

Sixty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2127

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 59-22 of the North Dakota Century Code, relating
2 to the Uniform Electronic Estate Planning Documents Act; and to provide for application.

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

4 **SECTION 1.** Chapter 59-22 of the North Dakota Century Code is created and enacted as
5 follows:

6 **59-22-01. (102) Definitions.**

7 As used in this chapter:

- 8 1. "Electronic" means relating to technology having electrical, digital, magnetic, wireless,
9 optical, electromagnetic, or similar capabilities.
- 10 2. "Electronic record" means a record created, generated, sent, communicated, received,
11 or stored by electronic means.
- 12 3. "Electronic signature" means an electronic symbol or process attached to or logically
13 associated with a record and executed or adopted by a person with the intent to sign
14 the record.
- 15 4. "Information" includes data, text, images, codes, computer programs, software, and
16 databases.
- 17 5. "Nontestamentary estate planning document" means a record relating to estate
18 planning which is readable as text at the time of signing and is not a will or contained
19 in a will. The term:
 - 20 a. Includes a record readable as text at the time of signing which creates, exercises,
21 modifies, releases, or revokes:
 - 22 (1) A trust instrument;
 - 23 (2) A trust power that under the terms of the trust requires a signed record;
 - 24 (3) A certification of a trust under section 59-18-13;

- 1 (4) A durable power of attorney under chapter 30.1-30;
- 2 (5) An agent's certification of the validity of a power of attorney and the agent's
- 3 authority;
- 4 (6) A power of appointment;
- 5 (7) An advance directive, including a health care power of attorney, directive to
- 6 physicians, natural death statement, living will, and medical or physician
- 7 order for life-sustaining treatment;
- 8 (8) A record directing disposition of an individual's body after death;
- 9 (9) A nomination of a guardian for the signing individual;
- 10 (10) A nomination of a guardian for a minor child or disabled adult child;
- 11 (11) A mental health treatment declaration;
- 12 (12) A disclaimer as defined under section 30.1-10-01; and
- 13 (13) Any other record intended to carry out an individual's intent regarding
- 14 property or health care while incapacitated or on death.
- 15 b. Does not include a deed of real property, or certificate of title for a motor vehicle,
- 16 watercraft, or aircraft.
- 17 6. "Person" means an individual, estate, business or nonprofit entity, government or
- 18 governmental subdivision, agency or instrumentality, or other legal entity.
- 19 7. "Power of attorney" means a record that grants authority to an agent to act in place of
- 20 the principal, even if the term is not used in the record.
- 21 8. "Record" means information:
- 22 a. Inscribed on a tangible medium; or
- 23 b. Stored in an electronic or other medium and retrievable in perceivable form.
- 24 9. "Security procedure" means a procedure to verify an electronic signature, record, or
- 25 performance is of a specific person or to detect a change or error in an electronic
- 26 record. The term includes a procedure that uses an algorithm, code, identifying word
- 27 or number, encryption, or callback or other acknowledgment procedure.
- 28 10. "Settlor" means a person, including a testator, that creates or contributes property to a
- 29 trust.
- 30 11. "Sign" means with present intent to authenticate or adopt a record to:
- 31 a. Execute or adopt a tangible symbol; or

1 b. Attach to or logically associate with the record an electronic signature.

2 12. "State" means a state of the United States, the District of Columbia, Puerto Rico, the
3 United States Virgin Islands, or other territory or possession subject to the jurisdiction
4 of the United States. The term includes a federally recognized Indian tribe.

5 13. "Terms of the trust" means:

6 a. Except as provided under subdivision b, the manifestation of the settlor's intent
7 regarding a trust's provisions as:

8 (1) Expressed in the trust instrument; or

9 (2) Established by other evidence that would be admissible in a judicial
10 proceeding.

11 b. The trust's provisions as established, determined, or amended by:

12 (1) A trustee or other person in accordance with applicable law;

13 (2) A court order; or

14 (3) A nonjudicial settlement agreement under section 59-09-11.

15 14. "Trust instrument" means an instrument executed by the settlor which contains terms
16 of the trust, including any amendments.

17 15. "Will" includes a codicil and a testamentary instrument that appoints an executor,
18 revokes or revises another will, nominates a guardian, or expressly excludes or limits
19 the right of an individual or class to succeed to property of the decedent passing by
20 intestate succession.

21 **59-22-02. (103) Construction.**

22 This chapter must be construed and applied to:

23 1. Facilitate electronic estate planning documents and signatures consistent with other
24 law; and

25 2. Be consistent with reasonable practices concerning electronic documents and
26 signatures and continued expansion of those practices.

27 **59-22-03. (201) Scope.**

28 1. Except as provided in subsection 2, this chapter applies to an electronic
29 nontestamentary estate planning document and an electronic signature on a
30 nontestamentary estate planning document.

2. This chapter does not apply to a nontestamentary estate planning document if the document precludes use of an electronic record or electronic signature.

3. This chapter does not affect the validity of an electronic record or electronic signature that is valid under chapter 30.1-37 or 9-16.

59-22-04. (202) Principles of law and equity.

The law of this state and principles of equity applicable to a nontestamentary estate planning document apply to an electronic nontestamentary estate planning document except as modified by this chapter.

59-22-05. (203) Use of electronic record or signature not required.

1. This chapter does not require a nontestamentary estate planning document or signature on a nontestamentary estate planning document to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

2. A person is not required to have a nontestamentary estate planning document in electronic form or signed electronically even if the person previously created or signed a nontestamentary estate planning document by electronic means.

3. A person may not waive the provisions of this section.

59-22-06. (204) Recognition of electronic nontestamentary estate planning document and electronic signature.

1. A nontestamentary estate planning document or a signature on a nontestamentary estate planning document may not be denied legal effect or enforceability because the document or signature is in electronic form.

2. If any other provision of law requires a nontestamentary estate planning document to be in writing, an electronic record of the document satisfies the requirement.

3. If any other provision of law requires a signature on a nontestamentary estate planning document, an electronic signature satisfies the requirement.

59-22-07. (205) Attribution and effect of electronic record and electronic signature.

1. An electronic nontestamentary estate planning document or electronic signature on an electronic nontestamentary estate planning document is attributable to a person if it was the act of the person. The act of the person may be shown in any manner,

1 including by showing the efficacy of a security procedure applied to determine the
2 person to which the electronic record or electronic signature was attributable.

- 3 2. The effect of attribution to a person under subsection 1 is determined from the context
4 and surrounding circumstances at the time the document or signature was created,
5 executed, or adopted, and as provided by law.

6 **59-22-08. (206) Notarization and acknowledgment.**

7 If any other provision of law requires a signature or record to be notarized, acknowledged,
8 verified, or made under oath, the requirement is satisfied with respect to an electronic
9 nontestamentary estate planning document if an individual authorized to perform the
10 notarization, acknowledgment, verification, or oath attaches or logically associates the
11 individual's electronic signature on the document together with all other information required to
12 be included under law.

13 **59-22-09. (207) Witnessing and attestation.**

- 14 1. If any other provision of law bases the validity of a nontestamentary estate planning
15 document on whether the document is signed, witnessed, or attested by another
16 individual, the signature, witnessing, or attestation of that individual may be electronic.
17 2. As used in this subsection, "electronic presence" means two or more individuals in
18 different locations are able to communicate in real time to the same extent as if the
19 individuals were physically present in the same location. If any other provision of law
20 bases the validity of a nontestamentary estate planning document on whether the
21 document is signed, witnessed, or attested by another individual in the presence of the
22 individual signing the document, the presence requirement is satisfied if the individuals
23 are in each other's electronic presence.

24 **59-22-10. (208) Retention of electronic record - Original.**

- 25 1. Except as provided in subsection 2, if any other provision of law requires an electronic
26 nontestamentary estate planning document to be retained, transmitted, copied, or
27 filed, the requirement is satisfied by retaining, transmitting, copying, or filing an
28 electronic record that:
29 a. Accurately reflects the information in the document after the document was first
30 generated in final form as an electronic record or under section 59-22-11; and
31 b. Remains accessible to the extent required by the other law.

2. A requirement under subsection 1 to retain a record does not apply to information the purpose of which is to enable the record to be sent, communicated, or received.

3. A person may satisfy subsection 1 by using the services of another person.

4. If any other provision of law requires a nontestamentary estate planning document to be presented or retained in its original form, or provides consequences if a nontestamentary estate planning document is not presented or retained in its original form, an electronic record retained in accordance with subsection 1 satisfies the other law.

5. This section does not preclude a governmental agency from specifying requirements for the retention of a record subject to the agency's jurisdiction in addition to those in this section.

6. As used in this section, "governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of the state or of a county, municipality, or other political subdivision of the state.

59-22-11. (209) Certification of paper copy.

An individual may create a certified paper copy of an electronic nontestamentary estate planning document by affirming under penalty of perjury that the paper copy is a complete and accurate copy of the document.

59-22-12. (210) Admissibility in evidence.

Evidence relating to an electronic nontestamentary estate planning document or an electronic signature on the document may not be excluded in a proceeding solely because it is in electronic form.

59-22-13. (401) Uniformity of application and construction.

In applying and construing this chapter, a court shall consider the promotion of uniformity of the law among the states that enact it.

59-22-14. (402) Relation to Electronic Signatures in Global and National Commerce

Act.

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, [15 U.S.C. Section 7001 et seq.] but does not modify, limit, or

1 supersede 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices
2 described in 15 U.S.C. Section 7003(b).

3 **SECTION 2. APPLICATION.** This Act applies to an electronic nontestamentary estate
4 planning document created, signed, generated, sent, communicated, received, or stored before,
5 on, or after July 31, 2025.