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SENATE, No. 1183

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED MARCH 27, 2000

Sponsored by:

Senator JOSEPH M. KYRILLOS, JR.

District 13 (Middlesex and Monmouth)

SYNOPSIS

Creates the "Uniform Electronic Transactions Act."

CURRENT VERSION OF TEXT

As introduced.



S1183 KYRILLOS

2

1 **AN ACT** creating the "Uniform Electronic Transactions Act" and
2 supplementing Title 12A of the New Jersey Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. This act shall be known and may be cited as the "Uniform
8 Electronic Transactions Act."

9

10 2. As used in this act:

11 "Agreement" means the bargain of the parties in fact, as found in
12 their language or inferred from other circumstances, and from rules,
13 regulations and procedures given the effect of agreements under laws
14 otherwise applicable to a particular transaction.

15 "Automated transaction" means a transaction conducted or
16 performed, in whole or in part, by electronic means or electronic
17 records, in which the acts or records of one or both parties are not
18 reviewed by an individual in the ordinary course in forming a contract,
19 performing under an existing contract or fulfilling an obligation
20 required by the transaction.

21 "Computer program" means a set of statements or instructions to
22 be used directly or indirectly in an information processing system in
23 order to bring about a certain result.

24 "Contract" means the total legal obligation resulting from the
25 parties' agreement as affected by this act and other applicable law.

26 "Electronic" means relating to technology having an electrical,
27 digital, magnetic, wireless, optical, electromagnetic or similar
28 capabilities.

29 "Electronic agent" means a computer program or an electronic or
30 other automated means used independently to initiate an action or
31 respond to electronic records or performances in whole or in part,
32 without review or action by an individual.

33 "Electronic record" means a record created, generated, sent,
34 communicated, received or stored by electronic means.

35 "Electronic signature" means an electronic sound, symbol, or
36 process attached to or logically associated with a record and executed
37 or adopted by a person with the intent to sign the record.

38 "Governmental agency" means an executive, legislative or judicial
39 agency, department, board, commission, authority, institution or
40 instrumentality of the federal government or of a state or of a county,
41 municipality, or other political subdivision of a state.

42 "Information" means data, text, images, sounds, codes, computer
43 programs, software, databases or the like.

44 "Information processing system" means an electronic system for
45 creating, generating, sending, receiving, storing, displaying or

S1183 KYRILLOS

1 processing information.

2 "Person" means an individual, corporation, business trust, estate,
3 trust, partnership, limited liability company, association, joint venture,
4 governmental agency, public corporation, or any other legal or
5 commercial entity.

6 "Record" means information that is inscribed on a tangible medium
7 or that is stored in an electronic or other medium and is retrievable in
8 perceivable form.

9 "Security procedure" means a procedure employed for the purpose
10 of verifying that an electronic signature, record or performance is that
11 of a specific person or for detecting changes or errors in the
12 information in an electronic record. The term includes a procedure
13 that requires the use of algorithms or other codes, identifying words
14 or numbers, encryption, callback or other acknowledgment
15 procedures.

16 "State" means a state of the United States, the District of Columbia,
17 Puerto Rico, the United States Virgin Islands, or any territory or
18 insular possession subject to the jurisdiction of the United States. The
19 term includes an Indian tribe or band, or Alaskan native village, which
20 is recognized by a federal law or formally acknowledged by a state.

21 "Transaction" means an action or set of actions occurring between
22 two or more persons relating to the conduct of business, commercial
23 or governmental affairs.

24

25 3. a. Except as provided in subsection b. of this section, this act
26 applies to electronic records and electronic signatures relating to a
27 transaction.

28 b. This act does not apply to a transaction to the extent it is
29 governed by:

30 (1) a law governing the creation and execution of wills, codicils or
31 testamentary trusts;

32 (2) the Uniform Commercial Code other than sections 1-107 and
33 1-206, Article 2 and Article 2A; and

34 (3) other laws as may be excluded from the provisions of this act.

35 c. This act applies to an electronic record or electronic signature
36 otherwise excluded from the application of this act under subsection
37 b. of this section to the extent it is governed by a law other than those
38 specified in subsection b. of this section.

39 d. A transaction subject to this act is subject also to other
40 applicable substantive law.

41

42 4. This act applies to any electronic record or electronic signature
43 created, generated, sent, communicated, received or stored on or after
44 the effective date of this act.

S1183 KYRILLOS

- 1 5. a. This act does not require a record or signature to be created,
2 generated, stored, sent, communicated, received, stored or otherwise
3 processed or used by electronic means or in electronic form.
- 4 b. This act applies only to transactions between parties each of
5 which has agreed to conduct transactions by electronic means.
6 Whether the parties agree to conduct a transaction by electronic means
7 is determined from the context and surrounding circumstances,
8 including the parties' conduct.
- 9 c. A party that agrees to conduct a transaction by electronic means
10 may refuse to conduct other transactions by electronic means. The
11 right granted by this subsection may not be waived by agreement.
- 12 d. Except as otherwise provided in this act, the effect of any of its
13 provisions may be varied by agreement. The presence in certain
14 provisions of this act of the words "unless otherwise agreed," or words
15 of similar import, does not imply that the effect of other provisions
16 may not be varied by agreement.
- 17 e. Whether an electronic record or electronic signature has legal
18 consequences is determined by this act and other applicable law.
19
- 20 6. This act shall be construed and applied:
- 21 a. to facilitate electronic transactions consistent with other
22 applicable law;
- 23 b. to be consistent with reasonable practices concerning electronic
24 transactions and with the continued expansion of those practices; and
25 c. to effectuate its general purpose to make uniform the law with
26 respect to the subject of this act among the states enacting it.
27
- 28 7. a. A record or signature may not be denied legal effect or
29 enforceability solely because it is in electronic form.
- 30 b. A contract may not be denied legal effect or enforceability solely
31 because an electronic record was used in its formation.
- 32 c. If a law requires a record to be in writing, an electronic record
33 satisfies the law.
- 34 d. If a law requires a signature, an electronic signature satisfies the
35 law.
36
- 37 8. a. If parties have agreed to conduct a transaction by electronic
38 means and a law requires a person to provide, send, or deliver
39 information in writing to another person, the requirement is satisfied
40 if the information is provided, sent, or delivered, as the case may be,
41 in an electronic record capable of retention by the recipient at the time
42 of receipt. An electronic record is not capable of retention by the
43 recipient if the sender or its information processing system inhibits the
44 ability of the recipient to print or store the electronic record.
- 45 b. If a law other than this act requires a record to be posted or

S1183 KYRILLOS

1 displayed in a certain manner, to be sent, communicated or transmitted
2 by a specified method, or to contain information that is formatted in
3 a certain manner, the following apply:

4 (1) The record shall be posted or displayed in the manner specified
5 in the other law.

6 (2) Except as otherwise provided in paragraph (2) of subsection d.
7 of this section, the record shall be sent, communicated or transmitted
8 by the method specified in the other law.

9 (3) The record shall contain the information formatted in the
10 manner specified in the other law.

11 c. If a sender inhibits the ability of a recipient to store or print an
12 electronic record, the electronic record is not enforceable against the
13 recipient.

14 d. The requirements of this section may not be varied by
15 agreement, but:

16 (1) to the extent a law other than this act requires information to
17 be provided, sent, or delivered in writing but permits that requirement
18 to be varied by agreement, the requirement under subsection a. of this
19 section that the information be in the form of an electronic record
20 capable of retention may also be varied by agreement; and

21 (2) a requirement under a law other than this act to send,
22 communicate, or transmit a record by United States mail, may be
23 varied by agreement to the extent permitted by the other law.

24

25 9. a. An electronic record or electronic signature is attributable to
26 a person if it was the act of the person. The act of the person may be
27 shown in any manner, including a showing of the efficacy of any
28 security procedure applied to determine the person to which the
29 electronic record or electronic signature was attributable.

30 b. The effect of an electronic record or electronic signature
31 attributed to a person under subsection a. of this section is determined
32 from the context and surrounding circumstances at the time of its
33 creation, execution or adoption, including the parties' agreement, if
34 any, and as otherwise provided by law.

35

36 10. If a change or error in an electronic record occurs in a
37 transmission between parties to a transaction, the following rules
38 apply:

39 a. If the parties have agreed to use a security procedure to detect
40 changes or errors and one party has consented to the procedure but
41 the other party has not, and the nonconforming party would have
42 detected the change or error had that party also conformed, the
43 conforming party may avoid the effect of the changed or erroneous
44 electronic record.

45 b. In an automated transaction involving an individual, the

1 individual may avoid the effect of an electronic record that resulted
2 from an error made by the individual in dealing with the electronic
3 agent of another person if the electronic agent did not provide an
4 opportunity for the prevention or correction of the error, and, at the
5 time the individual learns of the error, the individual:

6 (1) promptly notifies the other person of the error and that the
7 individual did not intend to be bound by the electronic record received
8 by the other person;

9 (2) takes reasonable steps, including steps that conform to the
10 other persons's reasonable instructions, to return to the other person
11 or, if instructed by the other person, to destroy the consideration
12 received, if any, as a result of the erroneous electronic record; and

13 (3) has not used or received any benefit or value from the
14 consideration, if any, received from the other person.

15 c. If neither subsection a. or b. of this section applies, the change
16 or error has the effect provided by other law, including the law of
17 mistake, and the parties' contract, if any.

18 d. Subsections b. and c. of this section may not be varied by
19 agreement.

20

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

27

28 12. a. If a law requires that a record be retained, the requirement
29 is satisfied by retaining an electronic record of the information in the
30 record which:

31 (1) accurately reflects the information set forth in the record after
32 it was first generated in its final form as an electronic record or
33 otherwise; and

34 (2) remains accessible for later reference.

35 b. A requirement to retain a record in accordance with subsection
36 a. of this section does not apply to any information the sole purpose
37 of which is to enable the record to be sent, communicated or received.

38 c. A person may satisfy subsection a. of this section by using the
39 services of another person if the requirements of that subsection are
40 satisfied.

41 d. If a law requires a record to be presented or retained in its
42 original form, or provides consequences if the record is not presented
43 or retained in its original form, that law is satisfied by an electronic
44 record retained in accordance with subsection a. of this section.

45 e. If a law requires retention of a check, that requirement is

1 satisfied by retention of an electronic record of the information on the
2 front and back of the check in accordance with subsection a. of this
3 section.

4 f. A record retained as an electronic record in accordance with
5 subsection a. of this section satisfies a law requiring a person to retain
6 a record for evidentiary, audit or like purposes, unless a law enacted
7 after the effective date of this act specifically prohibits the use of an
8 electronic record for the specified purpose.

9 g. This section does not preclude a governmental agency of this
10 State from specifying additional requirements for the retention of a
11 records subject to the agency's jurisdiction.

12

13 13. In a proceeding, evidence of a record or signature may not be
14 excluded solely because it is in electronic form.

15

16 14. In an automated transaction, the following rules apply:

17 a. A contract may be formed by the interaction of electronic agents
18 of the parties, even if no individual was aware of or reviewed the
19 electronic agents' actions or the resulting terms and agreements.

20 b. A contract may be formed by the interaction of an electronic
21 agent and an individual, acting on the individual's own behalf or for
22 another person, including by an interaction in which the individual
23 performs actions that the individual is free to refuse to perform and
24 which the individual knows or has reason to know will cause the
25 electronic agent to complete the transaction or performance.

26 c. The terms of the contract are determined by the substantive law
27 applicable to it.

28

29 15. a. Unless otherwise agreed between the sender and the
30 recipient, an electronic record is sent when it:

31 (1) is addressed properly or otherwise directed properly to an
32 information processing system that the recipient has designated or uses
33 for the purpose of receiving electronic records or information of the
34 type sent and from which the recipient is able to retrieve the electronic
35 record;

36 (2) is in a form capable of being processed by that system; and

37 (3) enters an information processing system outside the control of
38 the sender or of a person that sent the electronic record on behalf of
39 the sender or enters a region of the information processing system
40 designated or used by the recipient which is under the control of the
41 recipient.

42 b. Unless otherwise agreed between a sender and the recipient, an
43 electronic record is received when:

44 (1) it enters an information processing system that the recipient has
45 designated or uses for the purpose of receiving electronic records or

S1183 KYRILLOS

- 1 information of the type sent and from which the recipient is able to
2 retrieve the electronic record; and
- 3 (2) is in a form capable of being processed by that system.
- 4 c. Subsection b. of this section applies even if the place the
5 information processing system is located is different from the place the
6 electronic record is deemed to be received under subsection d. of this
7 section.
- 8 d. Unless otherwise expressly provided in the electronic record or
9 agreed between the sender and the recipient, an electronic record is
10 deemed to be sent from the sender's place of business and to be
11 received at the recipient's place of business. For purposes of this
12 subsection, the following rules apply:
- 13 (1) If the sender or recipient has more than one place of business,
14 the place of business of that person is the place having the closest
15 relationship to the underlying transaction.
- 16 (2) If the sender or the recipient does not have a place of business,
17 the place of business is the sender's or recipient's residence, as the case
18 may be.
- 19 e. An electronic record is received under subsection b. of this
20 section even if no individual is aware of its receipt.
- 21 f. Receipt of an electronic acknowledgment from an information
22 processing system described in subsection b. of this section establishes
23 that a record was received but, by itself, does not establish that the
24 content sent corresponds to the content received.
- 25 g. If a person is aware that an electronic record purportedly sent
26 under subsection a. of this section, or purportedly received under
27 subsection b. of this section, was not actually sent or received, the
28 legal effect of the sending or receipt is determined by other applicable
29 law. Except to the extent permitted by the other law, the requirements
30 of this subsection may not be varied by agreement.
- 31
- 32 16. a. As used in this section "transferable record" means an
33 electronic record that:
- 34 (1) would be a note under Article 3 of the Uniform Commercial
35 Code or a document under Article 7 of the Uniform Commercial Code
36 if the electronic record were in writing; and
- 37 (2) the issuer of the electronic record expressly has agreed is a
38 transferable record.
- 39 b. A person has control of a transferable record if a system
40 employed for evidencing the transfer of interests in the transferable
41 record reliably establishes that person as the person to which the
42 transferable record was issued or transferred.
- 43 c. A system satisfies subsection b. of this section and the person is
44 deemed to have control of a transferable record if the transferable
45 record is created, stored and assigned in such a manner that:

S1183 KYRILLOS

1 (1) a single authoritative copy of the transferable record exists
2 which is unique, identifiable and, except as otherwise provided in
3 paragraphs (4), (5) and (6) of this subsection, unalterable;

4 (2) the authoritative copy identifies the person asserting control as:

5 (a) the person to which the transferable record was issued; or

6 (b) if the authoritative copy indicates that the transferable record
7 has been transferred, the person to which the transferable record was
8 most recently transferred;

9 (3) the authoritative copy is communicated to and maintained by
10 the person asserting control or its designated custodian;

11 (4) copies or revisions that add or change an identified assignee of
12 the authoritative copy may be made only with the consent of the
13 person asserting control;

14 (5) each copy of the authoritative copy and any copy of a copy is
15 readily identifiable as a copy that is not the authoritative copy; and

16 (6) any revision of the authoritative copy is readily identifiable as
17 authorized or unauthorized.

18 d. Except as otherwise agreed, a person having control of a
19 transferable record is the holder, as defined in section 1-201 of the
20 Uniform Commercial Code of the transferable record and has the same
21 rights and defenses as a holder of an equivalent record or writing
22 under the Uniform Commercial Code including, if the applicable
23 statutory requirements are satisfied, the rights and defenses of a holder
24 in due course, a holder to which a negotiable document of title has
25 been duly negotiated or a purchaser. Delivery, possession and
26 indorsement are not required to obtain or exercise any of the rights
27 under this subsection.

28 e. Except as otherwise agreed, an obligor under a transferable
29 record has the same rights and defenses as an equivalent obligor under
30 equivalent records or writings under the Uniform Commercial Code.

31 f. If requested by a person against which enforcement is sought, the
32 person seeking to enforce the transferable record shall provide
33 reasonable proof that the person is in control of the transferable
34 record. Proof may include access to the authoritative copy of the
35 transferable record and related business records sufficient to review
36 the terms of the transferable record and to establish the identity of the
37 person having control of the transferable record.

38

39 17. Each governmental agency shall determine whether, and the
40 extent to which, it will create and retain electronic records and convert
41 written records to electronic records. Additionally, each executive
42 agency shall comply with standards adopted by the Secretary of State
43 pursuant to section 19 of this act.

44

45 18. a. Except as otherwise provided in subsection f. of section 12

1 of this act or section 17 of this act, each governmental agency shall
2 determine whether, and the extent to which, it will send and accept
3 electronic records and electronic signatures to and from other persons,
4 and otherwise create, generate, communicate, store, process, use and
5 rely upon electronic records and electronic signatures.

6 b. To the extent a governmental agency uses electronic records and
7 electronic signatures under subsection a. of this section, the
8 governmental agency, giving due consideration to security, may
9 specify:

10 (1) the manner and format in which the electronic records must be
11 created, generated, sent, communicated, received and stored and the
12 system established for those purposes;

13 (2) if electronic records must be signed by electronic means, the
14 type of electronic signature required, the manner and format in which
15 the electronic signature must be affixed to the electronic record, and
16 the identity of, or criteria that must be met by, any third party used by
17 a person filing a document to facilitate the process;

18 (3) control processes and procedures appropriate to ensure
19 adequate preservation, disposition, integrity, security, confidentiality
20 and auditability of electronic records; and

21 (4) any other required attributes for electronic records which are
22 currently specified for corresponding nonelectronic records, or
23 reasonably necessary under the circumstances.

24 c. Except as otherwise provided in subsection f. of section 12 of
25 this act or section 17 of this act, this act does not require a
26 governmental agency to use or permit the use of electronic records or
27 electronic signatures.

28

29 19. The Secretary of State shall adopt standards to encourage and
30 promote consistency and interoperability with similar requirements
31 adopted by other governmental agencies of this and other states and
32 the federal government, and nongovernmental persons interacting with
33 governmental agencies of this State. If appropriate, those standards
34 may specify differing levels of standards from which governmental
35 agencies of this State may chose in implementing the most appropriate
36 standard for a particular application.

37

38 20. If any provision of this act or its application to any person or
39 circumstance is held invalid, the invalidity shall not affect other
40 provisions or applications of this act which can be given effect without
41 the invalid provision or application and, to this end, the provisions of
42 this act are severable.

43

44 21. This act shall take effect on the 120th day after enactment.

1 STATEMENT

2

3 This bill concerns electronic records and electronic signatures. It
4 is based on the final draft of the report issued by the National
5 Conference of Commissioners on Uniform State Laws in July, 1999
6 known as the "Uniform Electronic Transactions Act" (UETA).

7 It is the sponsor's intent that this bill be construed and applied to
8 facilitate electronic transactions.

9 UETA applies only to transactions in which each party has agreed
10 by some means to conduct them electronically. Agreement is essential.
11 Parties to electronic transactions come under UETA, but they may
12 also opt out. They may vary, waive or disclaim most of the provisions
13 of UETA by agreement, even if it is agreed that business will be
14 transacted by electronic means. The rules in UETA are almost all
15 default rules that apply if the terms of an agreement do not govern.

16 The objective of UETA is to ensure that transactions in the
17 electronic marketplace are as enforceable as transactions memorialized
18 on paper and with manual signatures, but without changing the
19 substantive rules of law that apply. Thus, the objective of the bill is
20 limited providing that an electronic record of a transaction is the
21 equivalent of a paper record, and that an electronic signature will be
22 given the same legal effect as a manual signature.

23 The basic rules are found in section 7 of UETA. The fundamental
24 rule in section 7 provides that a record or signature may not be denied
25 legal effect or enforceability solely because it is in electronic form.
26 The second rule says that a contract may not be denied legal effect or
27 enforceability solely because an electronic record was used in its
28 formation. The third rule states that any law that requires a writing
29 will be satisfied by an electronic record. And the fourth basic rule
30 provides that any signature requirement in the law will be met if there
31 is an electronic signature.

32 Almost all other rules in UETA serve the principles set out in
33 section 7, and answer basic questions about the use of electronic
34 records and signatures. Thus, section 15 determines when information
35 is legally delivered in electronic form. It establishes when electronic
36 delivery occurs--when an electronic record capable of retention by the
37 recipient is legally sent and received since the traditional and statutory
38 rules that govern mail delivery of a paper memorializing a transaction
39 are not applicable to electronic transactions.

40 The rule on attribution is found in section 9 of the bill. Electronic
41 transactions may be faceless transactions between strangers. UETA
42 states that a signature is attributable to a person if it is an act of that
43 person, and that act may be shown in any manner. If a security
44 procedure is used, its efficacy in establishing the attribution may be
45 shown.

1 UETA may not be characterized as a digital signature statute
2 although it does facilitate the use of digital signatures and other
3 security procedures. Section 10 provides rules on errors and changes
4 in messages. It favors the party who conforms to the security
5 procedure used in the specific transaction against the party who does
6 not, in the event there is a dispute over the content.

7 Nothing in the UETA requires the use of a digital signature or any
8 security procedure. It is technologically neutral. UETA is procedural
9 in nature rather than substantive. It does not require the use of
10 electronic transactions or reliance upon electronic records and
11 signatures. It does not prohibit paper records and manual signatures.
12 Basic rules of law, like the general and statutory law of contracts,
13 continue to apply.

14 There are three provisions in UETA that deviate from the basic
15 rules in section 7. First, UETA excludes transactions subject to the
16 Uniform Commercial Code, with certain exceptions, laws governing
17 estates and trusts, and any other specific laws that a state exempts
18 from the bill.

19 Second, UETA provides for "transferable records" in section 16.
20 Notes under Article 3 and documents under Article 7 of the Uniform
21 Commercial Code are "transferable records" when in electronic form.

22 Third, UETA validates contracts formed by electronic agents.
23 Electronic agents are computer programs that are implemented by
24 their principals to do business in electronic form. Section 14 provides
25 that a person may form a contract by using an electronic agent. The
26 principal, the person or entity which provides the program to do
27 business, is bound by the contract that its agent makes.

28 Section 17 provides that each governmental agency shall determine
29 whether, and the extent to which, it will create and retain electronic
30 records and convert written records to electronic records.
31 Additionally, each executive agency shall comply with standards
32 adopted by the Secretary of State. Section 19 provides that the
33 Secretary of State shall set standards that promote consistency and
34 interoperability between state agencies with respect to the use of
35 electronic records and signatures.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1183

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 14, 2000

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 1183.

S-1183 proposes the enactment of the "Uniform Electronic Transaction Act" (UETA) which is based on the final draft of a report issued by the National Conference on Uniform State Laws in July, 1999.

UETA applies only to transactions in which each party has agreed by some means to conduct them electronically. Agreement is essential. Parties to electronic transactions come under UETA, but they may also opt out. They may vary, waive or disclaim most of the provisions of UETA by agreement, even if it is agreed that business will be transacted by electronic means. The rules in UETA are almost all default rules that apply if the terms of an agreement do not govern.

The objective of UETA is to ensure that transactions in the electronic marketplace are as enforceable as transactions memorialized on paper and with manual signatures, but without changing the substantive rules of law that apply. Thus, the objective of the bill is limited providing that an electronic record of a transaction is the equivalent of a paper record, and that an electronic signature will be given the same legal effect as a manual signature.

The basic rules are found in section 7 of UETA. The fundamental rule in section 7 provides that a record or signature may not be denied legal effect or enforceability solely because it is in electronic form. The second rule says that a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation. The third rule states that any law that requires a writing will be satisfied by an electronic record. And the fourth basic rule provides that any signature requirement in the law will be met if there is an electronic signature.

Almost all other rules in UETA serve the principles set out in section 7, and answer basic questions about the use of electronic records and signatures. Thus, section 15 determines when information is legally delivered in electronic form. It establishes when electronic delivery occurs--when an electronic record capable of retention by the

recipient is legally sent and received since the traditional and statutory rules that govern mail delivery of a paper memorializing a transaction are not applicable to electronic transactions.

The rule on attribution is found in section 9 of the bill. Electronic transactions may be faceless transactions between strangers. UETA states that a signature is attributable to a person if it is an act of that person, and that act may be shown in any manner. If a security procedure is used, its efficacy in establishing the attribution may be shown.

UETA may not be characterized as a digital signature statute although it does facilitate the use of digital signatures and other security procedures. Section 10 provides rules on errors and changes in messages. It favors the party who conforms to the security procedure used in the specific transaction against the party who does not, in the event there is a dispute over the content.

Nothing in the UETA requires the use of a digital signature or any security procedure. It is technologically neutral. UETA is procedural in nature rather than substantive. It does not require the use of electronic transactions or reliance upon electronic records and signatures. It does not prohibit paper records and manual signatures. Basic rules of law, like the general and statutory law of contracts, continue to apply.

There are three provisions in UETA that deviate from the basic rules in section 7. First, UETA excludes transactions subject to the Uniform Commercial Code, with certain exceptions, laws governing estates and trusts, and any other specific laws that a state exempts from the bill.

Second, UETA provides for "transferable records" in section 16. Notes under Article 3 and documents under Article 7 of the Uniform Commercial Code are "transferable records" when in electronic form.

Third, UETA validates contracts formed by electronic agents. Electronic agents are computer programs that are implemented by their principals to do business in electronic form. Section 14 provides that a person may form a contract by using an electronic agent. The principal, the person or entity which provides the program to do business, is bound by the contract that its agent makes.

Section 17 provides that each governmental agency shall determine whether, and the extent to which, it will create and retain electronic records and convert written records to electronic records. Additionally, each executive agency shall comply with standards adopted by the Secretary of State. Section 19 provides that the Secretary of State shall set standards that promote consistency and interoperability between state agencies with respect to the use of electronic records and signatures.

The amendments adopted by the committee provide that the act would not apply to the following:

C laws governing adoption, divorce or other family laws matters;

- C court orders or court documents;
- C cancellation notices for public utilities;
- C notices of default, repossession, foreclosure or eviction under a credit agreement secured by an individual's residence;
- C the cancellation of health insurance or life insurance benefits;
- C the recall of products which risk endangering health or safety; or
- C to any documents required to accompany the transportation or handling of hazardous or toxic materials.

The amendments also add a provision concerning consumers' rights. This provision provides that, if a law or regulation requires that information be provided in writing, the use of an electronic record will satisfy the "writing" requirement if the consumer has affirmatively consented to the use of the electronic record and has not withdrawn such consent and if the consumer, prior to consenting, receives a clear and conspicuous statement of any right of the consumer to have the record provided on paper, and of any right to withdraw the consent to have the record provided in electronic form. The notice would also require that the consumer be informed of any fees, conditions or consequences, which may include termination of the parties' relationship, in the event of the consumer's withdrawal of consent.

The notice would inform the consumer whether the consent applies only to the particular transaction, or to identified categories of records that may be provided during the course of the parties' relationship. In addition, the notice would describe the procedures the consumer must use to withdraw consent and to update information needed to contact the consumer electronically. Also, the consumer, prior to consenting, would be required to be provided with a statement of the hardware and software requirements for access to and retention of the electronic records, and to consent electronically in a manner that reasonably demonstrates that the consumer can access information in the electronic form.

After the consumer's consent, if a change in the hardware or software requirements creates a material risk that the consumer would no longer be able to access the electronic record, the person providing the electronic record would be required to provide the consumer with a statement of the revised hardware and software requirements for access to the electronic records and the consumer would then have the right to withdraw consent without the imposition of any fees and without the imposition of any conditions or consequences.

The amendments adopted by the committee provide that nothing in this act affects the content or timing of any disclosure or other record required to be provided to any consumer under any statute, regulation or other rule of law. The amendments also provide that if a law enacted prior to this act expressly requires a record to be provided by a specified method that requires verification or acknowledgement of receipt, the record may be provided electronically only if the method used provides verification or acknowledgement of receipt.

The amendments also provide that the legal effectiveness, validity or enforceability of any contract executed by a consumer could not be denied solely because of the failure to obtain electronic consent or confirmation of consent by that consumer in accordance with the act, and that withdrawal of consent by a consumer would not affect the legal effectiveness, validity or enforceability of electronic records provided to that consumer prior to implementation of the consumer's withdrawal of consent.

The amendments also provide that the act does not apply to any records that are provided or made available to a consumer who has consented prior to the effective date of the act to receive such records in electronic form as permitted by any statute, regulation, or other rule of law.

In addition, the amendments clarify that an oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of this section except as otherwise provided under applicable law.

The amendments also add a section of legislative findings and declarations. These findings provide that the recent adoption of the "Electronic Signatures in Global and National Commerce Act," Pub.L. 106-229, 114 Stat. 464 (2000), popularly known as "federal E-Sign," encourages states to enact the Uniform Electronic Transactions Act proposed for adoption by the National Conference of Commissioners on Uniform State Laws; that the adoption of the Uniform Electronic Transactions Act will invoke the provisions of the "federal E-sign" law which state that the federal law will no longer preempt the laws of an enacting state; that the "federal E-sign" law provides that a state, in enacting the Uniform Electronic Transactions Act, may "modify, limit or supersede" the provisions of the federal law; and that it is the intention of the Legislature that the adoption of the Uniform Electronic Transactions Act in this State modify, limit and supersede the provisions of Pub. L. 106-229 to the fullest possible extent permitted under the federal law.

Finally, the amendments repeal R.S.1:1-2.4, which is superseded by the act, and change the effective date to provide that the act will take effect immediately.

[First Reprint]

SENATE, No. 1183

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED MARCH 27, 2000

Sponsored by:

Senator JOSEPH M. KYRILLOS, JR.

District 13 (Middlesex and Monmouth)

SYNOPSIS

Creates the "Uniform Electronic Transactions Act."

CURRENT VERSION OF TEXT

As reported by the Senate Judiciary Committee on September 14, 2000, with amendments.



1 AN ACT creating the "Uniform Electronic Transactions ¹[Act" and]
2 Act;¹ supplementing Title 12A of the New Jersey Statutes ¹and
3 repealing R.S.1:1-2.4¹.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. This act shall be known and may be cited as the "Uniform
9 Electronic Transactions Act."

10

11 2. As used in this act:

12 "Agreement" means the bargain of the parties in fact, as found in
13 their language or inferred from other circumstances, and from rules,
14 regulations and procedures given the effect of agreements under laws
15 otherwise applicable to a particular transaction.

16 "Automated transaction" means a transaction conducted or
17 performed, in whole or in part, by electronic means or electronic
18 records, in which the acts or records of one or both parties are not
19 reviewed by an individual in the ordinary course in forming a contract,
20 performing under an existing contract or fulfilling an obligation
21 required by the transaction.

22 "Computer program" means a set of statements or instructions to
23 be used directly or indirectly in an information processing system in
24 order to bring about a certain result.

25 "Contract" means the total legal obligation resulting from the
26 parties' agreement as affected by this act and other applicable law.

27 "Electronic" means relating to technology having an electrical,
28 digital, magnetic, wireless, optical, electromagnetic or similar
29 capabilities.

30 "Electronic agent" means a computer program or an electronic or
31 other automated means used independently to initiate an action or
32 respond to electronic records or performances in whole or in part,
33 without review or action by an individual.

34 "Electronic record" means a record created, generated, sent,
35 communicated, received or stored by electronic means.

36 "Electronic signature" means an electronic sound, symbol, or
37 process attached to or logically associated with a record and executed
38 or adopted by a person with the intent to sign the record.

39 "Governmental agency" means an executive, legislative or judicial
40 agency, department, board, commission, authority, institution or

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SJU committee amendments adopted September 14, 2000.

1 instrumentality of the federal government or of a state or of a county,
2 municipality, or other political subdivision of a state.

3 "Information" means data, text, images, sounds, codes, computer
4 programs, software, databases or the like.

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

8 "Person" means an individual, corporation, business trust, estate,
9 trust, partnership, limited liability company, association, joint venture,
10 governmental agency, public corporation, or any other legal or
11 commercial entity.

12 "Record" means information that is inscribed on a tangible medium
13 or that is stored in an electronic or other medium and is retrievable in
14 perceivable form.

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

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

27 "Transaction" means an action or set of actions occurring between
28 two or more persons relating to the conduct of business, commercial
29 or governmental affairs.

30

31 3. a. Except as provided in subsection b. of this section, this act
32 applies to electronic records and electronic signatures relating to a
33 transaction.

34 b. This act does not apply to a transaction to the extent it is
35 governed by:

36 (1) a law governing the creation and execution of wills, codicils or
37 testamentary trusts;

38 (2) the Uniform Commercial Code other than sections 1-107 and
39 1-206, Article 2 and Article 2A; ¹[and]¹

40 (3) ¹[other laws as may be excluded from the provisions of this act]
41 a statute, regulation or other rule of law governing adoption, divorce
42 or other matters of family law;

43 (4) court orders or notices or official court documents (including
44 briefs, pleadings and other writings) required to be executed in
45 connection with court proceedings;

46 (5) any notice of :

- 1 (a) the cancellation or termination of utility services (including
2 water, heat and power);
- 3 (b) the default, acceleration, repossession, foreclosure or eviction,
4 or the right to cure, under a credit agreement secured by, or a rental
5 agreement for, a primary residence of an individual;
- 6 (c) the cancellation or termination of health insurance benefits or
7 life insurance benefits (excluding annuities); or
- 8 (d) the recall of a product, or material failure of a product, that
9 risks endangering health or safety; or
- 10 (6) any document required to accompany any transportation or
11 handling of hazardous materials, pesticides or other toxic or dangerous
12 materials¹.
- 13 c. This act applies to an electronic record or electronic signature
14 otherwise excluded from the application of this act under subsection
15 b. of this section to the extent it is governed by a law other than those
16 specified in subsection b. of this section.
- 17 d. A transaction subject to this act is subject also to other
18 applicable substantive law.
- 19
- 20 4. This act applies to any electronic record or electronic signature
21 created, generated, sent, communicated, received or stored on or after
22 the effective date of this act.
- 23
- 24 5. a. This act does not require a record or signature to be created,
25 generated, stored, sent, communicated, received, stored or otherwise
26 processed or used by electronic means or in electronic form.
- 27 b. This act applies only to transactions between parties each of
28 which has agreed to conduct transactions by electronic means.
29 Whether the parties agree to conduct a transaction by electronic means
30 is determined from the context and surrounding circumstances,
31 including the parties' conduct.
- 32 c. A party that agrees to conduct a transaction by electronic means
33 may refuse to conduct other transactions by electronic means. The
34 right granted by this subsection may not be waived by agreement.
- 35 d. Except as otherwise provided in this act, the effect of any of its
36 provisions may be varied by agreement. The presence in certain
37 provisions of this act of the words "unless otherwise agreed," or words
38 of similar import, does not imply that the effect of other provisions
39 may not be varied by agreement.
- 40 e. Whether an electronic record or electronic signature has legal
41 consequences is determined by this act and other applicable law.
- 42
- 43 6. This act shall be construed and applied:
- 44 a. to facilitate electronic transactions consistent with other
45 applicable law;

1 b. to be consistent with reasonable practices concerning electronic
2 transactions and with the continued expansion of those practices; and

3 c. to effectuate its general purpose to make uniform the law with
4 respect to the subject of this act among the states enacting it.

5
6 7. a. A record or signature may not be denied legal effect or
7 enforceability solely because it is in electronic form.

8 b. A contract may not be denied legal effect or enforceability solely
9 because an electronic record was used in its formation.

10 c. If a law requires a record to be in writing, an electronic record
11 satisfies the law.

12 d. If a law requires a signature, an electronic signature satisfies the
13 law.

14
15 8. a. If parties have agreed to conduct a transaction by electronic
16 means and a law requires a person to provide, send, or deliver
17 information in writing to another person, the requirement is satisfied
18 if the information is provided, sent, or delivered, as the case may be,
19 in an electronic record capable of retention by the recipient at the time
20 of receipt. An electronic record is not capable of retention by the
21 recipient if the sender or its information processing system inhibits the
22 ability of the recipient to print or store the electronic record.

23 b. If a law other than this act requires a record to be posted or
24 displayed in a certain manner, to be sent, communicated or transmitted
25 by a specified method, or to contain information that is formatted in
26 a certain manner, the following apply:

27 (1) The record shall be posted or displayed in the manner specified
28 in the other law.

29 (2) Except as otherwise provided in paragraph (2) of subsection d.
30 of this section, the record shall be sent, communicated or transmitted
31 by the method specified in the other law.

32 (3) The record shall contain the information formatted in the
33 manner specified in the other law.

34 c. If a sender inhibits the ability of a recipient to store or print an
35 electronic record, the electronic record is not enforceable against the
36 recipient.

37 d. The requirements of this section may not be varied by
38 agreement, but:

39 (1) to the extent a law other than this act requires information to
40 be provided, sent, or delivered in writing but permits that requirement
41 to be varied by agreement, the requirement under subsection a. of this
42 section that the information be in the form of an electronic record
43 capable of retention may also be varied by agreement; and

44 (2) a requirement under a law other than this act to send,
45 communicate, or transmit a record by United States mail, may be
46 varied by agreement to the extent permitted by the other law.

1 9. a. An electronic record or electronic signature is attributable to
2 a person if it was the act of the person. The act of the person may be
3 shown in any manner, including a showing of the efficacy of any
4 security procedure applied to determine the person to which the
5 electronic record or electronic signature was attributable.

6 b. The effect of an electronic record or electronic signature
7 attributed to a person under subsection a. of this section is determined
8 from the context and surrounding circumstances at the time of its
9 creation, execution or adoption, including the parties' agreement, if
10 any, and as otherwise provided by law.

11
12 10. If a change or error in an electronic record occurs in a
13 transmission between parties to a transaction, the following rules
14 apply:

15 a. If the parties have agreed to use a security procedure to detect
16 changes or errors and one party has consented to the procedure but
17 the other party has not, and the nonconforming party would have
18 detected the change or error had that party also conformed, the
19 conforming party may avoid the effect of the changed or erroneous
20 electronic record.

21 b. In an automated transaction involving an individual, the
22 individual may avoid the effect of an electronic record that resulted
23 from an error made by the individual in dealing with the electronic
24 agent of another person if the electronic agent did not provide an
25 opportunity for the prevention or correction of the error, and, at the
26 time the individual learns of the error, the individual:

27 (1) promptly notifies the other person of the error and that the
28 individual did not intend to be bound by the electronic record received
29 by the other person;

30 (2) takes reasonable steps, including steps that conform to the
31 other persons's reasonable instructions, to return to the other person
32 or, if instructed by the other person, to destroy the consideration
33 received, if any, as a result of the erroneous electronic record; and

34 (3) has not used or received any benefit or value from the
35 consideration, if any, received from the other person.

36 c. If neither subsection a. or b. of this section applies, the change
37 or error has the effect provided by other law, including the law of
38 mistake, and the parties' contract, if any.

39 d. Subsections b. and c. of this section may not be varied by
40 agreement.

41
42 11. If a law requires a signature or record to be notarized,
43 acknowledged, verified, or made under oath, the requirement is
44 satisfied if the electronic signature of the person authorized to perform
45 those acts, together with all other information required to be

1 included by other applicable law, is attached to or logically associated
2 with the signature or record.

3

4 12. a. If a law requires that a record be retained, the requirement
5 is satisfied by retaining an electronic record of the information in the
6 record which:

7 (1) accurately reflects the information set forth in the record after
8 it was first generated in its final form as an electronic record or
9 otherwise; and

10 (2) remains accessible for later reference.

11 b. A requirement to retain a record in accordance with subsection
12 a. of this section does not apply to any information the sole purpose
13 of which is to enable the record to be sent, communicated or received.

14 c. A person may satisfy subsection a. of this section by using the
15 services of another person if the requirements of that subsection are
16 satisfied.

17 d. If a law requires a record to be presented or retained in its
18 original form, or provides consequences if the record is not presented
19 or retained in its original form, that law is satisfied by an electronic
20 record retained in accordance with subsection a. of this section.

21 e. If a law requires retention of a check, that requirement is
22 satisfied by retention of an electronic record of the information on the
23 front and back of the check in accordance with subsection a. of this
24 section.

25 f. A record retained as an electronic record in accordance with
26 subsection a. of this section satisfies a law requiring a person to retain
27 a record for evidentiary, audit or like purposes, unless a law enacted
28 after the effective date of this act specifically prohibits the use of an
29 electronic record for the specified purpose.

30 g. This section does not preclude a governmental agency of this
31 State from specifying additional requirements for the retention of a
32 records subject to the agency's jurisdiction.

33

34 13. In a proceeding, evidence of a record or signature may not be
35 excluded solely because it is in electronic form.

36

37 14. In an automated transaction, the following rules apply:

38 a. A contract may be formed by the interaction of electronic agents
39 of the parties, even if no individual was aware of or reviewed the
40 electronic agents' actions or the resulting terms and agreements.

41 b. A contract may be formed by the interaction of an electronic
42 agent and an individual, acting on the individual's own behalf or for
43 another person, including by an interaction in which the individual
44 performs actions that the individual is free to refuse to perform and
45 which the individual knows or has reason to know will cause the
46 electronic agent to complete the transaction or performance.

1 c. The terms of the contract are determined by the substantive law
2 applicable to it.

3

4 15. a. Unless otherwise agreed between the sender and the
5 recipient, an electronic record is sent when it:

6 (1) is addressed properly or otherwise directed properly to an
7 information processing system that the recipient has designated or uses
8 for the purpose of receiving electronic records or information of the
9 type sent and from which the recipient is able to retrieve the electronic
10 record;

11 (2) is in a form capable of being processed by that system; and

12 (3) enters an information processing system outside the control of
13 the sender or of a person that sent the electronic record on behalf of
14 the sender or enters a region of the information processing system
15 designated or used by the recipient which is under the control of the
16 recipient.

17 b. Unless otherwise agreed between a sender and the recipient, an
18 electronic record is received when:

19 (1) it enters an information processing system that the recipient has
20 designated or uses for the purpose of receiving electronic records or
21 information of the type sent and from which the recipient is able to
22 retrieve the electronic record; and

23 (2) is in a form capable of being processed by that system.

24 c. Subsection b. of this section applies even if the place the
25 information processing system is located is different from the place the
26 electronic record is deemed to be received under subsection d. of this
27 section.

28 d. Unless otherwise expressly provided in the electronic record or
29 agreed between the sender and the recipient, an electronic record is
30 deemed to be sent from the sender's place of business and to be
31 received at the recipient's place of business. For purposes of this
32 subsection, the following rules apply:

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

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

39 e. An electronic record is received under subsection b. of this
40 section even if no individual is aware of its receipt.

41 f. Receipt of an electronic acknowledgment from an information
42 processing system described in subsection b. of this section establishes
43 that a record was received but, by itself, does not establish that the
44 content sent corresponds to the content received.

45 g. If a person is aware that an electronic record purportedly sent
46 under subsection a. of this section, or purportedly received under

1 subsection b. of this section, was not actually sent or received, the
2 legal effect of the sending or receipt is determined by other applicable
3 law. Except to the extent permitted by the other law, the requirements
4 of this subsection may not be varied by agreement.

5
6 16. a. As used in this section "transferable record" means an
7 electronic record that:

8 (1) would be a note under Article 3 of the Uniform Commercial
9 Code or a document under Article 7 of the Uniform Commercial Code
10 if the electronic record were in writing; and

11 (2) the issuer of the electronic record expressly has agreed is a
12 transferable record.

13 b. A person has control of a transferable record if a system
14 employed for evidencing the transfer of interests in the transferable
15 record reliably establishes that person as the person to which the
16 transferable record was issued or transferred.

17 c. A system satisfies subsection b. of this section and the person is
18 deemed to have control of a transferable record if the transferable
19 record is created, stored and assigned in such a manner that:

20 (1) a single authoritative copy of the transferable record exists
21 which is unique, identifiable and, except as otherwise provided in
22 paragraphs (4), (5) and (6) of this subsection, unalterable;

23 (2) the authoritative copy identifies the person asserting control as:

24 (a) the person to which the transferable record was issued; or

25 (b) if the authoritative copy indicates that the transferable record
26 has been transferred, the person to which the transferable record was
27 most recently transferred;

28 (3) the authoritative copy is communicated to and maintained by
29 the person asserting control or its designated custodian;

30 (4) copies or revisions that add or change an identified assignee of
31 the authoritative copy may be made only with the consent of the
32 person asserting control;

33 (5) each copy of the authoritative copy and any copy of a copy is
34 readily identifiable as a copy that is not the authoritative copy; and

35 (6) any revision of the authoritative copy is readily identifiable as
36 authorized or unauthorized.

37 d. Except as otherwise agreed, a person having control of a
38 transferable record is the holder, as defined in section 1-201 of the
39 Uniform Commercial Code of the transferable record and has the same
40 rights and defenses as a holder of an equivalent record or writing
41 under the Uniform Commercial Code including, if the applicable
42 statutory requirements are satisfied, the rights and defenses of a holder
43 in due course, a holder to which a negotiable document of title has
44 been duly negotiated or a purchaser. Delivery, possession and
45 indorsement are not required to obtain or exercise any of the rights
46 under this subsection.

1 e. Except as otherwise agreed, an obligor under a transferable
2 record has the same rights and defenses as an equivalent obligor under
3 equivalent records or writings under the Uniform Commercial Code.

4 f. If requested by a person against which enforcement is sought, the
5 person seeking to enforce the transferable record shall provide
6 reasonable proof that the person is in control of the transferable
7 record. Proof may include access to the authoritative copy of the
8 transferable record and related business records sufficient to review
9 the terms of the transferable record and to establish the identity of the
10 person having control of the transferable record.

11
12 17. Each governmental agency shall determine whether, and the
13 extent to which, it will create and retain electronic records and convert
14 written records to electronic records. Additionally, each executive
15 agency shall comply with standards adopted by the Secretary of State
16 pursuant to section 19 of this act.

17
18 18. a. Except as otherwise provided in subsection f. of section 12
19 of this act or section 17 of this act, each governmental agency shall
20 determine whether, and the extent to which, it will send and accept
21 electronic records and electronic signatures to and from other persons,
22 and otherwise create, generate, communicate, store, process, use and
23 rely upon electronic records and electronic signatures.

24 b. To the extent a governmental agency uses electronic records and
25 electronic signatures under subsection a. of this section, the
26 governmental agency, giving due consideration to security, may
27 specify:

28 (1) the manner and format in which the electronic records must be
29 created, generated, sent, communicated, received and stored and the
30 system established for those purposes;

31 (2) if electronic records must be signed by electronic means, the
32 type of electronic signature required, the manner and format in which
33 the electronic signature must be affixed to the electronic record, and
34 the identity of, or criteria that must be met by, any third party used by
35 a person filing a document to facilitate the process;

36 (3) control processes and procedures appropriate to ensure
37 adequate preservation, disposition, integrity, security, confidentiality
38 and auditability of electronic records; and

39 (4) any other required attributes for electronic records which are
40 currently specified for corresponding nonelectronic records, or
41 reasonably necessary under the circumstances.

42 c. Except as otherwise provided in subsection f. of section 12 of
43 this act or section 17 of this act, this act does not require a
44 governmental agency to use or permit the use of electronic records or
45 electronic signatures.

1 19. The Secretary of State shall adopt standards to encourage and
2 promote consistency and interoperability with similar requirements
3 adopted by other governmental agencies of this and other states and
4 the federal government, and nongovernmental persons interacting with
5 governmental agencies of this State. If appropriate, those standards
6 may specify differing levels of standards from which governmental
7 agencies of this State may chose in implementing the most appropriate
8 standard for a particular application.

9
10 20. If any provision of this act or its application to any person or
11 circumstance is held invalid, the invalidity shall not affect other
12 provisions or applications of this act which can be given effect without
13 the invalid provision or application and, to this end, the provisions of
14 this act are severable.

15
16 ¹21. a. Notwithstanding any other provision of this act, if a law or
17 regulation requires that information relating to the transaction be
18 provided or made available to a consumer in writing, the use of an
19 electronic record to provide or make available (whichever is required)
20 such information satisfies the requirement that such information be in
21 writing if:

22 (1) the consumer has affirmatively consented to such use and has
23 not withdrawn such consent;

24 (2) the consumer, prior to consenting, is provided with a clear and
25 conspicuous statement:

26 (a) informing the consumer of:

27 (i) any right or option of the consumer to have the record provided
28 or made available on paper or in nonelectronic form, and

29 (ii) the right of the consumer to withdraw the consent to have the
30 record provided or made available in an electronic form and of any
31 conditions, consequences (which may include termination of the
32 parties' relationship), or fees in the event of such withdrawal;

33 (b) informing the consumer of whether the consent applies:

34 (i) only to the particular transaction which gave rise to the
35 obligation to provide the record, or

36 (ii) to identified categories of records that may be provided or made
37 available during the course of the parties' relationship;

38 (c) describing the procedures the consumer must use to withdraw
39 consent as provided in a.(2)(a) of this section and to update
40 information needed to contact the consumer electronically; and

41 (d) informing the consumer:

42 (i) how, after the consent, the consumer may, upon request, obtain
43 a paper copy of an electronic record, and

44 (ii) whether any fee will be charged for such copy;

45 (3) the consumer:

1 (a) prior to consenting, is provided with a statement of the
2 hardware and software requirements for access to and retention of the
3 electronic records; and

4 (b) consents electronically, or confirms his or her consent
5 electronically, in a manner that reasonably demonstrates that the
6 consumer can access information in the electronic form that will be
7 used to provide the information that is the subject of the consent; and

8 (4) after the consent of a consumer in accordance with a.(1) of this
9 section, if a change in the hardware or software requirements needed
10 to access or retain electronic records creates a material risk that the
11 consumer will not be able to access or retain a subsequent electronic
12 record that was the subject of the consent, the person providing the
13 electronic record:

14 (a) provides the consumer with a statement of:

15 (i) the revised hardware and software requirements for access to
16 and retention of the electronic records; and

17 (ii) the right to withdraw consent without the imposition of any fees
18 for such withdrawal and without the imposition of any condition or
19 consequence that was not disclosed under a.(2)(a) of this section; and

20 (b) again complies with a.(3) of this section.

21 b. Nothing in this act affects the content or timing of any disclosure
22 or other record required to be provided or made available to any
23 consumer under any statute, regulation, or other rule of law.

24 c. If a law that was enacted prior to this act expressly requires a
25 record to be provided or made available by a specified method that
26 requires verification or acknowledgment of receipt, the record may be
27 provided or made available electronically only if the method used
28 provides verification or acknowledgment of receipt (whichever is
29 required).

30 d. The legal effectiveness, validity or enforceability of any contract
31 executed by a consumer shall not be denied solely because of the
32 failure to obtain electronic consent or confirmation of consent by that
33 consumer in accordance with a.(3)(b) of this section.

34 e. Withdrawal of consent by a consumer shall not affect the legal
35 effectiveness, validity or enforceability of electronic records provided
36 or made available to that consumer in accordance with subsection a.
37 prior to implementation of the consumer's withdrawal of consent. A
38 consumer's withdrawal of consent shall be effective within a reasonable
39 period of time after receipt of the withdrawal by the provider of the
40 record. Failure to comply with a.(4) of this section may, at the
41 election of the consumer, be treated as a withdrawal of consent for
42 purposes of this subsection.

43 f. This subsection does not apply to any records that are provided
44 or made available to a consumer who has consented prior to the
45 effective date of this act to receive such records in electronic form as
46 permitted by any statute, regulation, or other rule of law.

1 g. An oral communication or a recording of an oral communication
2 shall not qualify as an electronic record for purposes of this section
3 except as otherwise provided under applicable law.¹

4
5 ¹ 22. The Legislature finds and declares:

6 That the adoption of the "Electronic Signatures in Global and
7 National Commerce Act," Pub.L. 106-229, 114 Stat. 464 (2000),
8 popularly known as "federal E-Sign," encourages states to enact the
9 Uniform Electronic Transactions Act proposed for adoption by the
10 National Conference of Commissioners on Uniform State Laws; and

11 That the adoption of the Uniform Electronic Transactions Act will
12 invoke the provisions of Section 102 of Pub. L. 106-229 which state
13 that federal law will no longer preempt the laws of an enacting state;
14 and

15 That Section 102 of Pub. L. 106-229 provides that a state, in
16 enacting the Uniform Electronic Transactions Act, may "modify, limit
17 or supersede" the provisions of the federal law; and

18 That it is desirable for this State to take the fullest possible
19 advantage of the ability to "modify, limit or supersede" Pub. L. 106-
20 229; and

21 That it is the intention of the Legislature that the adoption of the
22 Uniform Electronic Transactions Act in this State modify, limit and
23 supersede the provisions of Pub. L. 106-229 to the fullest possible
24 extent permitted under the federal law.¹

25
26 ¹23. R.S.1:1-2.4 is hereby repealed.¹

27
28 ¹[21.] 24.¹ This act shall take effect ¹[on the 120th day after
29 enactment] immediately¹.

STATEMENT TO

[First Reprint]

SENATE, No. 1183

with Senate Floor Amendments
(Proposed By Senator KYRILLOS)

ADOPTED: SEPTEMBER 21, 2000

S-1183 (1R) proposes the enactment of the "Uniform Electronic Transactions Act." These amendments would add two new sections to the bill clarifying the provisions of the bill with regard to the retention of electronic records. These amendments would also provide for the establishment of the N.J. Center for Electronic Transactions and Informational Privacy within the Institute of Law, Science and Technology at Seton Hall University School of Law.

[Second Reprint]

SENATE, No. 1183

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED MARCH 27, 2000

Sponsored by:

Senator JOSEPH M. KYRILLOS, JR.
District 13 (Middlesex and Monmouth)

Co-Sponsored by:

Assemblymen Corodemus and Arnone

SYNOPSIS

Creates the "Uniform Electronic Transactions Act."

CURRENT VERSION OF TEXT

As amended by the Senate on September 21, 2000.



(Sponsorship Updated As Of: 1/30/2001)

S1183 [2R] KYRILLOS

2

1 AN ACT creating the "Uniform Electronic Transactions ¹[Act" and]
2 Act;¹ supplementing Title 12A of the New Jersey Statutes ¹and
3 repealing R.S.1:1-2.4¹.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. This act shall be known and may be cited as the "Uniform
9 Electronic Transactions Act."

10

11 2. As used in this act:

12 "Agreement" means the bargain of the parties in fact, as found in
13 their language or inferred from other circumstances, and from rules,
14 regulations and procedures given the effect of agreements under laws
15 otherwise applicable to a particular transaction.

16 "Automated transaction" means a transaction conducted or
17 performed, in whole or in part, by electronic means or electronic
18 records, in which the acts or records of one or both parties are not
19 reviewed by an individual in the ordinary course in forming a contract,
20 performing under an existing contract or fulfilling an obligation
21 required by the transaction.

22 "Computer program" means a set of statements or instructions to
23 be used directly or indirectly in an information processing system in
24 order to bring about a certain result.

25 "Contract" means the total legal obligation resulting from the
26 parties' agreement as affected by this act and other applicable law.

27 "Electronic" means relating to technology having an electrical,
28 digital, magnetic, wireless, optical, electromagnetic or similar
29 capabilities.

30 "Electronic agent" means a computer program or an electronic or
31 other automated means used independently to initiate an action or
32 respond to electronic records or performances in whole or in part,
33 without review or action by an individual.

34 "Electronic record" means a record created, generated, sent,
35 communicated, received or stored by electronic means.

36 "Electronic signature" means an electronic sound, symbol, or
37 process attached to or logically associated with a record and executed
38 or adopted by a person with the intent to sign the record.

39 "Governmental agency" means an executive, legislative or judicial
40 agency, department, board, commission, authority, institution or

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SJU committee amendments adopted September 14, 2000.

² Senate floor amendments adopted September 21, 2000.

1 instrumentality of the federal government or of a state or of a county,
2 municipality, or other political subdivision of a state.

3 "Information" means data, text, images, sounds, codes, computer
4 programs, software, databases or the like.

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

8 "Person" means an individual, corporation, business trust, estate,
9 trust, partnership, limited liability company, association, joint venture,
10 governmental agency, public corporation, or any other legal or
11 commercial entity.

12 "Record" means information that is inscribed on a tangible medium
13 or that is stored in an electronic or other medium and is retrievable in
14 perceivable form.

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

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

27 "Transaction" means an action or set of actions occurring between
28 two or more persons relating to the conduct of business, commercial
29 or governmental affairs.

30

31 3. a. Except as provided in subsection b. of this section, this act
32 applies to electronic records and electronic signatures relating to a
33 transaction.

34 b. This act does not apply to a transaction to the extent it is
35 governed by:

36 (1) a law governing the creation and execution of wills, codicils or
37 testamentary trusts;

38 (2) the Uniform Commercial Code other than sections 1-107 and
39 1-206, Article 2 and Article 2A; ¹[and]¹

40 (3) ¹[other laws as may be excluded from the provisions of this act]
41 a statute, regulation or other rule of law governing adoption, divorce
42 or other matters of family law;

43 (4) court orders or notices or official court documents (including
44 briefs, pleadings and other writings) required to be executed in
45 connection with court proceedings;

46 (5) any notice of :

1 (a) the cancellation or termination of utility services (including
2 water, heat and power);

3 (b) the default, acceleration, repossession, foreclosure or eviction,
4 or the right to cure, under a credit agreement secured by, or a rental
5 agreement for, a primary residence of an individual;

6 (c) the cancellation or termination of health insurance benefits or
7 life insurance benefits (excluding annuities); or

8 (d) the recall of a product, or material failure of a product, that
9 risks endangering health or safety; or

10 (6) any document required to accompany any transportation or
11 handling of hazardous materials, pesticides or other toxic or dangerous
12 materials¹.

13 c. This act applies to an electronic record or electronic signature
14 otherwise excluded from the application of this act under subsection
15 b. of this section to the extent it is governed by a law other than those
16 specified in subsection b. of this section.

17 d. A transaction subject to this act is subject also to other
18 applicable substantive law.

19
20 4. This act applies to any electronic record or electronic signature
21 created, generated, sent, communicated, received or stored on or after
22 the effective date of this act.

23
24 5. a. This act does not require a record or signature to be created,
25 generated, stored, sent, communicated, received, stored or otherwise
26 processed or used by electronic means or in electronic form.

27 b. This act applies only to transactions between parties each of
28 which has agreed to conduct transactions by electronic means.
29 Whether the parties agree to conduct a transaction by electronic means
30 is determined from the context and surrounding circumstances,
31 including the parties' conduct.

32 c. A party that agrees to conduct a transaction by electronic means
33 may refuse to conduct other transactions by electronic means. The
34 right granted by this subsection may not be waived by agreement.

35 d. Except as otherwise provided in this act, the effect of any of its
36 provisions may be varied by agreement. The presence in certain
37 provisions of this act of the words "unless otherwise agreed," or words
38 of similar import, does not imply that the effect of other provisions
39 may not be varied by agreement.

40 e. Whether an electronic record or electronic signature has legal
41 consequences is determined by this act and other applicable law.

42
43 6. This act shall be construed and applied:

44 a. to facilitate electronic transactions consistent with other
45 applicable law;

1 b. to be consistent with reasonable practices concerning electronic
2 transactions and with the continued expansion of those practices; and

3 c. to effectuate its general purpose to make uniform the law with
4 respect to the subject of this act among the states enacting it.

5
6 7. a. A record or signature may not be denied legal effect or
7 enforceability solely because it is in electronic form.

8 b. A contract may not be denied legal effect or enforceability solely
9 because an electronic record was used in its formation.

10 c. If a law requires a record to be in writing, an electronic record
11 satisfies the law.

12 d. If a law requires a signature, an electronic signature satisfies the
13 law.

14
15 8. a. If parties have agreed to conduct a transaction by electronic
16 means and a law requires a person to provide, send, or deliver
17 information in writing to another person, the requirement is satisfied
18 if the information is provided, sent, or delivered, as the case may be,
19 in an electronic record capable of retention by the recipient at the time
20 of receipt. An electronic record is not capable of retention by the
21 recipient if the sender or its information processing system inhibits the
22 ability of the recipient to print or store the electronic record.

23 b. If a law other than this act requires a record to be posted or
24 displayed in a certain manner, to be sent, communicated or transmitted
25 by a specified method, or to contain information that is formatted in
26 a certain manner, the following apply:

27 (1) The record shall be posted or displayed in the manner specified
28 in the other law.

29 (2) Except as otherwise provided in paragraph (2) of subsection d.
30 of this section, the record shall be sent, communicated or transmitted
31 by the method specified in the other law.

32 (3) The record shall contain the information formatted in the
33 manner specified in the other law.

34 c. If a sender inhibits the ability of a recipient to store or print an
35 electronic record, the electronic record is not enforceable against the
36 recipient.

37 d. The requirements of this section may not be varied by
38 agreement, but:

39 (1) to the extent a law other than this act requires information to
40 be provided, sent, or delivered in writing but permits that requirement
41 to be varied by agreement, the requirement under subsection a. of this
42 section that the information be in the form of an electronic record
43 capable of retention may also be varied by agreement; and

44 (2) a requirement under a law other than this act to send,
45 communicate, or transmit a record by United States mail, may be
46 varied by agreement to the extent permitted by the other law.

1 9. a. An electronic record or electronic signature is attributable to
2 a person if it was the act of the person. The act of the person may be
3 shown in any manner, including a showing of the efficacy of any
4 security procedure applied to determine the person to which the
5 electronic record or electronic signature was attributable.

6 b. The effect of an electronic record or electronic signature
7 attributed to a person under subsection a. of this section is determined
8 from the context and surrounding circumstances at the time of its
9 creation, execution or adoption, including the parties' agreement, if
10 any, and as otherwise provided by law.

11
12 10. If a change or error in an electronic record occurs in a
13 transmission between parties to a transaction, the following rules
14 apply:

15 a. If the parties have agreed to use a security procedure to detect
16 changes or errors and one party has consented to the procedure but
17 the other party has not, and the nonconforming party would have
18 detected the change or error had that party also conformed, the
19 conforming party may avoid the effect of the changed or erroneous
20 electronic record.

21 b. In an automated transaction involving an individual, the
22 individual may avoid the effect of an electronic record that resulted
23 from an error made by the individual in dealing with the electronic
24 agent of another person if the electronic agent did not provide an
25 opportunity for the prevention or correction of the error, and, at the
26 time the individual learns of the error, the individual:

27 (1) promptly notifies the other person of the error and that the
28 individual did not intend to be bound by the electronic record received
29 by the other person;

30 (2) takes reasonable steps, including steps that conform to the
31 other persons's reasonable instructions, to return to the other person
32 or, if instructed by the other person, to destroy the consideration
33 received, if any, as a result of the erroneous electronic record; and

34 (3) has not used or received any benefit or value from the
35 consideration, if any, received from the other person.

36 c. If neither subsection a. or b. of this section applies, the change
37 or error has the effect provided by other law, including the law of
38 mistake, and the parties' contract, if any.

39 d. Subsections b. and c. of this section may not be varied by
40 agreement.

41
42 11. If a law requires a signature or record to be notarized,
43 acknowledged, verified, or made under oath, the requirement is
44 satisfied if the electronic signature of the person authorized to perform
45 those acts, together with all other information required to be

1 included by other applicable law, is attached to or logically associated
2 with the signature or record.

3

4 12. a. If a law requires that a record be retained, the requirement
5 is satisfied by retaining an electronic record of the information in the
6 record which:

7 (1) accurately reflects the information set forth in the record after
8 it was first generated in its final form as an electronic record or
9 otherwise; and

10 (2) remains accessible for later reference.

11 b. A requirement to retain a record in accordance with subsection
12 a. of this section does not apply to any information the sole purpose
13 of which is to enable the record to be sent, communicated or received.

14 c. A person may satisfy subsection a. of this section by using the
15 services of another person if the requirements of that subsection are
16 satisfied.

17 d. If a law requires a record to be presented or retained in its
18 original form, or provides consequences if the record is not presented
19 or retained in its original form, that law is satisfied by an electronic
20 record retained in accordance with subsection a. of this section.

21 e. If a law requires retention of a check, that requirement is
22 satisfied by retention of an electronic record of the information on the
23 front and back of the check in accordance with subsection a. of this
24 section.

25 f. A record retained as an electronic record in accordance with
26 subsection a. of this section satisfies a law requiring a person to retain
27 a record for evidentiary, audit or like purposes, unless a law enacted
28 after the effective date of this act specifically prohibits the use of an
29 electronic record for the specified purpose.

30 g. This section does not preclude a governmental agency of this
31 State from specifying additional requirements for the retention of a
32 records subject to the agency's jurisdiction.

33

34 13. In a proceeding, evidence of a record or signature may not be
35 excluded solely because it is in electronic form.

36

37 14. In an automated transaction, the following rules apply:

38 a. A contract may be formed by the interaction of electronic agents
39 of the parties, even if no individual was aware of or reviewed the
40 electronic agents' actions or the resulting terms and agreements.

41 b. A contract may be formed by the interaction of an electronic
42 agent and an individual, acting on the individual's own behalf or for
43 another person, including by an interaction in which the individual
44 performs actions that the individual is free to refuse to perform and
45 which the individual knows or has reason to know will cause the
46 electronic agent to complete the transaction or performance.

1 c. The terms of the contract are determined by the substantive law
2 applicable to it.

3

4 15. a. Unless otherwise agreed between the sender and the
5 recipient, an electronic record is sent when it:

6 (1) is addressed properly or otherwise directed properly to an
7 information processing system that the recipient has designated or uses
8 for the purpose of receiving electronic records or information of the
9 type sent and from which the recipient is able to retrieve the electronic
10 record;

11 (2) is in a form capable of being processed by that system; and

12 (3) enters an information processing system outside the control of
13 the sender or of a person that sent the electronic record on behalf of
14 the sender or enters a region of the information processing system
15 designated or used by the recipient which is under the control of the
16 recipient.

17 b. Unless otherwise agreed between a sender and the recipient, an
18 electronic record is received when:

19 (1) it enters an information processing system that the recipient has
20 designated or uses for the purpose of receiving electronic records or
21 information of the type sent and from which the recipient is able to
22 retrieve the electronic record; and

23 (2) is in a form capable of being processed by that system.

24 c. Subsection b. of this section applies even if the place the
25 information processing system is located is different from the place the
26 electronic record is deemed to be received under subsection d. of this
27 section.

28 d. Unless otherwise expressly provided in the electronic record or
29 agreed between the sender and the recipient, an electronic record is
30 deemed to be sent from the sender's place of business and to be
31 received at the recipient's place of business. For purposes of this
32 subsection, the following rules apply:

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

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

39 e. An electronic record is received under subsection b. of this
40 section even if no individual is aware of its receipt.

41 f. Receipt of an electronic acknowledgment from an information
42 processing system described in subsection b. of this section establishes
43 that a record was received but, by itself, does not establish that the
44 content sent corresponds to the content received.

45 g. If a person is aware that an electronic record purportedly sent
46 under subsection a. of this section, or purportedly received under

1 subsection b. of this section, was not actually sent or received, the
2 legal effect of the sending or receipt is determined by other applicable
3 law. Except to the extent permitted by the other law, the requirements
4 of this subsection may not be varied by agreement.

5
6 16. a. As used in this section "transferable record" means an
7 electronic record that:

8 (1) would be a note under Article 3 of the Uniform Commercial
9 Code or a document under Article 7 of the Uniform Commercial Code
10 if the electronic record were in writing; and

11 (2) the issuer of the electronic record expressly has agreed is a
12 transferable record.

13 b. A person has control of a transferable record if a system
14 employed for evidencing the transfer of interests in the transferable
15 record reliably establishes that person as the person to which the
16 transferable record was issued or transferred.

17 c. A system satisfies subsection b. of this section and the person is
18 deemed to have control of a transferable record if the transferable
19 record is created, stored and assigned in such a manner that:

20 (1) a single authoritative copy of the transferable record exists
21 which is unique, identifiable and, except as otherwise provided in
22 paragraphs (4), (5) and (6) of this subsection, unalterable;

23 (2) the authoritative copy identifies the person asserting control as:

24 (a) the person to which the transferable record was issued; or

25 (b) if the authoritative copy indicates that the transferable record
26 has been transferred, the person to which the transferable record was
27 most recently transferred;

28 (3) the authoritative copy is communicated to and maintained by
29 the person asserting control or its designated custodian;

30 (4) copies or revisions that add or change an identified assignee of
31 the authoritative copy may be made only with the consent of the
32 person asserting control;

33 (5) each copy of the authoritative copy and any copy of a copy is
34 readily identifiable as a copy that is not the authoritative copy; and

35 (6) any revision of the authoritative copy is readily identifiable as
36 authorized or unauthorized.

37 d. Except as otherwise agreed, a person having control of a
38 transferable record is the holder, as defined in section 1-201 of the
39 Uniform Commercial Code of the transferable record and has the same
40 rights and defenses as a holder of an equivalent record or writing
41 under the Uniform Commercial Code including, if the applicable
42 statutory requirements are satisfied, the rights and defenses of a holder
43 in due course, a holder to which a negotiable document of title has
44 been duly negotiated or a purchaser. Delivery, possession and
45 indorsement are not required to obtain or exercise any of the rights
46 under this subsection.

1 e. Except as otherwise agreed, an obligor under a transferable
2 record has the same rights and defenses as an equivalent obligor under
3 equivalent records or writings under the Uniform Commercial Code.

4 f. If requested by a person against which enforcement is sought, the
5 person seeking to enforce the transferable record shall provide
6 reasonable proof that the person is in control of the transferable
7 record. Proof may include access to the authoritative copy of the
8 transferable record and related business records sufficient to review
9 the terms of the transferable record and to establish the identity of the
10 person having control of the transferable record.

11
12 17. Each governmental agency shall determine whether, and the
13 extent to which, it will create and retain electronic records and convert
14 written records to electronic records. Additionally, each executive
15 agency shall comply with standards adopted by the Secretary of State
16 pursuant to section 19 of this act.

17
18 18. a. Except as otherwise provided in subsection f. of section 12
19 of this act or section 17 of this act, each governmental agency shall
20 determine whether, and the extent to which, it will send and accept
21 electronic records and electronic signatures to and from other persons,
22 and otherwise create, generate, communicate, store, process, use and
23 rely upon electronic records and electronic signatures.

24 b. To the extent a governmental agency uses electronic records and
25 electronic signatures under subsection a. of this section, the
26 governmental agency, giving due consideration to security, may
27 specify:

28 (1) the manner and format in which the electronic records must be
29 created, generated, sent, communicated, received and stored and the
30 system established for those purposes;

31 (2) if electronic records must be signed by electronic means, the
32 type of electronic signature required, the manner and format in which
33 the electronic signature must be affixed to the electronic record, and
34 the identity of, or criteria that must be met by, any third party used by
35 a person filing a document to facilitate the process;

36 (3) control processes and procedures appropriate to ensure
37 adequate preservation, disposition, integrity, security, confidentiality
38 and auditability of electronic records; and

39 (4) any other required attributes for electronic records which are
40 currently specified for corresponding nonelectronic records, or
41 reasonably necessary under the circumstances.

42 c. Except as otherwise provided in subsection f. of section 12 of
43 this act or section 17 of this act, this act does not require a
44 governmental agency to use or permit the use of electronic records or
45 electronic signatures.

1 19. The Secretary of State shall adopt standards to encourage and
2 promote consistency and interoperability with similar requirements
3 adopted by other governmental agencies of this and other states and
4 the federal government, and nongovernmental persons interacting with
5 governmental agencies of this State. If appropriate, those standards
6 may specify differing levels of standards from which governmental
7 agencies of this State may chose in implementing the most appropriate
8 standard for a particular application.

9
10 20. If any provision of this act or its application to any person or
11 circumstance is held invalid, the invalidity shall not affect other
12 provisions or applications of this act which can be given effect without
13 the invalid provision or application and, to this end, the provisions of
14 this act are severable.

15
16 ¹21. a. Notwithstanding any other provision of this act, if a law or
17 regulation requires that information relating to the transaction be
18 provided or made available to a consumer in writing, the use of an
19 electronic record to provide or make available (whichever is required)
20 such information satisfies the requirement that such information be in
21 writing if:

22 (1) the consumer has affirmatively consented to such use and has
23 not withdrawn such consent;

24 (2) the consumer, prior to consenting, is provided with a clear and
25 conspicuous statement:

26 (a) informing the consumer of:

27 (i) any right or option of the consumer to have the record provided
28 or made available on paper or in nonelectronic form, and

29 (ii) the right of the consumer to withdraw the consent to have the
30 record provided or made available in an electronic form and of any
31 conditions, consequences (which may include termination of the
32 parties' relationship), or fees in the event of such withdrawal;

33 (b) informing the consumer of whether the consent applies:

34 (i) only to the particular transaction which gave rise to the
35 obligation to provide the record, or

36 (ii) to identified categories of records that may be provided or made
37 available during the course of the parties' relationship;

38 (c) describing the procedures the consumer must use to withdraw
39 consent as provided in a.(2)(a) of this section and to update
40 information needed to contact the consumer electronically; and

41 (d) informing the consumer:

42 (i) how, after the consent, the consumer may, upon request, obtain
43 a paper copy of an electronic record, and

44 (ii) whether any fee will be charged for such copy;

45 (3) the consumer:

1 (a) prior to consenting, is provided with a statement of the
2 hardware and software requirements for access to and retention of the
3 electronic records; and

4 (b) consents electronically, or confirms his or her consent
5 electronically, in a manner that reasonably demonstrates that the
6 consumer can access information in the electronic form that will be
7 used to provide the information that is the subject of the consent; and

8 (4) after the consent of a consumer in accordance with a.(1) of this
9 section, if a change in the hardware or software requirements needed
10 to access or retain electronic records creates a material risk that the
11 consumer will not be able to access or retain a subsequent electronic
12 record that was the subject of the consent, the person providing the
13 electronic record:

14 (a) provides the consumer with a statement of:

15 (i) the revised hardware and software requirements for access to
16 and retention of the electronic records; and

17 (ii) the right to withdraw consent without the imposition of any fees
18 for such withdrawal and without the imposition of any condition or
19 consequence that was not disclosed under a.(2)(a) of this section; and

20 (b) again complies with a.(3) of this section.

21 b. Nothing in this act affects the content or timing of any disclosure
22 or other record required to be provided or made available to any
23 consumer under any statute, regulation, or other rule of law.

24 c. If a law that was enacted prior to this act expressly requires a
25 record to be provided or made available by a specified method that
26 requires verification or acknowledgment of receipt, the record may be
27 provided or made available electronically only if the method used
28 provides verification or acknowledgment of receipt (whichever is
29 required).

30 d. The legal effectiveness, validity or enforceability of any contract
31 executed by a consumer shall not be denied solely because of the
32 failure to obtain electronic consent or confirmation of consent by that
33 consumer in accordance with a.(3)(b) of this section.

34 e. Withdrawal of consent by a consumer shall not affect the legal
35 effectiveness, validity or enforceability of electronic records provided
36 or made available to that consumer in accordance with subsection a.
37 prior to implementation of the consumer's withdrawal of consent. A
38 consumer's withdrawal of consent shall be effective within a reasonable
39 period of time after receipt of the withdrawal by the provider of the
40 record. Failure to comply with a.(4) of this section may, at the
41 election of the consumer, be treated as a withdrawal of consent for
42 purposes of this subsection.

43 f. This subsection does not apply to any records that are provided
44 or made available to a consumer who has consented prior to the
45 effective date of this act to receive such records in electronic form as
46 permitted by any statute, regulation, or other rule of law.

1 g. An oral communication or a recording of an oral communication
2 shall not qualify as an electronic record for purposes of this section
3 except as otherwise provided under applicable law.¹

4
5 ¹ 22. The Legislature finds and declares:

6 That the adoption of the "Electronic Signatures in Global and
7 National Commerce Act," Pub.L. 106-229, 114 Stat. 464 (2000),
8 popularly known as "federal E-Sign," encourages states to enact the
9 Uniform Electronic Transactions Act proposed for adoption by the
10 National Conference of Commissioners on Uniform State Laws; and

11 That the adoption of the Uniform Electronic Transactions Act will
12 invoke the provisions of Section 102 of Pub. L. 106-229 which state
13 that federal law will no longer preempt the laws of an enacting state;
14 and

15 That Section 102 of Pub. L. 106-229 provides that a state, in
16 enacting the Uniform Electronic Transactions Act, may "modify, limit
17 or supersede" the provisions of the federal law; and

18 That it is desirable for this State to take the fullest possible
19 advantage of the ability to "modify, limit or supersede" Pub. L. 106-
20 229; and

21 That it is the intention of the Legislature that the adoption of the
22 Uniform Electronic Transactions Act in this State modify, limit and
23 supersede the provisions of Pub. L. 106-229 to the fullest possible
24 extent permitted under the federal law.¹

25
26 ²23. Under the provisions of subsection a. of section 8, an
27 electronic record, to be capable of retention by the recipient at the
28 time of receipt, must be capable of being retained and accurately
29 reproduced for later reference by all persons who are entitled to retain
30 the record.²

31
32 ²24. Under the provisions of paragraph (2) of subsection a. of
33 section 12, a record of information remains accessible for later
34 reference if it remains accessible to all persons who are entitled to
35 access by statute, regulation or rule of law, for the period required by
36 such statute, regulation or rule of law, in a form that is capable of
37 being accurately reproduced for later reference, whether by
38 transmission, printing, or otherwise.²

39
40 ²25. The New Jersey Center for Electronic Transactions and
41 Informational Privacy shall be established within the Institute of Law,
42 Science and Technology at Seton Hall University School of Law. The
43 Center shall provide legal research and advisement to the Secretary of
44 State and governmental agencies of this State on issues concerning
45 electronic records and privacy.²

S1183 [2R] KYRILLOS

14

1 ²~~[23.]~~ 26. ² R.S.1:1-2.4 is hereby repealed.¹

2

3 ¹~~[21.]~~ ²~~[24.]~~ 27.² This act shall take effect ¹~~[on the 120th day~~
4 after enactment] immediately¹.

ASSEMBLY TELECOMMUNICATIONS AND UTILITIES
COMMITTEE

STATEMENT TO

[Second Reprint]
SENATE, No. 1183

STATE OF NEW JERSEY

DATED: JANUARY 18, 2001

The Assembly Telecommunications and Utilities Committee reports favorably Senate Bill No. 1183 (2R).

As reported, this bill proposes the enactment of the "Uniform Electronic Transaction Act" (UETA) which is based on the final draft of a report issued by the National Conference on Uniform State Laws in July, 1999.

UETA applies only to transactions in which each party has agreed by some means to conduct them electronically. Agreement is essential. Parties to electronic transactions come under UETA, but they may also opt out. They may vary, waive or disclaim most of the provisions of UETA by agreement, even if it is agreed that business will be transacted by electronic means. The rules in UETA are almost all default rules that apply if the terms of an agreement do not govern.

The objective of UETA is to ensure that transactions in the electronic marketplace are as enforceable as transactions memorialized on paper and with manual signatures, but without changing the substantive rules of law that apply. Thus, the objective of the bill is limited providing that an electronic record of a transaction is the equivalent of a paper record, and that an electronic signature will be given the same legal effect as a manual signature.

The basic rules are found in section 7 of UETA. The fundamental rule in section 7 provides that a record or signature may not be denied legal effect or enforceability solely because it is in electronic form. The second rule says that a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation. The third rule states that any law that requires a writing will be satisfied by an electronic record. And the fourth basic rule provides that any signature requirement in the law will be met if there is an electronic signature.

Almost all other rules in UETA serve the principles set out in section 7, and answer basic questions about the use of electronic records and signatures. Thus, section 15 determines when information is legally delivered in electronic form. It establishes when electronic

delivery occurs--when an electronic record capable of retention by the recipient is legally sent and received since the traditional and statutory rules that govern mail delivery of a paper memorializing a transaction are not applicable to electronic transactions.

The rule on attribution is found in section 9 of the bill. Electronic transactions may be faceless transactions between strangers. UETA states that a signature is attributable to a person if it is an act of that person, and that act may be shown in any manner. If a security procedure is used, its efficacy in establishing the attribution may be shown.

UETA may not be characterized as a digital signature statute although it does facilitate the use of digital signatures and other security procedures. Section 10 provides rules on errors and changes in messages. It favors the party who conforms to the security procedure used in the specific transaction against the party who does not, in the event there is a dispute over the content.

Nothing in the UETA requires the use of a digital signature or any security procedure. It is technologically neutral. UETA is procedural in nature rather than substantive. It does not require the use of electronic transactions or reliance upon electronic records and signatures. It does not prohibit paper records and manual signatures. Basic rules of law, like the general and statutory law of contracts, continue to apply.

There are three provisions in UETA that deviate from the basic rules in section 7. First, UETA excludes transactions subject to the Uniform Commercial Code, with certain exceptions, laws governing estates and trusts, and any other specific laws that a state exempts from the bill.

Second, UETA provides for "transferable records" in section 16. Notes under Article 3 and documents under Article 7 of the Uniform Commercial Code are "transferable records" when in electronic form.

Third, UETA validates contracts formed by electronic agents. Electronic agents are computer programs that are implemented by their principals to do business in electronic form. Section 14 provides that a person may form a contract by using an electronic agent. The principal, the person or entity which provides the program to do business, is bound by the contract that its agent makes.

Section 17 provides that each governmental agency shall determine whether, and the extent to which, it will create and retain electronic records and convert written records to electronic records. Additionally, each executive agency shall comply with standards adopted by the Secretary of State. Section 19 provides that the Secretary of State shall set standards that promote consistency and interoperability between state agencies with respect to the use of electronic records and signatures.

The act would not apply to the following:

- C laws governing adoption, divorce or other family laws matters;
- C court orders or court documents;

- C cancellation notices for public utilities;
- C notices of default, repossession, foreclosure or eviction under a credit agreement secured by an individual's residence;
- C the cancellation of health insurance or life insurance benefits;
- C the recall of products which risk endangering health or safety; or
- C to any documents required to accompany the transportation or handling of hazardous or toxic materials.

The bill contains a provision concerning consumers' rights. This provision provides that, if a law or regulation requires that information be provided in writing, the use of an electronic record will satisfy the "writing" requirement if the consumer has affirmatively consented to the use of the electronic record and has not withdrawn such consent and if the consumer, prior to consenting, receives a clear and conspicuous statement of any right of the consumer to have the record provided on paper, and of any right to withdraw the consent to have the record provided in electronic form. The notice would also require that the consumer be informed of any fees, conditions or consequences, which may include termination of the parties' relationship, in the event of the consumer's withdrawal of consent.

The notice would inform the consumer whether the consent applies only to the particular transaction, or to identified categories of records that may be provided during the course of the parties' relationship. In addition, the notice would describe the procedures the consumer must use to withdraw consent and to update information needed to contact the consumer electronically. Also, the consumer, prior to consenting, would be required to be provided with a statement of the hardware and software requirements for access to and retention of the electronic records, and to consent electronically in a manner that reasonably demonstrates that the consumer can access information in the electronic form.

After the consumer's consent, if a change in the hardware or software requirements creates a material risk that the consumer would no longer be able to access the electronic record, the person providing the electronic record would be required to provide the consumer with a statement of the revised hardware and software requirements for access to the electronic records and the consumer would then have the right to withdraw consent without the imposition of any fees and without the imposition of any conditions or consequences.

The bill also provides that nothing in this act affects the content or timing of any disclosure or other record required to be provided to any consumer under any statute, regulation or other rule of law. The bill also provides that if a law enacted prior to this act expressly requires a record to be provided by a specified method that requires verification or acknowledgment of receipt, the record may be provided electronically only if the method used provides verification or acknowledgment of receipt.

The bill further provides that the legal effectiveness, validity or enforceability of any contract executed by a consumer could not be

denied solely because of the failure to obtain electronic consent or confirmation of consent by that consumer in accordance with the act, and that withdrawal of consent by a consumer would not affect the legal effectiveness, validity or enforceability of electronic records provided to that consumer prior to implementation of the consumer's withdrawal of consent.

In addition, the bill provides that the act does not apply to any records that are provided or made available to a consumer who has consented prior to the effective date of the act to receive such records in electronic form as permitted by any statute, regulation, or other rule of law.

The bill also clarifies that an oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of this section except as otherwise provided under applicable law.

The bill contains a section of legislative findings and declarations. These findings provide that the recent adoption of the "Electronic Signatures in Global and National Commerce Act," Pub.L. 106-229, 114 Stat. 464 (2000), popularly known as "federal E-Sign," encourages states to enact the Uniform Electronic Transactions Act proposed for adoption by the National Conference of Commissioners on Uniform State Laws; that the adoption of the Uniform Electronic Transactions Act will invoke the provisions of the "federal E-sign" law which state that the federal law will no longer preempt the laws of an enacting state; that the "federal E-sign" law provides that a state, in enacting the Uniform Electronic Transactions Act, may "modify, limit or supersede" the provisions of the federal law; and that it is the intention of the Legislature that the adoption of the Uniform Electronic Transactions Act in this State modify, limit and supersede the provisions of Pub. L. 106-229 to the fullest possible extent permitted under the federal law.

Finally, the bill repeals R.S.1:1-2.4, which is superseded by the act, and changes the effective date to provide that the act will take effect immediately, clarify the provisions of the bill with regard to the retention of electronic records, and provide for the establishment of the N.J. Center for Electronic Transactions and Informational Privacy within the Institute of Law, Science and Technology at Seton Hall University School of Law.

STATEMENT TO
[Second Reprint]
SENATE, No. 1183

with Assembly Floor Amendments
(Proposed By Assemblyman Corodemus)

ADOPTED: JANUARY 29, 2001

These floor amendments accomplish three things. First, the manner of referring to the additional exceptions in section 3 of the bill is amended to conform more closely to the federal law. The purpose of this amendment is to correct the manner in which the additional exclusions taken from the federal Electronic Signatures in Global and Electronic Commerce legislation (P.L.106-229) are expressed. These additional exclusions are moved to a new subsection c. in section 3 of the bill, and existing subsections c. and d. are re-lettered accordingly.

Second, an additional section is added to the bill to clarify the meaning of the term "statute, regulation or other rule of law" and the reference in one section of the bill to "official court documents." The purpose of this new section is to clarify that the term "other rule of law" in the phrase "statute, regulation or other rule of law" as used throughout the bill includes the New Jersey court rules. It also clarifies the reference to official court documents in section 3. This is not proposed as an amendment to the section on definitions but as an additional section to keep the main body of the bill in close conformity with the text of the official version of the Uniform Electronic Transactions Act, as required by the federal Electronic Signatures in Global and National Commerce Act (P.L.106-22). The federal law contains restraints on state law enactments of the UETA and this separate section is an effort to conform to those restraints.

Third, section 25 of the bill concerning the New Jersey Center for Electronic Transactions and Informational Privacy established within the Institute of Law, Science and Technology at Seton Hall University School of Law was amended to clarify that the Center shall collect and evaluate information on issues concerning electronic records and privacy and shall compile its findings and any recommendations for submission to the Secretary of State and governmental agencies of this State, as may be appropriate.

[Third Reprint]

SENATE, No. 1183

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED MARCH 27, 2000

Sponsored by:

Senator JOSEPH M. KYRILLOS, JR.

District 13 (Middlesex and Monmouth)

Co-Sponsored by:

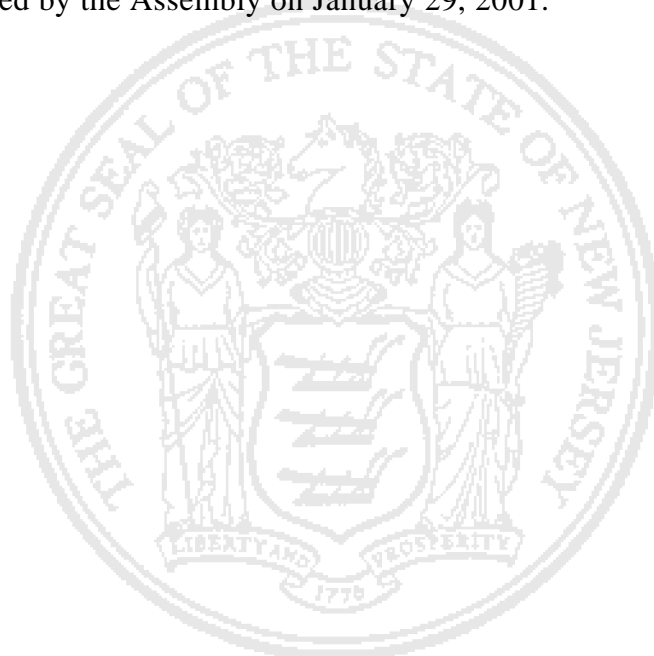
Assemblymen Corodemus and Arnone

SYNOPSIS

Creates the "Uniform Electronic Transactions Act."

CURRENT VERSION OF TEXT

As amended by the Assembly on January 29, 2001.



(Sponsorship Updated As Of: 1/30/2001)

S1183 [3R] KYRILLOS

2

1 AN ACT creating the "Uniform Electronic Transactions ¹[Act" and]
2 Act;¹ supplementing Title 12A of the New Jersey Statutes ¹and
3 repealing R.S.1:1-2.4¹.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. This act shall be known and may be cited as the "Uniform
9 Electronic Transactions Act."

10

11 2. As used in this act:

12 "Agreement" means the bargain of the parties in fact, as found in
13 their language or inferred from other circumstances, and from rules,
14 regulations and procedures given the effect of agreements under laws
15 otherwise applicable to a particular transaction.

16 "Automated transaction" means a transaction conducted or
17 performed, in whole or in part, by electronic means or electronic
18 records, in which the acts or records of one or both parties are not
19 reviewed by an individual in the ordinary course in forming a contract,
20 performing under an existing contract or fulfilling an obligation
21 required by the transaction.

22 "Computer program" means a set of statements or instructions to
23 be used directly or indirectly in an information processing system in
24 order to bring about a certain result.

25 "Contract" means the total legal obligation resulting from the
26 parties' agreement as affected by this act and other applicable law.

27 "Electronic" means relating to technology having an electrical,
28 digital, magnetic, wireless, optical, electromagnetic or similar
29 capabilities.

30 "Electronic agent" means a computer program or an electronic or
31 other automated means used independently to initiate an action or
32 respond to electronic records or performances in whole or in part,
33 without review or action by an individual.

34 "Electronic record" means a record created, generated, sent,
35 communicated, received or stored by electronic means.

36 "Electronic signature" means an electronic sound, symbol, or
37 process attached to or logically associated with a record and executed
38 or adopted by a person with the intent to sign the record.

39 "Governmental agency" means an executive, legislative or judicial
40 agency, department, board, commission, authority, institution or

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SJU committee amendments adopted September 14, 2000.

² Senate floor amendments adopted September 21, 2000.

³ Assembly floor amendments adopted January 29, 2001.

1 instrumentality of the federal government or of a state or of a county,
2 municipality, or other political subdivision of a state.

3 "Information" means data, text, images, sounds, codes, computer
4 programs, software, databases or the like.

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

8 "Person" means an individual, corporation, business trust, estate,
9 trust, partnership, limited liability company, association, joint venture,
10 governmental agency, public corporation, or any other legal or
11 commercial entity.

12 "Record" means information that is inscribed on a tangible medium
13 or that is stored in an electronic or other medium and is retrievable in
14 perceivable form.

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

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

27 "Transaction" means an action or set of actions occurring between
28 two or more persons relating to the conduct of business, commercial
29 or governmental affairs.

30

31 3. a. Except as provided in ³[subsection b.] subsections b. and c.³
32 of this section, this act applies to electronic records and electronic
33 signatures relating to a transaction.

34 b. This act does not apply to a transaction to the extent it is
35 governed by:

36 (1) a law governing the creation and execution of wills, codicils or
37 testamentary trusts;

38 (2) the Uniform Commercial Code other than sections 1-107 and
39 1-206, Article 2 and Article 2A; ¹[and]¹

40 (3) ¹[other laws as may be excluded from the provisions of this act]
41 a statute, regulation or other rule of law governing adoption, divorce
42 or other matters of family law ³[;].

43 c. This act does not apply to:³

44 ³[(4)] (1)³ court orders or notices or official court documents
45 (including briefs, pleadings and other writings) required to be executed
46 in connection with court proceedings;

1 ³~~[(5)]~~ (2)³ any notice of :

2 (a) the cancellation or termination of utility services (including
3 water, heat and power);

4 (b) the default, acceleration, repossession, foreclosure or eviction,
5 or the right to cure, under a credit agreement secured by, or a rental
6 agreement for, a primary residence of an individual;

7 (c) the cancellation or termination of health insurance benefits or
8 life insurance benefits (excluding annuities); or

9 (d) the recall of a product, or material failure of a product, that
10 risks endangering health or safety; or

11 ³~~[(6)]~~(3)³ any document required to accompany any transportation
12 or handling of hazardous materials, pesticides or other toxic or
13 dangerous materials¹.

14 ³[c.]d.³ This act applies to an electronic record or electronic
15 signature otherwise excluded from the application of this act under
16 subsection b. of this section to the extent it is governed by a law other
17 than those specified in subsection b. of this section.

18 ³[d.]e.³ A transaction subject to this act is subject also to other
19 applicable substantive law.

20

21 4. This act applies to any electronic record or electronic signature
22 created, generated, sent, communicated, received or stored on or after
23 the effective date of this act.

24

25 5. a. This act does not require a record or signature to be created,
26 generated, stored, sent, communicated, received, stored or otherwise
27 processed or used by electronic means or in electronic form.

28 b. This act applies only to transactions between parties each of
29 which has agreed to conduct transactions by electronic means.
30 Whether the parties agree to conduct a transaction by electronic means
31 is determined from the context and surrounding circumstances,
32 including the parties' conduct.

33 c. A party that agrees to conduct a transaction by electronic means
34 may refuse to conduct other transactions by electronic means. The
35 right granted by this subsection may not be waived by agreement.

36 d. Except as otherwise provided in this act, the effect of any of its
37 provisions may be varied by agreement. The presence in certain
38 provisions of this act of the words "unless otherwise agreed," or words
39 of similar import, does not imply that the effect of other provisions
40 may not be varied by agreement.

41 e. Whether an electronic record or electronic signature has legal
42 consequences is determined by this act and other applicable law.

43

44 6. This act shall be construed and applied:

45 a. to facilitate electronic transactions consistent with other
46 applicable law;

1 b. to be consistent with reasonable practices concerning electronic
2 transactions and with the continued expansion of those practices; and

3 c. to effectuate its general purpose to make uniform the law with
4 respect to the subject of this act among the states enacting it.

5
6 7. a. A record or signature may not be denied legal effect or
7 enforceability solely because it is in electronic form.

8 b. A contract may not be denied legal effect or enforceability solely
9 because an electronic record was used in its formation.

10 c. If a law requires a record to be in writing, an electronic record
11 satisfies the law.

12 d. If a law requires a signature, an electronic signature satisfies the
13 law.

14
15 8. a. If parties have agreed to conduct a transaction by electronic
16 means and a law requires a person to provide, send, or deliver
17 information in writing to another person, the requirement is satisfied
18 if the information is provided, sent, or delivered, as the case may be,
19 in an electronic record capable of retention by the recipient at the time
20 of receipt. An electronic record is not capable of retention by the
21 recipient if the sender or its information processing system inhibits the
22 ability of the recipient to print or store the electronic record.

23 b. If a law other than this act requires a record to be posted or
24 displayed in a certain manner, to be sent, communicated or transmitted
25 by a specified method, or to contain information that is formatted in
26 a certain manner, the following apply:

27 (1) The record shall be posted or displayed in the manner specified
28 in the other law.

29 (2) Except as otherwise provided in paragraph (2) of subsection d.
30 of this section, the record shall be sent, communicated or transmitted
31 by the method specified in the other law.

32 (3) The record shall contain the information formatted in the
33 manner specified in the other law.

34 c. If a sender inhibits the ability of a recipient to store or print an
35 electronic record, the electronic record is not enforceable against the
36 recipient.

37 d. The requirements of this section may not be varied by
38 agreement, but:

39 (1) to the extent a law other than this act requires information to
40 be provided, sent, or delivered in writing but permits that requirement
41 to be varied by agreement, the requirement under subsection a. of this
42 section that the information be in the form of an electronic record
43 capable of retention may also be varied by agreement; and

44 (2) a requirement under a law other than this act to send,
45 communicate, or transmit a record by United States mail, may be
46 varied by agreement to the extent permitted by the other law.

1 9. a. An electronic record or electronic signature is attributable to
2 a person if it was the act of the person. The act of the person may be
3 shown in any manner, including a showing of the efficacy of any
4 security procedure applied to determine the person to which the
5 electronic record or electronic signature was attributable.

6 b. The effect of an electronic record or electronic signature
7 attributed to a person under subsection a. of this section is determined
8 from the context and surrounding circumstances at the time of its
9 creation, execution or adoption, including the parties' agreement, if
10 any, and as otherwise provided by law.

11
12 10. If a change or error in an electronic record occurs in a
13 transmission between parties to a transaction, the following rules
14 apply:

15 a. If the parties have agreed to use a security procedure to detect
16 changes or errors and one party has consented to the procedure but
17 the other party has not, and the nonconforming party would have
18 detected the change or error had that party also conformed, the
19 conforming party may avoid the effect of the changed or erroneous
20 electronic record.

21 b. In an automated transaction involving an individual, the
22 individual may avoid the effect of an electronic record that resulted
23 from an error made by the individual in dealing with the electronic
24 agent of another person if the electronic agent did not provide an
25 opportunity for the prevention or correction of the error, and, at the
26 time the individual learns of the error, the individual:

27 (1) promptly notifies the other person of the error and that the
28 individual did not intend to be bound by the electronic record received
29 by the other person;

30 (2) takes reasonable steps, including steps that conform to the
31 other persons's reasonable instructions, to return to the other person
32 or, if instructed by the other person, to destroy the consideration
33 received, if any, as a result of the erroneous electronic record; and

34 (3) has not used or received any benefit or value from the
35 consideration, if any, received from the other person.

36 c. If neither subsection a. or b. of this section applies, the change
37 or error has the effect provided by other law, including the law of
38 mistake, and the parties' contract, if any.

39 d. Subsections b. and c. of this section may not be varied by
40 agreement.

41
42 11. If a law requires a signature or record to be notarized,
43 acknowledged, verified, or made under oath, the requirement is
44 satisfied if the electronic signature of the person authorized to perform
45 those acts, together with all other information required to be

1 included by other applicable law, is attached to or logically associated
2 with the signature or record.

3

4 12. a. If a law requires that a record be retained, the requirement
5 is satisfied by retaining an electronic record of the information in the
6 record which:

7 (1) accurately reflects the information set forth in the record after
8 it was first generated in its final form as an electronic record or
9 otherwise; and

10 (2) remains accessible for later reference.

11 b. A requirement to retain a record in accordance with subsection
12 a. of this section does not apply to any information the sole purpose
13 of which is to enable the record to be sent, communicated or received.

14 c. A person may satisfy subsection a. of this section by using the
15 services of another person if the requirements of that subsection are
16 satisfied.

17 d. If a law requires a record to be presented or retained in its
18 original form, or provides consequences if the record is not presented
19 or retained in its original form, that law is satisfied by an electronic
20 record retained in accordance with subsection a. of this section.

21 e. If a law requires retention of a check, that requirement is
22 satisfied by retention of an electronic record of the information on the
23 front and back of the check in accordance with subsection a. of this
24 section.

25 f. A record retained as an electronic record in accordance with
26 subsection a. of this section satisfies a law requiring a person to retain
27 a record for evidentiary, audit or like purposes, unless a law enacted
28 after the effective date of this act specifically prohibits the use of an
29 electronic record for the specified purpose.

30 g. This section does not preclude a governmental agency of this
31 State from specifying additional requirements for the retention of a
32 records subject to the agency's jurisdiction.

33

34 13. In a proceeding, evidence of a record or signature may not be
35 excluded solely because it is in electronic form.

36

37 14. In an automated transaction, the following rules apply:

38 a. A contract may be formed by the interaction of electronic agents
39 of the parties, even if no individual was aware of or reviewed the
40 electronic agents' actions or the resulting terms and agreements.

41 b. A contract may be formed by the interaction of an electronic
42 agent and an individual, acting on the individual's own behalf or for
43 another person, including by an interaction in which the individual
44 performs actions that the individual is free to refuse to perform and
45 which the individual knows or has reason to know will cause the
46 electronic agent to complete the transaction or performance.

1 c. The terms of the contract are determined by the substantive law
2 applicable to it.

3

4 15. a. Unless otherwise agreed between the sender and the
5 recipient, an electronic record is sent when it:

6 (1) is addressed properly or otherwise directed properly to an
7 information processing system that the recipient has designated or uses
8 for the purpose of receiving electronic records or information of the
9 type sent and from which the recipient is able to retrieve the electronic
10 record;

11 (2) is in a form capable of being processed by that system; and

12 (3) enters an information processing system outside the control of
13 the sender or of a person that sent the electronic record on behalf of
14 the sender or enters a region of the information processing system
15 designated or used by the recipient which is under the control of the
16 recipient.

17 b. Unless otherwise agreed between a sender and the recipient, an
18 electronic record is received when:

19 (1) it enters an information processing system that the recipient has
20 designated or uses for the purpose of receiving electronic records or
21 information of the type sent and from which the recipient is able to
22 retrieve the electronic record; and

23 (2) is in a form capable of being processed by that system.

24 c. Subsection b. of this section applies even if the place the
25 information processing system is located is different from the place the
26 electronic record is deemed to be received under subsection d. of this
27 section.

28 d. Unless otherwise expressly provided in the electronic record or
29 agreed between the sender and the recipient, an electronic record is
30 deemed to be sent from the sender's place of business and to be
31 received at the recipient's place of business. For purposes of this
32 subsection, the following rules apply:

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

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

39 e. An electronic record is received under subsection b. of this
40 section even if no individual is aware of its receipt.

41 f. Receipt of an electronic acknowledgment from an information
42 processing system described in subsection b. of this section establishes
43 that a record was received but, by itself, does not establish that the
44 content sent corresponds to the content received.

45 g. If a person is aware that an electronic record purportedly sent
46 under subsection a. of this section, or purportedly received under

1 subsection b. of this section, was not actually sent or received, the
2 legal effect of the sending or receipt is determined by other applicable
3 law. Except to the extent permitted by the other law, the requirements
4 of this subsection may not be varied by agreement.

5
6 16. a. As used in this section "transferable record" means an
7 electronic record that:

8 (1) would be a note under Article 3 of the Uniform Commercial
9 Code or a document under Article 7 of the Uniform Commercial Code
10 if the electronic record were in writing; and

11 (2) the issuer of the electronic record expressly has agreed is a
12 transferable record.

13 b. A person has control of a transferable record if a system
14 employed for evidencing the transfer of interests in the transferable
15 record reliably establishes that person as the person to which the
16 transferable record was issued or transferred.

17 c. A system satisfies subsection b. of this section and the person is
18 deemed to have control of a transferable record if the transferable
19 record is created, stored and assigned in such a manner that:

20 (1) a single authoritative copy of the transferable record exists
21 which is unique, identifiable and, except as otherwise provided in
22 paragraphs (4), (5) and (6) of this subsection, unalterable;

23 (2) the authoritative copy identifies the person asserting control as:

24 (a) the person to which the transferable record was issued; or

25 (b) if the authoritative copy indicates that the transferable record
26 has been transferred, the person to which the transferable record was
27 most recently transferred;

28 (3) the authoritative copy is communicated to and maintained by
29 the person asserting control or its designated custodian;

30 (4) copies or revisions that add or change an identified assignee of
31 the authoritative copy may be made only with the consent of the
32 person asserting control;

33 (5) each copy of the authoritative copy and any copy of a copy is
34 readily identifiable as a copy that is not the authoritative copy; and

35 (6) any revision of the authoritative copy is readily identifiable as
36 authorized or unauthorized.

37 d. Except as otherwise agreed, a person having control of a
38 transferable record is the holder, as defined in section 1-201 of the
39 Uniform Commercial Code of the transferable record and has the same
40 rights and defenses as a holder of an equivalent record or writing
41 under the Uniform Commercial Code including, if the applicable
42 statutory requirements are satisfied, the rights and defenses of a holder
43 in due course, a holder to which a negotiable document of title has
44 been duly negotiated or a purchaser. Delivery, possession and
45 indorsement are not required to obtain or exercise any of the rights
46 under this subsection.

1 e. Except as otherwise agreed, an obligor under a transferable
2 record has the same rights and defenses as an equivalent obligor under
3 equivalent records or writings under the Uniform Commercial Code.

4 f. If requested by a person against which enforcement is sought, the
5 person seeking to enforce the transferable record shall provide
6 reasonable proof that the person is in control of the transferable
7 record. Proof may include access to the authoritative copy of the
8 transferable record and related business records sufficient to review
9 the terms of the transferable record and to establish the identity of the
10 person having control of the transferable record.

11
12 17. Each governmental agency shall determine whether, and the
13 extent to which, it will create and retain electronic records and convert
14 written records to electronic records. Additionally, each executive
15 agency shall comply with standards adopted by the Secretary of State
16 pursuant to section 19 of this act.

17
18 18. a. Except as otherwise provided in subsection f. of section 12
19 of this act or section 17 of this act, each governmental agency shall
20 determine whether, and the extent to which, it will send and accept
21 electronic records and electronic signatures to and from other persons,
22 and otherwise create, generate, communicate, store, process, use and
23 rely upon electronic records and electronic signatures.

24 b. To the extent a governmental agency uses electronic records and
25 electronic signatures under subsection a. of this section, the
26 governmental agency, giving due consideration to security, may
27 specify:

28 (1) the manner and format in which the electronic records must be
29 created, generated, sent, communicated, received and stored and the
30 system established for those purposes;

31 (2) if electronic records must be signed by electronic means, the
32 type of electronic signature required, the manner and format in which
33 the electronic signature must be affixed to the electronic record, and
34 the identity of, or criteria that must be met by, any third party used by
35 a person filing a document to facilitate the process;

36 (3) control processes and procedures appropriate to ensure
37 adequate preservation, disposition, integrity, security, confidentiality
38 and auditability of electronic records; and

39 (4) any other required attributes for electronic records which are
40 currently specified for corresponding nonelectronic records, or
41 reasonably necessary under the circumstances.

42 c. Except as otherwise provided in subsection f. of section 12 of
43 this act or section 17 of this act, this act does not require a
44 governmental agency to use or permit the use of electronic records or
45 electronic signatures.

1 19. The Secretary of State shall adopt standards to encourage and
2 promote consistency and interoperability with similar requirements
3 adopted by other governmental agencies of this and other states and
4 the federal government, and nongovernmental persons interacting with
5 governmental agencies of this State. If appropriate, those standards
6 may specify differing levels of standards from which governmental
7 agencies of this State may chose in implementing the most appropriate
8 standard for a particular application.

9
10 20. If any provision of this act or its application to any person or
11 circumstance is held invalid, the invalidity shall not affect other
12 provisions or applications of this act which can be given effect without
13 the invalid provision or application and, to this end, the provisions of
14 this act are severable.

15
16 ¹21. a. Notwithstanding any other provision of this act, if a law or
17 regulation requires that information relating to the transaction be
18 provided or made available to a consumer in writing, the use of an
19 electronic record to provide or make available (whichever is required)
20 such information satisfies the requirement that such information be in
21 writing if:

22 (1) the consumer has affirmatively consented to such use and has
23 not withdrawn such consent;

24 (2) the consumer, prior to consenting, is provided with a clear and
25 conspicuous statement:

26 (a) informing the consumer of:

27 (i) any right or option of the consumer to have the record provided
28 or made available on paper or in nonelectronic form, and

29 (ii) the right of the consumer to withdraw the consent to have the
30 record provided or made available in an electronic form and of any
31 conditions, consequences (which may include termination of the
32 parties' relationship), or fees in the event of such withdrawal;

33 (b) informing the consumer of whether the consent applies:

34 (i) only to the particular transaction which gave rise to the
35 obligation to provide the record, or

36 (ii) to identified categories of records that may be provided or made
37 available during the course of the parties' relationship;

38 (c) describing the procedures the consumer must use to withdraw
39 consent as provided in a.(2)(a) of this section and to update
40 information needed to contact the consumer electronically; and

41 (d) informing the consumer:

42 (i) how, after the consent, the consumer may, upon request, obtain
43 a paper copy of an electronic record, and

44 (ii) whether any fee will be charged for such copy;

45 (3) the consumer:

1 (a) prior to consenting, is provided with a statement of the
2 hardware and software requirements for access to and retention of the
3 electronic records; and

4 (b) consents electronically, or confirms his or her consent
5 electronically, in a manner that reasonably demonstrates that the
6 consumer can access information in the electronic form that will be
7 used to provide the information that is the subject of the consent; and

8 (4) after the consent of a consumer in accordance with a.(1) of this
9 section, if a change in the hardware or software requirements needed
10 to access or retain electronic records creates a material risk that the
11 consumer will not be able to access or retain a subsequent electronic
12 record that was the subject of the consent, the person providing the
13 electronic record:

14 (a) provides the consumer with a statement of:

15 (i) the revised hardware and software requirements for access to
16 and retention of the electronic records; and

17 (ii) the right to withdraw consent without the imposition of any fees
18 for such withdrawal and without the imposition of any condition or
19 consequence that was not disclosed under a.(2)(a) of this section; and

20 (b) again complies with a.(3) of this section.

21 b. Nothing in this act affects the content or timing of any disclosure
22 or other record required to be provided or made available to any
23 consumer under any statute, regulation, or other rule of law.

24 c. If a law that was enacted prior to this act expressly requires a
25 record to be provided or made available by a specified method that
26 requires verification or acknowledgment of receipt, the record may be
27 provided or made available electronically only if the method used
28 provides verification or acknowledgment of receipt (whichever is
29 required).

30 d. The legal effectiveness, validity or enforceability of any contract
31 executed by a consumer shall not be denied solely because of the
32 failure to obtain electronic consent or confirmation of consent by that
33 consumer in accordance with a.(3)(b) of this section.

34 e. Withdrawal of consent by a consumer shall not affect the legal
35 effectiveness, validity or enforceability of electronic records provided
36 or made available to that consumer in accordance with subsection a.
37 prior to implementation of the consumer's withdrawal of consent. A
38 consumer's withdrawal of consent shall be effective within a reasonable
39 period of time after receipt of the withdrawal by the provider of the
40 record. Failure to comply with a.(4) of this section may, at the
41 election of the consumer, be treated as a withdrawal of consent for
42 purposes of this subsection.

43 f. This subsection does not apply to any records that are provided
44 or made available to a consumer who has consented prior to the
45 effective date of this act to receive such records in electronic form as
46 permitted by any statute, regulation, or other rule of law.

1 g. An oral communication or a recording of an oral communication
2 shall not qualify as an electronic record for purposes of this section
3 except as otherwise provided under applicable law.¹

4
5 ¹ 22. The Legislature finds and declares:

6 That the adoption of the "Electronic Signatures in Global and
7 National Commerce Act," Pub.L. 106-229, 114 Stat. 464 (2000),
8 popularly known as "federal E-Sign," encourages states to enact the
9 Uniform Electronic Transactions Act proposed for adoption by the
10 National Conference of Commissioners on Uniform State Laws; and

11 That the adoption of the Uniform Electronic Transactions Act will
12 invoke the provisions of Section 102 of Pub. L. 106-229 which state
13 that federal law will no longer preempt the laws of an enacting state;
14 and

15 That Section 102 of Pub. L. 106-229 provides that a state, in
16 enacting the Uniform Electronic Transactions Act, may "modify, limit
17 or supersede" the provisions of the federal law; and

18 That it is desirable for this State to take the fullest possible
19 advantage of the ability to "modify, limit or supersede" Pub. L. 106-
20 229; and

21 That it is the intention of the Legislature that the adoption of the
22 Uniform Electronic Transactions Act in this State modify, limit and
23 supersede the provisions of Pub. L. 106-229 to the fullest possible
24 extent permitted under the federal law.¹

25
26 ²23. Under the provisions of subsection a. of section 8, an
27 electronic record, to be capable of retention by the recipient at the
28 time of receipt, must be capable of being retained and accurately
29 reproduced for later reference by all persons who are entitled to retain
30 the record.²

31
32 ²24. Under the provisions of paragraph (2) of subsection a. of
33 section 12, a record of information remains accessible for later
34 reference if it remains accessible to all persons who are entitled to
35 access by statute, regulation or rule of law, for the period required by
36 such statute, regulation or rule of law, in a form that is capable of
37 being accurately reproduced for later reference, whether by
38 transmission, printing, or otherwise.²

39
40 ²25. The New Jersey Center for Electronic Transactions and
41 Informational Privacy shall be established within the Institute of Law,
42 Science and Technology at Seton Hall University School of Law. The
43 Center shall³[provide legal research and advisement] collect and
44 evaluate information on issues concerning electronic records and
45 privacy and shall compile its findings and any recommendations for
46 submission³ to the Secretary of State and governmental agencies of

1 this State³[on issues concerning electronic records and privacy], as
2 may be appropriate^{3, 2}

3

4 ³26. For purposes of this act, references to "statute, regulation or
5 other rule of law" shall include the Rules Governing the Courts of the
6 State of New Jersey and the reference to "court orders or notices or
7 official court documents" as used in paragraph (1) of subsection c. of
8 section 3 of this act shall include all official court documents governed
9 by the Rules Governing the Courts of the State of New Jersey.³

10

11 ²[¹23.]³[²26.] ³27. ³R.S.1:1-2.4 is hereby repealed.¹

12

13 ¹[21.] ²[24.] ³[27.] ³28.³ This act shall take effect ¹[on the
14 120th day after enactment] immediately¹.

ASSEMBLY, No. 2497

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED MAY 22, 2000

Sponsored by:

**Assemblyman STEVE CORODEMUS
District 11 (Monmouth)**

Co-Sponsored by:

Assemblyman Arnone

SYNOPSIS

Creates the "Uniform Electronic Transactions Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/16/2000)

A2497 CORODEMUS

2

1 AN ACT creating the "Uniform Electronic Transactions Act" and
2 supplementing Title 12A of the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the "Uniform
8 Electronic Transactions Act."

9

10 2. As used in this act:

11 "Agreement" means the bargain of the parties in fact, as found in
12 their language or inferred from other circumstances, and from rules,
13 regulations and procedures given the effect of agreements under laws
14 otherwise applicable to a particular transaction.

15 "Automated transaction" means a transaction conducted or
16 performed, in whole or in part, by electronic means or electronic
17 records, in which the acts or records of one or both parties are not
18 reviewed by an individual in the ordinary course in forming a contract,
19 performing under an existing contract or fulfilling an obligation
20 required by the transaction.

21 "Computer program" means a set of statements or instructions to
22 be used directly or indirectly in an information processing system in
23 order to bring about a certain result.

24 "Contract" means the total legal obligation resulting from the
25 parties' agreement as affected by this act and other applicable law.

26 "Electronic" means relating to technology having an electrical,
27 digital, magnetic, wireless, optical, electromagnetic or similar
28 capabilities.

29 "Electronic agent" means a computer program or an electronic or
30 other automated means used independently to initiate an action or
31 respond to electronic records or performances in whole or in part,
32 without review or action by an individual.

33 "Electronic record" means a record created, generated, sent,
34 communicated, received or stored by electronic means.

35 "Electronic signature" means an electronic sound, symbol, or
36 process attached to or logically associated with a record and executed
37 or adopted by a person with the intent to sign the record.

38 "Governmental agency" means an executive, legislative or judicial
39 agency, department, board, commission, authority, institution or
40 instrumentality of the federal government or of a state or of a county,
41 municipality, or other political subdivision of a state.

42 "Information" means data, text, images, sounds, codes, computer
43 programs, software, databases or the like.

44 "Information processing system" means an electronic system for
45 creating, generating, sending, receiving, storing, displaying or
46 processing information.

A2497 CORODEMUS

1 "Person" means an individual, corporation, business trust, estate,
2 trust, partnership, limited liability company, association, joint venture,
3 governmental agency, public corporation, or any other legal or
4 commercial entity.

5 "Record" means information that is inscribed on a tangible medium
6 or that is stored in an electronic or other medium and is retrievable in
7 perceivable form.

8 "Security procedure" means a procedure employed for the purpose
9 of verifying that an electronic signature, record or performance is that
10 of a specific person or for detecting changes or errors in the
11 information in an electronic record. The term includes a procedure
12 that requires the use of algorithms or other codes, identifying words
13 or numbers, encryption, callback or other acknowledgment
14 procedures.

15 "State" means a state of the United States, the District of Columbia,
16 Puerto Rico, the United States Virgin Islands, or any territory or
17 insular possession subject to the jurisdiction of the United States. The
18 term includes an Indian tribe or band, or Alaskan native village, which
19 is recognized by a federal law or formally acknowledged by a state.

20 "Transaction" means an action or set of actions occurring between
21 two or more persons relating to the conduct of business, commercial
22 or governmental affairs.

23
24 3. a. Except as provided in subsection b. of this section, this act
25 applies to electronic records and electronic signatures relating to a
26 transaction.

27 b. This act does not apply to a transaction to the extent it is
28 governed by:

29 (1) a law governing the creation and execution of wills, codicils or
30 testamentary trusts;

31 (2) the Uniform Commercial Code other than sections 1-107 and
32 1-206, Article 2 and Article 2A; and

33 (3) other laws as may be excluded from the provisions of this act.

34 c. This act applies to an electronic record or electronic signature
35 otherwise excluded from the application of this act under subsection
36 b. of this section to the extent it is governed by a law other than those
37 specified in subsection b. of this section.

38 d. A transaction subject to this act is subject also to other
39 applicable substantive law.

40
41 4. This act applies to any electronic record or electronic signature
42 created, generated, sent, communicated, received or stored on or after
43 the effective date of this act.

44
45 5. a. This act does not require a record or signature to be created,
46 generated, stored, sent, communicated, received, stored or otherwise

A2497 CORODEMUS

1 processed or used by electronic means or in electronic form.

2 b. This act applies only to transactions between parties each of
3 which has agreed to conduct transactions by electronic means.
4 Whether the parties agree to conduct a transaction by electronic means
5 is determined from the context and surrounding circumstances,
6 including the parties' conduct.

7 c. A party that agrees to conduct a transaction by electronic means
8 may refuse to conduct other transactions by electronic means. The
9 right granted by this subsection may not be waived by agreement.

10 d. Except as otherwise provided in this act, the effect of any of its
11 provisions may be varied by agreement. The presence in certain
12 provisions of this act of the words "unless otherwise agreed," or words
13 of similar import, does not imply that the effect of other provisions
14 may not be varied by agreement.

15 e. Whether an electronic record or electronic signature has legal
16 consequences is determined by this act and other applicable law.

17

18 6. This act shall be construed and applied:

19 a. to facilitate electronic transactions consistent with other
20 applicable law;

21 b. to be consistent with reasonable practices concerning electronic
22 transactions and with the continued expansion of those practices; and

23 c. to effectuate its general purpose to make uniform the law with
24 respect to the subject of this act among the states enacting it.

25

26 7. a. A record or signature may not be denied legal effect or
27 enforceability solely because it is in electronic form.

28 b. A contract may not be denied legal effect or enforceability solely
29 because an electronic record was used in its formation.

30 c. If a law requires a record to be in writing, an electronic record
31 satisfies the law.

32 d. If a law requires a signature, an electronic signature satisfies the
33 law.

34

35 8. a. If parties have agreed to conduct a transaction by electronic
36 means and a law requires a person to provide, send, or deliver
37 information in writing to another person, the requirement is satisfied
38 if the information is provided, sent, or delivered, as the case may be,
39 in an electronic record capable of retention by the recipient at the time
40 of receipt. An electronic record is not capable of retention by the
41 recipient if the sender or its information processing system inhibits the
42 ability of the recipient to print or store the electronic record.

43 b. If a law other than this act requires a record to be posted or
44 displayed in a certain manner, to be sent, communicated or transmitted
45 by a specified method, or to contain information that is formatted in
46 a certain manner, the following apply:

A2497 CORODEMUS

1 (1) The record shall be posted or displayed in the manner specified
2 in the other law.

3 (2) Except as otherwise provided in paragraph (2) of subsection d.
4 of this section, the record shall be sent, communicated or transmitted
5 by the method specified in the other law.

6 (3) The record shall contain the information formatted in the
7 manner specified in the other law.

8 c. If a sender inhibits the ability of a recipient to store or print an
9 electronic record, the electronic record is not enforceable against the
10 recipient.

11 d. The requirements of this section may not be varied by
12 agreement, but:

13 (1) to the extent a law other than this act requires information to
14 be provided, sent, or delivered in writing but permits that requirement
15 to be varied by agreement, the requirement under subsection a. of this
16 section that the information be in the form of an electronic record
17 capable of retention may also be varied by agreement; and

18 (2) a requirement under a law other than this act to send,
19 communicate, or transmit a record by United States mail, may be
20 varied by agreement to the extent permitted by the other law.

21

22 9. a. An electronic record or electronic signature is attributable
23 to a person if it was the act of the person. The act of the person may
24 be shown in any manner, including a showing of the efficacy of any
25 security procedure applied to determine the person to which the
26 electronic record or electronic signature was attributable.

27 b. The effect of an electronic record or electronic signature
28 attributed to a person under subsection a. of this section is determined
29 from the context and surrounding circumstances at the time of its
30 creation, execution or adoption, including the parties' agreement, if
31 any, and as otherwise provided by law.

32

33 10. If a change or error in an electronic record occurs in a
34 transmission between parties to a transaction, the following rules
35 apply:

36 a. If the parties have agreed to use a security procedure to detect
37 changes or errors and one party has consented to the procedure but
38 the other party has not, and the nonconforming party would have
39 detected the change or error had that party also conformed, the
40 conforming party may avoid the effect of the changed or erroneous
41 electronic record.

42 b. In an automated transaction involving an individual, the
43 individual may avoid the effect of an electronic record that resulted
44 from an error made by the individual in dealing with the electronic
45 agent of another person if the electronic agent did not provide an
46 opportunity for the prevention or correction of the error, and, at the

1 time the individual learns of the error, the individual:

2 (1) promptly notifies the other person of the error and that the
3 individual did not intend to be bound by the electronic record received
4 by the other person;

5 (2) takes reasonable steps, including steps that conform to the
6 other persons's reasonable instructions, to return to the other person
7 or, if instructed by the other person, to destroy the consideration
8 received, if any, as a result of the erroneous electronic record; and

9 (3) has not used or received any benefit or value from the
10 consideration, if any, received from the other person.

11 c. If neither subsection a. or b. of this section applies, the change
12 or error has the effect provided by other law, including the law of
13 mistake, and the parties' contract, if any.

14 d. Subsections b. and c. of this section may not be varied by
15 agreement.

16

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

23

24 12. a. If a law requires that a record be retained, the requirement
25 is satisfied by retaining an electronic record of the information in the
26 record which:

27 (1) accurately reflects the information set forth in the record after
28 it was first generated in its final form as an electronic record or
29 otherwise; and

30 (2) remains accessible for later reference.

31 b. A requirement to retain a record in accordance with subsection
32 a. of this section does not apply to any information the sole purpose
33 of which is to enable the record to be sent, communicated or received.

34 c. A person may satisfy subsection a. of this section by using the
35 services of another person if the requirements of that subsection are
36 satisfied.

37 d. If a law requires a record to be presented or retained in its
38 original form, or provides consequences if the record is not presented
39 or retained in its original form, that law is satisfied by an electronic
40 record retained in accordance with subsection a. of this section.

41 e. If a law requires retention of a check, that requirement is
42 satisfied by retention of an electronic record of the information on the
43 front and back of the check in accordance with subsection a. of this
44 section.

45 f. A record retained as an electronic record in accordance with
46 subsection a. of this section satisfies a law requiring a person to retain

1 a record for evidentiary, audit or like purposes, unless a law enacted
2 after the effective date of this act specifically prohibits the use of an
3 electronic record for the specified purpose.

4 g. This section does not preclude a governmental agency of this
5 State from specifying additional requirements for the retention of a
6 records subject to the agency's jurisdiction.

7
8 13. In a proceeding, evidence of a record or signature may not be
9 excluded solely because it is in electronic form.

10
11 14. In an automated transaction, the following rules apply:

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

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

21 c. The terms of the contract are determined by the substantive law
22 applicable to it.

23
24 15. a. Unless otherwise agreed between the sender and the
25 recipient, an electronic record is sent when it:

26 (1) is addressed properly or otherwise directed properly to an
27 information processing system that the recipient has designated or uses
28 for the purpose of receiving electronic records or information of the
29 type sent and from which the recipient is able to retrieve the electronic
30 record;

31 (2) is in a form capable of being processed by that system; and

32 (3) enters an information processing system outside the control of
33 the sender or of a person that sent the electronic record on behalf of
34 the sender or enters a region of the information processing system
35 designated or used by the recipient which is under the control of the
36 recipient.

37 b. Unless otherwise agreed between a sender and the recipient, an
38 electronic record is received when:

39 (1) it enters an information processing system that the recipient has
40 designated or uses for the purpose of receiving electronic records or
41 information of the type sent and from which the recipient is able to
42 retrieve the electronic record; and

43 (2) is in a form capable of being processed by that system.

44 c. Subsection b. of this section applies even if the place the
45 information processing system is located is different from the place the
46 electronic record is deemed to be received under subsection d. of this

1 section.

2 d. Unless otherwise expressly provided in the electronic record or
3 agreed between the sender and the recipient, an electronic record is
4 deemed to be sent from the sender's place of business and to be
5 received at the recipient's place of business. For purposes of this
6 subsection, the following rules apply:

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

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

13 e. An electronic record is received under subsection b. of this
14 section even if no individual is aware of its receipt.

15 f. Receipt of an electronic acknowledgment from an information
16 processing system described in subsection b. of this section establishes
17 that a record was received but, by itself, does not establish that the
18 content sent corresponds to the content received.

19 g. If a person is aware that an electronic record purportedly sent
20 under subsection a. of this section, or purportedly received under
21 subsection b. of this section, was not actually sent or received, the
22 legal effect of the sending or receipt is determined by other applicable
23 law. Except to the extent permitted by the other law, the requirements
24 of this subsection may not be varied by agreement.

25

26 16. a. As used in this section "transferable record" means an
27 electronic record that:

28 (1) would be a note under Article 3 of the Uniform Commercial
29 Code or a document under Article 7 of the Uniform Commercial Code
30 if the electronic record were in writing; and

31 (2) the issuer of the electronic record expressly has agreed is a
32 transferable record.

33 b. A person has control of a transferable record if a system
34 employed for evidencing the transfer of interests in the transferable
35 record reliably establishes that person as the person to which the
36 transferable record was issued or transferred.

37 c. A system satisfies subsection b. of this section and the person is
38 deemed to have control of a transferable record if the transferable
39 record is created, stored and assigned in such a manner that:

40 (1) a single authoritative copy of the transferable record exists
41 which is unique, identifiable and, except as otherwise provided in
42 paragraphs (4), (5) and (6) of this subsection, unalterable;

43 (2) the authoritative copy identifies the person asserting control as:

44 (a) the person to which the transferable record was issued; or

45 (b) if the authoritative copy indicates that the transferable record
46 has been transferred, the person to which the transferable record was

1 most recently transferred;

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

4 (4) copies or revisions that add or change an identified assignee of
5 the authoritative copy may be made only with the consent of the
6 person asserting control;

7 (5) each copy of the authoritative copy and any copy of a copy is
8 readily identifiable as a copy that is not the authoritative copy; and

9 (6) any revision of the authoritative copy is readily identifiable as
10 authorized or unauthorized.

11 d. Except as otherwise agreed, a person having control of a
12 transferable record is the holder, as defined in section 1-201 of the
13 Uniform Commercial Code of the transferable record and has the same
14 rights and defenses as a holder of an equivalent record or writing
15 under the Uniform Commercial Code including, if the applicable
16 statutory requirements are satisfied, the rights and defenses of a holder
17 in due course, a holder to which a negotiable document of title has
18 been duly negotiated or a purchaser. Delivery, possession and
19 indorsement are not required to obtain or exercise any of the rights
20 under this subsection.

21 e. Except as otherwise agreed, an obligor under a transferable
22 record has the same rights and defenses as an equivalent obligor under
23 equivalent records or writings under the Uniform Commercial Code.

24 f. If requested by a person against which enforcement is sought, the
25 person seeking to enforce the transferable record shall provide
26 reasonable proof that the person is in control of the transferable
27 record. Proof may include access to the authoritative copy of the
28 transferable record and related business records sufficient to review
29 the terms of the transferable record and to establish the identity of the
30 person having control of the transferable record.

31

32 17. Each governmental agency shall determine whether, and the
33 extent to which, it will create and retain electronic records and convert
34 written records to electronic records. Additionally, each executive
35 agency shall comply with standards adopted by the Secretary of State
36 pursuant to section 19 of this act.

37

38 18. a. Except as otherwise provided in subsection f. of section 12
39 of this act or section 17 of this act, each governmental agency shall
40 determine whether, and the extent to which, it will send and accept
41 electronic records and electronic signatures to and from other persons,
42 and otherwise create, generate, communicate, store, process, use and
43 rely upon electronic records and electronic signatures.

44 b. To the extent a governmental agency uses electronic records and
45 electronic signatures under subsection a. of this section, the
46 governmental agency, giving due consideration to security, may

1 specify:

2 (1) the manner and format in which the electronic records must be
3 created, generated, sent, communicated, received and stored and the
4 system established for those purposes;

5 (2) if electronic records must be signed by electronic means, the
6 type of electronic signature required, the manner and format in which
7 the electronic signature must be affixed to the electronic record, and
8 the identity of, or criteria that must be met by, any third party used by
9 a person filing a document to facilitate the process;

10 (3) control processes and procedures appropriate to ensure
11 adequate preservation, disposition, integrity, security, confidentiality
12 and auditability of electronic records; and

13 (4) any other required attributes for electronic records which are
14 currently specified for corresponding nonelectronic records, or
15 reasonably necessary under the circumstances.

16 c. Except as otherwise provided in subsection f. of section 12 of
17 this act or section 17 of this act, this act does not require a
18 governmental agency to use or permit the use of electronic records or
19 electronic signatures.

20

21 19. The Secretary of State shall adopt standards to encourage and
22 promote consistency and interoperability with similar requirements
23 adopted by other governmental agencies of this and other states and
24 the federal government, and nongovernmental persons interacting with
25 governmental agencies of this State. If appropriate, those standards
26 may specify differing levels of standards from which governmental
27 agencies of this State may chose in implementing the most appropriate
28 standard for a particular application.

29

30 20. If any provision of this act or its application to any person or
31 circumstance is held invalid, the invalidity shall not affect other
32 provisions or applications of this act which can be given effect without
33 the invalid provision or application and, to this end, the provisions of
34 this act are severable.

35

36 21. This act shall take effect on the 120th day after enactment.

37

38

39

STATEMENT

40

41 This bill concerns electronic records and electronic signatures. It
42 is based on the final draft of the report issued by the National
43 Conference of Commissioners on Uniform State Laws in July, 1999
44 known as the "Uniform Electronic Transactions Act" (UETA).

45 It is the sponsor's intent that this bill be construed and applied to
46 facilitate electronic transactions.

1 UETA applies only to transactions in which each party has agreed
2 by some means to conduct them electronically. Agreement is essential.
3 Parties to electronic transactions come under UETA, but they may
4 also opt out. They may vary, waive or disclaim most of the provisions
5 of UETA by agreement, even if it is agreed that business will be
6 transacted by electronic means. The rules in UETA are almost all
7 default rules that apply if the terms of an agreement do not govern.

8 The objective of UETA is to ensure that transactions in the
9 electronic marketplace are as enforceable as transactions memorialized
10 on paper and with manual signatures, but without changing the
11 substantive rules of law that apply. Thus, the objective of the bill is
12 limited providing that an electronic record of a transaction is the
13 equivalent of a paper record, and that an electronic signature will be
14 given the same legal effect as a manual signature.

15 The basic rules are found in section 7 of UETA. The fundamental
16 rule in section 7 provides that a record or signature may not be denied
17 legal effect or enforceability solely because it is in electronic form.
18 The second rule says that a contract may not be denied legal effect or
19 enforceability solely because an electronic record was used in its
20 formation. The third rule states that any law that requires a writing
21 will be satisfied by an electronic record. And the fourth basic rule
22 provides that any signature requirement in the law will be met if there
23 is an electronic signature.

24 Almost all other rules in UETA serve the principles set out in
25 section 7, and answer basic questions about the use of electronic
26 records and signatures. Thus, section 15 determines when information
27 is legally delivered in electronic form. It establishes when electronic
28 delivery occurs--when an electronic record capable of retention by the
29 recipient is legally sent and received since the traditional and statutory
30 rules that govern mail delivery of a paper memorializing a transaction
31 are not applicable to electronic transactions.

32 The rule on attribution is found in section 9 of the bill. Electronic
33 transactions may be faceless transactions between strangers. UETA
34 states that a signature is attributable to a person if it is an act of that
35 person, and that act may be shown in any manner. If a security
36 procedure is used, its efficacy in establishing the attribution may be
37 shown.

38 UETA may not be characterized as a digital signature statute
39 although it does facilitate the use of digital signatures and other
40 security procedures. Section 10 provides rules on errors and changes
41 in messages. It favors the party who conforms to the security
42 procedure used in the specific transaction against the party who does
43 not, in the event there is a dispute over the content.

44 Nothing in the UETA requires the use of a digital signature or any
45 security procedure. It is technologically neutral. UETA is procedural
46 in nature rather than substantive. It does not require the use of

1 electronic transactions or reliance upon electronic records and
2 signatures. It does not prohibit paper records and manual signatures.
3 Basic rules of law, like the general and statutory law of contracts,
4 continue to apply.

5 There are three provisions in UETA that deviate from the basic
6 rules in section 7. First, UETA excludes transactions subject to the
7 Uniform Commercial Code, with certain exceptions, laws governing
8 estates and trusts, and any other specific laws that a state exempts
9 from the bill.

10 Second, UETA provides for "transferable records" in section 16.
11 Notes under Article 3 and documents under Article 7 of the Uniform
12 Commercial Code are "transferable records" when in electronic form.

13 Third, UETA validates contracts formed by electronic agents.
14 Electronic agents are computer programs that are implemented by
15 their principals to do business in electronic form. Section 14 provides
16 that a person may form a contract by using an electronic agent. The
17 principal, the person or entity which provides the program to do
18 business, is bound by the contract that its agent makes.

19 Section 17 provides that each governmental agency shall determine
20 whether, and the extent to which, it will create and retain electronic
21 records and convert written records to electronic records.
22 Additionally, each executive agency shall comply with standards
23 adopted by the Secretary of State. Section 19 provides that the
24 Secretary of State shall set standards that promote consistency and
25 interoperability between state agencies with respect to the use of
26 electronic records and signatures.

ASSEMBLY TELECOMMUNICATIONS AND UTILITIES
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2497

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 18, 2001

The Assembly Telecommunications and Utilities Committee reports favorably and with committee amendments Assembly Bill No. 2497.

As amended, this bill proposes the enactment of the "Uniform Electronic Transaction Act" (UETA) which is based on the final draft of a report issued by the National Conference on Uniform State Laws in July, 1999.

UETA applies only to transactions in which each party has agreed by some means to conduct them electronically. Agreement is essential. Parties to electronic transactions come under UETA, but they may also opt out. They may vary, waive or disclaim most of the provisions of UETA by agreement, even if it is agreed that business will be transacted by electronic means. The rules in UETA are almost all default rules that apply if the terms of an agreement do not govern.

The objective of UETA is to ensure that transactions in the electronic marketplace are as enforceable as transactions memorialized on paper and with manual signatures, but without changing the substantive rules of law that apply. Thus, the objective of the bill is limited providing that an electronic record of a transaction is the equivalent of a paper record, and that an electronic signature will be given the same legal effect as a manual signature.

The basic rules are found in section 7 of UETA. The fundamental rule in section 7 provides that a record or signature may not be denied legal effect or enforceability solely because it is in electronic form. The second rule says that a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation. The third rule states that any law that requires a writing will be satisfied by an electronic record. And the fourth basic rule provides that any signature requirement in the law will be met if there is an electronic signature.

Almost all other rules in UETA serve the principles set out in section 7, and answer basic questions about the use of electronic records and signatures. Thus, section 15 determines when information is legally delivered in electronic form. It establishes when electronic

delivery occurs--when an electronic record capable of retention by the recipient is legally sent and received since the traditional and statutory rules that govern mail delivery of a paper memorializing a transaction are not applicable to electronic transactions.

The rule on attribution is found in section 9 of the bill. Electronic transactions may be faceless transactions between strangers. UETA states that a signature is attributable to a person if it is an act of that person, and that act may be shown in any manner. If a security procedure is used, its efficacy in establishing the attribution may be shown.

UETA may not be characterized as a digital signature statute although it does facilitate the use of digital signatures and other security procedures. Section 10 provides rules on errors and changes in messages. It favors the party who conforms to the security procedure used in the specific transaction against the party who does not, in the event there is a dispute over the content.

Nothing in the UETA requires the use of a digital signature or any security procedure. It is technologically neutral. UETA is procedural in nature rather than substantive. It does not require the use of electronic transactions or reliance upon electronic records and signatures. It does not prohibit paper records and manual signatures. Basic rules of law, like the general and statutory law of contracts, continue to apply.

There are three provisions in UETA that deviate from the basic rules in section 7. First, UETA excludes transactions subject to the Uniform Commercial Code, with certain exceptions, laws governing estates and trusts, and any other specific laws that a state exempts from the bill.

Second, UETA provides for "transferable records" in section 16. Notes under Article 3 and documents under Article 7 of the Uniform Commercial Code are "transferable records" when in electronic form.

Third, UETA validates contracts formed by electronic agents. Electronic agents are computer programs that are implemented by their principals to do business in electronic form. Section 14 provides that a person may form a contract by using an electronic agent. The principal, the person or entity which provides the program to do business, is bound by the contract that its agent makes.

Section 17 provides that each governmental agency shall determine whether, and the extent to which, it will create and retain electronic records and convert written records to electronic records. Additionally, each executive agency shall comply with standards adopted by the Secretary of State. Section 19 provides that the Secretary of State shall set standards that promote consistency and interoperability between state agencies with respect to the use of electronic records and signatures.

The amendments adopted by the committee provide that the act would not apply to the following:

C laws governing adoption, divorce or other family laws matters;

- C court orders or court documents;
- C cancellation notices for public utilities;
- C notices of default, repossession, foreclosure or eviction under a credit agreement secured by an individual's residence;
- C the cancellation of health insurance or life insurance benefits;
- C the recall of products which risk endangering health or safety; or
- C to any documents required to accompany the transportation or handling of hazardous or toxic materials.

The amendments also add a provision concerning consumers' rights. This provision provides that, if a law or regulation requires that information be provided in writing, the use of an electronic record will satisfy the "writing" requirement if the consumer has affirmatively consented to the use of the electronic record and has not withdrawn such consent and if the consumer, prior to consenting, receives a clear and conspicuous statement of any right of the consumer to have the record provided on paper, and of any right to withdraw the consent to have the record provided in electronic form. The notice would also require that the consumer be informed of any fees, conditions or consequences, which may include termination of the parties' relationship, in the event of the consumer's withdrawal of consent.

The notice would inform the consumer whether the consent applies only to the particular transaction, or to identified categories of records that may be provided during the course of the parties' relationship. In addition, the notice would describe the procedures the consumer must use to withdraw consent and to update information needed to contact the consumer electronically. Also, the consumer, prior to consenting, would be required to be provided with a statement of the hardware and software requirements for access to and retention of the electronic records, and to consent electronically in a manner that reasonably demonstrates that the consumer can access information in the electronic form.

After the consumer's consent, if a change in the hardware or software requirements creates a material risk that the consumer would no longer be able to access the electronic record, the person providing the electronic record would be required to provide the consumer with a statement of the revised hardware and software requirements for access to the electronic records and the consumer would then have the right to withdraw consent without the imposition of any fees and without the imposition of any conditions or consequences.

The amendments adopted by the committee provide that nothing in this act affects the content or timing of any disclosure or other record required to be provided to any consumer under any statute, regulation or other rule of law. The amendments also provide that if a law enacted prior to this act expressly requires a record to be provided by a specified method that requires verification or acknowledgment of receipt, the record may be provided electronically only if the method used provides verification or acknowledgment of receipt.

The amendments also provide that the legal effectiveness, validity or enforceability of any contract executed by a consumer could not be denied solely because of the failure to obtain electronic consent or confirmation of consent by that consumer in accordance with the act, and that withdrawal of consent by a consumer would not affect the legal effectiveness, validity or enforceability of electronic records provided to that consumer prior to implementation of the consumer's withdrawal of consent.

The amendments also provide that the act does not apply to any records that are provided or made available to a consumer who has consented prior to the effective date of the act to receive such records in electronic form as permitted by any statute, regulation, or other rule of law.

In addition, the amendments clarify that an oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of this section except as otherwise provided under applicable law.

The amendments also add a section of legislative findings and declarations. These findings provide that the recent adoption of the "Electronic Signatures in Global and National Commerce Act," Pub.L. 106-229, 114 Stat. 464 (2000), popularly known as "federal E-Sign," encourages states to enact the Uniform Electronic Transactions Act proposed for adoption by the National Conference of Commissioners on Uniform State Laws; that the adoption of the Uniform Electronic Transactions Act will invoke the provisions of the "federal E-sign" law which state that the federal law will no longer preempt the laws of an enacting state; that the "federal E-sign" law provides that a state, in enacting the Uniform Electronic Transactions Act, may "modify, limit or supersede" the provisions of the federal law; and that it is the intention of the Legislature that the adoption of the Uniform Electronic Transactions Act in this State modify, limit and supersede the provisions of Pub. L. 106-229 to the fullest possible extent permitted under the federal law.

Finally, the amendments repeal R.S.1:1-2.4, which is superseded by the act, and change the effective date to provide that the act will take effect immediately, clarify the provisions of the bill with regard to the retention of electronic records, and provide for the establishment of the N.J. Center for Electronic Transactions and Informational Privacy within the Institute of Law, Science and Technology at Seton Hall University School of Law.

The amendments to this bill make it identical to Senate Bill No. 1183 (2R).

[First Reprint]

ASSEMBLY, No. 2497

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED MAY 22, 2000

Sponsored by:

Assemblyman STEVE CORODEMUS

District 11 (Monmouth)

Co-Sponsored by:

Assemblyman Arnone

SYNOPSIS

Creates the "Uniform Electronic Transactions Act."

CURRENT VERSION OF TEXT

As reported by the Assembly Telecommunications and Utilities Committee on January 18, 2001, with amendments.



(Sponsorship Updated As Of: 6/16/2000)

A2497 [1R] CORODEMUS

2

1 AN ACT creating the "Uniform Electronic Transactions ¹[Act" and]
2 Act;¹ supplementing Title 12A of the New Jersey Statutes ¹and
3 repealing R.S.1:1-2.4¹.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. This act shall be known and may be cited as the "Uniform
9 Electronic Transactions Act."

10

11 2. As used in this act:

12 "Agreement" means the bargain of the parties in fact, as found in
13 their language or inferred from other circumstances, and from rules,
14 regulations and procedures given the effect of agreements under laws
15 otherwise applicable to a particular transaction.

16 "Automated transaction" means a transaction conducted or
17 performed, in whole or in part, by electronic means or electronic
18 records, in which the acts or records of one or both parties are not
19 reviewed by an individual in the ordinary course in forming a contract,
20 performing under an existing contract or fulfilling an obligation
21 required by the transaction.

22 "Computer program" means a set of statements or instructions to
23 be used directly or indirectly in an information processing system in
24 order to bring about a certain result.

25 "Contract" means the total legal obligation resulting from the
26 parties' agreement as affected by this act and other applicable law.

27 "Electronic" means relating to technology having an electrical,
28 digital, magnetic, wireless, optical, electromagnetic or similar
29 capabilities.

30 "Electronic agent" means a computer program or an electronic or
31 other automated means used independently to initiate an action or
32 respond to electronic records or performances in whole or in part,
33 without review or action by an individual.

34 "Electronic record" means a record created, generated, sent,
35 communicated, received or stored by electronic means.

36 "Electronic signature" means an electronic sound, symbol, or
37 process attached to or logically associated with a record and executed
38 or adopted by a person with the intent to sign the record.

39 "Governmental agency" means an executive, legislative or judicial
40 agency, department, board, commission, authority, institution or
41 instrumentality of the federal government or of a state or of a county,

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ATU committee amendments adopted January 18, 2001.

1 municipality, or other political subdivision of a state.

2 "Information" means data, text, images, sounds, codes, computer
3 programs, software, databases or the like.

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

7 "Person" means an individual, corporation, business trust, estate,
8 trust, partnership, limited liability company, association, joint venture,
9 governmental agency, public corporation, or any other legal or
10 commercial entity.

11 "Record" means information that is inscribed on a tangible medium
12 or that is stored in an electronic or other medium and is retrievable in
13 perceivable form.

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

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

26 "Transaction" means an action or set of actions occurring between
27 two or more persons relating to the conduct of business, commercial
28 or governmental affairs.

29

30 3. a. Except as provided in subsection b. of this section, this act
31 applies to electronic records and electronic signatures relating to a
32 transaction.

33 b. This act does not apply to a transaction to the extent it is
34 governed by:

35 (1) a law governing the creation and execution of wills, codicils or
36 testamentary trusts;

37 (2) the Uniform Commercial Code other than sections 1-107 and
38 1-206, Article 2 and Article 2A; ¹[and]¹

39 (3) ¹[other laws as may be excluded from the provisions of this act]
40 a statute, regulation or other rule of law governing adoption, divorce
41 or other matters of family law;

42 (4) court orders or notices or official court documents (including
43 briefs, pleadings and other writings) required to be executed in
44 connection with court proceedings;

45 (5) any notice of :

46 (a) the cancellation or termination of utility services (including

1 water, heat and power);

2 (b) the default, acceleration, repossession, foreclosure or eviction,
3 or the right to cure, under a credit agreement secured by, or a rental
4 agreement for, a primary residence of an individual;

5 (c) the cancellation or termination of health insurance benefits or
6 life insurance benefits (excluding annuities); or

7 (d) the recall of a product, or material failure of a product, that
8 risks endangering health or safety; or

9 (6) any document required to accompany any transportation or
10 handling of hazardous materials, pesticides or other toxic or dangerous
11 materials¹.

12 c. This act applies to an electronic record or electronic signature
13 otherwise excluded from the application of this act under subsection
14 b. of this section to the extent it is governed by a law other than those
15 specified in subsection b. of this section.

16 d. A transaction subject to this act is subject also to other
17 applicable substantive law.

18

19 4. This act applies to any electronic record or electronic signature
20 created, generated, sent, communicated, received or stored on or after
21 the effective date of this act.

22

23 5. a. This act does not require a record or signature to be created,
24 generated, stored, sent, communicated, received, stored or otherwise
25 processed or used by electronic means or in electronic form.

26 b. This act applies only to transactions between parties each of
27 which has agreed to conduct transactions by electronic means.
28 Whether the parties agree to conduct a transaction by electronic means
29 is determined from the context and surrounding circumstances,
30 including the parties' conduct.

31 c. A party that agrees to conduct a transaction by electronic means
32 may refuse to conduct other transactions by electronic means. The
33 right granted by this subsection may not be waived by agreement.

34 d. Except as otherwise provided in this act, the effect of any of its
35 provisions may be varied by agreement. The presence in certain
36 provisions of this act of the words "unless otherwise agreed," or words
37 of similar import, does not imply that the effect of other provisions
38 may not be varied by agreement.

39 e. Whether an electronic record or electronic signature has legal
40 consequences is determined by this act and other applicable law.

41

42 6. This act shall be construed and applied:

43 a. to facilitate electronic transactions consistent with other
44 applicable law;

45 b. to be consistent with reasonable practices concerning electronic
46 transactions and with the continued expansion of those practices; and

- 1 c. to effectuate its general purpose to make uniform the law with
2 respect to the subject of this act among the states enacting it.
3
- 4 7. a. A record or signature may not be denied legal effect or
5 enforceability solely because it is in electronic form.
6 b. A contract may not be denied legal effect or enforceability solely
7 because an electronic record was used in its formation.
8 c. If a law requires a record to be in writing, an electronic record
9 satisfies the law.
10 d. If a law requires a signature, an electronic signature satisfies the
11 law.
12
- 13 8. a. If parties have agreed to conduct a transaction by electronic
14 means and a law requires a person to provide, send, or deliver
15 information in writing to another person, the requirement is satisfied
16 if the information is provided, sent, or delivered, as the case may be,
17 in an electronic record capable of retention by the recipient at the time
18 of receipt. An electronic record is not capable of retention by the
19 recipient if the sender or its information processing system inhibits the
20 ability of the recipient to print or store the electronic record.
21 b. If a law other than this act requires a record to be posted or
22 displayed in a certain manner, to be sent, communicated or transmitted
23 by a specified method, or to contain information that is formatted in
24 a certain manner, the following apply:
25 (1) The record shall be posted or displayed in the manner specified
26 in the other law.
27 (2) Except as otherwise provided in paragraph (2) of subsection d.
28 of this section, the record shall be sent, communicated or transmitted
29 by the method specified in the other law.
30 (3) The record shall contain the information formatted in the
31 manner specified in the other law.
32 c. If a sender inhibits the ability of a recipient to store or print an
33 electronic record, the electronic record is not enforceable against the
34 recipient.
35 d. The requirements of this section may not be varied by
36 agreement, but:
37 (1) to the extent a law other than this act requires information to
38 be provided, sent, or delivered in writing but permits that requirement
39 to be varied by agreement, the requirement under subsection a. of this
40 section that the information be in the form of an electronic record
41 capable of retention may also be varied by agreement; and
42 (2) a requirement under a law other than this act to send,
43 communicate, or transmit a record by United States mail, may be
44 varied by agreement to the extent permitted by the other law.
45
46 9. a. An electronic record or electronic signature is attributable

1 to a person if it was the act of the person. The act of the person may
2 be shown in any manner, including a showing of the efficacy of any
3 security procedure applied to determine the person to which the
4 electronic record or electronic signature was attributable.

5 b. The effect of an electronic record or electronic signature
6 attributed to a person under subsection a. of this section is determined
7 from the context and surrounding circumstances at the time of its
8 creation, execution or adoption, including the parties' agreement, if
9 any, and as otherwise provided by law.

10

11 10. If a change or error in an electronic record occurs in a
12 transmission between parties to a transaction, the following rules
13 apply:

14 a. If the parties have agreed to use a security procedure to detect
15 changes or errors and one party has consented to the procedure but
16 the other party has not, and the nonconforming party would have
17 detected the change or error had that party also conformed, the
18 conforming party may avoid the effect of the changed or erroneous
19 electronic record.

20 b. In an automated transaction involving an individual, the
21 individual may avoid the effect of an electronic record that resulted
22 from an error made by the individual in dealing with the electronic
23 agent of another person if the electronic agent did not provide an
24 opportunity for the prevention or correction of the error, and, at the
25 time the individual learns of the error, the individual:

26 (1) promptly notifies the other person of the error and that the
27 individual did not intend to be bound by the electronic record received
28 by the other person;

29 (2) takes reasonable steps, including steps that conform to the
30 other persons's reasonable instructions, to return to the other person
31 or, if instructed by the other person, to destroy the consideration
32 received, if any, as a result of the erroneous electronic record; and

33 (3) has not used or received any benefit or value from the
34 consideration, if any, received from the other person.

35 c. If neither subsection a. or b. of this section applies, the change
36 or error has the effect provided by other law, including the law of
37 mistake, and the parties' contract, if any.

38 d. Subsections b. and c. of this section may not be varied by
39 agreement.

40

41 11. If a law requires a signature or record to be notarized,
42 acknowledged, verified, or made under oath, the requirement is
43 satisfied if the electronic signature of the person authorized to perform
44 those acts, together with all other information required to be included
45 by other applicable law, is attached to or logically associated with the
46 signature or record.

- 1 12. a. If a law requires that a record be retained, the requirement
2 is satisfied by retaining an electronic record of the information in the
3 record which:
- 4 (1) accurately reflects the information set forth in the record after
5 it was first generated in its final form as an electronic record or
6 otherwise; and
7 (2) remains accessible for later reference.
- 8 b. A requirement to retain a record in accordance with subsection
9 a. of this section does not apply to any information the sole purpose
10 of which is to enable the record to be sent, communicated or received.
- 11 c. A person may satisfy subsection a. of this section by using the
12 services of another person if the requirements of that subsection are
13 satisfied.
- 14 d. If a law requires a record to be presented or retained in its
15 original form, or provides consequences if the record is not presented
16 or retained in its original form, that law is satisfied by an electronic
17 record retained in accordance with subsection a. of this section.
- 18 e. If a law requires retention of a check, that requirement is
19 satisfied by retention of an electronic record of the information on the
20 front and back of the check in accordance with subsection a. of this
21 section.
- 22 f. A record retained as an electronic record in accordance with
23 subsection a. of this section satisfies a law requiring a person to retain
24 a record for evidentiary, audit or like purposes, unless a law enacted
25 after the effective date of this act specifically prohibits the use of an
26 electronic record for the specified purpose.
- 27 g. This section does not preclude a governmental agency of this
28 State from specifying additional requirements for the retention of a
29 records subject to the agency's jurisdiction.
30
- 31 13. In a proceeding, evidence of a record or signature may not be
32 excluded solely because it is in electronic form.
33
- 34 14. In an automated transaction, the following rules apply:
- 35 a. A contract may be formed by the interaction of electronic agents
36 of the parties, even if no individual was aware of or reviewed the
37 electronic agents' actions or the resulting terms and agreements.
- 38 b. A contract may be formed by the interaction of an electronic
39 agent and an individual, acting on the individual's own behalf or for
40 another person, including by an interaction in which the individual
41 performs actions that the individual is free to refuse to perform and
42 which the individual knows or has reason to know will cause the
43 electronic agent to complete the transaction or performance.
- 44 c. The terms of the contract are determined by the substantive law
45 applicable to it.

1 15. a. Unless otherwise agreed between the sender and the
2 recipient, an electronic record is sent when it:

3 (1) is addressed properly or otherwise directed properly to an
4 information processing system that the recipient has designated or uses
5 for the purpose of receiving electronic records or information of the
6 type sent and from which the recipient is able to retrieve the electronic
7 record;

8 (2) is in a form capable of being processed by that system; and

9 (3) enters an information processing system outside the control of
10 the sender or of a person that sent the electronic record on behalf of
11 the sender or enters a region of the information processing system
12 designated or used by the recipient which is under the control of the
13 recipient.

14 b. Unless otherwise agreed between a sender and the recipient, an
15 electronic record is received when:

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

20 (2) is in a form capable of being processed by that system.

21 c. Subsection b. of this section applies even if the place the
22 information processing system is located is different from the place the
23 electronic record is deemed to be received under subsection d. of this
24 section.

25 d. Unless otherwise expressly provided in the electronic record or
26 agreed between the sender and the recipient, an electronic record is
27 deemed to be sent from the sender's place of business and to be
28 received at the recipient's place of business. For purposes of this
29 subsection, the following rules apply:

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

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

36 e. An electronic record is received under subsection b. of this
37 section even if no individual is aware of its receipt.

38 f. Receipt of an electronic acknowledgment from an information
39 processing system described in subsection b. of this section establishes
40 that a record was received but, by itself, does not establish that the
41 content sent corresponds to the content received.

42 g. If a person is aware that an electronic record purportedly sent
43 under subsection a. of this section, or purportedly received under
44 subsection b. of this section, was not actually sent or received, the
45 legal effect of the sending or receipt is determined by other applicable
46 law. Except to the extent permitted by the other law, the requirements

1 of this subsection may not be varied by agreement.

2

3 16. a. As used in this section "transferable record" means an
4 electronic record that:

5 (1) would be a note under Article 3 of the Uniform Commercial
6 Code or a document under Article 7 of the Uniform Commercial Code
7 if the electronic record were in writing; and

8 (2) the issuer of the electronic record expressly has agreed is a
9 transferable record.

10 b. A person has control of a transferable record if a system
11 employed for evidencing the transfer of interests in the transferable
12 record reliably establishes that person as the person to which the
13 transferable record was issued or transferred.

14 c. A system satisfies subsection b. of this section and the person is
15 deemed to have control of a transferable record if the transferable
16 record is created, stored and assigned in such a manner that:

17 (1) a single authoritative copy of the transferable record exists
18 which is unique, identifiable and, except as otherwise provided in
19 paragraphs (4), (5) and (6) of this subsection, unalterable;

20 (2) the authoritative copy identifies the person asserting control as:

21 (a) the person to which the transferable record was issued; or

22 (b) if the authoritative copy indicates that the transferable record
23 has been transferred, the person to which the transferable record was
24 most recently transferred;

25 (3) the authoritative copy is communicated to and maintained by
26 the person asserting control or its designated custodian;

27 (4) copies or revisions that add or change an identified assignee of
28 the authoritative copy may be made only with the consent of the
29 person asserting control;

30 (5) each copy of the authoritative copy and any copy of a copy is
31 readily identifiable as a copy that is not the authoritative copy; and

32 (6) any revision of the authoritative copy is readily identifiable as
33 authorized or unauthorized.

34 d. Except as otherwise agreed, a person having control of a
35 transferable record is the holder, as defined in section 1-201 of the
36 Uniform Commercial Code of the transferable record and has the same
37 rights and defenses as a holder of an equivalent record or writing
38 under the Uniform Commercial Code including, if the applicable
39 statutory requirements are satisfied, the rights and defenses of a holder
40 in due course, a holder to which a negotiable document of title has
41 been duly negotiated or a purchaser. Delivery, possession and
42 indorsement are not required to obtain or exercise any of the rights
43 under this subsection.

44 e. Except as otherwise agreed, an obligor under a transferable
45 record has the same rights and defenses as an equivalent obligor under
46 equivalent records or writings under the Uniform Commercial Code.

1 f. If requested by a person against which enforcement is sought, the
2 person seeking to enforce the transferable record shall provide
3 reasonable proof that the person is in control of the transferable
4 record. Proof may include access to the authoritative copy of the
5 transferable record and related business records sufficient to review
6 the terms of the transferable record and to establish the identity of the
7 person having control of the transferable record.

8
9 17. Each governmental agency shall determine whether, and the
10 extent to which, it will create and retain electronic records and convert
11 written records to electronic records. Additionally, each executive
12 agency shall comply with standards adopted by the Secretary of State
13 pursuant to section 19 of this act.

14
15 18. a. Except as otherwise provided in subsection f. of section 12
16 of this act or section 17 of this act, each governmental agency shall
17 determine whether, and the extent to which, it will send and accept
18 electronic records and electronic signatures to and from other persons,
19 and otherwise create, generate, communicate, store, process, use and
20 rely upon electronic records and electronic signatures.

21 b. To the extent a governmental agency uses electronic records and
22 electronic signatures under subsection a. of this section, the
23 governmental agency, giving due consideration to security, may
24 specify:

25 (1) the manner and format in which the electronic records must be
26 created, generated, sent, communicated, received and stored and the
27 system established for those purposes;

28 (2) if electronic records must be signed by electronic means, the
29 type of electronic signature required, the manner and format in which
30 the electronic signature must be affixed to the electronic record, and
31 the identity of, or criteria that must be met by, any third party used by
32 a person filing a document to facilitate the process;

33 (3) control processes and procedures appropriate to ensure
34 adequate preservation, disposition, integrity, security, confidentiality
35 and auditability of electronic records; and

36 (4) any other required attributes for electronic records which are
37 currently specified for corresponding nonelectronic records, or
38 reasonably necessary under the circumstances.

39 c. Except as otherwise provided in subsection f. of section 12 of
40 this act or section 17 of this act, this act does not require a
41 governmental agency to use or permit the use of electronic records or
42 electronic signatures.

43
44 19. The Secretary of State shall adopt standards to encourage and
45 promote consistency and interoperability with similar requirements
46 adopted by other governmental agencies of this and other states and

1 the federal government, and nongovernmental persons interacting with
2 governmental agencies of this State. If appropriate, those standards
3 may specify differing levels of standards from which governmental
4 agencies of this State may chose in implementing the most appropriate
5 standard for a particular application.

6
7 20. If any provision of this act or its application to any person or
8 circumstance is held invalid, the invalidity shall not affect other
9 provisions or applications of this act which can be given effect without
10 the invalid provision or application and, to this end, the provisions of
11 this act are severable.

12
13 ¹21. a. Notwithstanding any other provision of this act, if a law or
14 regulation requires that information relating to the transaction be
15 provided or made available to a consumer in writing, the use of an
16 electronic record to provide or make available (whichever is required)
17 such information satisfies the requirement that such information be in
18 writing if:

19 (1) the consumer has affirmatively consented to such use and has
20 not withdrawn such consent;

21 (2) the consumer, prior to consenting, is provided with a clear and
22 conspicuous statement:

23 (a) informing the consumer of:

24 (i) any right or option of the consumer to have the record provided
25 or made available on paper or in nonelectronic form, and

26 (ii) the right of the consumer to withdraw the consent to have the
27 record provided or made available in an electronic form and of any
28 conditions, consequences (which may include termination of the
29 parties' relationship), or fees in the event of such withdrawal;

30 (b) informing the consumer of whether the consent applies:

31 (i) only to the particular transaction which gave rise to the
32 obligation to provide the record, or

33 (ii) to identified categories of records that may be provided or made
34 available during the course of the parties' relationship;

35 (c) describing the procedures the consumer must use to withdraw
36 consent as provided in a.(2)(a) of this section and to update
37 information needed to contact the consumer electronically; and

38 (d) informing the consumer:

39 (i) how, after the consent, the consumer may, upon request, obtain
40 a paper copy of an electronic record, and

41 (ii) whether any fee will be charged for such copy;

42 (3) the consumer:

43 (a) prior to consenting, is provided with a statement of the
44 hardware and software requirements for access to and retention of the
45 electronic records; and

46 (b) consents electronically, or confirms his or her consent

- 1 electronically, in a manner that reasonably demonstrates that the
2 consumer can access information in the electronic form that will be
3 used to provide the information that is the subject of the consent; and
4 (4) after the consent of a consumer in accordance with a.(1) of this
5 section, if a change in the hardware or software requirements needed
6 to access or retain electronic records creates a material risk that the
7 consumer will not be able to access or retain a subsequent electronic
8 record that was the subject of the consent, the person providing the
9 electronic record:
- 10 (a) provides the consumer with a statement of:
- 11 (i) the revised hardware and software requirements for access to
12 and retention of the electronic records; and
- 13 (ii) the right to withdraw consent without the imposition of any fees
14 for such withdrawal and without the imposition of any condition or
15 consequence that was not disclosed under a.(2)(a) of this section; and
16 (b) again complies with a.(3) of this section.
- 17 b. Nothing in this act affects the content or timing of any disclosure
18 or other record required to be provided or made available to any
19 consumer under any statute, regulation, or other rule of law.
- 20 c. If a law that was enacted prior to this act expressly requires a
21 record to be provided or made available by a specified method that
22 requires verification or acknowledgment of receipt, the record may be
23 provided or made available electronically only if the method used
24 provides verification or acknowledgment of receipt (whichever is
25 required).
- 26 d. The legal effectiveness, validity or enforceability of any contract
27 executed by a consumer shall not be denied solely because of the
28 failure to obtain electronic consent or confirmation of consent by that
29 consumer in accordance with a.(3)(b) of this section.
- 30 e. Withdrawal of consent by a consumer shall not affect the legal
31 effectiveness, validity or enforceability of electronic records provided
32 or made available to that consumer in accordance with subsection a.
33 prior to implementation of the consumer's withdrawal of consent. A
34 consumer's withdrawal of consent shall be effective within a reasonable
35 period of time after receipt of the withdrawal by the provider of the
36 record. Failure to comply with a.(4) of this section may, at the
37 election of the consumer, be treated as a withdrawal of consent for
38 purposes of this subsection.
- 39 f. This subsection does not apply to any records that are provided
40 or made available to a consumer who has consented prior to the
41 effective date of this act to receive such records in electronic form as
42 permitted by any statute, regulation, or other rule of law.
- 43 g. An oral communication or a recording of an oral communication
44 shall not qualify as an electronic record for purposes of this section
45 except as otherwise provided under applicable law. ¹

1 ¹22. The Legislature finds and declares:

2 That the adoption of the "Electronic Signatures in Global and
3 National Commerce Act," Pub.L. 106-229, 114 Stat. 464 (2000),
4 popularly known as "federal E-Sign," encourages states to enact the
5 Uniform Electronic Transactions Act proposed for adoption by the
6 National Conference of Commissioners on Uniform State Laws; and

7 That the adoption of the Uniform Electronic Transactions Act will
8 invoke the provisions of Section 102 of Pub. L. 106-229 which state
9 that federal law will no longer preempt the laws of an enacting state;
10 and

11 That Section 102 of Pub. L. 106-229 provides that a state, in
12 enacting the Uniform Electronic Transactions Act, may "modify, limit
13 or supersede" the provisions of the federal law; and

14 That it is desirable for this State to take the fullest possible
15 advantage of the ability to "modify, limit or supersede" Pub. L. 106-
16 229; and

17 That it is the intention of the Legislature that the adoption of the
18 Uniform Electronic Transactions Act in this State modify, limit and
19 supersede the provisions of Pub. L. 106-229 to the fullest possible
20 extent permitted under the federal law.¹

21

22 ¹23. Under the provisions of subsection a. of section 8, an
23 electronic record, to be capable of retention by the recipient at the
24 time of receipt, must be capable of being retained and accurately
25 reproduced for later reference by all persons who are entitled to retain
26 the record.¹

27

28 ¹24. Under the provisions of paragraph (2) of subsection a. of
29 section 12, a record of information remains accessible for later
30 reference if it remains accessible to all persons who are entitled to
31 access by statute, regulation or rule of law, for the period required by
32 such statute, regulation or rule of law, in a form that is capable of
33 being accurately reproduced for later reference, whether by
34 transmission, printing, or otherwise.¹

35

36 ¹25. The New Jersey Center for Electronic Transactions and
37 Informational Privacy shall be established within the Institute of Law,
38 Science and Technology at Seton Hall University School of Law. The
39 Center shall provide legal research and advisement to the Secretary of
40 State and governmental agencies of this State on issues concerning
41 electronic records and privacy.¹

42

43 ¹26. R.S.1:1-2.4 is hereby repealed.¹

44

45 ¹[21.] ¹27. This act shall take effect ¹[on the 120th day after
46 enactment] immediately¹.

Title 12A.
Chapter 12 (New)
Uniform Electronic
Transactions.
§§1-26
C.12A:12-1 to
12A:12-26
§27
Repealer

P.L. 2001, CHAPTER 116, *approved June 26, 2001*
Senate Bill No. 1183 (*Third Reprint*)

1 AN ACT creating the "Uniform Electronic Transactions ¹[Act" and]
2 Act:¹ supplementing Title 12A of the New Jersey Statutes ¹and
3 repealing R.S.1:1-2.4¹.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. This act shall be known and may be cited as the "Uniform
9 Electronic Transactions Act."

10

11 2. As used in this act:

12 "Agreement" means the bargain of the parties in fact, as found in
13 their language or inferred from other circumstances, and from rules,
14 regulations and procedures given the effect of agreements under laws
15 otherwise applicable to a particular transaction.

16 "Automated transaction" means a transaction conducted or
17 performed, in whole or in part, by electronic means or electronic
18 records, in which the acts or records of one or both parties are not
19 reviewed by an individual in the ordinary course in forming a contract,
20 performing under an existing contract or fulfilling an obligation
21 required by the transaction.

22 "Computer program" means a set of statements or instructions to
23 be used directly or indirectly in an information processing system in
24 order to bring about a certain result.

25 "Contract" means the total legal obligation resulting from the
26 parties' agreement as affected by this act and other applicable law.

27 "Electronic" means relating to technology having an electrical,
28 digital, magnetic, wireless, optical, electromagnetic or similar
29 capabilities.

30 "Electronic agent" means a computer program or an electronic or
31 other automated means used independently to initiate an action or
32 respond to electronic records or performances in whole or in part,

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SJU committee amendments adopted September 14, 2000.

² Senate floor amendments adopted September 21, 2000.

³ Assembly floor amendments adopted January 29, 2001.

1 without review or action by an individual.

2 "Electronic record" means a record created, generated, sent,
3 communicated, received or stored by electronic means.

4 "Electronic signature" means an electronic sound, symbol, or
5 process attached to or logically associated with a record and executed
6 or adopted by a person with the intent to sign the record.

7 "Governmental agency" means an executive, legislative or judicial
8 agency, department, board, commission, authority, institution or
9 instrumentality of the federal government or of a state or of a county,
10 municipality, or other political subdivision of a state.

11 "Information" means data, text, images, sounds, codes, computer
12 programs, software, databases or the like.

13 "Information processing system" means an electronic system for
14 creating, generating, sending, receiving, storing, displaying or
15 processing information.

16 "Person" means an individual, corporation, business trust, estate,
17 trust, partnership, limited liability company, association, joint venture,
18 governmental agency, public corporation, or any other legal or
19 commercial entity.

20 "Record" means information that is inscribed on a tangible medium
21 or that is stored in an electronic or other medium and is retrievable in
22 perceivable form.

23 "Security procedure" means a procedure employed for the purpose
24 of verifying that an electronic signature, record or performance is that
25 of a specific person or for detecting changes or errors in the
26 information in an electronic record. The term includes a procedure
27 that requires the use of algorithms or other codes, identifying words
28 or numbers, encryption, callback or other acknowledgment
29 procedures.

30 "State" means a state of the United States, the District of Columbia,
31 Puerto Rico, the United States Virgin Islands, or any territory or
32 insular possession subject to the jurisdiction of the United States. The
33 term includes an Indian tribe or band, or Alaskan native village, which
34 is recognized by a federal law or formally acknowledged by a state.

35 "Transaction" means an action or set of actions occurring between
36 two or more persons relating to the conduct of business, commercial
37 or governmental affairs.

38

39 3. a. Except as provided in ³[subsection b.] subsections b. and c.³
40 of this section, this act applies to electronic records and electronic
41 signatures relating to a transaction.

42 b. This act does not apply to a transaction to the extent it is
43 governed by:

44 (1) a law governing the creation and execution of wills, codicils or
45 testamentary trusts;

46 (2) the Uniform Commercial Code other than sections 1-107 and

1 1-206, Article 2 and Article 2A; ¹[and]¹

2 (3) ¹[other laws as may be excluded from the provisions of this act]
3 a statute, regulation or other rule of law governing adoption, divorce
4 or other matters of family law ³[;].

5 c. This act does not apply to:³

6 ³[(4)] (1)³ court orders or notices or official court documents
7 (including briefs, pleadings and other writings) required to be executed
8 in connection with court proceedings;

9 ³[(5)] (2)³ any notice of :

10 (a) the cancellation or termination of utility services (including
11 water, heat and power);

12 (b) the default, acceleration, repossession, foreclosure or eviction,
13 or the right to cure, under a credit agreement secured by, or a rental
14 agreement for, a primary residence of an individual;

15 (c) the cancellation or termination of health insurance benefits or
16 life insurance benefits (excluding annuities); or

17 (d) the recall of a product, or material failure of a product, that
18 risks endangering health or safety; or

19 ³[(6)](3)³ any document required to accompany any transportation
20 or handling of hazardous materials, pesticides or other toxic or
21 dangerous materials¹.

22 ³[c.] d.³ This act applies to an electronic record or electronic
23 signature otherwise excluded from the application of this act under
24 subsection b. of this section to the extent it is governed by a law other
25 than those specified in subsection b. of this section.

26 ³[d.] e.³ A transaction subject to this act is subject also to other
27 applicable substantive law.

28

29 4. This act applies to any electronic record or electronic signature
30 created, generated, sent, communicated, received or stored on or after
31 the effective date of this act.

32

33 5. a. This act does not require a record or signature to be created,
34 generated, stored, sent, communicated, received, stored or otherwise
35 processed or used by electronic means or in electronic form.

36 b. This act applies only to transactions between parties each of
37 which has agreed to conduct transactions by electronic means.
38 Whether the parties agree to conduct a transaction by electronic means
39 is determined from the context and surrounding circumstances,
40 including the parties' conduct.

41 c. A party that agrees to conduct a transaction by electronic means
42 may refuse to conduct other transactions by electronic means. The
43 right granted by this subsection may not be waived by agreement.

44 d. Except as otherwise provided in this act, the effect of any of its
45 provisions may be varied by agreement. The presence in certain
46 provisions of this act of the words "unless otherwise agreed," or words

1 of similar import, does not imply that the effect of other provisions
2 may not be varied by agreement.

3 e. Whether an electronic record or electronic signature has legal
4 consequences is determined by this act and other applicable law.

5

6 6. This act shall be construed and applied:

7 a. to facilitate electronic transactions consistent with other
8 applicable law;

9 b. to be consistent with reasonable practices concerning electronic
10 transactions and with the continued expansion of those practices; and

11 c. to effectuate its general purpose to make uniform the law with
12 respect to the subject of this act among the states enacting it.

13

14 7. a. A record or signature may not be denied legal effect or
15 enforceability solely because it is in electronic form.

16 b. A contract may not be denied legal effect or enforceability solely
17 because an electronic record was used in its formation.

18 c. If a law requires a record to be in writing, an electronic record
19 satisfies the law.

20 d. If a law requires a signature, an electronic signature satisfies the
21 law.

22

23 8. a. If parties have agreed to conduct a transaction by electronic
24 means and a law requires a person to provide, send, or deliver
25 information in writing to another person, the requirement is satisfied
26 if the information is provided, sent, or delivered, as the case may be,
27 in an electronic record capable of retention by the recipient at the time
28 of receipt. An electronic record is not capable of retention by the
29 recipient if the sender or its information processing system inhibits the
30 ability of the recipient to print or store the electronic record.

31 b. If a law other than this act requires a record to be posted or
32 displayed in a certain manner, to be sent, communicated or transmitted
33 by a specified method, or to contain information that is formatted in
34 a certain manner, the following apply:

35 (1) The record shall be posted or displayed in the manner specified
36 in the other law.

37 (2) Except as otherwise provided in paragraph (2) of subsection d.
38 of this section, the record shall be sent, communicated or transmitted
39 by the method specified in the other law.

40 (3) The record shall contain the information formatted in the
41 manner specified in the other law.

42 c. If a sender inhibits the ability of a recipient to store or print an
43 electronic record, the electronic record is not enforceable against the
44 recipient.

45 d. The requirements of this section may not be varied by
46 agreement, but:

1 (1) to the extent a law other than this act requires information to
2 be provided, sent, or delivered in writing but permits that requirement
3 to be varied by agreement, the requirement under subsection a. of this
4 section that the information be in the form of an electronic record
5 capable of retention may also be varied by agreement; and

6 (2) a requirement under a law other than this act to send,
7 communicate, or transmit a record by United States mail, may be
8 varied by agreement to the extent permitted by the other law.

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

15 b. The effect of an electronic record or electronic signature
16 attributed to a person under subsection a. of this section is determined
17 from the context and surrounding circumstances at the time of its
18 creation, execution or adoption, including the parties' agreement, if
19 any, and as otherwise provided by law.

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

24 a. If the parties have agreed to use a security procedure to detect
25 changes or errors and one party has consented to the procedure but
26 the other party has not, and the nonconforming party would have
27 detected the change or error had that party also conformed, the
28 conforming party may avoid the effect of the changed or erroneous
29 electronic record.

30 b. In an automated transaction involving an individual, the
31 individual may avoid the effect of an electronic record that resulted
32 from an error made by the individual in dealing with the electronic
33 agent of another person if the electronic agent did not provide an
34 opportunity for the prevention or correction of the error, and, at the
35 time the individual learns of the error, the individual:

36 (1) promptly notifies the other person of the error and that the
37 individual did not intend to be bound by the electronic record received
38 by the other person;

39 (2) takes reasonable steps, including steps that conform to the
40 other persons's reasonable instructions, to return to the other person
41 or, if instructed by the other person, to destroy the consideration
42 received, if any, as a result of the erroneous electronic record; and

43 (3) has not used or received any benefit or value from the
44 consideration, if any, received from the other person.

45 c. If neither subsection a. or b. of this section applies, the change
46 or error has the effect provided by other law, including the law of

1 mistake, and the parties' contract, if any.

2 d. Subsections b. and c. of this section may not be varied by
3 agreement.

4

5 11. If a law requires a signature or record to be notarized,
6 acknowledged, verified, or made under oath, the requirement is
7 satisfied if the electronic signature of the person authorized to perform
8 those acts, together with all other information required to be included
9 by other applicable law, is attached to or logically associated with the
10 signature or record.

11

12 12. a. If a law requires that a record be retained, the requirement
13 is satisfied by retaining an electronic record of the information in the
14 record which:

15 (1) accurately reflects the information set forth in the record after
16 it was first generated in its final form as an electronic record or
17 otherwise; and

18 (2) remains accessible for later reference.

19 b. A requirement to retain a record in accordance with subsection
20 a. of this section does not apply to any information the sole purpose
21 of which is to enable the record to be sent, communicated or received.

22 c. A person may satisfy subsection a. of this section by using the
23 services of another person if the requirements of that subsection are
24 satisfied.

25 d. If a law requires a record to be presented or retained in its
26 original form, or provides consequences if the record is not presented
27 or retained in its original form, that law is satisfied by an electronic
28 record retained in accordance with subsection a. of this section.

29 e. If a law requires retention of a check, that requirement is
30 satisfied by retention of an electronic record of the information on the
31 front and back of the check in accordance with subsection a. of this
32 section.

33 f. A record retained as an electronic record in accordance with
34 subsection a. of this section satisfies a law requiring a person to retain
35 a record for evidentiary, audit or like purposes, unless a law enacted
36 after the effective date of this act specifically prohibits the use of an
37 electronic record for the specified purpose.

38 g. This section does not preclude a governmental agency of this
39 State from specifying additional requirements for the retention of a
40 records subject to the agency's jurisdiction.

41

42 13. In a proceeding, evidence of a record or signature may not be
43 excluded solely because it is in electronic form.

44

45 14. In an automated transaction, the following rules apply:

46 a. A contract may be formed by the interaction of electronic agents

1 of the parties, even if no individual was aware of or reviewed the
2 electronic agents' actions or the resulting terms and agreements.

3 b. A contract may be formed by the interaction of an electronic
4 agent and an individual, acting on the individual's own behalf or for
5 another person, including by an interaction in which the individual
6 performs actions that the individual is free to refuse to perform and
7 which the individual knows or has reason to know will cause the
8 electronic agent to complete the transaction or performance.

9 c. The terms of the contract are determined by the substantive law
10 applicable to it.

11

12 15. a. Unless otherwise agreed between the sender and the
13 recipient, an electronic record is sent when it:

14 (1) is addressed properly or otherwise directed properly to an
15 information processing system that the recipient has designated or uses
16 for the purpose of receiving electronic records or information of the
17 type sent and from which the recipient is able to retrieve the electronic
18 record;

19 (2) is in a form capable of being processed by that system; and

20 (3) enters an information processing system outside the control of
21 the sender or of a person that sent the electronic record on behalf of
22 the sender or enters a region of the information processing system
23 designated or used by the recipient which is under the control of the
24 recipient.

25 b. Unless otherwise agreed between a sender and the recipient, an
26 electronic record is received when:

27 (1) it enters an information processing system that the recipient has
28 designated or uses for the purpose of receiving electronic records or
29 information of the type sent and from which the recipient is able to
30 retrieve the electronic record; and

31 (2) is in a form capable of being processed by that system.

32 c. Subsection b. of this section applies even if the place the
33 information processing system is located is different from the place the
34 electronic record is deemed to be received under subsection d. of this
35 section.

36 d. Unless otherwise expressly provided in the electronic record or
37 agreed between the sender and the recipient, an electronic record is
38 deemed to be sent from the sender's place of business and to be
39 received at the recipient's place of business. For purposes of this
40 subsection, the following rules apply:

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

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

1 e. An electronic record is received under subsection b. of this
2 section even if no individual is aware of its receipt.

3 f. Receipt of an electronic acknowledgment from an information
4 processing system described in subsection b. of this section establishes
5 that a record was received but, by itself, does not establish that the
6 content sent corresponds to the content received.

7 g. If a person is aware that an electronic record purportedly sent
8 under subsection a. of this section, or purportedly received under
9 subsection b. of this section, was not actually sent or received, the
10 legal effect of the sending or receipt is determined by other applicable
11 law. Except to the extent permitted by the other law, the requirements
12 of this subsection may not be varied by agreement.

13

14 16. a. As used in this section "transferable record" means an
15 electronic record that:

16 (1) would be a note under Article 3 of the Uniform Commercial
17 Code or a document under Article 7 of the Uniform Commercial Code
18 if the electronic record were in writing; and

19 (2) the issuer of the electronic record expressly has agreed is a
20 transferable record.

21 b. A person has control of a transferable record if a system
22 employed for evidencing the transfer of interests in the transferable
23 record reliably establishes that person as the person to which the
24 transferable record was issued or transferred.

25 c. A system satisfies subsection b. of this section and the person is
26 deemed to have control of a transferable record if the transferable
27 record is created, stored and assigned in such a manner that:

28 (1) a single authoritative copy of the transferable record exists
29 which is unique, identifiable and, except as otherwise provided in
30 paragraphs (4), (5) and (6) of this subsection, unalterable;

31 (2) the authoritative copy identifies the person asserting control as:

32 (a) the person to which the transferable record was issued; or

33 (b) if the authoritative copy indicates that the transferable record
34 has been transferred, the person to which the transferable record was
35 most recently transferred;

36 (3) the authoritative copy is communicated to and maintained by
37 the person asserting control or its designated custodian;

38 (4) copies or revisions that add or change an identified assignee of
39 the authoritative copy may be made only with the consent of the
40 person asserting control;

41 (5) each copy of the authoritative copy and any copy of a copy is
42 readily identifiable as a copy that is not the authoritative copy; and

43 (6) any revision of the authoritative copy is readily identifiable as
44 authorized or unauthorized.

45 d. Except as otherwise agreed, a person having control of a
46 transferable record is the holder, as defined in section 1-201 of the

1 Uniform Commercial Code of the transferable record and has the same
2 rights and defenses as a holder of an equivalent record or writing
3 under the Uniform Commercial Code including, if the applicable
4 statutory requirements are satisfied, the rights and defenses of a holder
5 in due course, a holder to which a negotiable document of title has
6 been duly negotiated or a purchaser. Delivery, possession and
7 indorsement are not required to obtain or exercise any of the rights
8 under this subsection.

9 e. Except as otherwise agreed, an obligor under a transferable
10 record has the same rights and defenses as an equivalent obligor under
11 equivalent records or writings under the Uniform Commercial Code.

12 f. If requested by a person against which enforcement is sought, the
13 person seeking to enforce the transferable record shall provide
14 reasonable proof that the person is in control of the transferable
15 record. Proof may include access to the authoritative copy of the
16 transferable record and related business records sufficient to review
17 the terms of the transferable record and to establish the identity of the
18 person having control of the transferable record.

19

20 17. Each governmental agency shall determine whether, and the
21 extent to which, it will create and retain electronic records and convert
22 written records to electronic records. Additionally, each executive
23 agency shall comply with standards adopted by the Secretary of State
24 pursuant to section 19 of this act.

25

26 18. a. Except as otherwise provided in subsection f. of section 12
27 of this act or section 17 of this act, each governmental agency shall
28 determine whether, and the extent to which, it will send and accept
29 electronic records and electronic signatures to and from other persons,
30 and otherwise create, generate, communicate, store, process, use and
31 rely upon electronic records and electronic signatures.

32 b. To the extent a governmental agency uses electronic records and
33 electronic signatures under subsection a. of this section, the
34 governmental agency, giving due consideration to security, may
35 specify:

36 (1) the manner and format in which the electronic records must be
37 created, generated, sent, communicated, received and stored and the
38 system established for those purposes;

39 (2) if electronic records must be signed by electronic means, the
40 type of electronic signature required, the manner and format in which
41 the electronic signature must be affixed to the electronic record, and
42 the identity of, or criteria that must be met by, any third party used by
43 a person filing a document to facilitate the process;

44 (3) control processes and procedures appropriate to ensure
45 adequate preservation, disposition, integrity, security, confidentiality
46 and auditability of electronic records; and

1 (4) any other required attributes for electronic records which are
2 currently specified for corresponding nonelectronic records, or
3 reasonably necessary under the circumstances.

4 c. Except as otherwise provided in subsection f. of section 12 of
5 this act or section 17 of this act, this act does not require a
6 governmental agency to use or permit the use of electronic records or
7 electronic signatures.

8
9 19. The Secretary of State shall adopt standards to encourage and
10 promote consistency and interoperability with similar requirements
11 adopted by other governmental agencies of this and other states and
12 the federal government, and nongovernmental persons interacting with
13 governmental agencies of this State. If appropriate, those standards
14 may specify differing levels of standards from which governmental
15 agencies of this State may chose in implementing the most appropriate
16 standard for a particular application.

17
18 20. If any provision of this act or its application to any person or
19 circumstance is held invalid, the invalidity shall not affect other
20 provisions or applications of this act which can be given effect without
21 the invalid provision or application and, to this end, the provisions of
22 this act are severable.

23
24 21. a. Notwithstanding any other provision of this act, if a law or
25 regulation requires that information relating to the transaction be
26 provided or made available to a consumer in writing, the use of an
27 electronic record to provide or make available (whichever is required)
28 such information satisfies the requirement that such information be in
29 writing if:

30 (1) the consumer has affirmatively consented to such use and has
31 not withdrawn such consent;

32 (2) the consumer, prior to consenting, is provided with a clear and
33 conspicuous statement:

34 (a) informing the consumer of:

35 (i) any right or option of the consumer to have the record provided
36 or made available on paper or in nonelectronic form, and

37 (ii) the right of the consumer to withdraw the consent to have the
38 record provided or made available in an electronic form and of any
39 conditions, consequences (which may include termination of the
40 parties' relationship), or fees in the event of such withdrawal;

41 (b) informing the consumer of whether the consent applies:

42 (i) only to the particular transaction which gave rise to the
43 obligation to provide the record, or

44 (ii) to identified categories of records that may be provided or made
45 available during the course of the parties' relationship;

46 (c) describing the procedures the consumer must use to withdraw

1 consent as provided in a.(2)(a) of this section and to update
2 information needed to contact the consumer electronically; and
3 (d) informing the consumer:
4 (i) how, after the consent, the consumer may, upon request, obtain
5 a paper copy of an electronic record, and
6 (ii) whether any fee will be charged for such copy;
7 (3) the consumer:
8 (a) prior to consenting, is provided with a statement of the
9 hardware and software requirements for access to and retention of the
10 electronic records; and
11 (b) consents electronically, or confirms his or her consent
12 electronically, in a manner that reasonably demonstrates that the
13 consumer can access information in the electronic form that will be
14 used to provide the information that is the subject of the consent; and
15 (4) after the consent of a consumer in accordance with a.(1) of this
16 section, if a change in the hardware or software requirements needed
17 to access or retain electronic records creates a material risk that the
18 consumer will not be able to access or retain a subsequent electronic
19 record that was the subject of the consent, the person providing the
20 electronic record:
21 (a) provides the consumer with a statement of:
22 (i) the revised hardware and software requirements for access to
23 and retention of the electronic records; and
24 (ii) the right to withdraw consent without the imposition of any fees
25 for such withdrawal and without the imposition of any condition or
26 consequence that was not disclosed under a.(2)(a) of this section; and
27 (b) again complies with a.(3) of this section.
28 b. Nothing in this act affects the content or timing of any disclosure
29 or other record required to be provided or made available to any
30 consumer under any statute, regulation, or other rule of law.
31 c. If a law that was enacted prior to this act expressly requires a
32 record to be provided or made available by a specified method that
33 requires verification or acknowledgment of receipt, the record may be
34 provided or made available electronically only if the method used
35 provides verification or acknowledgment of receipt (whichever is
36 required).
37 d. The legal effectiveness, validity or enforceability of any contract
38 executed by a consumer shall not be denied solely because of the
39 failure to obtain electronic consent or confirmation of consent by that
40 consumer in accordance with a.(3)(b) of this section.
41 e. Withdrawal of consent by a consumer shall not affect the legal
42 effectiveness, validity or enforceability of electronic records provided
43 or made available to that consumer in accordance with subsection a.
44 prior to implementation of the consumer's withdrawal of consent. A
45 consumer's withdrawal of consent shall be effective within a reasonable
46 period of time after receipt of the withdrawal by the provider of the

1 record. Failure to comply with a.(4) of this section may, at the
2 election of the consumer, be treated as a withdrawal of consent for
3 purposes of this subsection.

4 f. This subsection does not apply to any records that are provided
5 or made available to a consumer who has consented prior to the
6 effective date of this act to receive such records in electronic form as
7 permitted by any statute, regulation, or other rule of law.

8 g. An oral communication or a recording of an oral communication
9 shall not qualify as an electronic record for purposes of this section
10 except as otherwise provided under applicable law.¹

11
12 ¹ 22. The Legislature finds and declares:

13 That the adoption of the "Electronic Signatures in Global and
14 National Commerce Act," Pub.L. 106-229, 114 Stat. 464 (2000),
15 popularly known as "federal E-Sign," encourages states to enact the
16 Uniform Electronic Transactions Act proposed for adoption by the
17 National Conference of Commissioners on Uniform State Laws; and

18 That the adoption of the Uniform Electronic Transactions Act will
19 invoke the provisions of Section 102 of Pub. L. 106-229 which state
20 that federal law will no longer preempt the laws of an enacting state;
21 and

22 That Section 102 of Pub. L. 106-229 provides that a state, in
23 enacting the Uniform Electronic Transactions Act, may "modify, limit
24 or supersede" the provisions of the federal law; and

25 That it is desirable for this State to take the fullest possible
26 advantage of the ability to "modify, limit or supersede" Pub. L. 106-
27 229; and

28 That it is the intention of the Legislature that the adoption of the
29 Uniform Electronic Transactions Act in this State modify, limit and
30 supersede the provisions of Pub. L. 106-229 to the fullest possible
31 extent permitted under the federal law.¹

32
33 ²23. Under the provisions of subsection a. of section 8, an
34 electronic record, to be capable of retention by the recipient at the
35 time of receipt, must be capable of being retained and accurately
36 reproduced for later reference by all persons who are entitled to retain
37 the record.²

38
39 ²24. Under the provisions of paragraph (2) of subsection a. of
40 section 12, a record of information remains accessible for later
41 reference if it remains accessible to all persons who are entitled to
42 access by statute, regulation or rule of law, for the period required by
43 such statute, regulation or rule of law, in a form that is capable of
44 being accurately reproduced for later reference, whether by
45 transmission, printing, or otherwise.²

1 ²25. The New Jersey Center for Electronic Transactions and
2 Informational Privacy shall be established within the Institute of Law,
3 Science and Technology at Seton Hall University School of Law. The
4 Center shall ³[provide legal research and advisement] collect and
5 evaluate information on issues concerning electronic records and
6 privacy and shall compile its findings and any recommendations for
7 submission ³ to the Secretary of State and governmental agencies of
8 this State ³[on issues concerning electronic records and privacy], as
9 may be appropriate ^{3, 2}.

10
11 ³26. For purposes of this act, references to "statute, regulation or
12 other rule of law" shall include the Rules Governing the Courts of the
13 State of New Jersey and the reference to "court orders or notices or
14 official court documents" as used in paragraph (1) of subsection c. of
15 section 3 of this act shall include all official court documents governed
16 by the Rules Governing the Courts of the State of New Jersey. ³

17
18 ²[¹23.] ³[²26.] ^{27.} ³R.S.1:1-2.4 is hereby repealed. ¹

19
20 ¹[21.] ²[^{24.} ¹] ³[^{27.} ²] ^{28.} ³ This act shall take effect ¹[on the
21 120th day after enactment] immediately ¹.

22
23
24
25
26

Creates the "Uniform Electronic Transactions Act."

CHAPTER 116

AN ACT creating the "Uniform Electronic Transactions Act;" supplementing Title 12A of the New Jersey Statutes and repealing R.S.1:1-2.4.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.12A:12-1 Short title.

1. This act shall be known and may be cited as the "Uniform Electronic Transactions Act."

C.12A:12-2 Definitions relative to electronic transactions.

2. As used in this act:

"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.

"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 one 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.

"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.

"Contract" means the total legal obligation resulting from the parties' agreement as affected by this act and other applicable law.

"Electronic" means relating to technology having an electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

"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.

"Electronic record" means a record created, generated, sent, communicated, received or stored by electronic means.

"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.

"Governmental agency" means an executive, legislative or judicial agency, department, board, commission, authority, institution or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.

"Information" means data, text, images, sounds, codes, computer programs, software, databases or the like.

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

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

"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.

"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, callback or other acknowledgment procedures.

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

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

C.12A:12-3 Applicability of act to electronic records, signatures; exceptions.

3. a. Except as provided in subsections b. and c. of this section, this act applies to electronic records and electronic signatures relating to a transaction.

- b. This act does not apply to a transaction to the extent it is governed by:
 - (1) a law governing the creation and execution of wills, codicils or testamentary trusts;
 - (2) the Uniform Commercial Code other than sections 1-107 and 1-206, Article 2 and Article 2A;
 - (3) a statute, regulation or other rule of law governing adoption, divorce or other matters of family law.
- c. This act does not apply to:
 - (1) court orders or notices or official court documents (including briefs, pleadings and other writings) required to be executed in connection with court proceedings;
 - (2) any notice of:
 - (a) the cancellation or termination of utility services (including water, heat and power);
 - (b) the default, acceleration, repossession, foreclosure or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual;
 - (c) the cancellation or termination of health insurance benefits or life insurance benefits (excluding annuities); or
 - (d) the recall of a product, or material failure of a product, that risks endangering health or safety; or
 - (3) any document required to accompany any transportation or handling of hazardous materials, pesticides or other toxic or dangerous materials.
- d. This act applies to an electronic record or electronic signature otherwise excluded from the application of this act under subsection b. of this section to the extent it is governed by a law other than those specified in subsection b. of this section.
- e. A transaction subject to this act is subject also to other applicable substantive law.

C.12A:12-4 Act applies on or after June 26, 2001.

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.

C.12A:12-5 Electronic record, signature not required.

5. a. This act does not require a record or signature to be created, generated, stored, sent, communicated, received, stored or otherwise processed or used by electronic means or in electronic form.

b. 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.

c. 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.

d. Except as otherwise provided in this act, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this act of the words "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

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

C.12A:12-6 Construction of act.

6. This act shall be construed and applied:

- a. to facilitate electronic transactions consistent with other applicable law;
- b. to be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and
- c. to effectuate its general purpose to make uniform the law with respect to the subject of this act among the states enacting it.

C.12A:12-7 Legal effect and enforceability.

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

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

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

d. If a law requires a signature, an electronic signature satisfies the law.

C.12A:12-8 Use, retention, content, format of electronic records.

8. a. 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, as the case may be, 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.

b. If a law other than this act 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, the following apply:

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

(2) Except as otherwise provided in paragraph (2) of subsection d. of this section, the record shall be sent, communicated or transmitted by the method specified in the other law.

(3) The record shall contain the information formatted in the manner specified in the other law.

c. 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.

d. The requirements of this section may not be varied by agreement, but:

(1) to the extent a law other than this act requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection a. of this section that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(2) a requirement under a law other than this act to send, communicate, or transmit a record by United States mail, may be varied by agreement to the extent permitted by the other law.

C.12A:12-9 Attribution, effect of electronic records, signatures.

9. a. An electronic record or electronic signature is attributable to a person if it was 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.

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

C.12A:12-10 Rules applicable to changes, errors in electronic records.

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 one party has consented 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 avoid the effect of the changed or erroneous electronic record.

b. In an automated transaction involving an individual, the individual may avoid 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 an opportunity for the prevention or correction of the error, and, at the time the individual learns of the error, the individual:

(1) promptly notifies 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;

(2) takes reasonable steps, including steps that conform to the other persons's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(3) has not used or received any benefit or value from the consideration, if any, received from the other person.

c. If neither subsection a. or b. of this section applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

d. Subsections b. and c. of this section may not be varied by agreement.

C.12A:12-11 Notarized signatures or records.

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.

C.12A:12-12 Retention of electronic records.

12. a. If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

(1) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(2) remains accessible for later reference.

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

c. A person may satisfy subsection a. of this section by using the services of another person if the requirements of that subsection are satisfied.

d. 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 a. of this section.

e. 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 a. of this section.

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

g. This section does not preclude a governmental agency of this State from specifying additional requirements for the retention of a records subject to the agency's jurisdiction.

C.12A:12-13 Admissibility of electronic records, signatures.

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

C.12A:12-14 Rules applicable to automated transactions.

14. In an automated transaction, 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 which 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 it.

C.12A:12-15 Conditions under which electronic record is sent, received.

15. a. Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(1) is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or 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;

(2) is in a form capable of being processed by that system; and

(3) 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 designated or used by the recipient which is under the control of the recipient.

b. Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(1) it enters an information processing system that the recipient has designated or 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; and

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

c. Subsection b. of this section applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection d. of this section.

d. Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed 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, the following rules apply:

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

(2) 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, as the case may be.

e. An electronic record is received under subsection b. of this section even if no individual is aware of its receipt.

f. Receipt of an electronic acknowledgment from an information processing system described in subsection b. of this section establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

g. If a person is aware that an electronic record purportedly sent under subsection a. of this section, or purportedly received under subsection b. of this section, 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.

C.12A:12-16 Control of transferable records.

16. a. As used in this section "transferable record" means an electronic record that:

(1) would be a note under Article 3 of the Uniform Commercial Code or a document under Article 7 of the Uniform Commercial Code if the electronic record were in writing; and

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

b. 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.

c. A system satisfies subsection b. of this section and the person is deemed to have control of a transferable record if the transferable record is created, stored and assigned in such a manner that:

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

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

(a) the person to which the transferable record was issued; or

(b) if the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

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

(4) copies or revisions that add or change an identified assignee of the authoritative copy may be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

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

d. Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section 1-201 of the Uniform Commercial Code of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code including, if the applicable statutory requirements 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.

e. 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 the Uniform Commercial Code.

f. 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.

C.12A:12-17 Governmental agency creation, retention, conversion of electronic records.

17. Each governmental agency shall determine whether, and the extent to which, it will create and retain electronic records and convert written records to electronic records. Additionally, each executive agency shall comply with standards adopted by the Secretary of State pursuant to section 19 of this act.

C.12A:12-18 Use of electronic records, signatures by governmental agencies; specifications.

18. a. Except as otherwise provided in subsection f. of section 12 of this act or section 17 of this act, each governmental agency shall determine whether, and the extent to which, it 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.

b. To the extent a governmental agency uses electronic records and electronic signatures under subsection a. of this section, the governmental agency, giving due consideration to security, may specify:

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

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

(3) control processes and procedures appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality and auditability of electronic records; and

(4) any other required attributes for electronic records which are currently specified for corresponding nonelectronic records, or reasonably necessary under the circumstances.

c. Except as otherwise provided in subsection f. of section 12 of this act or section 17 of this act, this act does not require a governmental agency to use or permit the use of electronic records or electronic signatures.

C.12A:12-19 Adoption of standards for governmental.

19. The Secretary of State shall adopt standards to encourage and promote consistency and

interoperability with similar requirements adopted by other governmental agencies of this and other states and the federal government, and nongovernmental persons interacting with governmental agencies of this State. If appropriate, those standards may specify differing levels of standards from which governmental agencies of this State may choose in implementing the most appropriate standard for a particular application.

C.12A:12-20 Severability.

20. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application and, to this end, the provisions of this act are severable.

C.12A:12-21 Use of electronic record to satisfy consumer information in writing, conditions.

21. a. Notwithstanding any other provision of this act, if a law or regulation requires that information relating to the transaction be provided or made available to a consumer in writing, the use of an electronic record to provide or make available (whichever is required) such information satisfies the requirement that such information be in writing if:

(1) the consumer has affirmatively consented to such use and has not withdrawn such consent;

(2) the consumer, prior to consenting, is provided with a clear and conspicuous statement:

(a) informing the consumer of:

(i) any right or option of the consumer to have the record provided or made available on paper or in nonelectronic form, and

(ii) the right of the consumer to withdraw the consent to have the record provided or made available in an electronic form and of any conditions, consequences (which may include termination of the parties' relationship), or fees in the event of such withdrawal;

(b) informing the consumer of whether the consent applies:

(i) only to the particular transaction which gave rise to the obligation to provide the record, or

(ii) to identified categories of records that may be provided or made available during the course of the parties' relationship;

(c) describing the procedures the consumer must use to withdraw consent as provided in a.(2)(a) of this section and to update information needed to contact the consumer electronically; and

(d) informing the consumer:

(i) how, after the consent, the consumer may, upon request, obtain a paper copy of an electronic record, and

(ii) whether any fee will be charged for such copy;

(3) the consumer:

(a) prior to consenting, is provided with a statement of the hardware and software requirements for access to and retention of the electronic records; and

(b) consents electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent; and

(4) after the consent of a consumer in accordance with a.(1) of this section, if a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent, the person providing the electronic record:

(a) provides the consumer with a statement of:

(i) the revised hardware and software requirements for access to and retention of the electronic records; and

(ii) the right to withdraw consent without the imposition of any fees for such withdrawal and without the imposition of any condition or consequence that was not disclosed under a.(2)(a) of this section; and

(b) again complies with a.(3) of this section.

b. Nothing in this act affects the content or timing of any disclosure or other record required to be provided or made available to any consumer under any statute, regulation, or other rule of law.

c. If a law that was enacted prior to this act expressly requires a record to be provided or made available by a specified method that requires verification or acknowledgment of receipt, the record may be provided or made available electronically only if the method used provides verification or acknowledgment of receipt (whichever is required).

d. The legal effectiveness, validity or enforceability of any contract executed by a consumer shall not be denied solely because of the failure to obtain electronic consent or confirmation of consent by that consumer in accordance with a.(3)(b) of this section.

e. Withdrawal of consent by a consumer shall not affect the legal effectiveness, validity or enforceability of electronic records provided or made available to that consumer in accordance with subsection a. prior to implementation of the consumer's withdrawal of consent. A consumer's withdrawal of consent shall be effective within a reasonable period of time after receipt of the withdrawal by the provider of the record. Failure to comply with a.(4) of this section may, at the election of the consumer, be treated as a withdrawal of consent for purposes of this subsection.

f. This subsection does not apply to any records that are provided or made available to a consumer who has consented prior to the effective date of this act to receive such records in electronic form as permitted by any statute, regulation, or other rule of law.

g. An oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of this section except as otherwise provided under applicable law.

C.12A:12-22 Findings, declaration concerning "federal E-sign".

22. The Legislature finds and declares:

That the adoption of the "Electronic Signatures in Global and National Commerce Act," Pub.L. 106-229, 114 Stat. 464 (2000), popularly known as "federal E-Sign," encourages states to enact the Uniform Electronic Transactions Act proposed for adoption by the National Conference of Commissioners on Uniform State Laws; and

That the adoption of the Uniform Electronic Transactions Act will invoke the provisions of Section 102 of Pub. L. 106-229 which state that federal law will no longer preempt the laws of an enacting state; and

That Section 102 of Pub. L. 106-229 provides that a state, in enacting the Uniform Electronic Transactions Act, may "modify, limit or supersede" the provisions of the federal law; and

That it is desirable for this State to take the fullest possible advantage of the ability to "modify, limit or supersede" Pub. L. 106-229; and

That it is the intention of the Legislature that the adoption of the Uniform Electronic Transactions Act in this State modify, limit and supersede the provisions of Pub. L. 106-229 to the fullest possible extent permitted under the federal law.

C.12A:12-23 Capabilty of electronic records retention by recipients.

23. Under the provisions of subsection a. of section 8, an electronic record, to be capable of retention by the recipient at the time of receipt, must be capable of being retained and accurately reproduced for later reference by all persons who are entitled to retain the record.

C.12A:12-24 Accessibilty of records of information.

24. Under the provisions of paragraph (2) of subsection a. of section 12, a record of information remains accessible for later reference if it remains accessible to all persons who are entitled to access by statute, regulation or rule of law, for the period required by such statute, regulation or rule of law, in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise.

C.12A:12-25 The New Jersey Center for Electronic Transactions and Informational Privacy, established.

25. The New Jersey Center for Electronic Transactions and Informational Privacy shall be

established within the Institute of Law, Science and Technology at Seton Hall University School of Law. The Center shall collect and evaluate information on issues concerning electronic records and privacy and shall compile its findings and any recommendations for submission to the Secretary of State and governmental agencies of this State, as may be appropriate.

C.12A:12-26 "Statute, regulation or other rule of law" defined.

26. For purposes of this act, references to "statute, regulation or other rule of law" shall include the Rules Governing the Courts of the State of New Jersey and the reference to "court orders or notices or official court documents" as used in paragraph (1) of subsection c. of section 3 of this act shall include all official court documents governed by the Rules Governing the Courts of the State of New Jersey.

Repealer.

27. R.S.1:1-2.4 is hereby repealed.

28. This act shall take effect immediately

Approved June 26, 2001.

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TRENTON, NJ 08625

Office of the Governor
NEWS RELEASE

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RELEASE: June 27 , 2001

Acting Governor Donald T. DiFrancesco has signed the following legislation:

S-621, sponsored by Senators John Matheussen (R-Camden/Gloucester), Norman Robertson (Essex/Passaic) and Anthony Bucco (R-Morris) and Assemblymembers John Kelly (R-Bergen/Essex/Passaic) and Arline Friscia (D-Middlesex), allows parents, children, spouses and siblings of illegal drug users, as well as employers of illegal drug users, medical facilities, insurers and persons injured by the drug users' actions to sue drug dealers for civil damages.

S-647, sponsored by Senator Joseph Kyriillos (R-Middlesex/Monmouth) and Assemblyman Joseph Azzolina (R-Middlesex/Monmouth) and Guy Gregg (R-Sussex/Hunterdon/Morris) permits the Director of the Division of Alcoholic Beverage Control to issue a special auction permit to a nonprofit organization operating solely for civic, religious, education, charitable, fraternal, social or recreational purposes.

The permit will cost \$100 and would entitle the nonprofit organization to sell at auction alcoholic beverages donated to it by a licensee.

S-1382, sponsored by Senator Robert Martin (R-Essex/Morris/Passaic) and Assemblymen Wilfredo Caraballo (D-Essex) and Kip Bateman (R-Morris/Somerset), revises rules concerning secured transactions by replacing Chapter 9 of the Uniform Commercial Code (UCC) with revised Chapter 9, as well as, conforming amendments to Chapters 1,2,2A,4,5,7 and 8 of the UCC.

S-2123, sponsored by Senator Raymond Lesniak (D-Union) and Assemblymen Neil Cohen(D-Union) and Joseph Impreveduto (D-Bergen/Hudson), increases the term of office of the mayor and the members of council from two years to four years in municipalities. Provides for a transitional three-year term of office for the mayor and members of council elected at the 2002 general election.

This bill also alters the term of office of mayor and member so council from three years to four years in towns.

A-1325, sponsored by Senator William Schluter (R-Warren/Hunterdon/Mercer) and Assemblymembers Richard Bagger (R-Middlesex/Morris/Somerset/Union) and the late Alan Augustine (R-Middlesex/Morris/Somerset/Union), allows a municipality or county to install pedestrian crossing right-of-way signs at a marked or unmarked crosswalk or at an intersection.

A-1342, sponsored by late Assemblyman Alan Augustine (R-Middlesex/Morris/Somerset/Union), provides that, as a fifth option, a Teachers' Pension and Annuity Fund (TPAF) or Public Employees' Retirement System (PERS) member may choose a retirement allowance actuarially reduced to provide to a beneficiary an allowance equivalent to the full amount, three-quarters, one-half or one-quarter of that reduced allowance, but if the beneficiary dies before the retiree, the retiree's allowance will increase to a maximum amount.

A-2185, sponsored by Senator Louis Bassano (R-Essex/Union) and John Singer (R-Burlington/Monmouth/Ocean) and Assemblymembers Leonard Lance (R-Warren/Hunterdon/Mercer) and Rose Maria Heck (R-Bergen), appropriates \$28,695,000 from the Developmental Disabilities' Waiting List Reduction and Human Services Facilities Construction Fund for the Department of Human Services. This money will be used for various projects within the divisions, including reducing the community services waiting list.

A-2209, sponsored by Senators Jack Sinagra (R-Middlesex) and Joseph Vitale (D-Middlesex) and Assemblymembers Carol Murphy (R-Essex/Morris/Passaic) and Samuel Thompson (R-Middlesex/Monmouth), provides that the period for which eligibility for Medicaid and KidCare benefits is determined shall be the maximum permitted under federal law, currently 12 months.

A-2449, sponsored by Assemblymen Michael Arnone (R-Monmouth) and Joseph Azzolina (R-Middlesex/Monmouth), permits sewerage authority or a utilities authority to rename itself as a "water reclamation authority" to more accurately reflect its activities and purposes.

A-2523, sponsored by Senators William Gormley (R-Atlantic) and Edward O'Connor (D-Hudson) and Assemblymen James Holzapfel (R-Monmouth/Ocean) and Peter Barnes (D-Middlesex), increases the penalty for persons who produce and sell false motor vehicle identification cards from a crime of the fourth degree to a crime of the third degree which is punishable by imprisonment for three to five years, a fine of up to \$15,000, or both.

A-3622, sponsored by Senators Walter Kavanaugh (R-Morris/Somerset) and Raymond Lesniak (D-Union) and Assemblymen John Wisniewski (D-Middlesex) and Samuel Thompson (R-Middlesex/Monmouth), provides that for the year 2001, 1) the day on which members of the State, county or municipal committee of a political party will take office, and the day on which the terms of members previously elected to each such committee will terminate, will be the day immediately following the day of the primary election for the general election and 2) the holding of the annual meeting of the State, county and municipal committees of a political party will occur no earlier than the day immediately following the day of the primary election and no later than the 21st day following such election.