

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1266
Information Technology Committee Substitute Adopted 6/19/00

Short Title: Uniform Electronic Transactions Act.

(Public)

Sponsors:

Referred to:

May 17, 2000

A BILL TO BE ENTITLED
AN ACT TO ADOPT THE UNIFORM ELECTRONIC TRANSACTIONS ACT.

The General Assembly of North Carolina enacts:

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

"ARTICLE 40.

"UNIFORM ELECTRONIC TRANSACTIONS ACT.

"§ 66-308. Short title.

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

"§ 66-308.1. Definitions.

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

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

(2) 'Automated transaction' means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual

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

1 specific person or for detecting changes or errors in the information in
2 an electronic record. The term includes a procedure that requires the
3 use of algorithms or other codes, identifying words or numbers,
4 encryption, or callback or other acknowledgment procedures.

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

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

13 **"§ 66-308.2. Scope.**

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

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

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

19 (2) Chapter 25 of the General Statutes other than G.S. 25-1-107 and G.S.
20 25-1-206, Article 2, and Article 2A.

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

22 This Article applies to an electronic record or electronic signature otherwise excluded
23 from the application of this Article under this subsection to the extent it is governed by a
24 law other than those specified in this subsection.

25 (c) This Article does not apply to specific transactions that are subject to any of
26 the following statutes:

27 (1) G.S. 14-401.13 (Right to Cancel in Off-Premises Sales).

28 (2) G.S. 20-71.4 (Vehicle Damage Disclosure).

29 (3) G.S. 20-340 (Vehicle Mileage Act).

30 (4) G.S. 42-25.9 (Ejection of Residential Tenants).

31 (5) G.S. 44A-4 (Possessory Liens on Personal Property).

32 (6) G.S. 53-165 (Consumer Finance Act).

33 (7) G.S. 53-275 (Check Cashing).

34 (8) G.S. 66-106 (Loan Brokers).

35 (9) G.S. 66-118 (Prepaid Entertainment Contracts).

36 (10) G.S. 66-131 (Discount Buying Clubs).

37 (11) G.S. 66-209 (Invention Development Services).

38 (12) G.S. 66-220 (Credit Repair Services).

39 (13) G.S. 66-250 (Membership Camping Act).

40 (14) G.S. 93A-45 (Time Shares).

41 (d) This Article does not apply to any notice of:

42 (1) The cancellation or termination of utility services, including water, heat,
43 and power.

1 (2) Default, acceleration, repossession, foreclosure or eviction, or the right
2 to cure, under a credit agreement secured by, or a rental agreement for, a
3 primary residence of an individual.

4 (3) The cancellation or termination of automobile insurance, health
5 insurance or benefits, or life insurance or benefits (excluding annuities).

6 (4) Recall of a product, or material failure of a product that risks
7 endangering health or safety.

8 (e) This Article does not apply to any document required to accompany the
9 transportation or handling of hazardous materials, pesticides, or other toxic or dangerous
10 materials.

11 (f) A transaction subject to this Article is also subject to other applicable
12 substantive law.

13 **"§ 66-308.3. Prospective application.**

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

16 **"§ 66-308.4. Use of electronic records and electronic signatures; variation by**
17 **agreement.**

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

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

25 (c) Notwithstanding subsection (b) of this section, in a consumer transaction
26 where the consumer conducts the transaction on electronic equipment provided by or
27 through the seller, the consumer shall be given a written copy of the contract which is not
28 in electronic form. A consumer's consent to receive future notices regarding the
29 transaction in an electronic form is valid only if the consumer confirms electronically,
30 using equipment other than that provided by the seller, that (i) the consumer has the
31 software specified by the seller as necessary to read future notices, and (ii) the consumer
32 agrees to receive the notices in an electronic form.

33 (d) A party that agrees to conduct a transaction by electronic means may refuse to
34 conduct other transactions by electronic means. The right granted by this subsection may
35 not be waived by agreement.

36 (e) Except as otherwise provided in this Article, the effect of any of its provisions
37 may be varied by agreement. The presence in certain provisions of this Article of the
38 words 'unless otherwise agreed', or words of similar import, does not imply that the effect
39 of other provisions may not be varied by agreement.

40 (f) Whether an electronic record or electronic signature has legal consequences is
41 determined by this Article and other applicable law.

42 **"§ 66-308.5. Construction and application.**

43 This Article must be construed and applied:

- 1 (1) To facilitate electronic transactions consistent with other applicable law;
2 (2) To be consistent with reasonable practices concerning electronic
3 transactions and with the continued expansion of those practices; and
4 (3) To effectuate its general purpose to make uniform the law with respect
5 to the subject of this act among states enacting it.

6 **"§ 66-308.6. Legal recognition of electronic records, electronic signatures, and**
7 **electronic contracts.**

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

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

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

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

16 **"§ 66-308.7. Provision of information in writing; presentation of records.**

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

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

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

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

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

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

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

38 (1) To the extent a law other than this act requires information to be
39 provided, sent, or delivered in writing, but permits that requirement to
40 be varied by agreement, the requirement under subsection (a) of this
41 section that the information be in the form of an electronic record
42 capable of retention may also be varied by agreement; and

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

4 **"§ 66-308.8. Attribution and effect of electronic record and electronic signature.**

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

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

13 **"§ 66-308.9. Effect of change or error.**

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

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

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

- 25 a. Promptly notifies the other person of the error and that the
26 individual did not intend to be bound by the electronic record
27 received by the other person;
28 b. Takes reasonable steps, including steps that conform to the other
29 person's reasonable instructions, to return to the other person or,
30 if instructed by the other person, to destroy the consideration
31 received, if any, as a result of the erroneous electronic record;
32 and
33 c. Has not used or received any benefit or value from the
34 consideration, if any, received from the other person.

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

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

39 **"§ 66-308.10. Notarization and acknowledgment.**

40 If a law requires a signature or record relating to a transaction to be notarized,
41 acknowledged, verified, or made under oath, the requirement is satisfied if the electronic
42 signature of the person authorized to perform those acts, together with all other

1 information required to be included by other applicable law, is attached to or logically
2 associated with the signature or record.

3 **"§ 66-308.11. Retention of electronic records; originals.**

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

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

9 (2) Remains accessible for later reference.

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

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

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

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

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

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

29 **"§ 66-308.12. Admissibility in evidence.**

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

32 **"§ 66-308.13. Automated transaction.**

33 In an automated transaction, the following rules apply:

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

37 (2) A contract may be formed by the interaction of an electronic agent and
38 an individual, acting on the individual's own behalf or for another
39 person, including by an interaction in which the individual performs
40 actions that the individual is free to refuse to perform and which the
41 individual knows or has reason to know will cause the electronic agent
42 to complete the transaction or performance.

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

3 **"§ 66-308.14. Time and place of sending and receipt.**

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

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

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

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

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

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

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

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

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

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

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

35 (e) An electronic record is received under subsection (b) of this section even if no
36 individual is aware of its receipt.

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

40 (g) If a person is aware that an electronic record purportedly sent under subsection
41 (a) of this section, or purportedly received under subsection (b) of this section, was not
42 actually sent or received, the legal effect of the sending or receipt is determined by other

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

3 (h) Notwithstanding any other provision of this Article, if an individual enters into
4 a consumer transaction that is created or documented by an electronic record, the
5 transaction shall be deemed to have been made or to have occurred at the individual's
6 residence. This subsection may not be varied by agreement.

7 **§ 66-308.15. Transferable records.**

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

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

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

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

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

20 (1) A single authoritative copy of the transferable record exists which is
21 unique, identifiable, and, except as otherwise provided in subdivisions
22 (4), (5), and (6) of this subsection, unalterable;

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

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

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

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

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

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

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

37 (d) Except as otherwise agreed, a person having control of a transferable record is
38 the holder, as defined in G.S. 25-1-201(20), of the transferable record and has the same
39 rights and defenses as a holder of an equivalent record or writing under Chapter 25 of the
40 General Statutes, including, if the applicable statutory requirements under G.S. 25-3-
41 302(a), 25-7-501, or 25-9-308 are satisfied, the rights and defenses of a holder in due
42 course, a holder to which a negotiable document of title has been duly negotiated, or a

1 purchaser, respectively. Delivery, possession, and endorsement are not required to obtain
2 or exercise any of the rights under this subsection.

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

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

12 **"§ 66-308.16. Severability clause.**

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

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

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