

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SENATE BILL 1023
RATIFIED BILL**

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.
- (2) Any notice of 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.
- (3) Any notice of the cancellation or termination of health insurance or benefits, or life insurance or benefits, excluding annuities.
- (4) Any notice of the recall of a product, or material failure of a product that risks endangering health or safety.
- (5) Any document required to accompany the transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials."

SECTION 3. G.S. 66-318(a) reads as rewritten:

"§ 66-318. Provision of information in writing; presentation of records.

(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~~ **if:**

- (1) The sender or its information processing system inhibits the ability of the recipient to print or store the electronic ~~record.~~ record; or

- (2) It is not capable of being accurately reproduced for later reference by all parties or persons who are entitled to retain the contract or other record."

SECTION 4. G.S. 66-325 reads as rewritten:

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

(a) ~~Unless the sender and the recipient agree to a different method of sending that is reasonable under the circumstances,~~ Unless otherwise agreed between a sender and a recipient, which in a consumer transaction must be reasonable under the circumstances, 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 the sender and the recipient agree to a different method of sending that is reasonable under the circumstances,~~ Unless otherwise agreed between a sender and a recipient, which in a consumer transaction must be reasonable under the circumstances, 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) 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) ~~Notwithstanding any other sections of this Article,~~ An electronic record is received under subsection (b) of this section even if no individual is aware of its receipt; provided, however, in a consumer transaction, a record has not been received unless it is received by the intended recipient in a manner in which the sender has a reasonable basis to believe that the record can be opened and read by the recipient.

(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."

SECTION 5. G.S. 66-327 reads as rewritten:

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

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

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

- ~~(1) Any notice of the cancellation or termination of utility services, including water, heat, and power.~~
- ~~(2) Any notice of 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.~~
- ~~(3) Any notice of the cancellation or termination of health insurance or benefits, or life insurance or benefits (excluding annuities).~~
- ~~(4) Any notice of the recall of a product, or material failure of a product that risks endangering health or safety.~~
- ~~(5) Any document required to accompany the transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.~~

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

- (1) The consumer has affirmatively consented to the use of electronic means, and the consumer has not withdrawn consent.
- (2) The consumer, prior to consenting to the use of electronic means, is provided with a clear and conspicuous statement:
 - a. Informing the consumer of any right or option of the consumer to have the record provided or made available on paper or in nonelectronic form.
 - b. Informing the consumer of the right to withdraw consent to have the record provided or made available in an electronic form and of any conditions or consequences of such withdrawal. Those consequences may include termination of the parties' relationship but may not include the imposition of fees.
 - c. Informing the consumer of whether the consent to have the record provided or made available in an electronic form applies only to the particular transaction which gave rise to the obligation to provide the record, or to identified categories of records that may be provided or made available during the course of the parties' relationship.
 - d. Describing the procedures the consumer must use to withdraw consent as provided in sub-subdivision (2)b. of this subsection or to update information needed to contact the consumer electronically.
 - e. Informing the consumer how, after the consent to have the record provided or made available in an electronic form, the consumer may request and obtain a paper copy of an electronic record.

- (3) The consumer, prior to consenting to the use of electronic means, is provided with a statement of the hardware and software requirements for access to and retention of the electronic records; and the consumer 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.
- (4) After the consent of a consumer in accordance with subdivision (1) of this subsection, 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 provides the consumer with a statement of the revised hardware and software requirements for access to and retention of the electronic records, provides a statement of the right to withdraw consent without the imposition of any condition or consequence that was not disclosed under sub-subdivision (2)b. of this subsection, and again complies with subdivision (3) of this subsection.

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

(e) Oral Communications. – An oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of this section, except as other provided under applicable law.

(f) Consumer Transaction Entered Into in North Carolina. – If a consumer located in North Carolina enters into a consumer transaction which is created or documented by an electronic record, the transaction shall be deemed to have been entered into in North Carolina for purpose of G.S. 22B-3 which shall apply to the transaction."

SECTION 6. Article 40 of Chapter 66 of the General Statutes is amended by adding a new section to read:

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

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

SECTION 7. Article 40 of Chapter 66 of the General Statutes is amended by adding a new section to read:

"§ 66-329. Choice of law in computer information agreement.

A choice of law provision in a computer information agreement which provides that the contract is to be interpreted pursuant to the laws of a state that has enacted the Uniform Computer Information Transactions Act, as proposed by the National Conference of Commissioners on Uniform State Laws, or any substantially similar law, is voidable and the agreement shall be interpreted pursuant to the laws of this State if the party against whom enforcement of the choice of law provisions is sought is a

resident of this State or has its principal place of business located in this State. For purposes of this section, a "computer information agreement" means an agreement that would be governed by the Uniform Computer Information Transactions Act or substantially similar law as enacted in the state specified in the choice of law provisions if that state's law were applied to the agreement. This section may not be varied by agreement of the parties. This section shall remain in force until such time as the North Carolina General Assembly enacts the Uniform Computer Information Transactions Act or any substantially similar law and that law becomes effective."

SECTION 8. This act becomes effective October 1, 2001.

In the General Assembly read three times and ratified this the 10th day of July, 2001.

Beverly E. Perdue
President of the Senate

James B. Black
Speaker of the House of Representatives

Michael F. Easley
Governor

Approved _____ .m. this _____ day of _____, 2001