

ENROLLED HOUSE
BILL NO. 1322

By: Perry of the House

and

Robinson of the Senate

An Act relating to electronic commerce; amending Section 2, Chapter 372, O.S.L. 2000 (12A O.S. Supp. 2000, Section 15-102), which relates to the Uniform Electronic Transactions Act; adding certain definitions; requiring persons to register with the Secretary of State before becoming a registered certification authority; requiring persons to file certain evidence of financial security; requiring approval by the Secretary; requiring certain transactions to be performed by a registered certification authority; providing for the lapse of a registration; providing a penalty for violations; providing for liability; allowing for an injunction or restraining order; authorizing the Secretary to adopt rules; authorizing the Secretary to establish reciprocity; creating the Task Force on Electronic Commerce; providing for membership; providing for reappointment; providing for meetings; stating duties; requiring a report; providing for travel reimbursement; providing for staffing; repealing Section 3, Chapter 195, O.S.L. 1999, as amended by Section 1, Chapter 211, O.S.L. 2000, which relates to the Task Force on Electronic Commerce; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 2, Chapter 372, O.S.L. 2000 (12A O.S. Supp. 2000, Section 15-102), is amended to read as follows:

Section 15-102. DEFINITIONS

In this act:

(1) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

(2) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic

records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

(3) "Certification authority" means a person who issues a certificate for a digital signature.

(4) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

~~(4)~~ (5) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this act and other applicable law.

~~(5)~~ (6) "Digital signature" means a type of electronic signature consisting of a transformation of an electronic message using an asymmetric crypto system such that a person having the initial message and the signer's public key can accurately determine whether:

(A) The transformation was created using the private key that corresponds to the signer's public key; and

(B) The initial message has not been altered since the transformation was made.

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

~~(6)~~ (8) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

~~(7)~~ (9) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

~~(8)~~ (10) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

~~(9)~~ (11) "Governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.

~~(10)~~ (12) "Information" means data, text, images, sounds, codes, computer programs, software, databases, or the like.

~~(11)~~ (13) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(14) "Message" means a digital representation of information.

~~(12)~~ (15) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

~~(13)~~ (16) "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.

(17) "Registered certification authority" means a certification authority who is registered with the Secretary and has been certified by the Secretary as meeting the standards set forth by regulation.

(18) "Secretary" means the Oklahoma Secretary of State.

~~(14)~~ (19) "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term "security procedure" includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

~~(15)~~ (20) "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 an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

~~(16)~~ (21) "Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 15-121 of Title 12A, unless there is created a duplication in numbering, reads as follows:

(a) No person, other than a state agency, board, or commission, shall act as a registered certification authority in this state until such person:

(1) Registers with the Secretary on forms approved and provided by the Secretary;

(2) Files with the Secretary a good and sufficient surety bond, certificate of insurance, or other evidence of financial security in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00); and

(3) Meets the requirements of any rules promulgated by the Secretary.

(b) Real estate transactions and district and appellate court filings shall require the use of a registered certification authority.

(c) If a registered certification authority fails to maintain any of the qualifications listed in subsection (a) of this section,

the registration of the certification authority shall be deemed lapsed.

(d) Any person who knowingly acts as a registered certification authority who has not met the requirements set forth in subsection (a) of this section shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or up to thirty (30) days in a county jail, or both, for each violation. Each violation shall be a separate offense under this section.

(e) Notwithstanding any contractual provisions to the contrary, a certification authority shall be liable for damages suffered by any person injured as a result of the fraudulent or unauthorized acts of the certification authority.

(f) In addition to any civil or criminal actions, the Secretary or the Attorney General may apply to the district court in the county in which a violation of this section has allegedly occurred for an order enjoining or restraining the person from continuing the acts specified in the complaint. The court may grant a temporary or permanent injunction or restraining order, with or without bond, as it deems just and proper.

(g) The Secretary is authorized to adopt rules to implement the provisions of this section, and related provisions.

(h) The Secretary shall have the authority to establish reciprocity with other states and nations for purposes of this section, and related provisions.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8121 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created to continue until June 1, 2004, the Task Force on Electronic Commerce. The purpose of the Task Force shall be to study the technology of and applications for electronic commerce and to prepare recommendations for legislative and other action needed to assure the availability and use of electronic commerce technology in the state.

B. The Task Force shall be composed of forty-nine (49) 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 or designee;
8. The Chief Justice of the Oklahoma Supreme Court or designee;
9. The State Auditor and Inspector or designee;
10. The Superintendent of Public Instruction or designee;
11. The Administrator of the Oklahoma Securities Commission or designee;
12. One member who represents the Uniform Commercial Code Filing Office in the office of the county clerk of Oklahoma County;
13. The Chair of the Evidence Code Committee for the Oklahoma Bar Association;
14. Three members of the House of Representatives appointed by the Speaker of the House of Representatives;
15. One member who represents a statewide association of professional engineers and architects to be appointed by the Speaker of the House of Representatives;
16. The Chair of the House of Representatives Banking Committee;
17. The Chair of the Senate Finance Committee;
18. The Chair of the House of Representatives Judiciary Committee;
19. The Chair of the Senate Judiciary Committee;
20. Three members of the Senate appointed by the President Pro Tempore of the Senate;
21. Two members who represent a business association to be appointed by the Governor;
22. Two members who represent the banking industry to be appointed by the Governor;
23. One member who represents a state banking association to be appointed by the President Pro Tempore of the Senate;
24. Two members who represent the insurance industry to be appointed by the Governor;
25. Two members of the Oklahoma Bar Association to be appointed by the Governor;
26. One member who represents large manufacturing businesses to be appointed by the Governor;
27. One member who represents small manufacturing businesses to be appointed by the Governor;

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

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

30. Two members who represent the telecommunications industry, one to be appointed by the President Pro Tempore of the Senate and one to be appointed by the Speaker of the House of Representatives;

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

32. Two members who represent vocational-technical education, one to be appointed by the Speaker of the House of Representatives and one to be appointed by the Governor;

33. One member who represents credit unions to be appointed by the President Pro Tempore of the Senate;

34. One member who represents a public school district to be appointed by the Speaker of the House of Representatives;

35. One member representing the transportation industry appointed by the Governor;

36. One member representing a statewide oil and gas royalty owners association to be appointed by the Speaker of the House of Representatives;

37. One member representing a statewide organization of cities and towns to be appointed by the President Pro Tempore of the Senate; and

38. 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.

C. Members who were serving on the Task Force as of June 1, 2001, shall automatically be appointed to serve on the Task Force on Electronic Commerce after June 1, 2001.

D. Meetings shall be held at the call of the chairperson. The Task Force shall meet at such time as established by the chairperson.

E. The Task Force shall:

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

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

3. Survey vendors which have developed technology for electronic commerce 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 structure for a state electronic signature certification program; and

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

F. On or before January 1, 2004, 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 until June 1, 2004, to continue to carry out the duties of the Task Force and make recommendations concerning any possible legislative action.

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

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

SECTION 4. REPEALER Section 3, Chapter 195, O.S.L. 1999, as amended by Section 1, Chapter 211, O.S.L. 2000, is hereby repealed.

SECTION 5. This act shall become effective July 1, 2001.

SECTION 6. 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.

Passed the House of Representatives the 17th day of May, 2001.

Presiding Officer of the House of
Representatives

Passed the Senate the 21st day of May, 2001.

Presiding Officer of the Senate