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SENATE BILL 1266
Information Technology Committee Substitute Adopted 6/19/00
Third Edition Engrossed 6/28/00
House Committee Substitute Favorable 7/5/00

Short Title: Uniform Electronic Transactions Act.

(Public)

Sponsors:

Referred to:

May 17, 2000

1 A BILL TO BE ENTITLED
2 AN ACT TO ADOPT THE UNIFORM ELECTRONIC TRANSACTIONS ACT.
3 The General Assembly of North Carolina enacts:

4 Section 1. Chapter 66 of the General Statutes is amended by adding a new
5 Article to read:

6 **"ARTICLE 40.**

7 **"UNIFORM ELECTRONIC TRANSACTIONS ACT.**

8 **"§ 66-308. Short title.**

9 This Article may be cited as the Uniform Electronic Transactions Act.

10 **"§ 66-308.1. Definitions.**

11 As used in this Article, unless the context clearly requires otherwise, the term:

12 (1) 'Agreement' means the bargain of the parties in fact, as found in their
13 language or inferred from other circumstances and from rules,
14 regulations, and procedures given the effect of agreements under laws
15 otherwise applicable to a particular transaction.

16 (2) 'Automated transaction' means a transaction conducted or performed, in
17 whole or in part, by electronic means or electronic records, in which the

- 1 acts or records of one or both parties are not reviewed by an individual
2 in the ordinary course in forming a contract, performing under an
3 existing contract, or fulfilling an obligation required by the transaction.
- 4 (3) 'Computer program' means a set of statements or instructions to be used
5 directly or indirectly in an information processing system in order to
6 bring about a certain result.
- 7 (4) 'Consumer transaction' means a transaction involving a natural person
8 with respect to or affecting primarily personal, household, or family
9 purposes.
- 10 (5) 'Contract' means the total legal obligation resulting from the parties'
11 agreement as affected by this Article and other applicable law.
- 12 (6) 'Electronic' means relating to technology having electrical, digital,
13 magnetic, wireless, optical, electromagnetic, or similar capabilities.
- 14 (7) 'Electronic agent' means a computer program or an electronic or other
15 automated means used independently to initiate an action or respond to
16 electronic records or performances in whole or in part, without review
17 or action by an individual.
- 18 (8) 'Electronic record' means a record created, generated, sent,
19 communicated, received, or stored by electronic means.
- 20 (9) 'Electronic signature' means an electronic sound, symbol, or process
21 attached to, or logically associated with, a record and executed or
22 adopted by a person with the intent to sign the record.
- 23 (10) 'Governmental agency' means an executive, legislative, or judicial
24 agency, department, board, commission, authority, institution, or
25 instrumentality of the federal government or of a state or of a county,
26 municipality, or other political subdivision of a state.
- 27 (11) 'Information' means data, text, images, sounds, codes, computer
28 programs, software, databases, or the like.
- 29 (12) 'Information processing system' means an electronic system for creating,
30 generating, sending, receiving, storing, displaying, or processing
31 information.
- 32 (13) 'Person' means an individual, corporation, business trust, estate, trust,
33 partnership, limited liability company, association, joint venture,
34 governmental agency, public corporation, or any other legal or
35 commercial entity.
- 36 (14) 'Record' means information that is inscribed on a tangible medium or
37 that is stored in an electronic or other medium and is retrievable in
38 perceivable form.
- 39 (15) 'Security procedure' means a procedure employed for the purpose of
40 verifying that an electronic signature, record, or performance is that of a
41 specific person or for detecting changes or errors in the information in
42 an electronic record. The term includes a procedure that requires the

1 use of algorithms or other codes, identifying words or numbers,
2 encryption, or callback or other acknowledgment procedures.

3 (16) 'State' means a state of the United States, the District of Columbia,
4 Puerto Rico, the United States Virgin Islands, or any territory or insular
5 possession subject to the jurisdiction of the United States. The term
6 includes an Indian tribe or band, or Alaskan native village, which is
7 recognized by federal law or formally acknowledged by a state.

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

11 **"§ 66-308.2. Scope.**

12 (a) Except as otherwise provided in subsections (b) and (c) of this section, this
13 Article applies to electronic records and electronic signatures relating to a transaction.

14 (b) This Article does not apply to a transaction to the extent it is governed by:

15 (1) A law governing the creation and execution of wills, codicils, or
16 testamentary trusts.

17 (2) Chapter 25 of the General Statutes other than G.S. 25-1-107 and G.S.
18 25-1-206, Article 2, and Article 2A.

19 (3) Article 11A of Chapter 66 of the General Statutes.

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

23 (d) A transaction subject to this Article is also subject to other applicable
24 substantive law.

25 **"§ 66-308.3. Prospective application.**

26 This Article applies to any electronic record or electronic signature created, generated,
27 sent, communicated, received, or stored on or after the effective date of this Article.

28 **"§ 66-308.4. Use of electronic records and electronic signatures; variation by**
29 **agreement.**

30 (a) This Article does not require a record or signature to be created, generated,
31 sent, communicated, received, stored, or otherwise processed or used by electronic means
32 or in electronic form.

33 (b) This Article applies only to transactions between parties each of which has
34 agreed to conduct transactions by electronic means. Whether the parties agree to conduct
35 a transaction by electronic means is determined from the context and surrounding
36 circumstances, including the parties' conduct.

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

40 (d) Except as otherwise provided in this Article, the effect of any of its provisions
41 may be varied by agreement. The presence in certain provisions of this Article of the
42 words 'unless otherwise agreed', or words of similar import, does not imply that the effect
43 of other provisions may not be varied by agreement.

1 (e) Whether an electronic record or electronic signature has legal consequences is
2 determined by this Article and other applicable law.

3 **"§ 66-308.5. Construction and application.**

4 This Article must be construed and applied:

5 (1) To facilitate electronic transactions consistent with other applicable law;

6 (2) To be consistent with reasonable practices concerning electronic
7 transactions and with the continued expansion of those practices; and

8 (3) To effectuate its general purpose to make uniform the law with respect
9 to the subject of this act among states enacting it.

10 **"§ 66-308.6. Legal recognition of electronic records, electronic signatures, and**
11 **electronic contracts.**

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

14 (b) A contract may not be denied legal effect or enforceability solely because an
15 electronic record was used in its formation.

16 (c) If a law requires a record to be in writing, an electronic record satisfies the law
17 provided it complies with the provisions of this Article.

18 (d) If a law requires a signature, an electronic signature satisfies the law provided
19 it complies with the provisions of this Article.

20 **"§ 66-308.7. Provision of information in writing; presentation of records.**

21 (a) If parties have agreed to conduct a transaction by electronic means and a law
22 requires a person to provide, send, or deliver information in writing to another person, the
23 requirement is satisfied if the information is provided, sent, or delivered, as the case may
24 be, in an electronic record capable of retention by the recipient at the time of receipt. An
25 electronic record is not capable of retention by the recipient if the sender or its
26 information processing system inhibits the ability of the recipient to print or store the
27 electronic record.

28 (b) If a law other than this Article requires a record (i) to be posted or displayed in
29 a certain manner, (ii) to be sent, communicated, or transmitted by a specified method, or
30 (iii) to contain information that is formatted in a certain manner, the following rules
31 apply:

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

34 (2) Except as otherwise provided in subdivision (d)(2) of this section, the
35 record must be sent, communicated, or transmitted by the method
36 specified in the other law.

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

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

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

42 (1) To the extent a law other than this act requires information to be
43 provided, sent, or delivered in writing, but permits that requirement to

1 be varied by agreement, the requirement under subsection (a) of this
2 section that the information be in the form of an electronic record
3 capable of retention may also be varied by agreement; and

- 4 (2) A requirement under a law other than this Article to send, communicate,
5 or transmit a record by regular United States mail may be varied by
6 agreement to the extent permitted by the other law.

7 **"§ 66-308.8. Attribution and effect of electronic record and electronic signature.**

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

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

16 **"§ 66-308.9. Effect of change or error.**

17 If a change or error in an electronic record occurs in a transmission between parties to
18 a transaction, the following rules apply:

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

- 24 (2) In an automated transaction involving an individual, the individual may
25 avoid the effect of an electronic record that resulted from an error made
26 by the individual in dealing with the electronic agent of another person
27 if, at the time the individual learns of the error, the individual:

28 a. Promptly notifies the other person of the error and that the
29 individual did not intend to be bound by the electronic record
30 received by the other person;

31 b. Takes reasonable steps, including steps that conform to the other
32 person's reasonable instructions, to return to the other person or,
33 if instructed by the other person, to destroy the consideration
34 received, if any, as a result of the erroneous electronic record;
35 and

36 c. Has not used or received any benefit or value from the
37 consideration, if any, received from the other person.

- 38 (3) If neither subdivision (1) nor subdivision (2) of this section applies, the
39 change or error has the effect provided by other law, including the law
40 of mistake, and the parties' contract, if any.

- 41 (4) Subdivisions (2) and (3) of this section may not be varied by agreement.

42 **"§ 66-308.10. Notarization and acknowledgment.**

1 If a law requires a signature or record relating to a transaction to be notarized,
2 acknowledged, verified, or made under oath, the requirement is satisfied if the electronic
3 signature of the person authorized to perform those acts, together with all other
4 information required to be included by other applicable law, is attached to or logically
5 associated with the signature or record.

6 **"§ 66-308.11. Retention of electronic records; originals.**

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

9 (1) Accurately reflects the information set forth in the record at the time it
10 was first generated in its final form as an electronic record or otherwise;
11 and

12 (2) Remains accessible for later reference.

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

16 (c) A person may satisfy subsection (a) of this section by using the services of
17 another person if the requirements of that subsection are satisfied.

18 (d) If a law requires a record to be presented or retained in its original form, or
19 provides consequences if the record is not presented or retained in its original form, that
20 law is satisfied by an electronic record retained in accordance with subsection (a) of this
21 section.

22 (e) If a law requires retention of a check, that requirement is satisfied by retention
23 of an electronic record of the information on the front and back of the check in
24 accordance with subsection (a) of this section.

25 (f) A record retained as an electronic record in accordance with subsection (a) of
26 this section satisfies a law requiring a person to retain a record for evidentiary, audit, or
27 like purposes, unless a law enacted after the effective date of this Article specifically
28 prohibits the use of an electronic record for the specified purpose.

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

32 **"§ 66-308.12. Admissibility in evidence.**

33 In a proceeding, evidence of a record or signature may not be excluded solely because
34 it is in electronic form.

35 **"§ 66-308.13. Automated transaction.**

36 In an automated transaction, the following rules apply:

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

40 (2) A contract may be formed by the interaction of an electronic agent and
41 an individual, acting on the individual's own behalf or for another
42 person, including by an interaction in which the individual performs
43 actions that the individual is free to refuse to perform and which the

1 individual knows or has reason to know will cause the electronic agent
2 to complete the transaction or performance.

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

5 **"§ 66-308.14. Time and place of sending and receipt.**

6 (a) Unless the sender and the recipient agree to a different method of sending that
7 is reasonable under the circumstances, an electronic record is sent when it:

8 (1) Is addressed properly or otherwise directed properly to an information
9 processing system that the recipient has designated or uses for the
10 purpose of receiving electronic records or information of the type sent
11 and from which the recipient is able to retrieve the electronic record;

12 (2) Is in a form capable of being processed by that system; and

13 (3) Enters an information processing system outside the control of the
14 sender or of a person that sent the electronic record on behalf of the
15 sender or enters a region of the information processing system
16 designated or used by the recipient which is under the control of the
17 recipient.

18 (b) Unless the sender and the recipient agree to a different method of sending that
19 is reasonable under the circumstances, an electronic record is received when:

20 (1) It enters an information processing system that the recipient has
21 designated or uses for the purpose of receiving electronic records or
22 information of the type sent and from which the recipient is able to
23 retrieve the electronic record; and

24 (2) It is in a form capable of being processed by that system.

25 (c) Subsection (b) of this section applies even if the place the information
26 processing system is located is different from the place the electronic record is deemed to
27 be received under subsection (d) of this section.

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

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

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

37 (e) Notwithstanding any other sections of this Article, in a consumer transaction, a
38 record has not been received unless it is received by the intended recipient in a manner in
39 which the sender has a reasonable basis to believe that the record can be opened and read
40 by the recipient.

41 (f) Receipt of an electronic acknowledgment from an information processing
42 system described in subsection (b) of this section establishes that a record was received
43 but, by itself, does not establish that the content sent corresponds to the content received.

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

6 **"§ 66-308.15. Transferable records.**

7 (a) In this section, 'transferable record' means an electronic record that:

8 (1) Would be a note under Article 3 of Chapter 25 of the General Statutes
9 or a document under Article 7 of Chapter 25 of the General Statutes if
10 the electronic record were in writing; and

11 (2) The issuer of the electronic record expressly has agreed is a transferable
12 record.

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

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

19 (1) A single authoritative copy of the transferable record exists which is
20 unique, identifiable, and, except as otherwise provided in subdivisions
21 (4), (5), and (6) of this subsection, unalterable;

22 (2) The authoritative copy identifies the person asserting control as:

23 a. The person to which the transferable record was issued; or

24 b. If the authoritative copy indicates that the transferable record has
25 been transferred, the person to which the transferable record was
26 most recently transferred;

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

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

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

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

36 (d) Except as otherwise agreed, a person having control of a transferable record is
37 the holder, as defined in G.S. 25-1-201(20), of the transferable record and has the same
38 rights and defenses as a holder of an equivalent record or writing under Chapter 25 of the
39 General Statutes, including, if the applicable statutory requirements under G.S. 25-3-
40 302(a), 25-7-501, or 25-9-308 are satisfied, the rights and defenses of a holder in due
41 course, a holder to which a negotiable document of title has been duly negotiated, or a
42 purchaser, respectively. Delivery, possession, and endorsement are not required to obtain
43 or exercise any of the rights under this subsection.

1 (e) Except as otherwise agreed, an obligor under a transferable record has the
2 same rights and defenses as an equivalent obligor under equivalent records or writings
3 under Chapter 25 of the General Statutes.

4 (f) If requested by a person against which enforcement is sought, the person
5 seeking to enforce the transferable record shall provide reasonable proof that the person
6 is in control of the transferable record. Proof may include access to the authoritative
7 copy of the transferable record and related business records sufficient to review the terms
8 of the transferable record and to establish the identity of the person having control of the
9 transferable record.

10 **"§ 66-308.16. Consumer transactions; alternative procedures for use or acceptance**
11 **of electronic records or electronic signatures.**

12 (a) Consistent with the provisions of Section 102(a)2A of the federal Electronic
13 Signatures in Global and National Commerce Act, the use and acceptance of electronic
14 records or electronic signatures in consumer transactions shall be subject to the
15 requirements set out in this section. The requirements of this section may not be varied
16 by agreement of the parties.

17 (b) Limitation. – This Article shall not apply to:

18 (1) Any notice of the cancellation or termination of utility services,
19 including water, heat, and power.

20 (2) Any notice of default, acceleration, repossession, foreclosure or
21 eviction, or the right to cure, under a credit agreement secured by, or a
22 rental agreement for, a primary residence of an individual.

23 (3) Any notice of the cancellation or termination of health insurance or
24 benefits, or life insurance or benefits (excluding annuities).

25 (4) Any notice of the recall of a product, or material failure of a product that
26 risks endangering health or safety.

27 (5) Any document required to accompany the transportation or handling of
28 hazardous materials, pesticides, or other toxic or dangerous materials.

29 (c) Consent to Electronic Records. – In a consumer transaction, the consumer's
30 agreement to conduct a transaction by electronic means shall be evidenced as provided in
31 G.S. 66-308.4, and in compliance with this section. The consumer's agreement to
32 conduct the transaction by electronic means shall be found only when the following
33 apply:

34 (1) The consumer has affirmatively consented to the use of electronic
35 means, and the consumer has not withdrawn consent.

36 (2) The consumer, prior to consenting to the use of electronic means, is
37 provided with a clear and conspicuous statement:

38 a. Informing the consumer of any right or option of the consumer to
39 have the record provided or made available on paper or in
40 nonelectronic form.

41 b. Informing the consumer of the right to withdraw consent to have
42 the record provided or made available in an electronic form and
43 of any conditions or consequences of such withdrawal. Those

1 consequences may include termination of the parties' relationship
2 but may not include the imposition of fees.

3 c. Informing the consumer of whether the consent to have the
4 record provided or made available in an electronic form applies
5 only to the particular transaction which gave rise to the
6 obligation to provide the record, or to identified categories of
7 records that may be provided or made available during the course
8 of the parties' relationship.

9 d. Describing the procedures the consumer must use to withdraw
10 consent as provided in sub-subdivision (2)b. of this subsection or
11 to update information needed to contact the consumer
12 electronically.

13 e. Informing the consumer how, after the consent to have the record
14 provided or made available in an electronic form, the consumer
15 may request and obtain a paper copy of an electronic record.

16 (3) The consumer, prior to consenting to the use of electronic means, is
17 provided with a statement of the hardware and software requirements
18 for access to and retention of the electronic records; and the consumer
19 consents electronically, or confirms his or her consent electronically, in
20 a manner that reasonably demonstrates that the consumer can access
21 information in the electronic form that will be used to provide the
22 information that is the subject of the consent.

23 (4) After the consent of a consumer in accordance with subdivision (1) of
24 this subsection, if a change in the hardware or software requirements
25 needed to access or retain electronic records creates a material risk that
26 the consumer will not be able to access or retain a subsequent electronic
27 record that was the subject of the consent, the person providing the
28 electronic record provides the consumer with a statement of the revised
29 hardware and software requirements for access to and retention of the
30 electronic records, provides a statement of the right to withdraw consent
31 without the imposition of any condition or consequence that was not
32 disclosed under sub-subdivision (2)b. of this subsection, and again
33 complies with subdivision (3) of this subsection.

34 (d) Written Copy Required. – Notwithstanding G.S. 66-308.4(b), in a consumer
35 transaction where the consumer conducts the transaction on electronic equipment
36 provided by or through the seller, the consumer shall be given a written copy of the
37 contract which is not in electronic form. A consumer's consent to receive future notices
38 regarding the transaction in an electronic form is valid only if the consumer confirms
39 electronically, using equipment other than that provided by the seller, that (i) the
40 consumer has the software specified by the seller as necessary to read future notices, and
41 (ii) the consumer agrees to receive the notices in an electronic form. If an individual
42 enters into a consumer transaction that is created or documented by an electronic record,

1 the transaction shall be deemed to have been made or to have occurred at the individual's
2 residence.

3 **"§ 66-308.17. Severability clause.**

4 If any provision of this Article or its application to any person or circumstance is held
5 invalid, the invalidity does not affect other provisions or applications of this Article
6 which can be given effect without the invalid provision or application, and to this end the
7 provisions of this Article are severable."

8 Section 2. The Revisor of Statutes shall cause to be printed along with this act
9 all relevant portions of the official comments to the Uniform Electronic Transactions Act,
10 as the Revisor deems appropriate.

11 Section 3. This act becomes effective October 1, 2000.