



Sub. H.B. 204

125th General Assembly
(As Passed by the House)

Reps. Wolpert, Gilb, Seitz, McGregor, Collier, Barrett, Allen, Kearns, Seaver, Chandler, Daniels, Cirelli, Domenick, C. Evans, Fessler, Flowers, Olman, Schlichter, Sferra, Skindell, Wagner, Walcher, Carano, DePiero, Distel, Gibbs, Harwood, Hughes, Key, Miller, Niehaus, S. Patton, Raussen, Reidelbach, Schmidt, Schneider, G. Smith, J. Stewart, Sykes

BILL SUMMARY

- Requires a county office, before using electronic records and electronic signatures, to adopt a security procedure 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.
- Specifies that an electronic record must have the same force and effect as a paper filing in all cases where (1) the county office has authorized or agreed to the electronic filing and (2) the filing is made in accordance with applicable rules or an applicable agreement.
- Specifies that the bill does not require and cannot be construed to require a county office to use or permit the use of electronic records and electronic signatures.
- Requires the Auditor of State, in conducting a required or permitted audit of a county office, to inquire into the method, accuracy, and effectiveness of any security procedure adopted by that office for use with electronic records and electronic signatures.
- Excludes nonelectronic contracts to which a county office is a party from existing law's declaration that "conduct of transactions by electronic means" provisions are unenforceable against consumers who do not separately sign the provisions.

- Requires county records commissions to notify their county historical society and certain other local entities that request a notice, that certain county records approved for disposal may be selected and sent to the Ohio Historical Society and potentially distributed by the Society to them.
- Defines the "Internet" for the purpose of the entire Revised Code and eliminates individual definitions of the term throughout existing law.

CONTENT AND OPERATION

County-related provisions

Use of electronic records and signatures by county offices

Unless a law explicitly requires a transaction to be conducted by paper or other means, Chapter 1306. of the Revised Code, known as the Uniform Electronic Transactions Act (UETA), generally authorizes the state and various political subdivisions to conduct transactions electronically. If a specific statutory provision requires a document to be maintained in paper format or prescribes the exact manner in which a particular transaction must be conducted, that specific provision would rule over the general UETA authorization. Thus, under current law, political subdivisions, including county offices, may conduct business by electronic transaction, unless a statute specifically requires business to be conducted in another manner. There is, however, no requirement that an office transact business electronically, and, thus, the extent to which an office transacts business electronically is left to its discretion (R.C. 1306.04--not in the bill).

The bill generally requires a county office, before it uses electronic records and electronic signatures under the UETA, to adopt a security procedure 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. A security procedure includes, but is not limited to, a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgement procedures. A security procedure adopted under this requirement must be adopted in writing. (R.C. 304.01 and 304.02.)

The bill specifies that, whenever any rule or law requires or authorizes the filing of any information, notice, lien, or other document or record with any county office, a filing made by an electronic record has the same force and effect as a filing made on paper in all cases where (1) the county office has authorized or



agreed to the electronic filing and (2) the filing is made in accordance with applicable rules or an applicable agreement (R.C. 304.01 and 304.03(A)).

Nothing in the bill, however, authorizes or can be construed to authorize the use of a financial transaction device in an electronic transaction for the acceptance of payments for county expenses; existing law permitting a board of county commissioners to authorize the acceptance of payments by financial transaction devices for county expenses and a county auditor to accept payment of dog and kennel registration fees by those devices via the Internet is not affected by the bill (R.C. 304.01 and 304.03(B) and (C)). And, nothing in the bill requires or can be construed to require a county office to use or permit the use of electronic records and electronic signatures (R.C. 304.01 and 304.04).

Auditing of electronic security procedures

If a county office uses electronic records and electronic signatures under the UETA, the bill requires the Auditor of State, in conducting a required or permitted audit of that office, to inquire into the method, accuracy, and effectiveness of any security procedure adopted by that office (R.C. 117.111).

Consumers and electronic transactions

Under current law, if a provision in specified *nonelectronic* contracts involving a consumer authorizes the conducting of a transaction (in whole or in part) by electronic means, the provision is unenforceable against the consumer unless he or she separately signs it. This unenforceability applies to such a provision in any nonelectronic contract to which a "state agency" is not a party. The bill instead provides that this unenforceability applies to such a provision in any nonelectronic contract to which a state agency or a *county office* is not a party. For this purpose, "county office" means any officer, department, board, commission, agency, court, or other instrumentality of a county. (R.C. 1306.16(A) and (D).)

Notice to county historical societies and public and quasi-public entities about county records

Currently, counties, among other public entities, must follow a prescribed procedure for retaining and disposing of their records. Each county has a county records commission that provides rules for retention and disposal of records of the county and reviews applications for one-time records disposal and schedules of records retention and disposal submitted by county offices. When the commission approves county records for disposal, a copy of the list of those records must be sent to the Auditor of State for approval. After the Auditor of State approves or disapproves the records' disposal, the Ohio Historical Society, which functions as the state archives administration for the state and its political subdivisions, has 60



days to select for its custody those records it considers to be of continuing historical value. As the archives administration, the Society can transfer public records in its possession to public libraries, county historical societies, state universities, or other public or quasi-public institutions, agencies, or corporations by written agreement, if they are capable of meeting accepted archival standards for housing and use. (R.C. 149.38; R.C. 149.31--not in, but referred to in, the bill.)

The bill provides that, when the Ohio Historical Society is informed that county records are to be disposed of, the county records commission also must notify the county historical society, and any public or quasi-public institutions, agencies, or corporations in the county that have provided the commission with their name and address for these notification purposes, that the Society has been so informed and may select records of continuing historical value, including records that may be distributed to those entities as provided in current law (R.C. 149.38(C)).

Definition of the "Internet"

Under current law, references to the "Internet" are made in numerous provisions of the Revised Code. Several of those provisions, including one in the Campaign Finance Law, include a definition of the term. Other provisions of current law use the term but leave it undefined.

The bill eliminates each of the individual definitions of "Internet," and instead defines the term in the General Provisions that apply to the entire Revised Code. Under the bill, the "Internet" is defined, for the purpose of the entire Revised Code, as the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork known as the world wide web. (R.C. 1.59(K) and also amended R.C. 9.08, 9.314, 101.691, 125.072, 149.432, 307.12, 341.42, 505.10, 718.07, 721.15, 753.32, 955.013, 2307.64, 3517.10, 3517.106, 3517.11, 5145.31, and 5703.49.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-29-03	p. 525
Reported, H. County & Township Government	10-15-03	pp. 1117-1118
Passed House (95-0)	12-02-03	pp. 1221-1223

H0204-PH-125.doc/jc

