AN ACT

RELATING TO ELECTRONIC TRANSACTIONS; ENACTING THE UNIFORM ELECTRONIC TRANSACTIONS ACT; ESTABLISHING STANDARDS FOR THE USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES IN TRANSACTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1.   SHORT TITLE.--This act may be cited as the "Uniform Electronic Transactions Act".

Section 2.   DEFINITIONS.--As used in the Uniform Electronic Transactions Act:

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

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underscored material = new
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1   (2)   "automated transaction" means a transaction

2   conducted or performed, in whole or in part, by electronic

3   means or electronic records, in which the acts or records of

4   one or both parties are not reviewed by an individual in the

5   ordinary course in forming a contract, performing under an

6   existing contract or fulfilling an obligation required by the

7   transaction;

8   (3)   "computer program" means a set of statements

9   or instructions to be used directly or indirectly in an

10   information processing system in order to bring about a

11   certain result;

12   (4)   "contract" means the total legal obligation

13   resulting from the parties' agreement as affected by the

14   Uniform Electronic Transactions Act and other applicable law;

15   (5)   "electronic" means relating to technology

16   having electrical, digital, magnetic, wireless, optical,

17   electromagnetic or similar capabilities;

18   (6)   "electronic agent" means a computer program or

19   an electronic or other automated means used independently to

20   initiate an action or respond to electronic records or

21   performances, in whole or in part, without review or action by

22   an individual;

23   (7)   "electronic record" means a record created,

24   generated, sent, communicated, received or stored by

25   electronic means;

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

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

(10)   "information" means data, text, images, sounds, codes, computer programs, software, databases or the like;

(11)   "information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying or processing information;

(12)   "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;

(13)   "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in a perceivable form;

(14)   "security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record or performance is that of a specific person

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1   or for detecting changes or errors in the information in an

2   electronic record. The term includes a procedure that

3   requires the use of algorithms or other codes, identifying

4   words or numbers, encryption, callback or other acknowledgment

5   procedures;

6   (15) "state" means a state of the United States,

7   the District of Columbia, Puerto Rico, the United States

8   Virgin Islands or any territory or insular possession subject

9   to the jurisdiction of the United States. The term includes

10   an Indian tribe, an Indian band or an Alaskan native village,

11   which is recognized by federal law or formally acknowledged by

12   a state; and

13   (16) "transaction" means an action or set of

14   actions occurring between two or more persons relating to the

15   conduct of business, commercial affairs or governmental

16   affairs.

17   Section 3. SCOPE.--

18   (a) Except as otherwise provided in Subsection

19   (b), the Uniform Electronic Transactions Act applies to

20   electronic records and electronic signatures relating to a

21   transaction.

22   (b) The Uniform Electronic Transactions Act does

23   not apply to:

24   (1) a transaction to the extent it is

25   governed by:

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1   (i) a law governing the creation and

2   execution of wills, codicils or testamentary trusts;

3   (ii) the Uniform Commercial Code, other

4   than Sections 55-1-107 and 55-1-206 NMSA 1978 and Chapter 55,

5   Articles 2 and 2A NMSA 1978;

6   (iii) the Uniform Anatomical Gift Act;

7   (iv) the Uniform Health-Care Decisions

8   Act; or

9   (v) a statute, regulation or other rule

10   of law that governs adoption, divorce or other family law

11   matters;

12   (2) a notice concerning:

13   (i) the cancellation or termination of

14   utility services, including water, heat or power services;

15   (ii) default, acceleration,

16   repossession, foreclosure, eviction or the right to cure,

17   under a credit agreement secured by or a rental agreement for

18   a primary residence of an individual; or

19   (iii) the cancellation or termination

20   of health insurance benefits or life insurance benefits, but

21   not including annuities.

22   (c) The Uniform Electronic Transactions Act

23   applies to an electronic record or electronic signature

24   otherwise excluded from the application of that act under

25   Subsection (b) to the extent it is governed by a law other

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1   than those specified in Subsection (b).

2   (d)   A transaction subject to the Uniform

3   Electronic Transactions Act is also subject to other

4   applicable substantive law.

5   Section 4.   PROSPECTIVE APPLICATION.--The Uniform

6   Electronic Transactions Act applies to any electronic record

7   or electronic signature created, generated, sent,

8   communicated, received or stored on or after the effective

9   date of that act.

10   Section 5.   USE OF ELECTRONIC RECORDS AND ELECTRONIC

11   SIGNATURES--VARIATION BY AGREEMENT.--

12   (a)   The Uniform Electronic Transactions Act does

13   not require a record or signature to be created, generated,

14   sent, communicated, received, stored or otherwise processed or

15   used by electronic means or in electronic form.

16   (b)   The Uniform Electronic Transactions Act

17   applies only to transactions between parties each of which has

18   agreed to conduct transactions by electronic means.   Whether

19   the parties agree to conduct a transaction by electronic means

20   is determined from the context and surrounding circumstances,

21   including the parties' conduct.

22   (c)   A party that agrees to conduct a transaction

23   by electronic means may refuse to conduct other transactions

24   by electronic means.   The right granted by this subsection may

25   not be waived by agreement.

1   (d)   Except as otherwise provided in the Uniform

2   Electronic Transactions Act, the effect of any of its

3   provisions may be varied by agreement.   The presence in

4   certain provisions of the Uniform Electronic Transactions Act

5   of the words "unless otherwise agreed", or words of similar

6   import, does not imply that the effect of other provisions may

7   not be varied by agreement.

8   (e)   Whether an electronic record or electronic

9   signature has legal consequences is determined by the Uniform

10   Electronic Transactions Act and other applicable law.

11   Section 6.   CONSTRUCTION AND APPLICATION.--The Uniform

12   Electronic Transactions Act must be construed and applied:

13   (1)   to facilitate electronic transactions

14   consistent with other applicable law;

15   (2)   to be consistent with reasonable practices

16   concerning electronic transactions and with the continued

17   expansion of those practices; and

18   (3)   to effectuate its general purpose to make

19   uniform the law with respect to the subject of the Uniform

20   Electronic Transactions Act among states enacting it.

21   Section 7.   LEGAL RECOGNITION OF ELECTRONIC RECORDS,

22   ELECTRONIC SIGNATURES AND ELECTRONIC CONTRACTS.--

23   (a)   A record or signature may not be denied legal

24   effect or enforceability solely because it is in electronic

25   form.

1   (b)   A contract may not be denied legal effect or

2   enforceability solely because an electronic record was used in

3   its formation.

4   (c)   If a law requires a record to be in writing,

5   an electronic record satisfies the law.

6   (d)   If a law requires a signature, an electronic

7   signature satisfies the law.

8   Section 8.   PROVISION OF INFORMATION IN WRITING--

9   PRESENTATION OF RECORDS.--

10   (a)   If parties have agreed to conduct a

11   transaction by electronic means and a law requires a person to

12   provide, send or deliver information in writing to another

13   person, the requirement is satisfied if the information is

14   provided, sent or delivered, as the case may be, in an

15   electronic record capable of retention by the recipient at the

16   time of receipt.   An electronic record is not capable of

17   retention by the recipient if the sender or its information

18   processing system inhibits the ability of the recipient to

19   print or store the electronic record.

20   (b)   If a law other than the Uniform Electronic

21   Transactions Act requires a record (i) to be posted or

22   displayed in a certain manner, (ii) to be sent, communicated

23   or transmitted by a specified method, or (iii) to contain

24   information that is formatted in a certain manner, the

25   following rules apply:

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1   (1)   The record must be posted or displayed in

2   the manner specified in the other law.

3   (2)   Except as otherwise provided in

4   Subsection (d)(2), the record must be sent, communicated or

5   transmitted by the method specified in the other law.

6   (3)   The record must contain the information

7   formatted in the manner specified in the other law.

8   (c)   If a sender inhibits the ability of a

9   recipient to store or print an electronic record, the

10   electronic record is not enforceable against the recipient.

11   (d)   The requirements of this section may not be

12   varied by agreement, but:

13   (1)   to the extent a law other than the

14   Uniform Electronic Transactions Act requires information to be

15   provided, sent or delivered in writing but permits that

16   requirement to be varied by agreement, the requirement under

17   Subsection (a) that the information be in the form of an

18   electronic record capable of retention may also be varied by

19   agreement; and

20   (2)   a requirement under a law other than the

21   Uniform Electronic Transactions Act to send, communicate or

22   transmit a record by first-class mail, postage prepaid or

23   regular United States mail, may be varied by agreement to the

24   extent permitted by the other law.

25   Section 9.   ATTRIBUTION AND EFFECT OF ELECTRONIC RECORD

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1   AND ELECTRONIC SIGNATURE.--

2   (a)   An electronic record or electronic signature

3   is attributable to a person if it was the act of the person.

4   The act of the person may be shown in any manner, including a

5   showing of the efficacy of any security procedure applied to

6   determine the person to which the electronic record or

7   electronic signature was attributable.

8   (b)   The effect of an electronic record or

9   electronic signature attributed to a person under Subsection

10   (a) is determined from the context and surrounding

11   circumstances at the time of its creation, execution or

12   adoption, including the parties' agreement, if any, and

13   otherwise as provided by law.

14   Section 10.   EFFECT OF CHANGE OR ERROR.--If a change or

15   error in an electronic record occurs in a transmission between

16   parties to a transaction, the following rules apply:

17   (1)   If the parties have agreed to use a security

18   procedure to detect changes or errors and one party has

19   conformed to the procedure, but the other party has not, and

20   the nonconforming party would have detected the change or

21   error had that party also conformed, the conforming party may

22   avoid the effect of the changed or erroneous electronic

23   record.

24   (2)   In an automated transaction involving an

25   individual, the individual may avoid the effect of an

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1   electronic record that resulted from an error made by the

2   individual in dealing with the electronic agent of another

3   person if the electronic agent did not provide an opportunity

4   for the prevention or correction of the error and, at the time

5   the individual learns of the error, the individual:

6   (A)   promptly notifies the other person of the

7   error and that the individual did not intend to be bound by

8   the electronic record received by the other person;

9   (B)   takes reasonable steps, including steps

10   that conform to the other person's reasonable instructions, to

11   return to the other person or, if instructed by the other

12   person, to destroy the consideration received, if any, as a

13   result of the erroneous electronic record; and

14   (C)   has not used or received any benefit or

15   value from the consideration, if any, received from the other

16   person.

17   (3)   If neither Paragraph (1) nor Paragraph (2)

18   applies, the change or error has the effect provided by other

19   law, including the law of mistake, and the parties' contract,

20   if any.

21   (4)   Paragraphs (2) and (3) may not be varied by

22   agreement.

23   Section 11.   NOTARIZATION AND ACKNOWLEDGMENT.--If a law

24   requires a signature or record to be notarized, acknowledged,

25   verified or made under oath, the requirement is satisfied if

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1   the electronic signature of the person authorized to perform

2   those acts, together with all other information required to be

3   included by other applicable law, is attached to or logically

4   associated with the signature or record.

5   Section 12.   RETENTION OF ELECTRONIC RECORDS--

6   ORIGINALS.--

7   (a)   If a law requires that a record be retained,

8   the requirement is satisfied by retaining an electronic record

9   of the information in the record which:

10   (1)   accurately reflects the information set

11   forth in the record after it was first generated in its final

12   form as an electronic record or otherwise; and

13   (2)   remains accessible for later reference.

14   (b)   A requirement to retain a record in accordance

15   with Subsection (a) does not apply to any information the sole

16   purpose of which is to enable the record to be sent,

17   communicated or received.

18   (c)   A person may satisfy Subsection (a) by using

19   the services of another person if the requirements of that

20   subsection are satisfied.

21   (d)   If a law requires a record to be presented or

22   retained in its original form, or provides consequences if the

23   record is not presented or retained in its original form, that

24   law is satisfied by an electronic record retained in

25   accordance with Subsection (a).

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1   (e) If a law requires retention of a check, that

2   requirement is satisfied by retention of an electronic record

3   of the information on the front and back of the check in

4   accordance with Subsection (a).

5   (f) A record retained as an electronic record in

6   accordance with Subsection (a) satisfies a law requiring a

7   person to retain a record for evidentiary, audit or like

8   purposes, unless a law enacted after the effective date of the

9   Uniform Electronic Transactions Act specifically prohibits the

10   use of an electronic record for the specified purpose.

11   (g) This section does not preclude a governmental

12   agency of this state from specifying additional requirements

13   for the retention of a record subject to the agency's

14   jurisdiction.

15   Section 13.   ADMISSIBILITY IN EVIDENCE.--In a proceeding,

16   evidence of a record or signature may not be excluded solely

17   because it is in electronic form.

18   Section 14.   AUTOMATED TRANSACTION.--In an automated

19   transaction, the following rules apply:

20   (1) A contract may be formed by the interaction of

21   electronic agents of the parties, even if no individual was

22   aware of or reviewed the electronic agents' actions or the

23   resulting terms and agreements.

24   (2) A contract may be formed by the interaction of

25   an electronic agent and an individual, acting on the

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1   individual's own behalf or for another person, including by an

2   interaction in which the individual performs actions that the

3   individual is free to refuse to perform and which the

4   individual knows or has reason to know will cause the

5   electronic agent to complete the transaction or performance.

6   (3)   The terms of the contract are determined by

7   the substantive law applicable to it.

8   Section 15.   TIME AND PLACE OF SENDING AND RECEIPT.--

9   (a)   Unless otherwise agreed between the sender and

10   the recipient, an electronic record is sent when it:

11   (1)   is addressed properly or otherwise

12   directed properly to an information processing system that the

13   recipient has designated or uses for the purpose of receiving

14   electronic records or information of the type sent and from

15   which the recipient is able to retrieve the electronic record;

16   (2)   is in a form capable of being processed

17   by that system; and

18   (3)   enters an information processing system

19   outside the control of the sender or of a person that sent the

20   electronic record on behalf of the sender or enters a region

21   of the information processing system designated or used by the

22   recipient which is under the control of the recipient.

23   (b)   Unless otherwise agreed between a sender and

24   the recipient, an electronic record is received when:

25   (1)   it enters an information processing

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1   system that the recipient has designated or uses for the

2   purpose of receiving electronic records or information of the

3   type sent and from which the recipient is able to retrieve the

4   electronic record; and

5   (2)   it is in a form capable of being

6   processed by that system.

7   (c)   Subsection (b) applies even if the place the

8   information processing system is located is different from the

9   place the electronic record is deemed to be received under

10 Subsection (d).

11   (d)   Unless otherwise expressly provided in the

12 electronic record or agreed between the sender and the

13 recipient, an electronic record is deemed to be sent from the

14 sender's place of business and to be received at the

15 recipient's place of business.   For purposes of this

16 subsection, the following rules apply:

17   (1)   If the sender or recipient has more than

18 one place of business, the place of business of that person is

19 the place having the closest relationship to the underlying

20 transaction.

21   (2)   If the sender or the recipient does not

22 have a place of business, the place of business is the

23 sender's or recipient's residence, as the case may be.

24   (e)   An electronic record is received under

25 Subsection (b) even if no individual is aware of its receipt.

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1   (f)   Receipt of an electronic acknowledgment from

2   an information processing system described in Subsection (b)

3   establishes that a record was received but, by itself, does

4   not establish that the content sent corresponds to the content

5   received.

6   (g)   If a person is aware that an electronic record

7   purportedly sent under Subsection (a), or purportedly received

8   under Subsection (b), was not actually sent or received, the

9   legal effect of the sending or receipt is determined by other

10   applicable law.   Except to the extent permitted by the other

11   law, the requirements of this subsection may not be varied by

12   agreement.

13   Section 16.   TRANSFERABLE RECORDS.--

14   (a)   As used in this section, "transferable record"

15   means an electronic record that:

16   (1)   would be a note under Chapter 55, Article

17   3 NMSA 1978 or a document under Chapter 55, Article 7 NMSA

18   1978 if the electronic record were in writing; and

19   (2)   the issuer of the electronic record

20   expressly has agreed is a transferable record.

21   (b)   A person has control of a transferable record

22   if a system employed for evidencing the transfer of interests

23   in the transferable record reliably establishes that person as

24   the person to which the transferable record was issued or

25   transferred.

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1   (c) A system satisfies Subsection (b), and a

2   person is deemed to have control of a transferable record, if

3   the transferable record is created, stored and assigned in

4   such a manner that:

5   (1) a single authoritative copy of the

6   transferable record exists which is unique, identifiable and,

7   except as otherwise provided in Paragraphs (4), (5) and (6),

8   unalterable;

9   (2) the authoritative copy identifies the

10 person asserting control as:

11   (A) the person to which the

12 transferable record was issued; or

13   (B) if the authoritative copy indicates

14 that the transferable record has been transferred, the person

15 to which the transferable record was most recently

16 transferred;

17   (3) the authoritative copy is communicated to

18 and maintained by the person asserting control or its

19 designated custodian;

20   (4) copies or revisions that add or change an

21 identified assignee of the authoritative copy can be made only

22 with the consent of the person asserting control;

23   (5) each copy of the authoritative copy and

24 any copy of a copy is readily identifiable as a copy that is

25 not the authoritative copy; and

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

(d)   Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in Section 55-1-201 NMSA 1978, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under Sections 55-3-302, 55-7-501 or 55-9-308 NMSA 1978 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 indorsement are not required to obtain or exercise any of the rights under this subsection.

(e)   Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the Uniform Commercial Code.

(f)   If requested by a person against which 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. 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 to establish the identity

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1   of the person having control of the transferable record.

2   Section 17.   CREATION AND RETENTION OF ELECTRONIC RECORDS

3   AND CONVERSION OF WRITTEN RECORDS BY GOVERNMENTAL AGENCIES.--

4   Each governmental agency of this state shall determine

5   whether, and the extent to which, it will create and retain

6   electronic records and convert written records to electronic

7   records.

8   Section 18.   ACCEPTANCE AND DISTRIBUTION OF ELECTRONIC

9   RECORDS BY GOVERNMENTAL AGENCIES.--

10   (a)   Except as otherwise provided in Section 12(f),

11   each governmental agency of this state shall determine

12   whether, and the extent to which, it will send and accept

13   electronic records and electronic signatures to and from other

14   persons and otherwise create, generate, communicate, store,

15   process, use and rely upon electronic records and electronic

16   signatures.

17   (b)   To the extent that a governmental agency uses

18   electronic records and electronic signatures under Subsection

19   (a), the governmental agency, giving due consideration to

20   security, may specify:

21   (1)   the manner and format in which the

22   electronic records must be created, generated, sent,

23   communicated, received and stored and the systems established

24   for those purposes;

25   (2)   if electronic records must be signed by

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1   electronic means, the type of electronic signature required,

2   the manner and format in which the electronic signature must

3   be affixed to the electronic record and the identity of, or

4   criteria that must be met by, any third party used by a person

5   filing a document to facilitate the process;

6   (3)   control processes and procedures as

7   appropriate to ensure adequate preservation, disposition,

8   integrity, security, confidentiality and auditability of

9   electronic records; and

10   (4)   any other required attributes for

11 electronic records which are specified for corresponding

12 nonelectronic records or reasonably necessary under the

13 circumstances.

14   (c)   Except as otherwise provided in Section 12(f),

15 the Uniform Electronic Transactions Act does not require a

16 governmental agency of this state to use or permit the use of

17 electronic records or electronic signatures.

18   Section 19.   INTEROPERABILITY.--The governmental agency

19 of this state which adopts standards pursuant to Section 18

20 may encourage and promote consistency and interoperability

21 with similar requirements adopted by other governmental

22 agencies of this and other states and the federal government

23 and nongovernmental persons interacting with governmental

24 agencies of this state.   If appropriate, those standards may

25 specify differing levels of standards from which governmental

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1 agencies of this state may choose in implementing the most

2 appropriate standard for a particular application.

3   Section 20.   SEVERABILITY CLAUSE.--If any provision of

4 the Uniform Electronic Transactions Act or its application to

5 any person or circumstance is held invalid, the invalidity

6 does not affect other provisions or applications of the act

7 which can be given effect without the invalid provision or

8 application, and to this end the provisions of the act are

9 severable.

10   Section 21.   EFFECTIVE DATE.--The effective date of the

11 provisions of this act is July 1, 2001.

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