
MEMORANDUM

TO: NCBA LEGISLATIVE ADVISORY COMMITTEE

FROM: JUDY LINVILLE, CHAIR OF THE LEGISLATIVE COMMITTEE FROM THE ESTATE PLANNING AND FIDUCIARY LAW SECTION

RE: 2023 LONG SESSION PROPOSAL 1 - ENACTMENT OF NEW ARTICLE 11 OF CHAPTER 31 (NORTH CAROLINA UNIFORM ELECTRONIC WILLS ACT) AND AMENDMENT TO CURRENT GS § 28A-2A-8 (MANNER OF PROBATE OF ATTESTED WRITTEN WILL) AND GS § 31.3.2 (KINDS OF WILLS)

CC: CATHERINE WILSON (LEGISLATIVE VICE-CHAIR), ELIE FOY (SECTION CHAIR)

Proposal: Enactment of new Article 11 of Chapter 31 of North Carolina General Statute adopting North Carolina's version of the Uniform Law Commission's Uniform Electronic Wills Act. Amendment to current GS §28A-2A-8 to include procedures for probating electronic will and amendment to GS § 31-3.2 to include electronic wills.

Purpose: To establish legislation that governs the laws of electronic wills in North Carolina.

Changes: Creates a comprehensive body of statutory law to govern the creation and administration of electronic wills in North Carolina. Allows for electronic signing of wills but does not allow remote witnessing or notarization.

Improvements: The proposed legislation will provide the court system, practitioners, and the public with clear laws on the validity of electronic wills in North Carolina and how they will be administered. It will continue to modernize North Carolina law related to wills as technology advances while maintaining safeguards to help prevent fraud and coercion.

Constitutional: This legislation would not be unconstitutional.

Prior Position: The NCBA has not previously taken a position on the issue.

Affected Areas: Elder and special needs law.

Vetting: This proposal was presented to the Section's legislative committee and Council and was discussed and unanimously approved. In addition, this proposal was drafted after receiving input and comments from members of a joint task force between the legislative electronic wills subcommittee and members of the AOC Clerks conference; such joint task force meeting having multiple meeting spanning almost 2 years.

Approval: The proposal was _____ by the Council by _____.

Other Groups: General Statutes Commission (open docket item)

Prioritization: ____ of 9 (**TBD at the Council Meeting**)

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TALKING POINTS

NEW ENACTMENT OF NEW ARTICLE 11 OF CHAPTER 31 (NORTH CAROLINA UNIFORM ELECTRONIC WILLS ACT)

PROPOSED BY THE ESTATE PLANNING AND FIDUCIARY LAW SECTION

The Uniform Law Commission approved the Uniform Electronic Wills Act in July 2019 (UEWA). In September 2020 the NC General Statutes Commission (GSC) opened Docket Item 20-4 to review and study the Uniform Act. The GSC requested the legislative committee of the NCBA EP&FL Section to provide comments and feedback on the Uniform Act. An Electronic Wills Subcommittee (EWSC) was formed. After two years of studying the Uniform Act, electronic wills legislation passed in other jurisdictions, and gathering the comments and feedback from the AOC and Clerks through a joint task force created for this purpose, the EWSC proposed the modified version of the Uniform Act be enacted as the North Carolina Uniform Electronic Wills Act (NCUEWA or the Act). The modifications of the Act consider existing North Carolina laws related to wills, estate administration, and notarization.

The goal of the Act is to allow a testator to execute an electronic will, while maintaining the same protections for the testator of an electronic will that are available to those executing traditional wills. It covers both the creation of wills and the how they are to be probated in the courts. Florida, Nevada, Arizona, Indiana, and the District of Columbia have laws permitting electronic wills. In addition, the states of Washington, Utah, Colorado, and North Dakota have passed some version of the 2019 UEWA. In addition, UEWA legislation has been introduced and is currently pending legislation in Georgia, New Jersey, Massachusetts, and the District of Columbia.

The EWSC has considered the following in recommending this proposed legislation.

1. North Carolina courts, practitioners, and public will benefit from having laws governing the creation and administration of electronic wills. However, such laws should be consistent with North Carolina's current laws on traditional wills.
2. There is significant advantage to having the proposed legislation introduced by the NCBA where experienced and knowledgeable attorneys and practitioners have drafted the legislation as opposed to law introduced by an outside third party who may more likely have a commercial interest in the introduction and passing electronic wills legislation and who is not experienced or knowledgeable on North Carolina's current laws.
3. After careful consideration of the current status of North Carolina's existing laws (both temporary and permanent) on electronic and remote notarization and witnessing in North Carolina, the proposed NCUEWA does *not currently permit*

remote signing of the will. It is the EWSC opinion that adoption of remote signatures should be considered after the permanent remote notarization laws are implemented and effective. For a better understanding of the interplay between these laws a brief summary of the relevant points is included below.

- a. North Carolina has temporary remote laws in place that allow for remote notarization and witnessing of wills. However, this law expires June 30, 2023. It should also be noted that the temporary remote notarization and witnessing laws do not specifically address or govern electronic signatures and do not have the technology safeguards and requirements that the new permanent remote notarization act requires.
 - b. North Carolina enacted permanent remote notarization laws in 2022 but the effect date of the remote notarization laws will not be effective until July 1, 2023. This is primarily to ensure the Secretary of State has sufficient time to implement technology requirements. In additions, notarization of wills is currently exempted from the types of remote electronic notarial acts permitted. GS 10B-134.3.
4. The NCUEWA is not recognize and allow electronic wills as a valid will and set rules and procedures on how they are created and administered. However, it is not intended to otherwise modify or change North Carolinas existing law governing wills. As such, the harmless error provisions of the UEWA have been removed and there are modifications to the UEWA to include terminology and applicable statutory references to existing laws.
 5. In the fall of 2022 North Carolina begins implementing an E-courts system that includes estate administrations. This transition to an electronic document system by the North Carolina Courts is further support that now is the time to enact laws governing electronic wills.