

Act No. 305
Public Acts of 2000
Approved by the Governor
October 14, 2000
Filed with the Secretary of State
October 16, 2000
EFFECTIVE DATE: October 16, 2000

**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 2000**

Introduced by Rep. Richner

ENROLLED HOUSE BILL No. 5537

AN ACT 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:

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

Sec. 2. As used in this act:

(a) “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.

(b) “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 1 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.

(c) “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.

(d) “Contract” means the total legal obligation resulting from the parties’ agreement as affected by this act and other applicable law.

(e) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(f) “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.

(g) “Electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means.

(h) “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.

(i) “Governmental agency” means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal, state, or local government.

(j) “Information” means, but is not limited to, data, text, images, sounds, codes, computer programs, software and databases.

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

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

(m) "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.

(n) "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, or callback or other acknowledgment procedures.

(o) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or 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 federal law or formally acknowledged by a state.

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

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

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

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

(b) Except as otherwise provided in subsection (3), the uniform commercial code, 1962 PA 174, MCL 440.1101 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.

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

Sec. 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.

Sec. 5. (1) This act 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.

(2) 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.

(3) 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.

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

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

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

(a) Electronic transactions consistent with other applicable law.

(b) Be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices.

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

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

(2) A contract shall 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.

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

Sec. 8. (1) 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 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.

(2) If a law 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, all of the following rules apply:

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

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

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

(3) 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.

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

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

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

Sec. 9. (1) An electronic record or electronic signature is attributable to a person if it is 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.

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

Sec. 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 1 party has conformed 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 void the effect of the changed or erroneous electronic record.

(b) In an automated transaction involving an individual, the individual may void 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 for the prevention or correction of the error and, at the time the individual learns of the error, all of the following apply:

(i) The individual promptly notified 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.

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

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

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

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

Sec. 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.

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

(a) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise.

(b) Remains accessible for later reference.

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

(3) A person may satisfy subsection (1) by using the services of another person if the requirements of subsection (1) are satisfied.

(4) 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 (1).

(5) 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 (1).

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

(7) This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

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

Sec. 14. In an automated transaction, all of 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 that 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 the contract.

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

(a) It is addressed properly or otherwise directed properly to an information processing system that the recipient 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.

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

(c) The record 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 used by the recipient that is under the control of the recipient.

(2) Unless otherwise agreed between a sender and the recipient, an electronic record is received when it complies with all of the following:

(a) It enters an information processing system that the recipient 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.

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

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

(4) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is considered 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, all of the following rules apply:

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

(b) 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.

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

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

(7) If a person is aware that an electronic record purportedly sent under subsection (1), or purportedly received under subsection (2), 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.

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

(a) Would be a note under sections 3101 to 3801 of the uniform commercial code, 1962 PA 174, MCL 440.3101 to 440.3801, or a document under sections 7101 to 7603 of the uniform commercial code, 1962 PA 174, MCL 440.7101 to 440.7603, if the electronic record were in writing.

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

(2) 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.

(3) A system satisfies subsection (2), and a person is considered to have control of a transferable record, if the transferable record is created, stored, and assigned in a manner that all of the following apply:

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

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

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

(ii) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred.

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

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

(e) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy.

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

(4) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section 1201 of the uniform commercial code, 1962 PA 174, MCL 440.1201, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under section 1201 of the uniform commercial code, 1962 PA 174, MCL 440.1201, including, if the applicable statutory requirements under section 1201 of the uniform commercial code, 1962 PA 174, MCL 440.1201, 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.

(5) 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 section 1201 of the uniform commercial code, 1962 PA 174, MCL 440.1201.

(6) 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. The department of management and budget shall determine for each department whether, and the extent to which, the department will create and retain electronic records and convert written records to electronic records.

Sec. 18. (1) Except as otherwise provided in section 12(6), the department of management and budget shall determine whether, and the extent to which, each state department 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.

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

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

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

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

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

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

Sec. 19. (1) The department of management and budget may encourage and promote consistency and interoperability with similar standards adopted by other governmental agencies of this state and other states and the federal government and nongovernmental persons interacting with governmental agencies of this state.

(2) If appropriate, the standards established under subsection (1) may specify differing requirements from which governmental agencies and officials of this state may choose in implementing the most appropriate standard for a particular application.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.