

Part 2

Legal Status and Requirements of Electronic Records, Signatures, and Contracts

46-4-201 Legal recognition of electronic records, electronic signatures, and electronic contracts.

- (1) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
- (2) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
- (3) If a law requires a record to be in writing, an electronic record satisfies the law.
- (4) If a law requires a signature, an electronic signature satisfies the law.

Enacted by Chapter 74, 2000 General Session

46-4-202 Provision of information in writing -- Presentation of records.

- (1)
 - (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.
 - (b) An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.
- (2) If a law other than this chapter requires a record to be posted or displayed in a certain manner, to be sent, communicated, or transmitted by a specified method, or to contain information that is formatted in a certain manner, the following rules apply:
 - (a) the record must be posted or displayed in the manner specified in the other law;
 - (b) except as otherwise provided in Subsection (4)(b), the record must be sent, communicated, or transmitted by the method specified in the other law; and
 - (c) the record must contain the information formatted in the manner specified in the other law.
- (3) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.
- (4) The requirements of this section may not be varied by agreement, but:
 - (a) to the extent a law other than this chapter requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under Subsection (1) that the information be in the form of an electronic record capable of retention may also be varied by agreement; and
 - (b) a requirement under a law other than this chapter to send, communicate, or transmit a record by first-class mail, postage prepaid or regular United States mail, may be varied by agreement to the extent permitted by the other law.

Enacted by Chapter 74, 2000 General Session

46-4-203 Attribution and effect of electronic record and electronic signature.

- (1)
 - (a) An electronic record or electronic signature is attributable to a person if it was the act of the person.

- (b) The act of the person may be shown 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.
- (2) The effect of an electronic record or electronic signature attributed to a person under Subsection (1) 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.

Enacted by Chapter 74, 2000 General Session

46-4-204 Effect of change or error.

- (1) If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:
 - (a) If the parties have agreed to use a security procedure to detect changes or errors and one 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 conforming party may avoid the effect of the changed or erroneous electronic record.
 - (b) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual 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:
 - (i) 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;
 - (ii) 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
 - (iii) has not used or received any benefit or value from the consideration, if any, received from the other person.
- (2) If neither Subsection (1)(a) or (b) applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.
- (3) Subsections (1)(b) and (2) may not be varied by agreement.

Enacted by Chapter 74, 2000 General Session

46-4-205 Notarization and acknowledgment.

- (1) If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied by following the procedures and requirements of Subsection 46-1-16(7).
- (2) The electronic signature of the person authorized to perform the acts under Subsection (1), and all other information required to be included by other applicable law, shall be attached to or logically associated with the signature or record.

Amended by Chapter 21, 2006 General Session