



Romney Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

DIGITAL SIGNATURES, ETC.

House Bill 4406

Sponsor: Rep. Mickey Mortimer
Committee: Insurance and Financial Services

Complete to 4-19-99

A SUMMARY OF HOUSE BILL 4406 AS INTRODUCED 3-10-99

The bill would create a new act that would legitimize the use of electronic records and electronic signatures when all parties to a private transaction agreed to their use. Under the bill, if all parties to a private transaction agreed to the use of an electronic record or an electronic signature, then the following would apply:

-- information, records, and electronic agreements would have legal effect, validity, and enforceability;

-- if a statute or other law required a "written" signature, an electronic signature would have the same force and effect as the use of a manual signature;

-- if a statute or other law required information to be "written", the statute or other law would be satisfied by an electronic record; and

-- if a statute or other law required information to be presented or retained in its original form, that statute or other law would be satisfied by an electronic record if there existed reliable assurance as to the integrity of the data or the information from the time when it was first generated to its final form.

The new act would not apply to:

-- a situation in which the application of the provisions would be inconsistent with the express intent of the parties to a written document;

-- a legal requirement governing the creation or execution of a document that served to convey rights and responsibilities under a will or trust;

-- a legal requirement governing the conveyance of an interest in real property; or

-- a legal requirement governing the creation or transfer of a negotiable instrument or any instrument establishing title or interest in title.

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Further, the new act could not be construed to do any of the following:

-- require a recipient or any other person asked to rely on an electronic record or an electronic signature to accept such a record or signature or to respond to or act upon such a record or signature, unless the parties had voluntarily agreed to the use of such a record or signature prior to the transmission;

-- preclude the recipient of an electronic record or signature from establishing the conditions under which the recipient would accept the record or signature, unless the parties had voluntarily agreed to the conditions under which the recipient would accept the electronic record or signature prior to the transmission; or

-- require a governmental entity to accept an electronic record or signature, unless the entity or agency had agreed to accept the record or signature in advance of transmission and the manner and medium of transmission was acceptable to the governmental entity.

The term "electronic signature" is used in the bill to mean an electronic identifier whose use is intended by the person using it to have the same force and effect as the use of a manual signature and 1) is unique to the person using it, 2) is capable of verification, and 3) is under the sole control of the person using it. An "electronic record" would be defined to mean a digital representation of data or information generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another.

Analyst: C. Couch

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.