the testator and affidavits of the witnesses.							
10	<u>2.</u>	<u>The</u>	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>	The	The acknowledgment and affidavits under subsection 1 must be in substantially the							
16		<u>follo</u>	wing form:							
17		STATE OF								
18		<u>C</u>								
19			I,, the testator, sign my name to this instrument this							
20			day of, and being first sworn, declare to the undersigned							
21		authority that I sign and execute this instrument as my electronic will and that I sign i								
22		willingly or willingly direct another to sign for me, that I execute it as my free and								
23		voluntary 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			Testator							
27			We,, the witnesses, sign our							
		names to this instrument, and being first sworn, declare to the undersigned authority								
28		that the testator signs and executes this instrument as the testator's electronic will and								
28 29		<u>that</u>	the testator signs and executes this instrument as the testator's electronic will and							
			the testator signs and executes this instrument as the testator's electronic will and the testator signs it willingly or willingly directs another to sign for the testator, and							

1	witness to the testator's signing, and that to the best of our knowledge the testator is							
2		18 years of age or	<u>older, of sound mind, and ι</u>	under no constraint or undue influence.				
3								
4				<u>Witness</u>				
5								
6				<u>Witness</u>				
7		Subscribed, sv	worn to, and acknowledged	d before me by, the testator,				
8		and subscribed and	d sworn to before me by	and,				
9		witnesses, this	day of	<u>.</u>				
10		<u>(SEAL)</u>	<u>(Signed)</u>					
11								
12				(Official capacity of officer)				
13	<u>4.</u>	A signature physica	ally or electronically affixed	to an affidavit that is affixed to or				
14		logically associated	with an electronic will und	ler this chapter is deemed a signature of				
15		the electronic will u	nder subsection 1 of section	on 30.1-37-04.				
16	30.1-37-07. Certification of paper copy.							
17	An individual may create a certified paper copy of an electronic will by affirming under							
18	8 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							
			FF					