

By the Committee on Utilities & Communications and
Representative Arnall

1 A bill to be entitled
2 An act relating to electronic commerce;
3 providing a short title; providing definitions;
4 providing scope; providing for prospective
5 application; providing for use of electronic
6 records and signatures; providing for variation
7 by 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:

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14 Section 1. (1) SHORT TITLE.--This section may be
15 cited as the "Uniform Electronic Transaction Act."

16 (2) DEFINITIONS.--As used in this section:

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

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

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

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

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

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

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

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

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

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

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1 (k) "Information processing system" means an
2 electronic system for creating, generating, sending,
3 receiving, storing, displaying, or processing information.
4 (l) "Person" means an individual, corporation,
5 business trust, estate, trust, partnership, limited liability
6 company, association, joint venture, governmental agency,
7 public corporation, or any other legal or commercial entity.
8 (m) "Record" means information that is inscribed on a
9 tangible medium or that is stored in an electronic or other
10 medium and is retrievable in perceivable form, including
11 public records as defined in s. 119.011(1), Florida Statutes.
12 (n) "Security procedure" means a procedure employed
13 for the purpose of verifying that an electronic signature,
14 record, or performance is that of a specific person or for
15 detecting changes or errors in the information in an
16 electronic record. The term includes a procedure that requires
17 the use of algorithms or other codes, identifying words or
18 numbers, encryption, or callback or other acknowledgment
19 procedures.
20 (o) "State" means a state of the United States, the
21 District of Columbia, Puerto Rico, the United States Virgin
22 Islands, or any territory or insular possession subject to the
23 jurisdiction of the United States. The term includes an Indian
24 tribe or band, or Alaskan native village, which is recognized
25 by federal law or formally acknowledged by a state.
26 (p) "Transaction" means an action or set of actions
27 occurring between two or more persons relating to the conduct
28 of business, commercial, or governmental affairs.
29 (3) SCOPE.--
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1 (a) Except as otherwise provided in paragraph (b),
2 this section applies to electronic records and electronic
3 signatures relating to a transaction.

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

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

8 2. The Uniform Commercial Code other than Sections
9 1-107 and 1-206, Article 2, and Article 2A;

10 3. The Uniform Computer Information Transactions Act;
11 or

12 4. Rules relating to judicial procedure.

13 (c) This section applies to an electronic record or
14 electronic signature otherwise excluded from the application
15 of this section under paragraph (b) to the extent such record
16 or signature is governed by a provision of law other than
17 those specified in paragraph (b).

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

20 (4) PROSPECTIVE APPLICATION.--This section applies to
21 any electronic record or electronic signature created,
22 generated, sent, communicated, received, or stored on or after
23 July 1, 2000.

24 (5) USE OF ELECTRONIC RECORDS AND ELECTRONIC
25 SIGNATURES; VARIATION BY AGREEMENT.--

26 (a) This section does not require a record or
27 signature to be created, generated, sent, communicated,
28 received, stored, or otherwise processed or used by electronic
29 means or in electronic form.

30 (b) This section applies only to transactions between
31 parties each of which has agreed to conduct transactions by

1 electronic means. Whether the parties agree to conduct a
2 transaction by electronic means is determined from the context
3 and surrounding circumstances, including the parties' conduct.

4 (c) A party that agrees to conduct a transaction by
5 electronic means may refuse to conduct other transactions by
6 electronic means. The right granted by this paragraph may not
7 be waived by agreement.

8 (d) Except as otherwise provided in this section, the
9 effect of any provision of this section may be varied by
10 agreement. The presence in certain provisions of this section
11 of the words "unless otherwise agreed," or words of similar
12 import, does not imply that the effect of other provisions may
13 not be varied by agreement.

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

17 (6) CONSTRUCTION AND APPLICATION.--This section shall
18 be construed and applied to:

19 (a) Facilitate electronic transactions consistent with
20 other applicable provisions of law.

21 (b) Be consistent with reasonable practices concerning
22 electronic transactions and with the continued expansion of
23 those practices.

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

27 (7) LEGAL RECOGNITION OF ELECTRONIC RECORDS,
28 ELECTRONIC SIGNATURES, AND ELECTRONIC CONTRACTS.--

29 (a) A record or signature may not be denied legal
30 effect or enforceability solely because the record or
31 signature is in electronic form.

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

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

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

8 (8) PROVISION OF INFORMATION IN WRITING; PRESENTATION
9 OF RECORDS.--

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

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

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

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

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

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

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

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

12 2. A requirement under a law other than this section
13 to send, communicate, or transmit a record by first-class
14 mail, postage prepaid, or other regular United States mail,
15 may be varied by agreement to the extent permitted by the
16 other provision of law.

17 (9) ATTRIBUTION AND EFFECT OF ELECTRONIC RECORD AND
18 ELECTRONIC SIGNATURE.--

19 (a) An electronic record or electronic signature is
20 attributable to a person if the record or signature was the
21 act of the person. The act of the person may be shown in any
22 manner, including a showing of the efficacy of any security
23 procedure applied to determine the person to which the
24 electronic record or electronic signature was attributable.

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

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1 (10) EFFECT OF CHANGE OR ERROR.--If a change or error
2 in an electronic record occurs in a transmission between
3 parties to a transaction, the following rules apply:
4 (a) If the parties have agreed to use a security
5 procedure to detect changes or errors and one party has
6 conformed to the procedure, but the other party has not, and
7 the nonconforming party would have detected the change or
8 error had that party also conformed, the conforming party may
9 avoid the effect of the changed or erroneous electronic
10 record.
11 (b) In an automated transaction involving an
12 individual, the individual may avoid the effect of an
13 electronic record that resulted from an error made by the
14 individual in dealing with the electronic agent of another
15 person if the electronic agent did not provide an opportunity
16 for the prevention or correction of the error and, at the time
17 the individual learns of the error, the individual:
18 1. Promptly notifies the other person of the error and
19 that the individual did not intend to be bound by the
20 electronic record received by the other person.
21 2. Takes reasonable steps, including steps that
22 conform to the other person's reasonable instructions, to
23 return to the other person or, if instructed by the other
24 person, to destroy the consideration received, if any, as a
25 result of the erroneous electronic record.
26 3. Has not used or received any benefit or value from
27 the consideration, if any, received from the other person.
28 (c) If paragraphs (a) and (b) do not apply, the change
29 or error has the effect provided by the other provision of
30 law, including the law of mistake, and the parties' contract,
31 if any.

1 (d) Paragraphs (b) and (c) may not be varied by
2 agreement.

3 (11) NOTARIZATION AND ACKNOWLEDGMENT.--

4 (a) If a law requires a signature or record to be
5 notarized, acknowledged, verified, or made under oath, the
6 requirement is satisfied if the electronic signature of the
7 person authorized by applicable law to perform those acts,
8 together with all other information required to be included by
9 other applicable law, is attached to or logically associated
10 with the signature or record. Neither a rubber stamp nor an
11 impression type seal is required for an electronic
12 notarization.

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

22 (12) RETENTION OF ELECTRONIC RECORDS; ORIGINALS.--

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

26 1. Accurately reflects the information set forth in
27 the record after the record was first generated in final form
28 as an electronic record or otherwise.

29 2. Remains accessible for later reference.

30 (b) A requirement to retain a record in accordance
31 with paragraph (a) does not apply to any information the sole

1 purpose of which is to enable the record to be sent,
2 communicated, or received.

3 (c) A person may satisfy paragraph (a) by using the
4 services of another person if the requirements of paragraph
5 (a) are satisfied.

6 (d) If a provision of law requires a record to be
7 presented or retained in its original form, or provides
8 consequences if the record is not presented or retained in its
9 original form, that law is satisfied by an electronic record
10 retained in accordance with paragraph (a).

11 (e) If a provision of law requires retention of a
12 check, that requirement is satisfied by retention of an
13 electronic record of the information on the front and back of
14 the check in accordance with paragraph (a).

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

21 (g) This subsection does not preclude a governmental
22 agency of this state from specifying additional requirements
23 for the retention of a record subject to the agency's
24 jurisdiction.

25 (13) ADMISSIBILITY IN EVIDENCE.--In a proceeding,
26 evidence of a record or signature may not be excluded solely
27 because the record or signature is in electronic form.

28 (14) AUTOMATED TRANSACTIONS.--In an automated
29 transaction, the following rules apply:

30 (a) A contract may be formed by the interaction of
31 electronic agents of the parties, even if no individual was

1 aware of or reviewed the electronic agents' actions or the
2 resulting terms and agreements.

3 (b) A contract may be formed by the interaction of an
4 electronic agent and an individual, acting on the individual's
5 own behalf or for another person, including by an interaction
6 in which the individual performs actions that the individual
7 is free to refuse to perform and which the individual knows or
8 has reason to know will cause the electronic agent to complete
9 the transaction or performance.

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

12 (15) TIME AND PLACE OF SENDING AND RECEIVING.--

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

15 1. Is addressed properly or otherwise directed
16 properly to an information processing system that the
17 recipient has designated or uses for the purpose of receiving
18 electronic records or information of the type sent and from
19 which the recipient is able to retrieve the electronic record.

20 2. Is in a form capable of being processed by that
21 system.

22 3. Enters an information processing system outside the
23 control of the sender or of a person that sent the electronic
24 record on behalf of the sender or enters a region of the
25 information processing system designated or used by the
26 recipient which is under the control of the recipient.

27 (b) Unless otherwise agreed between a sender and the
28 recipient, an electronic record is received when the record
29 enters an information processing system that the recipient has
30 designated or uses for the purpose of receiving electronic
31 records or information of the type sent and from which the

1 recipient is able to retrieve the electronic record; and it is
2 in a form capable of being processed by that system.

3 (c) Paragraph (b) applies even if the place the
4 information processing system is located is different from the
5 place the electronic record is deemed to be received under
6 paragraph (d).

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

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

16 2. If the sender or the recipient does not have a
17 place of business, the place of business is the sender's or
18 recipient's residence, as the case may be.

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

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

26 (g) If a person is aware that an electronic record
27 purportedly sent under paragraph (a), or purportedly received
28 under paragraph (b), was not actually sent or received, the
29 legal effect of the sending or receipt is determined by other
30 applicable provisions of law. Except to the extent permitted
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1 by the other provisions of law, the requirements of this
2 paragraph may not be varied by agreement.
3 (h) An automated transaction does not establish the
4 acceptability of an electronic record for recording purposes.
5 (16) TRANSFERABLE RECORDS.--
6 (a) For purposes of this subsection, "transferable
7 record" means an electronic record that:
8 1. Would be a note under Article 3 of the Uniform
9 Commercial Code or a document under Article 7 of the Uniform
10 Commercial Code if the electronic record were in writing.
11 2. The issuer of the electronic record expressly has
12 agreed is a transferable record.
13 (b) A person has control of a transferable record if a
14 system employed for evidencing the transfer of interests in
15 the transferable record reliably establishes that person as
16 the person to which the transferable record was issued or
17 transferred.
18 (c) A system satisfies paragraph (b), and a person is
19 deemed to have control of a transferable record, if the
20 transferable record is created, stored, and assigned in such a
21 manner that:
22 1. A single authoritative copy of the transferable
23 record exists which is unique, identifiable, and, except as
24 otherwise provided in subparagraphs 4., 5., and 6.,
25 unalterable.
26 2. The authoritative copy identifies the person
27 asserting control as the person to which the transferable
28 record was issued or, if the authoritative copy indicates that
29 the transferable record has been transferred, the person to
30 which the transferable record was most recently transferred.
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1 3. The authoritative copy is communicated to and
2 maintained by the person asserting control or its designated
3 custodian.

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

7 5. Each copy of the authoritative copy and any copy of
8 a copy is readily identifiable as a copy that is not the
9 authoritative copy.

10 6. Any revision of the authoritative copy is readily
11 identifiable as authorized or unauthorized.

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

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

29 (f) If requested by a person against which enforcement
30 is sought, the person seeking to enforce the transferable
31 record shall provide reasonable proof that the person is in

1 control of the transferable record. Proof may include access
2 to the authoritative copy of the transferable record and
3 related business records sufficient to review the terms of the
4 transferable record and to establish the identity of the
5 person having control of the transferable record.

6 (17) CREATION AND RETENTION OF ELECTRONIC RECORDS AND
7 CONVERSION OF WRITTEN RECORDS BY GOVERNMENTAL AGENCIES.--Each
8 governmental agency shall determine whether, and the extent to
9 which, such agency will create and retain electronic records
10 and convert written records to electronic records.

11 (18) ACCEPTANCE AND DISTRIBUTION OF ELECTRONIC RECORDS
12 BY GOVERNMENTAL AGENCIES.--

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

20 (b) To the extent that a governmental agency uses
21 electronic records and electronic signatures under paragraph
22 (a), the state technology office, in consultation with the
23 governmental agency, giving due consideration to security, may
24 specify:

25 1. The manner and format in which the electronic
26 records must be created, generated, sent, communicated,
27 received, and stored and the systems established for those
28 purposes.

29 2. If electronic records must be signed by electronic
30 means, the type of electronic signature required, the manner
31 and format in which the electronic signature must be affixed

1 to the electronic record, and the identity of, or criteria
2 that must be met by, any third party used by a person filing a
3 document to facilitate the process.

4 3. Control processes and procedures as appropriate to
5 ensure adequate preservation, disposition, integrity,
6 security, confidentiality, and auditability of electronic
7 records.

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

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

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

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

28 (20) SEVERABILITY.--If any provision of this section
29 or its application to any person or circumstance is held
30 invalid, the invalidity does not affect other provisions or
31 applications of this section which can be given effect without

1 the invalid provision or application, and to this end the
2 provisions of this section are severable.

3 Section 2. (1) The Legislature finds that a proper
4 and legitimate state purpose is served by providing the public
5 with access to public records and information on the Internet
6 and hereby determines that the provisions of this act fulfill
7 and further an important state interest.

8 (2) No later than January 1, 2002, the county recorder
9 in each county shall provide a current index of documents
10 recorded in the official records of the county for the period
11 beginning no later than January 1, 1990, on a publicly
12 available Internet website which shall also contain a document
13 requisition point for obtaining images or copies of the
14 documents reflected in the index and which has the capability
15 of electronically providing the index data to a central
16 statewide search site.

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

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

23 (5) By January 1, 2006, each county recorder shall
24 provide for electronic retrieval, at a minimum, images of
25 documents referenced as the index required to be maintained on
26 the county's official records website by this section.

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

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