

SENATE BILL No. 405

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.

Mills

January 10, 2000, read first time and referred to Committee on Commerce and Consumer Affairs.

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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.

SENATE BILL No. 405



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:

1 SECTION 1. IC 26-2-8 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2000]:

4 **Chapter 8. Uniform Electronic Transactions Act**

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

7 **Sec. 102. As used in this chapter:**

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

13 (2) "Automated transaction" means a transaction conducted
14 or performed, in whole or in part, by electronic means or
15 electronic records in which the acts or records of one (1) or
16 both parties are not reviewed by an individual in the ordinary
17 course in forming a contract, performing under an existing

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- 1 contract, or fulfilling an obligation required by the
2 transaction.
- 3 (3) "Computer program" means a set of statements or
4 instructions to be used directly or indirectly in an information
5 processing system in order to bring about a certain result.
- 6 (4) "Contract" means the total legal obligation resulting from
7 the parties' agreement as affected by this chapter and other
8 applicable law.
- 9 (5) "Electronic" means relating to technology having
10 electrical, digital, magnetic, wireless, optical, electromagnetic,
11 or similar capabilities.
- 12 (6) "Electronic agent" means a computer program or an
13 electronic or other automated means used to initiate an action
14 or respond to electronic records or performances in whole or
15 in part without review by an individual at the time of the
16 action or response.
- 17 (7) "Electronic record" means a record created, generated,
18 sent, communicated, received, or stored by electronic means.
- 19 (8) "Electronic signature" means an electronic sound, symbol,
20 or process attached to or logically associated with an
21 electronic record and executed or adopted by a person with
22 the intent to sign the electronic record.
- 23 (9) "Governmental agency" means an executive, legislative, or
24 judicial agency, department, board, commission, authority,
25 institution, instrumentality, or other political subdivision of
26 the state.
- 27 (10) "Information" means data, text, images, sounds, codes,
28 computer programs, software, databases, or the like.
- 29 (11) "Information processing system" means an electronic
30 system for creating, generating, sending, receiving, storing,
31 displaying, or processing information.
- 32 (12) "Person" means an individual, corporation, business
33 trust, estate, trust, partnership, limited liability company,
34 association, joint venture, governmental agency, public
35 corporation, or any other legal or commercial entity.
- 36 (13) "Record" means information that is inscribed on a
37 tangible medium or that is stored in an electronic or other
38 medium and is retrievable in perceivable form.
- 39 (14) "Security procedure" means a procedure employed for
40 the purpose of verifying that an electronic signature, record,
41 or performance is that of a specific person or for detecting
42 changes or errors in the information in an electronic record.

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1 The term includes a procedure that requires the use of
 2 algorithms or other codes, identifying words or numbers,
 3 encryption, or callback or other acknowledgment procedures.
 4 (15) "Transaction" means an action or set of actions relating
 5 to the conduct of business, commercial, or governmental
 6 affairs and occurring between two (2) or more persons.

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

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

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

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

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

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

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

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

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

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

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

38 **(d)** Except as otherwise provided in this chapter, the effect of
 39 any provision of this chapter may be varied by agreement. The
 40 presence in certain provisions of this chapter of the words "unless
 41 otherwise agreed", or words of similar import, does not imply that
 42 the effect of other provisions may not be varied by agreement.



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

4 **Sec. 105. This chapter must be construed and applied:**

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

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

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

13 **Sec. 106. (a) A record or signature may not be denied legal effect
 14 or enforceability solely because it is in electronic form.**

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

17 **(c) If a law requires a record to be in writing, or provides
 18 consequences if it is not, an electronic record satisfies the law.**

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

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

29 **(b) If a law other than this chapter requires a record (i) to be
 30 posted or displayed in a certain manner, (ii) to be sent,
 31 communicated, or transmitted by a specified method, or (iii) to
 32 contain information that is formatted in a certain manner, the
 33 following rules apply:**

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

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

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

41 **(c) An electronic record may not be sent, communicated, or
 42 transmitted by an information processing system that inhibits the**

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

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

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

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

11 Sec. 108. (a) An electronic record or electronic signature is
12 attributable to a person if it was the act of the person. The act of
13 the person may be proved in any manner, including a showing of
14 the efficacy of any security procedure applied to determine the
15 person to which the electronic record or electronic signature was
16 attributable.

17 (b) The effect of an electronic record or electronic signature
18 attributed to a person under subsection (a) is determined from the
19 context and surrounding circumstances at the time of its creation,
20 execution, or adoption, including the parties' agreement, if any,
21 and otherwise as provided by law.

22 Sec. 109. If a change or error in an electronic record occurs in
23 a transmission between parties to a transaction, the following rules
24 apply:

25 (1) If the parties have agreed to use a security procedure to
26 detect changes or errors and one (1) party has conformed to
27 the procedure, but the other party has not, and the
28 nonconforming party would have detected the change or
29 error had that party also conformed, the effect of the changed
30 or erroneous electronic record is avoidable by the conforming
31 party.

32 (2) In an automated transaction involving an individual, the
33 individual may avoid the effect of an electronic record that
34 resulted from an error by the individual made in dealing with
35 the electronic agent of another person if the electronic agent
36 did not provide an opportunity for the prevention or
37 correction of the error and, at the time the individual learns
38 of the error, the individual:

39 (A) promptly notifies the other person of the error and that
40 the individual did not intend to be bound by the electronic
41 record received by the other person;

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

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1 the other person's reasonable instructions, to return to the
 2 other person or, if instructed by the other person, to
 3 destroy the consideration received, if any, as a result of the
 4 erroneous electronic record; and

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

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

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

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

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

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

23 (2) remains accessible for later reference.

24 (b) A requirement to retain records in accordance with
 25 subsection (a) does not apply to any information whose sole
 26 purpose is to enable the record to be sent, communicated, or
 27 received.

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

30 (d) If a law requires a record to be presented or retained in its
 31 original form, or provides consequences if the record is not
 32 presented or retained in its original form, that law is satisfied by an
 33 electronic record retained in accordance with subsection (a).

34 (e) If a law requires retention of a check, that requirement is
 35 satisfied by retention of an electronic record of the information on
 36 the front and back of the check in accordance with subsection (a).

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

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

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

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

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

11 (b) In an automated transaction, the following rules apply:

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

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

23 (c) The terms of a contract are determined by the substantive
24 law applicable to the particular contract.

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

29 (1) enters an information processing system outside the
30 control of the sender or of a person that sent the electronic
31 record on behalf of the sender; or

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

34 (b) Unless otherwise agreed between the sender and the
35 recipient, an electronic record is received when:

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

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

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

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

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

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

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

14 (e) An electronic record is effective when received even if no
15 individual is aware of its receipt.

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

20 (g) If a law other than this chapter requires that a record be
21 sent or received, the requirement is satisfied by an electronic
22 record only if it is sent in accordance with subsection (a) or
23 received in accordance with subsection (b). If a person is aware
24 that an electronic record purportedly sent under subsection (a), or
25 purportedly received under subsection (b), was not actually sent or
26 received, the legal effect of the sending or receipt is determined by
27 other applicable law. Except to the extent permitted by the other
28 law, this subsection may not be varied by agreement.

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

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

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

35 (b) A person has control of a transferable record if a system
36 employed for evidencing the transfer of interests in the
37 transferable record reliably establishes that person as the person
38 to whom the transferable record has been issued or transferred.

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

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

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1 that is unique, identifiable, and except as otherwise provided
2 in paragraphs (4), (5), and (6), unalterable;

3 (2) the authoritative copy identifies the person asserting
4 control as the assignee of the record or records;

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

7 (4) copies or revisions that add or change an identified
8 assignee of the authoritative copy can be made only with the
9 consent of the person asserting control;

10 (5) each copy of the authoritative copy and any copy of a copy
11 is readily identifiable as a copy that is not the authoritative
12 copy; and

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

15 (d) Except as otherwise agreed, a person having control of a
16 transferable record is the holder, as defined in IC 26-1-1-201(20),
17 of the transferable record and has the same rights and defenses as
18 a holder of an equivalent record or writing under IC 26-1,
19 including, if the applicable statutory requirements under
20 IC 26-1-3.1-302(a), IC 26-1-7-501, or IC 26-1-9-308 are satisfied,
21 the rights and defenses of a holder in due course, a holder to which
22 a negotiable document of title has been duly negotiated, or a
23 purchaser, respectively. Delivery, possession, and indorsement are
24 not required to obtain or exercise any of the rights in this
25 subsection.

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

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

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

41 **Sec. 202.** (a) Except as otherwise provided in section 111(f) of
42 this chapter, each governmental agency shall determine whether,

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1 and the extent to which, it will send and accept electronic records
 2 and electronic signatures to and from other persons and otherwise
 3 create, generate, communicate, store, process, use, and rely upon
 4 electronic records and electronic signatures.

5 (b) To the extent that a governmental agency uses electronic
 6 records and electronic signatures under subsection (a), the
 7 governmental agency, giving due consideration to security, may
 8 specify:

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

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

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

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

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

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

31 (1) other governmental agencies;

32 (2) other states;

33 (3) the federal government; and

34 (4) nongovernmental persons interacting with governmental
 35 agencies.

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

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

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

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

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