

Short Title: GSC NC Uniform Electronic Wills Act.

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA UNIFORM ELECTRONIC WILLS ACT.

The General Assembly of North Carolina enacts:

[General Statutes Commission (GSC) Staff Note: Redlining in Section 1 of 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.]

This draft incorporates amendments proposed by the Estate Planning & Fiduciary Law Section of the North Carolina Bar Association with minor changes by GSC staff. The draft codifies the Uniform Act as a new article of Chapter 31; an alternative approach would be to codify the Uniform Act as an article of the Uniform Electronic Estate Planning Documents Act.]

SECTION 1. Chapter 31 of the General Statutes is amended by adding a new article

to read:

"Article 11.

"North Carolina Uniform Electronic Wills Act.

"§ 31-71. Short title.

This ~~act~~ Article may be cited as the North Carolina Uniform Electronic Wills Act.

"§ 31-72. Definitions.

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

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

~~{(2) "Electronic presence" means the relationship of two or more individuals in different locations communicating in real time to the same extent as if the individuals were physically present in the same location.}~~

~~(3)(2)~~ "Electronic will" means a Electronic will. – A will executed electronically in compliance with ~~Section 5(a).~~ G.S. 31-75.

(4)(3) ~~“Record” means information~~ Record. – Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(5)(4) ~~“Sign” means, with~~ Sign. – With present intent to authenticate or adopt a ~~record;~~ record, to do either of the following:

- a. To execute or adopt a tangible ~~symbol;~~ or symbol.
- b. To affix to or logically associate with the record an electronic symbol or process.

(6)(5) "State" means 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 a federally recognized Indian tribe.~~ The term includes an Indian tribe or band or Alaskan native village that is recognized by federal law or formally acknowledged by an entity listed in this subdivision.

(7) ~~“Will” includes a codicil and any 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: A state that permits an electronic will only if executed with the witnesses in the physical presence of the testator should omit paragraph (2) and renumber the remaining paragraphs accordingly. See also the Legislative Note to Section 5.]

[GSC Staff Note: The Estate Planning & Fiduciary Law Section of the North Carolina Bar Association (NCBA) chose not to include the optional concept of "electronic presence". Please see the Section's Memo for further discussion. The Section also chose not to include a definition of "will" as unnecessary.]

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

An electronic will is a will for all purposes of the law of this ~~state~~. State. The law of this ~~state~~ State applicable to wills and principles of equity apply to an electronic will, except as modified by this ~~act~~. Article.

"§ 31-74. Choice of law regarding execution.

~~A will executed electronically but not in compliance with Section 5(a) is an electronic will under this [act] if executed in compliance with the law of the jurisdiction where the testator is:~~

~~(1) Physically located when the will is signed; or~~

~~(2) Domiciled or resides when the will is signed or when the testator dies.~~

An electronic will executed electronically but not in compliance with G.S. 31-75 is governed by G.S. 31-46.

[GSC Staff Note: G.S. 31-46 provides:

§ 31-46. Validity of will; which laws govern.

A will is valid if it meets the requirements of the applicable provisions of law in effect in this State either at the time of its execution or at the time of the death of the testator, or if any of the following apply:

(1) The will's execution complied with the law of the jurisdiction in which the testator was physically present at the time of execution.

(2) Its execution complied with the law of the place where the testator was domiciled at the time of execution or at the time of death.

(3) It is a military testamentary instrument executed in accordance with the provisions of 10 U.S.C. § 1044d or any successor or replacement statute. (1953, c. 1098, s. 14; 2013-91, s. 1(g); 2019-178, s. 3(b).)]

"§ 31-75. Execution of electronic will.

~~(a) Subject to Section 8(d)[and except as provided in Section 6], an electronic will must be:~~

~~(1) A record that is readable as text at the time of signing under paragraph (2);~~

~~(2) Signed by:~~

~~a. The testator; or~~

~~b. Another individual in the testator's name, in the testator's physical presence and by the testator's direction; and~~

(3) ~~{Either:~~

a. ~~}] Signed in the physical [or electronic] presence of the testator by at least two individuals[, each of whom is a resident of a state and physically located in a state at the time of signing and] within a reasonable time after witnessing:~~

~~{a.}[1.] The signing of the will under paragraph (2); or~~

~~{b.}[2.] The testator's acknowledgment of the signing of the will under paragraph (2) or acknowledgement of the will[; or~~

b. ~~Acknowledged by the testator before and in the physical [or electronic] presence of a notary public or other individual authorized by law to notarize records electronically].~~

~~(b) Intent of a testator that the record under subsection (a)(1) be the testator's electronic will may be established by extrinsic evidence.~~

Subject to G.S. 31-78(b), an electronic will is a record that is readable as text at the time of signing and is signed by the testator and attested by at least two competent witnesses, as provided by G.S. 31-3.3.

[ULC Legislative Note: A state should conform Section 5 to its will-execution statute.

A state that enacts Section 6 (harmless error) should include the bracketed language at the beginning of subsection (a).

A state that permits an electronic will only when the testator and witnesses are in the same physical location, and therefore prohibits remote attestation, should omit the bracketed words "or electronic" from subsection (a)(3) and Section 8(c).

A state that has enacted Uniform Probate Code Section 2-502 or otherwise validates an unattested but notarized will should include subsection (a)(3)(B).]

[GSC Staff Note: G.S. 31-3.3 provides:

§ 31-3.3. Attested written will.

(a) *An attested written will is a written will signed by the testator and attested by at least two competent witnesses as provided by this section.*

(b) *The testator must, with intent to sign the will, do so by actually signing the will or by having someone else in the testator's presence and at the testator's direction sign the testator's name thereon.*

(c) The testator must signify to the attesting witnesses that the instrument is the testator's instrument by signing it in their presence or by acknowledging to them the testator's signature previously affixed thereto, either of which may be done before the attesting witnesses separately.

(d) The attesting witnesses must sign the will in the presence of the testator but need not sign in the presence of each other. (1953, c. 1098, s. 2; 2011-344, s. 8.)]

"[§ 31-76. Harmless error.

Alternative A

A record readable as text not executed in compliance with Section 5(a) is deemed to comply with Section 5(a) if the proponent of the record establishes by clear and convincing evidence that the decedent intended the record to be:

(1) The decedent's will;

(2) A partial or complete revocation of the decedent's will;

(3) An addition to or modification of the decedent's will; or

(4) A partial or complete revival of the decedent's formerly revoked will or part of the will.

Alternative B

[Cite to Section 2-503 of the Uniform Probate Code or comparable provision of the law of this state] applies to a will executed electronically.

End of Alternatives]

[ULC Legislative Note: A state that has enacted Uniform Probate Code Section 2-503 or another harmless error rule for a non-electronic will, should enact Alternative B. A state that has not enacted a harmless error rule may not want to add a harmless error rule solely for an electronic will, but if it does, it should enact Alternative A.]

[GSC Staff Note: The Estate Planning & Fiduciary Law Section chose not to include the optional harmless error provision in its draft. Please see its Memo for further discussion.]

"§ 31-77. Revocation.

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

(b) All or part of an electronic will ~~is may be~~ revoked by: either in the manner provided by G.S. 31-5.1(1) or by a

(1) ~~A subsequent will that revokes all or part of the electronic will expressly or by inconsistency; or~~

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

[GSC Staff Note: G.S. 31-5.1 provides:

§ 31-5.1. Revocation of written will.

A written will, or any part thereof, may be revoked only

- (1) *By a subsequent written will or codicil or other revocatory writing executed in the manner provided herein for the execution of written wills, or*
- (2) *By being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it, by the testator himself or by another person in the testator's presence and by the testator's direction. (1784, c. 204, s. 14; 1819, c. 1004, ss. 1, 2; 1840, c. 62; R.C., c. 119, s. 22; Code, s. 2176; Rev., s. 3115; C.S., s. 4133; 1945, c. 140; 1953, c. 1098, s. 3; 2011-344, s. 8.)]*

"§ 31-78. Electronic will attested and made self-proving self-proved at time of execution.

(a) An electronic will may be ~~simultaneously~~ executed, attested, and made self-proving self-proved by acknowledgment of the testator and affidavits of the ~~witnesses.~~ witnesses as provided by G.S. 31-11.6, except that for an electronic will to be made self-proved, the affidavits of the testator and the witnesses shall be made simultaneously with the execution of the electronic will.

~~(b) The acknowledgment and affidavits under subsection (a) must be:~~

- ~~(1) Made before an officer authorized to administer oaths under law of the state in which execution occurs [or, if fewer than two attesting witnesses are physically present in the same location as the testator at the time of signing under Section 5(a)(2), before an officer authorized under [cite to Revised Uniform Law on Notarial Acts Section 14A (2018) or comparable provision of the law of this state]]; and~~

~~(2) Evidenced by the officer's certificate under official seal affixed to or logically
associated with the electronic will.~~

~~(c) The acknowledgment and affidavits under subsection (a) must be in substantially the
following form:~~

~~I, _____, the testator, and, being sworn, declare to the
(name)~~

~~undersigned officer that I sign this instrument as my electronic will, I willingly sign it or willingly
direct another individual to sign it for me, I execute it as my voluntary act for the purposes
expressed in this instrument, and I am [18] years of age or older, of sound mind, and under no
constraint or undue influence.~~

~~_____~~

~~Testator~~

~~We, _____ and _____,~~

~~(name)~~

~~(name)~~

~~witnesses, being sworn, declare to the undersigned officer that the testator signed this
instrument as the testator's electronic will, that the testator willingly signed it or willingly
directed another individual to sign for the testator, and that each of us, in the physical [or
electronic] presence of the testator, signs this instrument as witness to the testator's signing, and
to the best of our knowledge the testator is [18] years of age or older, of sound mind, and under
no constraint or undue influence.~~

~~_____~~

~~Witness~~

~~_____~~

~~Witness~~

~~Certificate of officer:~~

1 State of _____
2 [County] of _____
3 Subscribed, sworn to, and acknowledged before me by
4 _____,
5 (name)
6 the testator, and subscribed and sworn to before me by _____ and
7 (name)
8 _____, witnesses, this _____ day of _____,
9 (name)
10 (Seal)
11 _____
12 (Signed)
13 _____
14 (Capacity of officer)

15 ~~(d)~~(b) A signature physically or electronically affixed to an affidavit that is affixed to or
16 logically associated with an electronic will under this ~~act~~ Article is deemed a signature of the
17 electronic will under ~~Section 5(a)~~ G.S. 31-75.

18
19 *[ULC Legislative Note: A state that has not enacted the Uniform Probate Code should conform*
20 *Section 8 to its self-proving affidavit statute. The statements that the requirements for a valid will*
21 *are met and the language required for the notary's certification should conform with the*
22 *requirements under state law.*

23 *A state that has authorized remote online notarization by enacting the 2018 version of the*
24 *Revised Uniform Law on Notarial Acts should cite to Section 14A of that act in subsection (b)(1).*
25 *A state that has adopted a non-uniform law allowing remote online notarization should cite to*
26 *the relevant section of state law in subsection (b)(1).*

27 *A state that does not permit an electronic will to be executed without all witnesses being*
28 *physically present should omit the bracketed language in subsection (b)(1) and the words "or*
29 *electronic" in subsection (c) and Section 5(a)(3).]*
30

31 *[GSC Staff Note: G.S. 31-11.6 provides:*

32 *§ 31-11.6. How attested wills may be made self-proved.*

(a) Any will may be simultaneously executed, attested, and made self-proved, by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where execution occurs and evidenced by the officer's certificate, under official seal, in the following form, or in a similar form showing the same intent:

"I, _____, the testator, sign my name to this instrument this ____ day of _____, ____ and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Testator

We _____, _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Witness

Witness

THE STATE OF _____.

COUNTY OF _____.

Subscribed, sworn to and acknowledged before me by _____, the testator and subscribed and sworn to before me by _____ and _____, witnesses, this ____ day of _____

(SEAL)

(SIGNED) _____
(OFFICIAL CAPACITY OF OFFICER)"

(b) An attested written will executed as provided by G.S. 31-3.3 may at any time subsequent to its execution be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the attesting witnesses, each made before an officer authorized to administer oaths under the laws of this State, and evidenced by the officer's certificate, under official seal, attached or annexed to the will in form and content substantially as follows:

"STATE OF NORTH CAROLINA

"COUNTY/CITY OF _____

"Before me, the undersigned authority, on this day personally appeared _____, and _____, known to me to be the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument and, all of these persons being by me first duly sworn. The testator, declared to me and to the witnesses in my presence: That said instrument is his last will; that he had willingly signed or directed another to sign the same for him, and executed it in the presence of said witnesses as his free and voluntary act for the purposes therein expressed; or, that the testator signified that the instrument was his instrument by acknowledging to them his signature previously affixed thereto.

The said witnesses stated before me that the foregoing will was executed and acknowledged by the testator as his last will in the presence of said witnesses who, in his presence and at his request, subscribed their names thereto as attesting witnesses and that the testator, at the time of the execution of said will, was over the age of 18 years and of sound and disposing mind and memory.

Subscribed, sworn and acknowledged before me by _____, the testator, subscribed and sworn
before me by _____, _____ and _____ witnesses, this ____ day of _____, A.D. ____
(SEAL)

(SIGNED) _____
(OFFICIAL CAPACITY OF OFFICER)"

(c) The sworn statement of any such witnesses taken as herein provided shall be accepted
by the court as if it had been taken before such court.

(d) Any will recognized as valid under G.S. 31-46(1) or (2) and shown by the propounder
to have been made self-proved under the laws of the jurisdiction in which the testator was
physically present at the time of execution or the place where the testator was domiciled at the
time of execution or at the time of death shall be considered as self-proved.

(e) A military testamentary instrument executed in accordance with the provisions of 10
U.S.C. § 1044d(d) or any successor or replacement statute shall be considered as self-proved.
(1977, c. 795, s. 1; 1979, c. 536, s. 1; 1981, c. 599, s. 8; 1999-456, s. 59; 2013-91, s. 1(f);
2019-178, s. 3(a).)]

"§ 31-79. Certification of paper copy.

An individual may create a certified paper copy of an electronic will by ~~affirming under~~
~~penalty of perjury certifying~~ that a paper copy of the electronic will is a complete, true, and
accurate copy of the electronic will. The certification shall be in the form of an affidavit sworn
to or affirmed before an officer authorized to administer oaths. If the electronic will is made ~~self-~~
~~proving, self-proved,~~ the certified paper copy of the will ~~must~~ shall include the ~~self-proving~~
affidavits. The certified paper copy of the electronic will may be created at any time after the
electronic will is executed in accordance with G.S. 31-75.

[ULC Legislative Note: A state may need to change its probate court rules to expand the
definition of what may be filed with the court to include electronic filings.

Court procedural rules may require that a certified paper copy be filed within a prescribed
number of days of the filing of the application for probate. A state may want to include procedural
rules specifically for electronic wills.]

"§ 31-80. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it."

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

"§ 28A-2A-8. Manner of probate of attested written will.

(a) An attested written ~~will,~~will other than an electronic will, executed as provided by G.S. 31-3.3, may be probated in~~the following manner;~~any of the following ways:

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

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

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

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

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

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

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

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

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

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

(a1) A certified paper copy of an electronic will, executed as provided by G.S. 31-75 and
created as provided by G.S. 31-79, may be probated in any of the following ways:

(1) Upon the testimony of at least two of the attesting witnesses.

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

a. Upon the testimony of the witness.

b. Upon proof of other circumstances that satisfy the clerk of the superior
court as to the genuineness and due execution of the will.

(3) If the testimony of none of the attesting witnesses is available, then upon
compliance with sub-subdivision b. of subdivision (a1)(2) of this section.

(4) Upon a showing that the will has been made self-proved in accordance with
G.S. 31-78.

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

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

SECTION 3. G.S. 31-3.2 reads as rewritten:

"§ 31-3.2. Kinds of wills.

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

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

- 1 (2) A holographic will ~~which~~that complies with the requirements of G.S. 31-3.4.
- 2 (3) An electronic will that complies with the requirements of G.S. 31-75.

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

5 **SECTION 4.** The Revisor of Statutes shall cause to be printed, as annotations to the

6 published General Statutes, all relevant portions of the Official Comments to the Uniform

7 Electronic Wills Act and all explanatory comments of the drafters of this act as the Revisor may

8 deem appropriate.

9 **SECTION 5.** This act becomes effective January 1, 2025, and applies to wills

10 executed on or after that date.