By:  Parker S.B. No. 1779

A BILL TO BE ENTITLED

AN ACT

relating to the adoption of the Uniform Electronic Estate Planning Documents Act.

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

SECTION 1.  The Estates Code is amended by adding Title 5 to read as follows:

TITLE 5. ELECTRONIC ESTATE PLANNING

CHAPTER 2501. UNIFORM ELECTRONIC ESTATE PLANNING DOCUMENTS ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2501.001.  SHORT TITLE. This chapter may be cited as the Uniform Electronic Estate Planning Documents Act.

Sec. 2501.002.  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 presence" means the relationship of two or more individuals in different locations communicating in real time to the same extent as if the individuals were physically present in the same location.

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

(5)  "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.

(6)  "Electronic will" means a will executed in compliance with Section 2501.103.

(7)  "Information" includes data, text, images, codes, computer programs, software, and databases.

(8)  "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. The term:

(A)  includes a record readable as text at the time of signing that creates, exercises, modifies, releases, or revokes:

(i)  a trust instrument;

(ii)  a trust power that under the terms of the trust requires a signed record;

(iii)  a certification of a trust under Section 114.086, Property Code;

(iv)  a durable power of attorney under Subtitle P, Title 2;

(v)  an agent's certification under Section 751.203 of the validity of a power of attorney and the agent's authority;

(vi)  a power of appointment;

(vii)  an advance directive as defined by Section 166.002, Health and Safety Code;

(viii)  a record directing disposition of an individual's body after death;

(ix)  a designation of a guardian for the signing individual;

(x)  a declaration of appointment of a guardian for a minor child or adult child with a disability;

(xi)  a mental health treatment declaration;

(xii)  a community property survivorship agreement;

(xiii)  a disclaimer under Chapter 240, Property Code; and

(xiv)  any other record intended to carry out an individual's intent regarding property or health care while incapacitated or on death; and

(B)  does not include a deed of real property or a certificate of title for a motor vehicle, watercraft, or aircraft.

(9)  "Person" means an individual, estate, business or nonprofit entity, government or governmental subdivision, agency or instrumentality, or other legal entity.

(10)  "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.

(11)  "Record" means information:

(A)  inscribed on a tangible medium; or

(B)  stored in an electronic or other medium and retrievable in perceivable form.

(12)  "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. The term includes a procedure that uses an algorithm, code, identifying word or number, encryption, or callback or other acknowledgment procedure.

(13)  "Settlor" means a person, including a testator, that creates or contributes property to a trust.

(14)  "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.

(15)  "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.

(16)  "Terms of a trust" means:

(A)  except as provided by Paragraph (B), the manifestation of the settlor's intent regarding a trust's provisions as:

(i)  expressed in the trust instrument; or

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

(B)  the trust's provisions as established, determined, or amended by:

(i)  a trustee or other person in accordance with applicable law;

(ii)  a court order; or

(iii)  a nonjudicial settlement agreement.

(17)  "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments.

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

Sec. 2501.003.  CONSTRUCTION. This chapter must be construed and applied to:

(1)  facilitate electronic estate planning documents, electronic wills, and electronic signatures consistent with other law; and

(2)  be consistent with reasonable practices concerning electronic documents and signatures and continued expansion of those practices.

SUBCHAPTER B. ELECTRONIC NON-TESTAMENTARY ESTATE PLANNING DOCUMENTS

Sec. 2501.051.  SCOPE. (a) Except as provided by Subsection (b), this subchapter applies to an electronic non-testamentary estate planning document and an electronic signature on a non-testamentary estate planning document.

(b)  This subchapter does not apply to a non-testamentary estate planning document if the document precludes use of an electronic record or electronic signature.

(c)  This subchapter does not affect the validity of an electronic record or electronic signature that is valid under:

(1)  Chapter 322, Business & Commerce Code; or

(2)  Subchapter C of this Title or any other state law governing creation and execution of an electronic will.

Sec. 2501.052.  PRINCIPLES OF LAW AND EQUITY. The law of this state and principles of equity applicable to a non-testamentary estate planning document apply to an electronic non-testamentary estate planning document except as modified by this subchapter.

Sec. 2501.053.  USE OF ELECTRONIC RECORD OR SIGNATURE NOT REQUIRED. (a) This subchapter does 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 is not 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)  A person may not waive the provisions of this section.

Sec. 2501.054.  RECOGNITION OF ELECTRONIC NON-TESTAMENTARY ESTATE PLANNING DOCUMENT AND ELECTRONIC SIGNATURE. (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 law of this state requires a non-testamentary estate planning document to be in writing, an electronic record of the document satisfies the requirement.

(c)  If other law of this state requires a signature on a non-testamentary estate planning document, an electronic signature satisfies the requirement.

Sec. 2501.055.  ATTRIBUTION AND EFFECT OF ELECTRONIC RECORD AND ELECTRONIC SIGNATURE. (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 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 other law.

Sec. 2501.056.  NOTARIZATION AND ACKNOWLEDGMENT. If other law of this state requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is 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 the other law.

Sec. 2501.057.  WITNESSING AND ATTESTATION. (a) If other law of this state bases 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)  If other law of this state bases 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 is satisfied if the individuals are in each other's electronic presence.

Sec. 2501.058.  RETENTION OF ELECTRONIC RECORD; ORIGINAL. (a) In 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.

(b)  Except as provided by Subsection (c), if other law of this state requires 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 2501.059; and

(2)  remains accessible to the extent required by the other law.

(c)  A requirement under Subsection (b) 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.

(d)  A person may satisfy Subsection (b) by using the services of another person.

(e)  If other law of this state requires 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 (b) satisfies the other law.

(f)  This section does not preclude a governmental agency from specifying requirements for the retention of a record subject to the agency's jurisdiction in addition to those in this section.

Sec. 2501.059.  CERTIFICATION OF PAPER COPY. 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.

Sec. 2501.060.  ADMISSIBILITY IN EVIDENCE. 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 it is in electronic form.

SUBCHAPTER C. UNIFORM ELECTRONIC WILLS ACT

Sec. 2501.101.  LAW AND PRINCIPLES OF EQUITY. An electronic will is a will for all purposes of the law of this state. The law of this state and principles of equity applicable to wills apply to an electronic will except as modified by this subchapter.

Sec. 2501.102.  WHO MAY MAKE AN ELECTRONIC WILL. An individual who may make a will under the law of this state other

than this chapter may make an electronic will.

Sec. 2501.103.  EXECUTION OF ELECTRONIC WILL. (a) An electronic will must be in a record perceivable as text that is:

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

(A)  the testator; or

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

(2)  signed by at least two credible individuals who

are at least 14 years of age, each of whom signed in the physical or electronic presence of the testator.

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

electronic will may be established by extrinsic evidence.

Sec. 2501.104.  ELECTRONIC WILL MADE SELF-PROVING IF ALL WITNESSES PHYSICALLY PRESENT. (a) An electronic will with all attesting witnesses physically present in the same location as the testator may be made self-proving by acknowledgment of the testator and affidavits of the witnesses.

(b)  An acknowledgment and the affidavits under Subsection

(a) must be:

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

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

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

Before me, the undersigned authority, on this day personally appeared , , and , known to me to be the testator and witnesses, respectively, who signed their names to this record in their respective capacities, and all of said persons being by me duly sworn, the said , testator, declared to me and to the said witnesses in my presence that this record is [his/her] electronic will, and that [he/she] had willingly made and executed it as [his/her] free act and deed; and the said witnesses, each on [his/her] oath stated to me, in the physical presence and hearing of the said testator, that the said testator had declared to them that this record is [his/her] electronic will, and that [he/she] executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the physical presence of the said testator and at [his/her] request; that [he/she] 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 the armed forces of the United States, or the United States Maritime Service) and was of sound mind; and that each of said witnesses was then at least 14 years of age.

Testator

Witness

Witness

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

(SEAL)

(Signed)

(Official Capacity of Officer)

Sec. 2501.105.  ELECTRONIC WILL MADE SELF-PROVING WHERE ALL WITNESSES NOT PHYSICALLY PRESENT. (a) In this section, "authorized person" means an individual licensed to practice law in the United States.

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

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

(A)  made before an online notary public; and

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

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

(A)  the person is an authorized person;

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

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

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

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

(i)  was, at the time of the signing of the electronic will, 18 years of age or older 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 the armed forces of the United States, or the United States Maritime Service;

(ii)  was of sound mind; and

(iii)  willingly made and executed the electronic will as the testator's free act and deed; and

(F)  to the best of the authorized person's knowledge each of the witnesses was at least 14 years of age.

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

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

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

I, , an authorized person, certify that on this day of , 20\_\_\_\_, at , (city, state), the testator declared the attached record to be the electronic will of the testator and declared that the testator understands the contents of the electronic will. I further certify that the testator, in the electronic or physical presence of each individual who signed the electronic will as a witness, signed the electronic will. I further certify that I am satisfied as to the identity of the testator and the witnesses and that to the best of my knowledge the testator was, at the time of the signing of the electronic will, 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 the armed forces of the United States, or the United States Maritime Service, was of sound mind, and willingly made and executed the electronic will as the testator's free act and deed. I also certify that to the best of my knowledge each of the witnesses was at least 14 years of age.

(Signed)

Sec. 2501.106.  ELECTRONIC WILL MADE SELF-PROVING AFTER EXECUTION. (a) An electronic will with all attesting witnesses

physically present in the same location as the testator may be made self-proving at any time after its execution by the acknowledgment of the testator and the affidavits of the witnesses.

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

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

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

I,                 ,     the    testator,     and    we,         and         , witnesses, whose names are signed to the attached or preceding electronic will, being sworn, declare to the undersigned officer that the testator signed the record as the testator's electronic will, the testator willingly made and executed it as the testator's free act and deed, each of the witnesses, in the physical presence and hearing of the testator, signed the electronic will as witnesses to the testator's signing, to the best of each witness's knowledge the 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 the armed forces of the United States, or the United States Maritime Service) and was of sound mind, and each of the witnesses was then at least 14 years of age.

Testator

Witness

Witness

State of

County of

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

(SEAL)

(Signed)

(Official Capacity of Officer)

Sec. 2501.107.  PROOF OF ELECTRONIC WILL. A signature physically or electronically affixed to an affidavit attached to an electronic will under this chapter is considered a signature affixed to the electronic will if necessary to prove the will's execution.

Sec. 2501.108.  CHOICE OF LAW AS TO EXECUTION. A will executed electronically but not in compliance with Section 2501.103 is an electronic will under this subchapter 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.

Sec. 2501.109.  REVOCATION. (a) An electronic will or part

of an electronic will is revoked by:

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

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

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

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

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

Sec. 2501.110.  CERTIFICATION OF PAPER COPY. 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.

SUBCHAPTER D. MISCELLANEOUS PROVISIONS

Sec. 2501.151.  UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among states that enact it.

Sec. 2501.152.  RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) 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 2.  This Act applies to:

(1)  an electronic non-testamentary estate planning document created, signed, generated, sent, communicated, received, or stored before, on, or after the effective date of this Act.

(2)  the will of a decedent whose death is on or after the effective date of this Act.

SECTION 3.  This Act takes effect September 1, 2023.