

An Act

ENROLLED SENATE
BILL NO. 468

By: Howard of the Senate

and

Kannady and Swope of the
House

An Act relating to estate planning; creating the Oklahoma Uniform Electronic Estate Planning Documents Act; defining terms; providing when an electronic will is valid; providing requirements for an electronic will; providing that the intent of a testator's electronic will may be established by extrinsic evidence; providing for revocation; providing that an electronic will may be simultaneously executed, attested, and made self-proving by acknowledgment of the testator and affidavits of the witnesses; providing requirements for acknowledgment and affidavits; providing sample acknowledgment and affidavit form; providing for electronic signature; providing for a certified paper copy of an electronic will; providing for applying and construing act; providing when act is applicable; creating the Uniform Electronic Estate Planning Documents Act; providing short title; defining terms; construing provisions; stating scope of act; providing exception; providing for applicability of principles of law and equity; clarifying that use of electronic record or signature is not required; prohibiting certain waiver; requiring recognition of electronic non-testamentary estate planning document or signature; establishing attribution and effect of electronic record and signature; establishing requirements for notarization and acknowledgement; authorizing electronic witnessing and attestation for certain documents; establishing requirements for retention of certain electronic records; providing exception; allowing additional requirements imposed by governmental agency; authorizing creation of

certified paper copy of certain electronic documents; 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; providing for codification; and providing an effective date.

SUBJECT: Estate planning documents

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:

Sections 1 through 10 of this act shall be known and may be cited as the "Oklahoma Uniform Electronic Estate Planning Documents Act".

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

As used in the Uniform Electronic Estate Planning Documents Act:

1. "Communication technology" means an electronic device or process that:
 - a. allows two or more individuals to communicate with each other simultaneously by sight and sound, or
 - b. when necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment;

2. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

3. "Electronic presence" means the relationship of two or more individuals in different locations communicating in real time by means of communication technology, to the same extent as if the individuals were physically present in the same location;

4. "Electronic will" means a will executed electronically in compliance with subsection A of Section 5 of this act;

5. "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;

6. "Sign" means, with present intent to authenticate or adopt a record:

- a. to execute or adopt a tangible symbol, or
- b. to affix to or logically associate with the record an electronic symbol or process;

7. "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 property located within the reservation of a federally recognized Indian tribe; and

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

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

An electronic will is a will for all purposes of the laws of this state. The laws of this state applicable to wills and

principles of equity apply to an electronic will, except as modified by this act.

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

A will executed electronically but not in compliance with subsection A of Section 5 of this act is an electronic will under this act if executed in compliance with the law of the jurisdiction where the testator is:

1. Physically located when the will is signed; or
2. Domiciled or resides when the will is signed or when the testator dies.

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

A. Subject to subsection D of Section 7 of this act, an electronic will must be:

1. A record that is readable as text at the time of signing under paragraph 2 of this subsection;

2. Signed by:

- a. the testator, or
- b. another individual in the testator's name, in the testator's physical presence and by the testator's direction in a manner recognized by Oklahoma law; and

3. Signed in the physical or electronic presence of the testator by at least two individuals, each of whom is a resident of a state and physically located in a state at the time of signing, within a reasonable time after witnessing:

- a. the signing of the will under paragraph 2 of this subsection, or

- b. the testator's acknowledgment of the signing of the will under paragraph 2 of this subsection or acknowledgement of the will.

B. Intent of a testator that the record under paragraph 1 of subsection A of this section be the testator's electronic will may be established by extrinsic evidence.

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

A. An electronic will may revoke all or part of a previous will.

B. All or part of an electronic will is revoked by:

1. A subsequent will that revokes all or part of the electronic will expressly or by inconsistency; or

2. A physical act, if it is established by a preponderance of the evidence that the testator, with the intent of revoking all or part of the will, performed the act or directed another individual who performed the act in the testator's physical presence.

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

A. An electronic will may be simultaneously executed, attested, and made self-proving by acknowledgment of the testator and affidavits of the witnesses.

B. The acknowledgment and affidavits under subsection A of this section must be:

1. Made before an officer authorized to administer oaths under law of the state in which execution occurs or before an officer authorized under and in the manner provided by the Oklahoma Remote Online Notary Act; and

City and state where located when signing

Certificate of officer:

State of _____

County of _____

Subscribed, sworn to, and acknowledged before me by

_____,
(name)

the testator, and subscribed and sworn to before me by

_____ and
(name)

_____, witnesses, this _____ day of _____, ____.
(name)

(Seal)

(Signed)

(Capacity of officer)

D. A signature physically or electronically affixed to an affidavit that is affixed to or logically associated with an electronic will under this act is deemed a signature of the electronic will under subsection A of Section 5 of this act.

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

An individual may create a certified paper copy of an electronic will by affirming under penalty of perjury that a paper copy of the electronic will is a complete, true, and accurate copy of the electronic will. If the electronic will is made self-proving, the

certified paper copy of the will must include the self-proving affidavits.

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

A. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

B. Nothing in this act is intended to alter Oklahoma law regarding testamentary instruments executed under other provisions of Title 84 of the Oklahoma Statutes.

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

This act applies to the will of a decedent who dies on or after the effective date of this act.

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

Sections 11 through 27 of this act shall be known and may be cited as the "Uniform Electronic Estate Planning Documents Act".

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

As used in the Uniform Electronic Estate Planning Documents Act:

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

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

3. "Electronic signature" means an electronic 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;

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

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

- a. a record readable as text at the time of signing that creates, exercises, modifies, releases, or revokes:
 - (1) a trust instrument,
 - (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;

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

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

8. "Record" means information:

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

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

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

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

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

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

13. "Terms of a trust" means:

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

(1) expressed in the trust instrument, or

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

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

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

(2) a court order, or

(3) a nonjudicial settlement agreement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 918 of Title 84, unless there is created a duplication in numbering, reads as follows:

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

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

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 919 of Title 84, unless there is created a duplication in numbering, reads as follows:

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

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 920 of Title 84, unless there is created a duplication in numbering, reads as follows:

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

B. For the purposes of this subsection, "electronic presence" means that two or more individuals in different locations are able to communicate in real time to the same extent as if the individuals were physically present in the same location. If the laws of this state base the validity of a non-testamentary estate planning document on whether it is signed, witnessed, or attested by another individual in the presence of the individual signing the document, the presence requirement shall be satisfied if the individuals are in each other's electronic presence.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 921 of Title 84, unless there is created a duplication in numbering, reads as follows:

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

1. Accurately reflects the information in the document after it was first generated in final form as an electronic record or under Section 22 of this act; and

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

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

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

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

E. The provisions of this section do not preclude a governmental agency from specifying requirements for the retention of a record subject to the agency's jurisdiction in addition to the requirements provided in this section. For the purposes of this section, "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.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 922 of Title 84, unless there is created a duplication in numbering, reads as follows:

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

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 923 of Title 84, unless there is created a duplication in numbering, reads as follows:

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

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 924 of Title 84, unless there is created a duplication in numbering, reads as follows:

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

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 925 of Title 84, unless there is created a duplication in numbering, reads as follows:

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

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 926 of Title 84, unless there is created a duplication in numbering, reads as follows:

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

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 927 of Title 84, unless there is created a duplication in numbering, reads as follows:

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

SECTION 28. This act shall become effective November 1, 2024.
Passed the Senate the 21st day of May, 2024.

Presiding Officer of the Senate

Passed the House of Representatives the 16th day of April, 2024.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____

Approved by the Governor of the State of Oklahoma this _____
day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____