

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.]*

**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)}(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.}~~ **Reserved.**

(3) ~~"Electronic will" means a~~ Electronic will. – A will executed electronically in compliance with ~~Section 5(a).~~ G.S. 31-74(a).

(4) ~~"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) ~~"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) ~~"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 any 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  
sub-subdivision a. of 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.

**~~"§ #. 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.~~

**"§ 31-74. 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.~~

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

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

(2) Signed by the testator. A signature physically or electronically affixed to an  
acknowledgement or affidavit that is affixed to or logically associated with an  
electronic will is deemed a signature of the electronic will.

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

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

*[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 and G.S. 31-46 provide:*

**§ 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.)*

**§ 31-46. 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).)]*

~~"[§ #. 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.]*

**§ 31-75. 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: in either of the following ways:

(1) ~~A subsequent will that revokes all or part of the electronic will expressly or by inconsistency; or~~ In the manner provided by G.S. 31-5.1(1).

(2) ~~A~~ By 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.)]*

**"§ 31-76. 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, so long as the acknowledgment of the testator and the affidavits of the witnesses are 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:~~

State of \_\_\_\_\_

[County] of \_\_\_\_\_

Subscribed, \_\_\_\_\_ sworn to, \_\_\_\_\_ and \_\_\_\_\_ acknowledged before me by \_\_\_\_\_

\_\_\_\_\_,

(name)

the testator, and subscribed and sworn to before me by \_\_\_\_\_ and

(name)

\_\_\_\_\_, witnesses, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

(name)

~~(Seal)~~

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Capacity of officer)

~~(d) A signature physically or electronically affixed to an affidavit that is affixed to or  
logically associated with an electronic will under this [act] is deemed a signature of the electronic  
will under Section 5(a).~~

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

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

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



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

**§ 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.

\_\_\_\_\_  
Testator

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

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).)]

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

(a) 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.

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

*[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.]*

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

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

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

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

(a) An attested written ~~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~~ The testimony of ~~such witness, and~~ the witness.

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

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

b. ~~Upon compliance~~ 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 ~~created under G.S. 31-77(a)~~ 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. The testimony of the witness.

b. 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. 31-76.

(b) Due execution of a will may be established, ~~where if~~ 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. 28A-2B-1 reads as rewritten:

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

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

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

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

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

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

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

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

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

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

(1) A statement that the petitioner is a resident of North Carolina and specifying the county of the petitioner's residence.

(2) Allegations that the will was prepared and executed in accordance with North Carolina law and a statement that the will was executed with testamentary intent.

(3) A statement that the petitioner had testamentary capacity at the time the will was executed.

(4) A statement that the petitioner was free from undue influence and duress and executed the will in the exercise of the petitioner's free will.

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

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

**SECTION 5.** 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.~~

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

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

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

**SECTION 6.** G.S. 31-11 reads as rewritten:

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

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

**SECTION 4.** 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 Wills Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

**SECTION 5.** This act becomes effective January 1, 2025, and applies to electronic wills executed on or after that date.

*[Staff Note: The Administrative Office of the Courts ("AOC") suggests the following additional conforming changes:*

(1) AOC suggests clarifying how the living probate procedure in Article 2B of Chapter 28A applies to an electronic will. AOC specifically points out G.S. 28A-2B-1(b) and G.S. 28A-2B-3(b)'s references to an "original will or codicil." Article 2B of Chapter 28A provides:

Article 2B.

Living Probate.

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

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

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

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

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

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

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

**§ 28A-2B-2. Venue.**

The venue for a petition under G.S. 28A-2B-1 is the county of this State in which the petitioner whose will or codicil is the subject of the petition resides.

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

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

- (1) A statement that the petitioner is a resident of North Carolina and specifying the county of the petitioner's residence.
- (2) Allegations that the will was prepared and executed in accordance with North Carolina law and a statement that the will was executed with testamentary intent.
- (3) A statement that the petitioner had testamentary capacity at the time the will was executed.
- (4) A statement that the petitioner was free from undue influence and duress and executed the will in the exercise of the petitioner's free will.
- (5) A statement identifying the petitioner, and all persons believed by the petitioner to have an interest in the proceeding, including, for any interested parties who are minors, information regarding the minor's appropriate representative.

(b) The petitioner shall file a copy of the will or codicil with the petition and tender the original will or codicil at the hearing as provided in G.S. 28A-2B-1(b). If an order is entered



1 *declaring the will or codicil to be valid, the court shall affix a certificate of validity to the will or*  
2 *codicil.*

3 **§ 28A-2B-4. Declaration by court; bar to caveat.**

4 (a) *If the court enters a judgment declaring a will or codicil to be valid, such judgment*  
5 *shall be binding upon all parties to the proceeding, including any persons represented in the*  
6 *proceeding pursuant to the provisions of G.S. 28A-2-7, and no party bound by the judgment shall*  
7 *have any further right to, and shall be barred from filing, a caveat to the will or codicil once that*  
8 *will or codicil is entered into probate following the petitioner's death.*

9 (b) *If the court declares a will or codicil to be valid, upon the motion of the petitioner or*  
10 *the court, the court may order that the will or codicil cannot be revoked and that no subsequent*  
11 *will or codicil will be valid unless the revocation or the subsequent will or codicil is declared*  
12 *valid in a proceeding under this Article. If the court enters such an order, any subsequent*  
13 *revocation of the will or codicil not declared valid in a proceeding under this Article shall be*  
14 *void and any subsequent will or codicil not declared valid in a proceeding under this Article*  
15 *shall be void and shall not be admitted to probate.*

16 (c) *If a will or codicil judicially declared valid is revoked or modified by a subsequent*  
17 *will or codicil, nothing in this section shall bar an interested person from contesting the validity*  
18 *of that subsequent will or codicil, unless that subsequent will or codicil is also declared valid in*  
19 *a proceeding under this Article in which the interested person was a party. If a will or codicil*  
20 *judicially declared valid is revoked by a method other than the execution of a subsequent will or*  
21 *codicil, nothing in this section shall bar an interested person from contesting the validity of that*  
22 *revocation, unless that revocation is also declared valid in a proceeding under this Article in*  
23 *which the interested person was a party.*

24 (d) *Nothing in this Article shall preclude a party from seeking relief from a judgment*  
25 *pursuant to Rule 60 of the North Carolina Rules of Civil Procedure, including, without limitation,*  
26 *for fraud upon the court.*

27 **§ 28A-2B-5. Confidentiality.**

28 *Following the entry of a judgment, a party to the proceeding may move that the contents of*  
29 *the file be sealed and kept confidential, and upon such motion, the clerk shall seal the contents*  
30 *of the file from public inspection. The contents of the file shall not be released except by order of*  
31 *the clerk to any person other than:*

32 (1) *The petitioner named in the petition.*

33 (2) *The attorney for the petitioner.*

34 (3) *Any court of competent jurisdiction hearing or reviewing the matter.*

35 *For good cause shown, the court may order the records that are confidential under this section*  
36 *to be made available to a person who is not listed in this section. Following the petitioner's death,*  
37 *a sealed file shall be unsealed upon the request of any interested person for the purpose of*  
38 *probate or other estate proceedings.*

39 **§ 28A-2B-6. Costs and attorneys' fees.**

40 *Costs, including reasonable attorneys' fees, incurred by a party in a proceeding under this*  
41 *Article shall be taxed against any party, or apportioned among the parties, in the discretion of*  
42 *the court, except that the court shall allow attorneys' fees for the attorneys of a party contesting*  
43 *the proceeding only if the court finds that the party had reasonable grounds for contesting the*  
44 *proceeding.*

46 (2) *AOC suggests clarifying whether the provisions of Article 2 ("Revocation of Will") of*  
47 *Chapter 31 apply to electronic wills (e.g., G.S. 31-5.4). Article 2 of Chapter 31 provides:*

48  
49 *Article 2.*  
50 *Revocation of Will.*

1    § **31-5:** *Rewritten and renumbered as G.S. 31-5.1 by Session Laws 1953, c. 1098, s. 3.*

2    § **31-5.1. Revocation of written will.**

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

- 4           (1)    By a subsequent written will or codicil or other revocatory writing executed  
5                   in the manner provided herein for the execution of written wills, or  
6           (2)    By being burnt, torn, canceled, obliterated, or destroyed, with the intent and  
7                   for the purpose of revoking it, by the testator himself or by another person in  
8                   the testator's presence and by the testator's direction.

9    § **31-5.2. Revocation of nuncupative will.**

10       A nuncupative will or any part thereof may be revoked

- 11           (1)    By a subsequent nuncupative will, or  
12           (2)    By a subsequent written will or codicil or other revocatory writing executed  
13                   in the manner provided herein for the execution of written wills.

14   § **31-5.3. Will not revoked by marriage; dissent from will made prior to marriage.**

15       A will is not revoked by a subsequent marriage of the maker; and the surviving spouse may  
16       petition for an elective share when there is a will made prior to the marriage in the same manner,  
17       upon the same conditions, and to the same extent, as a surviving spouse may petition for an  
18       elective share when there is a will made subsequent to marriage.

19   § **31-5.4. Revocation by divorce or annulment; revival.**

20       Dissolution of marriage by absolute divorce or annulment after making a will does not revoke  
21       the will of any testator but, unless otherwise specifically provided in the will, it revokes all  
22       provisions in the will in favor of the testator's former spouse or purported former spouse,  
23       including, but not by way of limitation, any provision conferring a general or special power of  
24       appointment on the former spouse or purported former spouse and any appointment of the former  
25       spouse or purported former spouse as executor, trustee, conservator, or guardian. If provisions  
26       are revoked solely by this section, they are revived by the testator's remarriage to the former  
27       spouse or purported former spouse.

28   § **31-5.5. After-born or after-adopted child; children born out of wedlock; effect on will.**

29       (a)    A will shall not be revoked by the subsequent birth of a child to the testator, or by the  
30       subsequent adoption of a child by the testator, or by the subsequent entitlement of an after-born  
31       child born out of wedlock to take as an heir of the testator pursuant to the provisions of  
32       G.S. 29-19(b), but any after-born, after-adopted or entitled after-born child born out of wedlock  
33       shall have the right to share in the testator's estate to the same extent the after-born,  
34       after-adopted, or entitled after-born child born out of wedlock would have shared if the testator  
35       had died intestate unless:

- 36           (1)    The testator made some provision in the will for the child, whether adequate  
37                   or not;  
38           (2)    It is apparent from the will itself that the testator intentionally did not make  
39                   specific provision therein for the child;  
40           (3)    The testator had children living when the will was executed, and none of the  
41                   testator's children actually take under the will;  
42           (4)    The surviving spouse receives all of the estate under the will; or  
43           (5)    The testator made provision for the child that takes effect upon the death of  
44                   the testator, whether adequate or not.

45       (b)    The provisions of G.S. 28A-22-2 shall be construed as being applicable to  
46       after-adopted children and to after-born children, whether legitimate or entitled children born  
47       out of wedlock.

48       (c)    The terms "after-born," "after-adopted" and "entitled after-born" as used in this  
49       section refer to children born, adopted or entitled subsequent to the execution of the will.

50   § **31-5.6. No revocation by subsequent conveyance.**

*No conveyance or other act made or done subsequently to the execution of a will of, or relating to, any real or personal estate therein comprised, except an act by which such will shall be duly revoked, shall prevent the operation of the will with respect to any estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of the testator's death.*

**§ 31-5.7. Specific provisions for revocation exclusive; effect of changes in circumstances.**

*No will can be revoked in whole or in part by any act of the testator or by a change in the testator's circumstances or condition except as provided by G.S. 31-5.1 through 31-5.6 inclusive.*

**§ 31-5.8. Revival of revoked will.**

*No will or any part thereof that has been in any manner revoked can, except as provided in G.S. 31-5.4, be revived otherwise than by a reexecution thereof, or by the execution of another will in which the revoked will or part thereof is incorporated by reference.*

**§ 31-6:** Renumbered as G.S. 31-5.3 by Session Laws 1953, c. 1098, s. 5.

**§ 31-7.** Repealed by Session Laws 1953, c. 1098, s. 9.

**§ 31-8:** Renumbered as G.S. 31-5.6 by Session Laws 1953, c. 1098, s. 8.

(3) *AOC suggests amending G.S. 31-11 "to add an exception for electronic wills, to clarify that a hard drive or thumb drive could not be dropped in the safekeeping depositories clerks are required to keep for wills." G.S. 31-11 provides:*

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

*The clerk of the superior court in each county of North Carolina shall be required to keep a receptacle or depository in which any person who desires to do so may file that person's will for safekeeping; and the clerk shall, upon written request of the testator, or the duly authorized agent or attorney for the testator, permit said will or testament to be withdrawn from said depository or receptacle at any time prior to the death of the testator: Provided, that the contents of said will shall not be made public or open to the inspection of anyone other than the testator or the testator's duly authorized agent until such time as the said will shall be offered for probate. (1937, c. 435, s. 1; 1971, c. 528, s. 28; 2011-344, s. 8.)]*