

Bill No. HB 2075, 1st Eng.

Amendment No.

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Brown-Waite moved the following amendment to amendment		
12	(234928):		
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14	Senate Amendment (with title amendment)		
15	On page 41, between lines 27 and 28,		
16			
17	insert:		
18	Section 27. <u>Electronic Commerce.--</u>		
19	<u>(1) SHORT TITLE.--This section may be cited as the</u>		
20	<u>"Uniform Electronic Transaction Act."</u>		
21	<u>(2) DEFINITIONS.--As used in this section, the term:</u>		
22	<u>(a) "Agreement" means the bargain of the parties in</u>		
23	<u>fact, as found in their language or inferred from other</u>		
24	<u>circumstances and from rules, regulations, and procedures</u>		
25	<u>given the effect of agreements under provisions of law</u>		
26	<u>otherwise applicable to a particular transaction.</u>		
27	<u>(b) "Automated transaction" means a transaction</u>		
28	<u>conducted or performed, in whole or in part, by electronic</u>		
29	<u>means or electronic records, in which the acts or records of</u>		
30	<u>one or both parties are not reviewed by an individual in the</u>		
31	<u>ordinary course in forming a contract, performing under an</u>		

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1 existing contract, or fulfilling an obligation required by the
2 transaction.

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

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

10 (e) "Electronic" means relating to technology having
11 electrical, digital, magnetic, wireless, optical,
12 electromagnetic, or similar capabilities.

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

18 (g) "Electronic record" means a record created,
19 generated, sent, communicated, received, or stored by
20 electronic means.

21 (h) "Electronic signature" means an electronic sound,
22 symbol, or process attached to or logically associated with a
23 record and executed or adopted by a person with the intent to
24 sign the record.

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

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1 (j) "Information" means data, text, images, sounds,
2 codes, computer programs, software, databases, or other
3 similar representations of knowledge.

4 (k) "Information processing system" means an
5 electronic system for creating, generating, sending,
6 receiving, storing, displaying, or processing information.

7 (l) "Person" means an individual, corporation,
8 business trust, estate, trust, partnership, limited liability
9 company, association, joint venture, governmental agency,
10 public corporation, or any other legal or commercial entity.

11 (m) "Record" means information that is inscribed on a
12 tangible medium or that is stored in an electronic or other
13 medium and is retrievable in perceivable form, including
14 public records as defined in section 119.011(1), Florida
15 Statutes.

16 (n) "Security procedure" means a procedure employed
17 for the purpose of verifying that an electronic signature,
18 record, or performance is that of a specific person or for
19 detecting changes or errors in the information in an
20 electronic record. The term includes a procedure that requires
21 the use of algorithms or other codes, identifying words or
22 numbers, encryption, or callback or other acknowledgment
23 procedures.

24 (o) "State" means a state of the United States, the
25 District of Columbia, Puerto Rico, the United States Virgin
26 Islands, or any territory or insular possession subject to the
27 jurisdiction of the United States. The term includes an Indian
28 tribe or band, or Alaskan native village, which is recognized
29 by federal law or formally acknowledged by a state.

30 (p) "Transaction" means an action or set of actions
31 occurring between two or more persons relating to the conduct

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1 of business, commercial, or governmental affairs.

2 (3) SCOPE.--

3 (a) Except as otherwise provided in paragraph (b),
4 this section applies to electronic records and electronic
5 signatures relating to a transaction.

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

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

10 2. Chapters 670-680 of the Uniform Commercial Code,
11 other than sections 671.107 and 671.206 and chapters 672 and
12 680 of the Uniform Commercial Code;

13 3. The Uniform Computer Information Transactions Act;
14 or

15 4. Rules relating to judicial procedure.

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

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

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

27 (5) USE OF ELECTRONIC RECORDS AND ELECTRONIC
28 SIGNATURES; VARIATION BY AGREEMENT.--

29 (a) This section does not require a record or
30 signature to be created, generated, sent, communicated,
31 received, stored, or otherwise processed or used by electronic

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1 means or in electronic form.

2 (b) This section applies only to transactions between
3 parties each of which has agreed to conduct transactions by
4 electronic means. Whether the parties agree to conduct a
5 transaction by electronic means is determined from the context
6 and surrounding circumstances, including the parties' conduct.

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

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

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

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

22 (a) Facilitate electronic transactions consistent with
23 other applicable provisions of law.

24 (b) Be consistent with reasonable practices concerning
25 electronic transactions and with the continued expansion of
26 those practices.

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

30 (7) LEGAL RECOGNITION OF ELECTRONIC RECORDS,
31 ELECTRONIC SIGNATURES, AND ELECTRONIC CONTRACTS.--

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1 (a) A record or signature may not be denied legal
2 effect or enforceability solely because the record or
3 signature is in electronic form.

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

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

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

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

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

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

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

30 2. Except as otherwise provided in subparagraph (d)2.,
31 the record must be sent, communicated, or transmitted by the

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1 method specified in the other provision of law.

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

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

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

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

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

20 (9) CONTRIBUTION AND EFFECT OF ELECTRONIC RECORD AND
21 ELECTRONIC SIGNATURE.--

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

28 (b) The effect of an electronic record or electronic
29 signature attributed to a person under paragraph (a) is
30 determined from the context and surrounding circumstances at
31 the time of its creation, execution, or adoption, including

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1 the parties' agreement, if any, and otherwise as provided by
2 law.

3 (10) EFFECT OF CHANGE OR ERROR.--If a change or error
4 in an electronic record occurs in a transmission between
5 parties to a transaction, the following rules apply:

6 (a) If the parties have agreed to use a security
7 procedure to detect changes or errors and one party has
8 conformed to the procedure, but the other party has not, and
9 the nonconforming party would have detected the change or
10 error had that party also conformed, the conforming party may
11 avoid the effect of the changed or erroneous electronic
12 record.

13 (b) In an automated transaction involving an
14 individual, the individual may avoid the effect of an
15 electronic record that resulted from an error made by the
16 individual in dealing with the electronic agent of another
17 person if the electronic agent did not provide an opportunity
18 for the prevention or correction of the error and, at the time
19 the individual learns of the error, the individual:

20 1. Promptly notifies the other person of the error and
21 that the individual did not intend to be bound by the
22 electronic record received by the other person.

23 2. Takes reasonable steps, including steps that
24 conform to the other person's reasonable instructions, to
25 return to the other person or, if instructed by the other
26 person, to destroy the consideration received, if any, as a
27 result of the erroneous electronic record.

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

30 (c) If paragraphs (a) and (b) do not apply, the change
31 or error has the effect provided by the other provision of

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1 law, including the law of mistake, and the parties' contract,
2 if any.

3 (d) Paragraphs (b) and (c) may not be varied by
4 agreement.

5 (11) NOTARIZATION AND ACKNOWLEDGMENT.--

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

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

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

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

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

31 2. Remains accessible for later reference.

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

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

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

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

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

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

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

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

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

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

12 (c) The terms of the contract are determined by the
13 substantive law applicable to the contract.

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

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

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

22 2. Is in a form capable of being processed by that
23 system.

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

29 (b) Unless otherwise agreed between a sender and the
30 recipient, an electronic record is received when the record
31 enters an information processing system that the recipient has

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1 designated or uses for the purpose of receiving electronic
2 records or information of the type sent and from which the
3 recipient is able to retrieve the electronic record; and it is
4 in a form capable of being processed by that system.

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

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

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

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

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

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

28 (g) If a person is aware that an electronic record
29 purportedly sent under paragraph (a), or purportedly received
30 under paragraph (b), was not actually sent or received, the
31 legal effect of the sending or receipt is determined by other

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1 applicable provisions of law. Except to the extent permitted
2 by the other provisions of law, the requirements of this
3 paragraph may not be varied by agreement.

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

6 (16) TRANSFERABLE RECORDS.--

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

9 1. Would be a note under chapter 673 of the Uniform
10 Commercial Code or a document under chapter 677 of the Uniform
11 Commercial Code if the electronic record were in writing.

12 2. The issuer of the electronic record expressly has
13 agreed is a transferable record.

14 (b) A person has control of a transferable record if a
15 system employed for evidencing the transfer of interests in
16 the transferable record reliably establishes that person as
17 the person to which the transferable record was issued or
18 transferred.

19 (c) A system satisfies paragraph (b), and a person is
20 deemed to have control of a transferable record, if the
21 transferable record is created, stored, and assigned in such a
22 manner that:

23 1. A single authoritative copy of the transferable
24 record exists which is unique, identifiable, and, except as
25 otherwise provided in subparagraphs 4., 5., and 6.,
26 unalterable.

27 2. The authoritative copy identifies the person
28 asserting control as the person to which the transferable
29 record was issued or, if the authoritative copy indicates that
30 the transferable record has been transferred, the person to
31 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 671.201(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 673.3021(1), section 677.501, or
19 section 679.308 of the Uniform Commercial Code are satisfied,
20 the rights and defenses of a holder in due course, a holder to
21 which a negotiable document of title has been duly negotiated,
22 or a purchaser, respectively. Delivery, possession, and
23 endorsement are not required to obtain or exercise any of the
24 rights under this 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

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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 (12)(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

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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 (12)(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

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

3 Section 28. (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 determines that the provisions of this act fulfill and
7 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
28 (Redesignate subsequent sections.)

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 On page 43, line 8, after the semicolon,

4

5 insert:

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

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1 providing for acceptance and distribution of
2 electronic records by governmental agencies;
3 providing for interoperability; providing
4 severability; requiring the clerks of court to
5 provide a statewide index of official records
6 available on the Internet by a time certain;
7 providing for security; requiring that the
8 Internet information shall not be admissible in
9 court; providing that the official records must
10 be made available for electronic retrieval on
11 the statewide site by a time certain;

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