

## **IC 26-2-8**

### Chapter 8. Uniform Electronic Transactions Act

#### **IC 26-2-8-101**

##### **Short title**

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

*As added by P.L.62-2000, SEC.1.*

#### **IC 26-2-8-102**

##### **Definitions**

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) "Business entity" means a corporation, nonprofit corporation, limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is formed under the requirements of applicable Indiana law.

(4) "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.

(5) "Constituent" means a person who holds a position defined in the business entity's organic law that permits the person, directly or indirectly, to own, manage, or operate a business entity either alone or with others. The term includes officers, directors, shareholders, members, managers, general partners, limited partners, partners, and persons occupying a similar status or performing similar functions for a business entity.

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

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

(8) "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.

(9) "Electronic record" means a record created, generated, sent,

communicated, received, or stored by electronic means.

(10) "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.

(11) "Governing documents" means the publicly filed and nonpublicly filed organic documents of a business entity.

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

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

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

(15) "Organic actions" means actions, notices, consents, and signatures relating to the operation of a business entity that are undertaken among constituents of that business entity or among constituents of a business entity and that business entity. The term does not include the service of process or the service of a summons, subpoena, or other service contemplated by rules or statutes governing trial procedure, civil procedure, or comparable provisions.

(16) "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.

(17) "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. The term includes records transmitted in the course of organic actions.

(18) "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. 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.

(19) "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. The term includes an organic action.

*As added by P.L.62-2000, SEC.1. Amended by P.L.110-2008, SEC.10.*

### **IC 26-2-8-103**

#### **Scope**

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 other than IC 26-1-1-107, IC 26-1-1-206, IC 26-1-2, and IC 26-1-2.1.
- (3) Laws specifically excluded by a governmental agency under sections 201 and 202 of this chapter.

(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.

*As added by P.L.62-2000, SEC.1. Amended by P.L.46-2001, SEC.1.*

#### **IC 26-2-8-104**

##### **Agreement to conduct transaction electronically; variation by agreement**

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. A constituent of a business entity and a business entity are presumed to have agreed to conduct organic actions electronically unless and to the extent:

- (1) the governing documents of the business entity limit or prohibit, in whole or in part, the use of electronic signatures, electronic records, or both; or
- (2) the business entity expressly states the method, means, or requirement by which a constituent may respond to or participate in any organic action, including imposing a requirement that participants use a specific form of writing, record, or signature.

Unless and to the extent limited or prohibited in the governing documents of a business entity, any electronic record or electronic signature to be sent to a constituent is properly sent if sent in the manner and to the electronic address or other means of receipt designated by the constituent to receive the electronic record or electronic signature as shown in the current records of the business entity. If the electronic record is a notice, it is effective when sent. Unless and to the extent limited or prohibited, any electronic record or electronic signature sent by a constituent to a business entity shall be considered properly sent if it is sent in a manner designated by the business entity to an electronic address or other location designated

by the business entity in a publication or notice provided by the business entity to the constituent. If the electronic record is a notice, it is effective upon receipt. The publication or notice may be included in the governing documents of the business entity, may be communicated to the constituent in writing, or may be transmitted by any other means selected by the business entity that is reasonably likely to convey the information to the constituent. A constituent or business entity may revoke or change any instruction regarding the manner, electronic address, or means of receipt the person requires for electronic records or electronic signatures by sending notice of the change and the corresponding new information.

(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.

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

*As added by P.L.62-2000, SEC.1. Amended by P.L.110-2008, SEC.11; P.L.133-2009, SEC.41.*

### **IC 26-2-8-105**

#### **Construction and application**

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.

*As added by P.L.62-2000, SEC.1.*

### **IC 26-2-8-106**

#### **Legal recognition of electronic records, electronic signatures, and electronic contracts**

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 or electronic signature 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.

*As added by P.L.62-2000, SEC.1. Amended by P.L.110-2008, SEC.12.*

#### **IC 26-2-8-107**

##### **Provision of information in writing; presentation of records**

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 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.

*As added by P.L.62-2000, SEC.1.*

#### **IC 26-2-8-108**

##### **Attribution and effect of electronic record and electronic signature**

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.

*As added by P.L.62-2000, SEC.1.*

### **IC 26-2-8-109**

#### **Effect of change or error**

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 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 subdivision (1) nor subdivision (2) applies, the change or error has the effect provided by law, including the law of mistake, and the parties' contract, if any.

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

*As added by P.L.62-2000, SEC.1.*

### **IC 26-2-8-110**

#### **Notarization and acknowledgment**

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.

*As added by P.L.62-2000, SEC.1.*

### **IC 26-2-8-111**

#### **Retention of electronic records; originals**

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

*As added by P.L.62-2000, SEC.1.*

### **IC 26-2-8-112**

#### **Admissibility of evidence**

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.

*As added by P.L.62-2000, SEC.1.*

### **IC 26-2-8-113**

#### **Automated transaction**

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.

*As added by P.L.62-2000, SEC.1.*

#### **IC 26-2-8-114**

##### **Time and place of sending and receipt**

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 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.

*As added by P.L.62-2000, SEC.1.*

### **IC 26-2-8-115**

#### **Transferable records**

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 that is unique, identifiable, and except as otherwise provided in subdivisions (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 26-1-9.1-330 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 endorsement 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.

*As added by P.L.62-2000, SEC.1. Amended by P.L.1-2001, SEC.32.*

#### **IC 26-2-8-116**

##### **Electronic signature involving individual health information**

Sec. 116. (a) As used in this section, "authorization" means a consent, an approval, or an authorization between an individual and a person.

(b) As used in this section, "electronic identification" means the electronic identification system for form, location, and endorsement that is specified in subsection (d).

(c) Electronic signature authentication and identification may be used for an individual who participates in agreements, authorizations, contracts, records, or transactions that involve individually identifiable health information, including medical records and record keeping, transfer of medical records, medical billing, health care proxies, health care directives, consent to medical treatment, medical research, and organ and tissue donation or procurement.

(d) The electronic authentication and identification under subsection (c) may be accomplished by an interactive system of security procedures that include any of the following:

- (1) A tamper proof electric appliance that receives input of unique identification numbers, unique biometric identifiers, or location devices.
- (2) A computerized authentication process for biometric identifiers that is linked to the appropriate identification numbers upon receipt of the identifiers.
- (3) Transmission of verification of the identifiers to a securely maintained electronic repository.

No provision in this section may be construed to supersede or preempt applicable federal and state law, including the Indiana Uniform Electronic Transactions Act (IC 26-2-8), the Health Insurance Portability and Accountability Act of 1996 and associated regulations, and 21 CFR Part 11.

*As added by P.L.77-2005, SEC.1.*

#### **IC 26-2-8-201**

##### **Creation and retention of electronic records and conversion of written records by governmental agency**

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.

*As added by P.L.62-2000, SEC.1.*

**IC 26-2-8-202****Acceptance and distribution of electronic records by governmental agencies**

Sec. 202. (a) Except as otherwise provided in section 111(f) of this chapter, each governmental agency 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) 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.

*As added by P.L.62-2000, SEC.1.*

**IC 26-2-8-203****Interoperability**

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.

*As added by P.L.62-2000, SEC.1.*

**IC 26-2-8-301**

**Severability clause**

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

*As added by P.L.62-2000, SEC.1.*

**IC 26-2-8-302****Prospective application**

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

*As added by P.L.62-2000, SEC.1.*