1 State of Arkansas

2 82nd General Assembly

A Bill

3 Regular Session, 1999   HOUSE BILL   1021

4

5 By: Representative Lendall

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7

8   **For An Act To Be Entitled**

9   "UNIFORM ELECTRONIC TRANSACTIONS ACT."

10

11   **Subtitle**

12   "UNIFORM ELECTRONIC TRANSACTIONS ACT."

13

14

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

16

17   PART 1

18   GENERAL PROVISIONS

19   SECTION 101. SHORT TITLE. This Act may be cited as the "Uniform

20 Electronic Transactions Act".

21

22   SECTION 102. DEFINITIONS. In this act:

23   (1) "Agreement" means the bargain of the parties in fact as found in

24 their language or inferred from other circumstances, including course of

25 performance, course of dealing and usage of trade as provided in this act.

26 Whether an agreement has legal consequences is determined by this act, if

27 applicable, or, otherwise by other applicable rules of law.

28   (2) "Automated transaction" means a commercial or governmental

29 transaction formed or performed, in whole or in part, by electronic records in

30 which the records of one or both parties will not be reviewed by an individual

31 as an ordinary step in forming a contract, performing under an existing

32 contract, or fulfilling any obligation required by the transaction.

33   (3) "Commercial transaction" means all matters arising in a commercial

34 setting, whether contractual or not including, but not limited to, the

35 following: any trade transaction for the supply or exchange of goods,

36 information or services; distribution agreements; commercial representation or

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1 agency; factoring; leasing; construction of works; consulting; engineering;

2 licensing; investment; financing; banking; insurance; exploitation agreement

3 or concession; joint venture and other forms of industrial or business

4 cooperation or organization; carriage of goods or passengers by air, sea, rail

5 or road.

6   (4) "Computer Program" means a set of statements or instructions to be

7 used directly or indirectly to operate an information system in order to bring

8 about a certain result. The term does not include information created or

9 communicated as a result of the operation of the system.

10   (5) "Contract" means the total legal obligation which results from the

11 parties' agreement as affected by this act and as supplemented by other

12 applicable rules of law.

13   (6) "Electronic" means electrical, digital, magnetic, optical,

14 electromagnetic, or any other form of technology that entails capabilities

15 similar to these technologies.

16   (7) "Electronic agent" means a computer program or other electronic or

17 automated means used, selected, or programmed by a person to initiate or

18 respond to electronic records or performances in whole or in part without

19 review by an individual.

20   (8) "Electronic record" means a record created, stored, generated,

21 received, or communicated by electronic means such as computer equipment and

22 programs, electronic data interchange, electronic or voice mail, facsimile,

23 telex, telecopying, scanning, and similar technologies.

24   (9) "Electronic signature" means any signature in electronic form,

25 attached to or logically associated with an electronic record, executed or

26 adopted by person or its electronic agent with intent to sign the electronic

27 record.

28   (10) "Good faith" means honesty in fact and the observance of reasonable

29 commercial standards of fair dealing.

30   (11) "Governmental transaction" means all matters arising in any

31 governmental setting, including, but not limited to, the following: all

32 communications, filings, reports, commercial documentation, or other

33 electronic records relating to interactions between any governmental entity

34 and any individual outside the government; and all intergovernmental

35 communications, documents or other records employed in the conduct of

36 governmental functions between or within any branch or agency of government.

1   (12) "Information" means data, text, images, sounds, codes, computer

2 programs, software, databases, and the like.

3   (13) "Information system" means a system for creating, generating,

4 sending, receiving, storing or otherwise processing information, including

5 electronic records.

6   (14) "Notify" means to communicate, or make available, information to

7 another person in a form and manner as appropriate or required under the

8 circumstances.

9   (15) "Organization" means a person other than an individual.

10   (16) "Person" means an individual, corporation, business trust, estate,

11 trust, partnership, limited liability company, association, joint venture,

12 government, subdivision or agency or instrumentality, or any other legal or

13 commercial entity.

14   (17) "Presumption" or "presumed" means that the

15 trier of fact must find the existence of the fact presumed unless and until

16 evidence is introduced which would support a finding of its non-existence.

17   (18) "Record" means information that is inscribed on a tangible medium

18 or that is stored in an electronic or other medium and is retrievable in

19 perceivable form.

20   (19) "Rule of law" means a statute, regulation, ordinance, common-law

21 rule, court decision, or other law relating to commercial or governmental

22 transactions enacted, established, or promulgated by this State, or any

23 agency, commission, department, court, other authority or political

24 subdivision of this State.

25   (20) "Security procedure," with respect to either an electronic record

26 or electronic signature, means a commercially reasonable procedure or

27 methodology, established by law, by agreement, or adopted by the parties, for

28 the purpose of verifying (i) the identity of the sender, or source, of an

29 electronic record, or (ii) the integrity of, or detecting errors in, the

30 transmission or informational content of an electronic record. A security

31 procedure may require the use of algorithms or other codes, identifying words

32 or numbers, encryption, callback or other acknowledgment procedures, or any

33 other procedures that are reasonable under the circumstances.

34   (21) "Signature" means any symbol, sound, process, or encryption of a

35 record in whole or in part, executed or adopted by a person or the person's

36 electronic agent with intent to: (i) identify the party;(ii) adopt or accept a

term or a record; or (iii) establish the informational integrity of a record or term that contains the signature or to which a record containing the signature refers.

(22) "Sign" means the execution or adoption of a signature by a person or the person's electronic agent.

(23) "State agency" means any executive, legislative or judicial agency, department, board, commission, authority, institution, or instrumentality of this State or of any county, municipal or other political subdivision of this State.

(24) "Term" means that portion of an agreement which relates to a particular matter.

(25) "Transferable record" means a record, other than a writing, that is an instrument or chattel paper under Article 9 of the Uniform Commercial Code or a document of title under Article 1 of the Uniform Commercial Code.

(26) "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

SECTION 103. SCOPE. Except as otherwise provided in Section 104 or any regulation adopted pursuant to Part 5, this Act applies to electronic records and electronic signatures generated, stored, processed, communicated or used for any purpose in any commercial or governmental transaction.

SECTION 104. TRANSACTIONS SUBJECT TO OTHER LAW.

(a) This act does not apply to the extent that its application would involve a construction of a rule of law that is clearly inconsistent with the manifest intent of the lawmaking body or repugnant to the context of the same rule of law, provided that the mere requirement that information be "in writing," "written," "printed," "signed," or any other word that specifies or requires the use of a particular medium of presentation, communication or storage, shall not, by itself, be sufficient to establish such intent.

(b) A transaction subject to this act is also subject to:

(1) any applicable rules of law relating to consumer protection;

(2) the Uniform Commercial Code as enacted in this State; and

(c) The provisions of this act and a rule of law referenced in subsection (a) or (b) must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable a rule of law referenced

1 in subsection (a) or (b) governs.

2

3   SECTION 105.   VARIATION BY AGREEMENT.

4   (a) As between parties involved in generating, storing, sending,

5 receiving, or otherwise processing or using electronic records or electronic

6 signatures the provisions of this act may be varied by agreement, except:

7   (1) the obligations of good faith, reasonableness, diligence and

8 care prescribed by this act may not be disclaimed by agreement but the parties

9 may by agreement determine the standards by which the performance of such

10 obligations is to be measured if such standards are not manifestly

11 unreasonable; and

12   (2) the rules in Section 110 regarding allocations of loss where

13 no security procedure or commercially unreasonable security procedures are

14 used in a transaction.

15   (b) The presence in certain provisions of this act of the words "unless

16 otherwise agreed" or words of similar import does not imply that the effect of

17 other provisions may not be varied by agreement under subsection (a).

18   (c) This act does not require that records or signatures be generated,

19 stored, sent, received or otherwise processed or used by electronic means or

20 in electronic form.

21

22   SECTION 106.   APPLICATION AND CONSTRUCTION.

23   This act must be liberally construed and applied consistently with

24 commercially reasonable practices under the circumstances and to promote its

25 underlying purposes and policies.

26

27   SECTION 107.   COURSE OF PERFORMANCE, COURSE OF DEALING, AND USAGE OF

28 TRADE.

29   (a) A course of performance is a sequence of conduct between the parties

30 to a particular transaction which exists if:

31   (1) the agreement of the parties with respect to the transaction

32 involves repeated occasions for performance by a party;

33   (2) that party performs on one or more occasions; and

34   (3) the other party, with knowledge of the nature of the

35 performance and opportunity for objection to it, accepts the performance or

36 acquiesces to it without objection.

1   (b) A course of dealing is a sequence of previous conduct between the

2   parties to a particular transaction which is fairly to be regarded as

3   establishing a common basis of understanding for interpreting their

4   expressions and other conduct.

5   (c) A usage of trade is any practice or method of dealing having such

6   regularity of observance in a place, vocation, or trade as to justify an

7   expectation that it will be observed with respect to the transaction in

8   question. The existence and scope of the usage are to be proved as facts. If

9   it is established that the usage is embodied in a trade code or similar

10   record, the interpretation of the record is a question of law.

11   (d) A course of performance or course of dealing between the parties or

12   usage of trade in the vocation or trade in which they are engaged or of which

13   they are or should be aware is relevant in ascertaining the meaning of the

14   parties' agreement, may give particular meaning to specific terms of the

15   agreement, and may supplement or qualify the terms of the agreement. A usage

16   of trade applicable where only part of the performance under the agreement is

17   to occur may be so utilized as to that part of the performance.

18   (e) The express terms of an agreement, including terms to which a party

19   has manifested assent, and any applicable course of performance, course of

20   dealing, or usage of trade must be construed wherever reasonable as consistent

21   with each other. If such a construction is unreasonable:

22   (1) express terms prevail over course of performance, course of

23   dealing, and usage of trade;

24   (2) course of performance prevails over course of dealing and

25   usage of trade; and

26   (3) course of dealing prevails over usage of trade.

27   (f) Evidence of a relevant usage of trade offered by one party is not

28   admissible unless that party has given the other party such notice as the

29   court finds sufficient to prevent unfair surprise to the other party.

30

31   SECTION 108. MANIFESTING ASSENT.

32   (a) A person or electronic agent manifests assent to a record or term in

33   a record if, with knowledge of the terms or after having an opportunity to

34   review the record or term under Section 109, it:

35   (1) signs the record or term, or engages in other affirmative

36   conduct or operations that the record clearly provides or the circumstances,

1 including the terms of the record, clearly indicate will constitute acceptance

2 of the record or term; and

3   (2) had an opportunity to decline to sign the record or term or

4 engage in the conduct.

5   (b) The mere retention of information or a record without objection is

6 not a manifestation of assent.

7   (c) If assent to a particular term in addition to assent to a record is

8 required, a person's conduct does not manifest assent to that term unless

9 there was an opportunity to review the term and the signature or conduct

10 relates specifically to the term.

11   (d) A manifestation of assent may be proved in any manner, including by

12 showing that a procedure existed by which a person or an electronic agent must

13 have engaged in conduct or operations that manifests assent to the record or

14 term in order to proceed further in the transaction.

15

16   SECTION 109. OPPORTUNITY TO REVIEW.

17   A person or electronic agent has an opportunity to review a record or

18 term if it is made available in a manner which calls it to the attention of

19 the person and permits review of its terms or enables the electronic agent to

20 react to it.

21

22   SECTION 110. DETERMINATION OF COMMERCIALLY REASONABLE SECURITY

23 PROCEDURE; COMMERCIALLY UNREASONABLE SECURITY PROCEDURE; NO SECURITY

24 PROCEDURE.

25   (a) The commercial reasonableness of a security procedure is determined

26 by the court in light of the purposes of the procedure and the circumstances

27 at the time the parties agreed to or adopted the procedure including the

28 nature of the transaction, sophistication of the parties, volume of similar

29 transactions engaged in by either or both of the parties, availability of

30 alternatives offered to but rejected by a party, cost of alternative

31 procedures, and procedures in general use for similar transactions. A

32 security procedure established by law shall be determined to be commercially

33 reasonable for the purposes for which it was established.

34   (b) If a loss occurs because a person complies with a security procedure

35 that was not commercially reasonable, the person that required use of the

36 commercially unreasonable security procedure bears the loss unless it

1 disclosed the nature of the risk to the other person and offered commercially

2 reasonable alternatives that the person rejected. The liability of the person

3 that required use of the commercially unreasonable security procedure is

4 limited to losses that could not have been prevented by the exercise of

5 reasonable care by the other person.

6   (c) Except as otherwise provided in subsection (b), Section 202, Section

7 203, or Section 302, if a loss occurs because no security procedure was used,

8 the person relying on an electronic record or electronic signature as between

9 the two parties, the party who relied bears the loss.

10

11   SECTION 111. OBLIGATION OF GOOD FAITH.

12   There is an obligation to act in good faith in the formation,

13 performance, and enforcement of every transaction and duty within the scope of

14 this act.

15

16   SECTION 112. GENERAL PRINCIPLES OF LAW APPLICABLE.

17   Unless displaced by the particular provisions of this act, the

18 principles of law and equity, including the law merchant and the law relating

19 to contract, principal and agent, estoppel, fraud, misrepresentation, duress,

20 coercion, mistake, bankruptcy and other validating and invalidating cause

21 shall supplement its provisions.

22

23   PART 2

24   ELECTRONIC RECORDS GENERALLY

25   SECTION 201. LEGAL RECOGNITION OF ELECTRONIC RECORDS.

26   (a) A record may not be denied legal effect, validity or enforceability

27 solely because it is in the form of an electronic record.

28   (b) If a rule of law requires a record to be in writing, or provides

29 consequences if it is not, an electronic record satisfies that rule.

30   (c) A person may establish reasonable requirements regarding the type

31 of records which will be acceptable to it.

32

33   SECTION 202. ATTRIBUTION OF ELECTRONIC RECORD TO A PARTY.

34   (a) As between the parties, an electronic record is attributable to a

35 party if:

36   (1) it was in fact the action of that party, its agent, or its

1 electronic agent;

2   (2) the other party, in good faith and in compliance with a

3 security procedure for identifying the party concluded that it was the action

4 of the other party, its agent, or its electronic agent; or

5   (3) the electronic record:

6   (A) resulted from acts of a person that obtained access to a

7 security procedure, access numbers, codes, computer programs, or the like from

8 a source under the control of the party creating the appearance that the

9 electronic record came from that party;

10   (B) the access occurred under circumstances constituting a

11 failure to exercise reasonable care by the party; and

12   (C) the other party reasonably relied to its detriment on

13 the apparent source of the electronic record.

14   (b) In a case governed by subsection (a)(3), the following rules apply:

15   (1) The relying party has the burden of proving reasonable

16 reliance, and the party to which the electronic record is to be attributed has

17 the burden of proving reasonable care.

18   (2) Reliance on an electronic record that does not comply with a

19 security procedure is not reasonable unless authorized by an individual

20 representing the party to which the electronic record is to be attributed.

21   (c) Attribution of an electronic record to a party under subsection

22 (a)(2) creates a presumption that the electronic record was that of the party

23 to which it is attributed.

24

25   SECTION 203.   DETECTION OF CHANGES AND ERRORS.

26   (a) If through a security procedure to detect changes in informational

27 content, the informational content of an electronic record can be shown to be

28 unaltered since a specified point in time, the informational content shall be

29 presumed to have been unaltered since that time.

30   (b) If an electronic record is created or sent in accordance with a

31 security procedure for the detection of error, the information in the

32 electronic record is presumed to be as intended by the person creating or

33 sending it as to portions of the information to which the security procedure

34 applies. If the electronic record nevertheless contained an error but the

35 error was not discovered, the following rules apply:

36   (1) If the sender complied with the security procedure and the

1 error would have been detected had the receiving party also complied with the

2 security procedure, the sender is not bound.

3   (2) If the sender required by the security procedure that

4 describes the content of the record as received, the sender shall review the

5 notice and report any error detected by it, in a commercially reasonable

6 manner. Failure to so review and report any error shall bind the sender to

7 the content of the record as received.

8   (c) In an automated transaction involving an individual, the individual

9 is not responsible for an electronic record that the individual did not intend

10 but that was caused by an inadvertent error if, on learning of the other

11 party's reliance on the erroneous electronic record, the individual:

12   (1) in good faith promptly notifies the other party of the error

13 and that the individual did not intend the electronic record received by the

14 other party;

15   (2) takes reasonable steps, including steps that conform to the

16 other party's reasonable instructions, to return to the other party or destroy

17 the consideration received, if any, as a result of the erroneous electronic

18 record; and

19   (3) has not used or received the benefit or value of the

20 consideration, if any, received from the other party.

21   (d) In subsection (c), the burden of proving intent and lack of error is

22 on the other party, and the individual has the burden of proving compliance

23 with subsections (c)(1),(2), and (3).

24   (e) In this section, "inadvertent error" means an error by an individual

25 made in dealing with an electronic agent of the other party when the

26 electronic agent of the other party did not allow for the correction of the

27 error.

28

29   SECTION 204.   ORIGINALS: - INFORMATION ACCURACY.

30   (a) If a rule of law, or a commercial practice, requires a record to be

31 presented or retained in its original form, or provides consequences for the

32 record not being presented or retained in its original form, that requirement

33 is met by an electronic record if the electronic record is shown to reflect

34 accurately the information set forth in the electronic record from the time

35 when it was first generated in its final form, as an electronic record or

36 otherwise.

1   (b) The integrity and accuracy of the information in an electronic

2 record are determined by whether the information has remained complete and

3 unaltered, apart from the addition of any endorsement and any change that

4 arises in the normal course of communication, storage and display. The

5 standard of reliability required must be assessed in the light of the purpose

6 for which the information was generated and in the light of all the relevant

7 circumstances.

8

9   SECTION 205. RETENTION OF ELECTRONIC RECORDS.

10   (a) If a rule of law requires that certain documents, records, or

11 information be retained, that requirement is met by retaining electronic

12 records, if

13   (1) the information contained in the electronic record remains

14 accessible so as to be usable for subsequent reference;

15   (2) the electronic record is retained in the format in which it

16 was generated, stored, sent, or received, or in a format that can be

17 demonstrated to reflect accurately the information as originally generated,

18 stored, sent, or received; and

19   (3) the information, if any, is retained as enables the

20 identification of the source of origin and destination of an electronic record

21 and the date and time it was sent or received.

22   (b) A requirement to retain documents, records, or information in

23 accordance with subsection (a) does not extend to any information the sole

24 purpose of which is to enable the record to be sent or received.

25   (c) A person may satisfy the requirement referred to in subsection (a)

26 by using the services of any other person, if the conditions set forth in

27 subsection (a) are met.

28   (d) Nothing in this section preclude any federal or state agency from

29 specifying additional requirements for the retention of records, either

30 written or electronic, subject to agency's jurisdiction.

31

32   PART 3

33   ELECTRONIC SIGNATURES GENERALLY

34   SECTION 301. LEGAL RECOGNITION OF ELECTRONIC SIGNATURES.

35   (a) A signature may not be denied legal effect, validity, or

36 enforceability solely because it is in the form of an electronic signature.

1   (b) If a rule of law requires a signature, or provides consequences in

2   the absence of a signature, the rule of law is satisfied with respect to an

3   electronic record if the electronic record includes an electronic signature.

4   (c) A party may establish reasonable requirements regarding the method

5   and type of signatures which will be acceptable to it.

6

7   SECTION 302.   ELECTRONIC SIGNATURES: EFFECT AND PROOF.

8   (a) Unless the circumstances otherwise indicate that a party intends

9   less than all of the effect, an electronic signature is intended to establish

10   (1) the signing party's identity,

11   (2) its adoption and acceptance of a record or a term, and

12   (3) the informational integrity of the record or term to which the

13   electronic signature is attached or with which it is logically associated.

14   (b) If the signing party executed or adopted the electronic signature

15   in accordance with a security procedure, the electronic record to which the

16   electronic signature is attached or with which it is logically associated is

17   presumed to be signed by the signing party. Otherwise, an electronic

18   signature may be proven in any manner, including by showing that

19   (1) a procedure existed by which a party must of necessity have

20   signed, or manifested assent to, a record or term in order to proceed further

21   in the processing of the transaction, or

22   (2) that the party is bound by virtue of the operations of its

23   electronic agent.

24   (c) The authenticity of, and authority to make, an electronic signature

25   is admitted unless specifically denied in the pleadings. If the validity of

26   an electronic signature is denied in the pleadings, the burden of establishing

27   validity is on the person claiming validity.

28

29   SECTION 303. ELECTRONIC AGENTS.

30   (a) A party that designs, programs or selects an electronic agent is

31   bound by operations of its electronic agent.

32   (b) An electronic record resulting from the operations of an electronic

33   agent shall be deemed signed by a party designing, programming or selecting

34   the electronic agent, regardless of whether the operations result in the

35   attachment or application of an electronic signature to the electronic record.

36

PART 4

ELECTRONIC CONTRACTS AND COMMUNICATIONS

SECTION 401.   FORMATION AND VALIDITY.

(a) If an electronic record is used in the formation of a contract, the contract may not be denied legal effect, validity or enforceability on the sole ground that an electronic record was used for that purpose.

(b) Operations of electronic agents which confirm the existence of a contract or signify agreement may form a contract even if no individual was aware of or reviewed the operations.

c) In an automated transaction, the following rules apply:

(1) A contract may be formed by the interaction of two electronic agents. A contract is formed if the interaction results in both electronic agents engaging in operations that signify agreement, such as by engaging in performing the contract, ordering or instructing performance, accepting performance, or making a record of the existence of a contract.

(2) A contract may be formed by the interaction of an electronic agent and an individual. A contract is formed by such interaction if (A) the individual has reason to know (i) that the individual is dealing with an electronic agent (ii) the limitations on the ability of the electronic agent to react to contemporaneous expressions by the individual and (B) the individual performs actions that the individual should know will cause the electronic agent to complete the transaction, perform or permit further use, or that are clearly indicated as constituting acceptance.

(3) The terms of a contract resulting from an automated transaction include terms of the parties' agreement (including terms with respect to which either party has manifested assent), terms that the electronic agent could take into account, and, to the extent not covered by the foregoing, terms provided by law.

(d) If an electronic record initiated by a party or an electronic agent evokes an electronic record in response and the records reflect an intent to be bound, a contract exists when:

(1) the response signifying acceptance is received; or

(2) if the response consists of electronically performing the requested consideration in whole or in part, when the requested consideration, to be performed electronically, is received, unless the originating record prohibited that form of response.

1

2   SECTION 402.   TIME AND PLACE OF SENDING AND RECEIPT.

3   (a)   Unless otherwise agreed between the sender and the recipient, an

4 electronic record is sent when it enters an information system outside the

5 control of the sender or of a person who sent the electronic record on behalf

6 of the sender.

7   (b)   Unless otherwise agreed between the sender and the recipient, an

8 electronic record is received when the electronic record enters an information

9 system from which the recipient is able to retrieve electronic records, in a

10 form capable of being processed by that system, and the recipient uses or has

11 designated that system for the purpose of receiving such records or

12 information.   In addition, an electronic record is received when it comes to

13 the attention of the recipient.

14   (c)   Subsection (b) applies even if the place where the information

15 system is located is different from the place where the electronic record is

16 considered to be received under subsection (d).

17   (d)   Unless otherwise agreed between the sender and the recipient, an

18 electronic record is deemed to be sent from where the sender has its place of

19 business, and is deemed to be received where the recipient has its place of

20 business.   For the purposes of this subsection:

21   (1) if the sender or recipient has more than one place of

22 business, the place of business is that which has the closest relationship to

23 the underlying transaction or, if there is no underlying transaction, the

24 principal place of business; and

25   (2) if the sender or the recipient does not have a place of

26 business, the place of business is the recipient's habitual residence.

27   (e) Subject to section 403, an electronic record is effective when

28 received, even if no individual is aware of its receipt.

29

30   SECTION 403.   ELECTRONIC ACKNOWLEDGMENT OF RECEIPT.

31   (a)   If the sender of a record requests or agrees with the recipient of

32 the record that receipt of the record must be acknowledged electronically, the

33 following rules apply:

34   (1) If the sender indicates in the record or otherwise that the

35 record is conditional on receipt of an electronic acknowledgment, the record

36 does not bind the sender until acknowledgment is received and expires if

1 acknowledgment is not received in a reasonable time after the record was sent.

2   (2) If the sender requests electronic acknowledgment but does not

3 state that the record is conditional on electronic acknowledgment and does not

4 specify a time for receipt, and electronic acknowledgment is not received

5 within an reasonable time after the record is sent the sender, on notice to

6 the other party, may either treat the record as having expired or specify a

7 further reasonable time within which electronic acknowledgment must be

8 received or the message will be treated as having expired. If electronic

9 acknowledgment is not received within that additional time, the sender may

10 treat the record as not having binding effect.

11   (3) If the sender requests electronic acknowledgment and

12 specifies a time for receipt, if receipt does not occur within that time, the

13 sender may treat the record as having expired.

14   (b) Receipt of electronic acknowledgment establishes that the record was

15 received but, in itself, does not establish that the content sent corresponds

16 to the content received.

17

18   SECTION 404. ADMISSIBILITY INTO EVIDENCE.

19   (a) In any legal proceeding, the rules of evidence must not be applied

20 to deny the admissibility in evidence of an electronic record or electronic

21 signature:

22   (1) on the sole ground that it is an electronic record or

23 electronic signature; or

24   (2) on the grounds that it is not in its original form or is not

25 an original.

26   (b) In assessing the evidentiary weight of an electronic record or

27 electronic signature, the trier of fact shall consider the manner in which the

28 electronic record or electronic signature was generated, stored, communicated,

29 or retrieved, the reliability of the manner in which the integrity of the

30 electronic record or electronic signature was maintained, the manner in which

31 its originator was identified or the electronic record was signed, and any

32 other relevant information or circumstances.

33

34   SECTION 405. TRANSFERABLE RECORDS. If the identity of the rightful

35 holder of a transferable record can be reliably determined from the record

36 itself or from a method employed for recording, registering, or otherwise

1 evidencing the transfer of interests in such records, the rightful holder of

2 the record is considered to be in possession of the record.

3

4   PART 5

5   GOVERNMENTAL ELECTRONIC RECORDS

6   SECTION 501. USE OF ELECTRONIC RECORDS BY STATE AGENCIES.

7   (a) Except where expressly prohibited by statute, every state agency may

8 create and retain electronic records in place of written records and may

9 convert written records to electronic records.

10   (b) Any state agency that accepts the filing of records, or requires

11 that records be created or retained by any person, may authorize, the filing,

12 creation, or retention of records in the form of electronic records.

13   (c) In any case governed by subsection (a) or (b), the state agency, by

14 appropriate regulation giving due consideration to security, may specify:

15   (1) the manner and format in which the electronic records must be

16 filed, created, or retained;

17   (2) if electronic records must be electronically signed, the type

18 of electronic signature required, and the manner and format in which the

19 electronic signature must be affixed to the electronic record;

20   (3) control processes and procedures as appropriate to ensure

21 adequate integrity, security, confidentiality, and auditability of electronic

22 records; and

23   (4) any other required attributes for electronic records which are

24 currently specified for corresponding non-electronic records.

25   (d) In establishing regulations under subsection (c) state agencies

26 shall give due regard to regulations implemented by other state agencies,

27 other states and the federal government for conflicting regulations which

28 would impede commerce and the implementation of electronic transactions.

29   (e) Nothing in this act may be construed to require any state agency to

30 use or permit the use of electronic records or signatures.

31

32   PART 6

33   MISCELLANEOUS PROVISIONS

34   SECTION 601. All provisions of this Act of a general and permanent

35 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas

36 Code Revision Commission shall incorporate the same in the Code.

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2   SECTION 602.   If any provision of this Act or the application thereof to
3   any person or circumstance is held invalid, such invalidity shall not affect
4   other provisions or applications of the Act which can be given effect without
5   the invalid provision or application, and to this end the provisions of this
6   Act are declared to be severable.

7

8   SECTION 603.   All laws and parts of laws in conflict with this Act are
9   hereby repealed.