

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.