

STORAGE NAME: h1891.uco

DATE: March 24, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
UTILITIES AND COMMUNICATIONS
ANALYSIS**

BILL #: HB 1891

RELATING TO: Electronic Commerce

SPONSOR(S): Representative Arnall

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) UTILITIES AND COMMUNICATIONS
 - (2) JUDICIARY
 - (3) GOVERNMENTAL OPERATIONS
 - (4) CRIMINAL JUSTICE APPROPRIATIONS
 - (5)
-

I. SUMMARY:

The National Conference of Commissioners on Uniform State Laws (NCCUSL) approved and recommended for enactment in all states the Uniform Electronic Transaction Act (1999), (UETA). Two states have enacted legislation, and twenty states have legislation pending. Notaries Public are governed by Chapter 117, Florida Statutes. Article V, section 16, Florida Constitution provides for the establishment of the clerk of the circuit court in each county of the state. The duties of the clerk are to be established by special or general law.

HB1891 provides a discretionary legal framework for electronic transactions equivalent to the Uniform Electronic Transaction Act (1999). The bill clarifies specific conduct and certain circumstances that constitute a electronic transaction.

The bill specifies notarization and acknowledgment as required. The bill also sets forth criteria for first-time applicants for notary commission to submit proof of completion of certain approved classroom or interactive instruction within one year prior to application.

The bill further provides guidelines for the county recorder in each county to produce a current index of documents recorded in the official records of the county beginning with a specified date.

The act shall be effective July 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The National Conference of Commissioners on Uniform State Laws (NCCUSL) is now in its 108th year. The organization is comprised of more than 300 lawyers, judges, and law professors, appointed by the states as well as the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. The group drafts proposals for uniform and model laws for consideration and enactment in state legislatures. Since its inception in 1892, the group has promulgated more than 200 acts, among them the Uniform Commercial Code, the Uniform Probate Code, and the Uniform Partnership Act.

The NCCUSL drafted, approved and recommended for enactment in all states at its July 1999 Annual Conference the Uniform Electronic Transactions Act, (UETA).

According to NCCUSL, the purpose of the Act is to remove barriers to electronic commerce by validating and effectuating electronic records and signatures. It is not a general contracting statute or a digital signature statute. To the extent that a state has a Digital Signature Law, the UETA is designed to support and compliment that statute.

In Florida, the laws governing digital or electronic signatures are found in Chapter 282, Part III, Florida Statutes, Electronic Signatures. Pursuant to s. 282.71, Florida Statutes, it is the legislative intent of the act to:

282.71 Legislative intent.—It is the intent of the Legislature that this act:

- (1) Facilitate economic development and efficient delivery of government services by means of reliable electronic messages.
- (2) Enhance public confidence in the use of electronic signatures.
- (3) Minimize the incidence of forged electronic signatures and fraud in electronic commerce.
- (4) Foster the development of electronic commerce through the use of electronic signatures to lend authenticity and integrity to writings in any electronic medium.

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(5) Assure that proper management oversight and accountability are maintained for agency-conducted electronic commerce.

Section 282.73, Florida Statutes, provides that:

Unless otherwise provided by law, an electronic signature may be used to sign a writing and shall have the same force and effect as a written signature.

Further, s. 282.75, Florida Statutes, states:

The head of each agency shall be responsible for adopting and implementing control procedures to ensure adequate security, confidentiality, and audit ability of business transactions conducted using electronic commerce.

Chapter 117, Florida Statutes, outlines the provisions for notaries public. Section 117.01, Florida Statutes provides in part:

117.01 Appointment, application, suspension, revocation, application fee, bond, and oath.—

(1) The Governor may appoint as many notaries public as he or she deems necessary, each of whom shall be at least 18 years of age and a legal resident of the state. A permanent resident alien may apply and be appointed and shall file with his or her application a recorded Declaration of Domicile. The residence required for appointment must be maintained throughout the term of appointment. Notaries public shall be appointed for 4 years and shall use and exercise the office of notary public within the boundaries of this state. An applicant must be able to read, write, and understand the English language.

(2) The application for appointment shall be signed and sworn to by the applicant and shall be accompanied by a fee of \$25, together with the \$10 commission fee required by s. 113.01, and a surcharge of \$4, which \$4 is appropriated to the Executive Office of the Governor to be used to educate and assist notaries public. The Executive Office of the Governor may contract with private vendors to provide the services set forth in this section. . .

Article V, section 16, Florida Constitution, provides for the establishment of the clerk of the circuit court in each county of the state. The duties of the clerk are to be established by special or general law.

Section 28.222, Florida Statutes, provides in part that:

28.222 Clerk to be county recorder.—

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(1) The clerk of the circuit court shall be the recorder of all instruments that he or she may be required or authorized by law to record in the county where he or she is clerk.

(2) The clerk of the circuit court shall record all instruments in one general series called "Official Records." He or she shall keep a register in which he or she shall enter at the time of filing the filing number of each instrument filed for record, the date and hour of filing, the kind of instrument, and the names of the parties to the instrument. The clerk shall maintain a general alphabetical index, direct and inverse, of all instruments filed for record. The register of Official Records must be available at each office where official records may be filed.

According to the National Conference of State Legislators (NCSL), two states, California and Pennsylvania have enacted the Act and 20 states have legislation pending.

C. EFFECT OF PROPOSED CHANGES:

The proposed bill provides a discretionary legal framework for electronic transactions using language equivalent to the Uniform Electronic Transaction Act (1999), (UETA).

The bill provides definitions identical to UETA.

Consistent with UETA, the bill creates scope language that applies to transactions in which the parties have agreed to conduct an electronic transaction.

The bill sets forth language identical to UETA to provide agreement variation. According to NCCUSL, the intent is to facilitate the use of electronic means, but does not require the use of electronic means. The bill provides that provisions of law governing the following are not applicable: creation and execution of wills, codicils, or trusts; the Uniform Commercial Code, other than sections 1-107 and 1-206, Article 2 and Article 2A; the Uniform Computer Information Transactions Act (UCITA); rules relating to judicial procedure; with other exceptions, to the extent electronic records and signatures are governed by provisions of law other than the ones specified.

The bill authorizes that electronic transaction be consistent with other applicable provisions of law, reasonable and expansive practices concerning electronic transactions with the purpose of making uniform the law with states enacting similar legislation. The language is equivalent to UETA.

The bill provides for legal recognition of records and signatures in electronic format.

The bill further provides, absent the Statute of Fraud, the elimination of the premises that the medium in which a record or signature is created, presented or retained affects its legal effect and enforceability. This language is also equivalent to UETA.

The bill clarifies, using identical UETA language, that to meet a requirement of any provision of law that compels a person to provide, send, or deliver information in writing to another that the recipient of the record must be capable of retrieval and retention of such record. Any inhibition by the sender or the sender's system to deny the recipient retention

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of the record precludes satisfaction of the act. The bill further provides that if a provision of law requires that the record be posted or displayed in a certain manner; sent, communicated, transmitted, or formatted by a specified method, such other requirements must be satisfied. The bill adds that if a sender inhibits the ability of a recipient to store or print the record, the electronic record is unenforceable against the recipient. The bill also permits a waiver of the requirements by agreement.

HB 1891 also provides that an electronic record or electronic signature is attributed to a person by his action. The person's actions may be shown in any matter, including any security procedures determined by the parties, actions by human agents of the person, as well as actions of electronic agents. The bill further states that the act does not alter existing rules of law regarding attribution. This language too is identical to UETA.

The bill additionally states that in the event of change or error in an electronic record occurs in a transmission, the following applies: (a) if parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record. (b) in an automated transaction, an individual may avoid the effect of electronic record that resulted from an error made by an individual in dealing with the electronic agent of that person. If the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual: must promptly notify the other person of the error and that the individual did not intend to be bound by the record received; takes reasonable steps to conform to the recipients instruction to return or destroy the record received; or has not used or received any benefit or value from the consideration, if any, as a result of the erroneous record. This is consistent with UETA.

The bill authorizes notaries public and other persons authorized by applicable law to electronically perform notarization and acknowledgments. The bill requires that within one year prior to application, first-time applicants complete three hours of interactive or classroom instruction on the duties of a notary, including electronic notarization.

The bill provides that if provisions of law require that a record be retained, electronic retention meets that requirement. However this section does not preclude a governmental agency from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

The bill clarifies that the acceptance of electronic records or signatures in a proceeding cannot be excluded based on their electronic form.

The bill provides rules for an automated transaction, such that a contract may be formed by the electronic agents and the parties, or between the electronic agent and an individual. The language used is identical UETA.

The bill further provides rules for determining when an electronic record is "sent" and "received."

HB 1891 uses identical language to UETA that provides the definition of "transferable record" and criteria for a person who has control of a transferable record.

Subsection (16) of the bill provides a governmental agency the discretion as to whether it will create and retain electronic records, and convert written records to electronic records.

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Subsection (17) of the bill clarifies that a governmental agency has the discretion as to whether it will send and accept electronic records and electronic signatures, and otherwise use and rely on electronic records and signatures. The bill further provides that a governmental agency may specify certain aspects of the electronic record, such as manner and format, type of electronic signature, and security. The bill does not require the agency to use or permit the use of electronic transactions. The bill specifies that service charges and other fees established by law for the filing of non-electronic records apply to electronic records.

The bill adds in subsection (18) that a governmental agency may adopt standards pursuant to subsection (17) consistent with interoperability with similar requirements of other state and federal agencies, as well as nongovernmental persons interacting with governmental agencies.

The bill authorizes a severability clause, such that if any provision of the act is held invalid, the other provisions of the act are not affected.

The bill provides a finding of important state purpose in providing the public with access to public records on the Internet.

The bill requires that, no later than January 1, 2002, the county recorder in each county must provide an electronic index to that county's public records for the period beginning no later than January 1, 1990, for posting on an Internet website. The electronic indices will form a statewide index, from which copies of public records can be requested or obtained. The bill further requires county recorders to use Internet security measures to ensure that no person can alter or modify any public record. Also unless otherwise provided by law, no information retrieved electronically shall be admissible in court as an authenticated document. The bill also provides that the county recorder may charge a reasonable fee for access and use of the system and to make such other charges as appropriate for commercial use of the system, with an except for individuals who access the system for less than one hour per month.

The bill requires that by January 1, 2006, each county recorder must provide the electronic images of the Official Records through the statewide site.

The act shall take effect July 1, 2000.

D. SECTION-BY-SECTION ANALYSIS:

Please see "Effect of Proposed Changes" section.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

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2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take action requiring the expenditures of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

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C. OTHER COMMENTS:

According to the Florida Association of Court Clerk and Comptroller, only one county in Florida does not keep these lists in an electronic format.

It is unclear whether there is an additional cost implication in the provision requiring that a first-time applicant for a notary commission complete a core curriculum through a public or private sector person or entity registered with the Executive Office of the Governor.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND COMMUNICATIONS:

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