

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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SENATE BILL 1023

Short Title: Revise Uniform Electronic Transactions Act. (Public)

Sponsors: Senators Hagan; Dalton, Hartsell, and Reeves.

Referred to: Judiciary II.

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO REVISE THE UNIFORM ELECTRONIC TRANSACTIONS ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-312(17) reads as rewritten:

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

SECTION 2. G.S. 66-313 reads as rewritten:

"§ 66-313. Scope.

(a) Except as otherwise provided in subsections ~~(b) and (c)~~ (b), (c), and (e) of this section, this Article applies to electronic records and electronic signatures relating to a transaction.

(b) This Article 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) Chapter 25 of the General Statutes other than G.S. 25-1-107 and G.S. 25-1-206, Article 2, and Article 2A.

(3) Article 11A of Chapter 66 of the General Statutes.

(c) This Article applies to an electronic record or electronic signature otherwise excluded from the application of this Article 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.

(d) A transaction subject to this Article is also subject to other applicable substantive law.

(e) This Article shall not apply to:

(1) Any notice of the cancellation or termination of utility services, including water, heat, and power.

- 1 (2) Any notice of default, acceleration, repossession, foreclosure or
2 eviction, or the right to cure, under a credit agreement secured by, or a
3 rental agreement for, a primary residence of an individual.
4 (3) Any notice of the cancellation or termination of health insurance or
5 benefits, or life insurance or benefits, excluding annuities.
6 (4) Any notice of the recall of a product, or material failure of a product
7 that risks endangering health or safety.
8 (5) Any document required to accompany the transportation or handling of
9 hazardous materials, pesticides, or other toxic or dangerous materials."

10 **SECTION 3.** G.S. 66-325 reads as rewritten:

11 **"§ 66-325. Time and place of sending and receipt.**

12 (a) ~~Unless the sender and the recipient agree to a different method of sending that~~
13 ~~is reasonable under the circumstances,~~ Unless otherwise agreed between a sender and a
14 recipient, which in a consumer transaction must be reasonable under the circumstances,
15 an electronic record is sent when it:

- 16 (1) Is addressed properly or otherwise directed properly to an information
17 processing system that the recipient has designated or uses for the
18 purpose of receiving electronic records or information of the type sent
19 and from which the recipient is able to retrieve the electronic record;
20 (2) Is in a form capable of being processed by that system; and
21 (3) Enters an information processing system outside the control of the
22 sender or of a person that sent the electronic record on behalf of the
23 sender or enters a region of the information processing system
24 designated or used by the recipient which is under the control of the
25 recipient.

26 (b) ~~Unless the sender and the recipient agree to a different method of sending that~~
27 ~~is reasonable under the circumstances,~~ Unless otherwise agreed between a sender and a
28 recipient, which in a consumer transaction must be reasonable under the circumstances,
29 an electronic record is received when:

- 30 (1) It enters an information processing system that the recipient has
31 designated or uses for the purpose of receiving electronic records or
32 information of the type sent and from which the recipient is able to
33 retrieve the electronic record; and
34 (2) It is in a form capable of being processed by that system.

35 (c) Subsection (b) of this section applies even if the place the information
36 processing system is located is different from the place the electronic record is deemed
37 to be received under subsection (d) of this section.

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

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

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

4 (e) ~~Notwithstanding any other sections of this Article,~~ An electronic record is
5 received under subsection (b) of this section even if no individual is aware of its receipt;
6 provided, however, in a consumer transaction, a record has not been received unless it is
7 received by the intended recipient in a manner in which the sender has a reasonable
8 basis to believe that the record can be opened and read by the recipient.

9 (f) Receipt of an electronic acknowledgment from an information processing
10 system described in subsection (b) of this section establishes that a record was received
11 but, by itself, does not establish that the content sent corresponds to the content
12 received.

13 (g) If a person is aware that an electronic record purportedly sent under
14 subsection (a) of this section, or purportedly received under subsection (b) of this
15 section, was not actually sent or received, the legal effect of the sending or receipt is
16 determined by other applicable law. Except to the extent permitted by the other law, the
17 requirements of this subsection may not be varied by agreement."

18 **SECTION 4.** G.S. 66-327 reads as rewritten:

19 "**§ 66-327. Consumer transactions; alternative procedures for use or acceptance of**
20 **electronic records or electronic signatures.**

21 (a) ~~Consistent with the provisions of Section 102(a)2A of the federal Electronic~~
22 ~~Signatures in Global and National Commerce Act, the use and acceptance of electronic~~
23 ~~records or electronic signatures in consumer transactions shall be subject to the~~
24 ~~requirements set out in this section. The requirements of this section may not be varied~~
25 ~~by agreement of the parties.~~

26 (b) ~~Limitation.—This Article shall not apply to:~~

27 (1) ~~Any notice of the cancellation or termination of utility services,~~
28 ~~including water, heat, and power.~~

29 (2) ~~Any notice of default, acceleration, repossession, foreclosure or~~
30 ~~eviction, or the right to cure, under a credit agreement secured by, or a~~
31 ~~rental agreement for, a primary residence of an individual.~~

32 (3) ~~Any notice of the cancellation or termination of health insurance or~~
33 ~~benefits, or life insurance or benefits (excluding annuities).~~

34 (4) ~~Any notice of the recall of a product, or material failure of a product~~
35 ~~that risks endangering health or safety.~~

36 (5) ~~Any document required to accompany the transportation or handling of~~
37 ~~hazardous materials, pesticides, or other toxic or dangerous materials.~~

38 (c) Consent to Electronic Records. – In a consumer ~~transaction,~~ transaction in
39 which a statute, regulation, or rule of law of this State requires that information relating
40 to a transaction or transactions in or affecting commerce be provided or made available
41 to a consumer in writing, the consumer's agreement to conduct a transaction by
42 electronic means shall be evidenced as provided in G.S. 66-315, and in compliance with
43 this section. The consumer's agreement to conduct the transaction by electronic means
44 shall be found only when the following apply:

- 1 (1) The consumer has affirmatively consented to the use of electronic
2 means, and the consumer has not withdrawn consent.
- 3 (2) The consumer, prior to consenting to the use of electronic means, is
4 provided with a clear and conspicuous statement:
- 5 a. Informing the consumer of any right or option of the consumer
6 to have the record provided or made available on paper or in
7 nonelectronic form.
- 8 b. Informing the consumer of the right to withdraw consent to
9 have the record provided or made available in an electronic
10 form and of any conditions or consequences of such
11 withdrawal. Those consequences may include termination of
12 the parties' relationship but may not include the imposition of
13 fees.
- 14 c. Informing the consumer of whether the consent to have the
15 record provided or made available in an electronic form applies
16 only to the particular transaction which gave rise to the
17 obligation to provide the record, or to identified categories of
18 records that may be provided or made available during the
19 course of the parties' relationship.
- 20 d. Describing the procedures the consumer must use to withdraw
21 consent as provided in sub-subdivision (2)b. of this subsection
22 or to update information needed to contact the consumer
23 electronically.
- 24 e. Informing the consumer how, after the consent to have the
25 record provided or made available in an electronic form, the
26 consumer may request and obtain a paper copy of an electronic
27 record.
- 28 (3) The consumer, prior to consenting to the use of electronic means, is
29 provided with a statement of the hardware and software requirements
30 for access to and retention of the electronic records; and the consumer
31 consents electronically, or confirms his or her consent electronically,
32 in a manner that reasonably demonstrates that the consumer can access
33 information in the electronic form that will be used to provide the
34 information that is the subject of the consent.
- 35 (4) After the consent of a consumer in accordance with subdivision (1) of
36 this subsection, if a change in the hardware or software requirements
37 needed to access or retain electronic records creates a material risk that
38 the consumer will not be able to access or retain a subsequent
39 electronic record that was the subject of the consent, the person
40 providing the electronic record provides the consumer with a statement
41 of the revised hardware and software requirements for access to and
42 retention of the electronic records, provides a statement of the right to
43 withdraw consent without the imposition of any condition or

1 consequence that was not disclosed under sub-subdivision (2)b. of this
2 subsection, and again complies with subdivision (3) of this subsection.

3 (d) Written Copy Required. – Notwithstanding G.S. 66-315(b), in a consumer
4 transaction in which a statute, regulation, or rule of law of this State requires that
5 information relating to a transaction or transactions be provided or made available to a
6 consumer in writing, where the consumer conducts the transaction on electronic
7 equipment provided by or through the seller, the consumer shall be given a written copy
8 of the contract which is not in electronic form. A consumer's consent to receive future
9 notices regarding the transaction in an electronic form is valid only if the consumer
10 confirms electronically, using equipment other than that provided by the seller, that (i)
11 the consumer has the software specified by the seller as necessary to read future notices,
12 and (ii) the consumer agrees to receive the notices in an electronic form. ~~If an individual~~
13 ~~enters into a consumer transaction that is created or documented by an electronic record,~~
14 ~~the transaction shall be deemed to have been made or to have occurred at the~~
15 ~~individual's residence.~~

16 (e) Consumer Transaction Entered Into In North Carolina. — If a consumer
17 located in North Carolina enters into a consumer transaction in which a statute,
18 regulation, or rule of law of this State requires that information relating to the
19 transaction or transactions be provided or made available to a consumer in writing and
20 which is created or documented by an electronic record, the transaction shall be deemed
21 to have been entered into in North Carolina."

22 **SECTION 5.** Article 40 of Chapter 66 of the General Statutes is amended by
23 adding a new section to read:

24 "**§ 66-328. Procedures consistent with federal law.**

25 Consistent with the provisions of section 7002(a) of the Electronic Signatures in the
26 Global and National Commerce Act, 15 U.S.C. § 7002(a), this Article sets forth
27 alternative procedures or requirements for the use of electronic records to establish the
28 legal effect or validity of records in electronic transactions."

29 **SECTION 6.** This act becomes effective October 1, 2001.