

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 3287

By: Perry and Deutschendorf
of the House

and

Robinson of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to technology; stating legislative recognition of certain technology; establishing a digital signature pilot program; stating purposes of the pilot program; providing for Office of State Finance to act as coordinating agency; stating duties of coordinating agency; creating the Electronic Commerce Pilot Program Steering Committee; stating duties of the Committee; providing for membership of the Committee; providing for participation of agencies in pilot program; requiring certain report; making program contingent upon certain funds; authorizing Committee to perform certain duties in certain situation; amending Section 2, Chapter 100, O.S.L. 1997, which relates to the Task Force on Electronic Signature Technology; modifying expiration date; adding membership; deleting certain report requirements; creating the Electronic Records and Signature Act of 1998; stating purposes of the act; providing definitions; stating application of the act; providing exceptions for certain rules of law; providing for application of other rules of law; providing for resolution of conflicts of law; providing for optional use of electronic records or signatures; establishing validity of an electronic record; allowing other requirements by agreement; establishing validity of an electronic signature; allowing other requirements by agreement; providing for admissibility of electronic records or signatures; allowing original form requirements to be satisfied by certain electronic records; allowing retention requirements to be satisfied by certain electronic records; providing for form of retention; providing for retention in a certain manner; allowing governmental entities to specify additional requirements; providing for codification; providing an effective date; and declaring an emergency.

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 5060.50 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Legislature, recognizing the advancement of technology in commerce, hereby establishes a pilot program for the use of electronic commerce, including the use of digital signatures in state government. The pilot program will provide verifiable data on how electronic commerce and digital signatures can improve the internal services and operations of state government, and how it can enable and encourage the use of electronic commerce, including digital signatures, in transactions with business and commerce. The pilot program will limit risk and enable discovery and testing of procedures so that deployment across state government will progress smoothly. The pilot program shall include certain state agencies that will test the technology in government-to-government transactions and government-to-private-entity transactions.

B. The Office of State Finance shall be the coordinating agency for the pilot program. The Office of State Finance shall work with the state agencies participating in the program and acquire resources necessary for the pilot program. All resources acquired for the pilot program shall meet standards and procedures established by the Electronic Commerce Pilot Program Steering Committee.

C. There is hereby created the Electronic Commerce Pilot Program Steering Committee to oversee the pilot program. The Committee shall establish standards and procedures for using electronic commerce and for conducting the pilot program. The Committee shall study and incorporate, where appropriate, standards for digital signatures set by national organizations. The Committee shall consist of two members appointed by the Speaker of the House of Representatives, two members appointed by the President Pro Tempore of the Senate, one member appointed by the Governor and one member from each of the following agencies or offices:

1. The Department of Central Services;

2. The Secretary of State;
3. The Office of State Finance;
4. The Department of Commerce;
5. The Attorney General;
6. The State Auditor and Inspector;
7. The State Treasurer;
8. The Office of Personnel Management; and
9. The Oklahoma Tax Commission.

D. The Committee shall choose which state agencies will participate in the pilot program based on a determination made by the Committee of which agencies would enhance the pilot program.

E. The Committee shall evaluate the pilot program and file a report of its findings and recommendations by December 15, 1998, to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Governor.

F. Implementation of the pilot program shall be contingent upon the appropriation of funds for such purpose or the allocation of funds by participating agencies for such purpose. If funds are not appropriated or allocated for implementation of the pilot program the Committee may still meet to establish standards and procedures for using electronic commerce in state government.

SECTION 2. AMENDATORY Section 2, Chapter 100, O.S.L. 1997, is amended to read as follows:

Section 2. A. There is hereby created to continue until ~~July 1, 1998~~ February 1, 1999, the Task Force on Electronic Signature Technology. The purpose of the Task Force shall be to study the technology of and applications for electronic signatures and to prepare recommendations for legislative and other action needed to assure the availability and use of electronic signature technology in the state.

B. The Task Force shall be composed of ~~twenty-two (22)~~ thirty-six (36) members as follows:

1. The Secretary of State or designee;
2. The Director of State Finance or designee;
3. The Director of the Information Services Division of the Office of State Finance or designee;

4. The Attorney General or designee;
5. The Director of the Department of Central Services or designee;
6. The Director of the Oklahoma Department of Commerce or designee;
7. The Chancellor of the Oklahoma State Regents for Higher Education;
8. The Chief Justice of the Oklahoma Supreme Court or designee;
9. The Chair of the Evidence Code Committee for the Oklahoma Bar Association;
10. Two members of the House of Representatives appointed by the Speaker of the House of Representatives;
- ~~9.~~ 11. One member who represents a statewide association of professional engineers and architects to be appointed by the Speaker of the House of Representatives;
12. The Chair of the House of Representatives Banking Committee;
13. The Chair of the Senate Finance Committee;
14. The Chair of the House of Representatives Judiciary Committee;
15. The Chair of the Senate Judiciary Committee;
16. Two members of the Senate appointed by the President Pro Tempore of the Senate;
- ~~10.~~ 17. Two members who represent a business association to be appointed by the Governor;
- ~~11.~~ 18. Two members who represent the banking industry to be appointed by the Governor;
- ~~12.~~ 19. One member who represents a state banking association to be appointed by the President Pro Tempore of the Senate;
20. Two members who represent the insurance industry to be appointed by the Governor;
- ~~13.~~ 21. Two members of the Oklahoma Bar Association to be appointed by the Governor;
- ~~14.~~ 22. One member who represents large manufacturing businesses to be appointed by the Governor;

~~15.~~ 23. One member who represents small manufacturing businesses to be appointed by the Governor; ~~and~~

~~16.~~ 24. One member from a software or computer services business entity to be appointed by the Governor;

25. One member who represents the land title profession to be appointed by the Speaker of the House of Representatives;

26. Two members who represent the telecommunications industry to be appointed by the Speaker of the House of Representatives;

27. One member who represents a federal governmental agency with offices in Oklahoma to be appointed by the President Pro Tempore of the Senate; and

28. Two members at large, one to be appointed by the Speaker of the House of Representatives and one to be appointed by the President Pro Tempore of the Senate.

Required appointments shall be made on or before August 1, ~~1997~~ 1998.

~~C. The Governor Meetings shall call the first meeting of the Task Force, with subsequent meetings to be held at the call of the chairperson. At the first meeting, the Task Force shall elect a chairperson and vice-chairperson from among its members. The Task Force shall meet monthly at such time as established by the chairperson.~~

D. The Task Force shall:

1. Study the technology of and applications for electronic signatures;

2. Review and compare electronic signature legislation from other states;

3. Survey vendors which have developed technology for electronic signatures and review the available technology;

4. Study the cost of implementing and maintaining a state electronic signature certification program;

5. Make recommendations on an appropriate fee structure for a state electronic signature certification program; and

6. Make recommendations for implementing electronic commerce procedures for state agencies.

~~E. On or before December 1, 1997, the Task Force shall submit a report of the findings and recommendations of the Task Force to the House of Representatives Science and Technology Committee, the State Data Processing and Telecommunications Advisory Committee and the legislative committee in the State Senate responsible for technology issues for review and input.~~

~~F.~~ On or before January 1, ~~1998~~ 1999, the Task Force shall issue a final report of findings and recommendations to the Governor, the Legislature, each member of the Governor's cabinet and appropriate state agencies. The Task Force shall continue to meet monthly until ~~July 1, 1998~~ February 1, 1999, to continue to carry out the duties of the Task Force and make recommendations concerning any possible legislative action.

~~G.~~ F. Members of the Task Force shall receive no compensation for serving on the Task Force, but shall receive travel reimbursement as follows:

1. Legislative members of the Task Force shall be reimbursed for their necessary travel expenses incurred in the performance of their duties in accordance with Section 456 of Title 74 of the Oklahoma Statutes from the legislative body in which they serve;

2. State agency employees who are members of the Task Force shall be reimbursed for travel expenses incurred in the performance of their duties by their respective agencies in accordance with the State Travel Reimbursement Act; and

3. All other Task Force members shall be reimbursed by the Oklahoma Department of Commerce for travel expenses incurred in performance of their duties on the Task Force, in accordance with the State Travel Reimbursement Act.

~~H.~~ G. As necessary to carry out its charge, the Task Force may seek technical assistance from specialists in electronic signature technology.

~~I.~~ H. Staffing for the Task Force shall be provided jointly by the Office of the Secretary of State and the Oklahoma Department of Commerce.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 960 of Title 15, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Electronic Records and Signature Act of 1998".

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 961 of Title 15, unless there is created a duplication in numbering, reads as follows:

The purposes of the Electronic Records and Signature Act of 1998 are:

1. To facilitate and promote commerce transactions by validating and authorizing the use of electronic records and electronic signatures;

2. To eliminate barriers to electronic commerce transactions resulting from uncertainties relating to writing and signature requirements;

3. To simplify, clarify, and modernize the law governing commerce transactions through the use of electronic means;

4. To promote public confidence in the validity, integrity, and reliability of electronic transactions; and

5. To promote the development of the legal and business infrastructure necessary to implement electronic commerce transactions.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 962 of Title 15, unless there is created a duplication in numbering, reads as follows:

As used in the Electronic Records and Signature Act:

1. "Electronic" means electrical, digital, magnetic, optical, electromagnetic, or any other form of technology that entails capabilities similar to these technologies;

2. "Electronic agent" means a computer program or other electronic or automated means used, selected, or programmed by a person to initiate or respond to electronic records or performances in whole or in part without review by an individual;

3. "Electronic record" means a record created, stored, generated, received, or communicated by electronic means,

including but not limited to a computer program, electronic data interchange, electronic or voice mail, facsimile, telex, telecopying, scanning and similar technologies;

4. "Electronic signature" means any signature in electronic form attached to or logically associated with an electronic record executed or adopted by a person or its electronic agent with intent to sign the electronic record;

5. "Information" means data, text, images, sounds, codes, computer programs, software, databases, and the like;

6. "Person" means an individual, corporation, business trust, government or governmental unit or agency, political subdivision, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity;

7. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

8. "Rule of law" means a statute, regulation, ordinance, common-law rule, or other law relating to a transaction and enacted, established, or promulgated by this state, any agency, commission, department, court, or other authority or political subdivision of this state;

9. "Sign" means the execution or adoption of a signature by a person or the person's electronic agent;

10. "Signature" means any symbol, sound, process, or encryption of a record in whole or in part executed or adopted by a person or the person's electronic agent with intent to identify the person and to either:

- a. adopt or accept a term or record, or
- b. establish the informational integrity of a record or term that contains the signature or to which a record containing the signature refers;

11. "Term" means that portion of an agreement which relates to a particular matter; and

12. "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 963 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in subsection B of this section, the Electronic Records and Signature Act applies to electronic records and electronic signatures generated, stored, processed, communicated, or used for any purpose and in any transaction. Nothing in this act shall be construed to require any person to use or permit the use of electronic records or electronic signatures.

B. This act shall not apply to:

1. Rules of law relating to the creation or execution of a will;

2. Rules of law relating to the creation, performance, or enforcement of an indenture, declaration of trust, or power of attorney;

3. Rules of law relating to mortgages, conveyances, surface and mineral leases, rights-of-way, and easements of real property;

4. Rules of law, as specified by Section 475.1 et seq. of Title 59 of the Oklahoma Statutes relating to persons licensed as professional land surveyors or professional engineers, and Section 46.1 et seq. of Title 59 of the Oklahoma Statutes relating to persons licensed as architects or licensed landscape architects; and

5. Rules of law which expressly require a written record when the application of this act would cause a result which is inconsistent with the intent as expressed by the rule of law. Provided, a requirement by the rule of law that the information be in writing, printed, signed, or the like shall not in and of itself establish an inconsistency.

C. A transaction subject to this act shall also be subject to:

1. Any applicable rules of law relating to consumer transactions or which have the purpose of consumer protection; and
2. The Uniform Commercial Code as enacted in this state.

D. In the case of a conflict between this act and a rule of law referenced in subsection C of this section, the rule of law shall govern.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 964 of Title 15, unless there is created a duplication in numbering, reads as follows:

A record shall not be denied legal effect, validity, or enforceability solely because it is in the form of an electronic record. If a rule of law requires a record to be in writing, or provides consequences if it is not, an electronic record satisfies that rule of law. Persons may agree to their own requirements regarding the method of generating, storing, and communicating electronic records with each other.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 965 of Title 15, unless there is created a duplication in numbering, reads as follows:

A signature shall not be denied legal effect, validity or enforceability solely because it is in the form of an electronic signature. If a rule of law requires a signature, or provides consequences in the absence of a signature, an electronic signature satisfies that rule of law. Persons may agree to their own requirements regarding the method of generating, storing, and communicating electronic signatures with each other.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 966 of Title 15, unless there is created a duplication in numbering, reads as follows:

In any legal proceeding, the admissibility into evidence of an electronic record or electronic signature shall be determined by rules of law relating to evidence and the Oklahoma Evidence Code.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 967 of Title 15, unless there is created a duplication in numbering, reads as follows:

If a rule of law requires a record to be presented or retained in its original form, or provides consequences for the record not being presented or retained in its original form, that requirement shall be met by an electronic record if the electronic record is shown to reflect accurately the information in the original record from the time when it was first generated in its final form.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 968 of Title 15, unless there is created a duplication in numbering, reads as follows:

If a rule of law requires that certain documents, records, or information be retained, that requirement is met by retaining electronic records if the information contained in the electronic record remains accessible. The electronic record shall be retained in the format in which it was generated, stored, sent or received or in a format that can be demonstrated to reflect accurately the information as originally generated, stored, sent or received. Also, the information, if any, shall be retained in a manner that enables the identification of the source of origin and destination of an electronic record and the date and time it was sent or received. Nothing in this section shall preclude any government or governmental unit, agency, or political subdivision from specifying additional requirements for the retention of records, either written or electronic, that are subject to its jurisdiction.

SECTION 12. Sections 3 through 11 of this act shall become effective January 1, 1999.

SECTION 13. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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