



House of Representatives

General Assembly

File No. 15

January Session, 2001

Substitute House Bill No. 5925

House of Representatives, February 28, 2001

The Committee on Government Administration and Elections reported through REP. KNOPP of the 137th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE CONNECTICUT UNIFORM ELECTRONIC TRANSACTIONS ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) Sections 1 to 22, inclusive, of this act shall be
2 known and may be cited as the Connecticut Uniform Electronic
3 Transactions Act.

4 Sec. 2. (NEW) As used in sections 1 to 22, inclusive, of this act:

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

9 (2) "Automated transaction" means a transaction conducted or
10 performed, in whole or in part, by electronic means or electronic
11 records, in which the acts or records of one or both parties are not

12 reviewed by an individual in the ordinary course in forming a
13 contract, performing under an existing contract or fulfilling an
14 obligation required by the transaction.

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

18 (4) "Contract" means the total legal obligation resulting from the
19 parties' agreement as affected by sections 1 to 22, inclusive, of this act
20 and other applicable law.

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

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

28 (7) "Electronic record" means a record created, generated, sent,
29 communicated, received or stored by electronic means. Examples of
30 such electronic records include, without limitation, facsimiles,
31 electronic mail, telexes and Internet messaging.

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

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

39 (10) "Information" means data, text, images, sounds, codes,

40 computer programs, software, databases or the like.

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

44 (12) "Person" has the same meaning as "person", as defined in
45 subsection (k) of section 1-1 of the general statutes.

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

49 (14) "Security procedure" means a procedure employed for the
50 purpose of verifying that an electronic signature, record or
51 performance is that of a specific person or for detecting changes or
52 errors in the information in an electronic record. The term includes a
53 procedure that requires the use of algorithms or other codes,
54 identifying words or numbers, encryption, or callback or other
55 acknowledgment procedures.

56 (15) "State" means a state of the United States, the District of
57 Columbia, Puerto Rico, the United States Virgin Islands, or any
58 territory or insular possession subject to the jurisdiction of the United
59 States. The term includes an Indian tribe or band, or Alaskan native
60 village, which is recognized by federal law or formally acknowledged
61 by a state.

62 (16) "Transaction" means an action or set of actions occurring
63 between two or more persons relating to the conduct of business,
64 consumer, commercial, charitable or governmental affairs.

65 Sec. 3. (NEW) (a) Except as otherwise provided in subsection (b) or
66 (c) of this section, sections 1 to 22, inclusive, of this act apply to
67 electronic records and electronic signatures relating to a transaction.

68 (b) Sections 1 to 22, inclusive, of this act do not apply to a
69 transaction to the extent it is governed by:

70 (1) A law governing the creation and execution of wills, codicils or
71 testamentary trusts;

72 (2) Except to the extent provided in section 16 of this act, the
73 Uniform Commercial Code, other than Sections 1-107 and 1-206, and
74 Article 2;

75 (3) Sections 47-10, 47-12, 47-12a, 47-14g, 47-14j, 47-14k, 47-15, 47-16,
76 47-17, 47-18a and 47-19 of the general statutes;

77 (c) Sections 1 to 22, inclusive, of this act do not apply to any of the
78 following:

79 (1) Rules of court practice and procedure under the Connecticut
80 Practice Book;

81 (2) Any notice of:

82 (A) The cancellation or termination of utility services, including
83 water, heat, gas, cable, oil, telephone and electric power;

84 (B) Default, acceleration, repossession, foreclosure or eviction, or
85 the right to cure, under a credit agreement secured by, or a rental
86 agreement for, a primary residence of an individual;

87 (C) The cancellation or termination of health insurance or benefits or
88 life insurance benefits, excluding annuities; or

89 (D) Recall of a product, or material failure of a product, that risks
90 endangering health or safety;

91 (3) Any document required to accompany any transportation or
92 handling of hazardous materials, pesticides or other toxic or
93 dangerous materials.

94 (d) Sections 1 to 22, inclusive, of this act apply to an electronic
95 record or electronic signature otherwise excluded from the application
96 of sections 1 to 22, inclusive, of this act under subsection (b) or (c) of
97 this section to the extent it is governed by a law other than those
98 specified in said subsection (b) or (c).

99 (e) A transaction subject to sections 1 to 22, inclusive, of this act is
100 also subject to other applicable substantive law.

101 Sec. 4. (NEW) Sections 1 to 22, inclusive, of this act apply to any
102 electronic record or electronic signature created, generated, sent,
103 communicated, received or stored on or after the effective date of this
104 act.

105 Sec. 5. (NEW) (a) Sections 1 to 22, inclusive, of this act do not require
106 a record or signature to be created, generated, sent, communicated,
107 received, stored or otherwise processed or used by electronic means or
108 in electronic form.

109 (b) Sections 1 to 22, inclusive, of this act apply only to transactions
110 between parties each of which has agreed to conduct transactions by
111 electronic means. Whether the parties agree to conduct a transaction
112 by electronic means is determined from the context and surrounding
113 circumstances, including the parties' conduct.

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

117 (d) Except as otherwise provided in sections 1 to 22, inclusive, of
118 this act, the effect of any of its provisions may be varied by agreement.
119 The presence in certain provisions of sections 1 to 22, inclusive, of this
120 act of the words "unless otherwise agreed", or words of similar import,
121 does not imply that the effect of other provisions may not be varied by
122 agreement.

123 (e) Whether an electronic record or electronic signature has legal
124 consequences is determined by sections 1 to 22, inclusive, of this act
125 and other applicable law.

126 Sec. 6. (NEW) Sections 1 to 22, inclusive, of this act shall be
127 construed and applied:

128 (1) To facilitate electronic transactions consistent with other
129 applicable law;

130 (2) To be consistent with reasonable practices concerning electronic
131 transactions and with the continued expansion of those practices; and

132 (3) To effectuate their general purpose to make uniform the law
133 with respect to the subject of sections 1 to 22, inclusive, of this act
134 among states enacting it.

135 Sec. 7. (NEW) (a) A record or signature may not be denied legal
136 effect or enforceability solely because it is in electronic form.

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

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

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

143 Sec. 8. (NEW) (a) If parties have agreed to conduct a transaction by
144 electronic means and a law requires a person to provide, send or
145 deliver information in writing to another person, the requirement is
146 satisfied if the information is provided, sent or delivered, as the case
147 may be, in an electronic record capable of retention by the recipient at
148 the time of receipt. An electronic record is not capable of retention by
149 the recipient if the sender or its information processing system inhibits

150 the ability of the recipient to print or store the electronic record.

151 (b) If a law other than sections 1 to 22, inclusive, of this act requires
152 a record (1) to be posted or displayed in a certain manner, (2) to be
153 sent, communicated or transmitted by a specified method, or (3) to
154 contain information that is formatted in a certain manner, the
155 following rules apply:

156 (A) The record shall be posted or displayed in the manner specified
157 in the other law.

158 (B) Except as otherwise provided in subdivision (2) of subsection (d)
159 of this section, the record shall be sent, communicated or transmitted
160 by the method specified in the other law.

161 (C) The record shall contain the information formatted in the
162 manner specified in the other law.

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

166 (d) The requirements of this section may not be varied by
167 agreement, except that:

168 (1) To the extent a law other than sections 1 to 22, inclusive, of this
169 act requires information to be provided, sent or delivered in writing
170 but permits said requirement to be varied by agreement, the
171 requirement under subsection (a) of this section that the information
172 be in the form of an electronic record capable of retention may also be
173 varied by agreement; and

174 (2) A requirement under a law other than sections 1 to 22, inclusive,
175 of this act to send, communicate or transmit a record by a specified
176 means of delivery may be varied by agreement to the extent permitted
177 by the other law.

178 Sec. 9. (NEW) (a) An electronic record or electronic signature is
179 attributable to a person if it was the act of the person. The act of the
180 person may be shown in any manner, including a showing of the
181 efficacy of any security procedure applied to determine the person to
182 which the electronic record or electronic signature was attributable.

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

188 Sec. 10. (NEW) If a change or error in an electronic record occurs in
189 a transmission between parties to a transaction, the following rules
190 apply:

191 (1) If the parties have agreed to use a security procedure to detect
192 changes or errors and one party has conformed to the procedure, but
193 the other party has not, and the nonconforming party would have
194 detected the change or error had that party also conformed, the
195 conforming party may avoid the effect of the changed or erroneous
196 electronic record.

197 (2) In an automated transaction involving an individual, the
198 individual may avoid the effect of an electronic record that resulted
199 from an error made by the individual in dealing with the electronic
200 agent of another person if the electronic agent did not provide an
201 opportunity for the prevention or correction of the error and, at the
202 time the individual learns of the error, the individual:

203 (A) Promptly notifies the other person of the error and that the
204 individual did not intend to be bound by the electronic record received
205 by the other person;

206 (B) Takes reasonable steps, including steps that conform to the other

207 person's reasonable instructions, to return to the other person or, if
208 instructed by the other person, to destroy the consideration received, if
209 any, as a result of the erroneous electronic record; and

210 (C) Has not used or received any benefit or value from the
211 consideration, if any, received from the other person.

212 (3) If neither subdivision (1) nor (2) of this section applies, the
213 change or error shall have the effect provided by other law, including
214 the law of mistake, and the parties' contract, if any.

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

217 Sec. 11. (NEW) If a law requires a signature or record to be
218 notarized, acknowledged, verified or made under oath, the
219 requirement is satisfied if the electronic signature of the person
220 authorized to perform said acts, together with all other information
221 required to be included by other applicable law, is attached to or
222 logically associated with the signature or record.

223 Sec. 12. (NEW) (a) If a law requires that a record be retained, the
224 requirement is satisfied by retaining an electronic record of the
225 information in the record which:

226 (1) Accurately reflects the information set forth in the record after it
227 was first generated in its final form as an electronic record or
228 otherwise; and

229 (2) Remains accessible for later reference.

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

233 (c) A person may satisfy subsection (a) of this section by using the

234 services of another person if the requirements of that subsection are
235 satisfied.

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

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

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

249 (g) This section does not preclude a governmental agency in this
250 state from specifying additional requirements for the retention of a
251 record subject to the agency's jurisdiction.

252 Sec. 13. (NEW) In a proceeding, evidence of a record or signature
253 may not be excluded solely because it is in electronic form.

254 Sec. 14. (NEW) In an automated transaction, the following rules
255 apply:

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

259 (2) A contract may be formed by the interaction of an electronic
260 agent and an individual, acting on the individual's own behalf or for
261 another person, including by an interaction in which the individual

262 performs actions that the individual is free to refuse to perform and
263 which the individual knows or has reason to know will cause the
264 electronic agent to complete the transaction or performance.

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

267 Sec. 15. (NEW) (a) Unless otherwise agreed between the sender and
268 the recipient, an electronic record is sent when it:

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

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

275 (3) Enters an information processing system outside the control of
276 the sender or of a person that sent the electronic record on behalf of the
277 sender or enters a region of the information processing system
278 designated or used by the recipient which is under the control of the
279 recipient.

280 (b) Unless otherwise agreed between a sender and the recipient, an
281 electronic record is received when:

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

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

287 (c) Subsection (b) of this section applies even if the place the
288 information processing system is located is different from the place the

289 electronic record is deemed to be received under subsection (d) of this
290 section.

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

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

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

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

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

308 (g) If a person is aware that an electronic record purportedly sent
309 under subsection (a) of this section, or purportedly received under
310 subsection (b) of this section, was not actually sent or received, the
311 legal effect of the sending or receipt is determined by other applicable
312 law. Except to the extent permitted by the other law, the requirements
313 of this subsection may not be varied by agreement.

314 Sec. 16. (NEW) (a) As used in this section, "transferable record"
315 means an electronic record that:

316 (1) Would be a note under Article 3 of the Uniform Commercial

317 Code, or other similar law, or a document under Article 7 of the
318 Uniform Commercial Code, or other similar law, if the electronic
319 record were in writing; and

320 (2) The issuer of the electronic record expressly has agreed is a
321 transferable record.

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

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

329 (1) A single authoritative copy of the transferable record exists
330 which is unique, identifiable, and, except as otherwise provided in
331 subdivisions (4), (5) and (6) of this subsection, unalterable;

332 (2) The authoritative copy identifies the person asserting control as:

333 (A) The person to which the transferable record was issued; or

334 (B) If the authoritative copy indicates that the transferable record
335 has been transferred, the person to which the transferable record was
336 most recently transferred;

337 (3) The authoritative copy is communicated to and maintained by
338 the person asserting control or its designated custodian;

339 (4) Copies or revisions that add or change an identified assignee of
340 the authoritative copy can be made only with the consent of the person
341 asserting control;

342 (5) Each copy of the authoritative copy and any copy of a copy is
343 readily identifiable as a copy that is not the authoritative copy; and

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

346 (d) Except as otherwise agreed, a person having control of a
347 transferable record is the holder, as defined in Section 1-201(20) of the
348 Uniform Commercial Code, or other similar law, of the transferable
349 record and has the same rights and defenses as a holder of an
350 equivalent record or writing under the Uniform Commercial Code, or
351 other similar law, including, if the applicable statutory requirements
352 under Section 3-302(a), 7-501, or 9-308 of the Uniform Commercial
353 Code, or other similar law, are satisfied, the rights and defenses of a
354 holder in due course, a holder to which a negotiable document of title
355 has been duly negotiated, or a purchaser, respectively. Delivery,
356 possession, and endorsement are not required to obtain or exercise any
357 of the rights under this subsection.

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

362 (f) If requested by a person against which enforcement is sought, the
363 person seeking to enforce the transferable record shall provide
364 reasonable proof that the person is in control of the transferable record.
365 Proof may include access to the authoritative copy of the transferable
366 record and related business records sufficient to review the terms of
367 the transferable record and to establish the identity of the person
368 having control of the transferable record.

369 Sec. 17. (NEW) Each governmental agency in this state shall
370 determine whether, and the extent to which, it will create and retain
371 electronic records and convert written records to electronic records.

372 Sec. 18. (NEW) (a) Except as otherwise provided in subsection (f) of
373 section 12 of this act, each governmental agency in this state shall

374 determine whether, and the extent to which, it will send and accept
375 electronic records and electronic signatures to and from other persons
376 and otherwise create, generate, communicate, store, process, use and
377 rely upon electronic records and electronic signatures.

378 (b) To the extent that a state of Connecticut executive branch
379 governmental agency uses electronic records and electronic signatures
380 under subsection (a) of this section, the Department of Information
381 Technology, giving due consideration to security, may adopt
382 regulations, in accordance with the provisions of chapter 54,
383 specifying:

384 (1) The manner and format in which the electronic records shall be
385 created, generated, sent, communicated, received, and stored and the
386 systems established for those purposes;

387 (2) If electronic records shall be signed by electronic means, the type
388 of electronic signature required, the manner and format in which the
389 electronic signature shall be affixed to the electronic record, and the
390 identity of, or criteria that shall be met by, any third party used by a
391 person filing a document to facilitate the process;

392 (3) Control processes and procedures as appropriate to ensure
393 adequate preservation, disposition, integrity, security, confidentiality
394 and auditability of electronic records; and

395 (4) Any other required attributes for electronic records which are
396 specified for corresponding nonelectronic records or reasonably
397 necessary under the circumstances.

398 (c) The regulations which the Department of Information
399 Technology may adopt pursuant to subsection (b) of this section may
400 encourage and promote consistency and interoperability with similar
401 requirements adopted by governmental agencies of other states and
402 the federal government and nongovernmental persons interacting with

403 governmental agencies of this state. If appropriate, said regulations
404 may specify differing levels of standards from which governmental
405 agencies of this state may choose in implementing the most
406 appropriate standard for a particular application.

407 (d) The regulations which the Department of Information
408 Technology may adopt pursuant to subsection (b) of this section shall
409 not apply to the office of the State Treasurer, State Comptroller,
410 Secretary of the State or Attorney General. Each said office may adopt
411 regulations, in accordance with the provisions of chapter 54 of the
412 general statutes, to carry out the purposes of the regulations adopted
413 pursuant to said subsection (b) with regard to said office.

414 (e) Except as otherwise provided in subsection (f) of section 12 of
415 this act, sections 1 to 22, inclusive, of this act do not require a
416 governmental agency in this state to use or permit the use of electronic
417 records or electronic signatures.

418 Sec. 19. (NEW) (a) For purposes of this section and section 20 of this
419 act, "consumer" means an individual who obtains, through a
420 transaction, products or services that are used primarily for personal,
421 family or household purposes, and also means the legal representative
422 of such an individual.

423 (b) Notwithstanding the provisions of section 7 of this act, if a
424 statute, regulation, or other rule of law requires that information
425 relating to a transaction or transactions be provided or made available
426 to a consumer in writing, the use of an electronic record to provide or
427 make available, whichever is required, such information satisfies the
428 requirement that such information be in writing if the requirements of
429 subdivisions (1) to (6), inclusive, of subsection (c) of section 101 of the
430 Electronic Signatures in Global and National Commerce Act, P.L. 106-
431 226, 114 Stat. 464 (2000), as amended, are met. This section may not be
432 varied by agreement.

433 Sec. 20. (NEW) (a) When a consumer is required to provide notice to
434 exercise or preserve the consumer's rights under any law, the
435 consumer may exercise or preserve that right in the same manner in
436 which the consumer was provided with notice of that right.

437 (b) Notwithstanding the provisions of section 15 of this act, in a
438 consumer transaction, an electronic record is not sent to or received by
439 the consumer if the sender is aware that the consumer did not actually
440 receive the electronic record or did not actually receive the electronic
441 record in a manner allowing the record to be opened and read by the
442 consumer.

443 (c) A transaction entered into by a consumer electronically is
444 entered into at the consumer's place of residence.

445 (d) The provisions of this section may not be waived or varied by
446 agreement.

447 Sec. 21. (NEW) If any provision of sections 1 to 22, inclusive, of this
448 act or its application to any person or circumstance is held invalid or
449 inconsistent with the Electronic Signatures in Global and National
450 Commerce Act, P.L. 106-229, 114 Stat. 464 (2000), the invalidity or
451 inconsistency does not affect other provisions or applications of
452 sections 1 to 22, inclusive, of this act which can be given effect without
453 the invalid or inconsistent provision or application, and to this end the
454 provisions of sections 1 to 22, inclusive, of this act are severable.

455 Sec. 22. (NEW) The provisions of sections 1 to 22, inclusive, of this
456 act governing the legal effect, validity, or enforceability of electronic
457 records or signatures, and of contracts formed or performed with the
458 use of such records or signatures conform to the requirements of
459 Section 102 of the Electronic Signatures in Global and National
460 Commerce Act, P.L. 106-229, 114 Stat. 464 (2000), and supersede,
461 modify and limit said federal act as provided in said Section 102.

462 Sec. 23. Sections 1-260 to 1-265, inclusive, of the general statutes are
463 repealed.

Statement of Legislative Commissioners:

References to "sections 1 to 22, inclusive," were inserted throughout the act for statutory consistency; in section 3 (a), "or (c)" was inserted for statutory consistency; in the second sentence of section 18(c), the first reference to "standards" was changed to "regulations" for internal consistency; and in section 22, "as provided in said Section 102" was inserted for clarity.

GAE *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Potential Minimal Cost

Affected Agencies: Various, Department of Information Technology

Municipal Impact: None

Explanation

State and Municipal Impact:

The bill, which establishes a legal foundation for the use of electronic communications in transactions where private parties have agreed to conduct business electronically, has no fiscal impact on the state. The bill permits, but does not require federal, state or local governmental agencies to use electronic records or signatures. It is anticipated that state agencies and municipalities would select to use electronic records and signatures only to the extent that existing equipment and staff resources are available to support the use of these electronic communications.

The bill also allows the Department of Information Technology (DOIT) to adopt regulations on the use of electronic records and electronic signatures by the state’s executive branch agencies. (Their regulations would not apply to the State Treasurer, the State Comptroller, the Secretary of the State and the Attorney General.) DOIT has already devoted significant effort by participating in studies

and drafting proposed legislation on uniform electronic transactions, so their potential drafting of regulations would result in a minimal workload increase and in minimal costs that could be absorbed within existing appropriations.

OLR Bill Analysis

sHB 5925

AN ACT CONCERNING THE CONNECTICUT UNIFORM ELECTRONIC TRANSACTIONS ACT.**SUMMARY:**

This bill establishes as state law a version of the Uniform Electronic Transaction Act (UETA), which the National Conference of Commissioners on Uniform State Laws adopted on July 29, 1999. UETA provides uniform rules governing electronic commerce transactions. Currently, 22 states have adopted some version of it.

The bill, referred to as "CUETA," establishes a legal foundation for the use of electronic communications in transactions where the parties have agreed to conduct business electronically. It validates the use of electronic records and signatures and places electronic commerce and paper-based commerce on the same legal footing. An "electronic record" is one created, generated, sent, communicated, received, or stored by electronic means. E-mails, faxes, and Internet messaging are examples of electronic records. "Electronic signatures" are electronic sounds, symbols, or processes that people attach to or logically associate with a record to indicate their signature.

The major difference between UETA and CUETA is that CUETA provides consumer protections that are absent in the uniform law.

The bill supercedes and repeals the electronic records and signature law enacted in 1999.

EFFECTIVE DATE: October 1, 2001

PURPOSE OF CUETA (Sec. 6)

The bill requires that its provisions: (1) be interpreted and applied to

facilitate electronic transactions consistent with other applicable laws, (2) be consistent with reasonable electronic transaction practices and with continued practice expansions, and (3) make electronic transaction laws uniform among the states enacting "it." (The last requirement appears to refer to UETA rather than CUETA since no other state is adopting CUETA).

SCOPE (Secs. 2 through 5)

The bill governs transactions in electronic commerce when parties have agreed to transact business electronically. Parties have a right to refuse to transact business electronically.

Except where it provides otherwise, the bill establishes default rules that apply unless the parties to a transaction provide otherwise.

The bill applies to electronic records and signatures created, generated, sent, communicated, received, or stored on and after October 1, 2001. "Transaction" means an action or set of actions involving two or more people relating to business, consumer, commercial, charitable, or governmental affairs.

Transactions covered under the bill are subject to other applicable substantive law.

The bill does not apply to:

1. wills, codicils, or testamentary trusts if other laws apply;
2. transactions covered by the Uniform Commercial Code (UCC), except the rights of parties after a breach of contract, the statute of frauds, and sales;
3. most land transactions;
4. court practices and procedures in the Connecticut Practice Book;
5. utility termination notices, including water, gas, cable, electric, heat, oil, and telephone services;

6. notice that health or health insurance benefits or life insurance are being cancelled or terminated, other than with respect to annuities;
7. recall notices of products that could endanger health or safety;
8. notice of the material failure of products that could endanger health or safety;
9. notice of eviction, foreclosure, repossession, acceleration, default, or the right to cure, under a rental or credit agreement secured by someone's primary residence; or
10. documents required in transporting or handling hazardous materials, pesticides, or other toxic or dangerous materials.

Determining Scope

The context of the agreement and the surrounding circumstances, including the parties' conduct, are the determining factors when the parties' agreement to conduct a transaction electronically is at issue.

LEGAL RECOGNITION OF ELECTRONIC RECORDS, SIGNATURES, AND CONTRACTS (Secs. 7, 5 (d) and (e), and 13)

The bill:

1. prohibits a record or signature from being denied legal effect or enforceability solely because it is in electronic form,
2. prohibits a contract from being denied legal effect or enforceability solely because an electronic record was used in its formation,
3. specifies that an electronic record satisfies a law that requires a record to be in writing,
4. specifies that an electronic signature satisfies a law that requires a signature, and
5. prohibits electronic records from being denied admissibility into evidence solely because they are electronic.

The bill and other applicable law determine whether an electronic record or signature has legal consequences. Unless the bill states otherwise, parties to a transaction may vary the effect of its provisions.

PROVIDING ELECTRONIC INFORMATION (Sec. 8)

The bill establishes standards for determining whether information provided in an electronic record is equivalent to information provided in writing. These standards may not be varied by agreement.

A law that requires information to be provided, sent, or delivered in writing to another person is satisfied if it is provided, sent, or delivered in an electronic record that the recipient can retain upon receipt. If the sender or the electronic system he uses to send it inhibits the recipient's ability to print or store an electronic record, it is not considered retained under the bill.

If the law specifies the manner in which a record must be posted, displayed, sent, communicated, transmitted, or formatted, the law governs and the information cannot be presented electronically unless the law permits a waiver.

SECURITY PROCEDURES (Sec. 9)

An electronic record or signature is attributable to the person who created it. Creation may be proven in any manner, including a showing of the efficacy of a security procedure. "Security procedure" means a procedure employed to verify that an electronic signature, record, or performance is that of a specific person or to detect changes or errors in the electronic record formation.

The legal effect of the attribution is determined from the context and surrounding circumstances at the time the record or signature was created, executed, or adopted, including the parties' agreement and any other applicable law.

ERRORS AND CHANGES (Sec. 10)

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

1. A person may avoid a transaction caused by an inadvertent error if, upon learning of the error, he gives prompt notice of it, does not use or receive a benefit from the transaction, and complies with any instructions for returning or destroying any received consideration.
2. If the parties agreed to use a security procedure to detect changes or errors and only one party conforms, the conforming party may avoid the effect of any error or change if the nonconforming party would have detected it had he conformed.
3. In all other instances the change or error has the effect provided by law, including the law of mistake and the parties' contract.

The rules on error and change cannot be varied by agreement.

NOTORIZATION AND ACKNOWLEDGEMENT (Sec. 11)

The bill permits a notary and other officers authorized to acknowledge, verify, or take a statement made under oath to act electronically, effectively removing requirements for a stamp or a seal. The notary's or officer's electronic signature, together with all other information required by law, must be attached or logically associated with the electronic record.

RETAINING ELECTRONIC RECORDS (Sec. 12)

The bill validates electronic records as originals when the law requires retention of the original. Specifically, an electronic record that accurately reproduces information required by law and that is accessible at a later time satisfies legal requirements for a record to be retained, unless a law passed after October 1, 2001 prohibits the use of an electronic record. An electronic record of a check is valid only if the information on the front and back of the check are recorded. The bill does not preclude a federal, state or local governmental agency located in Connecticut from imposing additional retention requirements.

A third party may be used to retain records.

AUTOMATED TRANSACTIONS (Sec. 14)

The bill allows two or more electronic agents to form a contract even if no individual is aware of or reviews the agents' actions or the resulting terms and agreements. In such contracts, the principal is bound by the contract his agent makes. Contracts can also be formed when individuals perform acts with electronic agents that they know will cause the agent to complete a transaction or performance. For example, articles purchased from a website by a click of a button obligates the person who clicked the button to purchase the product if he knew that his actions would complete the sale. Applicable law determines the contract's terms.

TIME AND PLACE OF SENDING AND RECEIPT (Sec. 15)

The bill establishes default rules regarding when and from where an electronic record is sent and received. It does not address what happens when a record is unintelligible or unusable by a recipient. The effectiveness of an illegible record and whether it binds any party are left to other law.

Unless otherwise agreed, an electronic record is sent when it:

1. is properly addressed or otherwise properly directed to an information processing system: (a) that the recipient has designated or uses to receive electronic records of the type sent, and (b) where the recipient can retrieve the electronic record,
2. is in a form that the system can process, and
3. enters a system outside of the sender's control or enters a region of the system the recipient controls and designates or uses.

Unless otherwise agreed, an electronic record is received when:

1. it enters a system the recipient has designated or uses to receive electronic records of the type sent and from which he can retrieve the record, and

2. it is in a form capable of being processed by that system.

The record is received even if no one is aware of its arrival. An acknowledgement of receipt sent by an information processing system establishes that a record was received but, by itself, does not establish that the contents sent correspond to those received.

Unless otherwise expressly provided, an electronic record is deemed sent from and received at the parties' place of business. If they have more than one place of business, the business with the closest relationship to the transaction is considered as the place of business. If the parties do not have a place of business, their residence substitutes as the place of business. A record is received even if the information processing center that received it is not located at the recipient's place of business.

TRANSFERABLE RECORDS (Sec. 16)

The bill allows for the creation of a system for transferring negotiable instruments and documents in electronic form in the same way that their paper equivalents are transferred.

The provision is limited to notes and documents that: (1) are recognized as negotiable instruments and documents under the UCC or other similar law if the notes and documents were in writing and (2) the issuer has expressly agreed are transferable records.

The bill considers a person to have control of a transferable record in electronic form (to be the holder) if a system reliably establishes his ownership. The holder has the same rights and defenses as a holder of a note or document under the UCC or other similar law, including those of a holder in due course where applicable.

A system establishes that a person is the holder if the record was created, stored, and assigned so that:

1. a single, unique, identifiable, authoritative copy exists;
2. the copy identifies the person asserting control as the person to whom the record was issued or the most recent transferee;

3. the copy is communicated to and maintained by the person asserting control or his custodian;
4. the person asserting control must consent to copies or revisions that add or change the name of an identified assignee;
5. copies of the authoritative copy are readily identifiable; and
6. revisions to the authoritative copy are readily identifiable as authorized or unauthorized.

The bill requires the holder to provide reasonable proof that he is in control of the transferable record if the obligor (person who must honor it) requests it. The proof may include access to the authoritative copy of the record and related business records that show the record's terms and that establish the identity of the person asserting control. Unless otherwise agreed, an obligor has the same rights and defenses as an equivalent obligor for equivalent records or writings under the UCC or other similar law.

CONSUMER PROTECTIONS (Secs. 19 and 20)

The bill protects consumers by providing that:

1. they can exercise or preserve their legal rights in the same manner that they were notified of such rights;
2. in a consumer transaction, an electronic record is not sent to or received by a consumer if the sender knows that the consumer did not actually receive it or that he received it but could not open or read it;
3. consumer electronic transactions are entered into at the consumer's place of residence, meaning any legal action pertaining to the transaction involving a Connecticut consumer could be brought in Connecticut unless a contract provides otherwise; and
4. information required by law to be provided or made available to a consumer in writing can be satisfied by an electronic record that

conveys the information only if the requirements of the federal Electronic Signatures in Global and National Commerce Act's (E-SIGN) provisions on consumer disclosures are met.

The bill prohibits parties to a consumer transaction from varying the requirement to comply with federal law by agreement. It also prohibits these consumer protections from being waived or varied by agreement. "Consumer" has the same meaning as it does under E-SIGN (i.e., a person who transacts to get personal, family, or household products or services or his legal representative).

GOVERNMENT RECORDS (Secs. 17 and 18)

The bill does not require a federal, state, or local government agency or entity located in Connecticut to use or permit the use of electronic records or signatures. But if such agency decides to use or allow them, it must determine whether, and to what extent, it will: (1) create and retain electronic records, (2) convert written records to electronic records, (3) send and accept electronic records and signatures, and (4) communicate and use and rely upon electronic records and signatures (see COMMENT). A law passed after October 1, 2001 that prohibits the use of electronic records for evidentiary, audit, or like purposes will prevent a governmental agency from retaining them in electronic form.

If a state executive branch governmental agency uses electronic records and signatures, the bill authorizes the Department of Information Technology (DOIT), after considering security, to adopt regulations specifying:

1. how the electronic records will be created, generated, sent, communicated, received, and stored and the systems established for this purpose;
2. acceptable types of electronic signatures, the manner and format for affixing the signature to the record, how to identify any third party assisting someone file an electronic record, and any criteria the third party must meet;
3. how the records will be preserved, disposed of, and secured and

how their integrity, confidentiality and auditability will be maintained; and

4. any other requirements concerning non-electronic records that are applicable to electronic records.

Regulations

DOIT's regulations regarding electronic records may encourage and promote consistency and interoperability with similar regulatory requirements adopted by other states, the federal government, and nongovernmental entities and people interacting with state agencies.

The regulations may allow state agencies to choose, from differing standard levels, the most appropriate for a particular application.

DOIT's regulations do not apply to the offices of the state treasurer, comptroller, attorney general, or the secretary of the state. These offices may each adopt regulations to carry out the purposes of the regulations adopted by DOIT as they pertain to each office.

SEVERABILITY (Sec. 21)

The bill includes a severability clause, which allows each of its provisions to be given legal effect irrespective of other provisions. If any of its provisions are held invalid or inconsistent with E-SIGN, the invalidity or inconsistency does not alter the affect of its other provisions.

E-SIGN AS IT RELATES TO CUETA (Sec. 22)

The bill states that its provisions on the effectiveness, validity, and enforceability of electronic records and signatures and related contracts conform to the requirements of E-SIGN, which allows states to supercede, modify, or limit its electronic contracting provisions (see BACKGROUND).

BACKGROUND

States That Have Adopted UETA

Arizona, California, Delaware, Florida, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Minnesota, Nebraska, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Utah, and Virginia have all adopted UETA in some form.

National Conference of Commissioners on Uniform State Laws

NCCUSL is a non-profit unincorporated association, comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Each jurisdiction determines the method of appointment and the number of commissioners appointed. Most jurisdictions provide for their commission by statute. NCCUSL promotes the passage of uniform state laws.

Electronic Records and Signatures Act of 1999 Repealed by the Bill

This act permits state agencies to electronically create, use, distribute, and maintain governmental records, other than wills, codicils, and land conveyances. It also permits them to: (1) receive electronic records, and (2) allow these records to be signed with an electronic signature. An "electronic signature" means a signature in electronic form attached to or logically associated with an electronic record.

It permits the DOIT's chief information officer, in consultation with the Office of Policy and Management secretary, to adopt regulations applicable to all executive branch state agencies on the creation, use, distribution, and maintenance of electronic records.

The executive-branch regulations adopted by the chief information officer do not apply to offices of the state treasurer, comptroller, secretary of the state, and attorney general. These offices may adopt their own regulations. Additionally, all state agencies may adopt regulations regarding electronic records that: (1) address the adopting agency's needs and circumstances, (2) carry out the purpose of the executive-branch regulations adopted by the chief information officer, and (3) are consistent with the executive-branch regulations.

E-SIGN

Congress passed and the president approved it on June 30, 2000. It

became effective on October 1, 2000. Like CUETA, E-SIGN validates the use of electronic records and signatures. While the two overlap significantly, they are not identical. For example, E-SIGN applies only to interstate transactions, not intrastate transactions.

Where E-SIGN and any state law address the same aspects of interstate and foreign commerce, Section 102 of E-SIGN states that federal law preempts state law. However, E-SIGN has a reverse preemption provision that allows states to modify, limit, or supersede its electronic contracting provisions when a state adopts:

1. UETA; or
2. alternative procedures or requirements for the use or acceptance of electronic records or electronic signatures, if the alternative procedures or requirements: (a) are consistent with the federal act, (b) do not require or accord greater legal status or effect to a specific technology, or (c) make specific reference to the federal act (Pub. Law 106-229, 114 Stat. 464 (2000), codified at 15 USC Secs. 7001 to 7006, 7021, and 7031).

Holder

A “holder” is a person who has legal possession of a negotiable instrument or document.

Holder in Due Course

A “holder in due course” is a person who, in good faith, gave value for a negotiable instrument or document without notice that it was overdue or had been dishonored or that there were any defenses or claims to it. The holder in due course takes the instrument or document free of all claims and personal defenses.

COMMENT

State Authority to Direct Actions of Federal Agencies

Sections 17 and 18 of the bill, which require federal agencies to take certain actions regarding the use or permitted use of electronic records and signatures, appear to usurp congressional powers in violation of Article First of the U.S. Constitution.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 17 Nay 0