

HOUSE BILL No. 5537

March 22, 2000, Introduced by Rep. Richner and referred to the Committee on Insurance and Financial Services.

A bill to authorize and provide the terms and conditions under which information and signatures can be transmitted, received, and stored by electronic means.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "uniform electronic transactions act".

3 Sec. 2. As used in this act:

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

9 (b) "Automated transaction" means a transaction conducted or
10 performed, in whole or in part, by electronic means or electronic
11 records, in which the acts or records of 1 or both parties are

1 not reviewed by an individual in the ordinary course in forming a
2 contract, performing under an existing contract, or fulfilling an
3 obligation required by the transaction.

4 (c) "Computer program" means a set of statements or instruc-
5 tions to be used directly or indirectly in an information pro-
6 cessing system in order to bring about a certain result.

7 (d) "Contract" means the total legal obligation resulting
8 from the parties' agreement as affected by this act and other
9 applicable law.

10 (e) "Electronic" means relating to technology having elec-
11 trical, digital, magnetic, wireless, optical, electromagnetic, or
12 similar capabilities.

13 (f) "Electronic agent" means a computer program or an elec-
14 tronic or other automated means used independently to initiate an
15 action or respond to electronic records or performances in whole
16 or in part, without review or action by an individual.

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

19 (h) "Electronic signature" means an electronic sound,
20 symbol, or process attached to or logically associated with a
21 record and executed or adopted by a person with the intent to
22 sign the record.

23 (i) "Governmental agency" means an executive, legislative,
24 or judicial agency, department, board, commission, authority,
25 institution, or instrumentality of the federal, state, or local
26 government.

1 (j) "Information" means, but is not limited to, data, text,
2 images, sounds, codes, computer programs, software and
3 databases.

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

7 (l) "Person" means an individual, corporation, partnership,
8 limited liability company, association, governmental entity, or
9 any other legal entity.

10 (m) "Record" means information that is inscribed on a tangi-
11 ble medium or that is stored in an electronic or other medium and
12 is retrievable in perceivable form.

13 (n) "Security procedure" means a procedure employed for the
14 purpose of verifying that an electronic signature, record, or
15 performance is that of a specific person or for detecting changes
16 or errors in the information in an electronic record. The term
17 includes a procedure that requires the use of algorithms or other
18 codes, identifying words or numbers, encryption, or callback or
19 other acknowledgement procedures.

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

1 (p) "Transaction" means an action or set of actions
2 occurring between 2 or more persons relating to the conduct of
3 business, commercial, or governmental affairs.

4 Sec. 3. (1) Except as otherwise provided in subsection (2)
5 and section 4, this act applies to electronic records and elec-
6 tronic signatures relating to a transaction.

7 (2) This act does not apply to a transaction to the extent
8 it is governed by either of the following:

9 (a) A law governing the creation and execution of wills,
10 codicils, or testamentary trusts.

11 (b) [Except as otherwise provided in subsection (3), the]
uniform commercial code, 1962 PA 174, MCL 440.1101
12 to 440.11102.

[(3) This act does apply to a transaction to the extent it is
governed by section 1107 or 1206 or article 2 or 2A of the uniform
commercial code, 1962 PA 174, MCL 440.1107, 440.1206, and 440.2101
to 440.2982.]

13 [(4)] A transaction subject to this act is also subject to
14 other applicable substantive law.

15 Sec. 4. This act applies to any electronic record or elec-
16 tronic signature created, generated, sent, communicated,
17 received, or stored on or after the effective date of this act.

18 Sec. 5. (1) This act does not require a record or signature
19 to be created, generated, sent, communicated, received, stored,
20 or otherwise processed or used by electronic means or in elec-
21 tronic form.

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

1 (3) A party that agrees to conduct a transaction by
2 electronic means may refuse to conduct other transactions by
3 electronic means. The right granted by this subsection may not
4 be waived by agreement.

5 (4) Unless otherwise prohibited by this act, a provision of
6 this act may be varied by agreement.

7 (5) Whether an electronic record or electronic signature has
8 legal consequences is determined by this act and other applicable
9 law.

10 Sec. 6. This act shall be construed and applied to all of
11 the following:

12 (a) Electronic transactions consistent with other applicable
13 law.

14 (b) Be consistent with reasonable practices concerning elec-
15 tronic transactions and with the continued expansion of those
16 practices.

17 (c) Effectuate its general purpose to make uniform the law
18 with respect to electronic transactions among the states.

19 Sec. 7. (1) A record or signature shall not be denied legal
20 effect or enforceability solely because it is in electronic
21 form.

22 (2) A contract shall not be denied legal effect or enforce-
23 ability solely because an electronic record was used in its
24 formation.

25 (3) If a law requires a record to be in writing, an elec-
26 tronic record satisfies the law.

1 (4) If a law requires an signature, an electronic signature
2 satisfies the law.

3 Sec. 8. (1) If parties have agreed to conduct a transaction
4 by electronic means and a law requires a person to provide, send,
5 or deliver information in writing to another person, the require-
6 ment is satisfied if the information is provided, sent, or deliv-
7 ered in an electronic record capable of retention by the recipi-
8 ent at the time of receipt. An electronic record is not capable
9 of retention by the recipient if the sender or its information
10 processing system inhibits the ability of the recipient to print
11 or store the electronic record.

12 (2) If a law requires a record to be posted or displayed in
13 a certain manner, to be sent, communicated, or transmitted by a
14 specified method, or to contain information that is formatted in
15 a certain manner, all of the following rules apply:

16 (a) The record must be posted or displayed in the manner
17 specified by law.

18 (b) Except as otherwise provided in subsection (4)(b), the
19 record shall be sent, communicated, or transmitted by the method
20 specified by law.

21 (c) The record shall contain the information formatted in
22 the manner specified by law.

23 (3) If a sender inhibits the ability of a recipient to store
24 or print an electronic record, the electronic record is not
25 enforceable against the recipient.

26 (4) The requirements of this section may be varied by either
27 of the following:

1 (a) To the same extent a law other than this act that
2 requires information to be provided, sent, or delivered in writ-
3 ing allows that requirement to be varied by agreement.

4 (b) To the same extent a law other than this act that
5 requires a record be sent, communicated, or transmitted by regu-
6 lar United States mail allows that requirement to be varied by
7 agreement.

8 Sec. 9. (1) An electronic record or electronic signature is
9 attributable to a person if it is the act of the person. The act
10 of the person may be shown in any manner, including a showing of
11 the efficacy of any security procedure applied to determine the
12 person to which the electronic record or electronic signature was
13 attributable.

14 (2) The effect of an electronic record or electronic signa-
15 ture attributed to a person under subsection (1) is determined
16 from the context and surrounding circumstances at the time of its
17 creation, execution, or adoption, including any agreements of the
18 parties, and otherwise as provided by law.

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

22 (a) If the parties have agreed to use a security procedure
23 to detect changes or errors and 1 party has conformed to the pro-
24 cedure, but the other party has not, and the nonconforming party
25 would have detected the change or error had that party also con-
26 formed, the conforming party may void the effect of the changed
27 or erroneous electronic record.

1 (b) In an automated transaction involving an individual, the
2 individual may void the effect of an electronic record that
3 resulted from an error made by the individual in dealing with the
4 electronic agent of another person if the electronic agent did
5 not provide for the prevention or correction of the error and, at
6 the time the individual learns of the error, all of the following
7 apply:

8 (i) The individual promptly notified the other person of the
9 error and that the individual did not intend to be bound by the
10 electronic record received by the other person.

11 (ii) The individual takes reasonable steps to return to the
12 other person or to destroy any consideration received as a result
13 of the erroneous electronic record.

14 (iii) The individual has not used or received any benefit or
15 value from any consideration received from the other person.

16 (c) If neither subdivision (a) nor (b) applies, the error
17 has the same effect as provided by law.

18 (d) Subdivisions (b) and (c) cannot be varied by agreement.

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

1 Sec. 12. (1) If a law requires that a record be retained,
2 the requirement is satisfied by retaining an electronic record of
3 the information if the record does both of the following:

4 (a) Accurately reflects the information set forth in the
5 record after it was first generated in its final form as an elec-
6 tronic record or otherwise.

7 (b) Remains accessible for later reference.

8 (2) A requirement to retain a record in accordance with sub-
9 section (1) does not apply to any information the sole purpose of
10 which is to enable the record to be sent, communicated, or
11 received.

12 (3) A person may satisfy subsection (1) by using the serv-
13 ices of another person if the requirements of subsection (1) are
14 satisfied.

15 (4) If a law requires a record to be presented or retained
16 in its original form, or provides consequences if the record is
17 not presented or retained in its original form, that law is sat-
18 isfied by an electronic record retained in accordance with sub-
19 section (1).

20 (5) If a law requires retention of a check, that requirement
21 is satisfied by retention of an electronic record of the informa-
22 tion on the front and back of the check in accordance with sub-
23 section (1).

24 (6) A record retained as an electronic record in accordance
25 with subsection (1) satisfies a law requiring a person to retain
26 a record for evidentiary, audit, or similar purposes, unless a
27 law enacted after the effective date of this act specifically

1 prohibits the use of an electronic record for the specified
2 purpose.

3 (7) This section does not preclude a governmental agency of
4 this state from specifying additional requirements for the reten-
5 tion of a record subject to the agency's jurisdiction.

6 Sec. 13. In a criminal or civil proceeding, evidence of a
7 record or signature shall not be excluded solely because it is in
8 electronic form.

9 Sec. 14. In an automated transaction, all of the following
10 rules apply:

11 (a) A contract may be formed by the interaction of elec-
12 tronic agents of the parties, even if no individual was aware of
13 or reviewed the electronic agents' actions or the resulting terms
14 and agreements.

15 (b) A contract may be formed by the interaction of an elec-
16 tronic agent and an individual, acting on the individual's own
17 behalf or for another person, including by an interaction in
18 which the individual performs actions that the individual is free
19 to refuse to perform and that the individual knows or has reason
20 to know will cause the electronic agent to complete the transac-
21 tion or performance.

22 (c) The terms of the contract are determined by the substan-
23 tive law applicable to the contract.

24 Sec. 15. (1) Unless otherwise agreed between the sender and
25 the recipient, an electronic record is sent when it complies with
26 all of the following:

1 (a) It is addressed properly or otherwise directed properly
2 to an information processing system that the recipient uses for
3 the purpose of receiving electronic records or information of the
4 type sent and from which the recipient is able to retrieve the
5 electronic record.

6 (b) It is in a form capable of being processed by that
7 system.

8 (c) The record enters an information processing system out-
9 side the control of the sender or of a person that sent the elec-
10 tronic record on behalf of the sender or enters a region of the
11 information processing system used by the recipient that is under
12 the control of the recipient.

13 (2) Unless otherwise agreed between a sender and the recipi-
14 ent, an electronic record is received when it complies with all
15 of the following:

16 (a) It enters an information processing system that the
17 recipient uses for the purpose of receiving electronic records or
18 information of the type sent and from which the recipient is able
19 to retrieve the electronic record.

20 (b) It is in a form capable of being processed by that
21 system.

22 (3) Subsection (2) applies even if the place the information
23 processing system is located is different from the place the
24 electronic record is considered to be received under subsection
25 (4).

26 (4) Unless otherwise expressly provided in the electronic
27 record or agreed between the sender and the recipient, an

1 electronic record is considered to be sent from the sender's
2 place of business and to be received at the recipient's place of
3 business. For purposes of this subsection, all of the following
4 rules apply:

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

8 (b) If the sender or the recipient does not have a place of
9 business, the place of business is the sender's or recipient's
10 residence.

11 (5) An electronic record is received under subsection (2)
12 even if no individual is aware of its receipt.

13 (6) Receipt of an electronic acknowledgment from an informa-
14 tion processing system described in subsection (2) establishes
15 that a record was received but, by itself, does not establish
16 that the content sent corresponds to the content received.

17 (7) If a person is aware that an electronic record purport-
18 edly sent under subsection (1), or purportedly received under
19 subsection (2), was not actually sent or received, the legal
20 effect of the sending or receipt is determined by other applica-
21 ble law. Except to the extent permitted by the other law, the
22 requirements of this subsection may not be varied by agreement.

23 Sec. 16. (1) As used in this section, "transferable record"
24 means an electronic record that is both of the following:

25 (a) Would be a note under sections 3101 to 3801 of the uni-
26 form commercial code, 1962 PA 174, MCL 440.3101 to 440.3801, or a
27 document under sections 7101 to 7603 of the uniform commercial

1 code, 1962 PA 174, MCL 440.7101 to 440.7603, if the electronic
2 record were in writing.

3 (b) The issuer of the electronic record expressly has agreed
4 is a transferable record.

5 (2) A person has control of a transferable record if a
6 system employed for evidencing the transfer of interests in the
7 transferable record reliably establishes that person as the
8 person to which the transferable record was issued or
9 transferred.

10 (3) A system satisfies subsection (2), and a person is con-
11 sidered to have control of a transferable record, if the trans-
12 ferable record is created, stored, and assigned in a manner that
13 all of the following apply:

14 (a) A single authoritative copy of the transferable record
15 exists that is unique, identifiable, and, except as otherwise
16 provided in subdivisions (d), (e), and (f), unalterable.

17 (b) The authoritative copy identifies the person asserting
18 control as 1 of the following:

19 (i) The person to which the transferable record was issued.

20 (ii) If the authoritative copy indicates that the transfer-
21 able record has been transferred, the person to which the trans-
22 ferable record was most recently transferred.

23 (c) The authoritative copy is communicated to and maintained
24 by the person asserting control or its designated custodian.

25 (d) Copies or revisions that add or change an identified
26 assignee of the authoritative copy can be made only with the
27 consent of the person asserting control.

1 (e) Each copy of the authoritative copy and any copy of a
2 copy is readily identifiable as a copy that is not the authorita-
3 tive copy.

4 (f) Any revision of the authoritative copy is readily iden-
5 tifiable as authorized or unauthorized.

6 (4) Except as otherwise agreed, a person having control of a
7 transferable record is the holder, as defined in section 1201 of
8 the uniform commercial code, 1962 PA 174, MCL 440.1201, of the
9 transferable record and has the same rights and defenses as a
10 holder of an equivalent record or writing under section 1201 of
11 the uniform commercial code, 1962 PA 174, MCL 440.1201, includ-
12 ing, if the applicable statutory requirements under section 1201
13 of the uniform commercial code, 1962 PA 174, MCL 440.1201, are
14 satisfied, the rights and defenses of a holder in due course, a
15 holder to which a negotiable document of title has been duly
16 negotiated, or a purchaser. Delivery, possession, and indorse-
17 ment are not required to obtain or exercise any of the rights
18 under this subsection.

19 (5) Except as otherwise agreed, an obligor under a transfer-
20 able record has the same rights and defenses as an equivalent
21 obligor under equivalent records or writings under section 1201
22 of the uniform commercial code, 1962 PA 174, MCL 440.1201.

23 (6) If requested by a person against which enforcement is
24 sought, the person seeking to enforce the transferable record
25 shall provide reasonable proof that the person is in control of
26 the transferable record. Proof may include access to the
27 authoritative copy of the transferable record and related

1 business records sufficient to review the terms of the
2 transferable record and to establish the identity of the person
3 having control of the transferable record. The department of
4 management and budget shall determine for each department wheth-
5 er, and the extent to which, the department will create and
6 retain electronic records and convert written records to elec-
7 tronic records.

8 Sec. 18. (1) Except as otherwise provided in section 12(6),
9 the department of management and budget shall determine whether,
10 and the extent to which, each state department will send and
11 accept electronic records and electronic signatures to and from
12 other persons and otherwise create, generate, communicate, store,
13 process, use, and rely upon electronic records and electronic
14 signatures.

15 (2) To the extent that a governmental agency uses electronic
16 records and electronic signatures under subsection (1), the
17 department of management and budget, giving due consideration to
18 security, may specify any or all of the following:

19 (a) The manner and format in which the electronic records
20 must be created, generated, sent, communicated, received, and
21 stored and the systems established for those purposes.

22 (b) If an electronic record is required to be signed by
23 electronic means, the type of electronic signature required, the
24 manner and format in which the electronic signature is to be
25 affixed to the electronic record, and the identity of or criteria
26 that is to be met by any third party used by a person filing a
27 document.

1 (c) Control processes and procedures as appropriate to
2 ensure adequate preservation, disposition, integrity, security,
3 confidentiality, and auditability of electronic records.

4 (d) Any other required attributes for electronic records
5 that are specified for corresponding nonelectronic records or
6 reasonably necessary under the circumstances.

7 (3) Except as otherwise provided in section 12(6), this act
8 does not require a governmental agency or official of this state
9 to use or permit the use of electronic records or electronic
10 signatures.

11 Sec. 19. (1) The department of management and budget may
12 encourage and promote consistency and interoperability with simi-
13 lar standards adopted by other governmental agencies of this
14 state and other states and the federal government and nongovern-
15 mental persons interacting with governmental agencies of this
16 state.

17 (2) If appropriate, the standards established under subsec-
18 tion (1) may specify differing requirements from which governmen-
19 tal agencies and officials of this state may choose in implement-
20 ing the most appropriate standard for a particular application.