§ 66-327. Consumer transactions; alternative procedures for use or acceptance of electronic records or electronic signatures.

(a), (b) Repealed by Session Laws 2001-295, s. 5.

(c) Consent to Electronic Records. – In a consumer transaction in which a statute, regulation, or rule of law of this State requires that information relating to a transaction or transactions in or affecting commerce be made available in writing or be disclosed to a consumer, the consumer's agreement to conduct a transaction by electronic means shall be evidenced as provided in G.S. 66-315, and shall be found only when accomplished in compliance with the following provisions:

(1) The consumer has affirmatively consented to the use of electronic means, and the consumer has not withdrawn consent.

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

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

b. Informing the consumer of the right to withdraw consent to have the record provided or made available in an electronic form and of any conditions or consequences of such withdrawal. Those consequences may include termination of the parties' relationship but may not include the imposition of fees.

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

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

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

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

(4) After the consent of a consumer in accordance with subdivision (1) of this subsection, if a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent, the person providing the electronic record provides the consumer with a statement of the revised hardware and software requirements for access to and retention of the electronic records, provides a statement of the right to withdraw consent without the imposition of any condition or consequence that was not disclosed under

sub-subdivision (2)b. of this subsection, and again complies with subdivision (3) of this subsection.

(d) Written Copy Required. – Notwithstanding G.S. 66-315(b), in a consumer transaction in which a statute, regulation, or rule of law of this State requires that information relating to a transaction or transactions be made available in writing or be disclosed to a consumer, where the consumer conducts the transaction on electronic equipment provided by or through the seller, the consumer shall be given a written copy of the contract or disclosure which is not in electronic form. A consumer's consent to receive future notices regarding the transaction in an electronic form is valid only if the consumer confirms electronically, using equipment other than that provided by the seller, that (i) the consumer has the software specified by the seller as necessary to read future notices, and (ii) the consumer agrees to receive the notices in an electronic form.

(e) Oral Communications. – An oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of this section, except as other provided under applicable law.

(f) Consumer Transaction Entered Into in North Carolina. – If a consumer located in North Carolina enters into a consumer transaction which is created or documented by an electronic record, the transaction shall be deemed to have been entered into in North Carolina for purpose of G.S. 22B-3 which shall apply to the transaction. (2000-152, s. 1; 2001-295, s. 5.)