SENATE BILL No. 275

DIGEST OF INTRODUCED BILL

Citations Affected: IC 26-2-8.

Synopsis: Uniform electronic transactions act. Adds the uniform electronic transactions act. Provides procedures for conducting electronic transactions. Allows governmental agencies to establish procedures for conducting electronic transactions.

Effective: July 1, 2000.

Simpson

January 10, 2000, read first time and referred to Committee on Judiciary.

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Introduced

Second Regular Session 111th General Assembly (2000)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 1999 General Assembly.

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SENATE BILL No. 275

A BILL FOR AN ACT to amend the Indiana Code concerning commercial law.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 26-2-8 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]:

Chapter 8. Uniform Electronic Transactions Act

Sec. 101. IC 26-2-8 may be cited as the Uniform Electronic Transactions Act.

Sec. 102. As used in this chapter:

(1) "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.

(2) "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 (1) 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.

(3) "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.

(4) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this chapter and other applicable law.

(5) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(6) "Electronic agent" means a computer program or an electronic or other automated means used to initiate an action or respond to electronic records or performances in whole or in part without review by an individual at the time of the action or response.

(7) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

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

(9) "Governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, instrumentality, or other political subdivision of the state.

(10) "Information" means data, text, images, sounds, codes, computer programs, software, databases, or the like.

(11) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(12) "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.

(13) "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.

(14) "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.

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The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

(15) "Transaction" means an action or set of actions relating to the conduct of business, commercial, or governmental affairs and occurring between two (2) or more persons.

Sec. 103. (a) Except as otherwise provided in subsection (b), this chapter applies to electronic records and electronic signatures that relate to a transaction.

(b) This chapter does not apply to transactions subject to the following laws:

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

(2) IC 26-1-1, other than IC 26-1- 1-107 and IC 26-1-1-206.

(3) IC 26-1-2, IC 26-1-2.1, IC 26-1-3.1, IC 26-1-4, IC 26-1-4.1. IC 26-1-5.1, IC 26-1-6.1, IC 26-1-7, IC 26-1-8.1, or IC 26-1-9.

(4) Laws specifically excluded by a governmental agency under IC 26-2-8-201 and IC 26-2-8-202.

(c) This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under subsection (b) when used for transactions subject to a law other than those specified in subsection (b).

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

Sec. 104. (a) This chapter does not require that a record or signature be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(b) This chapter only applies to transactions between parties each of which has agreed to conduct transactions electronically. An agreement to conduct transactions electronically is determined from the context and surrounding circumstances, including the parties' conduct.

(c) If a party agrees to conduct a transaction electronically, this chapter does not prohibit the party from refusing to conduct other transactions electronically. This subsection may not be varied by agreement.

(d) Except as otherwise provided in this chapter, the effect of any provision of this chapter may be varied by agreement. The presence in certain provisions of this chapter 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.

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(e) Whether an electronic record or electronic signature has legal consequences is determined by this chapter, if applicable, and otherwise by other applicable law.

Sec. 105. This chapter 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 chapter among States enacting it.

Sec. 106. (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, or provides consequences if it is not, an electronic record satisfies the law.

(d) If a law requires a signature, or provides consequences in the absence of a signature, the law is satisfied with respect to an electronic record if the electronic record includes an electronic signature.

Sec. 107. (a) If parties have agreed to conduct transactions electronically and a law requires a person to provide, send, or deliver information in writing to another person, that requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record and the information is capable of retention by the recipient at the time the information is received.

(b) If a law other than this chapter requires a record (i) to be posted or displayed in a certain manner, (ii) to be sent, communicated, or transmitted by a specified method, or (iii) to contain information that 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) An electronic record may not be sent, communicated, or transmitted by an information processing system that inhibits the

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ability to print or download the information in the electronic record.

(d) This section may not be varied by agreement, but:

(1) a requirement under a law other than this chapter to provide information in writing may be varied by agreement to the extent permitted by the other law; and

(2) a requirement under a law other than this chapter to send, communicate, or transmit a record by first-class mail, may be varied by agreement to the extent permitted by the other law.

Sec. 108. (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 proved 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) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

Sec. 109. 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 (1) 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 effect of the changed or erroneous electronic record is avoidable by the conforming party.

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error by the individual made 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:

(A) 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;

(B) takes reasonable steps, including steps that conform to

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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

(C) 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 law, including the law of mistake, and the parties' contract, if any.

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

Sec. 110. If a law requires that a signature be notarized, the requirement is satisfied with respect to an electronic signature if an electronic record includes, in addition to the electronic signature to be notarized, the electronic signature of a notary public together with all other information required to be included in a notarization by other applicable law.

Sec. 111. (a) If a law requires that certain records be retained, that requirement is met by retaining an electronic record of the information in the record that:

(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 records in accordance with subsection (a) does not apply to any information whose sole purpose is to enable the record to be sent, communicated, or received.

(c) A person satisfies subsection (a) by using the services of any other person if the requirements of subsection (a) are met.

(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).

(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).

(f) A record retained as an electronic record in accordance with subsection (a) satisfies a law requiring a person to retain records for evidentiary, audit, or like purposes, unless a law enacted after July 1, 2000 specifically prohibits the use of an electronic record for a specified purpose.

(g) This section does not preclude a governmental agency from

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specifying additional requirements for the retention of records, written or electronic, subject to the agency's jurisdiction.

Sec. 112. In a legal proceeding, evidence of an electronic record or electronic signature may not be excluded because it is an electronic record or electronic signature or it is not an original or is not in its original form.

Sec. 113. (a) If an offer evokes an electronic record in response, a contract may be formed in the same manner and with the same effect as if the record were not electronic, but an acceptance of the offer is effective, if at all, when received.

(b) 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 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 a contract are determined by the substantive law applicable to the particular contract.

Sec. 114. (a) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when the information is addressed or otherwise directed properly to the recipient and either:

(1) 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

(2) enters a region of an information processing system that is under the control of the recipient.

(b) Unless otherwise agreed between the 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 from which the recipient is able to retrieve the electronic record; and

(2) the electronic record is in a form capable of being processed by that system.

(c) Subsection (b) applies even if the place the information

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processing system is located is different from the place the electronic record is deemed to be received under subsection (d).

(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 is deemed 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 (1) place of business, the place of business of that person is that which has 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 effective when received even if no individual is aware of its receipt.

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

(g) If a law other than this chapter requires that a record be sent or received, the requirement is satisfied by an electronic record only if it is sent in accordance with subsection (a) or received in accordance with subsection (b). 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, this subsection may not be varied by agreement.

Sec. 115. (a) In this section, "transferable record" means an electronic record that:

(1) would be a note under IC 26-1-3.1 or a document under IC 26-1-7, if the electronic record were in writing; and

(2) the issuer of the electronic record expressly has agreed is subject to this chapter.

(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 whom the transferable record has been issued or transferred.

(c) A system satisfies subsection (a), and a person is deemed to have control of a transferable record, if the record or records are created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the record or records exists

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that 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 the assignee of the record or records;

(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 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 that is not the authoritative copy; and

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

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in IC 26-1-1-201(20), of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under IC 26-1, including, if the applicable statutory requirements under IC 26-1-3.1-302(a), IC 26-1-7-501, or IC 26-1-9-308 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, respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights in this subsection.

(e) Except as otherwise agreed, obligors under a transferable record have the same rights and defenses as equivalent obligors under equivalent records and writings under IC 26-1.

(f) If requested by the person against whom 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. This 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 establish the identity of the person in control of the transferable record.

Sec. 201. Each governmental agency shall determine whether, and the extent to which, the governmental agency will create and retain electronic records and convert written records to electronic records.

Sec. 202. (a) Except as otherwise provided in section 111(f), each governmental agency shall determine whether, and the extent to

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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 that a governmental agency uses electronic records and electronic signatures under subsection (a), 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 systems established for such purposes;

(2) if electronic records must be electronically signed, 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; and

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

(c) Except as otherwise provided in section 111(f) of this chapter, this chapter does not require a governmental agency to use or permit the use of electronic records or electronic signatures.

Sec. 203. Standards adopted by a governmental agency under section 202 of this chapter must encourage and promote consistency and interoperability with similar requirements adopted by:

(1) other governmental agencies;

(2) other states;

(3) the federal government; and

(4) nongovernmental persons interacting with governmental agencies.

If appropriate, those standards must specify differing levels of standards from which governmental agencies may choose in implementing the most appropriate standard for a particular application.

Sec. 301. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given

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effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Sec. 302. This chapter applies to an electronic record or electronic signature created, generated, sent, communicated, received, or stored after June 30, 2000.

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