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***Bill Analysis***

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**Reps. Terwilleger, Amstutz, Householder, Harris, Gardner, Tiberi, Carey, Mottley, Corbin, Metzger, Hollister, Van Vyven, Willamowski, Olman, DePiero, Luebbers, Thomas, Trakas, Goodman, Hoops, Austria, Damschroder, Hartnett, Sykes, Maier, Brading, Peterson, Mead, Schuler, Metelsky, Taylor, Jolivette, Buehrer, Flannery, D. Miller, Robinson, Allen, Evans, Verich, Stevens, Wilson, Myers, Distel, Calvert, Salerno, Widener, Barrett, Cates, O'Brien, Winkler, Patton, Gooding, Britton, Barnes, Hollister, Sykes**

## BILL SUMMARY


- Adopts the Uniform Electronic Transactions Act providing for use of electronic records and electronic signatures by private parties.
- Adopts provisions relating to the use of electronic records and electronic signatures in consumer related transactions.
- Adopts provisions relating to attribution of electronic records and electronic signatures when a security procedure is provided.
- Provides for electronic record and electronic signature use by state agencies, including provision for use consistent with administrative rules adopted by the Department of Administrative Services.


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## CONTENT AND OPERATION

### ***Overview***

The bill proposes the enactment of sections within the Ohio Uniform Commercial Code, a portion of which is to be known as the Uniform Electronic Transactions Act. In addition, the bill provides for use of electronic records and

signatures in consumer related transactions, attribution of electronic records and signatures between nonstate agency parties where a security procedure is provided, and use of electronic records and electronic signatures by state agencies and other government agencies. Generally, the bill provides a statutory framework for the creation and use of information and records in electronic form, both in the private sector and within state government, and, with specified exceptions, gives legal effect to information, records, and signatures in electronic form.

## THE UNIFORM ELECTRONIC TRANSACTIONS ACT

### ***Name and construction***

(sec. 1306.05)

A portion of the bill (sections 1306.01 to 1306.15) is to be known and cited as the "Uniform Electronic Transactions Act." These provisions must be construed and applied (1) to facilitate electronic transactions consistent with other applicable law, (2) to be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices, and (3) to effectuate its general purpose to make uniform the law with respect to the subject of the bill among states enacting the Uniform Electronic Transactions Act.

### ***General rules***

(secs. 1306.01(G) and (H), 1306.04(E), 1306.06, and 1306.12)

The bill specifies that (1) a record or signature may not be denied legal effect or enforceability solely because it is in electronic form, (2) a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation, (3) if a law requires a record to be in writing, an electronic record satisfies the law, and (4) if a law requires a signature, an electronic signature satisfies the law. Evidence of a record or signature may not be excluded in a proceeding solely because it is in electronic form. Finally, the bill specifies that whether an electronic record or electronic signature has legal consequences is to be determined by the provisions of the bill and other applicable law.

Under the bill, "electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means, and "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 (for additional definitions, see "***Definitions***," below).

***Scope and application***

(secs. 1306.02, 1306.03, and 1306.04(A))

The bill's provisions apply to electronic records and electronic signatures relating to a transaction. However, the bill *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, or (2) the Ohio Uniform Commercial Code, except provisions of law pertaining to sales or leases, waivers or renunciations after a breach of contract, or the statute of frauds applicable to personal property. In addition, the bill's provisions apply to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after the bill's effective date.

The bill also provides that it does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

***Agreement of the parties***

(sec. 1306.04(B), (C), and (D))

The bill specifies that it only applies to transactions between parties each of which has agreed to conduct transactions by electronic means. And whether the parties agree to conduct a transaction by electronic means is to be determined from the context and surrounding circumstances, including the parties' conduct. A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means, and this right may not be waived by agreement.

The bill specifies that, except as otherwise provided by the bill, any of its provisions may be varied by agreement. And the presence in certain provisions of the bill 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.

***Relation to other laws***

(sec. 1306.07)

If the 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 bill provides that 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. However, 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. And 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.

In addition, if a law other than the bill 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, (1) the record must be posted or displayed in the manner specified in the other law, (2) subject to the bill's provision governing the waiver of a law requiring a record to be sent, communicated, or transmitted by regular mail, the record must be sent, communicated, or transmitted by the method specified in the other law, and (3) the record must contain the information formatted in the manner specified in the other law.

The provisions described in the preceding paragraph may not be varied by agreement, except (1) to the extent that law other than the bill requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, in which case, the requirement that a party send an electronic record capable of retention also may be varied by agreement, and (2) a requirement under law other than the bill to send, communicate, or transmit a record by regular mail may be varied by agreement to the extent permitted by the other law.

***Attribution and effect of electronic records or signatures***

(sec. 1306.08)

The bill provides that an electronic record or signature is attributable to a person if it was the act of the person. And 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 is attributable. In addition, the effect of an electronic record or electronic signature attributed to a person pursuant to this paragraph must be determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law. (Also see "ATTRIBUTION IN TRANSACTIONS IF A SECURITY PROCEDURE IS USED," below.)

***Errors in electronic records***

(sec. 1306.09)

If a change or error in an electronic record occurs in a transmission between parties to a transaction, the bill specifies that (1) if the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure but the other party has not, and (2) 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.

In addition, 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 does three things. The individual must (1) promptly notify the other person of the error and of the individual's intent not to be bound by the electronic record received by the other person, (2) take reasonable steps, including steps that conform to the other person'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) not have used or received any benefit or value from the consideration, if any, received from the other person. (Under the bill, "electronic agent" is 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.)

However, if these provisions relating to agreed upon security procedures and errors in automated transactions are not involved, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any. And these provisions relating to errors in automated transactions and the application of other law under circumstances discussed in this paragraph may not be varied by agreement.

***Notarizing***

(sec. 1306.10)

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, this 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.

***Retaining an electronic record***

(sec. 1306.11)

If a law requires that a record be retained, the bill provides that the requirement is satisfied by retaining an electronic record of the information in the record if (1) the electronic record accurately and completely 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) the electronic record remains accessible for later reference. However, a requirement to retain a record in accordance with (1) and (2) does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received. And a person satisfies (1) and (2) by using the services of another person if the requirements of (1) and (2) are satisfied.

In addition, 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 (1) and (2) above. And if a law requires retention of a check, the bill specifies that the requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with (1) and (2).

Finally, the bill provides that a record retained in accordance with (1) and (2) above satisfies a law requiring a person to retain a record for evidentiary, audit, or similar purposes, unless a law enacted after the bill's effective date specifically prohibits the use of an electronic record for the specified purpose. However, these provisions do not preclude an Ohio governmental agency from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

***Automated transactions***

(secs. 1306.01(B) and 1306.13)

Under the bill, in an automated transaction, 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. In addition, 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 that the individual knows or has reason to know will cause the electronic agent to complete the transaction or

performance. Finally, in an automated transaction, the terms of the contract are determined by the substantive law applicable to the contract.

Under the bill, an "automated transaction" is 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 (for additional definitions, see "***Definitions***," below).

***Sending and receiving electronic records***

(secs. 1306.01(K) and 1306.14)

Unless otherwise agreed between the sender and the recipient, the bill specifies that 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 the information processing system described in (1), 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 that is under the control of the recipient.

Under the bill, "information processing system" is an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

The bill provides that, unless otherwise agreed between a sender and the recipient, an electronic record is *received* when it (1) 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 the information processing system described in (1).

These provisions governing receipt of an electronic record apply even if the place the information processing system is located is different from the place the electronic record is deemed to be received under the bill. And an electronic record is received under these provisions even if no individual is aware of its receipt. Finally, the receipt of an electronic acknowledgment from an information processing system described in (1) establishes that a record was received, but, by itself, does not establish that the content sent corresponds to the content received.

The bill specifies that, 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. And for purposes of this provision, (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, and (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.

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

***Transferable records***

(sec. 1306.15)

***Control of a transferable record***

Under the bill, 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. And a system satisfies this specification and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that satisfies all of the following:

(1) A single authoritative copy of the transferable record exists that is unique, identifiable, and, except as provided in (4) through (6), unalterable.

(2) The authoritative copy identifies the person asserting control as either (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 most recently was 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.

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

For purposes of this provision of the bill, a "transferable record" is an electronic record that is both (1) a note under the Negotiable Instruments Law or a document under the Documents of Title Law, if the electronic record were in writing, and (2) an electronic record that the issuer expressly has agreed is a transferable record.

The bill provides that, except as otherwise agreed, a person having control of a transferable record is the "holder" as defined under the Ohio Uniform Commercial Code. And this holder of the transferable record has the same rights and defenses as a holder of an equivalent record or writing under the Ohio Uniform Commercial Code. If the applicable statutory requirements under the Holder in Due Course Law, Negotiable Documents Law, or Secured Transactions Law involving chattel paper and nonnegotiable instruments are satisfied, these rights and defenses include 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, respectively. And delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this provision.

***Obligors and enforcement of transferable records***

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. In addition, if requested by a person against which enforcement is sought, the person seeking to enforce the transferable record must provide reasonable proof that the person is in control of the transferable record. This 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.

## CONSUMER RELATED TRANSACTIONS

***Enforceability of consumer contracts***

(sec. 1306.16(A) to (C))

The bill specifies that a provision of a nonelectronic contract involving a consumer, and to which a state agency is *not* a party, that authorizes the conducting of a transaction or any part of a transaction by electronic means is unenforceable against the consumer, unless the consumer separately signs the provision. In addition, a consumer's agreement to conduct a transaction or a part of a transaction electronically must not be inferred solely from the fact that the consumer has used electronic means to pay an account or register a purchase or warranty. These specifications pertaining to a consumer related transaction apply to every such consumer related transaction regardless of any other provision of the bill and are prohibited from being varied by agreement.

***"Consumer" and "state agency" defined***

(sec. 1306.16(D))

For purposes of this provision, "consumer" is defined as an individual who is involved in a transaction primarily for personal, family, or household purposes, and "state agency" means every organized body, office, or agency established by the laws of Ohio for the exercise of any function of state government.

## ATTRIBUTION IN TRANSACTIONS IF A SECURITY PROCEDURE IS USED

***In general***

(secs. 1306.17(A) and (C) and 1306.19)

The bill provides specifications for the attribution of electronic records and electronic signatures where a security procedure exists among parties that are not state agencies and the attribution does not involve a consumer related transaction. "State agency" means every organized body, office, or agency established by the laws of Ohio for the exercise of any function of state government.

***Commercial reasonableness of security procedures***

(secs. 1306.01(N) and 1306.17(B))

The commercial reasonableness of a security procedure is to be determined by a court. In making this determination, the bill specifies that (1) a security procedure established by statute or regulation is effective for transactions covered

by the statute or regulation, and (2) except as otherwise provided in (1), the commercial reasonableness and effectiveness is to be determined in light of the purposes of the security procedure and the commercial circumstances at the time the parties agree to or adopt the procedure. Under the bill, "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. And "security procedure" includes a procedure that requires the use of algorithms or other codes, identifying word or numbers, encryption, or callback or other acknowledgment procedures.

***Security procedures between parties***

(sec. 1306.18)

If there is a security procedure between the parties with respect to an electronic signature or electronic record, the bill provides that the effect of compliance with a security procedure established by a law or regulation is determined by that law or regulation. In all other cases, if the parties agree to use or otherwise knowingly adopt a security procedure to verify the person from which an electronic signature or electronic record has been sent, the electronic signature or electronic record is attributable to the person identified by the security procedure, if three conditions are met. Under these conditions, the person relying on the attribution must establish that (1) the security procedure is commercially reasonable, (2) the party accepted or relied on the electronic message in good faith and in compliance with the security procedure and any additional agreement with or separate instructions of the other party, and (3) the security procedure indicates that the electronic message is from the person to which attribution is sought.

If the electronic signature or electronic record is *not* attributable to a party under another provision of the bill discussed in "***Attribution and effect of electronic records or signatures***" (above), but *is* attributable to the party under provisions discussed in the preceding paragraph, then the provisions discussed in the preceding paragraph do *not* apply and the electronic signature or electronic record is *not* attributable to the party if the party establishes that the electronic signature or electronic record was caused directly or indirectly by a person meeting any of certain specifications. These specifications include that (1) the person was not entrusted at any time with the right or duty to act for the party with respect to such electronic signature or electronic record or security procedure, (2) the person lawfully obtained access to transmitting facilities of the party, if such access facilitated the misuse of the security procedure, or (3) the person obtained, from a source controlled by the party, information facilitating misuse of the security procedure.

The bill provides that if the parties use a commercially reasonable security procedure (discussed above) to detect errors or changes with respect to an electronic signature or electronic record, then (1) the effect of a security procedure is determined by the agreement between the parties, or, in the absence of an agreement, by these provisions of the bill or any law establishing the security procedure, and (2) unless the circumstances indicate otherwise, if a security procedure indicates that an electronic signature or electronic record has not been altered since a particular time, it must be treated as not having been altered since that time.

## STATE AGENCY USE OF ELECTRONIC RECORDS AND SIGNATURES

### ***In general***

(secs. 1306.20(A), (C), (D), (F), and (G) and 1306.21(B))

Generally, the bill provides that state agencies must determine if, and the extent to which, they will send and receive 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. The General Assembly and the Supreme Court also are authorized to adopt administrative rules providing for the use of electronic records and electronic signatures by their respective agencies.

However, the Department of Administrative Services (DAS) must prescribe administrative rules governing the use of electronic records and electronic signatures that, under specified circumstances, must be complied with by a state agency, other than the General Assembly or the Supreme Court, if that agency creates, uses, receives, or retains electronic records or creates, uses, or receives electronic signatures. In addition, if a state agency, other than the General Assembly or the Supreme Court, creates, uses, receives, and retains electronic records, the agency expressly must comply with the Public Records Law.

Nothing in the bill's provisions is to be construed to *require* any state agency to use or permit the use of electronic records and electronic signatures.

The bill also provides that whenever any rule of law requires or authorizes the filing of any information, notice, lien, or other document or record with any state agency, a filing made by an electronic record has the same force and effect as a filing made on paper in all cases where the state agency has authorized or agreed to such electronic filing.

***Altering the format of electronic records***

(sec. 1306.20(E))

To the extent a state agency retains an electronic record, the bill authorizes a state agency to retain a record in a format that is different from the format in which the record was originally created, used, sent, or received only if it can be demonstrated that the alternative format used accurately and completely reflects the record as it was originally created, used, sent, or received. In addition, if a state agency in retaining any set of electronic records alters the format of the records, the state agency must create a certificate of authenticity for each set of records that is altered. DAS, in consultation with the State Archivist, must adopt "111" rules, not requiring a public hearing, that establish the methods for creating these certificates of authenticity.

***Waiver of a legal requirement by a state agency***

(sec. 1306.20(B))

Under the bill, a state agency is permitted to waive a requirement in the law, other than a requirement included in the Uniform Electronic Transactions Act, that relates to (1) the method of posting or displaying records, (2) the manner of sending, communicating, or transmitting records, or (3) the manner of formatting records. However, a state agency may exercise its authority to waive such a requirement only if (1) the requirement relates to a matter over which the state agency has jurisdiction, and (2) the waiver is consistent with criteria set forth in rules adopted by the state agency. The criteria described in (2), to the extent reasonable under the circumstances, must contain standards to facilitate the use of electronic commerce by persons under the jurisdiction of the state agency consistent with rules adopted by DAS pursuant to the bill pertaining to the use of electronic records and electronic signature by state agencies.

***Effective date of state agency use***

(sec. 1306.20(H))

The bill authorizes any state agency that, prior to the bill's effective date, used or permitted the use of electronic records or electronic signatures pursuant to laws enacted, administrative rules adopted, or agency policies adopted before the bill's effective date, to use or permit the use of electronic records or electronic signatures pursuant to those previously enacted laws, adopted rules, or adopted policies for a period of two years after the bill's effective date. However, subject to obtaining permission from DAS by filing a written request after this two-year period has concluded, all state agencies that use or permit the use of electronic

records or electronic signatures before the bill's effective date must only use or permit the use of electronic records or electronic signatures consistent with DAS administrative rules governing the use of electronic records and electronic signatures by state agencies.

***DAS administrative rules governing use and interoperability; DAS recommendations***

(secs. 1306.21 and 1306.22; Section 2)

The bill requires DAS, in consultation with the State Archivist, to adopt "111" rules, not requiring a public hearing, setting forth (1) the minimum requirements for the method of creation, maintenance, and security of electronic records and electronic signatures, (2) control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records, and (3) any other required attributes for electronic records that are specified for corresponding nonelectronic records or are reasonably necessary under the circumstances. The rules also must provide, if electronic records must be signed by electronic means, (a) the type of electronic signature required, (b) the manner and format in which the electronic signature must be affixed to the electronic record, and (c) the identity of, or criteria that must be met by, any third party used by the person filing a document to facilitate the process. DAS must file these initial rules not later than 90 days after the bill's effective date.

In addition, DAS is authorized to adopt "111" rules, not requiring a public hearing, to ensure consistency and interoperability among state agencies with regard to electronic transactions, electronic signatures, and security procedures. If DAS adopts these rules, DAS must consider consistency in applications and interoperability with governmental agencies of Ohio, agencies of other states, the federal government, and nongovernmental persons to the extent practicable when adopting these rules.

With regard to electronic transactions, electronic signatures, and security procedures, DAS is authorized to publish recommendations for governmental agencies and nongovernmental persons to promote consistency and interoperability among nongovernmental persons, agencies of Ohio and other states, and the federal government.

***Definition of state agency***

(secs. 1306.20(I), 1306.21(C), and 1306.22(D))

For the purposes of these provisions regulating state agency use of electronic records and electronic signatures, a "state agency" is every organized body, office, or agency established by the laws of the state for the exercise of any function of state government, but does not include the General Assembly or the Supreme Court.

***Public records exclusion***

(sec. 1306.23)

The bill specifies that records that would disclose or may lead to the disclosure of records or information that would jeopardize the state's continued use or security of any computer or telecommunications devices or services associated with electronic signatures, electronic records, or electronic transactions are not public records for purposes of the Public Records Law.

OTHER PROVISIONS

***Severability***

(Section 3)

If any provision of the bill or its application to any person or circumstance is held invalid, the bill provides that the invalidity does not affect other provisions or applications of the bill that can be given effect without the invalid provision or application, and to this end the bill's provisions are severable.

***Definitions***

(sec. 1306.01)

The bill includes the following definitions:

(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" is 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.

(3) "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.

(4) "Contract" means the total legal obligation resulting from the parties' agreement as affected by the bill's provisions and other applicable law.

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

(6) "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.

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

(8) "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.

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

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

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

(12) "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.

(13) "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.

(14) "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.

"Security procedure" includes a procedure that requires the use of algorithms or other codes, identifying word or numbers, encryption, or callback or other acknowledgment procedures.

(15) "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. "State" includes an Indian tribe or band, or Alaskan native village, that is recognized by federal law or formally acknowledged by a state.

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

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**HISTORY**

| ACTION | DATE | JOURNAL ENTRY | |
|---|---|---|---|
| Introduced | 10-27-99 | p. | 1325 |
| Reported, H. Financial Institutions | 04-05-00 | p. | 1775 |
| Passed House (97-0) | 04-11-00 | pp. | 1788-1789 |

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