

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 SENATE BILL 468

By: Howard

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6 AS INTRODUCED

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

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

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

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

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

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

10 1. "Electronic" means relating to technology having electrical,
11 digital, magnetic, wireless, optical, electromagnetic, or similar
12 capabilities;

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

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

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

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

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- 1 a. a record readable as text at the time of signing that
2 creates, exercises, modifies, releases, or revokes:
- 3 (1) a trust instrument,
 - 4 (2) a trust power that under the terms of the trust
5 requires a signed record,
 - 6 (3) a memorandum or certification of a trust,
 - 7 (4) a durable power of attorney,
 - 8 (5) an agent's certification of the validity of a
9 power of attorney and the agent's authority,
 - 10 (6) a power of appointment,
 - 11 (7) an advance directive including a health-care
12 power of attorney, directive to physicians,
13 natural death statement, living will, and medical
14 or physician order for life-sustaining treatment,
 - 15 (8) a record directing disposition of an individual's
16 body after death,
 - 17 (9) a nomination of a guardian for the signing
18 individual,
 - 19 (10) a nomination of a guardian for a minor child or
20 disabled adult child,
 - 21 (11) a mental health treatment declaration, or
22 (12) any other record intended to carry out an
23 individual's intent regarding property or health
24 care while incapacitated or on death, and

1 b. Non-testamentary estate planning document does not
2 include a deed of real property or certificate of
3 title for a motor vehicle, watercraft, or aircraft;

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

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

10 8. "Record" means information:

11 a. inscribed on a tangible medium, or

12 b. stored in an electronic or other medium and
13 retrievable in perceivable form;

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

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

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

23 a. execute or adopt a tangible symbol, or
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1 b. attach to or logically associate with the record an
2 electronic signature;

3 12. "State" means a state of the United States, the District of
4 Columbia, Puerto Rico, the United States Virgin Islands, or other
5 territory or possession subject to the jurisdiction of the United
6 States. The term includes a federally recognized Indian tribe;

7 13. "Terms of a trust" means:

8 a. except as provided in subparagraph b of this
9 paragraph, the manifestation of the settlor's intent
10 regarding a trust's provisions as:

11 (1) expressed in the trust instrument, or

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

14 b. the trust's provisions as established, determined, or
15 amended by:

16 (1) a trustee or other person in accordance with
17 applicable law,

18 (2) a court order, or

19 (3) a nonjudicial settlement agreement;

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

23 15. "Will" includes a codicil and a testamentary instrument
24 that appoints an executor, revokes or revises another will,

1 nominates a guardian, or expressly excludes or limits the right of
2 an individual or class to succeed to property of the decedent
3 passing by intestate succession.

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

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

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

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

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

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

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

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

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

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

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

22 C. No person shall waive the provisions of this section.
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1 SECTION 7. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 907 of Title 84, unless there is
3 created a duplication in numbering, reads as follows:

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

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

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

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

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

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

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

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

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

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

23 B. For the purposes of this subsection, "electronic presence"
24 means that two or more individuals in different locations are able

1 to communicate in real time to the same extent as if the individuals
2 were physically present in the same location. If the laws of this
3 state base the validity of a non-testamentary estate planning
4 document on whether it is signed, witnessed, or attested by another
5 individual in the presence of the individual signing the document,
6 the presence requirement shall be satisfied if the individuals are
7 in each other's electronic presence.

8 SECTION 11. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 911 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, if the
12 laws of this state require an electronic non-testamentary estate
13 planning document to be retained, transmitted, copied, or filed, the
14 requirement is satisfied by retaining, transmitting, copying, or
15 filing an electronic record that:

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

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

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

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

1 D. If the laws of this state require a non-testamentary estate
2 planning document to be presented or retained in its original form
3 or provides consequences if a non-testamentary estate planning
4 document is not presented or retained in its original form, an
5 electronic record retained in accordance with subsection A of this
6 section satisfies such requirement.

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

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

19 An individual may create a certified paper copy of an electronic
20 non-testamentary estate planning document by affirming under penalty
21 of perjury that the paper copy is a complete and accurate copy of
22 the document.

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

4 Evidence relating to an electronic non-testamentary estate
5 planning document or an electronic signature on the document may not
6 be excluded in a proceeding solely because such evidence is in
7 electronic form.

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

11 In applying and construing this uniform act, a court shall
12 consider the promotion of uniformity of the law among jurisdictions
13 that enact it.

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

17 This act modifies, limits, or supersedes the Electronic
18 Signatures in Global and National Commerce Act, 15 U.S.C. Section
19 7001 et seq., as amended, but does not modify, limit, or supersede
20 15 U.S.C. Section 7001(c), or authorize electronic delivery of any
21 of the notices described in 15 U.S.C. Section 7003(b).

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

1 This act shall apply to an electronic non-testamentary estate
2 planning document created, signed, generated, sent, communicated,
3 received, or stored prior to, on, or after the effective date of
4 this act.

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

8 If a provision of this act or its application to a person or
9 circumstance is held invalid, the invalidity does not affect another
10 provision or application that can be given effect without the
11 invalid provision.

12 SECTION 18. This act shall become effective November 1, 2023.

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