

By: Senator(s) Carlton

To: Fees, Salaries and
Administration;
Appropriations

SENATE BILL NO. 2678

1 AN ACT TO ENACT THE UNIFORM ELECTRONIC TRANSACTIONS ACT; TO
 2 CREATE A SHORT TITLE; TO ENACT DEFINITIONS; TO PRESCRIBE THE SCOPE
 3 OF THE ACT; TO DETERMINE PROSPECTIVE APPLICATION; TO PROVIDE FOR
 4 THE USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES AND FOR
 5 VARIATION BY AGREEMENT; TO SPECIFY THE CONSTRUCTION AND
 6 APPLICATION OF THE ACT; TO PROVIDE FOR LEGAL RECOGNITION OF
 7 ELECTRONIC RECORDS, ELECTRONIC SIGNATURES, AND ELECTRONIC
 8 CONTRACTS; TO PROVIDE FOR PROVISION OF INFORMATION IN WRITING; TO
 9 SPECIFY THE PRESENTATION OF RECORDS; TO PROVIDE THE ATTRIBUTION
 10 AND EFFECT OF ELECTRONIC RECORD AND ELECTRONIC SIGNATURE; TO
 11 SPECIFY THE EFFECT OF CHANGE OR ERROR; TO PROVIDE FOR NOTARIZATION
 12 AND ACKNOWLEDGMENT; TO PROVIDE FOR THE RETENTION OF ELECTRONIC
 13 RECORDS AND ORIGINALS; TO SPECIFY THE ADMISSIBILITY IN EVIDENCE OF
 14 ELECTRONIC RECORDS; TO PROVIDE FOR AUTOMATED TRANSACTION; TO
 15 SPECIFY THE TIME AND PLACE OF SENDING AND RECEIPT; TO PROVIDE WHEN
 16 RECORDS ARE TRANSFERABLE RECORDS; TO PROVIDE FOR THE CREATION AND
 17 RETENTION OF ELECTRONIC RECORDS AND CONVERSION OF WRITTEN RECORDS
 18 BY GOVERNMENTAL AGENCIES; TO PROVIDE FOR THE ACCEPTANCE AND
 19 DISTRIBUTION OF ELECTRONIC RECORDS BY GOVERNMENTAL AGENCIES; TO
 20 PROVIDE FOR INTEROPERABILITY WITH SIMILAR STANDARDS ADOPTED BY
 21 OTHER AGENCIES; TO ENACT A SEVERABILITY CLAUSE; TO REPEAL SECTIONS
 22 25-63-1, 25-63-3, 25-63-5, 25-63-7, 25-63-9 AND 25-63-11,
 23 MISSISSIPPI CODE OF 1972, WHICH CONSTITUTE THE DIGITAL SIGNATURE
 24 ACT OF 1997; AND FOR RELATED PURPOSES.

25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

26 SECTION 1. **Short title.** This chapter may be cited as the
 27 Uniform Electronic Transactions Act.

28 SECTION 2. **Definitions.** In this chapter:

29 (1) "Agreement" means the bargain of the parties in
 30 fact, as found in their language or inferred from other
 31 circumstances and from rules, regulations and procedures given the
 32 effect of agreements under laws otherwise applicable to a
 33 particular transaction.

34 (2) "Automated transaction" means a transaction
 35 conducted or performed, in whole or in part, by electronic means
 36 or electronic records, in which the acts or records of one or both

37 parties are not reviewed by an individual in the ordinary course
38 in forming a contract, performing under an existing contract, or
39 fulfilling an obligation required by the transaction.

40 (3) "Computer program" means a set of statements or
41 instructions to be used directly or indirectly in an information
42 processing system in order to bring about a certain result.

43 (4) "Contract" means the total legal obligation
44 resulting from the parties' agreement as affected by this chapter
45 and other applicable law.

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

49 (6) "Electronic agent" means a computer program or an
50 electronic or other automated means used independently to initiate
51 an action or respond to electronic records or performances in
52 whole or in part, without review or action by an individual.

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

56 (8) "Electronic signature" means an electronic sound,
57 symbol, or process attached to or logically associated with a
58 record and executed or adopted by a person with the intent to sign
59 the record.

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

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

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

70 (12) "Person" means an individual, corporation,
71 business trust, estate, trust, partnership, limited liability
72 company, association, joint venture, governmental agency, public
73 corporation, or any other legal or commercial entity.

74 (13) "Record" means information that is inscribed on a
75 tangible medium or that is stored in an electronic or other medium
76 and is retrievable in perceivable form.

77 (14) "Security procedure" means a procedure employed
78 for the purpose of verifying that an electronic signature, record,
79 or performance is that of a specific person or for detecting
80 changes or errors in the information in an electronic record. The
81 term includes a procedure that requires the use of algorithms or
82 other codes, identifying words or numbers, encryption, or callback
83 or other acknowledgment procedures.

84 (15) "State" means a state of the United States, the
85 District of Columbia, Puerto Rico, the United States Virgin
86 Islands, or any territory or insular possession subject to the
87 jurisdiction of the United States. The term includes an Indian
88 tribe or band, or Alaskan native village, which is recognized by
89 federal law or formally acknowledged by a state.

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

93 SECTION 3. **Scope.**

94 (a) Except as otherwise provided in subsection (b), this
95 chapter applies to electronic records and electronic signatures
96 relating to a transaction.

97 (b) This chapter does not apply to a transaction to the
98 extent it is governed by:

99 (1) A law governing the creation and execution of
100 wills, codicils, or testamentary trusts;

101 (2) The Uniform Commercial Code other than Sections
102 75-1-107 and 75-1-206, Article 2 [(Section 75-2-101 et. seq.

103 (sales)], and Article 2A [(Section 75-2A-101 et. seq. (leases))];
104 and

105 (3) Title 75, Chapter 1 General Provisions, other than
106 Section 75-1-107 Waiver or Renunciation of Claim and Section
107 75-1-206 Statute of Frauds on Miscellaneous Personal Property.

108 (4) A statute, regulation or other rule of law
109 governing adoption, divorce or other matters of family law. The
110 provisions of this chapter shall not apply to court orders or
111 notices, or official court documents (including briefs, pleadings
112 and other writings) required to be executed in connection with
113 court proceedings; any document required to accompany any
114 transportation or handling of hazardous materials, pesticides or
115 other toxic or dangerous materials; or any notice of (a) the
116 cancellation or termination of utility services (including water,
117 heat and power); (b) default, acceleration, repossession,
118 foreclosure or eviction, or right to cure, under a credit
119 agreement secured by, or a rental agreement for, a primary
120 residence of an individual; (c) the cancellation or termination of
121 health insurance or benefits or life insurance benefits (excluding
122 annuities); or (d) recall of a product, or material failure of a
123 product, that risks endangering health or safety.

124 (c) This chapter applies to an electronic record or
125 electronic signature otherwise excluded from the application of
126 this chapter under subsection (b) to the extent it is governed by
127 a law other than those specified in subsection (b).

128 (d) A transaction subject to this chapter is also subject to
129 other applicable substantive law.

130 **SECTION 4. Prospective Application.** This chapter applies to
131 any electronic record or electronic signature created, generated,
132 sent, communicated, received, or stored on or after July 1, 2001.

133 **SECTION 5. Use of electronic records and electronic**
134 **signatures; variation by agreement.**

135 (a) This chapter does not require a record or signature to
136 be created, generated, sent, communicated, received, stored, or
137 otherwise processed or used by electronic means or in electronic
138 form.

139 (b) This chapter applies only to transactions between
140 parties each of which has agreed to conduct transactions by
141 electronic means. Whether the parties agree to conduct a
142 transaction by electronic means is determined from the context and
143 surrounding circumstances, including the parties' conduct.

144 (c) A party that agrees to conduct a transaction by
145 electronic means may refuse to conduct other transactions by
146 electronic means. The right granted by this subsection may not be
147 waived by agreement.

148 (d) Except as otherwise provided in this chapter, the effect
149 of any of its provisions may be varied by agreement. The presence
150 in certain provisions of this chapter of the words "unless
151 otherwise agreed", or words of similar import, does not imply that
152 the effect of other provisions may not be varied by agreement.

153 (e) Whether an electronic record or electronic signature has
154 legal consequences is determined by this chapter and other
155 applicable law.

156 **SECTION 6. Construction and application.** This chapter must
157 be construed and applied:

158 (1) To facilitate electronic transactions consistent
159 with other applicable law;

160 (2) To be consistent with reasonable practices
161 concerning electronic transactions and with the continued
162 expansion of those practices; and

163 (3) To effectuate its general purpose to make uniform
164 the law with respect to the subject of this chapter among states
165 enacting it.

166 **SECTION 7. Legal recognition of electronic records,**
167 **electronic signatures and electronic contracts.**

168 (a) A record or signature may not be denied legal effect or
169 enforceability solely because it is in electronic form.

170 (b) A contract may not be denied legal effect or
171 enforceability solely because an electronic record was used in its
172 formation.

173 (c) If a law requires a record to be in writing, an
174 electronic record satisfies the law.

175 (d) If a law requires a signature, an electronic signature
176 satisfies the law.

177 **SECTION 8. Provision of information in writing; presentation**
178 **of records.**

179 (a) If parties have agreed to conduct a transaction by
180 electronic means and a law requires a person to provide, send, or
181 deliver information in writing to another person, the requirement
182 is satisfied if the information is provided, sent, or delivered,
183 as the case may be, in an electronic record capable of retention
184 by the recipient at the time of receipt. An electronic record is
185 not capable of retention by the recipient if the sender or its
186 information processing system inhibits the ability of the
187 recipient to print or store the electronic record.

188 (b) If a law other than this chapter requires a record (i)
189 to be posted or displayed in a certain manner, (ii) to be sent,
190 communicated, or transmitted by a specified method, or (iii) to
191 contain information that is formatted in a certain manner, the
192 following rules apply:

193 (1) The record must be posted or displayed in the
194 manner specified in the other law.

195 (2) Except as otherwise provided in subsection (d)(2),
196 the record must be sent, communicated, or transmitted by the
197 method specified in the other law.

198 (3) The record must contain the information formatted
199 in the manner specified in the other law.

200 (c) If a sender inhibits the ability of a recipient to store
201 or print an electronic record, the electronic record is not
202 enforceable against the recipient.

203 (d) The requirements of this section may not be varied by
204 agreement, but:

205 (1) To the extent a law other than this chapter
206 requires information to be provided, sent, or delivered in writing
207 but permits that requirement to be varied by agreement, the
208 requirement under subsection (a) that the information be in the
209 form of an electronic record capable of retention may also be
210 varied by agreement; and

211 (2) A requirement under a law other than this chapter
212 to send, communicate, or transmit a record by first class mail,
213 postage prepaid or regular United States mail, may be varied by
214 agreement to the extent permitted by the other law.

215 **SECTION 9. Attribution and effect of electronic record and**
216 **electronic signature.**

217 (a) An electronic record or electronic signature is
218 attributable to a person if it was the act of the person. The act
219 of the person may be shown in any manner, including a showing of
220 the efficacy of any security procedure applied to determine the
221 person to which the electronic record or electronic signature was
222 attributable.

223 (b) The effect of an electronic record or electronic
224 signature attributed to a person under subsection (a) is
225 determined from the context and surrounding circumstances at the
226 time of its creation, execution, or adoption, including the
227 parties' agreement, if any, and otherwise as provided by law.

228 **SECTION 10. Effect of change or error.** If a change or error
229 in an electronic record occurs in a transmission between parties
230 to a transaction, the following rules apply:

231 (1) If the parties have agreed to use a security
232 procedure to detect changes or errors and one party has conformed

233 to the procedure, but the other party has not, and the
234 nonconforming party would have detected the change or error had
235 that party also conformed, the conforming party may avoid the
236 effect of the changed or erroneous electronic record.

237 (2) In an automated transaction involving an
238 individual, the individual may avoid the effect of an electronic
239 record that resulted from an error made by the individual in
240 dealing with the electronic agent of another person if the
241 electronic agent did not provide an opportunity for the prevention
242 or correction of the error and, at the time the individual learns
243 of the error, the individual:

244 (A) Promptly notifies the other person of the
245 error and that the individual did not intend to be bound by the
246 electronic record received by the other person;

247 (B) Takes reasonable steps, including steps that
248 conform to the other person's reasonable instructions, to return
249 to the other person or, if instructed by the other person, to
250 destroy the consideration received, if any, as a result of the
251 erroneous electronic record; and

252 (C) Has not used or received any benefit or value
253 from the consideration, if any, received from the other person.

254 (3) If neither paragraph (1) nor paragraph (2) applies,
255 the change or error has the effect provided by other law,
256 including the law of mistake, and the parties' contract, if any.

257 (4) Paragraphs (2) and (3) may not be varied by
258 agreement.

259 **SECTION 11. Notarization and acknowledgment.** If a law
260 requires a signature or record to be notarized, acknowledged,
261 verified, or made under oath, the requirement is satisfied if the
262 electronic signature of the person authorized to perform those
263 acts, together with all other information required to be included
264 by other applicable law, is attached to or logically associated
265 with the signature or record.

266 SECTION 12. **Retention of electronic records; originals.**

267 (a) If a law requires that a record be retained, the
268 requirement is satisfied by retaining an electronic record of the
269 information in the record which:

270 (1) Accurately reflects the information set forth in
271 the record at the time it was first generated in its final form as
272 an electronic record or otherwise; and

273 (2) Remains accessible for later reference.

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

278 (c) A person may satisfy subsection (a) by using the
279 services of another person if the requirements of that subsection
280 are satisfied.

281 (d) If a law requires a record to be presented or retained
282 in its original form, or provides consequences if the record is
283 not presented or retained in its original form, that law is
284 satisfied by an electronic record retained in accordance with
285 subsection (a).

286 (e) If a law requires retention of a check, that requirement
287 is satisfied by retention of an electronic record of the
288 information on the front and back of the check in accordance with
289 subsection (a).

290 (f) A record retained as an electronic record in accordance
291 with subsection (a) satisfies a law requiring a person to retain a
292 record for evidentiary, audit, or like purposes, unless a law
293 enacted after the effective date of this chapter specifically
294 prohibits the use of an electronic record for the specified
295 purpose.

296 (g) This section does not preclude a governmental agency of
297 this State from specifying additional requirements for the
298 retention of a record subject to the agency's jurisdiction.

299 SECTION 13. Admissibility in evidence. In a proceeding,
300 evidence of a record or signature may not be excluded solely
301 because it is in electronic form.

302 SECTION 14. Automated transaction. In an automated
303 transaction, the following rules apply:

304 (1) A contract may be formed by the interaction of
305 electronic agents of the parties, even if no individual was aware
306 of or reviewed the electronic agents' actions or the resulting
307 terms and agreements.

308 (2) A contract may be formed by the interaction of an
309 electronic agent and an individual, acting on the individual's own
310 behalf or for another person, including by an interaction in which
311 the individual performs actions that the individual is free to
312 refuse to perform and which the individual knows or has reason to
313 know will cause the electronic agent to complete the transaction
314 or performance.

315 (3) The terms of the contract are determined by the
316 substantive law applicable to it.

317 SECTION 15. Time and place of sending and receipt.

318 (a) Unless otherwise agreed between the sender and the
319 recipient, an electronic record is sent when it:

320 (1) Is addressed properly or otherwise directed
321 properly to an information processing system that the recipient
322 has designated or uses for the purpose of receiving electronic
323 records or information of the type sent and from which the
324 recipient is able to retrieve the electronic record;

325 (2) Is in a form capable of being processed by that
326 system; and

327 (3) Enters an information processing system outside the
328 control of the sender or of a person that sent the electronic
329 record on behalf of the sender or enters a region of the
330 information processing system designated or used by the recipient
331 which is under the control of the recipient.

332 (b) Unless otherwise agreed between a sender and the
333 recipient, an electronic record is received when:

334 (1) It enters an information processing system that the
335 recipient has designated or uses for the purpose of receiving
336 electronic records or information of the type sent and from which
337 the recipient is able to retrieve the electronic record; and

338 (2) It is in a form capable of being processed by that
339 system.

340 (c) Subsection (b) applies even if the place the information
341 processing system is located is different from the place the
342 electronic record is deemed to be received under subsection (d).

343 (d) Unless otherwise expressly provided in the electronic
344 record or agreed between the sender and the recipient, an
345 electronic record is deemed to be sent from the sender's place of
346 business and to be received at the recipient's place of business.
347 For purposes of this subsection, the following rules apply:

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

351 (2) If the sender or the recipient does not have a
352 place of business, the place of business is the sender's or
353 recipient's residence, as the case may be.

354 (e) An electronic record is received under subsection (b)
355 even if no individual is aware of its receipt.

356 (f) Receipt of an electronic acknowledgment from an
357 information processing system described in subsection (b)
358 establishes that a record was received but, by itself, does not
359 establish that the content sent corresponds to the content
360 received.

361 (g) If a person is aware that an electronic record
362 purportedly sent under subsection (a), or purportedly received
363 under subsection (b), was not actually sent or received, the legal
364 effect of the sending or receipt is determined by other applicable

365 law. Except to the extent permitted by the other law, the
366 requirements of this subsection may not be varied by agreement.

367 SECTION 16. Transferable records.

368 (a) In this section, "transferable record" means an
369 electronic record that:

370 (1) Would be a note under Article 3 of the Uniform
371 Commercial Code (Section 75-3-101 et. seq.) or a document Article
372 7 of the Uniform Commercial Code (Section 75-7-101 et. seq.) if
373 the electronic record were in writing; and

374 (2) The issuer of the electronic record expressly has
375 agreed is a transferable record.

376 (b) A person has control of a transferable record if a
377 system employed for evidencing the transfer of interests in the
378 transferable record reliably establishes that person as the person
379 to which the transferable record was issued or transferred.

380 (c) A system satisfies subsection (b), and a person is
381 deemed to have control of a transferable record, if the
382 transferable record is created, stored, and assigned in such a
383 manner that:

384 (1) A single authoritative copy of the transferable
385 record exists which is unique, identifiable, and, except as
386 otherwise provided in paragraphs (4), (5) and (6), unalterable;

387 (2) The authoritative copy identifies the person
388 asserting control as:

389 (A) The person to which the transferable record
390 was issued; or

391 (B) If the authoritative copy indicates that the
392 transferable record has been transferred, the person to which the
393 transferable record was most recently transferred;

394 (3) The authoritative copy is communicated to and
395 maintained by the person asserting control or its designated
396 custodian;

397 (4) Copies or revisions that add or change an
398 identified assignee of the authoritative copy can be made only
399 with the consent of the person asserting control;

400 (5) Each copy of the authoritative copy and any copy of
401 a copy is readily identifiable as a copy that is not the
402 authoritative copy; and

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

405 (d) Except as otherwise agreed, a person having control of a
406 transferable record is the holder, as defined in Section
407 75-1-201(20), of the transferable record and has the same rights
408 and defenses as a holder of an equivalent record or writing under
409 the Uniform Commercial Code, including, if the applicable
410 statutory requirements under Section 75-3-302(a), 75-7-501 or
411 75-9-308 are satisfied, the rights and defenses of a holder in due
412 course, a holder to which a negotiable document of title has been
413 duly negotiated, or a purchaser, respectively. Delivery,
414 possession and endorsement are not required to obtain or exercise
415 any of the rights under this subsection.

416 (e) Except as otherwise agreed, an obligor under a
417 transferable record has the same rights and defenses as an
418 equivalent obligor under equivalent records or writings under the
419 Uniform Commercial Code.

420 (f) If requested by a person against which enforcement is
421 sought, the person seeking to enforce the transferable record
422 shall provide reasonable proof that the person is in control of
423 the transferable record. Proof may include access to the
424 authoritative copy of the transferable record and related business
425 records sufficient to review the terms of the transferable record
426 and to establish the identity of the person having control of the
427 transferable record.

428 **SECTION 17. Creation and retention of electronic records and**
429 **conversion of written records by governmental agencies.** The

430 executive authority of each governmental agency of this state
431 shall determine whether, and the extent to which, it will create
432 and retain electronic records and convert written records to
433 electronic records subject to applicable policies and standards of
434 the Mississippi Department of Information Technology Services and
435 the Mississippi Department of Archives and History as may be
436 adopted pursuant to law.

437 **SECTION 18. Acceptance and distribution of electronic**
438 **records by governmental agencies.**

439 (a) Except as otherwise provided in Section 12(f), the
440 executive authority of each governmental agency of this State
441 shall determine whether, and the extent to which, it will send and
442 accept electronic records and electronic signatures to and from
443 other persons and otherwise create, generate, communicate, store,
444 process, use, and rely upon electronic records and electronic
445 signatures.

446 (b) To the extent that a governmental agency uses electronic
447 records and electronic signatures under subsection (a), the
448 executive authority of the governmental agency, giving due
449 consideration to security, may specify:

450 (1) The manner and format in which the electronic
451 records must be created, generated, sent, communicated, received,
452 and stored and the systems established for those purposes;

453 (2) If electronic records must be signed by electronic
454 means, the type of electronic signature required, the manner and
455 format in which the electronic signature must be affixed to the
456 electronic record, and the identity of, or criteria that must be
457 met by, any third party used by a person filing a document to
458 facilitate the process;

459 (3) Control processes and procedures as appropriate to
460 ensure adequate preservation, disposition, integrity, security,
461 confidentiality, and auditability of electronic records; and

462 (4) Any other required attributes for electronic
463 records which are specified for corresponding nonelectronic
464 records or reasonably necessary under the circumstances.

465 (c) Except as otherwise provided in Section 12(f), this
466 chapter does not require a governmental agency of this state to
467 use or permit the use of electronic records or electronic
468 signatures.

469 SECTION 19. **Interoperability.** The governmental agency of
470 this state which adopts standards pursuant to Section 18 may
471 encourage and promote consistency and interoperability with
472 similar requirements adopted by other governmental agencies of
473 this and other states and the federal government and
474 nongovernmental persons interacting with governmental agencies of
475 this state. If appropriate, those standards may specify differing
476 levels of standards from which governmental agencies of this state
477 may choose in implementing the most appropriate standard for a
478 particular application.

479 SECTION 20. **Severability clause.** If any provision of this
480 chapter or its application to any person or circumstance is held
481 invalid, the invalidity does not affect other provisions or
482 applications of this chapter which can be given effect without the
483 invalid provision or application, and to this end the provisions
484 of this chapter are severable.

485 SECTION 21. Sections 25-63-1, 25-63-3, 25-63-5, 25-63-7,
486 25-63-9 and 25-63-11, Mississippi Code of 1972, which constitute
487 the Digital Signature Act of 1997, are repealed.

488 SECTION 22. **Effective date.** This act shall take effect and
489 be in force from and after July 1, 2001.