

No. 1999-69

AN ACT

SB 555

Regulating electronic transactions.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

**CHAPTER 1
PRELIMINARY PROVISIONS**

Section 101. Short title.

(a) General.—This act shall be known and may be cited as the Electronic Transactions Act.

(b) Uniform.—Chapters 1, 3 and 5 shall be known and may be cited as the Uniform Electronic Transactions Act.

Section 102. Legislative findings.

The General Assembly finds and declares as follows:

(1) electronic commerce is expanding rapidly and is an engine for economic growth in this Commonwealth and the United States; and

(2) uniformity among state laws recognizing the validity and enforceability of electronic signatures, records and writings is important to the continued expansion of electronic commerce; and

(3) the rights of consumers under existing laws should be protected and preserved.

The General Assembly should enact the Uniform Electronic Transactions Act submitted to the state legislatures by the National Conference of Commissioners on Uniform State Laws with additions to enhance and promote the reliability of electronic commerce.

Section 103. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Agreement.” 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.” 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.” 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.

“Consumer.” An individual involved in an electronic transaction primarily for personal, family or household purposes.

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

“Electronic.” Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

“Electronic agent.” 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.” A record created, generated, sent, communicated, received or stored by electronic means.

“Electronic signature.” 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.

“Executive agency.” A department, board, commission, authority, officer or agency of the Executive Department subject to the policy supervision and control of the Governor.

“Governmental agency.” An executive agency, an independent agency, a State-affiliated entity or other instrumentality of the Commonwealth. The term includes authorities, political subdivisions and State-related institutions.

“Independent agency.” A board, commission or other agency or officer of the Executive Department that is not subject to the policy supervision and control of the Governor.

“Information.” Data, text, images, sounds, codes, computer programs, software, data bases or the like.

“Information processing system.” An electronic system for creating, generating, sending, receiving, storing, displaying or processing information.

“Person.” Any individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or other legal or commercial entity.

“Record.” Information which is inscribed on a tangible medium or is stored in an electronic or other medium and which is retrievable in perceivable form.

“Security procedure.” 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 which requires the use of algorithms or other codes, identifying words or numbers, encryption or callback or other acknowledgment procedures.

“State.” 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 an Alaskan Native Village which is recognized by Federal law or formally acknowledged by a state.

“State-affiliated entity or other instrumentality.” A Commonwealth authority or a Commonwealth entity or instrumentality. The term includes the Pennsylvania Turnpike Commission, the Pennsylvania Housing Finance Agency, the Pennsylvania Municipal Retirement System, the Pennsylvania Infrastructure Investment Authority, the State Public School Building Authority, the Pennsylvania Higher Educational Facilities Authority and the State System of Higher Education.

“State-related institution.” The Pennsylvania State University, the University of Pittsburgh, Lincoln University or Temple University.

“Transaction.” An action or set of actions occurring between two or more persons relating to the conduct of business, commercial or governmental affairs.

Section 104. Scope.

(a) General rule.—Except as provided in subsection (b), this act applies to electronic records and electronic signatures relating to a transaction.

(b) Exception.—Subject to subsection (c), this act does not apply to a transaction to the extent it is governed by any of the following:

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

(2) The provisions of 13 Pa.C.S. (relating to commercial code) other than:

(i) sections 1107 (relating to waiver or renunciation of claim or right after breach) and 1206 (relating to statute of frauds for kinds of personal property not otherwise covered);

(ii) Division 2 (relating to sales); and

(iii) Division 2A (relating to leases).

(c) Limitation of exception.—This act applies to an electronic record or electronic signature otherwise excluded from the application of this act under subsection (b) to the extent it is governed by a law other than those specified in subsection (b).

(d) Other law.—A transaction subject to this act is also subject to other applicable substantive law.

Section 105. Prospective application.

This act applies to an electronic record or electronic signature created, generated, sent, communicated, received or stored on or after the effective date of this act.

CHAPTER 3 UNIFORM ELECTRONIC TRANSACTIONS

Section 301. Use of electronic records and electronic signatures; variation by agreement.

(a) Electronic means or form not required.—This act does not require a record or signature to be created, generated, sent, communicated, received, stored or otherwise processed or used by electronic means or in electronic form.

(b) Consent.—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) Other transactions.—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) Variation by agreement.—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) Conclusions of law.—Whether an electronic record or electronic signature has legal consequences is determined by this act and other applicable law.

Section 302. Construction and application.

This act must be construed and applied:

(1) to facilitate electronic transactions consistent with other applicable law;

(2) to be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

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

Section 303. Legal recognition of electronic records, electronic signatures and electronic contracts.

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

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

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

(d) Signature.—If a law requires a signature, an electronic signature satisfies the law.

Section 304. Provision of information in writing; presentation of records.

(a) Writing.—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) Records.—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 which is formatted in a certain manner, the following rules apply:

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

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

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

(c) Unenforceable.—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) Variation by agreement.—The requirements of this section may not be varied by agreement except as follows:

(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) that the information be in the form of an electronic record capable of retention may also be varied by agreement.

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

Section 305. Attribution and effect of electronic records and signatures.

(a) Attribution.—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) Effect.—The effect of an electronic record or electronic signature attributed to a person under subsection (a) is determined:

(1) from the context and surrounding circumstances at the time of its creation, execution or adoption, including the parties' agreement, if any; and

(2) otherwise as provided by law.

Section 306. Effect of change or error.

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

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

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

(2) 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:

(i) 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;

(ii) takes reasonable steps, including steps which conform to the other person'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

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

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

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

Section 307. Notarization and acknowledgment.

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 services, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

Section 308. Retention of electronic records; originals.

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

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

(d) Originals.—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).

(e) Checks.—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).

(f) Evidence; audits.—A record retained as an electronic record in accordance with subsection (a) satisfies a law requiring a person to retain a record for evidentiary, audit or like purposes.

(g) Governmental agencies.—This section does not preclude a governmental agency of this Commonwealth from specifying additional requirements for the retention of a record subject to the governmental agency's jurisdiction, including the requirement that a record be retained in a nonelectronic form.

Section 309. Admissibility in evidence.

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

Section 310. Automated transaction.

In an automated transaction, the following rules apply:

(1) 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.

(2) 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 which 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.

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

Section 311. Time and place of sending and receipt.

(a) Sending.—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) Receipt.—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) it is in a form capable of being processed by that system.

(c) Physical location.—Subsection (b) 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).

(d) Place of business.—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) Actual receipt.—An electronic record is received under subsection (b) even if no individual is aware of its receipt.

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

(g) Legal effect.—If a person is aware that an electronic record purportedly sent under subsection (a) or purportedly received under subsection (b) 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.

Section 312. Transferable records.

(a) Control.—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.

(b) Compliance.—A system satisfies subsection (a) and a person is deemed to have control of a transferable record if the transferable record is created, stored and assigned in such a manner that all of the following paragraphs apply:

(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), unalterable.

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

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

(ii) 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 that person's designated custodian.

(4) Copies or revisions which add or change an identified assignee of the authoritative copy can 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 which is not the authoritative copy.

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

(c) Holders.—Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in paragraph (2) of the definition of "holder" in 13 Pa.C.S. § 1201 (relating to general definitions), of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under 13 Pa.C.S. (relating to commercial code), including, if the applicable statutory requirements are satisfied, sections 3302(a) (relating to holder in due course), 7501 (relating to form of negotiation and requirements of "due negotiation") and 9308 (relating to purchase of chattel paper and instruments). Delivery, possession and endorsement are not required to obtain or exercise any of the rights under this subsection.

(d) Obligors.—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 13 Pa.C.S.

(e) Proof.—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.

(f) Definition.—As used in this section, the term "transferable record" means an electronic record:

(1) which would be a note under 13 Pa.C.S. Div. 3 (relating to negotiable instruments) or a document under 13 Pa.C.S. Div. 7 (relating to warehouse receipts, bills of lading and other documents of title) if the electronic record were in writing; and

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

CHAPTER 5 GOVERNMENTAL AGENCIES

Section 501. Creation and retention of electronic records and conversion of written records.

Each governmental agency in this Commonwealth shall determine whether and the extent to which it will create and retain electronic records and convert written records to electronic records. Executive agencies shall also comply with standards published by the Office of Administration.

Section 502. Acceptance and distribution of electronic records.

(a) Option.—Each governmental agency in this Commonwealth 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) Specifics.—To the extent that a governmental agency uses electronic records and electronic signatures under subsection (a), the governmental agency, giving due consideration to security, may specify all of the following:

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

(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 as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality and auditability of electronic records.

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

(c) Not mandatory.—This chapter does not require a governmental agency to use or permit the use of electronic records or electronic signatures.

Section 503. Interoperability.

The standards published by the Office of Administration under section 501 should 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 a governmental agency. If appropriate, those standards may specify differing levels of standards from which a governmental agency may choose in implementing the most appropriate standard for a particular application.

**CHAPTER 7
ATTRIBUTION OF RECORDS AND SIGNATURES**

Section 701. Use of security procedures.

If there is a security procedure between the parties with respect to the electronic signature or electronic record, the following rules apply:

(1) The effect of compliance with a security procedure established by a law or regulation is determined by that law or regulation.

(2) In all other cases, if the parties agree to use or otherwise knowingly adopt a security procedure to verify the person from which an electronic signature or electronic record has been sent, the electronic signature or electronic record is attributable to the person identified by the security procedure if the person relying on the attribution satisfies the burden of establishing that:

(i) the security procedure was commercially reasonable;

(ii) the party accepted or relied on the electronic message in good faith and in compliance with the security procedure and any additional agreement with or separate instructions of the other party; and

(iii) the security procedure indicated that the electronic message was from the person to which attribution is sought.

(3) If the electronic signature or electronic record is not attributable to a person under section 305 but would be attributable to the person under this section, the electronic signature or electronic record is nevertheless not attributable to the person under this section if the person satisfies the burden of establishing that the electronic signature or electronic record was caused directly or indirectly by a person:

(i) that was not entrusted at any time with the right or duty to act for the person with respect to such electronic signature or electronic record or security procedure;

(ii) that lawfully obtained access to transmitting facilities of the person if such access facilitated the misuse of the security procedure; or

(iii) that obtained, from a source controlled by the person, information facilitating misuse of the security procedure.

Section 702. Effect of using security procedure to detect errors or changes.

If the parties use a commercially reasonable security procedure to detect errors or changes with respect to an electronic signature or electronic record, the following rules shall apply:

(1) The effect of a security procedure is determined by the agreement between the parties or, in the absence of agreement, by this section or any law establishing the security procedure.

(2) Unless the circumstances indicate otherwise, if a security procedure indicates that an electronic signature or electronic record has not been altered since a particular time, it is treated as not having been altered since that time.

Section 703. Commercial reasonableness.

The efficacy and commercial reasonableness of a security procedure is to be determined by the court. In making this determination, the following rules apply:

(1) A security procedure established by statute or regulation is effective for transactions covered by the statute or regulation.

(2) Except as otherwise provided in paragraph (1), commercial reasonableness and effectiveness is determined in light of the purposes of the security procedure and the commercial circumstances at the time the parties agree to or adopt the procedure.

Section 704. Inapplicability to consumers.

The provisions of this chapter shall not apply to any electronic transaction to which a consumer is a party.

Section 705. Variation by agreement.

Except as otherwise provided by statute or regulation, any provision of this chapter other than section 704 may be varied by agreement.

**CHAPTER 9
CONSUMER AGREEMENTS**

Section 901. Limitation on consumer agreements.

In the case of a nonelectronic consumer contract or agreement, the contract or agreement may not contain a provision authorizing the conducting of the transaction or any part thereof by electronic means unless the consumer agrees to such a provision by a separate and express acknowledgment. Such an agreement shall specifically indicate the parts of the transaction to be conducted by electronic means, and shall indicate the manner in which the electronic transaction or a part thereof shall be conducted. An agreement to conduct a consumer transaction or a part thereof electronically may not be inferred solely from the fact that the consumer has used electronic means to pay an account or register a purchase or warranty.

Section 902. Sending and receipt.

If a party to a consumer transaction has actual knowledge that an electronic record purportedly sent to or purportedly received by the other party was not actually sent to or received by the other party, the purported sending or receipt of the electronic record shall be of no legal force or effect.

Section 903. Variation by agreement.

The provisions of this chapter may not be varied by agreement of the parties to a consumer contract or transaction.

**CHAPTER 51
MISCELLANEOUS PROVISIONS**

Section 5101. Effective date.

This act shall take effect as follows:

(1) Section 307 shall take effect 30 days following the publication in the Pennsylvania Bulletin of a notice by the Secretary of the Commonwealth that the provisions of section 307 no longer conflict with the requirements and procedures of the act of August 21, 1953 (P.L.1323, No.373), known as The Notary Public Law, or its successor with regard to electronic notarization, acknowledgment and verification.

(2) This section shall take effect immediately.

(3) The remainder of this act shall take effect in 30 days.

APPROVED—The 16th day of December, A.D. 1999.

THOMAS J. RIDGE