

**Sixty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 5, 2021**

HOUSE BILL NO. 1077
(Judiciary Committee)
(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact chapter 30.1-37 of the North Dakota Century Code, relating to the Uniform Electronic Wills Act; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 30.1-37 of the North Dakota Century Code is created and enacted as follows:

30.1-37-01. Definitions.

As used in this chapter:

1. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
2. "Electronic will" means a will executed electronically in compliance with subsection 1 of section 30.1-37-04.
3. "Record" means information inscribed on a tangible medium or stored in an electronic or other medium and is retrievable in perceivable form.
4. "Sign" means, with present intent to authenticate or adopt a record to:
 - a. Execute or adopt a tangible symbol; or
 - b. Affix to or logically associate with the record an electronic symbol or process.
5. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.
6. "Will" includes a codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

30.1-37-02. Law applicable to electronic will - Principles of equity.

An electronic will is a will for all purposes of the law of this state. The law of this state applicable to wills and principles of equity apply to an electronic will, except as modified by this chapter.

30.1-37-03. Choice of law regarding execution.

A will executed electronically but not in compliance with subsection 1 of section 30.1-37-04 is an electronic will under this chapter if executed in compliance with the law of the jurisdiction where the testator is:

1. Physically located when the will is signed; or
2. Domiciled or resides when the will is signed or when the testator dies.

30.1-37-04. Execution of electronic will.

1. Subject to subsection 4 of section 30.1-37-06, an electronic will must be:
 - a. A record that is readable as text at the time of signing as provided under subdivision b;
 - b. Signed by:
 - (1) The testator; or
 - (2) Another individual in the testator's name, in the testator's conscious presence, and by the testator's direction; and
 - c. Either:
 - (1) Signed by at least two individuals, each of whom signed within a reasonable time after witnessing:
 - (a) The signing of the will as provided under subdivision b; or
 - (b) The testator's acknowledgment of the signature as provided under subdivision b or acknowledgment of the will; or
 - (2) Acknowledged by the testator before a notary public or other individual authorized by law to take acknowledgments.
2. Intent of a testator that the record under subdivision a of subsection 1 be the testator's electronic will may be established by extrinsic evidence.

30.1-37-05. Revocation.

1. An electronic will may revoke all or part of a previous will.
2. All or part of an electronic will is revoked by:
 - a. A subsequent will that revokes all or part of the electronic will expressly or by inconsistency; or
 - b. A physical act, if it is established by a preponderance of the evidence that the testator, with the intent of revoking all or part of the will, performed the act or directed another individual who performed the act in the testator's physical presence.

30.1-37-06. Electronic will attested and made self-proving at time of execution.

1. An electronic will may be simultaneously executed, attested, and made self-proving by acknowledgment of the testator and affidavits of the witnesses.
2. The acknowledgment and affidavits under subsection 1 must be:
 - a. Made before an officer authorized to administer oaths under law of the state in which execution occurs; and
 - b. Evidenced by the officer's certificate under official seal affixed to or logically associated with the electronic will.
3. The acknowledgment and affidavits under subsection 1 must be in substantially the following form:

STATE OF _____

COUNTY OF _____

I, _____, the testator, sign my name to this instrument this _____ day of _____, _____, and being first sworn, declare to the undersigned authority that I sign and execute this instrument as my electronic will and that I sign it willingly or willingly direct another to sign for me, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

Testator

We, _____, _____, the witnesses, sign our names to this instrument, and being first sworn, declare to the undersigned authority that the testator signs and executes this instrument as the testator's electronic will and that the testator signs it willingly or willingly directs another to sign for the testator, and that each of us, in the presence and hearing of the testator, signs this electronic will as witness to the testator's signing, and that to the best of our knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

Witness

Witness

Subscribed, sworn to, and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____ and _____, witnesses, this _____ day of _____.

(SEAL)

(Signed) _____

(Official capacity of officer)

- 4. A signature physically or electronically affixed to an affidavit that is affixed to or logically associated with an electronic will under this chapter is deemed a signature of the electronic will under subsection 1 of section 30.1-37-04.

30.1-37-07. Certification of paper copy.

An individual may create a certified paper copy of an electronic will by affirming under penalty of perjury that a paper copy of the electronic will is a complete, true, and accurate copy of the electronic will. If the electronic will is made self-proving, the certified paper copy of the will must include the self-proving affidavits.

SECTION 2. APPLICATION. This Act applies to the will of a decedent who dies after July 31, 2021.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1077.

House Vote: Yeas 92 Nays 1 Absent 1

Senate Vote: Yeas 47 Nays 0 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2021.

Approved at _____ M. on _____, 2021.

Governor

Filed in this office this _____ day of _____, 2021,

at _____ o'clock _____ M.

Secretary of State