

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.

1 (5) "Electronic signature" means an electronic symbol
2 or process attached to or logically associated with a record and
3 executed or adopted by a person with the intent to sign the record.

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

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

8 (8) "Non-testamentary estate planning document" means
9 a record relating to estate planning that is readable as text at the
10 time of signing and is not a will or contained in a will. The term:

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

14 (i) a trust instrument;

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

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

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

21 (v) an agent's certification under Section
22 751.203 of the validity of a power of attorney and the agent's
23 authority;

24 (vi) a power of appointment;

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

27 (viii) a record directing disposition of an

1 individual's body after death;
2 (ix) a designation of a guardian for the
3 signing individual;
4 (x) a declaration of appointment of a
5 guardian for a minor child or adult child with a disability;
6 (xi) a mental health treatment declaration;
7 (xii) a community property survivorship
8 agreement;
9 (xiii) a disclaimer under Chapter 240,
10 Property Code; and
11 (xiv) any other record intended to carry
12 out an individual's intent regarding property or health care while
13 incapacitated or on death; and
14 (B) does not include a deed of real property or a
15 certificate of title for a motor vehicle, watercraft, or aircraft.
16 (9) "Person" means an individual, estate, business or
17 nonprofit entity, government or governmental subdivision, agency
18 or instrumentality, or other legal entity.
19 (10) "Power of attorney" means a record that grants
20 authority to an agent to act in place of the principal, even if the
21 term is not used in the record.
22 (11) "Record" means information:
23 (A) inscribed on a tangible medium; or
24 (B) stored in an electronic or other medium and
25 retrievable in perceivable form.
26 (12) "Security procedure" means a procedure to verify
27 that an electronic signature, record, or performance is that of a

1 specific person or to detect a change or error in an electronic
2 record. The term includes a procedure that uses an algorithm, code,
3 identifying word or number, encryption, or callback or other
4 acknowledgment procedure.

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

7 (14) "Sign" means, with present intent to authenticate
8 or adopt a record:

9 (A) execute or adopt a tangible symbol; or

10 (B) attach to or logically associate with the
11 record an electronic signature.

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

17 (16) "Terms of a trust" means:

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

21 (i) expressed in the trust instrument; or

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

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

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

1 (ii) a court order; or

2 (iii) a nonjudicial settlement agreement.

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

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

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

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

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

19 SUBCHAPTER B. ELECTRONIC NON-TESTAMENTARY ESTATE PLANNING

20 DOCUMENTS

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

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

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

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

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

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

11 Sec. 2501.053. USE OF ELECTRONIC RECORD OR SIGNATURE NOT
12 REQUIRED. (a) This subchapter does not require a non-testamentary
13 estate planning document or signature on a non-testamentary estate
14 planning document to be created, generated, sent, communicated,
15 received, stored, or otherwise processed or used by electronic
16 means or in electronic form.

17 (b) A person is not required to have a non-testamentary
18 estate planning document in electronic form or signed
19 electronically even if the person previously created or signed a
20 non-testamentary estate planning document by electronic means.

21 (c) A person may not waive the provisions of this section.

22 Sec. 2501.054. RECOGNITION OF ELECTRONIC NON-TESTAMENTARY
23 ESTATE PLANNING DOCUMENT AND ELECTRONIC SIGNATURE. (a) A
24 non-testamentary estate planning document or a signature on a
25 non-testamentary estate planning document may not be denied legal
26 effect or enforceability solely because it is in electronic form.

27 (b) If other law of this state requires a non-testamentary

1 estate planning document to be in writing, an electronic record of
2 the document satisfies the requirement.

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

6 Sec. 2501.055. ATTRIBUTION AND EFFECT OF ELECTRONIC RECORD
7 AND ELECTRONIC SIGNATURE. (a) An electronic non-testamentary
8 estate planning document or electronic signature on an electronic
9 non-testamentary estate planning document is attributable to a
10 person if it was the act of the person. The act of the person may be
11 shown in any manner, including by showing the efficacy of a security
12 procedure applied to determine the person to which the electronic
13 record or electronic signature was attributable.

14 (b) The effect of attribution to a person under Subsection
15 (a) of a document or signature is determined from the context and
16 surrounding circumstances at the time of its creation, execution,
17 or adoption and as provided by other law.

18 Sec. 2501.056. NOTARIZATION AND ACKNOWLEDGMENT. If other
19 law of this state requires a signature or record to be notarized,
20 acknowledged, verified, or made under oath, the requirement is
21 satisfied with respect to an electronic non-testamentary estate
22 planning document if an individual authorized to perform the
23 notarization, acknowledgment, verification, or oath attaches or
24 logically associates the individual's electronic signature on the
25 document together with all other information required to be
26 included under the other law.

27 Sec. 2501.057. WITNESSING AND ATTESTATION. (a) If other

1 law of this state bases the validity of a non-testamentary estate
2 planning document on whether it is signed, witnessed, or attested
3 by another individual, the signature, witnessing, or attestation of
4 that individual may be electronic.

5 (b) If other law of this state bases the validity of a
6 non-testamentary estate planning document on whether it is signed,
7 witnessed, or attested by another individual in the presence of the
8 individual signing the document, the presence requirement is
9 satisfied if the individuals are in each other's electronic
10 presence.

11 Sec. 2501.058. RETENTION OF ELECTRONIC RECORD; ORIGINAL.

12 (a) In this section, "governmental agency" means an executive,
13 legislative, or judicial agency, department, board, commission,
14 authority, institution, or instrumentality of the federal
15 government or of a state or of a county, municipality, or other
16 political subdivision of a state.

17 (b) Except as provided by Subsection (c), if other law of
18 this state requires an electronic non-testamentary estate planning
19 document to be retained, transmitted, copied, or filed, the
20 requirement is satisfied by retaining, transmitting, copying, or
21 filing an electronic record that:

22 (1) accurately reflects the information in the
23 document after it was first generated in final form as an electronic
24 record or under Section 2501.059; and

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

27 (c) A requirement under Subsection (b) to retain a record

1 does not apply to information the sole purpose of which is to enable
2 the record to be sent, communicated, or received.

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

5 (e) If other law of this state requires a non-testamentary
6 estate planning document to be presented or retained in its
7 original form, or provides consequences if a non-testamentary
8 estate planning document is not presented or retained in its
9 original form, an electronic record retained in accordance with
10 Subsection (b) satisfies the other law.

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

14 Sec. 2501.059. CERTIFICATION OF PAPER COPY. An individual
15 may create a certified paper copy of an electronic non-testamentary
16 estate planning document by affirming under penalty of perjury that
17 the paper copy is a complete and accurate copy of the document.

18 Sec. 2501.060. ADMISSIBILITY IN EVIDENCE. Evidence
19 relating to an electronic non-testamentary estate planning
20 document or an electronic signature on the document may not be
21 excluded in a proceeding solely because it is in electronic form.

22 SUBCHAPTER C. UNIFORM ELECTRONIC WILLS ACT

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

27 Sec. 2501.102. WHO MAY MAKE AN ELECTRONIC WILL. An

1 individual who may make a will under the law of this state other
2 than this chapter may make an electronic will.

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

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

7 (A) the testator; or

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

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

14 (b) Intent of a testator that a record be the testator's
15 electronic will may be established by extrinsic evidence.

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

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

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

27 (2) evidenced by the officer's certificate under

1 official seal logically associated with the electronic will.

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

4 Before me, the undersigned authority, on this day personally
5 appeared _____, _____, and _____, known to me to be
6 the testator and witnesses, respectively, who signed their names to
7 this record in their respective capacities, and all of said persons
8 being by me duly sworn, the said _____, testator, declared to
9 me and to the said witnesses in my presence that this record is
10 [his/her] electronic will, and that [he/she] had willingly made and
11 executed it as [his/her] free act and deed; and the said witnesses,
12 each on [his/her] oath stated to me, in the physical presence and
13 hearing of the said testator, that the said testator had declared to
14 them that this record is [his/her] electronic will, and that
15 [he/she] executed same as such and wanted each of them to sign it as
16 a witness; and upon their oaths each witness stated further that
17 they did sign the same as witnesses in the physical presence of the
18 said testator and at [his/her] request; that [he/she] was at that
19 time eighteen years of age or over (or being under such age, was or
20 had been lawfully married, or was then a member of the armed forces
21 of the United States, or an auxiliary of the armed forces of the
22 United States, or the United States Maritime Service) and was of
23 sound mind; and that each of said witnesses was then at least 14
24 years of age.

25 _____
26 Testator

27 _____
28 Witness

1
2 Witness
3 Subscribed and sworn to before me by the said,
4 testator, and by the said and , witnesses,
5 this day of , 20 .

6 (SEAL)
7 (Signed)
8 (Official Capacity of Officer)

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

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

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

18 (A) made before an online notary public; and
19 (B) evidenced by the online notary public's
20 electronic notarial certificate; or

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

23 (A) the person is an authorized person;
24 (B) the testator declared that the record is the
25 testator's electronic will and that the testator
26 understands the will's contents;
27 (C) the testator signed the electronic will in

1 the electronic or physical presence of each individual
2 who signed the record as a witness;

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

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

7 (i) was, at the time of the signing of the
8 electronic will, 18 years of age or older or,
9 being under such age, was or had been lawfully
10 married or was then a member of the armed forces of
11 the United States, or an auxiliary of the armed
12 forces of the United States, or the United States
13 Maritime Service;

14 (ii) was of sound mind; and

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

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

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

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

27 (e) A certification made under Subsection (b)(2) must be in

1 substantially the following form:

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

19 _____
20 (Signed)

21 Sec. 2501.106. ELECTRONIC WILL MADE SELF-PROVING AFTER
22 EXECUTION. (a) An electronic will with all attesting witnesses
23 physically present in the same location as the testator may be made
24 self-proving at any time after its execution by the acknowledgment
25 of the testator and the affidavits of the witnesses.

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

1 County of _____

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

5 (SEAL)

6 (Signed) _____

7 (Official Capacity of Officer)

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

13 Sec. 2501.108. CHOICE OF LAW AS TO EXECUTION. A will
14 executed electronically but not in compliance with Section 2501.103
15 is an electronic will under this subchapter if executed in
16 compliance with the law of the jurisdiction where the testator is:

- 17 (1) physically located when the will is signed; or
- 18 (2) domiciled or resides when the will is signed or
19 when the testator dies.

20 Sec. 2501.109. REVOCATION. (a) An electronic will or part
21 of an electronic will is revoked by:

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

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

- 27 (A) the testator performed the act with the

1 intent and for the purpose of revoking the will or part of the will;
2 or

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

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

8 Sec. 2501.110. CERTIFICATION OF PAPER COPY. An individual
9 may create a certified paper copy of an electronic will by affirming
10 under penalty of perjury that a paper copy of the electronic will is
11 a complete, true, and accurate copy of the electronic will. If the
12 electronic will is made self-proving, the certified paper copy of
13 the will must include the self-proving affidavits.

14 SUBCHAPTER D. MISCELLANEOUS PROVISIONS

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

18 Sec. 2501.152. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
19 AND NATIONAL COMMERCE ACT. This chapter modifies, limits, or
20 supersedes the Electronic Signatures in Global and National
21 Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify,
22 limit, or supersede 15 U.S.C. Section 7001(c) or authorize
23 electronic delivery of any of the notices described in 15 U.S.C.
24 Section 7003(b).

25 SECTION 2. This Act applies to:

26 (1) an electronic non-testamentary estate planning document
27 created, signed, generated, sent, communicated, received, or

1 stored before, on, or after the effective date of this Act.

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

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