

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

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4

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A Bill

SENATE BILL 159

5 By: Senator Everett
6 By: Representatives Carson, C. Taylor
7

For An Act To Be Entitled

THE UNIFORM ELECTRONIC TRANSACTIONS ACT

Subtitle

THE UNIFORM ELECTRONIC TRANSACTIONS ACT

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

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18 SECTION 1. SHORT TITLE. This Act may be cited as the Uniform
19 Electronic Transactions Act.

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21 SECTION 2. DEFINITIONS. In this Act:

22 (1) "Agreement" means the bargain of the parties in fact, as found in
23 their language or inferred from other circumstances and from rules,
24 regulations, and procedures given the effect of agreements under laws
25 otherwise applicable to a particular transaction.

26 (2) "Automated transaction" means a transaction conducted or performed,
27 in whole or in part, by electronic means or electronic records, in which the
28 acts or records of one or both parties are not reviewed by an individual in
29 the ordinary course in forming a contract, performing under an existing
30 contract, or fulfilling an obligation required by the transaction.

31 (3) "Computer program" means a set of statements or instructions to be
32 used directly or indirectly in an information processing system in order to
33 bring about a certain result.

34 (4) "Contract" means the total legal obligation resulting from the
35 parties' agreement as affected by this Act and other applicable law.

36 (5) "Electronic" means relating to technology having electrical,

1 digital, magnetic, wireless, optical, electromagnetic, or similar
2 capabilities.

3 (6) "Electronic agent" means a computer program or an electronic or
4 other automated means used independently to initiate an action or respond to
5 electronic records or performances in whole or in part, without review or
6 action by an individual.

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

9 (8) "Electronic signature" means an electronic sound, symbol, or
10 process attached to or logically associated with a record and executed or
11 adopted by a person with the intent to sign the record.

12 (9) "Governmental agency" means an executive, legislative, or judicial
13 agency, department, board, commission, authority, institution, or
14 instrumentality of the federal government or of a State or of a county,
15 municipality, or other political subdivision of a State.

16 (10) "Information" means data, text, images, sounds, codes, computer
17 programs, software, databases, or the like.

18 (11) "Information processing system" means an electronic system for
19 creating, generating, sending, receiving, storing, displaying, or processing
20 information.

21 (12) "Person" means an individual, corporation, business trust, estate,
22 trust, partnership, limited liability company, association, joint venture,
23 governmental agency, public corporation, or any other legal or commercial
24 entity.

25 (13) "Record" means information that is inscribed on a tangible medium
26 or that is stored in an electronic or other medium and is retrievable in
27 perceivable form.

28 (14) "Security procedure" means a procedure employed for the purpose of
29 verifying that an electronic signature, record, or performance is that of a
30 specific person or for detecting changes or errors in the information in an
31 electronic record. The term includes a procedure that requires the use of
32 algorithms or other codes, identifying words or numbers, encryption, or
33 callback or other acknowledgment procedures.

34 (15) "State" means a State of the United States, the District of
35 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or
36 insular possession subject to the jurisdiction of the United States. The term

1 includes an Indian tribe or band, or Alaskan native village, which is
2 recognized by federal law or formally acknowledged by a State.

3 (16)(A) "State agency" means all state departments, boards, and
4 commissions.

5 (B) "State agency" does not mean elected constitutional officers
6 and their employees, members of the General Assembly and their staff, and the
7 Supreme Court and the Administrative Office of the Courts.

8 (17) "Transaction" means an action or set of actions occurring between
9 two or more persons relating to the conduct of business, commercial, or
10 governmental affairs.

11
12 SECTION 3. SCOPE.

13 (a) Except as otherwise provided in subsection (b), this Act applies to
14 electronic records and electronic signatures relating to a transaction.

15 (b) This Act does not apply to a transaction to the extent it is
16 governed by:

17 (1) a law governing the creation and execution of wills, codicils,
18 or testamentary trusts; and

19 (2) the Uniform Commercial Code other than Sections 4-1-107 and 4-
20 1-206, Chapter 2, and Chapter 2A.

21 (c) This Act applies to an electronic record or electronic signature
22 otherwise excluded from the application of this Act under subsection (b) to
23 the extent it is governed by a law other than those specified in subsection
24 (b).

25 (d) A transaction subject to this Act is also subject to other
26 applicable substantive law.

27 (e) This Act is an enactment of the Uniform Electronic Transactions
28 Act as approved and recommended for enactment in all the States by the
29 National Conference of Commissioners on Uniform State Laws in 1999 and
30 therefore, pursuant to Section 102(a) of the Electronic Signatures in Global
31 and National Commerce Act, modifies, limits, or supercedes the provisions of
32 Section 101 of the Electronic Signatures in Global and National Commerce Act
33 to the extent therein authorized.

34
35 SECTION 4. PROSPECTIVE APPLICATION. This Act applies to any electronic
36 record or electronic signature created, generated, sent, communicated,

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

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3 SECTION 5. USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES;
4 VARIATION BY AGREEMENT.

5 (a) This Act does not require a record or signature to be created,
6 generated, sent, communicated, received, stored, or otherwise processed or
7 used by electronic means or in electronic form.

8 (b) This Act applies only to transactions between parties each of which
9 has agreed to conduct transactions by electronic means. Whether the parties
10 agree to conduct a transaction by electronic means is determined from the
11 context and surrounding circumstances, including the parties' conduct.

12 (c) A party that agrees to conduct a transaction by electronic means
13 may refuse to conduct other transactions by electronic means. The right
14 granted by this subsection may not be waived by agreement.

15 (d) Except as otherwise provided in this Act, the effect of any of its
16 provisions may be varied by agreement. The presence in certain provisions of
17 this Act of the words "unless otherwise agreed", or words of similar import,
18 does not imply that the effect of other provisions may not be varied by
19 agreement.

20 (e) Whether an electronic record or electronic signature has legal
21 consequences is determined by this Act and other applicable law.

22
23 SECTION 6. CONSTRUCTION AND APPLICATION. This Act must be construed
24 and applied:

25 (1) to facilitate electronic transactions consistent with other
26 applicable law;

27 (2) to be consistent with reasonable practices concerning electronic
28 transactions and with the continued expansion of those practices; and

29 (3) to effectuate its general purpose to make uniform the law with
30 respect to the subject of this Act among States enacting it.

31
32 SECTION 7. LEGAL RECOGNITION OF ELECTRONIC RECORDS, ELECTRONIC
33 SIGNATURES, AND ELECTRONIC CONTRACTS.

34 (a) A record or signature may not be denied legal effect or
35 enforceability solely because it is in electronic form.

36 (b) A contract may not be denied legal effect or enforceability solely

1 because an electronic record was used in its formation.

2 (c) If a law requires a record to be in writing, an electronic record
3 satisfies the law.

4 (d) If a law requires a signature, an electronic signature satisfies
5 the law.

6
7 SECTION 8. PROVISION OF INFORMATION IN WRITING; PRESENTATION OF RECORDS.

8 (a) If parties have agreed to conduct a transaction by electronic means
9 and a law requires a person to provide, send, or deliver information in
10 writing to another person, the requirement is satisfied if the information is
11 provided, sent, or delivered, as the case may be, in an electronic record
12 capable of retention by the recipient at the time of receipt. An electronic
13 record is not capable of retention by the recipient if the sender or its
14 information processing system inhibits the ability of the recipient to print
15 or store the electronic record.

16 (b) If a law other than this Act requires a record (i) to be posted or
17 displayed in a certain manner, (ii) to be sent, communicated, or transmitted
18 by a specified method, or (iii) to contain information that is formatted in a
19 certain manner, the following rules apply:

20 (1) The record must be posted or displayed in the manner
21 specified in the other law.

22 (2) Except as otherwise provided in subsection (d)(2), the record
23 must be sent, communicated, or transmitted by the method specified in the
24 other law.

25 (3) The record must contain the information formatted in the
26 manner specified in the other law.

27 (c) If a sender inhibits the ability of a recipient to store or print
28 an electronic record, the electronic record is not enforceable against the
29 recipient.

30 (d) The requirements of this section may not be varied by agreement,
31 but:

32 (1) to the extent a law other than this Act requires information
33 to be provided, sent, or delivered in writing but permits that requirement to
34 be varied by agreement, the requirement under subsection (a) that the
35 information be in the form of an electronic record capable of retention may
36 also be varied by agreement; and

1 (2) a requirement under a law other than this Act to send,
2 communicate, or transmit a record by first-class mail, postage prepaid or
3 regular United States mail, may be varied by agreement to the extent permitted
4 by the other law.

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7 SECTION 9. ATTRIBUTION AND EFFECT OF ELECTRONIC RECORD AND ELECTRONIC
8 SIGNATURE.

9 (a) An electronic record or electronic signature is attributable to a
10 person if it was the act of the person. The act of the person may be shown in
11 any manner, including a showing of the efficacy of any security procedure
12 applied to determine the person to which the electronic record or electronic
13 signature was attributable.

14 (b) The effect of an electronic record or electronic signature
15 attributed to a person under subsection (a) is determined from the context and
16 surrounding circumstances at the time of its creation, execution, or adoption,
17 including the parties' agreement, if any, and otherwise as provided by law.

18
19 SECTION 10. EFFECT OF CHANGE OR ERROR. If a change or error in an
20 electronic record occurs in a transmission between parties to a transaction,
21 the following rules apply:

22 (1) If the parties have agreed to use a security procedure to detect
23 changes or errors and one party has conformed to the procedure, but the other
24 party has not, and the nonconforming party would have detected the change or
25 error had that party also conformed, the conforming party may avoid the effect
26 of the changed or erroneous electronic record.

27 (2) In an automated transaction involving an individual, the individual
28 may avoid the effect of an electronic record that resulted from an error made
29 by the individual in dealing with the electronic agent of another person if
30 the electronic agent did not provide an opportunity for the prevention or
31 correction of the error and, at the time the individual learns of the error,
32 the individual:

33 (A) promptly notifies the other person of the error and that the
34 individual did not intend to be bound by the electronic record received by the
35 other person;

36 (B) takes reasonable steps, including steps that conform to the

1 other person's reasonable instructions, to return to the other person or, if
2 instructed by the other person, to destroy the consideration received, if any,
3 as a result of the erroneous electronic record; and

4 (C) has not used or received any benefit or value from the
5 consideration, if any, received from the other person.

6 (3) If neither paragraph (1) nor paragraph (2) applies, the change or
7 error has the effect provided by other law, including the law of mistake, and
8 the parties' contract, if any.

9 (4) Paragraphs (2) and (3) may not be varied by agreement.

10
11 SECTION 11. NOTARIZATION AND ACKNOWLEDGMENT. If a law requires a
12 signature or record to be notarized, acknowledged, verified, or made under
13 oath, the requirement is satisfied if the electronic signature of the person
14 authorized to perform those acts, together with all other information required
15 to be included by other applicable law, is attached to or logically associated
16 with the signature or record.

17
18 SECTION 12. RETENTION OF ELECTRONIC RECORDS; ORIGINALS.

19 (a) If a law requires that a record be retained, the requirement is
20 satisfied by retaining an electronic record of the information in the record
21 whi ch:

22 (1) accurately reflects the information set forth in the record
23 after it was first generated in its final form as an electronic record or
24 otherwise; and

25 (2) remains accessible for later reference.

26 (b) A requirement to retain a record in accordance with subsection (a)
27 does not apply to any information the sole purpose of which is to enable the
28 record to be sent, communicated, or received.

29 (c) A person may satisfy subsection (a) by using the services of
30 another person if the requirements of that subsection are satisfied.

31 (d) If a law requires a record to be presented or retained in its
32 original form, or provides consequences if the record is not presented or
33 retained in its original form, that law is satisfied by an electronic record
34 retained in accordance with subsection (a).

35 (e) If a law requires retention of a check, that requirement is
36 satisfied by retention of an electronic record of the information on the front

1 and back of the check in accordance with subsection (a).

2 (f) A record retained as an electronic record in accordance with
3 subsection (a) satisfies a law requiring a person to retain a record for
4 evidentiary, audit, or like purposes, unless a law enacted after the effective
5 date of this Act specifically prohibits the use of an electronic record for
6 the specified purpose.

7 (g) This section does not preclude a governmental agency of this State
8 from specifying additional requirements for the retention of a record subject
9 to the agency's jurisdiction.

10
11 SECTION 13. ADMISSIBILITY IN EVIDENCE. In a proceeding, evidence of a
12 record or signature may not be excluded solely because it is in electronic
13 form.

14
15 SECTION 14. AUTOMATED TRANSACTION. In an automated transaction, the
16 following rules apply:

17 (1) A contract may be formed by the interaction of electronic agents of
18 the parties, even if no individual was aware of or reviewed the electronic
19 agents' actions or the resulting terms and agreements.

20 (2) A contract may be formed by the interaction of an electronic agent
21 and an individual, acting on the individual's own behalf or for another
22 person, including by an interaction in which the individual performs actions
23 that the individual is free to refuse to perform and which the individual
24 knows or has reason to know will cause the electronic agent to complete the
25 transaction or performance.

26 (3) The terms of the contract are determined by the substantive law
27 applicable to it.

28
29 SECTION 15. TIME AND PLACE OF SENDING AND RECEIPT.

30 (a) Unless otherwise agreed between the sender and the recipient, an
31 electronic record is sent when it:

32 (1) is addressed properly or otherwise directed properly to an
33 information processing system that the recipient has designated or uses for
34 the purpose of receiving electronic records or information of the type sent
35 and from which the recipient is able to retrieve the electronic record;

36 (2) is in a form capable of being processed by that system; and

1 (3) enters an information processing system outside the control of
2 the sender or of a person that sent the electronic record on behalf of the
3 sender or enters a region of the information processing system designated or
4 used by the recipient which is under the control of the recipient.

5 (b) Unless otherwise agreed between a sender and the recipient, an
6 electronic record is received when:

7 (1) it enters an information processing system that the recipient
8 has designated or uses for the purpose of receiving electronic records or
9 information of the type sent and from which the recipient is able to retrieve
10 the electronic record; and

11 (2) it is in a form capable of being processed by that system.

12 (c) Subsection (b) applies even if the place the information processing
13 system is located is different from the place the electronic record is deemed
14 to be received under subsection (d).

15 (d) Unless otherwise expressly provided in the electronic record or
16 agreed between the sender and the recipient, an electronic record is deemed to
17 be sent from the sender's place of business and to be received at the
18 recipient's place of business. For purposes of this subsection, the following
19 rules apply:

20 (1) If the sender or recipient has more than one place of
21 business, the place of business of that person is the place having the closest
22 relationship to the underlying transaction.

23 (2) If the sender or the recipient does not have a place of
24 business, the place of business is the sender's or recipient's residence, as
25 the case may be.

26 (e) An electronic record is received under subsection (b) even if no
27 individual is aware of its receipt.

28 (f) Receipt of an electronic acknowledgment from an information
29 processing system described in subsection (b) establishes that a record was
30 received but, by itself, does not establish that the content sent corresponds
31 to the content received.

32 (g) If a person is aware that an electronic record purportedly sent
33 under subsection (a), or purportedly received under subsection (b), was not
34 actually sent or received, the legal effect of the sending or receipt is
35 determined by other applicable law. Except to the extent permitted by the
36 other law, the requirements of this subsection may not be varied by agreement.

1
2 SECTION 16. TRANSFERABLE RECORDS.

3 (a) In this section, "transferable record" means an electronic record
4 that:

5 (1) would be a note under Chapter 3 of the Uniform Commercial Code
6 or a document under Chapter 7 of the Uniform Commercial Code if the electronic
7 record were in writing; and

8 (2) the issuer of the electronic record expressly has agreed is a
9 transferable record.

10 (b) A person has control of a transferable record if a system employed
11 for evidencing the transfer of interests in the transferable record reliably
12 establishes that person as the person to which the transferable record was
13 issued or transferred.

14 (c) A system satisfies subsection (b), and a person is deemed to have
15 control of a transferable record, if the transferable record is created,
16 stored, and assigned in such a manner that:

17 (1) a single authoritative copy of the transferable record exists
18 which is unique, identifiable, and, except as otherwise provided in paragraphs
19 (4), (5), and (6), unalterable;

20 (2) the authoritative copy identifies the person asserting control
21 as:

22 (A) the person to which the transferable record was issued;

23 or

24 (B) if the authoritative copy indicates that the
25 transferable record has been transferred, the person to which the transferable
26 record was most recently transferred;

27 (3) the authoritative copy is communicated to and maintained by
28 the person asserting control or its designated custodian;

29 (4) copies or revisions that add or change an identified assignee
30 of the authoritative copy can be made only with the consent of the person
31 asserting control;

32 (5) each copy of the authoritative copy and any copy of a copy is
33 readily identifiable as a copy that is not the authoritative copy; and

34 (6) any revision of the authoritative copy is readily identifiable
35 as authorized or unauthorized.

36 (d) Except as otherwise agreed, a person having control of a

1 transferable record is the holder, as defined in Section 4-1-201(20) of the
 2 Uniform Commercial Code, of the transferable record and has the same rights
 3 and defenses as a holder of an equivalent record or writing under the Uniform
 4 Commercial Code, including, if the applicable statutory requirements under
 5 Section 4-3-302(a), 4-7-501, or 4-9-308 of the Uniform Commercial Code are
 6 satisfied, the rights and defenses of a holder in due course, a holder to
 7 whom a negotiable document of title has been duly negotiated, or a purchaser,
 8 respectively. Delivery, possession, and indorsement are not required to
 9 obtain or exercise any of the rights under this subsection.

10 (e) Except as otherwise agreed, an obligor under a transferable record
 11 has the same rights and defenses as an equivalent obligor under equivalent
 12 records or writings under the Uniform Commercial Code.

13 (f) If requested by a person against whom enforcement is sought, the
 14 person seeking to enforce the transferable record shall provide reasonable
 15 proof that the person is in control of the transferable record. Proof may
 16 include access to the authoritative copy of the transferable record and
 17 related business records sufficient to review the terms of the transferable
 18 record and to establish the identity of the person having control of the
 19 transferable record.

20
 21 SECTION 17. CREATION AND RETENTION OF ELECTRONIC RECORDS AND CONVERSION
 22 OF WRITTEN RECORDS BY GOVERNMENTAL AGENCIES.

23 (a) Each governmental agency of this State shall determine whether, and
 24 the extent to which, it will create and retain electronic records and convert
 25 written records to electronic records.

26 (b) Each state agency shall comply with applicable standards and
 27 policies adopted or established by the Executive Chief Information Officer, in
 28 collaboration with the Chief Information Officer Council to determine whether
 29 and the extent to which it will retain and convert written records to
 30 electronic records.

31
 32 SECTION 18. ACCEPTANCE AND DISTRIBUTION OF ELECTRONIC RECORDS BY
 33 GOVERNMENTAL AGENCIES.

34 (a)(1) Except as otherwise provided in Section 12(f), each governmental
 35 agency of this State shall determine whether, and the extent to which it will
 36 send and accept electronic records and electronic signatures to and from other

1 persons and otherwise create, generate, communicate, store, process, use, and
2 rely upon electronic records and electronic signatures.

3 (2) For state agencies, the determinations shall be consistent
4 with applicable standards and policies adopted or established by the Executive
5 Chief Information Officer, in collaboration with the Chief Information Officer
6 Council.

7 (b) To the extent that a governmental agency uses electronic records
8 and electronic signatures under subsection (a), the governmental agency,
9 giving due consideration to security, may specify:

10 (1) the manner and format in which the electronic records must be
11 created, generated, sent, communicated, received, and stored and the systems
12 established for those purposes;

13 (2) if electronic records must be signed by electronic means, the
14 type of electronic signature required, the manner and format in which the
15 electronic signature must be affixed to the electronic record, and the
16 identity of, or criteria that must be met by, any third party used by a person
17 filing a document to facilitate the process;

18 (3) control processes and procedures as appropriate to ensure
19 adequate preservation, disposition, integrity, security, confidentiality, and
20 auditability of electronic records; and

21 (4) any other required attributes for electronic records which are
22 specified for corresponding non-electronic records or reasonably necessary
23 under the circumstances.

24 (c) Except as otherwise provided in Section 12(f), this Act does not
25 require a governmental agency of this State to use or permit the use of
26 electronic records or electronic signatures.

27
28 SECTION 19. INTEROPERABILITY. With respect to standards adopted
29 pursuant to section 18 of this act, the Executive Chief Information Officer of
30 this state may encourage and promote consistency and interoperability with
31 similar requirements adopted by other governmental agencies of this and other
32 States and the federal government and nongovernmental persons interacting with
33 governmental agencies of this State. If appropriate, those standards may
34 specify differing levels of standards from which governmental agencies of this
35 State may choose in implementing the most appropriate standard for a
36 particular application.

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2 SECTION 20. SEVERABILITY CLAUSE. If any provision of this Act or its
3 application to any person or circumstance is held invalid, the invalidity does
4 not affect other provisions or applications of this Act which can be given
5 effect without the invalid provision or application, and to this end the
6 provisions of this Act are severable.

7
8 SECTION 21. EMERGENCY CLAUSE. It is found and determined by the
9 General Assembly that modern commerce in this State requires the use of, and
10 will be facilitated by electronic signatures and electronic transactions, that
11 presently Arkansas law is preempted by federal law concerning that subject
12 matter by the Electronic Signatures in Global and National Commerce Act; that
13 under the federal act the federal preemption may be largely and immediately be
14 displaced by the enactment of the Uniform Electronic Transactions Act; that
15 the latter act contains provisions not contained in the current act and the
16 additional provisions would be of immediate advantage to electronic commerce
17 in Arkansas; and the latter act has already been adopted in over two-dozen
18 states, resulting in potential economic advantage to those states over
19 Arkansas. Therefore, an emergency is declared to exist and this act being
20 immediately necessary for the preservation of the public peace, health and
21 safety shall become effective on the date of its approval by the Governor. If
22 the bill is neither approved nor vetoed by the Governor, it shall become
23 effective on the expiration of the period of time during which the Governor
24 may veto the bill. If the bill is vetoed by the Governor and the veto is
25 overridden, it shall become effective on the date the last house overrides the
26 veto.

27 /s/ Everett
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