

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1266  
Information Technology Committee Substitute Adopted 6/19/00  
Third Edition Engrossed 6/28/00

Short Title: Uniform Electronic Transactions Act.

(Public)

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Sponsors:

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Referred to:

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May 17, 2000

1 A BILL TO BE ENTITLED  
2 AN ACT TO ADOPT THE UNIFORM ELECTRONIC TRANSACTIONS ACT.  
3 The General Assembly of North Carolina enacts:  
4 Section 1. Chapter 66 of the General Statutes is amended by adding a new  
5 Article to read:

6 **"ARTICLE 40.**  
7 **"UNIFORM ELECTRONIC TRANSACTIONS ACT.**  
8 **"§ 66-308. Short title.**

9 This Article may be cited as the Uniform Electronic Transactions Act.

10 **"§ 66-308.1. Definitions.**

11 As used in this Article, unless the context clearly requires otherwise, the term:

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

16 (2) 'Automated transaction' means a transaction conducted or performed, in  
17 whole or in part, by electronic means or electronic records, in which the  
18 acts or records of one or both parties are not reviewed by an individual

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

1           (16) 'State' means a state of the United States, the District of Columbia,  
2           Puerto Rico, the United States Virgin Islands, or any territory or insular  
3           possession subject to the jurisdiction of the United States. The term  
4           includes an Indian tribe or band, or Alaskan native village, which is  
5           recognized by federal law or formally acknowledged by a state.

6           (17) 'Transaction' means an action or set of actions occurring between two or  
7           more persons relating to the conduct of business, commercial, or  
8           governmental affairs.

9           **"§ 66-308.2. Scope.**

10          (a) Except as otherwise provided in subsections (b) and (c) of this section, this  
11 Article applies to electronic records and electronic signatures relating to a transaction.

12          (b) This Article does not apply to a transaction to the extent it is governed by:

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

15           (2) Chapter 25 of the General Statutes other than G.S. 25-1-107 and G.S.  
16           25-1-206, Article 2, and Article 2A.

17           (3) Article 11A of Chapter 66 of the General Statutes.

18          (c) This Article applies to an electronic record or electronic signature otherwise  
19 excluded from the application of this Article under subsection (b) of this section to the  
20 extent it is governed by a law other than those specified in subsection (b) of this section.

21          (d) A transaction subject to this Article is also subject to other applicable  
22 substantive law.

23           **"§ 66-308.3. Prospective application.**

24           This Article applies to any electronic record or electronic signature created, generated,  
25 sent, communicated, received, or stored on or after the effective date of this Article.

26           **"§ 66-308.4. Use of electronic records and electronic signatures; variation by**  
27 **agreement.**

28          (a) This Article does not require a record or signature to be created, generated,  
29 sent, communicated, received, stored, or otherwise processed or used by electronic means  
30 or in electronic form.

31          (b) This Article applies only to transactions between parties each of which has  
32 agreed to conduct transactions by electronic means. Whether the parties agree to conduct  
33 a transaction by electronic means is determined from the context and surrounding  
34 circumstances, including the parties' conduct.

35          (c) A party that agrees to conduct a transaction by electronic means may refuse to  
36 conduct other transactions by electronic means. The right granted by this subsection may  
37 not be waived by agreement.

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

42          (e) Whether an electronic record or electronic signature has legal consequences is  
43 determined by this Article and other applicable law.

1 **"§ 66-308.5. Construction and application.**

2 This Article must be construed and applied:

- 3 (1) To facilitate electronic transactions consistent with other applicable law;  
4 (2) To be consistent with reasonable practices concerning electronic  
5 transactions and with the continued expansion of those practices; and  
6 (3) To effectuate its general purpose to make uniform the law with respect  
7 to the subject of this act among states enacting it.

8 **"§ 66-308.6. Legal recognition of electronic records, electronic signatures, and**  
9 **electronic contracts.**

10 (a) A record or signature may not be denied legal effect or enforceability solely  
11 because it is in electronic form.

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

14 (c) If a law requires a record to be in writing, an electronic record satisfies the law  
15 provided it complies with the provisions of this Article.

16 (d) If a law requires a signature, an electronic signature satisfies the law provided  
17 it complies with the provisions of this Article.

18 **"§ 66-308.7. Provision of information in writing; presentation of records.**

19 (a) If parties have agreed to conduct a transaction by electronic means and a law  
20 requires a person to provide, send, or deliver information in writing to another person, the  
21 requirement is satisfied if the information is provided, sent, or delivered, as the case may  
22 be, in an electronic record capable of retention by the recipient at the time of receipt. An  
23 electronic record is not capable of retention by the recipient if the sender or its  
24 information processing system inhibits the ability of the recipient to print or store the  
25 electronic record.

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

30 (1) The record must be posted or displayed in the manner specified in the  
31 other law.

32 (2) Except as otherwise provided in subdivision (d)(2) of this section, the  
33 record must be sent, communicated, or transmitted by the method  
34 specified in the other law.

35 (3) The record must contain the information formatted in the manner  
36 specified in the other law.

37 (c) If a sender inhibits the ability of a recipient to store or print an electronic  
38 record, the electronic record is not enforceable against the recipient.

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

40 (1) To the extent a law other than this act requires information to be  
41 provided, sent, or delivered in writing, but permits that requirement to  
42 be varied by agreement, the requirement under subsection (a) of this

1            section that the information be in the form of an electronic record  
2            capable of retention may also be varied by agreement; and

- 3            (2) A requirement under a law other than this Article to send, communicate,  
4            or transmit a record by regular United States mail may be varied by  
5            agreement to the extent permitted by the other law.

6            **"§ 66-308.8. Attribution and effect of electronic record and electronic signature.**

7            (a) An electronic record or electronic signature is attributable to a person if it was  
8            the act of the person. The act of the person may be shown in any manner, including a  
9            showing of the efficacy of any security procedure applied to determine the person to  
10           which the electronic record or electronic signature was attributable.

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

15           **"§ 66-308.9. Effect of change or error.**

16           If a change or error in an electronic record occurs in a transmission between parties to  
17           a transaction, the following rules apply:

- 18           (1) If the parties have agreed to use a security procedure to detect changes  
19           or errors and one party has conformed to the procedure, but the other  
20           party has not, and the nonconforming party would have detected the  
21           change or error had that party also conformed, the conforming party  
22           may avoid the effect of the changed or erroneous electronic record.

- 23           (2) In an automated transaction involving an individual, the individual may  
24           avoid the effect of an electronic record that resulted from an error made  
25           by the individual in dealing with the electronic agent of another person  
26           if, at the time the individual learns of the error, the individual:

27           a. Promptly notifies the other person of the error and that the  
28           individual did not intend to be bound by the electronic record  
29           received by the other person;

30           b. Takes reasonable steps, including steps that conform to the other  
31           person's reasonable instructions, to return to the other person or,  
32           if instructed by the other person, to destroy the consideration  
33           received, if any, as a result of the erroneous electronic record;  
34           and

35           c. Has not used or received any benefit or value from the  
36           consideration, if any, received from the other person.

- 37           (3) If neither subdivision (1) nor subdivision (2) of this section applies, the  
38           change or error has the effect provided by other law, including the law  
39           of mistake, and the parties' contract, if any.

- 40           (4) Subdivisions (2) and (3) of this section may not be varied by agreement.

41           **"§ 66-308.10. Notarization and acknowledgment.**

42           If a law requires a signature or record relating to a transaction to be notarized,  
43           acknowledged, verified, or made under oath, the requirement is satisfied if the electronic

1 signature of the person authorized to perform those acts, together with all other  
2 information required to be included by other applicable law, is attached to or logically  
3 associated with the signature or record.

4 **"§ 66-308.11. Retention of electronic records; originals.**

5 (a) If a law requires that a record be retained, the requirement is satisfied by  
6 retaining an electronic record of the information in the record which:

7 (1) Accurately reflects the information set forth in the record at the time it  
8 was first generated in its final form as an electronic record or otherwise;  
9 and

10 (2) Remains accessible for later reference.

11 (b) A requirement to retain a record in accordance with subsection (a) of this  
12 section does not apply to any information the sole purpose of which is to enable the  
13 record to be sent, communicated, or received.

14 (c) A person may satisfy subsection (a) of this section by using the services of  
15 another person if the requirements of that subsection are satisfied.

16 (d) If a law requires a record to be presented or retained in its original form, or  
17 provides consequences if the record is not presented or retained in its original form, that  
18 law is satisfied by an electronic record retained in accordance with subsection (a) of this  
19 section.

20 (e) If a law requires retention of a check, that requirement is satisfied by retention  
21 of an electronic record of the information on the front and back of the check in  
22 accordance with subsection (a) of this section.

23 (f) A record retained as an electronic record in accordance with subsection (a) of  
24 this section satisfies a law requiring a person to retain a record for evidentiary, audit, or  
25 like purposes, unless a law enacted after the effective date of this Article specifically  
26 prohibits the use of an electronic record for the specified purpose.

27 (g) This section does not preclude a governmental agency of this State from  
28 specifying additional requirements for the retention of a record subject to the agency's  
29 jurisdiction.

30 **"§ 66-308.12. Admissibility in evidence.**

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

33 **"§ 66-308.13. Automated transaction.**

34 In an automated transaction, the following rules apply:

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

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

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

3 **"§ 66-308.14. Time and place of sending and receipt.**

4           (a) Unless otherwise agreed between the sender and the recipient, an electronic  
5 record is sent when it:

6           (1) Is addressed properly or otherwise directed properly to an information  
7 processing system that the recipient has designated or uses for the  
8 purpose of receiving electronic records or information of the type sent  
9 and from which the recipient is able to retrieve the electronic record;

10          (2) Is in a form capable of being processed by that system; and

11          (3) Enters an information processing system outside the control of the  
12 sender or of a person that sent the electronic record on behalf of the  
13 sender or enters a region of the information processing system  
14 designated or used by the recipient which is under the control of the  
15 recipient.

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

18          (1) It enters an information processing system that the recipient has  
19 designated or uses for the purpose of receiving electronic records or  
20 information of the type sent and from which the recipient is able to  
21 retrieve the electronic record; and

22          (2) It is in a form capable of being processed by that system.

23          (c) Subsection (b) of this section applies even if the place the information  
24 processing system is located is different from the place the electronic record is deemed to  
25 be received under subsection (d) of this section.

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

30          (1) If the sender or recipient has more than one place of business, the place  
31 of business of that person is the place having the closest relationship to  
32 the underlying transaction.

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

35          (e) An electronic record is received under subsection (b) of this section even if no  
36 individual is aware of its receipt.

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

40          (g) If a person is aware that an electronic record purportedly sent under subsection  
41 (a) of this section, or purportedly received under subsection (b) of this section, was not  
42 actually sent or received, the legal effect of the sending or receipt is determined by other

1 applicable law. Except to the extent permitted by the other law, the requirements of this  
2 subsection may not be varied by agreement.

3 **"§ 66-308.15. Transferable records.**

4 (a) In this section, 'transferable record' means an electronic record that:

- 5 (1) Would be a note under Article 3 of Chapter 25 of the General Statutes  
6 or a document under Article 7 of Chapter 25 of the General Statutes if  
7 the electronic record were in writing; and  
8 (2) The issuer of the electronic record expressly has agreed is a transferable  
9 record.

10 (b) A person has control of a transferable record if a system employed for  
11 evidencing the transfer of interests in the transferable record reliably establishes that  
12 person as the person to which the transferable record was issued or transferred.

13 (c) A system satisfies subsection (b) of this section, and a person is deemed to  
14 have control of a transferable record, if the transferable record is created, stored, and  
15 assigned in such a manner that:

- 16 (1) A single authoritative copy of the transferable record exists which is  
17 unique, identifiable, and, except as otherwise provided in subdivisions  
18 (4), (5), and (6) of this subsection, unalterable;  
19 (2) The authoritative copy identifies the person asserting control as:  
20 a. The person to which the transferable record was issued; or  
21 b. If the authoritative copy indicates that the transferable record has  
22 been transferred, the person to which the transferable record was  
23 most recently transferred;  
24 (3) The authoritative copy is communicated to and maintained by the  
25 person asserting control or its designated custodian;  
26 (4) Copies or revisions that add or change an identified assignee of the  
27 authoritative copy can be made only with the consent of the person  
28 asserting control;  
29 (5) Each copy of the authoritative copy and any copy of a copy is readily  
30 identifiable as a copy that is not the authoritative copy; and  
31 (6) Any revision of the authoritative copy is readily identifiable as  
32 authorized or unauthorized.

33 (d) Except as otherwise agreed, a person having control of a transferable record is  
34 the holder, as defined in G.S. 25-1-201(20), of the transferable record and has the same  
35 rights and defenses as a holder of an equivalent record or writing under Chapter 25 of the  
36 General Statutes, including, if the applicable statutory requirements under G.S. 25-3-  
37 302(a), 25-7-501, or 25-9-308 are satisfied, the rights and defenses of a holder in due  
38 course, a holder to which a negotiable document of title has been duly negotiated, or a  
39 purchaser, respectively. Delivery, possession, and endorsement are not required to obtain  
40 or exercise any of the rights under this subsection.

41 (e) Except as otherwise agreed, an obligor under a transferable record has the  
42 same rights and defenses as an equivalent obligor under equivalent records or writings  
43 under Chapter 25 of the General Statutes.



1 (f) If requested by a person against which enforcement is sought, the person  
2 seeking to enforce the transferable record shall provide reasonable proof that the person  
3 is in control of the transferable record. Proof may include access to the authoritative  
4 copy of the transferable record and related business records sufficient to review the terms  
5 of the transferable record and to establish the identity of the person having control of the  
6 transferable record.

7 **"§ 66-308.16. Consumer transactions; alternative procedures for use or acceptance**  
8 **of electronic records or electronic signatures.**

9 (a) Consistent with the provisions of Section 102(a)2A of the federal Electronic  
10 Signatures in Global and National Commerce Act, the use and acceptance of electronic  
11 records or electronic signatures in consumer transactions shall be subject to the  
12 requirements set out in this section. The requirements of this section may not be varied  
13 by agreement of the parties.

14 (b) Limitation. – This Article shall not apply to:

15 (1) Any notice of the cancellation or termination of utility services,  
16 including water, heat, and power.

17 (2) Any notice of default, acceleration, repossession, foreclosure or  
18 eviction, or the right to cure, under a credit agreement secured by, or a  
19 rental agreement for, a primary residence of an individual.

20 (3) Any notice of the cancellation or termination of health insurance or  
21 benefits, or life insurance or benefits (excluding annuities).

22 (4) Any notice of the recall of a product, or material failure of a product that  
23 risks endangering health or safety.

24 (5) Any document required to accompany the transportation or handling of  
25 hazardous materials, pesticides, or other toxic or dangerous materials.

26 (c) Consent to Electronic Records. – In a consumer transaction, the consumer's  
27 agreement to conduct a transaction by electronic means shall be evidenced as provided in  
28 G.S. 66-308.4, and in compliance with this section. The consumer's agreement to  
29 conduct the transaction by electronic means shall be found only when the following  
30 apply:

31 (1) The consumer has affirmatively consented to the use of electronic  
32 means, and the consumer has not withdrawn consent.

33 (2) The consumer, prior to consenting to the use of electronic means, is  
34 provided with a clear and conspicuous statement:

35 a. Informing the consumer of any right or option of the consumer to  
36 have the record provided or made available on paper or in  
37 nonelectronic form.

38 b. Informing the consumer of the right to withdraw consent to have  
39 the record provided or made available in an electronic form and  
40 of any conditions or consequences of such withdrawal. Those  
41 consequences may include termination of the parties' relationship  
42 but may not include the imposition of fees.

- 1           c.     Informing the consumer of whether the consent to have the  
2           record provided or made available in an electronic form applies  
3           only to the particular transaction which gave rise to the  
4           obligation to provide the record, or to identified categories of  
5           records that may be provided or made available during the course  
6           of the parties' relationship.
- 7           d.     Describing the procedures the consumer must use to withdraw  
8           consent as provided in sub-subdivision (2)b. of this subsection or  
9           to update information needed to contact the consumer  
10          electronically.
- 11          e.     Informing the consumer how, after the consent to have the record  
12          provided or made available in an electronic form, the consumer  
13          may request and obtain a paper copy of an electronic record.

14       (3)    The consumer, prior to consenting to the use of electronic means, is  
15        provided with a statement of the hardware and software requirements  
16        for access to and retention of the electronic records; and the consumer  
17        consents electronically, or confirms his or her consent electronically, in  
18        a manner that reasonably demonstrates that the consumer can access  
19        information in the electronic form that will be used to provide the  
20        information that is the subject of the consent.

21       (4)    After the consent of a consumer in accordance with subdivision (1) of  
22        this subsection, if a change in the hardware or software requirements  
23        needed to access or retain electronic records creates a material risk that  
24        the consumer will not be able to access or retain a subsequent electronic  
25        record that was the subject of the consent, the person providing the  
26        electronic record provides the consumer with a statement of the revised  
27        hardware and software requirements for access to and retention of the  
28        electronic records, provides a statement of the right to withdraw consent  
29        without the imposition of any condition or consequence that was not  
30        disclosed under sub-subdivision (2)b. of this subsection, and again  
31        complies with subdivision (3) of this subsection.

32       (d)    Written Copy Required. – Notwithstanding G.S. 66-308.4(b), in a consumer  
33        transaction where the consumer conducts the transaction on electronic equipment  
34        provided by or through the seller, the consumer shall be given a written copy of the  
35        contract which is not in electronic form. A consumer's consent to receive future notices  
36        regarding the transaction in an electronic form is valid only if the consumer confirms  
37        electronically, using equipment other than that provided by the seller, that (i) the  
38        consumer has the software specified by the seller as necessary to read future notices, and  
39        (ii) the consumer agrees to receive the notices in an electronic form. If an individual  
40        enters into a consumer transaction that is created or documented by an electronic record,  
41        the transaction shall be deemed to have been made or to have occurred at the individual's  
42        residence.

43       "§ 66-308.17. Severability clause.

1        If any provision of this Article or its application to any person or circumstance is held  
2 invalid, the invalidity does not affect other provisions or applications of this Article  
3 which can be given effect without the invalid provision or application, and to this end the  
4 provisions of this Article are severable."

5                Section 2. The Revisor of Statutes shall cause to be printed along with this act  
6 all relevant portions of the official comments to the Uniform Electronic Transactions Act,  
7 as the Revisor deems appropriate.

8                Section 3. This act becomes effective October 1, 2000.