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FISCAL IMPACT REPORT

SPONSOR: Park DATE TYPED: 03/01/01 HB 232/aHJC
 SHORT TITLE: Uniform Electronic Transactions Act SB _____
 ANALYST: Carrillo

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		NFI			

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to HB66, Amend Electronic Authentication of Documents; HB88, Amend Procurement Code

SOURCES OF INFORMATION

State Auditor’s Office
 New Mexico State Highway and Transportation Department
 New Mexico Environment Department
 Attorney General’s Office
 Information Technology Management Office

Synopsis of HJC Amendment

House Judiciary Committee amendment to House Bill 232 adds the word “telephonic” to the definition of electronic.

The remainder of the FIR is unchanged.

Synopsis of Original Bill

House Bill 232 proposes to enact the Uniform Electronic Transactions Act (UETA) and establishes standards for the use of electronic records and electronic signatures in transactions.

Significant Issues

According to the New Mexico Environment Department (NMED) staff, in order to allow for intrastate, interstate and international e-commerce transactions, the National Conference of Commissioners on Uniform State Laws (NCCUSL) recommended that all states enact model legislation. House Bill 232 mirrors the model legislation approved by the NCCUSL. Similar legislation has been adopted by Arizona, California, Delaware, Florida, Hawaii, Idaho, Indiana, Iowa,

Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Nebraska, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Utah, and Virginia.

The Information Technology Management Office (ITMO) staff adds the proposed legislation outlines the conduct for secure electronic transactions, contracts and signatures. The bill provides full legal recognition to the transactions and allows for electronic notary. Finally, the UETA eliminates the requirement for a document to be in hard copy (paper form) with a written signature, except in specified cases.

ITMO staff indicates the UETA will apply to any transaction between parties who have agreed to deal electronically unless the law governing it is specifically excluded. UETA is designed to interact with current laws which otherwise govern procurement and record-retention. HB 232 provides that a contract may be formed by the interaction of electronic agents or with individuals.

HB 232 addresses the issue of an individual taking an action in error (i.e., clicking a button on an Internet page, which indicates agreement to a transaction). A party may void a transaction provided the party give prompt notice of the error (to the party that may have believed a transaction had occurred) and has not used or received the benefit of the transaction, and complies with any instructions for return or destruction of the consideration received.

OTHER SUBSTANTIVE ISSUES

The ITMO staff suggests the following amendments.

Consent provisions and consumer notice exemptions. This act does not modify, limit, or supersede section 101(c), (d), or (e) of the federal Electronic Signatures in global and National Commerce Act.

Consumer notice rights. When a consumer is required to provide notice to exercise or preserve that right in the same manner in which the consumer was provided with notice of that right.

Hand delivery in face-to-face transactions. When the parties to a transaction in which one of the parties is a consumer are both physically present in the same location, or one party is present along with the agent of another, any contract, policy notice, disclosure or other document provided at that time which is provided in a form other than orally must also be provided in the same medium, other than orally, in which sales materials are provided. This section does not prevent the additional delivery of the same documents by other means.

Transferable records involving consumers. Notwithstanding the provisions of the Uniform Electronic Transactions Act, the following rules apply to transferable records of transactions involving consumers:

If payment is made to a person that the system indicates is in control of a transferable record, the obligor is discharged to the extent of the payment.

A transferable record remains subject to the defenses of alteration and unauthorized signature whether or not those defenses are apparent on the face of the record.

A record does not qualify as a transferable record if a system is unable to reliably establish the person entitled to enforce the record or the system permits the creation of multiple copies that appear to be authoritative copies.

A consumer is entitled, on request and without charge, to a printed or printable copy of a transferable record at any time.

Document retention and integrity requirements preserved.

If a statute, regulation, or other rule of law requires that a contract or other record be retained, that requirement is met by retaining an electronic record of the information in the contract or other record that:

Accurately reflects the information set forth in the contract or other record; and

Remains accessible to all persons who are entitled to access by statute, regulation, or rule of law, for the period required by such statute, regulation, or rule of law, in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise.

Notwithstanding subsection (a), if a statute, regulation, or the rule of law requires that a contract or other record be in writing, the legal effect, validity, or enforceability of an electronic record of such contract or other record may be denied if such electronic record is not in a form that is capable of being retained and accurately reproduced for later reference by all parties or persons who are entitled to retain the contract or other record.

Place of electronic contracting is the consumer's residence. A transaction entered into by a consumer electronically is entered into at the individual's place of residence.

Consumer contracts. In consumer transactions, the rules and requirements set out in UETA may not be changed by agreement of the parties.

Time frames triggered by legally required notices. Any time period for action by or rights to a consumer which is triggered by the sending or receipt of a notice is triggered by an electronic notice no earlier than the earliest of these dates: the date the consumer opens the notice, the date the consumer acknowledges electronic receipt of the notice; or the date on which the technology by which the notice is sent provides confirmation that the notice has been received and opened by the consumer.

Determination of receipt of a consumer transaction. An electronic record sent in a transaction with a consumer is not sent to or received by a consumer until it is received by the intended recipient in a manner which can be opened, read, stored and printed by that recipient.