

1 ENGROSSED SENATE
2 BILL NO. 468

By: Howard of the Senate

and

Kannady of the House

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6 An Act relating to estate planning; creating the
7 Uniform Electronic Estate Planning Documents Act;
8 providing short title; defining terms; construing
9 provisions; stating scope of act; providing
10 exception; providing for applicability of principles
11 of law and equity; clarifying that use of electronic
12 record or signature not required; prohibiting certain
13 waiver; requiring recognition of electronic non-
14 testamentary estate planning document or signature;
15 establishing attribution and effect of electronic
16 record and signature; establishing requirements for
17 notarization and acknowledgement; authorizing
18 electronic witnessing and attestation for certain
19 documents; establishing requirements for retention of
20 certain electronic records; providing exception;
21 allowing additional requirements imposed by
22 governmental agency; authorizing creation of
23 certified paper copy of certain electronic documents;
24 providing for admissibility of certain electronic
documents or signatures; providing for uniformity of
application and construction; clarifying relation to
certain federal provisions; specifying applicability
of provisions to certain electronic documents;
providing for severability; and providing for
codification.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 901 of Title 84, unless there is
created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as the "Uniform
2 Electronic Estate Planning Documents Act".

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 902 of Title 84, unless there is
5 created a duplication in numbering, reads as follows:

6 As used in the Uniform Electronic Estate Planning Documents Act:

7 1. "Electronic" means relating to technology having electrical,
8 digital, magnetic, wireless, optical, electromagnetic, or similar
9 capabilities;

10 2. "Electronic record" means a record created, generated, sent,
11 communicated, received, or stored by electronic means;

12 3. "Electronic signature" means an electronic symbol or process
13 attached to or logically associated with a record and executed or
14 adopted by a person with the intent to sign the record;

15 4. "Information" includes data, text, images, codes, computer
16 programs, software, and databases;

17 5. "Non-testamentary estate planning document" means a record
18 relating to estate planning that is readable as text at the time of
19 signing and is not a will or contained in a will. Non-testamentary
20 estate planning document includes:

21 a. a record readable as text at the time of signing that
22 creates, exercises, modifies, releases, or revokes:

23 (1) a trust instrument,
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- (2) a trust power that under the terms of the trust requires a signed record,
 - (3) a memorandum or certification of a trust,
 - (4) a durable power of attorney,
 - (5) an agent's certification of the validity of a power of attorney and the agent's authority,
 - (6) a power of appointment,
 - (7) an advance directive including a health-care power of attorney, directive to physicians, natural death statement, living will, and medical or physician order for life-sustaining treatment,
 - (8) a record directing disposition of an individual's body after death,
 - (9) a nomination of a guardian for the signing individual,
 - (10) a nomination of a guardian for a minor child or disabled adult child,
 - (11) a mental health treatment declaration, or
 - (12) any other record intended to carry out an individual's intent regarding property or health care while incapacitated or on death, and
- b. Non-testamentary estate planning document does not include a deed of real property or certificate of title for a motor vehicle, watercraft, or aircraft;

1 6. "Person" means an individual, estate, business or nonprofit
2 entity, government or governmental subdivision, agency, or
3 instrumentality, or other legal entity;

4 7. "Power of attorney" means a record that grants authority to
5 an agent to act in place of the principal, even if the term is not
6 used in the record;

7 8. "Record" means information:

- 8 a. inscribed on a tangible medium, or
- 9 b. stored in an electronic or other medium and
10 retrievable in perceivable form;

11 9. "Security procedure" means a procedure to verify that an
12 electronic signature, record, or performance is that of a specific
13 person or to detect a change or error in an electronic record,
14 including a procedure that uses an algorithm, code, identifying word
15 or number, encryption, callback, or other acknowledgment procedure;

16 10. "Settlor" means a person, including a testator, that
17 creates or contributes property to a trust;

18 11. "Sign" means, with present intent to authenticate or adopt
19 a record:

- 20 a. execute or adopt a tangible symbol, or
- 21 b. attach to or logically associate with the record an
22 electronic signature;

23 12. "State" means a state of the United States, the District of
24 Columbia, Puerto Rico, the United States Virgin Islands, or other

1 territory or possession subject to the jurisdiction of the United
2 States. The term includes a federally recognized Indian tribe;

3 13. "Terms of a trust" means:

4 a. except as provided in subparagraph b of this
5 paragraph, the manifestation of the settlor's intent
6 regarding a trust's provisions as:

7 (1) expressed in the trust instrument, or

8 (2) established by other evidence that would be
9 admissible in a judicial proceeding; or

10 b. the trust's provisions as established, determined, or
11 amended by:

12 (1) a trustee or other person in accordance with
13 applicable law,

14 (2) a court order, or

15 (3) a nonjudicial settlement agreement;

16 14. "Trust instrument" means an instrument executed by the
17 settlor or other person authorized by law that contains terms of the
18 trust including any amendments; and

19 15. "Will" includes a codicil and a testamentary instrument
20 that appoints an executor, revokes or revises another will,
21 nominates a guardian, or expressly excludes or limits the right of
22 an individual or class to succeed to property of the decedent
23 passing by intestate succession.

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 903 of Title 84, unless there is
3 created a duplication in numbering, reads as follows:

4 This act shall be construed and applied to facilitate electronic
5 estate planning documents and signatures consistent with other law
6 and be consistent with reasonable practices concerning electronic
7 documents and signatures and continued expansion of those practices.

8 SECTION 4. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 904 of Title 84, unless there is
10 created a duplication in numbering, reads as follows:

11 A. Except as provided in subsection B of this section, this act
12 shall apply to an electronic non-testamentary estate planning
13 document and an electronic signature on a non-testamentary estate
14 planning document.

15 B. This act shall not apply to a non-testamentary estate
16 planning document if the document precludes use of an electronic
17 record or electronic signature.

18 C. This act shall not affect the validity of an electronic
19 record or electronic signature that is valid under the Uniform
20 Electronic Transactions Act, Section 15-101 et seq. of Title 12A of
21 the Oklahoma Statutes or other law of this state authorizing the use
22 of electronic records or electronic signatures.

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1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 905 of Title 84, unless there is
3 created a duplication in numbering, reads as follows:

4 The law of this state and principles of equity applicable to a
5 non-testamentary estate planning document shall apply to an
6 electronic non-testamentary estate planning document except as
7 modified by this act.

8 SECTION 6. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 906 of Title 84, unless there is
10 created a duplication in numbering, reads as follows:

11 A. This act shall not require a non-testamentary estate
12 planning document or signature on a non-testamentary estate planning
13 document to be created, generated, sent, communicated, received,
14 stored, or otherwise processed or used by electronic means or in
15 electronic form.

16 B. A person shall not be required to have a non-testamentary
17 estate planning document in electronic form or signed electronically
18 even if the person previously created or signed a non-testamentary
19 estate planning document by electronic means.

20 C. No person shall waive the provisions of this section.

21 SECTION 7. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 907 of Title 84, unless there is
23 created a duplication in numbering, reads as follows:

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1 A. A non-testamentary estate planning document or a signature
2 on a non-testamentary estate planning document may not be denied
3 legal effect or enforceability solely because it is in electronic
4 form.

5 B. If other laws of this state require a non-testamentary
6 estate planning document to be in writing, an electronic record of
7 the document shall satisfy such requirement.

8 C. If other laws of this state require a signature on a non-
9 testamentary estate planning document, an electronic signature shall
10 satisfy such requirement.

11 SECTION 8. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 908 of Title 84, unless there is
13 created a duplication in numbering, reads as follows:

14 A. An electronic non-testamentary estate planning document or
15 electronic signature on an electronic non-testamentary estate
16 planning document is attributable to a person if it was the act of
17 the person. The act of the person may be shown in any manner
18 including by showing the efficacy of a security procedure applied to
19 determine the person to which the electronic record or electronic
20 signature was attributable.

21 B. The effect of attribution to a person under subsection A of
22 this section of a document or signature is determined from the
23 context and surrounding circumstances at the time of its creation,
24 execution, or adoption and as provided by law.

1 SECTION 9. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 909 of Title 84, unless there is
3 created a duplication in numbering, reads as follows:

4 If the laws of this state require a signature or record to be
5 notarized, acknowledged, verified, or made under oath, the
6 requirement shall be satisfied with respect to an electronic non-
7 testamentary estate planning document if an individual authorized to
8 perform the notarization, acknowledgment, verification, or oath
9 attaches or logically associates the individual's electronic
10 signature on the document together with all other information
11 required to be included under law.

12 SECTION 10. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 910 of Title 84, unless there is
14 created a duplication in numbering, reads as follows:

15 A. If the laws of this state base the validity of a non-
16 testamentary estate planning document on whether it is signed,
17 witnessed, or attested by another individual, the signature,
18 witnessing, or attestation of that individual may be electronic.

19 B. For the purposes of this subsection, "electronic presence"
20 means that two or more individuals in different locations are able
21 to communicate in real time to the same extent as if the individuals
22 were physically present in the same location. If the laws of this
23 state base the validity of a non-testamentary estate planning
24 document on whether it is signed, witnessed, or attested by another

1 individual in the presence of the individual signing the document,
2 the presence requirement shall be satisfied if the individuals are
3 in each other's electronic presence.

4 SECTION 11. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 911 of Title 84, unless there is
6 created a duplication in numbering, reads as follows:

7 A. Except as provided in subsection B of this section, if the
8 laws of this state require an electronic non-testamentary estate
9 planning document to be retained, transmitted, copied, or filed, the
10 requirement is satisfied by retaining, transmitting, copying, or
11 filing an electronic record that:

12 1. Accurately reflects the information in the document after it
13 was first generated in final form as an electronic record or under
14 Section 12 of this act; and

15 2. Remains accessible to the extent required by the other law.

16 B. A requirement under subsection A of this section to retain a
17 record does not apply to information the sole purpose of which is to
18 enable the record to be sent, communicated, or received.

19 C. A person may satisfy the requirements of subsection A of
20 this section by using the services of another person.

21 D. If the laws of this state require a non-testamentary estate
22 planning document to be presented or retained in its original form
23 or provides consequences if a non-testamentary estate planning
24 document is not presented or retained in its original form, an

1 electronic record retained in accordance with subsection A of this
2 section satisfies such requirement.

3 E. The provisions of this section do not preclude a
4 governmental agency from specifying requirements for the retention
5 of a record subject to the agency's jurisdiction in addition to the
6 requirements provided in this section. For the purposes of this
7 section, "governmental agency" means an executive, legislative, or
8 judicial agency, department, board, commission, authority,
9 institution, or instrumentality of the federal government or of a
10 state or of a county, municipality, or other political subdivision
11 of a state.

12 SECTION 12. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 912 of Title 84, unless there is
14 created a duplication in numbering, reads as follows:

15 An individual may create a certified paper copy of an electronic
16 non-testamentary estate planning document by affirming under penalty
17 of perjury that the paper copy is a complete and accurate copy of
18 the document.

19 SECTION 13. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 913 of Title 84, unless there is
21 created a duplication in numbering, reads as follows:

22 Evidence relating to an electronic non-testamentary estate
23 planning document or an electronic signature on the document may not
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1 be excluded in a proceeding solely because such evidence is in
2 electronic form.

3 SECTION 14. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 914 of Title 84, unless there is
5 created a duplication in numbering, reads as follows:

6 In applying and construing this uniform act, a court shall
7 consider the promotion of uniformity of the law among jurisdictions
8 that enact it.

9 SECTION 15. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 915 of Title 84, unless there is
11 created a duplication in numbering, reads as follows:

12 This act modifies, limits, or supersedes the Electronic
13 Signatures in Global and National Commerce Act, 15 U.S.C. Section
14 7001 et seq., as amended, but does not modify, limit, or supersede
15 15 U.S.C. Section 7001(c), or authorize electronic delivery of any
16 of the notices described in 15 U.S.C. Section 7003(b).

17 SECTION 16. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 916 of Title 84, unless there is
19 created a duplication in numbering, reads as follows:

20 This act shall apply to an electronic non-testamentary estate
21 planning document created, signed, generated, sent, communicated,
22 received, or stored prior to, on, or after the effective date of
23 this act.

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1 SECTION 17. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 917 of Title 84, unless there is
3 created a duplication in numbering, reads as follows:

4 If a provision of this act or its application to a person or
5 circumstance is held invalid, the invalidity does not affect another
6 provision or application that can be given effect without the
7 invalid provision.

8 Passed the Senate the 26th day of February, 2024.

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10 _____
11 Presiding Officer of the Senate

12 Passed the House of Representatives the ____ day of _____,
13 2024.

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15 _____
16 Presiding Officer of the House
17 of Representatives

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