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SENATE BILL DRS45113-MUZ-2

Short Title: GSC NC Uniform Electronic Wills Act. (Public)

Sponsors: Senators Galey, Daniel, and Sawrey (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE NORTH CAROLINA UNIFORM ELECTRONIC WILLS ACT, AS
3 RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 31 of the General Statutes is amended by adding a new Article
6 to read:

7 "Article 11.

8 "North Carolina Uniform Electronic Wills Act.

9 **"§ 31-71. Short title.**

10 This Article may be cited as the "North Carolina Uniform Electronic Wills Act."

11 **"§ 31-72. Definitions.**

12 In this Article, the following definitions apply:

- 13 (1) Electronic. – Relating to technology having electrical, digital, magnetic,
14 wireless, optical, electromagnetic, or similar capabilities.
- 15 (2) Reserved for future codification purposes.
- 16 (3) Electronic will. – A will executed electronically in compliance with
17 G.S. 31-74(a).
- 18 (4) Record. – Information that is inscribed on a tangible medium or that is stored
19 in an electronic or other medium and is retrievable in perceivable form.
- 20 (5) Sign. – With present intent to authenticate or adopt a record, to do either of
21 the following:
22 a. To execute or adopt a tangible symbol.
23 b. To affix to or logically associate with the record an electronic symbol
24 or process.
- 25 (6) State. – Consists of the following:
26 a. A state of the United States, the District of Columbia, Puerto Rico, the
27 United States Virgin Islands, or any territory or insular possession
28 subject to the jurisdiction of the United States.
29 b. An Indian tribe or band or Alaskan native village that is recognized by
30 federal law or formally acknowledged by an entity listed in
31 sub-subdivision a. of this subdivision.

32 **"§ 31-73. Law applicable to electronic will; principles of equity.**

33 An electronic will is a will for all purposes of the law of this State. The law of this State
34 applicable to wills and principles of equity applies to an electronic will, except as modified by
35 this Article.

36 **"§ 31-74. Execution of electronic will.**



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1 (a) An electronic will shall be executed in accordance with all of the following:

2 (1) Recorded in electronic form and readable as text at the time of signing.

3 (2) Signed by the testator.

4 (3) Attested by at least two competent witnesses as provided by G.S. 31-3.3.

5 (b) The validity of a will executed electronically but not in compliance with subsection
6 (a) of this section is governed by G.S. 31-46.

7 **"§ 31-75. Revocation.**

8 (a) An electronic will may revoke all or part of a previous will.

9 (b) All or part of an electronic will may be revoked in either of the following ways:

10 (1) In the manner provided by G.S. 31-5.1(1).

11 (2) By a physical act, if it is established by a preponderance of the evidence that
12 the testator, with the intent of revoking all or part of the will, performed the
13 act or directed another individual who performed the act in the testator's
14 physical presence.

15 **"§ 31-76. Electronic will attested and made self-proved at time of execution.**

16 (a) An electronic will may be self-proved by acknowledgment of the testator and
17 affidavits of the witnesses as provided by G.S. 31-11.6, so long as the acknowledgment of the
18 testator and the affidavits of the witnesses are made simultaneously with the execution of the
19 electronic will.

20 (b) A signature physically or electronically affixed to an acknowledgment or affidavit
21 that is affixed to or logically associated with an electronic will is deemed a signature of the
22 electronic will.

23 **"§ 31-77. Certification of paper copy.**

24 (a) An individual may create a certified paper copy of an electronic will by certifying that
25 a paper copy of the electronic will is a complete, true, and accurate copy of the electronic will.
26 The certification shall be in the form of an affidavit sworn to or affirmed before an officer
27 authorized to administer oaths. If the electronic will is made self-proved, the certified paper copy
28 of the will shall include the affidavits. The certified paper copy of the electronic will may be
29 created at any time after the electronic will is executed.

30 (b) A certified paper copy of an electronic will, but not the electronic will itself, may be
31 probated under G.S. 28A-2A-8(a1).

32 **"§ 31-78. Uniformity of application and construction.**

33 In applying and construing this Article, consideration must be given to the need to promote
34 uniformity of the law with respect to its subject matter among states that enact the Uniform
35 Electronic Wills Act."

36 **SECTION 2.** G.S. 28A-2A-8 reads as rewritten:

37 **"§ 28A-2A-8. Manner of probate of attested written will, will or certified paper copy of**
38 **electronic will.**

39 (a) An attested written will, executed as provided by G.S. 31-3.3, may be probated in the
40 following manner: any of the following ways:

41 (1) Upon the testimony of at least two of the attesting ~~witnesses;~~ or witnesses.

42 (2) If the testimony of only one attesting witness is available, then with all of the
43 following:

44 a. ~~Upon the~~ The testimony of ~~such witness, and~~ the witness.

45 b. ~~Upon proof~~ Proof of the handwriting of at least one of the attesting
46 witnesses who is dead or whose testimony is otherwise ~~unavailable,~~
47 ~~and~~ unavailable.

48 c. ~~Upon proof~~ Proof of the handwriting of the testator, unless ~~he~~ the
49 testator signed by ~~his mark,~~ and the testator's mark.

1 d. ~~Upon proof~~ Proof of such other circumstances as ~~will~~ that satisfy the
2 clerk of the superior court as to the genuineness and due execution of
3 the ~~will~~; or will.

4 (3) If the testimony of none of the attesting witnesses is available, then with both
5 of the following:

6 a. ~~Upon proof~~ Proof of the handwriting of at least two of the attesting
7 witnesses whose testimony is ~~unavailable~~, and unavailable.

8 b. ~~Upon compliance~~ Compliance with ~~paragraphs~~ sub-subdivisions c.
9 and d. of ~~subsection (a)(2) of this section~~; or subdivision (a)(2) of this
10 section.

11 (4) Upon a showing that the will has been made self-proved in accordance with
12 ~~the provisions of G.S. 31-11.6~~.

13 (a1) A certified paper copy of an electronic will created under G.S. 31-77(a) may be
14 probated in any of the following ways:

15 (1) Upon the testimony of at least two of the attesting witnesses.
16 (2) If the testimony of only one attesting witness is available, then with both of
17 the following:

18 a. The testimony of the witness.
19 b. Proof of other circumstances that satisfy the clerk of the superior court
20 as to the genuineness and due execution of the will.

21 (3) If the testimony of none of the attesting witnesses is available, then upon
22 compliance with sub-subdivision b. of subdivision (2) of this subsection.

23 (4) Upon a showing that the will has been made self-proved in accordance with
24 G.S. 31-76.

25 (b) Due execution of a will may be established, ~~where~~ if the evidence required by
26 ~~subsection (a)~~ subsections (a) and (a1) of this section is unavoidably lacking or inadequate, by
27 testimony of other competent witnesses as to the requisite facts.

28 (c) The testimony of a witness is unavailable within the meaning of this section when the
29 witness is dead, out of the State, not to be found within the State, incompetent, physically unable
30 to ~~testify~~ testify, or refuses to testify."

31 **SECTION 3. G.S. 28A-2B-1 reads as rewritten:**

32 **"§ 28A-2B-1. Establishment before death that a will or codicil is valid.**

33 (a) Any petitioner who is a resident of North Carolina and who has executed a will or
34 codicil may file a petition seeking a judicial declaration that the will or codicil is valid.

35 (b) The petition shall be filed with the clerk of superior court and the matter shall proceed
36 as a contested estate proceeding governed by Article 2 of Chapter 28A of the General Statutes.
37 At the hearing before the clerk of superior court, the petitioner shall produce the original will or
38 codicil or, if electronic, a certified paper copy of it and any other evidence necessary to establish
39 that the will or codicil would be admitted to probate if the petitioner were deceased.

40 If an interested party contests the validity of the will or codicil, that person shall file a written
41 challenge to the will or codicil before the hearing or make an objection to the validity of the will
42 or codicil at the hearing. Upon the filing of a challenge or the raising of an issue contesting the
43 validity of the will or codicil, the clerk shall transfer the cause to the superior court. The matter
44 shall be heard as if it were a caveat proceeding, and the court shall make a determination as to
45 the validity of the will or codicil and enter judgment accordingly.

46 If no interested party contests the validity of the will or codicil and if the clerk of superior
47 court determines that the will or codicil would be admitted to probate if the petitioner were
48 deceased, the clerk of superior court shall enter an order adjudging the will or codicil to be valid.

49 (c) Failure to use the procedure authorized by this Article ~~shall~~ does not have any
50 evidentiary or procedural effect on any future probate proceedings.

1 (d) For purposes of this Article only, a "petitioner" is a person who requests a judicial
2 declaration that confirms the validity of that person's will or codicil."

3 **SECTION 4.** G.S. 28A-2B-3 reads as rewritten:

4 "**§ 28A-2B-3. Contents of petition for will validity.**

5 (a) Petition. – A petition requesting an order declaring that a petitioner's will or codicil is
6 valid shall be verified and shall contain the following information:

7 ...

8 (5) A statement identifying the ~~petitioner~~, petitioner and all persons believed by
9 the petitioner to have an interest in the proceeding, including, for any
10 interested parties who are minors, information regarding the minor's
11 appropriate representative.

12 (b) The petitioner shall file a copy of the will or codicil with the ~~petition and~~ petition. At
13 the hearing provided in G.S. 28A-2B-1(b), the petitioner shall tender the original will or codicil
14 at the hearing as provided in G.S. 28A-2B-1(b) or, if electronic, a certified paper copy of it. If
15 an order is entered declaring the will or codicil to be valid, the court shall affix a certificate of
16 validity to the will or codicil."

17 **SECTION 5.** G.S. 31-3.1 reads as rewritten:

18 "**§ 31-3.1. Will invalid unless statutory requirements complied with.**

19 No will is valid unless it complies with the requirements ~~prescribed therefor by this Article of~~
20 this Chapter."

21 **SECTION 6.** G.S. 31-3.2 reads as rewritten:

22 "**§ 31-3.2. Kinds of wills.**

23 (a) Personal property and real property may be devised by any of the following:

24 (1) An attested written will ~~which that~~ complies with the requirements of G.S.
25 31-3.3, or G.S. 31-3.3.

26 (2) A holographic will ~~which that~~ complies with the requirements of G.S. 31-3.4.

27 (3) An electronic will that complies with the requirements of G.S. 31-74(a).

28 (b) Personal property may also be devised by a nuncupative will ~~which that~~ complies
29 with the requirements of G.S. 31-3.5."

30 **SECTION 7.** G.S. 31-11 reads as rewritten:

31 "**§ 31-11. Depositories in offices of clerks of superior court where living persons may file**
32 **wills.**

33 The clerk of the superior court in each county of North Carolina shall be required to keep a
34 receptacle or depository in which any person who desires to do so may file ~~that person's will for~~
35 ~~safekeeping; and the~~ for safekeeping that person's original will or, if electronic, a certified paper
36 copy of it. The clerk shall, upon written request of the testator, or the ~~duly authorized agent or~~
37 ~~attorney~~ for the testator, permit said the will or testament to be withdrawn from said the
38 depository or receptacle at any time prior to the death of the testator: Provided, that the testator.
39 The contents of said the will shall not be made public or open to the inspection of anyone other
40 than the testator or the testator's duly authorized agent until such time as the said will shall be
41 offered for probate the death of the testator."

42 **SECTION 8.** The Revisor of Statutes shall cause to be printed, as annotations to the
43 published General Statutes, all relevant portions of the Official Comments to the Uniform
44 Electronic Wills Act and all explanatory comments of the drafters of this act as the Revisor may
45 deem appropriate.

46 **SECTION 9.** This act becomes effective January 1, 2025, and applies to electronic
47 wills executed on or after that date.