

2025 SENATE JUDICIARY

SB 2127

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

SB 2127
1/15/2025

A BILL for an Act to create and enact chapter 59-22 of the North Dakota Century Code, relating to the Uniform Electronic Estate Planning Documents Act; and to provide for application.

11:02 a.m. Chair Larson opened the hearing.

Members Present: Chair Larson, Vice-Chair Paulson, Senators Braunberger, Castaneda, Cory, Luick, Myrdal.

Discussion Topics:

- Completing Documents Online
- Electronic Signatures
- Security

11:03 a.m. Bradley Myers, Commissioner for Uniform Law Commission, testified in favor and submitted testimony #28964, #28965, #28966, #28967.

11:07 a.m. Rick Clayburgh, President and CEO, ND Banker's Association , testified in favor and submitted testimony #29144.

11:10 a.m. Lise Kruse, Commissioner for Department of Financial Institutions, testified in favor.

11:13 a.m. Chair Larson closed the hearing.

11:13 a.m. Senator Myrdal moved a Do Pass.

11:13 a.m. Senator Luick seconded the motion.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Ryan Braunberger	Y
Senator Jose L. Castaneda	Y
Senator Claire Cory	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion Passed 7-0-0.

Senator Cory will carry the bill.

Additional Written Testimony:

Cody Barbo, CEO and co-founder of Trust & Will , submitted testimony in favor #28801.

11:15 a.m. Chair Larson closed the hearing.

Kendra McCann, Committee Clerk

REPORT OF STANDING COMMITTEE
SB 2127 ([25.0258.01000](#))

Judiciary Committee (Sen. Larson, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2127 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.



January 15, 2025

Honorable Diane Larson
Chair, Senate Judiciary Committee
Peace Garden Room
600 East Boulevard Avenue
Bismarck, ND 58505

RE: Senate Bill 2127 - Uniform Electronic Estate Planning Documents Act (Judiciary Committee)

My name is Cody Barbo, and I am the CEO and co-founder of Trust & Will, a company founded in 2017 with a mission to modernize and democratize the estate planning process. Trust & Will serves families across the nation, including those in North Dakota. Our platform is particularly valuable for individuals in rural areas and legal deserts, where access to estate planning attorneys is limited. By offering accessible, affordable, and user-friendly solutions, we empower North Dakota residents to take control of their futures and protect their loved ones.

I am writing to express my strong support for Senate Bill 2127, the Uniform Estate Planning Documents Act (UEEPDA). This forward-thinking legislation explicitly authorizes the use of electronic documents and electronic signatures for non-testamentary estate planning documents, including trusts, health care directives, durable powers of attorney, and more. Senate Bill 2127 addresses a critical gap in North Dakota's existing laws. It represents the logical next step following the state's adoption of the Uniform Electronic Wills Act in 2021, which enables the electronic execution of wills.

The Uniform Law Commission adopted UEEPDA in July 2022, and it has already been enacted in four states—Oklahoma, Colorado, Washington, and Illinois. The legislation is currently pending in Missouri and was introduced in Texas, signaling growing national recognition of the need for modernization in estate planning.

Senate Bill 2127 simplifies and streamlines the estate planning process by increasing accessibility for North Dakotans, especially those in rural and underserved areas. Just as North Dakotans can conduct banking transactions or designate beneficiaries online, they should also be able to appoint an agent under a power of attorney or create a trust with the same convenience and security. This legislation ensures that modern-day technology meets the evolving needs of North Dakotans.

Importantly, Senate Bill 2127 also addresses a pressing issue: that only 1/3 of Americans today have an estate plan. Without access to this critical service, families face unnecessary legal and financial hardships, and probate courts are burdened with avoidable guardianship proceedings. By enabling the creation and execution of these documents online, the bill will reduce these challenges, save families



and the state time and money, and ensure North Dakotan's wishes are fulfilled while easing the workload on the courts.

Senate Bill 2127 is a practical, incremental step toward modernizing estate planning in North Dakota. It will ensure that residents have greater access to the tools they need to protect themselves and their families.

I strongly urge the Committee to support Senate Bill 2127. Thank you for your thoughtful consideration of this essential legislation.

Sincerely,

A handwritten signature in black ink that reads "Cody Barbo". The signature is written in a cursive style. A small, light blue rectangular stamp is visible over the middle of the signature.

Cody Barbo
CEO & Co-Founder, Trust & Will

cc: Vice-Chair, Bob Paulson
Senator Ryan Braunberger
Senator Jose L. Castaneda
Senator Claire Cory
Senator Larry Luick
Senator Janne Myrdal
Chief Information Officer, Corey Mock

Electronic Record of Contracts

This document was generated as a record of certain contracts created, accepted and stored electronically.



Summary of Contracts

This document contains the following contracts.

Title	ID
Other (Senate Judiciary Committee and Trust & Will)	16b51714-43a4-4bca-ab62-7c0f2095624f

Contract signed by:

Cody Barbo		Signer ID:	e0dbbd5e-d855-4de5-a650-0a12453410d2
		Email:	cody@trustandwill.com
Date / Time:	Jan 13, 2025 at 4:17 PM EST		
IP Address:	104.14.119.80		
User Agent:	Mozilla/5.0 (iPhone; CPU iPhone OS 18_2_1 like Mac OS X) AppleWebKit/605.1.15 (KHTML, like Gecko) Version/18.2 Mobile/15E148 Safari/604.1		



Uniform Law Commission
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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THE UNIFORM ELECTRONIC ESTATE PLANNING DOCUMENTS ACT

- A Summary -

The Uniform Electronic Estate Planning Documents Act (UEEPDA) expressly authorizes the use of electronic documents and electronic signatures for common estate planning documents. The act fills a gap in the law that created uncertainty as to whether some electronic estate planning documents were valid.

The UEEPDA is based on a successful model. The Uniform Electronic Transactions Act (UETA), which the Uniform Law Commission approved in 1999 and since adopted in 49 states, 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. However, 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 caused estate planners 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. UEEPDA was drafted to complement that act, which can be inserted as Article 3 of UEEPDA to provide states with a comprehensive set of rules for both testamentary and non-testamentary electronic estate planning documents.

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



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**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 Larson 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."

Uniform Electronic Estate Planning Documents Act

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-THIRTY-FIRST YEAR
PHILADELPHIA, PENNSYLVANIA
JULY 8–13, 2022



WITH PREFATORY NOTE AND COMMENTS

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By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

September 28, 2022

ABOUT ULC

The **Uniform Law Commission** (ULC), also known as National Conference of Commissioners on Uniform State Laws (NCCUSL), now in its 131st year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

- ULC strengthens the federal system by providing rules and procedures that are consistent from state to state but that also reflect the diverse experience of the states.
- ULC statutes are representative of state experience because the organization is made up of representatives from each state, appointed by state government.
- ULC keeps state law up to date by addressing important and timely legal issues.
- ULC's efforts reduce the need for individuals and businesses to deal with different laws as they move and do business in different states.
- ULC's work facilitates economic development and provides a legal platform for foreign entities to deal with U.S. citizens and businesses.
- Uniform Law Commissioners donate thousands of hours of their time and legal and drafting expertise every year as a public service and receive no salary or compensation for their work.
- ULC's deliberative and uniquely open drafting process draws on the expertise of commissioners, but also utilizes input from legal experts, and advisors and observers representing the views of other legal organizations or interests that will be subject to the proposed laws.
- ULC is a state-supported organization that represents true value for the states, providing services that most states could not otherwise afford or duplicate.

Uniform Electronic Estate Planning Documents Act

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

Suzanne B. Walsh	Connecticut, <i>Chair</i>
Mary Ackerly	Connecticut
Turney P. Berry	Kentucky
James W. Dodge	Illinois
David M. English	Missouri
Marc S. Feinstein	South Dakota
Jacqueline T. Lenmark	Montana
Donald E. Mielke	Colorado
Bradley Myers	North Dakota
David G. Nixon	Arkansas
Robert H. Sitkoff	Massachusetts
Susan D. Snyder	Illinois
Dan Robbins	California, <i>President</i>
Nora Winkelman	Pennsylvania, <i>Division Chair</i>

Other Participants

Gerry W. Beyer	Texas, <i>Reporter</i>
Benjamin K. Sanchez	Texas, <i>American Bar Association Advisor</i>
John T. Rogers	California, <i>American Bar Association Section Advisor</i>
Nathaniel Sterling	California, <i>Style Liaison</i>
Tim Schnabel	Illinois, <i>Executive Director</i>

Copies of this act may be obtained from:

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Uniform Electronic Estate Planning Documents Act

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Electronic Estate Planning Documents Act

Prefatory Note

Times are changing. Reliance on traditional paper documents is waning. Many areas of the law have already embraced the transition from written to electronic documents which are electronically signed. For example, virtually all states have enacted the Uniform Electronic Transactions Act (UETA) and the electronic filing of pleadings and appellate briefs is widely accepted.

Left out of this transition were non-transactional documents relating to estate planning which hung on to the requirement of paper documents with actual pen-to-paper (wet) signatures. Recently, however, this trend has reversed with at least ten states embracing electronic wills either through the adoption of the Uniform Electronic Wills Act or through their own unique statutes. Regrettably, other estate planning documents have been left behind in this transition. Why is this?

A primary reason is the failure of state laws to expressly authorize these documents to be in electronic form and electronically signed. For example, UETA provides that when both parties to a transaction agree, a record or signature cannot be “denied legal effect or enforceability solely because it is in electronic form.” UETA § 7(a). However, UETA does not expressly authorize the electronic signing of estate planning documents. UETA § 3(a) limits UETA’s application to “transaction[s],” defined in UETA § 2(16) as “actions occurring *between two or more persons* relating to the conduct of business, commercial, or governmental affairs.” (emphasis added). Accordingly, unilateral documents such as trusts and powers of attorney are not directly within UETA’s scope. This conclusion is bolstered by Comment 1 to UETA § 3 which states:

The scope of this Act is inherently limited by the fact that it only applies to transactions related to business, commercial (including consumer) and governmental matters. Consequently, transactions with no relation to business, commercial or governmental transactions would not be subject to this Act. Unilaterally generated electronic records and signatures which are not part of a transaction also are not covered by this Act.

UETA does not “prohibit” the electronic signing of estate planning documents. However, its failure to include them within its scope leaves such electronically signed documents vulnerable to attack. As a result, the underlying state laws governing estate planning documents must be amended. Absent such amendment, parties to unilateral estate planning documents could not be certain that electronically signed originals would be valid.

The Uniform Electronic Wills Act (2019) (UEWA) solves this problem with respect to testamentary documents such as wills, codicils, and testamentary trusts. The Uniform Electronic Estate Planning Documents Act (UEEPDA) solves this problem for all other estate planning documents such as powers of attorney and trusts. For states that have yet to adopt the UEWA or their own electronic will statute, Article 3 of the UEPPDA provides the state with the opportunity to adopt the UEWA.

UEEPDA is designed to authorize estate planning documents to be in electronic form and electronically signed. There is no intent to change the requirements for the validity of these documents imposed by state law in any other manner. UEEPDA is modeled after UETA so that it will cleanly interface with existing laws.

Uniform Electronic Estate Planning Documents Act

[Article] 1

General Provisions and Definitions

Section 101. Title

This [act] may be cited as the Uniform Electronic Estate Planning Documents Act.

Section 102. Definitions

In this [act]:

(1) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) “Electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means.

(3) “Electronic signature” means an electronic symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(4) “Information” includes data, text, images, codes, computer programs, software, and databases.

(5) “Non-testamentary estate planning document” means a record relating to estate planning that is readable as text at the time of signing and is not a will or contained in a will. The term:

(A) includes a record readable as text at the time of signing that creates, exercises, modifies, releases, or revokes:

(i) a trust instrument;

(ii) a trust power that under the terms of the trust requires a signed

record;

(iii) a certification of a trust under [cite to Uniform Trust Code Section 1013];

(iv) a power of attorney that is durable under [cite to Uniform Power of Attorney Act];

(v) an agent's certification under [cite to Uniform Power of Attorney Act Section 302] of the validity of a power of attorney and the agent's authority;

(vi) a power of appointment;

(vii) an advance directive, including a [health-care power of attorney], directive to physicians, natural death statement, living will, and medical or physician order for life-sustaining treatment;

(viii) a record directing disposition of an individual's body after death;

(ix) a nomination of a guardian for the signing individual;

(x) a nomination of a guardian for a minor child or disabled adult child;

(xi) a mental health treatment declaration;

(xii) a community property survivorship agreement;

(xiii) a disclaimer under [cite to Uniform Disclaimer of Property Interests Act Section 2(3)]; and

(xiv) any other record intended to carry out an individual's intent regarding property or health care while incapacitated or on death; and

(B) does not include a deed of real property[,], or] certificate of title for a

motor vehicle, watercraft, or aircraft[, or [list other documents the state intends to exclude from Article 2]].

(6) “Person” means an individual, estate, business or nonprofit entity, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(7) “Power of attorney” means a record that grants authority to an agent to act in place of the principal, even if the term is not used in the record.

(8) “Record” means information:

(A) inscribed on a tangible medium; or

(B) stored in an electronic or other medium and retrievable in perceivable form.

(9) “Security procedure” means a procedure to verify that an electronic signature, record, or performance is that of a specific person or to detect a change or error in an electronic record. The term includes a procedure that uses an algorithm, code, identifying word or number, encryption, or callback or other acknowledgment procedure.

(10) “Settlor” means a person, including a testator, that creates or contributes property to a trust.

(11) “Sign” means, with present intent to authenticate or adopt a record:

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic signature.

(12) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or other territory or possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

(13) “Terms of a trust” means:

(A) except as provided in subparagraph (B), the manifestation of the settlor's intent regarding a trust's provisions as:

- (i) expressed in the trust instrument; or
- (ii) established by other evidence that would be admissible in a judicial proceeding; or

(B) the trust's provisions as established, determined, or amended by:

- (i) a trustee or other person in accordance with applicable law; [or]
- (ii) a court order[; or
- (iii) a nonjudicial settlement agreement under [cite to Uniform Trust Code Section 111]].

(14) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments.

(15) "Will" includes a codicil and a 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.

Legislative Note: *In paragraph (5), the definition of "non-testamentary estate planning document" may be expanded or contracted to conform with the state's substantive, administrative, or regulatory law or practices. A signature on a non-testamentary estate planning document and on a document excluded from the definition may still be effective under other state law. Likewise, an audio or audio-visual record still may be effective under other state law. This act is designed to validate a signature that is in electronic form when other state law has not addressed the issue.*

In paragraph (5), a state should conform the name of the documents to match other state law. For example, in subparagraph (A)(vii), a state that uses the term "medical power of attorney", "health-care proxy", or other term should revise the bracketed text accordingly.

In paragraph (5), if a state does not authorize a particular non-testamentary estate planning document, that document should be omitted from the enumerated list. For example, a state following a common-law marital property system would delete subparagraph (A)(xii) referring

to a community property survivorship agreement.

Comment

The definition of “electronic signature” is designed to exclude authentication via verbal or video methods.

Paragraph (5) requires the non-testamentary estate planning document to be readable as text such as an Adobe pdf file or a Word docx file; audio and audio-video records are not included. However, other state law that authorizes audio and audio-video non-testamentary estate planning documents is not impacted by this act and thus non-textual records authorized by other state law are still effective if they comply with the applicable state law.

The definition of “sign” is designed to exclude authentication via verbal or video methods.

Section 103. Construction

This [act] must be construed and applied to:

(1) facilitate electronic estate planning documents and signatures consistent with other law; and

(2) be consistent with reasonable practices concerning electronic documents and signatures and continued expansion of those practices.

Comment

This section is based on the Uniform Electronic Transactions Act Section 6.

[Article] 2

Electronic Non-Testamentary Estate Planning Documents

Section 201. Scope

(a) Except as provided in subsection (b), this [article] applies to an electronic non-testamentary estate planning document and an electronic signature on a non-testamentary estate planning document.

(b) This [article] does not apply to a non-testamentary estate planning document if the document precludes use of an electronic record or electronic signature.

(c) This [article] does not affect the validity of an electronic record or electronic signature that is valid under:

(1) [cite to Uniform Electronic Transactions Act]; [or]

(2) [[Article] 3] [cite to other state law governing creation and execution of an electronic will, codicil, or testamentary trust]; or

(3) [cite to other state law relating to non-testamentary estate planning documents the state excludes from this [article]]].

Comment

This section makes certain that the scope of this act is restricted to validating electronic documents and signatures and is not intended to impact the validity of electronic signatures already authorized under other state law. If an electronic non-testamentary estate planning document, or a signature on such a document, is granted legal recognition by UETA, this act does not limit the legal recognition of the document or signature, but if the document or signature is not granted legal recognition by UETA, it will be granted legal recognition by this act.

Section 202. Principles of Law and Equity

The law of this state and principles of equity applicable to a non-testamentary estate planning document apply to an electronic non-testamentary estate planning document except as modified by this [article].

Comment

This section makes it clear that the act supplants, but does not negate, other state law requirements that must be satisfied to validate a non-testamentary estate planning document.

Section 203. Use of Electronic Record or Signature Not Required

(a) This [article] does not require a non-testamentary estate planning document or signature on a non-testamentary estate planning document to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(b) A person is not required to have a non-testamentary estate planning document in electronic form or signed electronically even if the person previously created or signed a non-testamentary estate planning document by electronic means.

(c) A person may not waive the provisions of this section.

Comment

This section is based on the Uniform Electronic Transactions Act Section 5.

In subsection (b), the term “person” rather than “individual” is used because a trustee may be a corporation or other legal entity. Accordingly, “person” is appropriate as it encompasses these entities.

Subsection (c) makes clear that a person cannot waive the right to require future non-testamentary estate planning documents to be in physical form and signed with a wet signature.

Section 204. Recognition of Electronic Non-Testamentary Estate Planning

Document and Electronic Signature

(a) A non-testamentary estate planning document or a signature on a non-testamentary estate planning document may not be denied legal effect or enforceability solely because it is in electronic form.

(b) If other law of this state requires a non-testamentary estate planning document to be in writing, an electronic record of the document satisfies the requirement.

(c) If other law of this state requires a signature on a non-testamentary estate planning document, an electronic signature satisfies the requirement.

Comment

This section is based on the Uniform Electronic Transactions Act Section 7.

Section 205. Attribution and Effect of Electronic Record and Electronic Signature

(a) An electronic non-testamentary estate planning document or electronic signature on an electronic non-testamentary 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, including by showing the efficacy of a security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of attribution to a person under subsection (a) of a document or signature is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption and as provided by other law.

Comment

This section is based on the Uniform Electronic Transactions Act Section 9.

Section 206. Notarization and Acknowledgment

If other law of this state requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied with respect to an electronic non-testamentary estate planning document if an individual authorized to perform the notarization, acknowledgment, verification, or oath attaches or logically associates the individual's electronic signature on the document together with all other information required to be included under the other law.

Comment

This act does not address whether the notarization of electronic estate planning documents must be done in the physical presence of the signer or whether an electronic (remote) presence is sufficient. These are matters for state substantive law to address such as by the enactment of the Revised Uniform Law on Notarial Acts.

Section 207. Witnessing and Attestation

[(a)] If other law of this state bases the validity of a non-testamentary estate planning document on whether it is signed, witnessed, or attested by another individual, the signature, witnessing, or attestation of that individual may be electronic.

[(b)] In this subsection, "electronic presence" means that two or more individuals in

different locations are able to communicate in real time to the same extent as if the individuals were physically present in the same location. If other law of this state bases the validity of a non-testamentary estate planning document on whether it is signed, witnessed, or attested by another individual in the presence of the individual signing the document, the presence requirement is satisfied if the individuals are in each other's electronic presence.]

Legislative Note: *Optional subsection (b) provides the state the opportunity to authorize electronic presence, or remote, witnessing. If a state has enacted the Uniform Electronic Wills Act, the state should consider making the “presence” rules the same for a non-testamentary as for a testamentary document.*

Comment

This act does not take a position on whether the witnesses who are required by state law to be in the physical presence of the individual signing the document may satisfy the presence requirement by a virtual or electronic presence. Optional subsection (b) provides the state with the opportunity to authorize remote witnessing if the state believes doing so would be a prudent addition to its jurisprudence.

Section 208. Retention of Electronic Record; Original

(a) Except as provided in subsection (b), if other law of this state requires an electronic non-testamentary estate planning document to be retained, transmitted, copied, or filed, the requirement is satisfied by retaining, transmitting, copying, or filing an electronic record that:

(1) accurately reflects the information in the document after it was first generated in final form as an electronic record or under Section 209; and

(2) remains accessible to the extent required by the other law.

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

(c) A person may satisfy subsection (a) by using the services of another person.

(d) If other law of this state requires a non-testamentary estate planning document to be presented or retained in its original form, or provides consequences if a non-testamentary estate

planning document is not presented or retained in its original form, an electronic record retained in accordance with subsection (a) satisfies the other law.

(e) 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. 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 a state or of a county, municipality, or other political subdivision of a state.

Comment

This section is based on the Uniform Electronic Transactions Act Section 12.

This section is not intended to replace or alter existing state law governing the filing, transmission, or retention of paper non-testamentary estate planning documents.

Section 209. Certification of Paper Copy

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

Comment

This section is based on the Uniform Electronic Wills Act Section 9. Using this procedure to obtain a paper copy will not cure any defect that existed regarding the validity of the electronic non-testamentary estate planning document or electronic signature thereon.

Section 210. Admissibility in Evidence

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

Comment

This section is based on the Uniform Electronic Transactions Act Section 13.

[[Article] 3

Uniform Electronic Wills Act]

Legislative Note: *A state that wishes to expand state law to include electronic creation and execution of a testamentary document, including a will, testamentary trust, or codicil, has two options:*

(1) The state may insert the Uniform Electronic Wills Act or similar statute as Article 3 in this act, making adjustments to this act or to the incorporated act as appropriate. If the Uniform Electronic Wills Act is the statute being included, the only definition in Section 2 of that act necessary is “electronic will.” If remote witnessing is desired for an electronic will, the definition of “electronic presence” in Section 207(b) of this act also is necessary in this article. Sections 10 (uniformity of application and construction), 11 (transitional provision), and 12 (effective date) should be deleted from the Uniform Electronic Wills Act.

(2) The state may omit Article 3 and enact the Uniform Electronic Wills Act as a freestanding act.

[Article] 4

Miscellaneous Provisions

Section 401. Uniformity of Application and Construction

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

Section 402. Relation to Electronic Signatures in Global and National Commerce Act

This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq.[, as amended], but does not modify, limit, or supersede 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. Section 7003(b).

Legislative Note: *It is the intent of this act to incorporate future amendments to the cited federal law. A state in which the constitution or other law does not permit incorporation of future amendments when a federal statute is incorporated into state law should omit the phrase “, as amended”. A state in which, in the absence of a legislative declaration, future amendments are incorporated into state law also should omit the phrase.*

Section 403. Transitional Provision

[(a)] This [act] applies to an electronic non-testamentary estate planning document created, signed, generated, sent, communicated, received, or stored before, on, or after [the effective date of this [act]].

[(b) This [act] applies to the will of a decedent who dies on or after [the effective date of this [act]].]

Legislative Note: *A state that enacts this act with optional Article 3 (Uniform Electronic Wills Act) should adopt this section in its entirety, including all of the bracketed text. A state that enacts this act without Article 3 should adopt this section omitting both the bracketed text “[a)” and the entirety of bracketed subsection (b).*

[Section 404. Severability

If a provision of this [act] or its application to a person or circumstance is held invalid, the invalidity does not affect another provision or application that can be given effect without the invalid provision.]

Legislative Note: *Include this section only if the state lacks a general severability statute or a decision by the highest court of the state adopting a general rule of severability.*

[Section 405. Repeals; Conforming Amendments

(a). . .

(b). . .]

Legislative Note: *A state should examine its statutes to determine whether conforming revisions are required by provisions of this act relating to the execution of testamentary and non-testamentary estate planning documents.*

Section 406. Effective Date

This [act] takes effect . . .



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WHY YOUR STATE SHOULD ADOPT THE UNIFORM ELECTRONIC ESTATE PLANNING DOCUMENTS ACT

The Uniform Electronic Estate Planning Document Act (UEEPDA) authorizes the use of electronic documents and signatures for non-testamentary documents like trusts and powers of attorney. This uniform law allows estate planners and their clients to conduct their business online in the same manner that is already legal for electronic banking and commercial transactions. It should be adopted in your state because:

- ***The UEEPDA modernizes the law of estate planning.*** Most people already handle their finances and sign leases, mortgage and loan documents and other business transaction documents electronically. That's possible because another uniform state law ensures electronic transactions are enforceable. UEEPDA provides similar rules for estate planning documents, filling a gap in the law and allowing estate planners to also serve their clients online.
- ***The UEEPDA will enable more people to make an estate plan.*** Enacting UEEPDA will increase access to legal services for people who are homebound, travel frequently, or who just prefer the convenience of electronic signing.
- ***The UEEPDA is forward-looking.*** Like other uniform laws, the UEEPDA uses technology-neutral terminology to ensure the law will not become obsolete with the next technological advancement in document security or electronic signature protocol.
- ***The UEEPDA complements state laws governing electronic wills.*** Testamentary documents like wills are subject to different execution requirements than non-testamentary documents such as trusts and powers of attorney. The UEEPDA was drafted to complement the Uniform Electronic Wills Act and can be easily combined with that act into a single statute that will govern electronic versions of both testamentary and non-testamentary estate planning documents.

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



Written Testimony in Support of SB 2127:
The Uniform Electronic Estate Planning Documents Act

Chairwoman Larson and Members of the Committee,

For the record, I am Rick Clayburgh, President and CEO of the North Dakota Banker's Association. The NDBA supports the enactment of Senate Bill 2127, the Uniform Electronic Estate Planning Documents Act (UEEPDA). In short, SB 2127 authorizes electronic documents and signatures for common estate planning documents.

In recent years, North Dakota adopted the Uniform Electronic Transactions Act and Uniform Electronic Wills, the first of which broadly permits electronic records and signatures *except* wills, codicils, or testamentary trusts; and the latter of which specifically allows for electronic wills. The UEEPDA will fill in any existing gaps by clearly authorizing electronic documents and signatures for non-testamentary documents, such as trusts and powers of attorney.

In summary, key benefits of UEEPDA include the following:

1. **Complements Existing Laws:** Again, the UEEPDA will act as a gap-filler to already existing electronic document and signature laws adopted in our state.
2. **Increased Accessibility and Convenience:** UEEPDA makes estate planning more accessible by allowing individuals to create, store, and share their documents electronically. This is particularly beneficial for individuals with mobility challenges or those living in remote areas.
3. **Support for Modernization and Innovation:** The UEEPDA embraces technological advancements, encouraging the adoption of secure and efficient digital tools for estate planning. This modernization aligns with the broader trend of digital transformation in the financial and legal sectors.
4. **Enhanced Legal Consistency Across Jurisdictions:** By adopting a uniform standard, the Act eliminates conflicts that arise when digital estate planning documents are used in multiple states. This ensures that individuals' wishes are respected regardless of where they or their assets are located.
5. **Reduced Administrative Burdens:** Electronic documents streamline estate administration by simplifying the storage, retrieval, and verification of important records. This reduces delays and costs for both individuals and legal professionals.

In conclusion, the Uniform Electronic Estate Planning Documents Act represents a vital step forward in modernizing estate planning practices. By adopting this legislation, North Dakota can provide individuals, families, and financial institutions with expanded tools to protect their legacies in the digital age.

2025 HOUSE JUDICIARY

SB 2127

2025 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2127
3/11/2025

A BILL for an Act to create and enact chapter 59-22 of the North Dakota Century Code, relating to the Uniform Electronic Estate Planning Documents Act; and to provide for application.

10:59 a.m. Chairman Klemin opened the hearing.

Members Present: Chairman Klemin, Vice-Chairman Karls, Vice-Chairman Vetter, Representatives Christianson, Hoverson, Johnston, McLeod, S. Olson, Satrom, Tveit, VanWinkle, Wolff, Schneider

Members Absent: Representative Henderson

Discussion Topics:

- Testamentary documents
- Receiving and recording of electronic documents

10:59 a.m. Bradley Myers, North Dakota's Commissioner to the National Conference of Commissioners on Uniform State Laws, testified in favor and provided testimony #39975, #39976, #39977, #39978.

11:03 a.m. Rick Clayburgh, President and CEO of the North Dakota Bankers Association, testified in favor and provided testimony #40453.

11:10 a.m. Lise Kruse, Commissioner of the Department of Financial Institutions, testified in favor.

11:12 a.m. John Alexander, Director of Legislative and Regulatory Affairs for the Dakota Credit union Association, testified in favor and provided testimony #40540.

11:13 a.m. Katie Paulson, McKenzie County Recorder for Watford City, testified in opposition.

11:25 a.m. Nancy Seefeldt, Morton County Record Recorder, testified in opposition and provided testimony #40323.

11:36 a.m. Katie Paulson, McKenzie County Recorder for Watford City, answered committee questions

Additional written testimony:

Cody Barbo, CEO and Co-Founder of Trust & Will, submitted testimony in favor #39648.
Carrie Krause, Wells County Recorder, submitted neutral testimony #40320.

Judiciary Committee
SB 2127
March 11, 2025
Page 2

11:37 a.m. Chairman Klemin closed the hearing.

Wyatt Armstrong, Committee Clerk



March 11, 2025

Honorable Lawrence Klemm
Chairman, House Judiciary Committee
Room JW327B
600 East Boulevard Avenue
Bismarck, ND 58505

RE: Senate Bill 2127 - Uniform Electronic Estate Planning Documents Act

My name is Cody Barbo, and I am the CEO and co-founder of Trust & Will, a company founded in 2017 with a mission to modernize and democratize the estate planning process. Trust & Will serves families across the nation, including those in North Dakota. Our platform is particularly valuable for individuals in rural areas and legal deserts, where access to estate planning attorneys is limited. By offering accessible, affordable, and user-friendly solutions, we empower North Dakota residents to take control of their futures and protect their loved ones.

I am writing to express my strong support for Senate Bill 2127, the Uniform Estate Planning Documents Act (UEEPDA). This forward-thinking legislation explicitly authorizes the use of electronic documents and electronic signatures for non-testamentary estate planning documents, including trusts, health care directives, durable powers of attorney, and more. Senate Bill 2127 addresses a critical gap in North Dakota's existing laws. It represents the logical next step following the state's adoption of the Uniform Electronic Wills Act in 2021, which enables the electronic execution of wills.

The Uniform Law Commission adopted UEEPDA in July 2022, and it has already been enacted in four states—Oklahoma, Colorado, Washington, and Illinois. The legislation is currently pending in Missouri and was introduced in Texas, signaling growing national recognition of the need for modernization in estate planning.

Senate Bill 2127 simplifies and streamlines the estate planning process by increasing accessibility for North Dakotans, especially those in rural and underserved areas. Just as North Dakotans can conduct banking transactions or designate beneficiaries online, they should also be able to appoint an agent under a power of attorney or create a trust with the same convenience and security. This legislation ensures that modern-day technology meets the evolving needs of North Dakotans.

Importantly, Senate Bill 2127 also addresses a pressing issue: that only 1/3 of Americans today have an estate plan. Without access to this critical service, families face unnecessary legal and financial hardships, and probate courts are burdened with avoidable guardianship proceedings. By enabling the creation and execution of these documents online, the bill will reduce these challenges, save families and the state time and money, and ensure North Dakotans' wishes are fulfilled while easing the workload on the courts.



Senate Bill 2127 is a practical, incremental step toward modernizing estate planning in North Dakota. It will ensure that residents have greater access to the tools they need to protect themselves and their families.

I strongly urge the Committee to support Senate Bill 2127. Thank you for your thoughtful consideration of this essential legislation.

Sincerely,

A handwritten signature in black ink that reads "Cody Barbo". The signature is written in a cursive style. A small, light blue rectangular stamp is visible over the middle of the signature.

Cody Barbo
CEO & Co-Founder, Trust & Will

cc: Vice-Chair, Karen Karls
Rep. Steve Vetter
Rep. Nels Christianson
Rep. Donna Henderson
Rep. Jeff Hoverson
Rep. Daniel Johnston
Rep. Carrie McLeod
Rep. SuAnn Olson
Rep. Bernie Satrom
Rep. Mary Schneider
Rep. Bill Tveit
Rep. Lori VanWinkle
Rep. Christina Wolff

Electronic Record of Contracts

This document was generated as a record of certain contracts created, accepted and stored electronically.



Summary of Contracts

This document contains the following contracts.

Title	ID
Other (North Dakota House Judiciary Committee and Trust & Will)	e6ffe615-5fdb-4aec-bba7-475a423df418

Contract signed by:

Cody Barbo	Signer ID:	591c5c6d-d3da-4181-842b-0da258a80df9
	Email:	cody@trustandwill.com
Date / Time:	Mar 7, 2025 at 3:52 PM EST	
IP Address:	104.28.162.253	
User Agent:	Mozilla/5.0 (Macintosh; Intel Mac OS X 10_15_7) AppleWebKit/605.1.15 (KHTML, like Gecko) Version/18.3 Safari/605.1.15	



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THE UNIFORM ELECTRONIC ESTATE PLANNING DOCUMENTS ACT

- A Summary -

The Uniform Electronic Estate Planning Documents Act (UEEPDA) expressly authorizes the use of electronic documents and electronic signatures for common estate planning documents. The act fills a gap in the law that created uncertainty as to whether some electronic estate planning documents were valid.

The UEEPDA is based on a successful model. The Uniform Electronic Transactions Act (UETA), which the Uniform Law Commission approved in 1999 and since adopted in 49 states, 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. However, 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 caused estate planners 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. UEEPDA was drafted to complement that act, which can be inserted as Article 3 of UEEPDA to provide states with a comprehensive set of rules for both testamentary and non-testamentary electronic estate planning documents.

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



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**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."

Uniform Electronic Estate Planning Documents Act

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-THIRTY-FIRST YEAR
PHILADELPHIA, PENNSYLVANIA
JULY 8–13, 2022



WITH PREFATORY NOTE AND COMMENTS

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By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

September 28, 2022

ABOUT ULC

The **Uniform Law Commission** (ULC), also known as National Conference of Commissioners on Uniform State Laws (NCCUSL), now in its 131st year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

- ULC strengthens the federal system by providing rules and procedures that are consistent from state to state but that also reflect the diverse experience of the states.
- ULC statutes are representative of state experience because the organization is made up of representatives from each state, appointed by state government.
- ULC keeps state law up to date by addressing important and timely legal issues.
- ULC's efforts reduce the need for individuals and businesses to deal with different laws as they move and do business in different states.
- ULC's work facilitates economic development and provides a legal platform for foreign entities to deal with U.S. citizens and businesses.
- Uniform Law Commissioners donate thousands of hours of their time and legal and drafting expertise every year as a public service and receive no salary or compensation for their work.
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- ULC is a state-supported organization that represents true value for the states, providing services that most states could not otherwise afford or duplicate.

Uniform Electronic Estate Planning Documents Act

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

Suzanne B. Walsh	Connecticut, <i>Chair</i>
Mary Ackerly	Connecticut
Turney P. Berry	Kentucky
James W. Dodge	Illinois
David M. English	Missouri
Marc S. Feinstein	South Dakota
Jacqueline T. Lenmark	Montana
Donald E. Mielke	Colorado
Bradley Myers	North Dakota
David G. Nixon	Arkansas
Robert H. Sitkoff	Massachusetts
Susan D. Snyder	Illinois
Dan Robbins	California, <i>President</i>
Nora Winkelman	Pennsylvania, <i>Division Chair</i>

Other Participants

Gerry W. Beyer	Texas, <i>Reporter</i>
Benjamin K. Sanchez	Texas, <i>American Bar Association Advisor</i>
John T. Rogers	California, <i>American Bar Association Section Advisor</i>
Nathaniel Sterling	California, <i>Style Liaison</i>
Tim Schnabel	Illinois, <i>Executive Director</i>

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Uniform Electronic Estate Planning Documents Act

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Electronic Estate Planning Documents Act

Prefatory Note

Times are changing. Reliance on traditional paper documents is waning. Many areas of the law have already embraced the transition from written to electronic documents which are electronically signed. For example, virtually all states have enacted the Uniform Electronic Transactions Act (UETA) and the electronic filing of pleadings and appellate briefs is widely accepted.

Left out of this transition were non-transactional documents relating to estate planning which hung on to the requirement of paper documents with actual pen-to-paper (wet) signatures. Recently, however, this trend has reversed with at least ten states embracing electronic wills either through the adoption of the Uniform Electronic Wills Act or through their own unique statutes. Regrettably, other estate planning documents have been left behind in this transition. Why is this?

A primary reason is the failure of state laws to expressly authorize these documents to be in electronic form and electronically signed. For example, UETA provides that when both parties to a transaction agree, a record or signature cannot be “denied legal effect or enforceability solely because it is in electronic form.” UETA § 7(a). However, UETA does not expressly authorize the electronic signing of estate planning documents. UETA § 3(a) limits UETA’s application to “transaction[s],” defined in UETA § 2(16) as “actions occurring *between two or more persons* relating to the conduct of business, commercial, or governmental affairs.” (emphasis added). Accordingly, unilateral documents such as trusts and powers of attorney are not directly within UETA’s scope. This conclusion is bolstered by Comment 1 to UETA § 3 which states:

The scope of this Act is inherently limited by the fact that it only applies to transactions related to business, commercial (including consumer) and governmental matters. Consequently, transactions with no relation to business, commercial or governmental transactions would not be subject to this Act. Unilaterally generated electronic records and signatures which are not part of a transaction also are not covered by this Act.

UETA does not “prohibit” the electronic signing of estate planning documents. However, its failure to include them within its scope leaves such electronically signed documents vulnerable to attack. As a result, the underlying state laws governing estate planning documents must be amended. Absent such amendment, parties to unilateral estate planning documents could not be certain that electronically signed originals would be valid.

The Uniform Electronic Wills Act (2019) (UEWA) solves this problem with respect to testamentary documents such as wills, codicils, and testamentary trusts. The Uniform Electronic Estate Planning Documents Act (UEEPDA) solves this problem for all other estate planning documents such as powers of attorney and trusts. For states that have yet to adopt the UEWA or their own electronic will statute, Article 3 of the UEPPDA provides the state with the opportunity to adopt the UEWA.

UEEPDA is designed to authorize estate planning documents to be in electronic form and electronically signed. There is no intent to change the requirements for the validity of these documents imposed by state law in any other manner. UEEPDA is modeled after UETA so that it will cleanly interface with existing laws.

Uniform Electronic Estate Planning Documents Act

[Article] 1

General Provisions and Definitions

Section 101. Title

This [act] may be cited as the Uniform Electronic Estate Planning Documents Act.

Section 102. Definitions

In this [act]:

(1) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) “Electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means.

(3) “Electronic signature” means an electronic symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(4) “Information” includes data, text, images, codes, computer programs, software, and databases.

(5) “Non-testamentary estate planning document” means a record relating to estate planning that is readable as text at the time of signing and is not a will or contained in a will. The term:

(A) includes a record readable as text at the time of signing that creates, exercises, modifies, releases, or revokes:

(i) a trust instrument;

(ii) a trust power that under the terms of the trust requires a signed

record;

(iii) a certification of a trust under [cite to Uniform Trust Code Section 1013];

(iv) a power of attorney that is durable under [cite to Uniform Power of Attorney Act];

(v) an agent's certification under [cite to Uniform Power of Attorney Act Section 302] of the validity of a power of attorney and the agent's authority;

(vi) a power of appointment;

(vii) an advance directive, including a [health-care power of attorney], directive to physicians, natural death statement, living will, and medical or physician order for life-sustaining treatment;

(viii) a record directing disposition of an individual's body after death;

(ix) a nomination of a guardian for the signing individual;

(x) a nomination of a guardian for a minor child or disabled adult child;

(xi) a mental health treatment declaration;

(xii) a community property survivorship agreement;

(xiii) a disclaimer under [cite to Uniform Disclaimer of Property Interests Act Section 2(3)]; and

(xiv) any other record intended to carry out an individual's intent regarding property or health care while incapacitated or on death; and

(B) does not include a deed of real property[,], or] certificate of title for a

motor vehicle, watercraft, or aircraft[, or [list other documents the state intends to exclude from Article 2]].

(6) “Person” means an individual, estate, business or nonprofit entity, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(7) “Power of attorney” means a record that grants authority to an agent to act in place of the principal, even if the term is not used in the record.

(8) “Record” means information:

(A) inscribed on a tangible medium; or

(B) stored in an electronic or other medium and retrievable in perceivable form.

(9) “Security procedure” means a procedure to verify that an electronic signature, record, or performance is that of a specific person or to detect a change or error in an electronic record. The term includes a procedure that uses an algorithm, code, identifying word or number, encryption, or callback or other acknowledgment procedure.

(10) “Settlor” means a person, including a testator, that creates or contributes property to a trust.

(11) “Sign” means, with present intent to authenticate or adopt a record:

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic signature.

(12) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or other territory or possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

(13) “Terms of a trust” means:

(A) except as provided in subparagraph (B), the manifestation of the settlor's intent regarding a trust's provisions as:

- (i) expressed in the trust instrument; or
- (ii) established by other evidence that would be admissible in a judicial proceeding; or

(B) the trust's provisions as established, determined, or amended by:

- (i) a trustee or other person in accordance with applicable law; [or]
- (ii) a court order[; or
- (iii) a nonjudicial settlement agreement under [cite to Uniform Trust Code Section 111]].

(14) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments.

(15) "Will" includes a codicil and a 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.

Legislative Note: *In paragraph (5), the definition of "non-testamentary estate planning document" may be expanded or contracted to conform with the state's substantive, administrative, or regulatory law or practices. A signature on a non-testamentary estate planning document and on a document excluded from the definition may still be effective under other state law. Likewise, an audio or audio-visual record still may be effective under other state law. This act is designed to validate a signature that is in electronic form when other state law has not addressed the issue.*

In paragraph (5), a state should conform the name of the documents to match other state law. For example, in subparagraph (A)(vii), a state that uses the term "medical power of attorney", "health-care proxy", or other term should revise the bracketed text accordingly.

In paragraph (5), if a state does not authorize a particular non-testamentary estate planning document, that document should be omitted from the enumerated list. For example, a state following a common-law marital property system would delete subparagraph (A)(xii) referring

to a community property survivorship agreement.

Comment

The definition of “electronic signature” is designed to exclude authentication via verbal or video methods.

Paragraph (5) requires the non-testamentary estate planning document to be readable as text such as an Adobe pdf file or a Word docx file; audio and audio-video records are not included. However, other state law that authorizes audio and audio-video non-testamentary estate planning documents is not impacted by this act and thus non-textual records authorized by other state law are still effective if they comply with the applicable state law.

The definition of “sign” is designed to exclude authentication via verbal or video methods.

Section 103. Construction

This [act] must be construed and applied to:

(1) facilitate electronic estate planning documents and signatures consistent with other law; and

(2) be consistent with reasonable practices concerning electronic documents and signatures and continued expansion of those practices.

Comment

This section is based on the Uniform Electronic Transactions Act Section 6.

[Article] 2

Electronic Non-Testamentary Estate Planning Documents

Section 201. Scope

(a) Except as provided in subsection (b), this [article] applies to an electronic non-testamentary estate planning document and an electronic signature on a non-testamentary estate planning document.

(b) This [article] does not apply to a non-testamentary estate planning document if the document precludes use of an electronic record or electronic signature.

(c) This [article] does not affect the validity of an electronic record or electronic signature that is valid under:

(1) [cite to Uniform Electronic Transactions Act]; [or]

(2) [[Article] 3] [cite to other state law governing creation and execution of an electronic will, codicil, or testamentary trust]; or

(3) [cite to other state law relating to non-testamentary estate planning documents the state excludes from this [article]]].

Comment

This section makes certain that the scope of this act is restricted to validating electronic documents and signatures and is not intended to impact the validity of electronic signatures already authorized under other state law. If an electronic non-testamentary estate planning document, or a signature on such a document, is granted legal recognition by UETA, this act does not limit the legal recognition of the document or signature, but if the document or signature is not granted legal recognition by UETA, it will be granted legal recognition by this act.

Section 202. Principles of Law and Equity

The law of this state and principles of equity applicable to a non-testamentary estate planning document apply to an electronic non-testamentary estate planning document except as modified by this [article].

Comment

This section makes it clear that the act supplants, but does not negate, other state law requirements that must be satisfied to validate a non-testamentary estate planning document.

Section 203. Use of Electronic Record or Signature Not Required

(a) This [article] does not require a non-testamentary estate planning document or signature on a non-testamentary estate planning document to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(b) A person is not required to have a non-testamentary estate planning document in electronic form or signed electronically even if the person previously created or signed a non-testamentary estate planning document by electronic means.

(c) A person may not waive the provisions of this section.

Comment

This section is based on the Uniform Electronic Transactions Act Section 5.

In subsection (b), the term “person” rather than “individual” is used because a trustee may be a corporation or other legal entity. Accordingly, “person” is appropriate as it encompasses these entities.

Subsection (c) makes clear that a person cannot waive the right to require future non-testamentary estate planning documents to be in physical form and signed with a wet signature.

Section 204. Recognition of Electronic Non-Testamentary Estate Planning

Document and Electronic Signature

(a) A non-testamentary estate planning document or a signature on a non-testamentary estate planning document may not be denied legal effect or enforceability solely because it is in electronic form.

(b) If other law of this state requires a non-testamentary estate planning document to be in writing, an electronic record of the document satisfies the requirement.

(c) If other law of this state requires a signature on a non-testamentary estate planning document, an electronic signature satisfies the requirement.

Comment

This section is based on the Uniform Electronic Transactions Act Section 7.

Section 205. Attribution and Effect of Electronic Record and Electronic Signature

(a) An electronic non-testamentary estate planning document or electronic signature on an electronic non-testamentary 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, including by showing the efficacy of a security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of attribution to a person under subsection (a) of a document or signature is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption and as provided by other law.

Comment

This section is based on the Uniform Electronic Transactions Act Section 9.

Section 206. Notarization and Acknowledgment

If other law of this state requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied with respect to an electronic non-testamentary estate planning document if an individual authorized to perform the notarization, acknowledgment, verification, or oath attaches or logically associates the individual's electronic signature on the document together with all other information required to be included under the other law.

Comment

This act does not address whether the notarization of electronic estate planning documents must be done in the physical presence of the signer or whether an electronic (remote) presence is sufficient. These are matters for state substantive law to address such as by the enactment of the Revised Uniform Law on Notarial Acts.

Section 207. Witnessing and Attestation

[(a)] If other law of this state bases the validity of a non-testamentary estate planning document on whether it is signed, witnessed, or attested by another individual, the signature, witnessing, or attestation of that individual may be electronic.

[(b)] In this subsection, "electronic presence" means that two or more individuals in

different locations are able to communicate in real time to the same extent as if the individuals were physically present in the same location. If other law of this state bases the validity of a non-testamentary estate planning document on whether it is signed, witnessed, or attested by another individual in the presence of the individual signing the document, the presence requirement is satisfied if the individuals are in each other's electronic presence.]

Legislative Note: *Optional subsection (b) provides the state the opportunity to authorize electronic presence, or remote, witnessing. If a state has enacted the Uniform Electronic Wills Act, the state should consider making the “presence” rules the same for a non-testamentary as for a testamentary document.*

Comment

This act does not take a position on whether the witnesses who are required by state law to be in the physical presence of the individual signing the document may satisfy the presence requirement by a virtual or electronic presence. Optional subsection (b) provides the state with the opportunity to authorize remote witnessing if the state believes doing so would be a prudent addition to its jurisprudence.

Section 208. Retention of Electronic Record; Original

(a) Except as provided in subsection (b), if other law of this state requires an electronic non-testamentary estate planning document to be retained, transmitted, copied, or filed, the requirement is satisfied by retaining, transmitting, copying, or filing an electronic record that:

(1) accurately reflects the information in the document after it was first generated in final form as an electronic record or under Section 209; and

(2) remains accessible to the extent required by the other law.

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

(c) A person may satisfy subsection (a) by using the services of another person.

(d) If other law of this state requires a non-testamentary estate planning document to be presented or retained in its original form, or provides consequences if a non-testamentary estate

planning document is not presented or retained in its original form, an electronic record retained in accordance with subsection (a) satisfies the other law.

(e) 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. 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 a state or of a county, municipality, or other political subdivision of a state.

Comment

This section is based on the Uniform Electronic Transactions Act Section 12.

This section is not intended to replace or alter existing state law governing the filing, transmission, or retention of paper non-testamentary estate planning documents.

Section 209. Certification of Paper Copy

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

Comment

This section is based on the Uniform Electronic Wills Act Section 9. Using this procedure to obtain a paper copy will not cure any defect that existed regarding the validity of the electronic non-testamentary estate planning document or electronic signature thereon.

Section 210. Admissibility in Evidence

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

Comment

This section is based on the Uniform Electronic Transactions Act Section 13.

[[Article] 3

Uniform Electronic Wills Act]

Legislative Note: *A state that wishes to expand state law to include electronic creation and execution of a testamentary document, including a will, testamentary trust, or codicil, has two options:*

(1) The state may insert the Uniform Electronic Wills Act or similar statute as Article 3 in this act, making adjustments to this act or to the incorporated act as appropriate. If the Uniform Electronic Wills Act is the statute being included, the only definition in Section 2 of that act necessary is “electronic will.” If remote witnessing is desired for an electronic will, the definition of “electronic presence” in Section 207(b) of this act also is necessary in this article. Sections 10 (uniformity of application and construction), 11 (transitional provision), and 12 (effective date) should be deleted from the Uniform Electronic Wills Act.

(2) The state may omit Article 3 and enact the Uniform Electronic Wills Act as a freestanding act.

[Article] 4

Miscellaneous Provisions

Section 401. Uniformity of Application and Construction

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

Section 402. Relation to Electronic Signatures in Global and National Commerce Act

This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq.[, as amended], but does not modify, limit, or supersede 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. Section 7003(b).

Legislative Note: *It is the intent of this act to incorporate future amendments to the cited federal law. A state in which the constitution or other law does not permit incorporation of future amendments when a federal statute is incorporated into state law should omit the phrase “, as amended”. A state in which, in the absence of a legislative declaration, future amendments are incorporated into state law also should omit the phrase.*

Section 403. Transitional Provision

[(a)] This [act] applies to an electronic non-testamentary estate planning document created, signed, generated, sent, communicated, received, or stored before, on, or after [the effective date of this [act]].

[(b) This [act] applies to the will of a decedent who dies on or after [the effective date of this [act]].]

Legislative Note: *A state that enacts this act with optional Article 3 (Uniform Electronic Wills Act) should adopt this section in its entirety, including all of the bracketed text. A state that enacts this act without Article 3 should adopt this section omitting both the bracketed text “[a)” and the entirety of bracketed subsection (b).*

[Section 404. Severability

If a provision of this [act] or its application to a person or circumstance is held invalid, the invalidity does not affect another provision or application that can be given effect without the invalid provision.]

Legislative Note: *Include this section only if the state lacks a general severability statute or a decision by the highest court of the state adopting a general rule of severability.*

[Section 405. Repeals; Conforming Amendments

(a). . .

(b). . .]

Legislative Note: *A state should examine its statutes to determine whether conforming revisions are required by provisions of this act relating to the execution of testamentary and non-testamentary estate planning documents.*

Section 406. Effective Date

This [act] takes effect . . .



Uniform Law Commission
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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WHY YOUR STATE SHOULD ADOPT THE UNIFORM ELECTRONIC ESTATE PLANNING DOCUMENTS ACT

The Uniform Electronic Estate Planning Document Act (UEEPDA) authorizes the use of electronic documents and signatures for non-testamentary documents like trusts and powers of attorney. This uniform law allows estate planners and their clients to conduct their business online in the same manner that is already legal for electronic banking and commercial transactions. It should be adopted in your state because:

- ***The UEEPDA modernizes the law of estate planning.*** Most people already handle their finances and sign leases, mortgage and loan documents and other business transaction documents electronically. That's possible because another uniform state law ensures electronic transactions are enforceable. UEEPDA provides similar rules for estate planning documents, filling a gap in the law and allowing estate planners to also serve their clients online.
- ***The UEEPDA will enable more people to make an estate plan.*** Enacting UEEPDA will increase access to legal services for people who are homebound, travel frequently, or who just prefer the convenience of electronic signing.
- ***The UEEPDA is forward-looking.*** Like other uniform laws, the UEEPDA uses technology-neutral terminology to ensure the law will not become obsolete with the next technological advancement in document security or electronic signature protocol.
- ***The UEEPDA complements state laws governing electronic wills.*** Testamentary documents like wills are subject to different execution requirements than non-testamentary documents such as trusts and powers of attorney. The UEEPDA was drafted to complement the Uniform Electronic Wills Act and can be easily combined with that act into a single statute that will govern electronic versions of both testamentary and non-testamentary estate planning documents.

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

House Judiciary Committee

March 11, 2025

By: Carrie K. Krause, Wells County Recorder

RE: SB 2127 Relating to the
Uniform Electronic Estate
Planning Documents Act;
and to provide for
application.

Chairman Klemin and House Judiciary Committee Members.

I am Carrie K Krause, Wells County Recorder. I am writing to you as neutral of SB 2127. There is only one section of this bill that I have a concern with on page 6 lines 16 through 19:

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.

As a Recorder, how would we know the “individual” “affirming under penalty of perjury” is the person they are claiming to be? Who do they affirm it to? Who is verifying that the individual is who they say they are and what does this process look like on paper?

For this reason, I ask for an **amendment** recommendation for clarification on the process of the certifying and affirming of these electronic documents and also to clarify the recordability of the certified instrument for SB 2127.

Thank you again for your time and consideration.

Carrie K. Krause

Wells County Recorder

ckrause@nd.gov

House Judiciary Committee

Date 03/10/2025

Nancy Seefeldt – Morton County Recorder

RE: SB 2127 Uniform Electronic Estate Planning
Documents Act

Chairman Klemin and Committee:

My name is Nancy Seefeldt, and I am the Recorder in Morton County. I appreciate your committee giving me time to provide testimony. I am not opposed to this bill in entirety, I am looking for clarification to be added on line 17 of page 6.

In the proposed bill on page 6 lines 17-19 it states:

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.

As a recorder we will receive these documents to be recorded in our land records. Part of our duties is to make sure every document is an original document, or in this case a valid certified copy. Above it says "An Individual may create a certified copy", we are wondering who specifically "an individual" is.

When we receive documents that come from the court, we have to look for a stamp and seal from the Clerk of Courts office stating that it was a true copy of the original document they have stored in their office. Only clerk employees can apply this certification to the document.

If we issue a certified copy of a marriage certificate in the Records office we have to stamp, seal and sign stating that it is a true copy of the original document stored in our office. Only Recorder employees or another county office appointed by their commissioners can apply this certification.

In this bill for the electronic nontestamentary estate planning documents, it is not clarified as to whom can certify these documents, therefore we won't know how to determine if the document given to us, is a valid certification.

Thank you for your time and consideration.

I would appreciate clarification being added on the portion of the bill located on page 6 lines 16-19 for SB 2127.



March 11, 2025

Chairman Klemin and Members of the Committee, for the record, I am Rick Clayburgh, President and CEO of the North Dakota Banker's Association. The NDBA supports the enactment of **Senate Bill 2127**, the Uniform Electronic Estate Planning Documents Act (UEEPDA). In short, SB 2127 authorizes electronic documents and signatures for common estate planning documents.

In recent years, North Dakota adopted the Uniform Electronic Transactions Act and Uniform Electronic Wills, the first of which broadly permits electronic records and signatures *except* wills, codicils, or testamentary trusts; and the latter of which specifically allows for electronic wills. The UEEPDA will fill in any existing gaps by clearly authorizing electronic documents and signatures for non-testamentary documents, such as trusts and powers of attorney.

In summary, the key benefits of UEEPDA include the following:

1. **Complements Existing Laws:** Again, the UEEPDA will act as a gap-filler to already existing electronic document and signature laws adopted in our state.
2. **Increased Accessibility and Convenience:** UEEPDA makes estate planning more accessible by allowing individuals to create, store, and share their documents electronically. This is particularly beneficial for individuals with mobility challenges or those living in remote areas.
3. **Support for Modernization and Innovation:** The UEEPDA embraces technological advancements, encouraging the adoption of secure and efficient digital tools for estate planning. This modernization aligns with the broader trend of digital transformation in the financial and legal sectors.
4. **Enhanced Legal Consistency Across Jurisdictions:** By adopting a uniform standard, the Act eliminates conflicts that arise when digital estate planning documents are used in multiple states. This ensures that individuals' wishes are respected regardless of where they or their assets are located.
5. **Reduced Administrative Burdens:** Electronic documents streamline estate administration by simplifying the storage, retrieval, and verification of important records. This reduces delays and costs for both individuals and legal professionals.

In conclusion, the Uniform Electronic Estate Planning Documents Act represents a vital step forward in modernizing estate planning practices. By adopting this legislation, North Dakota can provide individuals, families, and financial institutions with expanded tools to protect their legacies in the digital age.

Thank you



Mr. Chairman and Members of the House Judiciary Committee, Im John Alexander Director of Legislative and Regulatory Affairs for the Dakota credit union association.

On behalf of our governmental affairs committee, we support a do pass vote on Senate Bill 2127, the Uniform Electronic Estate Planning Documents Act. SB 2127 will improve the ability of credit unions to manage member estate documents efficiently and securely through electronic means.

Our credit unions consistently strive to offer convenient, secure, and modern financial services to our members. By recognizing electronically executed and stored estate planning documents, SB 2127 enables us to better serve our members, outside urban areas where physical access to services can be challenging. Electronic estate planning documents reduce paperwork, enhance security, minimize the risk of document loss or tampering, and speed up the estate administration process, providing tangible benefits to our members during critical and often stressful times.

We urge you to support Senate Bill 2127, promoting innovation, efficiency, and greater accessibility in financial services across North Dakota.

John Alexander
Director of Legislative and Regulatory Affairs

2025 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2127
3/11/2025

A BILL for an Act to create and enact chapter 59-22 of the North Dakota Century Code, relating to the Uniform Electronic Estate Planning Documents Act; and to provide for application.

3:13 p.m. Chairman Klemin opened the hearing.

Members Present: Chairman Klemin, Vice-Chairman Karls, Representatives Christianson, Hoverson, Johnston, McLeod, S. Olson, Satrom, Tveit, Wolff, Schneider

Members Absent: Vice-Chairman Vetter, Representatives Henderson, VanWinkle

Discussion Topics:

- Committee action

3:15 p.m. Representative Schneider moved to Amend and add "before a notary public" after "under penalty of perjury" on page 6 line 26.

3:15 p.m. Representative McLeod seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Steve Vetter	A
Representative Nels Christianson	Y
Representative Donna Henderson	A
Representative Jeff Hoverson	Y
Representative Daniel Johnston	Y
Representative Carrie McLeod	Y
Representative SuAnn Olson	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Bill Tveit	Y
Representative Lori VanWinkle	A
Representative Christina Wolff	Y

3:16 p.m. Motion passed 11-0-3.

3:16 p.m. Representative Wolff moved a Do Pass as Amended.

3:17 p.m. Representative McLeod seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Steve Vetter	A
Representative Nels Christianson	Y
Representative Donna Henderson	A
Representative Jeff Hoverson	Y
Representative Daniel Johnston	Y
Representative Carrie McLeod	Y
Representative SuAnn Olson	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Bill Tveit	Y
Representative Lori VanWinkle	A
Representative Christina Wolff	Y

3:17 p.m. Motion passed 11-0-3.

3:17 p.m. Representative McLeod will carry the bill.

3:18 p.m. Chairman Klemin closed the hearing.

Wyatt Armstrong, Committee Clerk

March 11, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

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:

Sixty-ninth
Legislative Assembly

- 1 a. Includes a record readable as text at the time of signing which creates, exercises,
- 2 modifies, releases, or revokes:
- 3 (1) A trust instrument;
- 4 (2) A trust power that under the terms of the trust requires a signed record;
- 5 (3) A certification of a trust under section 59-18-13;
- 6 (4) A durable power of attorney under chapter 30.1-30;
- 7 (5) An agent's certification of the validity of a power of attorney and the agent's
- 8 authority;
- 9 (6) A power of appointment;
- 10 (7) An advance directive, including a health care power of attorney, directive to
- 11 physicians, natural death statement, living will, and medical or physician
- 12 order for life-sustaining treatment;
- 13 (8) A record directing disposition of an individual's body after death;
- 14 (9) A nomination of a guardian for the signing individual;
- 15 (10) A nomination of a guardian for a minor child or disabled adult child;
- 16 (11) A mental health treatment declaration;
- 17 (12) A disclaimer as defined under section 30.1-10-01; and
- 18 (13) Any other record intended to carry out an individual's intent regarding
- 19 property or health care while incapacitated or on death.
- 20 b. Does not include a deed of real property, or certificate of title for a motor vehicle,
- 21 watercraft, or aircraft.
- 22 6. "Person" means an individual, estate, business or nonprofit entity, government or
- 23 governmental subdivision, agency or instrumentality, or other legal entity.
- 24 7. "Power of attorney" means a record that grants authority to an agent to act in place of
- 25 the principal, even if the term is not used in the record.
- 26 8. "Record" means information:
- 27 a. Inscribed on a tangible medium; or
- 28 b. Stored in an electronic or other medium and retrievable in perceivable form.
- 29 9. "Security procedure" means a procedure to verify an electronic signature, record, or
- 30 performance is of a specific person or to detect a change or error in an electronic

Sixty-ninth
Legislative Assembly

- 1 record. The term includes a procedure that uses an algorithm, code, identifying word
 2 or number, encryption, or callback or other acknowledgment procedure.
- 3 10. "Settlor" means a person, including a testator, that creates or contributes property to a
 4 trust.
- 5 11. "Sign" means with present intent to authenticate or adopt a record to:
 6 a. Execute or adopt a tangible symbol; or
 7 b. Attach to or logically associate with the record an electronic signature.
- 8 12. "State" means a state of the United States, the District of Columbia, Puerto Rico, the
 9 United States Virgin Islands, or other territory or possession subject to the jurisdiction
 10 of the United States. The term includes a federally recognized Indian tribe.
- 11 13. "Terms of the trust" means:
 12 a. Except as provided under subdivision b, the manifestation of the settlor's intent
 13 regarding a trust's provisions as:
 14 (1) Expressed in the trust instrument; or
 15 (2) Established by other evidence that would be admissible in a judicial
 16 proceeding.
 17 b. The trust's provisions as established, determined, or amended by:
 18 (1) A trustee or other person in accordance with applicable law;
 19 (2) A court order; or
 20 (3) A nonjudicial settlement agreement under section 59-09-11.
- 21 14. "Trust instrument" means an instrument executed by the settlor which contains terms
 22 of the trust, including any amendments.
- 23 15. "Will" includes a codicil and a testamentary instrument that appoints an executor,
 24 revokes or revises another will, nominates a guardian, or expressly excludes or limits
 25 the right of an individual or class to succeed to property of the decedent passing by
 26 intestate succession.
- 27 **59-22-02. (103) Construction.**
 28 This chapter must be construed and applied to:
 29 1. Facilitate electronic estate planning documents and signatures consistent with other
 30 law; and

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

3 **59-22-03. (201) Scope.**

- 4 1. Except as provided in subsection 2, this chapter applies to an electronic
5 nontestamentary estate planning document and an electronic signature on a
6 nontestamentary estate planning document.
7 2. This chapter does not apply to a nontestamentary estate planning document if the
8 document precludes use of an electronic record or electronic signature.
9 3. This chapter does not affect the validity of an electronic record or electronic signature
10 that is valid under chapter 30.1-37 or 9-16.

11 **59-22-04. (202) Principles of law and equity.**

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

15 **59-22-05. (203) Use of electronic record or signature not required.**

- 16 1. This chapter does not require a nontestamentary estate planning document or
17 signature on a nontestamentary estate planning document to be created, generated,
18 sent, communicated, received, stored, or otherwise processed or used by electronic
19 means or in electronic form.
20 2. A person is not required to have a nontestamentary estate planning document in
21 electronic form or signed electronically even if the person previously created or signed
22 a nontestamentary estate planning document by electronic means.
23 3. A person may not waive the provisions of this section.

24 **59-22-06. (204) Recognition of electronic nontestamentary estate planning document**
25 **and electronic signature.**

- 26 1. A nontestamentary estate planning document or a signature on a nontestamentary
27 estate planning document may not be denied legal effect or enforceability because the
28 document or signature is in electronic form.
29 2. If any other provision of law requires a nontestamentary estate planning document to
30 be in writing, an electronic record of the document satisfies the requirement.

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

3 **59-22-07. (205) Attribution and effect of electronic record and electronic signature.**

- 4 1. An electronic nontestamentary estate planning document or electronic signature on an
5 electronic nontestamentary estate planning document is attributable to a person if it
6 was the act of the person. The act of the person may be shown in any manner,
7 including by showing the efficacy of a security procedure applied to determine the
8 person to which the electronic record or electronic signature was attributable.
9 2. The effect of attribution to a person under subsection 1 is determined from the context
10 and surrounding circumstances at the time the document or signature was created,
11 executed, or adopted, and as provided by law.

12 **59-22-08. (206) Notarization and acknowledgment.**

- 13 If any other provision of law requires a signature or record to be notarized, acknowledged,
14 verified, or made under oath, the requirement is satisfied with respect to an electronic
15 nontestamentary estate planning document if an individual authorized to perform the
16 notarization, acknowledgment, verification, or oath attaches or logically associates the
17 individual's electronic signature on the document together with all other information required to
18 be included under law.

19 **59-22-09. (207) Witnessing and attestation.**

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

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

1. Except as provided in subsection 2, if any other provision of law requires an electronic nontestamentary estate planning document to be retained, transmitted, copied, or filed, the requirement is satisfied by retaining, transmitting, copying, or filing an electronic record that:

- a. Accurately reflects the information in the document after the document was first generated in final form as an electronic record or under section 59-22-11; and
- 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 before a notary public 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.

1 **59-22-13. (401) Uniformity of application and construction.**

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

4 **59-22-14. (402) Relation to Electronic Signatures in Global and National Commerce**
5 **Act.**

6 This chapter modifies, limits, or supersedes the Electronic Signatures in Global and
7 National Commerce Act, [15 U.S.C. Section 7001 et seq.] but does not modify, limit, or
8 supersede 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices
9 described in 15 U.S.C. Section 7003(b).

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

**REPORT OF STANDING COMMITTEE
SB 2127**

Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS** ([25.0258.01001](#)) and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT OR EXCUSED AND NOT VOTING). SB 2127 was placed on the Sixth order on the calendar.