

1 **UNIFORM ELECTRONIC TRANSACTIONS ACT**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Lyle W. Hillyard**

5 AN ACT RELATING TO ESTABLISHING CRITERIA, PROCEDURES, AND LEGAL
6 STANDARDS GOVERNING ELECTRONIC TRANSACTIONS; AUTHORIZING STATE
7 AGENCIES TO MAKE RULES DEFINING TRANSACTIONS THAT WILL AND WILL NOT
8 BE CONDUCTED ELECTRONICALLY; **h** **REQUIRING STATE AGENCIES TO COMPLY WITH**
8a **EXISTING RECORD RETENTION REQUIREMENTS; h** AND AUTHORIZING THE CHIEF
8b INFORMATION
9 OFFICER TO PREPARE MODEL RULES AND STANDARDS TO ASSIST STATE
10 AGENCIES.

11 This act affects sections of Utah Code Annotated 1953 as follows:

12 ENACTS:

13 **46-4-101**, Utah Code Annotated 1953

14 **46-4-102**, Utah Code Annotated 1953

15 **46-4-103**, Utah Code Annotated 1953

16 **46-4-104**, Utah Code Annotated 1953

17 **46-4-105**, Utah Code Annotated 1953

18 **46-4-106**, Utah Code Annotated 1953

19 **46-4-201**, Utah Code Annotated 1953

20 **46-4-202**, Utah Code Annotated 1953

21 **46-4-203**, Utah Code Annotated 1953

22 **46-4-204**, Utah Code Annotated 1953

23 **46-4-205**, Utah Code Annotated 1953

24 **46-4-301**, Utah Code Annotated 1953

25 **46-4-302**, Utah Code Annotated 1953

26 **46-4-401**, Utah Code Annotated 1953

27 **46-4-402**, Utah Code Annotated 1953

28 **46-4-403**, Utah Code Annotated 1953

29 **46-4-501**, Utah Code Annotated 1953

30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **46-4-101** is enacted to read:

32 **CHAPTER 4. UNIFORM ELECTRONIC TRANSACTIONS ACT**

33 **Part 1. Title, Interpretation, and Definitions**

34 **46-4-101. Title.**

35 This chapter is known as the "Uniform Electronic Transactions Act."

36 Section 2. Section **46-4-102** is enacted to read:

37 **46-4-102. Definitions.**

38 As used in this chapter:

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

42 (2) "Automated transaction" means a transaction conducted or performed, in whole or in
43 part, by electronic means or electronic records, in which the acts or records of one or both parties
44 are not reviewed by an individual in the ordinary course in forming a contract, performing under
45 an existing contract, or fulfilling an obligation required by the transaction.

46 (3) "Computer program" means a set of statements or instructions to be used directly or
47 indirectly in an information processing system in order to bring about a certain result.

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

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

52 (6) "Electronic agent" means a computer program or an electronic or other automated
53 means used independently to initiate an action or respond to electronic records or performances
54 in whole or in part, without review or action by an individual.

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

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

59 record.

60 (9) "Governmental agency" means an executive, legislative, or judicial agency,
61 department, board, commission, authority, institution, or instrumentality of the federal government
62 or of a state or of a county, municipality, or other political subdivision of a state.

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

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

67 (12) "Person" means an individual, corporation, business trust, estate, trust, partnership,
68 limited liability company, association, joint venture, governmental agency, public corporation, or
69 any other legal or commercial entity.

70 (13) "Record" means information that is inscribed on a tangible medium or that is stored
71 in an electronic or other medium and is retrievable in perceivable form.

72 (14) (a) "Security procedure" means a procedure employed for the purpose of verifying that
73 an electronic signature, record, or performance is that of a specific person or for detecting changes
74 or errors in the information in an electronic record.

75 (b) "Security procedure" includes a procedure that requires the use of algorithms or other
76 codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

77 (15) (a) "State" means a state of the United States, the District of Columbia, Puerto Rico,
78 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
79 of the United States.

80 (b) "State" includes an Indian tribe or band, or Alaskan native village, that is recognized
81 by federal law or formally acknowledged by a state.

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

84 Section 3. Section **46-4-103** is enacted to read:

85 **46-4-103. Scope.**

86 (1) Except as otherwise provided in Subsection (2), this chapter applies to electronic
87 records and electronic signatures relating to a transaction.

88 (2) This chapter does not apply to:

89 (a) a transaction to the extent it is governed by a law governing the creation and execution

90 of wills, codicils, or testamentary trusts:

91 (b) Title 70A, Uniform Commercial Code, other than:

92 (i) Sections 70A-1-107 and 70A-1-206; and

93 (ii) Title 70A, Chapter 2, and Title 70A, Chapter 2a.

94 (3) This chapter applies to an electronic record or electronic signature otherwise excluded
95 from the application of this chapter under Subsection (2) to the extent it is governed by a law other
96 than those specified in Subsection (2).

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

98 (5) Nothing in this chapter requires any county recorder to accept for recording any
99 instrument in electronic form.

100 Section 4. Section **46-4-104** is enacted to read:

101 **46-4-104. Prospective application.**

102 This chapter applies to any electronic record or electronic signature created, generated, sent,
103 communicated, received, or stored on or after May 1, 2000.

104 Section 5. Section **46-4-105** is enacted to read:

105 **46-4-105. Use of electronic records and electronic signatures -- Variation by**
106 **agreement.**

107 (1) This chapter does not require a record or signature to be created, generated, sent,
108 communicated, received, stored, or otherwise processed or used by electronic means or in
109 electronic form.

110 (2) (a) This chapter applies only to transactions between parties each of which has agreed
111 to conduct transactions by electronic means.

112 (b) Whether or not the parties agree to conduct a transaction by electronic means is
113 determined from the context and surrounding circumstances, including the parties' conduct.

114 (3) (a) A party that agrees to conduct a transaction by electronic means may refuse to
115 conduct other transactions by electronic means.

116 (b) The right granted by this Subsection (3)(a) may not be waived by agreement.

117 (4) (a) Except as otherwise provided in this chapter, the effect of any of its provisions may
118 be varied by agreement.

119 (b) The presence in certain provisions of this chapter of the words "unless otherwise
120 agreed," or words of similar import, does not imply that the effect of other provisions may not be

121 varied by agreement.

122 (5) Whether an electronic record or electronic signature has legal consequences is
123 determined by this chapter and other applicable law.

124 Section 6. Section **46-4-106** is enacted to read:

125 **46-4-106. Construction and application.**

126 This chapter must be construed and applied:

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

128 (2) to be consistent with reasonable practices concerning electronic transactions and with
129 the continued expansion of those practices; and

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

132 Section 7. Section **46-4-201** is enacted to read:

133 **Part 2. Legal Status and Requirements of Electronic Records, Signatures, and Contracts**

134 **46-4-201. Legal recognition of electronic records, electronic signatures, and electronic**
135 **contracts.**

136 (1) A record or signature may not be denied legal effect or enforceability solely because
137 it is in electronic form.

138 (2) A contract may not be denied legal effect or enforceability solely because an electronic
139 record was used in its formation.

140 (3) If a law requires a record to be in writing, an electronic record satisfies the law.

141 (4) If a law requires a signature, an electronic signature satisfies the law.

142 Section 8. Section **46-4-202** is enacted to read:

143 **46-4-202. Provision of information in writing -- Presentation of records.**

144 (1) (a) If parties have agreed to conduct a transaction by electronic means and a law
145 requires a person to provide, send, or deliver information in writing to another person, the
146 requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an
147 electronic record capable of retention by the recipient at the time of receipt.

148 (b) An electronic record is not capable of retention by the recipient if the sender or its
149 information processing system inhibits the ability of the recipient to print or store the electronic
150 record.

151 (2) If a law other than this chapter requires a record to be posted or displayed in a certain

152 manner, to be sent, communicated, or transmitted by a specified method, or to contain information
153 that is formatted in a certain manner, the following rules apply:

154 (a) the record must be posted or displayed in the manner specified in the other law;

155 (b) except as otherwise provided in Subsection (4)(b), the record must be sent,

156 communicated, or transmitted by the method specified in the other law; and

157 (c) the record must contain the information formatted in the manner specified in the other
158 law.

159 (3) If a sender inhibits the ability of a recipient to store or print an electronic record, the
160 electronic record is not enforceable against the recipient.

161 (4) The requirements of this section may not be varied by agreement, but:

162 (a) to the extent a law other than this chapter requires information to be provided, sent, or
163 delivered in writing but permits that requirement to be varied by agreement, the requirement under
164 Subsection (1) that the information be in the form of an electronic record capable of retention may
165 also be varied by agreement; and

166 (b) a requirement under a law other than this chapter to send, communicate, or transmit
167 a record by first-class mail, postage prepaid or regular United States mail, may be varied by
168 agreement to the extent permitted by the other law.

169 Section 9. Section **46-4-203** is enacted to read:

170 **46-4-203. Attribution and effect of electronic record and electronic signature.**

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

173 (b) The act of the person may be shown in any manner, including a showing of the
174 efficacy of any security procedure applied to determine the person to which the electronic record
175 or electronic signature was attributable.

176 (2) The effect of an electronic record or electronic signature attributed to a person under
177 Subsection (1) is determined from the context and surrounding circumstances at the time of its
178 creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided
179 by law.

180 Section 10. Section **46-4-204** is enacted to read:

181 **46-4-204. Effect of change or error.**

182 (1) If a change or error in an electronic record occurs in a transmission between parties to

183 a transaction, the following rules apply:

184 (a) If the parties have agreed to use a security procedure to detect changes or errors and
185 one party has conformed to the procedure, but the other party has not, and the nonconforming party
186 would have detected the change or error had that party also conformed, the conforming party may
187 avoid the effect of the changed or erroneous electronic record.

188 (b) In an automated transaction involving an individual, the individual may avoid the effect
189 of an electronic record that resulted from an error made by the individual in dealing with the
190 electronic agent of another person if the electronic agent did not provide an opportunity for the
191 prevention or correction of the error and, at the time the individual learns of the error, the
192 individual:

193 (i) promptly notifies the other person of the error and that the individual did not intend to
194 be bound by the electronic record received by the other person;

195 (ii) takes reasonable steps, including steps that conform to the other person's reasonable
196 instructions, to return to the other person or, if instructed by the other person, to destroy the
197 consideration received, if any, as a result of the erroneous electronic record; and

198 (iii) has not used or received any benefit or value from the consideration, if any, received
199 from the other person.

200 (2) If neither Subsection (1)(a) or (b) applies, the change or error has the effect provided
201 by other law, including the law of mistake, and the parties' contract, if any.

202 (3) Subsections (1)(b) and (2) may not be varied by agreement.

203 Section 11. Section **46-4-205** is enacted to read:

204 **46-4-205. Notarization and acknowledgment.**

205 If a law requires a signature or record to be notarized, acknowledged, verified, or made
206 under oath, the requirement is satisfied by following the procedures and requirements of
207 Subsection 46-1-16(7).

208 Section 12. Section **46-4-301** is enacted to read:

209 **Part 3. Retention and Admissibility of Electronic Records**

210 **46-4-301. Retention of electronic records -- Originals.**

211 (1) If a law requires that a record be retained, the requirement is satisfied by retaining an
212 electronic record of the information in the record that:

213 (a) accurately reflects the information set forth in the record after it was first generated in

214 its final form as an electronic record or otherwise; and

215 (b) remains accessible for later reference.

216 (2) A requirement to retain a record in accordance with Subsection (1) does not apply to
217 any information the sole purpose of which is to enable the record to be sent, communicated, or
218 received.

219 (3) A person may satisfy Subsection (1) by using the services of another person if the
220 requirements of Subsection (1) are satisfied.

221 (4) If a law requires a record to be presented or retained in its original form, or provides
222 consequences if the record is not presented or retained in its original form, that law is satisfied by
223 an electronic record retained in accordance with Subsection (1).

224 (5) If a law requires retention of a check, that requirement is satisfied by retention of an
225 electronic record of the information on the front and back of the check in accordance with
226 Subsection (1).

227 (6) A record retained as an electronic record in accordance with Subsection (1) satisfies
228 a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law
229 enacted after May 1, 2000, specifically prohibits the use of an electronic record for the specified
230 purpose.

231 (7) This section does not preclude a governmental agency from specifying additional
232 requirements for the retention of a record subject to the agency's jurisdiction.

233 Section 13. Section **46-4-302** is enacted to read:

234 **46-4-302. Admissibility in evidence.**

235 In a proceeding, evidence of a record or signature may not be excluded solely because it
236 is in electronic form.

237 Section 14. Section **46-4-401** is enacted to read:

238 **Part 4. Automated Transactions, Sending and Receiving Electronic Records, and**
239 **Transferable Records**

240 **46-4-401. Automated transaction.**

241 In an automated transaction, the following rules apply:

242 (1) A contract may be formed by the interaction of electronic agents of the parties, even
243 if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and
244 agreements.

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

250 (3) The terms of the contract are determined by the substantive law applicable to it.

251 Section 15. Section **46-4-402** is enacted to read:

252 **46-4-402. Time and place of sending and receipt.**

253 (1) Unless otherwise agreed between the sender and the recipient, an electronic record is
254 sent when it:

255 (a) is addressed properly or otherwise directed properly to an information processing
256 system that the recipient has designated or uses for the purpose of receiving electronic records or
257 information of the type sent and from which the recipient is able to retrieve the electronic record;

258 (b) is in a form capable of being processed by that system; and

259 (c) enters an information processing system outside the control of the sender or of a person
260 that sent the electronic record on behalf of the sender or enters a region of the information
261 processing system designated or used by the recipient that is under the control of the recipient.

262 (2) Unless otherwise agreed between a sender and the recipient, an electronic record is
263 received when:

264 (a) it enters an information processing system that the recipient has designated or uses for
265 the purpose of receiving electronic records or information of the type sent and from which the
266 recipient is able to retrieve the electronic record; and

267 (b) it is in a form capable of being processed by that system.

268 (3) Subsection (2) applies even if the place the information processing system is located
269 is different from the place the electronic record is deemed to be received under Subsection (4).

270 (4) (a) Unless otherwise expressly provided in the electronic record or agreed between the
271 sender and the recipient, an electronic record is deemed to be sent from the sender's place of
272 business and to be received at the recipient's place of business.

273 (b) For purposes of this Subsection (4), the following rules apply:

274 (i) If the sender or recipient has more than one place of business, the place of business of
275 that person is the place having the closest relationship to the underlying transaction.

276 (ii) If the sender or the recipient does not have a place of business, the place of business
277 is the sender's or recipient's residence, as the case may be.

278 (5) An electronic record is received under Subsection (2) even if no individual is aware
279 of its receipt.

280 (6) Receipt of an electronic acknowledgment from an information processing system
281 described in Subsection (2) establishes that a record was received but, by itself, does not establish
282 that the content sent corresponds to the content received.

283 (7) (a) If a person is aware that an electronic record purportedly sent under Subsection (1),
284 or purportedly received under Subsection (2), was not actually sent or received, the legal effect of
285 the sending or receipt is determined by other applicable law.

286 (b) Except to the extent permitted by the other law, the requirements of this Subsection
287 (7) may not be varied by agreement.

288 Section 16. Section **46-4-403** is enacted to read:

289 **46-4-403. Transferable records.**

290 (1) As used in this section, "transferable record" means an electronic record that:

291 (a) would be a note under Title 70A, Chapter 3, or a document under Title 70A, Chapter
292 7, if the electronic record were in writing; and

293 (b) the issuer of the electronic record expressly has agreed is a transferable record.

294 (2) A person has control of a transferable record if a system employed for evidencing the
295 transfer of interests in the transferable record reliably establishes that person as the person to which
296 the transferable record was issued or transferred.

297 (3) A system satisfies Subsection (2), and a person is deemed to have control of a
298 transferable record, if the transferable record is created, stored, and assigned in such a manner that:

299 (a) a single authoritative copy of the transferable record exists that is unique, identifiable,
300 and, except as otherwise provided in Subsections (3)(d), (e), and (f), unalterable;

301 (b) the authoritative copy identifies the person asserting control as:

302 (i) the person to which the transferable record was issued; or

303 (ii) if the authoritative copy indicates that the transferable record has been transferred, the
304 person to which the transferable record was most recently transferred;

305 (c) the authoritative copy is communicated to and maintained by the person asserting
306 control or its designated custodian;

307 (d) copies or revisions that add or change an identified assignee of the authoritative copy
308 can be made only with the consent of the person asserting control;

309 (e) each copy of the authoritative copy and any copy of a copy is readily identifiable as a
310 copy that is not the authoritative copy; and

311 (f) any revision of the authoritative copy is readily identifiable as authorized or
312 unauthorized.

313 (4) (a) Except as otherwise agreed, a person having control of a transferable record is the
314 holder, as defined in Subsection 70A-1-201(20), of the transferable record and has the same rights
315 and defenses as a holder of an equivalent record or writing under Title 70A, Uniform Commercial
316 Code, including, if the applicable statutory requirements under Subsection 70A-3-302(1), Section
317 70A-7-501, or Section 70A-9-308 are satisfied, the rights and defenses of a holder in due course,
318 a holder to which a negotiable document of title has been duly negotiated, or a purchaser,
319 respectively.

320 (b) Delivery, possession, and indorsement are not required to obtain or exercise any of the
321 rights under Subsection (4)(a).

322 (5) Except as otherwise agreed, an obligor under a transferable record has the same rights
323 and defenses as an equivalent obligor under equivalent records or writings under Title 70A,
324 Uniform Commercial Code.

325 (6) (a) If requested by a person against which enforcement is sought, the person seeking
326 to enforce the transferable record shall provide reasonable proof that the person is in control of the
327 transferable record.

328 (b) Proof may include access to the authoritative copy of the transferable record and
329 related business records sufficient to review the terms of the transferable record and to establish
330 the identity of the person having control of the transferable record.

331 Section 17. Section **46-4-501** is enacted to read:

332 **Part 5. Electronic Records in Government Agencies**

333 **46-4-501. Creation and retention of electronic records and conversion of written**
334 **records by governmental agencies.**

335 (1) A state governmental agency may, by following the procedures and requirements of
336 Title 63, Chapter 46a, Utah Administrative Rulemaking Act, make rules that:

337 (a) identify specific transactions that the agency is willing to conduct by electronic means;

338 (b) identify specific transactions that the agency will never conduct by electronic means;

339 (c) specify the manner and format in which electronic records must be created, generated,

340 sent, communicated, received, and stored, and the systems established for those purposes;

341 (d) if law or rule requires that the electronic records must be signed by electronic means,

342 specify the type of electronic signature required, the manner and format in which the electronic

343 signature must be affixed to the electronic record, and the identity of, or criteria that must be met,

344 by any third party used by a person filing a document to facilitate the process;

345 (e) specify control processes and procedures as appropriate to ensure adequate

346 preservation, disposition, integrity, security, confidentiality, and auditability of electronic records;

347 and

348 (f) identify any other required attributes for electronic records that are specified for

349 corresponding nonelectronic records or that are reasonably necessary under the circumstances.

350 (2) A state governmental agency that makes rules under this section shall submit copies
351 of those rules, and any amendments to those rules, to:

352 (a) the chief information officer established by Section 63D-1-301; and

353 (b) the Utah Information Technology Commission established by Section 63D-1-202.

354 (3) (a) The chief information officer may prepare model rules and standards relating to
355 electronic transactions that encourage and promote consistency and interoperability with similar
356 requirements adopted by other Utah government agencies, other states, the federal government,
357 and nongovernmental persons interacting with Utah governmental agencies.

358 (b) In preparing those model rules and standards, the chief information officer may specify
359 different levels of standards from which governmental agencies may choose in order to implement
360 the most appropriate standard for a particular application.

361 (c) Before submitting any model rules or standards to state governmental agencies for their
362 adoption as permanent rules, the chief information officer shall submit the model rules and
363 standards to the Utah Information Technology Commission for its review and suggestions.

364 (d) Nothing in this Subsection (3) requires a state agency to use the model rules and
365 standards prepared by the chief information officer when making rules under this section.

366 (4) Except as provided in Subsection 46-4-301(6), nothing in this chapter requires any
367 state governmental agency to:

368 (a) conduct transactions by electronic means; or

369 (b) use or permit the use of electronic records or electronic signatures.
369a h (5) EACH STATE GOVERNMENTAL AGENCY SHALL:
369b (a) ESTABLISH RECORD RETENTION SCHEDULES FOR ANY ELECTRONIC RECORDS
369c CREATED OR RECEIVED IN AN ELECTRONIC TRANSACTION ACCORDING TO THE STANDARDS
369d DEVELOPED BY THE DIVISION OF ARCHIVES UNDER SUBSECTION 63-2-901(2)(e); AND
369e (b) OBTAIN APPROVAL OF THOSE SCHEDULES FROM THE STATE RECORDS COMMITTEE
369f AS REQUIRED BY SUBSECTION 63-2-502(1)(b). h

Legislative Review Note
as of 1-3-00 3:09 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel