



**Statement of Bradley Myers, Randy H. Lee Professor of Law at the
University of North Dakota and Uniform Law Commissioner,
in support of SB 2127 to adopt the Uniform Electronic Estate Planning Documents Act.**

Chair Klemin and Members of the Committee:

I am Bradley Myers, and I have the honor of serving as one of North Dakota's Commissioners to the National Conference of Commissioners on Uniform State Laws. I am also on the faculty of the University of North Dakota School of Law. I am not representing the School of Law today and nothing I say should be considered to be on behalf of the School of Law or the University of North Dakota.

Thank you for considering SB 2127, a bill to adopt the Uniform Electronic Estate Planning Documents Act. This act fills a gap in the law that creates uncertainty as to whether North Dakotans can complete certain estate planning documents online in the same manner that is already authorized by statute for electronic banking and commercial transactions.

The UEEPDA is based on a successful model. The Uniform Electronic Transactions Act (UETA), which the Uniform Law Commission approved in 1999 and North Dakota adopted in 2001, authorizes the use of electronic contracts and signatures in commerce. This uniform state law helped facilitate the growth of internet-based commerce by ensuring the enforceability of electronically executed transactions.

UETA applies only to bilateral agreements between two parties who agree to conduct business electronically. Estate planning documents, such as trusts and powers of attorney, are executed by a single individual for the purpose of carrying out the individual's wishes regarding property or health care at the time of the individual's death or disability. Because these unilateral documents do not fall within the scope of UETA, their validity could potentially be challenged. This uncertain legal status causes some estate planners and fiduciaries to require paper and ink documents even for clients who preferred to conduct business electronically.

The UEEPDA corrects this anomaly by providing UETA-like rules for electronic estate plans:

1. The use of electronic estate planning documents and signatures is optional.
2. An estate-planning document may not be denied legal effect solely because it is in electronic form or electronically signed.
3. An electronic signature is attributable to a person if it was created by the act of the person, which can be shown in any manner, including by showing the efficacy of a security procedure applied.

The UEEPDA applies only to non-testamentary documents. Testamentary documents, such as an individual's will, are subject to special rules covered in the Uniform Electronic Wills Act, adopted in ND in 2021. UEEPDA was drafted to complement that act.

I have uploaded for the committee's use: 1) the complete version of the act as adopted by the ULC, with comments; 2) the ULC's official summary of the UEEPDA; and 3) a ULC produced document on "Why your State should adopt the UEEPDA."