

2021 HOUSE JUDICIARY

HB 1077

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

HB 1077

1/19/2021

Relating to the Uniform Electronic Wills Act, and to provide for applications.

Chairman Klemin called the hearing to order at 8:30 AM.

Representatives	Attendance
Representative Lawrence R. Klemin	P
Representative Karen Karls	P
Representative Rick Becker	P
Representative Ruth Buffalo	P
Representative Cole Christensen	P
Representative Claire Cory	P
Representative Karla Rose Hanson	P
Representative Terry B. Jones	P
Representative Jeffery J. Magrum	P
Representative Bob Paulson	P
Representative Gary Paur	P
Representative Shannon Roers Jones	P
Representative Bernie Satrom	P
Representative Steve Vetter	P

Discussion Topics:

- Online wills
- Paper wills validity

Bradly Myers. National Conference of Commissioners: Introduced the bill. Testimony # 1395 & 1396. 8:30

Tony Weiler, Uniform Law Attorney: Verbal testimony in favor 8:40

Opposition: None

Neutral: None

Do Pass Motion Made by **Rep. Paur**; Seconded by **Rep. Roers Jones**

Roll Call Vote:

Representatives	Vote
Chairman Klemin	Y
Vice Chairman Karls	Y
Rep Becker	Y
Rep. Christensen	A
Rep. Cory	A
Rep T. Jones	Y
Rep Magrum	Y
Rep Paulson	Y
Rep Paur	Y
Rep Roers Jones	Y
Rep B. Satrom	Y
Rep Vetter	Y
Rep Buffalo	Y
Rep K. Hanson	Y

Motion Passed 12-0-2

Bill carrier: **Rep. Paur**

Additional Written Testimony: Carol Two-Eagle: CVO, Indian Maid Products, Inc. #1514

Chairman Klemin adjourned at 8:43

DeLores D. Shimek
Committee Clerk by Donna Whetham

REPORT OF STANDING COMMITTEE

HB 1077: Judiciary Committee (Rep. Klemin, Chairman) recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1077 was placed on the Eleventh order on the calendar.



**Statement of Bradley Myers, Randy H. Lee Professor of Law at the
University of North Dakota and Uniform Law Commissioner,
in support of HB 1077 to adopt the Uniform Electronic Wills 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 HB 1077, a bill to adopt the Uniform Electronic Wills Act. This act is a modernization of the law of wills and will allow North Dakotans to create and execute wills online.

As a general matter, North Dakota law has recognized most types of electronic documents for many years. Wills are the exception. Traditionally a will was only recognized as valid if it was written on a tangible material (usually paper), signed by the testator, and also signed by two witnesses. Since 2009, North Dakota has also recognized wills acknowledged by a licensed notary, instead of witnesses. These rules help a probate court determine whether a will is genuine if someone challenges its validity. Because the testator is deceased when the court must determine validity, the witnesses or the notary can verify that the testator was of sound mind, and signed the document willingly, without coercion or undue influence.

The Uniform Electronic Wills Act preserves these important safeguards, while allowing the use of modern technology. Under the act, the testator can create a will using a computer, and store it as a digital file. The testator must still sign the document electronically, and it still must be acknowledged by two witnesses or a notary.

This new law will work seamlessly with North Dakota's remote notarization law, enacted in 2019. That statute allows a notary to acknowledge documents online, using electronic procedures to verify the signor's identity, and using videoconferencing software to create an audio-visual record of the execution ceremony. Online notaries can create secure, tamper-evident files that cannot be altered after execution, unlike paper wills which are more susceptible to forgery and fraudulent replacement of pages.

The act also provides for self-proving electronic wills. These wills include sworn affidavits by the witnesses or notary confirming that the testator intended the document to be his or her last will and testament, that the testator was of sound mind when the will was signed, and that the testator signed

The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.

willingly, without coercion or undue influence. This simplifies the process of admitting a will to probate in uncontested cases.

The ongoing pandemic has created a greater need for online services, including estate planning services. The Uniform Electronic Wills Act will allow North Dakota attorneys to serve their clients remotely, without the need for an in-person meeting to sign documents. The act is drafted using language that should not need updating to deal with future advances in technology.

I would like to point out two differences between HB 1077 and the UEWA adopted by the Uniform Law Commission. First, the bill does not contain the optional “harmless error” provision. This provision would allow a court to treat an electronic will that was not properly executed as one that was properly executed if the court determined by clear and convincing evidence that the testator intended the document to be his or her will. A similar provision is part of the Uniform Probate Code as adopted by the Uniform Law Commission. When the legislature considered the harmless error provision as part of its consideration of the Uniform Probate Code, it decided not to adopt the harmless error provision. One of the goals of the UEWA is to treat electronic wills in the same way as all other wills. A harmless error provision, if adopted, should apply to both electronic and non-electronic wills.

The second difference concerns the question of whether witnesses must be physically present when the testator signs or acknowledges a will or whether they may be electronically present. UEWA as adopted by the Uniform Law provides language that specifically provides whether a witness can do so electronically. Again, because the Uniform Probate Code as adopted in North Dakota does not similarly provide guidance for witnesses for non-electronic wills, the language regarding physical and/or electronic presence is omitted in HB 1077 to maintain consistency under North Dakota law. I note that North Dakota’s Uniform Probate Code does not expressly prohibit witnesses from doing so remotely, but a court could interpret the current ambiguous language that way.

In summary, HB 1077 will update the law of North Dakota with a statute more suitable for the 21st century. The law will allow North Dakotans to create secure wills online, using the same technology that is already used to execute contracts, deeds, and other legal documents. I thank you for your consideration of this act, and I welcome any questions from the committee.



WHY YOUR STATE SHOULD ADOPT THE UNIFORM ELECTRONIC WILLS ACT

Under traditional state laws, a person's last will and testament is only valid if written on a tangible material (usually paper), signed by the testator, and signed by two witnesses. These traditional execution requirements prevent courts from recognizing and enforcing the terms of electronic wills, an anomaly in the internet age when electronic legal documents and signatures are common.

- ***The Uniform Electronic Wills Act modernizes the law.*** Under the Uniform E-Wills Act, a state's probate courts will recognize a person's electronic will if it is executed in compliance with the law and the court determines the will is valid.
- ***The Uniform Electronic Wills Act will encourage more people to make a will.*** Fewer than half of Americans make a will, and too many of those who do never sign it. The Uniform E-Wills Act will encourage will completion by eliminating the need for an in-person meeting to sign the documents. It will also allow qualified professionals to offer online estate planning services to persons who might not otherwise make a plan.
- ***The Uniform Electronic Wills Act is fair and impartial.*** The Uniform E-Wills Act is technology-neutral, promoting competition and consumer choice by allowing any qualified person or company to offer online estate planning. It simply modernizes and adapts existing Wills Act requirements, without prescribing the use of specific technologies. The law will not need amendments to accommodate future technological advances.
- ***The Uniform Electronic Wills Act solves interstate recognition problems.*** Consider the following example based on actual conflicting state laws: State A allows residents of *other* states to make a will online using a company based in State A. State B passes a law invalidating wills made online under the law of another state. If a resident of State B makes a will online under the law of State A and later dies in State B, the resident's estate plan will be deemed invalid. The Uniform E-Wills Act provides a reasonable, reciprocal rule to solve the problem: States adopting the Uniform E-Wills Act will recognize a will created under the law of another state if the testator was either (1) physically located in, or (2) a resident of, the other state at the time the will was signed.

For further information about the Uniform Electronic Wills Act, please contact ULC Chief Counsel Benjamin Orzeske at (312) 450-6621 or borzeske@uniformlaws.org.

<< TESTIMONY ON HB 1077 >>

Carel Two-Eagle, PK, PB
CVO, Indian Maid Products, Incorporated

Good morning Chairman Klemin and members of the House Judiciary Committee. For the record, my name is Carel Two-Eagle.

I have been in business most of my life. This means I am not like the general run of citizens, in that I have used attorneys many times throughout my life for ordinary life transactions, such as wills. I have had an attorney of record for most of that time.

Being in business, I have come to know the importance of a will. I am much in favor of this bill, partly because of the convenience it brings, especially to people like me, who are physically impaired. Being able to make a valid will electronically promotes our independence, which is a most important aspect of our lives.

I have been named Executor for several people's wills – some of whom had not considered making a will until it was brought to their attention that they actually had property they wanted to insure would go to specific beneficiaries, and not to the state or whoever got to it first.

When one of my grandmothers went to the Spirit world, I had gotten her to make a will only weeks before she went on. We kept it quiet, because there were relatives who had already made plans for her property – which was not much, but it was hers, and she wanted it to go where she wanted it to, not where the greedy and self-centered planned. The reality of this will made for quite an uproar for the small dollar value involved, but money was not the point.. Sentimental value was. To the Lakota way of thinking, that alone made having a will a desirable thing.

I know this bill is likely to pass without opposition, but I still wanted to stand in favor of it, if for no other reason than to encourage those who would not otherwise make a will to do so. If they value something, others almost certainly do, too.

Thank you for hearing me in a good way now. I am always available to answer any questions you may have.

2021 SENATE JUDICIARY

HB 1077

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1077
2/16/2021

A BILL for 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.
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Hearing called to order all Senators Present: **Myrdal, Luick, Dwyer, Bakke, Fors, Heitkamp, Larson.** [8:32]

Discussion Topics:

- Uniformity amongst United State Laws
- Systems to be implemented for electronic wills

Bradley Myers, Uniform State Laws Commissionaire provided testimony in favor #6618 [8:33]

Senator Luick Moved a DO PASS Recommendation [8:38]

Senator Myrdal Seconded the motion [8:38]

Vote passed 7-0-0

Senator Bakke carried

DO PASS ON HB 1077	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Hearing Adjourned [8:40]

Jamal Omar, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1077: Judiciary Committee (Sen. Larson, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1077 was placed on the Fourteenth order on the calendar.



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University of North Dakota and Uniform Law Commissioner,
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Chair Larson and Members of the Committee:

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