

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

HOUSE BILL HB1322

By: Perry

AS INTRODUCED

An Act relating to electronic commerce; amending Sections 2 and 18, Chapter 372, O.S.L. 2000 (12A O.S. Supp. 2000, Sections 15-102 and 15-118), which relate to the Uniform Electronic Transactions Act; adding certain definitions; limiting the extent of the act; authorizing state agencies to adopt rules relating to the use of digital signatures by the agency; requiring persons to register with the Secretary of State before becoming a registered certification authority; requiring persons to pay certain fee and file certain evidence of financial security; requiring approval by the Secretary; directing a registered certification authority to maintain certain records; providing for the lapse of a registration; providing a penalty for violations; authorizing the Secretary to adopt rules; authorizing the Secretary to establish reciprocity; amending 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; extending termination date for the Task Force; 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) "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) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this act and other applicable law.

(5) "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.

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

~~(6)~~ (7) "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)~~ (8) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

~~(8)~~ (9) "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)~~ (10) "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)~~ (11) "Information" means data, text, images, sounds, codes, computer programs, software, databases, or the like.

~~(11)~~ (12) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

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

~~(12)~~ (14) "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)~~ (15) "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.

(16) "Registered certification authority" means a person providing certification of a digital signature who is, or is certified by, a member of the group of certification authorities approved by and registered with the secretary.

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

~~(14)~~ (18) "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)~~ (19) "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)~~ (20) "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. AMENDATORY Section 18, Chapter 372, O.S.L. 2000 (12A O.S. Supp. 2000, Section 15-118), is amended to read as follows:

Section 15-118. ACCEPTANCE AND DISTRIBUTION OF ELECTRONIC RECORDS BY GOVERNMENTAL AGENCIES

(a) Except as otherwise provided in subsection (f) of Section ~~12~~ 15-112 of this ~~act~~ title, each governmental agency of this state shall determine whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

(b) To the extent that a governmental agency uses electronic records and electronic signatures under subsection (a) of this section, the governmental agency, giving due consideration to security, may specify:

(1) the manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;

(2) if electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any

third party used by a person filing a document to facilitate the process;

(3) control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and

(4) any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

(c) Except as otherwise provided in subsection (f) of Section ~~12~~ 15-112 of this ~~act~~ title, this act does not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures.

(d) This act does not require any person to use or permit the use of electronic or digital signatures.

(e) Any state agency may adopt rules governing the use of digital signatures by the agency as long as the rules meet or exceed those adopted by the Secretary.

SECTION 3. 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) Any person, before entering upon the duties of a registered certification authority, shall:

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

(2) Pay to the Secretary an annual filing fee of One Thousand Dollars (\$1,000.00);

(3) File with the Secretary a good and sufficient surety bond, certificate of insurance, or other evidence of financial security in the amount of One Hundred Thousand Dollars (\$100,000.00); and

(4) Be approved by the Secretary as meeting the requirements of any rules adopted by the Secretary, as the Secretary determines appropriate, to ensure the financial responsibility of the person

and condition, character, qualifications, and fitness to be a registered certification authority.

(b) A registered certification authority shall create, maintain, and preserve all records that are necessary to demonstrate compliance with rules adopted by the Secretary.

(c) If any person who is approved and registered with the Secretary as a registered certification authority fails to maintain any of the qualifications listed in subsection (a) and (b) of this section or otherwise required by rules adopted by the Secretary, the registration of the person shall be deemed lapsed.

(d) Any person who violates or fails to comply with this section and any provisions related to registered certification authority and the rules of the Secretary promulgated pursuant to this section, upon notice and hearing, shall be subject to a civil penalty not to exceed Ten Thousand Dollars (\$10,000.00) per failure or violation.

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

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

SECTION 4. AMENDATORY Section 3, Chapter 195, O.S.L. 1999, as amended by Section 1, Chapter 211, O.S.L. 2000, is amended to read as follows:

Section 1. A. There is hereby created to continue until June 1, ~~2003~~ 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 (40) 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 State Auditor and Inspector or designee;
10. The Chair of the Evidence Code Committee for the Oklahoma Bar Association;
11. Two members of the House of Representatives appointed by the Speaker of the House of Representatives;
12. One member who represents a statewide association of professional engineers and architects to be appointed by the Speaker of the House of Representatives;
13. The Chair of the House of Representatives Banking Committee;
14. The Chair of the Senate Finance Committee;
15. The Chair of the House of Representatives Judiciary Committee;
16. The Chair of the Senate Judiciary Committee;
17. Two members of the Senate appointed by the President Pro Tempore of the Senate;
18. Two members who represent a business association to be appointed by the Governor;
19. Two members who represent the banking industry to be appointed by the Governor;

20. One member who represents a state banking association to be appointed by the President Pro Tempore of the Senate;

21. Two members who represent the insurance industry to be appointed by the Governor;

22. Two members of the Oklahoma Bar Association to be appointed by the Governor;

23. One member who represents large manufacturing businesses to be appointed by the Governor;

24. One member who represents small manufacturing businesses to be appointed by the Governor;

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

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

27. 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;

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

29. 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;

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

31. 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, 2000, shall automatically be appointed to serve on the Task Force on Electronic Commerce after June 1, 2000.

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, ~~2003~~ 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, ~~2003~~ 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 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.

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