

CHAPTER 116

AN ACT creating the "Uniform Electronic Transactions Act;" supplementing Title 12A of the New Jersey Statutes and repealing R.S.1:1-2.4.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.12A:12-1 Short title.

1. This act shall be known and may be cited as the "Uniform Electronic Transactions Act."

C.12A:12-2 Definitions relative to electronic transactions.

2. As used in this act:

"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.

"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 in the ordinary course in forming a contract, performing under an existing contract or fulfilling an obligation required by the transaction.

"Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

"Contract" means the total legal obligation resulting from the parties' agreement as affected by this act and other applicable law.

"Electronic" means relating to technology having an electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

"Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

"Electronic record" means a record created, generated, sent, communicated, received or stored by electronic means.

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Governmental agency" means an executive, legislative or judicial agency, department, board, commission, authority, institution or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.

"Information" means data, text, images, sounds, codes, computer programs, software, databases or the like.

"Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying or processing information.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, callback or other acknowledgment procedures.

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

"Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial or governmental affairs.

C.12A:12-3 Applicability of act to electronic records, signatures; exceptions.

3. a. Except as provided in subsections b. and c. of this section, this act applies to electronic records and electronic signatures relating to a transaction.

- b. This act does not apply to a transaction to the extent it is governed by:
 - (1) a law governing the creation and execution of wills, codicils or testamentary trusts;
 - (2) the Uniform Commercial Code other than sections 1-107 and 1-206, Article 2 and Article 2A;
 - (3) a statute, regulation or other rule of law governing adoption, divorce or other matters of family law.
- c. This act does not apply to:
 - (1) court orders or notices or official court documents (including briefs, pleadings and other writings) required to be executed in connection with court proceedings;
 - (2) any notice of:
 - (a) the cancellation or termination of utility services (including water, heat and power);
 - (b) the default, acceleration, repossession, foreclosure or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual;
 - (c) the cancellation or termination of health insurance benefits or life insurance benefits (excluding annuities); or
 - (d) the recall of a product, or material failure of a product, that risks endangering health or safety; or
 - (3) any document required to accompany any transportation or handling of hazardous materials, pesticides or other toxic or dangerous materials.
- d. This act applies to an electronic record or electronic signature otherwise excluded from the application of this act under subsection b. of this section to the extent it is governed by a law other than those specified in subsection b. of this section.
- e. A transaction subject to this act is subject also to other applicable substantive law.

C.12A:12-4 Act applies on or after June 26, 2001.

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

C.12A:12-5 Electronic record, signature not required.

5. a. This act does not require a record or signature to be created, generated, stored, sent, communicated, received, stored or otherwise processed or used by electronic means or in electronic form.

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

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

d. Except as otherwise provided in this act, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this act of the words "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

e. Whether an electronic record or electronic signature has legal consequences is determined by this act and other applicable law.

C.12A:12-6 Construction of act.

6. This act shall be construed and applied:

- a. to facilitate electronic transactions consistent with other applicable law;
- b. to be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and
- c. to effectuate its general purpose to make uniform the law with respect to the subject of this act among the states enacting it.

C.12A:12-7 Legal effect and enforceability.

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

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

c. If a law requires a record to be in writing, an electronic record satisfies the law.

d. If a law requires a signature, an electronic signature satisfies the law.

C.12A:12-8 Use, retention, content, format of electronic records.

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

b. If a law other than this act requires a record to be posted or displayed in a certain manner, to be sent, communicated or transmitted by a specified method, or to contain information that is formatted in a certain manner, the following apply:

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

(2) Except as otherwise provided in paragraph (2) of subsection d. of this section, the record shall be sent, communicated or transmitted by the method specified in the other law.

(3) The record shall contain the information formatted in the manner specified in the other law.

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

d. The requirements of this section may not be varied by agreement, but:

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

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

C.12A:12-9 Attribution, effect of electronic records, signatures.

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

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

C.12A:12-10 Rules applicable to changes, errors in electronic records.

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

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

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

(1) promptly notifies the other person of the error and that the individual did not intend to

be bound by the electronic record received by the other person;

(2) takes reasonable steps, including steps that conform to the other persons's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(3) has not used or received any benefit or value from the consideration, if any, received from the other person.

c. If neither subsection a. or b. of this section applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

d. Subsections b. and c. of this section may not be varied by agreement.

C.12A:12-11 Notarized signatures or records.

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

C.12A:12-12 Retention of electronic records.

12. a. If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

(1) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(2) remains accessible for later reference.

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

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

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

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

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

g. This section does not preclude a governmental agency of this State from specifying additional requirements for the retention of a records subject to the agency's jurisdiction.

C.12A:12-13 Admissibility of electronic records, signatures.

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

C.12A:12-14 Rules applicable to automated transactions.

14. In an automated transaction, the following rules apply:

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

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

c. The terms of the contract are determined by the substantive law applicable to it.

C.12A:12-15 Conditions under which electronic record is sent, received.

15. a. Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

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

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

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

b. Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

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

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

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

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

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

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

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

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

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

C.12A:12-16 Control of transferable records.

16. a. As used in this section "transferable record" means an electronic record that:

(1) would be a note under Article 3 of the Uniform Commercial Code or a document under Article 7 of the Uniform Commercial Code if the electronic record were in writing; and

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

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

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

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

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

(a) the person to which the transferable record was issued; or

(b) if the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

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

(4) copies or revisions that add or change an identified assignee of the authoritative copy may be made only with the consent of the person asserting control;

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

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

d. Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section 1-201 of the Uniform Commercial Code of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code including, if the applicable statutory requirements are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated or a purchaser. Delivery, possession and indorsement are not required to obtain or exercise any of the rights under this subsection.

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

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

C.12A:12-17 Governmental agency creation, retention, conversion of electronic records.

17. Each governmental agency shall determine whether, and the extent to which, it will create and retain electronic records and convert written records to electronic records. Additionally, each executive agency shall comply with standards adopted by the Secretary of State pursuant to section 19 of this act.

C.12A:12-18 Use of electronic records, signatures by governmental agencies; specifications.

18. a. Except as otherwise provided in subsection f. of section 12 of this act or section 17 of this act, each governmental agency shall determine whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons, and otherwise create, generate, communicate, store, process, use and rely upon electronic records and electronic signatures.

b. To the extent a governmental agency uses electronic records and electronic signatures under subsection a. of this section, the governmental agency, giving due consideration to security, may specify:

(1) the manner and format in which the electronic records must be created, generated, sent, communicated, received and stored and the system established for those purposes;

(2) if electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;

(3) control processes and procedures appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality and auditability of electronic records; and

(4) any other required attributes for electronic records which are currently specified for corresponding nonelectronic records, or reasonably necessary under the circumstances.

c. Except as otherwise provided in subsection f. of section 12 of this act or section 17 of this act, this act does not require a governmental agency to use or permit the use of electronic records or electronic signatures.

C.12A:12-19 Adoption of standards for governmental.

19. The Secretary of State shall adopt standards to encourage and promote consistency and

interoperability with similar requirements adopted by other governmental agencies of this and other states and the federal government, and nongovernmental persons interacting with governmental agencies of this State. If appropriate, those standards may specify differing levels of standards from which governmental agencies of this State may choose in implementing the most appropriate standard for a particular application.

C.12A:12-20 Severability.

20. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application and, to this end, the provisions of this act are severable.

C.12A:12-21 Use of electronic record to satisfy consumer information in writing, conditions.

21. a. Notwithstanding any other provision of this act, if a law or regulation requires that information relating to the transaction be provided or made available to a consumer in writing, the use of an electronic record to provide or make available (whichever is required) such information satisfies the requirement that such information be in writing if:

(1) the consumer has affirmatively consented to such use and has not withdrawn such consent;

(2) the consumer, prior to consenting, is provided with a clear and conspicuous statement:

(a) informing the consumer of:

(i) any right or option of the consumer to have the record provided or made available on paper or in nonelectronic form, and

(ii) the right of the consumer to withdraw the consent to have the record provided or made available in an electronic form and of any conditions, consequences (which may include termination of the parties' relationship), or fees in the event of such withdrawal;

(b) informing the consumer of whether the consent applies:

(i) only to the particular transaction which gave rise to the obligation to provide the record, or

(ii) to identified categories of records that may be provided or made available during the course of the parties' relationship;

(c) describing the procedures the consumer must use to withdraw consent as provided in a.(2)(a) of this section and to update information needed to contact the consumer electronically; and

(d) informing the consumer:

(i) how, after the consent, the consumer may, upon request, obtain a paper copy of an electronic record, and

(ii) whether any fee will be charged for such copy;

(3) the consumer:

(a) prior to consenting, is provided with a statement of the hardware and software requirements for access to and retention of the electronic records; and

(b) 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; and

(4) after the consent of a consumer in accordance with a.(1) of this section, 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:

(a) provides the consumer with a statement of:

(i) the revised hardware and software requirements for access to and retention of the electronic records; and

(ii) the right to withdraw consent without the imposition of any fees for such withdrawal and without the imposition of any condition or consequence that was not disclosed under a.(2)(a) of this section; and

(b) again complies with a.(3) of this section.

b. Nothing in this act affects the content or timing of any disclosure or other record required to be provided or made available to any consumer under any statute, regulation, or other rule of law.

c. If a law that was enacted prior to this act expressly requires a record to be provided or made available by a specified method that requires verification or acknowledgment of receipt, the record may be provided or made available electronically only if the method used provides verification or acknowledgment of receipt (whichever is required).

d. The legal effectiveness, validity or enforceability of any contract executed by a consumer shall not be denied solely because of the failure to obtain electronic consent or confirmation of consent by that consumer in accordance with a.(3)(b) of this section.

e. Withdrawal of consent by a consumer shall not affect the legal effectiveness, validity or enforceability of electronic records provided or made available to that consumer in accordance with subsection a. prior to implementation of the consumer's withdrawal of consent. A consumer's withdrawal of consent shall be effective within a reasonable period of time after receipt of the withdrawal by the provider of the record. Failure to comply with a.(4) of this section may, at the election of the consumer, be treated as a withdrawal of consent for purposes of this subsection.

f. This subsection does not apply to any records that are provided or made available to a consumer who has consented prior to the effective date of this act to receive such records in electronic form as permitted by any statute, regulation, or other rule of law.

g. An oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of this section except as otherwise provided under applicable law.

C.12A:12-22 Findings, declaration concerning "federal E-sign".

22. The Legislature finds and declares:

That the adoption of the "Electronic Signatures in Global and National Commerce Act," Pub.L. 106-229, 114 Stat. 464 (2000), popularly known as "federal E-Sign," encourages states to enact the Uniform Electronic Transactions Act proposed for adoption by the National Conference of Commissioners on Uniform State Laws; and

That the adoption of the Uniform Electronic Transactions Act will invoke the provisions of Section 102 of Pub. L. 106-229 which state that federal law will no longer preempt the laws of an enacting state; and

That Section 102 of Pub. L. 106-229 provides that a state, in enacting the Uniform Electronic Transactions Act, may "modify, limit or supersede" the provisions of the federal law; and

That it is desirable for this State to take the fullest possible advantage of the ability to "modify, limit or supersede" Pub. L. 106-229; and

That it is the intention of the Legislature that the adoption of the Uniform Electronic Transactions Act in this State modify, limit and supersede the provisions of Pub. L. 106-229 to the fullest possible extent permitted under the federal law.

C.12A:12-23 Capabilty of electronic records retention by recipients.

23. Under the provisions of subsection a. of section 8, an electronic record, to be capable of retention by the recipient at the time of receipt, must be capable of being retained and accurately reproduced for later reference by all persons who are entitled to retain the record.

C.12A:12-24 Accessibilty of records of information.

24. Under the provisions of paragraph (2) of subsection a. of section 12, a record of information remains accessible for later reference if it remains accessible to all persons who are entitled to access by statute, regulation or rule of law, for the period required by such statute, regulation or rule of law, in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise.

C.12A:12-25 The New Jersey Center for Electronic Transactions and Informational Privacy, established.

25. The New Jersey Center for Electronic Transactions and Informational Privacy shall be

established within the Institute of Law, Science and Technology at Seton Hall University School of Law. The Center shall collect and evaluate information on issues concerning electronic records and privacy and shall compile its findings and any recommendations for submission to the Secretary of State and governmental agencies of this State, as may be appropriate.

C.12A:12-26 "Statute, regulation or other rule of law" defined.

26. For purposes of this act, references to "statute, regulation or other rule of law" shall include the Rules Governing the Courts of the State of New Jersey and the reference to "court orders or notices or official court documents" as used in paragraph (1) of subsection c. of section 3 of this act shall include all official court documents governed by the Rules Governing the Courts of the State of New Jersey.

Repealer.

27. R.S.1:1-2.4 is hereby repealed.

28. This act shall take effect immediately

Approved June 26, 2001.