

Short Title: GSC Unif. Electronic Estate Planning Docs Act.

A BILL TO BE ENTITLED

AN ACT TO ENACT THE UNIFORM ELECTRONIC ESTATE PLANNING DOCUMENTS
ACT.

The General Assembly of North Carolina enacts:

[General Statutes Commission (GSC) Staff Note: Redlining in this draft represents changes to the Uniform Act, not current law. GSC staff also made non-redlined changes to conform to the General Statutes numbering system and capitalization conventions.]

SECTION 1. The General Statutes are amended by adding a new chapter to read:

"Chapter 36G.

"Uniform Electronic Estate Planning Documents Act.

"Article 1.

"General Provisions and Definitions.

"§ 36G-1. Title.

This ~~act~~ Chapter may be cited as the Uniform Electronic Estate Planning Documents Act.

"§ 36G-2. Definitions.

In this ~~act~~ Chapter, the following definitions apply:

(1) ~~"Electronic" means relating~~ Electronic. – Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

~~(2)~~ Reserved.

~~(2)(3)~~ "Electronic record" means a Electronic record. – A record created, generated, sent, communicated, received, or stored by electronic means.

~~(3)(4)~~ "Electronic signature" means an Electronic signature. – 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.

(5) Electronic will. – A will executed electronically in compliance with
G.S. 36G-29.

~~(4)(6) "Information" includes Information. – Includes~~ data, text, images, codes,
computer programs, software, and databases.

~~(5)(7) "Non-testamentary estate planning document" means a Non-testamentary
estate planning document. – 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:~~ Both of the following apply:

a. ~~Includes~~ The term includes a record readable as text at the time of
signing that creates, exercises, modifies, releases, or ~~revokes;~~ revokes
any of the following:

1. A trust ~~instrument;~~ instrument.

2. A trust power that under the terms of the trust requires a signed
~~record;~~ record.

3. A certification of a trust under ~~[cite to Uniform Trust Code
Section 1013];~~ G.S. 36C-10-1013.

4. A power of attorney that is durable under ~~[cite to Uniform
Power of Attorney Act];~~ Chapter 32C of the General Statutes.

5. An agent's certification under ~~[cite to Uniform Power of
Attorney Act Section 302]~~ G.S. 32C-3-302 of the validity of a
power of attorney and the agent's ~~authority;~~ authority.

6. A power of ~~appointment;~~ appointment.

7. An advance directive, including a ~~[health care power of
attorney];~~ health care power of attorney, directive to
physicians, natural death statement, living will, ~~and~~ medical or

physician order for life-sustaining ~~treatment~~; treatment, and
advance directive for a natural death.

8. A record directing disposition of an individual's body after
~~death~~; death.

9. A nomination of a guardian for the signing ~~individual~~;
individual.

10. A nomination of a guardian for a minor child or ~~disabled adult~~
~~child~~; an adult child with a disability.

11. A mental health treatment ~~declaration~~; declaration.

12. A community property survivorship agreement; agreement.

13. A disclaimer under [cite to Uniform Disclaimer of Property
Interests Act Section 2(3)]; and or renunciation under Chapter
31B of the General Statutes.

14. Any other record intended to carry out an individual's intent
regarding property or health care while incapacitated or on
~~death~~; and death.

b. ~~Does~~ The term 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)(8) "Person" means an individual, estate, business or nonprofit entity, government
or governmental subdivision, agency, or instrumentality, or other legal entity.
Person. – Defined in G.S. 36C-1-103.

(7)(9) "Power of attorney" means a Power of attorney. – 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)(10) ~~"Record" means information:~~ Record. – Information inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form.

a. ~~Inscribed on a tangible medium; or~~

b. ~~Stored in an electronic or other medium and retrievable in perceivable form.~~

(9)(11) ~~"Security procedure" means a~~ Security procedure. – 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)(12) ~~"Settlor" means a~~ Settlor. – A person, including a testator, that creates or contributes property to a trust.

(11)(13) ~~"Sign" means, with~~ Sign. – With present intent to authenticate or adopt a record: record, to do either of the following:

a. ~~Execute or adopt a tangible symbol; or~~ symbol.

b. ~~Attach to or logically associate with the record an electronic signature.~~

(12)(14) ~~"State" means a~~ State. – Consists of the following:

a. A state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or other territory or insular possession subject to the jurisdiction of the United States. ~~The term includes a federally recognized Indian tribe.~~

b. An Indian tribe or band or Alaskan native village that is recognized by federal law or formally acknowledged by an entity listed in subdivision a. of this subdivision.

(13)(15) ~~"Terms of a trust" means:~~ Terms of a trust. – Defined in G.S. 36C-1-103.

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

~~1. Expressed in the trust instrument; or~~

~~2. Established by other evidence that would be admissible in a judicial proceeding; or~~

~~b. The trust's provisions as established, determined, or amended by:~~

~~1. A trustee or other person in accordance with applicable law;
[or]~~

~~2. A court order[; or~~

~~3. A nonjudicial settlement agreement under [cite to Uniform Trust Code Section 111]].~~

(14)(16) ~~"Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments.~~ Trust instrument. – Defined in G.S. 36C-1-103.

~~(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.~~

[Uniform Law Commission (ULC) 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.]

[GSC Staff Note: In the definition of "non-testamentary estate planning document," this draft uses the term "health care power of attorney" in conformity with Article 3 of Chapter 32A of the General Statutes.

In its Uniform Electronic Wills Act draft, the Estate Planning & Fiduciary Law Section of the North Carolina Bar Association (NCBA) chose not to include the definition of "will" as unnecessary.

G.S. 36C-1-103 provides:

§ 36C-1-103. Definitions.

The following definitions apply in this Chapter:

- (1) Action. – When applicable to an act of a trustee, includes a failure to act.*
- (2) Ascertainable standard. – A standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.*
- (3) Beneficiary. – A person who:*
 - a. Has a present or future beneficial interest in a trust, vested or contingent, including the owner of an interest by assignment or transfer, but excluding a permissible appointee of a power of appointment; or*
 - b. In a capacity other than that of trustee, holds a power of appointment over trust property.*
- (4) Charitable trust. – A trust, including a split-interest trust as described in section 4947 of the Internal Revenue Code, created for a charitable purpose described in G.S. 36C-4-405(a).*
- (5) Environmental law. – A federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.*
- (6) General guardian. – As defined in G.S. 35A-1202(7).*
- (7) Guardian of the estate. – As defined in G.S. 35A-1202(9).*
- (8) Guardian of the person. – As defined in G.S. 35A-1202(10).*
- (9) Interests of the beneficiaries. – The beneficial interests provided in the terms of the trust.*
- (10) Internal Revenue Code. – The Internal Revenue Code of 1986, as amended from time to time. Each reference to a provision of the Internal Revenue Code shall include any successor to that provision.*
- (11) Jurisdiction. – When applicable to a geographic area, includes a state or country.*
- (12) Person. – An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.*
- (13) Power of withdrawal. – A presently exercisable general power of appointment other than a power:*
 - a. Exercisable by a trustee and limited by an ascertainable standard; or*
 - b. Exercisable by another person only upon consent of the trustee or a person holding an adverse interest.*

- (13a) *Principal place of administration.* – The trustee's usual place of business where the records pertaining to the trust are kept or the trustee's residence if the trustee has no usual place of business. In the case of cotrustees, the principal place of administration is one of the following:
- a. The usual place of business of the corporate trustee if there is a corporate cotrustee.
 - b. The usual place of business or residence of any of the cotrustees if there is no corporate cotrustee.
- (14) *Property.* – Anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.
- (15) *Qualified beneficiary.* – A living beneficiary to whom, on the date the beneficiary's qualification is determined, any of the following apply:
- a. Is a distributee or permissible distributee of trust income or principal.
 - b. Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in sub-subdivision a. of this subdivision terminated on that date without causing the trust to terminate.
 - c. Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.
- (16) *Revocable.* – When applicable to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.
- (17) *Settlor.* – Except as otherwise provided in G.S. 36C-8B-25, a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.
- (18) *Spendthrift provision.* – A term of a trust that restrains both voluntary and involuntary transfer of a beneficiary's interest.
- (19) *State.* – A state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.
- (20) *Terms of a trust.* – The manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as established, determined, or amended by any of the following:
- a. A judicial proceeding.
 - b. A nonjudicial settlement agreement.
 - c. A nonjudicial modification with the consent of the settlor and all beneficiaries under G.S. 36C-4-411(a) or other law.
 - d. A trustee or other person in accordance with law, including a power holder under Article 8A of this Chapter or a trustee under Article 8B of this Chapter.
- (21) *Trust instrument.* – An instrument that contains the terms of a trust.
- (22) *Trustee.* – Includes an original, additional, and successor trustee, and a cotrustee, whether or not appointed or confirmed by a court. The term does not include trustees in mortgages and deeds of trusts. (2001-413, s. 1; 2005-192, s. 2; 2007-106, s. 2; 2009-222, s. 1; 2017-121, s. 2.1; 2021-85, s. 2(a).)]

"§ 36G-3. Construction.

This ~~act~~ Chapter must be construed and applied ~~to~~ as follows:

- (1) ~~Facilitate~~ To facilitate electronic estate planning documents and signatures consistent with other ~~law~~; and law.
- (2) ~~Be~~ To be consistent with reasonable practices concerning electronic documents and signatures and continued expansion of those practices.

"Article 2.

"Electronic Non-Testamentary Estate Planning Documents.

"§ 36G-11. Scope.

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

(b) This ~~article~~ 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~~ Article does not affect the validity of an electronic record or electronic signature that is valid ~~under~~; under any of the following:

- (1) ~~[cite to Uniform Electronic Transactions Act]; [or]~~ Article 40 of Chapter 66 of the General Statutes.
- (2) ~~[[Article] 3] [cite to other state law governing creation and execution of an electronic will, codicil, or testamentary trust]]~~; or Article 3 of this Chapter.
- (3) [cite to other state law relating to non-testamentary estate planning documents the state excludes from this [article]]].

"§ 36G-12. Principles of law and equity.

The law of this ~~state~~ 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~~ Article.

"§ 36G-13. Use of electronic record or signature not required.

(a) This ~~article~~ 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~~ shall not waive the provisions of this section.

"§ 36G-14. 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~~ shall not be denied legal effect or enforceability solely because it is in electronic form.

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

"§ 36G-15. 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 of a document or signature to a person under subsection (a) ~~of this section 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.

"§ 36G-16. Notarization and acknowledgment.

If other law of this ~~state~~ 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.

"§ 36G-17. Witnessing and attestation.

[(a)] If other law of this ~~state~~ 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.]~~

[ULC 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.]

[GSC Staff Note: In its Uniform Electronic Wills Act draft, the Estate Planning & Fiduciary Law Section chose not to include the optional concept of "electronic presence." Please see the Section's Memo for further discussion.]

"§ 36G-18. Retention of electronic record; original.

(a) Except as provided in ~~subsection (b)~~, subsection (b) of this section, if other law of this ~~state~~ 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~~ that does both of the following:

(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 G.S. 36G-19.

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

(b) A requirement under subsection (a) of this section 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) of this section by using the services of another person.

(d) If other law of this ~~state~~ 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) of this section 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.

"§ 36G-19. 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 certifying~~ that the paper copy is a complete and accurate copy of the document. The certification shall be in the form of an affidavit sworn to or affirmed before an officer authorized to administer oaths. The certified paper copy of the electronic non-testamentary estate planning document may be created at any time after the electronic non-testamentary estate planning document is executed.

[GSC Staff Note: GSC staff made changes to the section above to mirror proposed language from the Estate Planning & Fiduciary Law Section for the Uniform Electronic Wills Act draft.]

"§ 36G-20. Admissibility in evidence.

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

"Article 3.

"Uniform Electronic Wills Act.

[ULC 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.]

[Staff Note: The Trusts Drafting Committee recommends that the Uniform Electronic Wills Act be codified as Article 3 of this Chapter as G.S. 36G-25 through G.S. 36G-33.]

"Article 4.

"Miscellaneous Provisions.

"§ 36G-41. Uniformity of application and construction.

In applying and construing this ~~uniform act, Chapter~~, a court shall consider the promotion of uniformity of the law among jurisdictions that enact ~~it, the Uniform Electronic Estate Planning Documents Act.~~

"§ 36G-42. Relation to Electronic Signatures in Global and National Commerce Act.

This ~~act~~ Chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. ~~Section § 7001 et seq.~~ ~~[, as amended], et seq.~~, 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)~~."

[ULC 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.]

[Staff Note: 15 U.S.C. §§ 7001 through 7003 provide:

§ 7001. General rule of validity

(a) In general

Notwithstanding any statute, regulation, or other rule of law (other than this subchapter and subchapter II), with respect to any transaction in or affecting interstate or foreign commerce—

(1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and

(2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

(b) Preservation of rights and obligations

This subchapter does not--

(1) limit, alter, or otherwise affect any requirement imposed by a statute, regulation, or rule of law relating to the rights and obligations of persons under such statute, regulation, or rule of law other than a requirement that contracts or other records be written, signed, or in nonelectronic form; or

(2) require any person to agree to use or accept electronic records or electronic signatures, other than a governmental agency with respect to a record other than a contract to which it is a party.

(c) Consumer disclosures

(1) Consent to electronic records

Notwithstanding subsection (a), if a statute, regulation, or other rule of law requires that information relating to a transaction or transactions in or affecting interstate or foreign

commerce be provided or made available to a consumer in writing, the use of an electronic record to provide or make available (whichever is required) such information satisfies the requirement that such information be in writing if--

(A) the consumer has affirmatively consented to such use and has not withdrawn such consent;

(B) the consumer, prior to consenting, is provided with a clear and conspicuous statement--

(i) informing the consumer of (I) any right or option of the consumer to have the record provided or made available on paper or in nonelectronic form, and (II) the right of the consumer to withdraw the consent to have the record provided or made available in an electronic form and of any conditions, consequences (which may include termination of the parties' relationship), or fees in the event of such withdrawal;

(ii) informing the consumer of whether the consent applies (I) only to the particular transaction which gave rise to the obligation to provide the record, or (II) to identified categories of records that may be provided or made available during the course of the parties' relationship;

(iii) describing the procedures the consumer must use to withdraw consent as provided in clause (i) and to update information needed to contact the consumer electronically; and

(iv) informing the consumer (I) how, after the consent, the consumer may, upon request, obtain a paper copy of an electronic record, and (II) whether any fee will be charged for such copy;

(C) the consumer--

(i) prior to consenting, is provided with a statement of the hardware and software requirements for access to and retention of the electronic records; and

(ii) consents electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent; and

(D) after the consent of a consumer in accordance with subparagraph (A), if a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent, the person providing the electronic record--

(i) provides the consumer with a statement of (I) the revised hardware and software requirements for access to and retention of the electronic records, and (II) the right to withdraw consent without the imposition of any fees for such withdrawal and without the imposition of any condition or consequence that was not disclosed under subparagraph (B)(i); and

(ii) again complies with subparagraph (C).

(2) Other rights

(A) Preservation of consumer protections

Nothing in this subchapter affects the content or timing of any disclosure or other record required to be provided or made available to any consumer under any statute, regulation, or other rule of law.

(B) Verification or acknowledgment

If a law that was enacted prior to this chapter expressly requires a record to be provided or made available by a specified method that requires verification or acknowledgment of receipt, the record may be provided or made available electronically only if the method used provides verification or acknowledgment of receipt (whichever is required).

(3) Effect of failure to obtain electronic consent or confirmation of consent

The legal effectiveness, validity, or enforceability of any contract executed by a consumer shall not be denied solely because of the failure to obtain electronic consent or confirmation of consent by that consumer in accordance with paragraph (1)(C)(ii).

(4) Prospective effect

Withdrawal of consent by a consumer shall not affect the legal effectiveness, validity, or enforceability of electronic records provided or made available to that consumer in accordance with paragraph (1) prior to implementation of the consumer's withdrawal of consent. A consumer's withdrawal of consent shall be effective within a reasonable period of time after receipt of the withdrawal by the provider of the record. Failure to comply with paragraph (1)(D) may, at the election of the consumer, be treated as a withdrawal of consent for purposes of this paragraph.

(5) Prior consent

This subsection does not apply to any records that are provided or made available to a consumer who has consented prior to the effective date of this subchapter to receive such records in electronic form as permitted by any statute, regulation, or other rule of law.

(6) Oral communications

An oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of this subsection except as otherwise provided under applicable law.

(d) Retention of contracts and records

(1) Accuracy and accessibility

If a statute, regulation, or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be retained, that requirement is met by retaining an electronic record of the information in the contract or other record that--

(A) accurately reflects the information set forth in the contract or other record; and

(B) remains accessible to all persons who are entitled to access by statute, regulation, or rule of law, for the period required by such statute, regulation, or rule of law, in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise.

(2) Exception

A requirement to retain a contract or other record in accordance with paragraph (1) does not apply to any information whose sole purpose is to enable the contract or other record to be sent, communicated, or received.

(3) Originals

If a statute, regulation, or other rule of law requires a contract or other record relating to a transaction in or affecting interstate or foreign commerce to be provided, available, or retained in its original form, or provides consequences if the contract or other record is not provided, available, or retained in its original form, that statute, regulation, or rule of law is satisfied by an electronic record that complies with paragraph (1).

(4) Checks

If a statute, regulation, or other rule of law requires the retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with paragraph (1).

(e) Accuracy and ability to retain contracts and other records

Notwithstanding subsection (a), if a statute, regulation, or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce

be in writing, the legal effect, validity, or enforceability of an electronic record of such contract or other record may be denied if such electronic record is not in a form that is capable of being retained and accurately reproduced for later reference by all parties or persons who are entitled to retain the contract or other record.

(f) Proximity

Nothing in this subchapter affects the proximity required by any statute, regulation, or other rule of law with respect to any warning, notice, disclosure, or other record required to be posted, displayed, or publicly affixed.

(g) Notarization and acknowledgment

If a statute, regulation, or other rule of law requires a signature or record relating to a transaction in or affecting interstate or foreign commerce to be notarized, acknowledged, verified, or made under oath, that requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable statute, regulation, or rule of law, is attached to or logically associated with the signature or record.

(h) Electronic agents

A contract or other record relating to a transaction in or affecting interstate or foreign commerce may not be denied legal effect, validity, or enforceability solely because its formation, creation, or delivery involved the action of one or more electronic agents so long as the action of any such electronic agent is legally attributable to the person to be bound.

(i) Insurance

It is the specific intent of the Congress that this subchapter and subchapter II apply to the business of insurance.

(j) Insurance agents and brokers

An insurance agent or broker acting under the direction of a party that enters into a contract by means of an electronic record or electronic signature may not be held liable for any deficiency in the electronic procedures agreed to by the parties under that contract if--

- (1) the agent or broker has not engaged in negligent, reckless, or intentional tortious conduct;
- (2) the agent or broker was not involved in the development or establishment of such electronic procedures; and
- (3) the agent or broker did not deviate from such procedures.

§ 7002. Exemption to preemption

(a) In general

A State statute, regulation, or other rule of law may modify, limit, or supersede the provisions of section 7001 of this title with respect to State law only if such statute, regulation, or rule of law--

- (1) constitutes an enactment or adoption of the Uniform Electronic Transactions Act as approved and recommended for enactment in all the States by the National Conference of Commissioners on Uniform State Laws in 1999, except that any exception to the scope of such Act enacted by a State under section 3(b)(4) of such Act shall be preempted to the extent such exception is inconsistent with this subchapter or subchapter II, or would not be permitted under paragraph (2)(A)(ii) of this subsection; or

(2)(A) specifies the alternative procedures or requirements for the use or acceptance (or both) of electronic records or electronic signatures to establish the legal effect, validity, or enforceability of contracts or other records, if--

(i) such alternative procedures or requirements are consistent with this subchapter and subchapter II; and

(ii) such alternative procedures or requirements do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures; and

(B) if enacted or adopted after June 30, 2000, makes specific reference to this chapter.

(b) Exceptions for actions by States as market participants

Subsection (a)(2)(A)(ii) shall not apply to the statutes, regulations, or other rules of law governing procurement by any State, or any agency or instrumentality thereof.

(c) Prevention of circumvention

Subsection (a) does not permit a State to circumvent this subchapter or subchapter II through the imposition of nonelectronic delivery methods under section 8(b)(2) of the Uniform Electronic Transactions Act.

§ 7003. Specific exceptions

(a) Excepted requirements

The provisions of section 7001 of this title shall not apply to a contract or other record to the extent it is governed by--

(1) a statute, regulation, or other rule of law governing the creation and execution of wills, codicils, or testamentary trusts;

(2) a State statute, regulation, or other rule of law governing adoption, divorce, or other matters of family law; or

(3) the Uniform Commercial Code, as in effect in any State, other than sections 1-107 and 1-206 and Articles 2 and 2A.

(b) Additional exceptions

The provisions of section 7001 of this title shall not apply to--

(1) court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings;

(2) any notice of--

(A) the cancellation or termination of utility services (including water, heat, and power);

(B) default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual;

(C) the cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities); or

(D) recall of a product, or material failure of a product, that risks endangering health or safety; or

(3) any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.

(c) Review of exceptions

(1) Evaluation required

The Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall review the operation of the exceptions in subsections (a) and (b) to evaluate, over a period of 3 years, whether such exceptions continue to be necessary for the protection of consumers. Within 3 years after June 30, 2000, the Assistant Secretary shall submit a report to the Congress on the results of such evaluation.

(2) Determinations

If a Federal regulatory agency, with respect to matter within its jurisdiction, determines after notice and an opportunity for public comment, and publishes a finding, that one or more such exceptions are no longer necessary for the protection of consumers and eliminating such exceptions will not increase the material risk of harm to consumers, such agency may extend the application of section 7001 of this title to the exceptions identified in such finding.

[ULC 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 2. If a provision of this ~~act~~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.]

[ULC 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.]

[GSC Staff Note: Please see the following excerpt from Pope v. Easley, 354 N.C. 544, 548, 556 S.E. 2d 265, 268 (2001):

"The test for severability is whether the remaining portion of the legislation can stand on its own and whether the General Assembly would have enacted the remainder absent the offending portion. See, e.g., Jackson v. Guilford Cty. Bd. of Adjust., 275 N.C. 155, 168, 166 S.E.2d 78, 87 (1969) ("When the statute, ... [can] be given effect had the invalid portion never been included, it will be given such effect if it is apparent that the legislative body, had it known of the invalidity of the one portion, would have enacted the remainder alone."). Additionally, the inclusion of a severability clause within legislation will be interpreted as a clear statement of legislative intent to strike an unconstitutional provision and to allow the balance to be enforced independently. Fulton Corp. v. Faulkner, 345 N.C. 419, 421, 481 S.E.2d 8, 9 (1997)."]

SECTION 3. The Revisor of Statutes shall cause to be printed, as annotations to the published General Statutes, all relevant portions of the Official Comments to the Uniform Electronic Estate Planning Documents Act and Uniform Electronic Wills Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

SECTION 4. This act becomes effective January 1, 2025, and applies to both of the following:

(1) 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]].~~ the effective date of this act.

~~[(2) The will of a decedent who dies on or after [the effective date of this [act]].]~~

(2) An electronic will executed on or after the effective date of this act.

[ULC 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).]

[GSC Staff Note: Staff has combined and reorganized the transition and effective date provisions of the Uniform Act in accordance with this State's drafting conventions.]