

By Representative Arnall

1 A bill to be entitled
2 An act relating to electronic commerce;
3 providing definitions; providing scope;
4 providing for prospective application;
5 providing for use of electronic records and
6 signatures; providing for variation by
7 agreement among parties using electronic
8 records and electronic signatures; providing
9 construction and application; providing for
10 uniformity; providing for legal recognition of
11 electronic records, signatures, and contracts;
12 providing for provision of information in
13 writing; providing for presentation of records;
14 providing for attribution and effect of
15 electronic records and electronic signatures;
16 providing for the effect of changes or errors
17 in electronic records; providing for
18 notarization and acknowledgment; providing for
19 retention of electronic records and originals;
20 providing for admissibility of electronic
21 records as evidence; providing for rules
22 applying to automated transactions; providing
23 for time and place of sending and receiving
24 electronic records and signatures; providing
25 for transferable records; providing for
26 creation and retention of electronic records by
27 governmental agencies; providing for conversion
28 of written records by governmental agencies;
29 providing for acceptance and distribution of
30 electronic records by governmental agencies;
31 providing for interoperability; providing

1 severability; requiring the clerks of court to
2 provide a statewide index of official records
3 available on the Internet by a time certain;
4 providing for security; requiring that the
5 Internet information shall not be admissible in
6 court; authorizing charging a reasonable fee
7 for certain purposes; providing that the
8 official records must be made available for
9 electronic retrieval on the statewide site by a
10 time certain; providing an effective date.

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12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. (1) DEFINITIONS.--As used in this section:

15 (a) "Agreement" means the bargain of the parties in
16 fact, as found in their language or inferred from other
17 circumstances and from rules, regulations, and procedures
18 given the effect of agreements under provisions of law
19 otherwise applicable to a particular transaction.

20 (b) "Automated transaction" means a transaction
21 conducted or performed, in whole or in part, by electronic
22 means or electronic records, in which the acts or records of
23 one or both parties are not reviewed by an individual in the
24 ordinary course in forming a contract, performing under an
25 existing contract, or fulfilling an obligation required by the
26 transaction.

27 (c) "Computer program" means a set of statements or
28 instructions to be used directly or indirectly in an
29 information processing system in order to bring about a
30 certain result.

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1 (d) "Contract" means the total legal obligation
2 resulting from the parties' agreement as affected by this
3 section and other applicable provisions of law.

4 (e) "Electronic" means relating to technology having
5 electrical, digital, magnetic, wireless, optical,
6 electromagnetic, or similar capabilities.

7 (f) "Electronic agent" means a computer program or an
8 electronic or other automated means used independently to
9 initiate an action or respond to electronic records or
10 performances in whole or in part, without review or action by
11 an individual.

12 (g) "Electronic record" means a record created,
13 generated, sent, communicated, received, or stored by
14 electronic means.

15 (h) "Electronic signature" means an electronic sound,
16 symbol, or process attached to or logically associated with a
17 record and executed or adopted by a person with the intent to
18 sign the record.

19 (i) "Governmental agency" means an executive,
20 legislative, or judicial agency, department, board,
21 commission, authority, institution, or instrumentality of the
22 Federal Government or of a state or of a county, municipality,
23 or other political subdivision of a state and any other public
24 or private agency, person, partnership, corporation, or
25 business entity acting on behalf of any public agency.

26 (j) "Information" means data, text, images, sounds,
27 codes, computer programs, software, databases, or other
28 similar representations of knowledge.

29 (k) "Information processing system" means an
30 electronic system for creating, generating, sending,
31 receiving, storing, displaying, or processing information.

1 (l) "Person" means an individual, corporation,
2 business trust, estate, trust, partnership, limited liability
3 company, association, joint venture, governmental agency,
4 public corporation, or any other legal or commercial entity.

5 (m) "Record" means information that is inscribed on a
6 tangible medium or that is stored in an electronic or other
7 medium and is retrievable in perceivable form, including
8 public records as defined in s. 119.011(1), Florida Statutes.

9 (n) "Security procedure" means a procedure employed
10 for the purpose of verifying that an electronic signature,
11 record, or performance is that of a specific person or for
12 detecting changes or errors in the information in an
13 electronic record. The term includes a procedure that requires
14 the use of algorithms or other codes, identifying words or
15 numbers, encryption, or callback or other acknowledgment
16 procedures.

17 (o) "State" means a state of the United States, the
18 District of Columbia, Puerto Rico, the United States Virgin
19 Islands, or any territory or insular possession subject to the
20 jurisdiction of the United States. The term includes an Indian
21 tribe or band, or Alaskan native village, which is recognized
22 by federal law or formally acknowledged by a state.

23 (p) "Transaction" means an action or set of actions
24 occurring between two or more persons relating to the conduct
25 of business, commercial, or governmental affairs.

26 (2) SCOPE.--

27 (a) Except as otherwise provided in paragraph (b),
28 this section applies to electronic records and electronic
29 signatures relating to a transaction.

30 (b) This section does not apply to a transaction to
31 the extent the transaction is governed by:

1 1. A provision of law governing the creation and
2 execution of wills, codicils, or testamentary trusts;

3 2. The Uniform Commercial Code other than Sections
4 1-107 and 1-206, Article 2, and Article 2A;

5 3. The Uniform Computer Information Transactions Act;
6 or

7 4. Rules relating to judicial procedure.

8 (c) This section applies to an electronic record or
9 electronic signature otherwise excluded from the application
10 of this section under paragraph (b) to the extent such record
11 or signature is governed by a provision of law other than
12 those specified in paragraph (b).

13 (d) A transaction subject to this section is also
14 subject to other applicable provisions of substantive law.

15 (3) PROSPECTIVE APPLICATION.--This section applies to
16 any electronic record or electronic signature created,
17 generated, sent, communicated, received, or stored on or after
18 July 1, 2000.

19 (4) USE OF ELECTRONIC RECORDS AND ELECTRONIC
20 SIGNATURES; VARIATION BY AGREEMENT.--

21 (a) This section does not require a record or
22 signature to be created, generated, sent, communicated,
23 received, stored, or otherwise processed or used by electronic
24 means or in electronic form.

25 (b) This section applies only to transactions between
26 parties each of which has agreed to conduct transactions by
27 electronic means. Whether the parties agree to conduct a
28 transaction by electronic means is determined from the context
29 and surrounding circumstances, including the parties' conduct.

30 (c) A party that agrees to conduct a transaction by
31 electronic means may refuse to conduct other transactions by

1 electronic means. The right granted by this paragraph may not
2 be waived by agreement.

3 (d) Except as otherwise provided in this section, the
4 effect of any provision of this section may be varied by
5 agreement. The presence in certain provisions of this section
6 of the words "unless otherwise agreed," or words of similar
7 import, does not imply that the effect of other provisions may
8 not be varied by agreement.

9 (e) Whether an electronic record or electronic
10 signature has legal consequences is determined by this section
11 and other applicable provisions of law.

12 (5) CONSTRUCTION AND APPLICATION.--This section shall
13 be construed and applied to:

14 (a) Facilitate electronic transactions consistent with
15 other applicable provisions of law.

16 (b) Be consistent with reasonable practices concerning
17 electronic transactions and with the continued expansion of
18 those practices.

19 (c) Effectuate its general purpose to make uniform the
20 law with respect to the subject of this section among states
21 enacting similar legislation.

22 (6) LEGAL RECOGNITION OF ELECTRONIC RECORDS,
23 ELECTRONIC SIGNATURES, AND ELECTRONIC CONTRACTS.--

24 (a) A record or signature may not be denied legal
25 effect or enforceability solely because the record or
26 signature is in electronic form.

27 (b) A contract may not be denied legal effect or
28 enforceability solely because an electronic record was used in
29 the formation of the contract.

30 (c) If a provision of law requires a record to be in
31 writing, an electronic record satisfies such provision.

1 (d) If a provision of law requires a signature, an
2 electronic signature satisfies such provision.

3 (7) PROVISION OF INFORMATION IN WRITING; PRESENTATION
4 OF RECORDS.--

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

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

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

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

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

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

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

1 1. To the extent a provision of law other than this
2 section requires information to be provided, sent, or
3 delivered in writing but permits that requirement to be varied
4 by agreement, the requirement under paragraph (a) that the
5 information be in the form of an electronic record capable of
6 retention may also be varied by agreement.

7 2. A requirement under a law other than this section
8 to send, communicate, or transmit a record by first-class
9 mail, postage prepaid, or other regular United States mail,
10 may be varied by agreement to the extent permitted by the
11 other provision of law.

12 (8) CONTRIBUTION AND EFFECT OF ELECTRONIC RECORD AND
13 ELECTRONIC SIGNATURE.--

14 (a) An electronic record or electronic signature is
15 attributable to a person if the record or signature was the
16 act of the person. The act of the person may be shown in any
17 manner, including a showing of the efficacy of any security
18 procedure applied to determine the person to which the
19 electronic record or electronic signature was attributable.

20 (b) The effect of an electronic record or electronic
21 signature attributed to a person under paragraph (a) is
22 determined from the context and surrounding circumstances at
23 the time of its creation, execution, or adoption, including
24 the parties' agreement, if any, and otherwise as provided by
25 law.

26 (9) EFFECT OF CHANGE OR ERROR.--If a change or error
27 in an electronic record occurs in a transmission between
28 parties to a transaction, the following rules apply:

29 (a) If the parties have agreed to use a security
30 procedure to detect changes or errors and one party has
31 conformed to the procedure, but the other party has not, and

1 the nonconforming party would have detected the change or
2 error had that party also conformed, the conforming party may
3 avoid the effect of the changed or erroneous electronic
4 record.

5 (b) In an automated transaction involving an
6 individual, the individual may avoid the effect of an
7 electronic record that resulted from an error made by the
8 individual in dealing with the electronic agent of another
9 person if the electronic agent did not provide an opportunity
10 for the prevention or correction of the error and, at the time
11 the individual learns of the error, the individual:

12 1. Promptly notifies the other person of the error and
13 that the individual did not intend to be bound by the
14 electronic record received by the other person.

15 2. Takes reasonable steps, including steps that
16 conform to the other person's reasonable instructions, to
17 return to the other person or, if instructed by the other
18 person, to destroy the consideration received, if any, as a
19 result of the erroneous electronic record.

20 3. Has not used or received any benefit or value from
21 the consideration, if any, received from the other person.

22 (c) If paragraphs (a) and (b) do not apply, the change
23 or error has the effect provided by the other provision of
24 law, including the law of mistake, and the parties' contract,
25 if any.

26 (d) Paragraphs (b) and (c) may not be varied by
27 agreement.

28 (10) NOTARIZATION AND ACKNOWLEDGMENT.--

29 (a) If a law requires a signature or record to be
30 notarized, acknowledged, verified, or made under oath, the
31 requirement is satisfied if the electronic signature of the

1 person authorized by applicable law to perform those acts,
2 together with all other information required to be included by
3 other applicable law, is attached to or logically associated
4 with the signature or record. Neither a rubber stamp nor an
5 impression type seal is required for an electronic
6 notarization.

7 (b) A first-time applicant for a notary commission
8 must submit proof that the applicant has, within 1 year prior
9 to the application, completed at least 3 hours of interactive
10 or classroom instruction, including electronic notarization,
11 and covering the duties of the notary public. Courses
12 satisfying this section may be offered by any public or
13 private sector person or entity registered with the Executive
14 Office of the Governor and must include a core curriculum
15 approved by that office.

16 (11) RETENTION OF ELECTRONIC RECORDS; ORIGINALS.--

17 (a) If a law requires that a record be retained, the
18 requirement is satisfied by retaining an electronic record of
19 the information in the record which:

20 1. Accurately reflects the information set forth in
21 the record after the record was first generated in final form
22 as an electronic record or otherwise.

23 2. Remains accessible for later reference.

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

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

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1 (d) If a provision of law requires a record to be
2 presented or retained in its original form, or provides
3 consequences if the record is not presented or retained in its
4 original form, that law is satisfied by an electronic record
5 retained in accordance with paragraph (a).

6 (e) If a provision of law requires retention of a
7 check, that requirement is satisfied by retention of an
8 electronic record of the information on the front and back of
9 the check in accordance with paragraph (a).

10 (f) A record retained as an electronic record in
11 accordance with paragraph (a) satisfies a provision of law
12 requiring a person to retain a record for evidentiary, audit,
13 or similar purposes, unless a provision of law enacted after
14 July 1, 2000, specifically prohibits the use of an electronic
15 record for the specified purpose.

16 (g) This subsection does not preclude a governmental
17 agency of this state from specifying additional requirements
18 for the retention of a record subject to the agency's
19 jurisdiction.

20 (12) ADMISSIBILITY IN EVIDENCE.--In a proceeding,
21 evidence of a record or signature may not be excluded solely
22 because the record or signature is in electronic form.

23 (13) AUTOMATED TRANSACTIONS.--In an automated
24 transaction, the following rules apply:

25 (a) A contract may be formed by the interaction of
26 electronic agents of the parties, even if no individual was
27 aware of or reviewed the electronic agents' actions or the
28 resulting terms and agreements.

29 (b) A contract may be formed by the interaction of an
30 electronic agent and an individual, acting on the individual's
31 own behalf or for another person, including by an interaction

1 in which the individual performs actions that the individual
2 is free to refuse to perform and which the individual knows or
3 has reason to know will cause the electronic agent to complete
4 the transaction or performance.

5 (d) The terms of the contract are determined by the
6 substantive law applicable to the contract.

7 (14) TIME AND PLACE OF SENDING AND RECEIVING.--

8 (a) Unless otherwise agreed between the sender and the
9 recipient, an electronic record is sent when the record:

10 1. Is addressed properly or otherwise directed
11 properly to an information processing system that the
12 recipient has designated or uses for the purpose of receiving
13 electronic records or information of the type sent and from
14 which the recipient is able to retrieve the electronic record.

15 2. Is in a form capable of being processed by that
16 system.

17 3. Enters an information processing system outside the
18 control of the sender or of a person that sent the electronic
19 record on behalf of the sender or enters a region of the
20 information processing system designated or used by the
21 recipient which is under the control of the recipient.

22 (b) Unless otherwise agreed between a sender and the
23 recipient, an electronic record is received when the record
24 enters an information processing system that the recipient has
25 designated or uses for the purpose of receiving electronic
26 records or information of the type sent and from which the
27 recipient is able to retrieve the electronic record; and it is
28 in a form capable of being processed by that system.

29 (c) Paragraph (b) applies even if the place the
30 information processing system is located is different from the
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1 place the electronic record is deemed to be received under
2 paragraph (d).

3 (d) Unless otherwise expressly provided in the
4 electronic record or agreed between the sender and the
5 recipient, an electronic record is deemed to be sent from the
6 sender's place of business and to be received at the
7 recipient's place of business. For purposes of this paragraph,
8 the following rules apply:

9 1. If the sender or recipient has more than one place
10 of business, the place of business of that person is the place
11 having the closest relationship to the underlying transaction.

12 2. If the sender or the recipient does not have a
13 place of business, the place of business is the sender's or
14 recipient's residence, as the case may be.

15 (e) An electronic record is received under paragraph
16 (b) even if no individual is aware of its receipt.

17 (f) Receipt of an electronic acknowledgment from an
18 information processing system described in paragraph (b)
19 establishes that a record was received but, by itself, does
20 not establish that the content sent corresponds to the content
21 received.

22 (g) If a person is aware that an electronic record
23 purportedly sent under paragraph (a), or purportedly received
24 under paragraph (b), was not actually sent or received, the
25 legal effect of the sending or receipt is determined by other
26 applicable provisions of law. Except to the extent permitted
27 by the other provisions of law, the requirements of this
28 paragraph may not be varied by agreement.

29 (h) An automated transaction does not establish the
30 acceptability of an electronic record for recording purposes.

31 (15) TRANSFERABLE RECORDS.--

1 (a) For purposes of this subsection, "transferable
2 record" means an electronic record that:

3 1. Would be a note under Article 3 of the Uniform
4 Commercial Code or a document under Article 7 of the Uniform
5 Commercial Code if the electronic record were in writing.

6 2. The issuer of the electronic record expressly has
7 agreed is a transferable record.

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

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

17 1. A single authoritative copy of the transferable
18 record exists which is unique, identifiable, and, except as
19 otherwise provided in subparagraphs 4., 5., and 6.,
20 unalterable.

21 2. The authoritative copy identifies the person
22 asserting control as the person to which the transferable
23 record was issued or, if the authoritative copy indicates that
24 the transferable record has been transferred, the person to
25 which the transferable record was most recently transferred.

26 3. The authoritative copy is communicated to and
27 maintained by the person asserting control or its designated
28 custodian.

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

1 5. Each copy of the authoritative copy and any copy of
2 a copy is readily identifiable as a copy that is not the
3 authoritative copy.

4 6. Any revision of the authoritative copy is readily
5 identifiable as authorized or unauthorized.

6 (d) Except as otherwise agreed, a person having
7 control of a transferable record is the holder, as defined in
8 Section 1-201(20) of the Uniform Commercial Code, of the
9 transferable record and has the same rights and defenses as a
10 holder of an equivalent record or writing under the Uniform
11 Commercial Code, including, if the applicable statutory
12 requirements under Section 3-302(a), 7-501, or 9-308 of the
13 Uniform Commercial Code are satisfied, the rights and defenses
14 of a holder in due course, a holder to which a negotiable
15 document of title has been duly negotiated, or a purchaser,
16 respectively. Delivery, possession, and endorsement are not
17 required to obtain or exercise any of the rights under this
18 paragraph.

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

23 (f) If requested by a person against which enforcement
24 is sought, the person seeking to enforce the transferable
25 record shall provide reasonable proof that the person is in
26 control of the transferable record. Proof may include access
27 to the authoritative copy of the transferable record and
28 related business records sufficient to review the terms of the
29 transferable record and to establish the identity of the
30 person having control of the transferable record.

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1 (16) CREATION AND RETENTION OF ELECTRONIC RECORDS AND
2 CONVERSION OF WRITTEN RECORDS BY GOVERNMENTAL AGENCIES.--Each
3 governmental agency shall determine whether, and the extent to
4 which, such agency will create and retain electronic records
5 and convert written records to electronic records.

6 (17) ACCEPTANCE AND DISTRIBUTION OF ELECTRONIC RECORDS
7 BY GOVERNMENTAL AGENCIES.--

8 (a) Except as otherwise provided in paragraph (11)(f),
9 each governmental agency shall determine whether, and the
10 extent to which, such agency will send and accept electronic
11 records and electronic signatures to and from other persons
12 and otherwise create, generate, communicate, store, process,
13 use, and rely upon electronic records and electronic
14 signatures.

15 (b) To the extent that a governmental agency uses
16 electronic records and electronic signatures under paragraph
17 (a), the governmental agency, giving due consideration to
18 security, may specify:

19 1. The manner and format in which the electronic
20 records must be created, generated, sent, communicated,
21 received, and stored and the systems established for those
22 purposes.

23 2. If electronic records must be signed by electronic
24 means, the type of electronic signature required, the manner
25 and format in which the electronic signature must be affixed
26 to the electronic record, and the identity of, or criteria
27 that must be met by, any third party used by a person filing a
28 document to facilitate the process.

29 3. Control processes and procedures as appropriate to
30 ensure adequate preservation, disposition, integrity,
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1 security, confidentiality, and auditability of electronic
2 records.

3 4. Any other required attributes for electronic
4 records which are specified for corresponding nonelectronic
5 records or reasonably necessary under the circumstances.

6 (c) Except as otherwise provided in paragraph (11)(f),
7 this section does not require a governmental agency of this
8 state to use or permit the use of electronic records or
9 electronic signatures.

10 (d) Service charges and fees otherwise established by
11 law applicable to the filing of nonelectronic records shall
12 apply in kind to the filing of electronic records.

13 (18) INTEROPERABILITY.--The governmental agency which
14 adopts standards pursuant to subsection (17) may encourage and
15 promote consistency and interoperability with similar
16 requirements adopted by other governmental agencies of this
17 and other states and the Federal Government and
18 nongovernmental persons interacting with governmental agencies
19 of this state. If appropriate, those standards may specify
20 differing levels of standards from which governmental agencies
21 of this state may choose in implementing the most appropriate
22 standard for a particular application.

23 (19) SEVERABILITY.--If any provision of this section
24 or its application to any person or circumstance is held
25 invalid, the invalidity does not affect other provisions or
26 applications of this section which can be given effect without
27 the invalid provision or application, and to this end the
28 provisions of this section are severable.

29 Section 2. (1) The Legislature finds that a proper
30 and legitimate state purpose is served by providing the public
31 with access to public records and information on the Internet

1 and hereby determines that the provisions of this act fulfill
2 and further an important state interest.

3 (2) No later than January 1, 2002, the county recorder
4 in each county shall provide a current index of documents
5 recorded in the official records of the county for the period
6 beginning no later than January 1, 1990, on a publicly
7 available Internet website which shall also contain a document
8 requisition point for obtaining images or copies of the
9 documents reflected in the index. Each county recorder shall
10 contract with the Florida Association of Court Clerks to
11 participate in and connect to the statewide official records
12 website developed and operated by the Florida Association of
13 Court Clerks.

14 (3) Each county recorder shall use appropriate
15 Internet security measures to ensure that no person has the
16 ability to alter or to modify any public record.

17 (4) Unless otherwise provided by law, no information
18 retrieved electronically pursuant to this section shall be
19 admissible in court as an authenticated document.

20 (5) The Florida Association of Court Clerks, to
21 support the development, maintenance, and operation of the
22 statewide official records website, may charge a reasonable
23 fee for access and use of the system and to make such other
24 charges as appropriate for commercial use of the system.
25 However, no fee or other charge will be made against a person
26 who accesses the system for less than 1 hour per month.

27 (6) By January 1, 2006, each county recorder shall
28 provide for electronic retrieval, at a minimum, images of
29 documents referenced as the index required to be maintained on
30 the county's official records website by this section.

31 Section 3. This act shall take effect July 1, 2000.

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HOUSE SUMMARY

Provides requirements, criteria, procedures, and limitations for electronic records, signatures, and contracts. Requires clerks of court to provide a statewide index of official records available on the Internet. See bill for details.