

By: Longoria

H.B. No. 3848

A BILL TO BE ENTITLED

AN ACT

relating to adoption of the Electronic Wills Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle F, Title 2, Estates Code, is amended by adding Chapter 259 to read as follows:

CHAPTER 259. ELECTRONIC WILLS

Sec. 259.001. SHORT TITLE. This chapter may be cited as the Electronic Wills Act.

Sec. 259.002. DEFINITIONS. In this chapter:

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

(2) "Electronic notarial certificate" has the meaning assigned by Section 406.101, Government Code.

(3) "Electronic will" means a will executed in compliance with Section 259.005.

(4) "Online notary public" has the meaning assigned by Section 406.101, Government Code.

(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

1 (B) to affix to or logically associate with the
2 record an electronic symbol, sound, or process.

3 Sec. 259.0025. ELECTRONIC PRESENCE. For purposes of this
4 chapter, two individuals are in each other's "electronic presence"
5 if the individuals are in different physical locations but able to
6 communicate simultaneously by sight and sound, with accommodation
7 for a testator or witness who has limited ability in sight or
8 hearing.

9 Sec. 259.003. COMMON LAW AND PRINCIPLES OF EQUITY. The
10 common law and principles of equity supplement this chapter except
11 to the extent modified by this chapter or state law other than this
12 chapter.

13 Sec. 259.004. WHO MAY MAKE AN ELECTRONIC WILL. An
14 individual who may make a will under the law of this state other
15 than this chapter may make an electronic will.

16 Sec. 259.005. EXECUTION OF ELECTRONIC WILL. (a) An
17 electronic will must be in a record perceivable as text that is:

18 (1) signed, with the intent that the record be the
19 testator's electronic will, by:

20 (A) the testator; or

21 (B) another individual in the testator's name, in
22 the testator's conscious physical or electronic presence, and at
23 the testator's direction; and

24 (2) signed by at least two credible individuals who
25 are at least 14 years of age, each of whom signed in the physical or
26 electronic presence of the testator.

27 (b) Intent of a testator that a record be the testator's

1 electronic will may be established by extrinsic evidence.

2 Sec. 259.006. ELECTRONIC WILL MADE SELF-PROVING IF ALL
3 WITNESSES PHYSICALLY PRESENT. (a) An electronic will with all
4 attesting witnesses physically present in the same location as the
5 testator may be made self-proving by acknowledgment of the testator
6 and affidavits of the witnesses.

7 (b) An acknowledgment and the affidavits under Subsection
8 (a) must be:

9 (1) made before an officer authorized to administer
10 oaths under law of the state in which execution occurs, who is
11 physically present in the same location as the testator and
12 attesting witnesses; and

13 (2) evidenced by the officer's certificate under
14 official seal logically associated with the electronic will.

15 (c) The acknowledgment and affidavits under Subsection (a)
16 must be in substantially the following form:

17 Before me, the undersigned authority, on this day personally
18 appeared _____, _____, and _____, known to
19 me to be the testator and witnesses, respectively, who signed their
20 names to this record in their respective capacities, and all of said
21 persons being by me duly sworn, the said _____, testator,
22 declared to me and to the said witnesses in my presence that this
23 record is [his/her] electronic will, and that [he/she] had
24 willingly made and executed it as [his/her] free act and deed; and
25 the said witnesses, each on [his/her] oath stated to me, in the
26 physical presence and hearing of the said testator, that the said
27 testator had declared to them that this record is [his/her]

1 electronic will, and that [he/she] executed same as such and wanted
2 each of them to sign it as a witness; and upon their oaths each
3 witness stated further that they did sign the same as witnesses in
4 the presence of the said testator and at [his/her] request; that
5 [he/she] was at that time eighteen years of age or over (or being
6 under such age, was or had been lawfully married, or was then a
7 member of the armed forces of the United States, or an auxiliary of
8 the armed forces of the United States, or the United States Maritime
9 Service) and was of sound mind; and that each of said witnesses was
10 then at least fourteen years of age.

11 _____
12 Testator

13 _____
14 Witness

15 _____
16 Witness

17 Subscribed and sworn to before me by the said _____,
18 testator, and by the said _____ and _____,
19 witnesses, this _____ day of _____, 20____.

20 (SEAL)

21 (Signed) _____

22 (Official Capacity of Officer)

23 Sec. 259.007. ELECTRONIC WILL MADE SELF-PROVING WHERE ALL
24 WITNESSES NOT PHYSICALLY PRESENT. (a) In this section,
25 "authorized person" means:

26 (1) an individual licensed to practice law in the
27 United States; or

1 (2) a court clerk.

2 (b) An electronic will without all attesting witnesses
3 physically present in the same location as the testator may be made
4 self-proving by:

5 (1) acknowledgment of the testator and affidavits of
6 the witnesses:

7 (A) made before an online notary public; and

8 (B) evidenced by the online notary public's
9 electronic notarial certificate; or

10 (2) an authorized person's certification in writing
11 under Subsection (e) that:

12 (A) the person is an authorized person;

13 (B) the testator declared that the record is the
14 testator's electronic will and that the testator understands the
15 will's contents;

16 (C) the testator signed the electronic will in
17 the electronic or physical presence of each individual who signed
18 the record as a witness;

19 (D) the authorized person is satisfied as to the
20 identity of the testator and the witnesses; and

21 (E) to the best of the authorized person's
22 knowledge the testator:

23 (i) was, at the time of the signing of the
24 electronic will, 18 years of age or older or, being under such age,
25 was or had been lawfully married or was then a member of the armed
26 forces of the United States, or an auxiliary of the armed forces of
27 the United States, or the United States Maritime Service;

1 (ii) was of sound mind; and
2 (iii) willingly made and executed the
3 electronic will as the testator's free act and deed.

4 (c) An heir of the testator or a beneficiary under an
5 electronic will may not act as an authorized person under this
6 section.

7 (d) An authorized person under this section submits to the
8 jurisdiction of the court in the county in which the testator
9 executes the electronic will.

10 (e) A certification made under Subsection (b)(2) must be in
11 substantially the following form:

12 I, _____, an authorized person, certify
13 that on this _____ day of _____, 20____, at _____,
14 _____ (city, state), the testator declared the attached
15 record to be the electronic will of the testator and declared that
16 the testator understands the contents of the electronic will. I
17 further certify that the testator, in the electronic or physical
18 presence of each individual who signed the electronic will as a
19 witness, signed the electronic will. I further certify that I am
20 satisfied as to the identity of the testator and the witnesses and
21 that to the best of my knowledge the testator was, at the time of the
22 signing of the electronic will, eighteen years of age or over or,
23 being under such age, was or had been lawfully married or was then a
24 member of the armed forces of the United States, or an auxiliary of
25 the armed forces of the United States, or the United States Maritime
26 Service, was of sound mind, and willingly made and executed the
27 electronic will as the testator's free act and deed.

1 _____
2 _____
3 _____
4 (Signed)

5 Sec. 259.008. ELECTRONIC WILL MADE SELF-PROVING AFTER
6 EXECUTION. (a) An electronic will with all attesting witnesses
7 physically present in the same location as the testator may be made
8 self-proving at any time after its execution by the acknowledgment
9 of the testator and the affidavits of the witnesses.

10 (b) An acknowledgment and affidavits under Subsection (a)
11 must be:

12 (1) made before an officer authorized to administer
13 oaths under the law of the state in which the acknowledgment occurs;
14 and

15 (2) evidenced by the officer's certificate under
16 official seal, logically associated with the electronic will, in
17 substantially the following form:

18 I, _____, the testator, and we,
19 _____ and _____, witnesses,
20 whose names are signed to the attached or preceding electronic
21 will, being sworn, declare to the undersigned officer that the
22 testator signed the record as the testator's electronic will, the
23 testator willingly made and executed it as the testator's free act
24 and deed, each of the witnesses, in the physical presence and
25 hearing of the testator, signed the electronic will as witnesses to
26 the testator's signing, to the best of each witness's knowledge the
27 testator was at that time eighteen years of age or over (or being
under such age, was or had been lawfully married, or was then a
member of the armed forces of the United States, or an auxiliary of

1 the armed forces of the United States, or the United States Maritime
2 Service) and was of sound mind, and each of the witnesses was then
3 at least fourteen years of age.

4 _____
5 Testator

6 _____
7 Witness

8 _____
9 Witness

10 State of _____
11 County of _____

12 Subscribed and sworn to before me by the said _____,
13 testator, and by the said _____ and _____,
14 witnesses, this _____ day of _____, 20_____.

15 (SEAL)

16 (Signed) _____

17 (Official Capacity of Officer)

18 Sec. 259.009. PROOF OF ELECTRONIC WILL. A signature
19 physically or electronically affixed to an affidavit attached to an
20 electronic will under this chapter is considered a signature
21 affixed to the electronic will if necessary to prove the will's
22 execution.

23 Sec. 259.010. CHOICE OF LAW AS TO EXECUTION. An electronic
24 will is validly executed if executed in compliance with the law of
25 the place where:

26 (1) the testator is physically located at the time of
27 execution; or

1 (2) at the time of execution or at the time of death,
2 the testator is domiciled, resides, or is a citizen.

3 Sec. 259.011. REVOCATION. (a) An electronic will or part
4 of an electronic will is revoked by:

5 (1) a subsequent will, including an electronic will,
6 that revokes the previous will or part of the previous will
7 expressly or by inconsistency; or

8 (2) a revocatory act, if it is established by clear and
9 convincing evidence that:

10 (A) the testator performed the act with the
11 intent and for the purpose of revoking the will or part of the will;
12 or

13 (B) another individual performed the act in the
14 testator's physical or electronic presence and by the testator's
15 direction.

16 (b) An electronic will may revoke a will that is not an
17 electronic will.

18 Sec. 259.012. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
19 In applying and construing this chapter, consideration must be
20 given to the need to promote uniformity of the law with respect to
21 its subject matter among states that enact it.

22 Sec. 259.013. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
23 AND NATIONAL COMMERCE ACT. This chapter modifies, limits, or
24 supersedes the Electronic Signatures in Global and National
25 Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify,
26 limit, or supersede Section 101(c) of that Act (15 U.S.C. Section
27 7001(c)) or authorize electronic delivery of any of the notices

1 described in Section 103(b) of that Act (15 U.S.C. Section
2 7003(b)).

3 SECTION 2. This Act applies to the will of a decedent whose
4 death is on or after the effective date of this Act.

5 SECTION 3. This Act takes effect September 1, 2019.