



## Senate

General Assembly

**File No. 423**

February Session, 2002

Substitute Senate Bill No. 561

*Senate, April 10, 2002*

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, 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) (*Effective October 1, 2002*) Sections 1 to 21,  
2 inclusive, of this act shall be known and may be cited as the  
3 Connecticut Uniform Electronic Transactions Act.

4 Sec. 2. (NEW) (*Effective October 1, 2002*) As used in sections 1 to 21,  
5 inclusive, of this act:

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

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

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

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

19 (4) "Contract" means the total legal obligation resulting from the  
20 parties' agreement as affected by sections 1 to 21, inclusive, of this act  
21 and other applicable law.

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

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

29 (7) "Electronic record" means a record created, generated, sent,  
30 communicated, received or stored by electronic means, including, but  
31 not limited to, facsimiles, electronic mail, telexes and Internet  
32 messaging.

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

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

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

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

45 (12) "Person" has the same meaning as provided in subsection (k) of  
46 section 1-1 of the general statutes.

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

50 (14) "Security procedure" means a procedure employed for the  
51 purpose of verifying that an electronic signature, record or  
52 performance is that of a specific person or for detecting changes or  
53 errors in the information in an electronic record, including a procedure  
54 that requires the use of algorithms or other codes, identifying words or  
55 numbers, encryption or callback or other 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, including an Indian tribe or band, or an Alaskan native village,  
60 that is recognized by federal law or formally acknowledged by a state.

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

64 Sec. 3. (NEW) (*Effective October 1, 2002*) (a) Except as otherwise  
65 provided in subsection (b) or (c) of this section, sections 1 to 21,  
66 inclusive, of this act apply to electronic records and electronic  
67 signatures relating to a transaction.

68 (b) Sections 1 to 21, 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 42a-1-107 and 42a-1-  
74 206 of the general statutes, and article 2 of title 42a of the general  
75 statutes; or

76 (3) Sections 47-10, 47-12, 47-12a, 47-14g, 47-14j, 47-14k, 47-15, 47-16,  
77 47-17, 47-18a and 47-19 of the general statutes.

78 (c) (1) Sections 1 to 21, inclusive, of this act apply to a transaction  
79 governed by the Electronic Signatures in Global and National  
80 Commerce Act, 15 USC 7001 et seq., but are not intended to limit,  
81 modify or supersede the provisions of 15 USC 7001(c); and

82 (2) Unless a notice is subject to the Electronic Signatures in Global  
83 and National Commerce Act, 15 USC 7003, sections 1 to 21, inclusive,  
84 of this act do not apply to a notice to the extent that it is governed by a  
85 law requiring the furnishing of:

86 (A) Notice of the cancellation or termination of utility services,  
87 including water, heat, gas, cable television or other services, oil,  
88 telephone and electric power;

89 (B) Notice of default, acceleration, repossession, foreclosure or  
90 eviction, or the right to cure, under a credit agreement secured by, or a  
91 rental agreement for, a primary residence of an individual;

92 (C) Notice of the cancellation or termination of health insurance or  
93 benefits or life insurance benefits, excluding annuities;

94 (D) Notice of the recall of a product, or the material failure of a  
95 product, that risks endangering health or safety; or

96 (E) Any document required to accompany any transportation or  
97 handling of hazardous materials, pesticides or other toxic or  
98 dangerous materials.

99 (d) Sections 1 to 21, inclusive, of this act do not apply to any of the  
100 rules of court practice and procedure under the Connecticut Practice

101 Book.

102 (e) Sections 1 to 21, inclusive, of this act apply to an electronic record  
103 or electronic signature otherwise excluded from the application of  
104 sections 1 to 21, inclusive, of this act under subsection (b), (c) or (d) of  
105 this section to the extent that the electronic record or electronic  
106 signature is governed by a law other than those specified in subsection  
107 (b), (c) or (d) of this section.

108 (f) A transaction subject to sections 1 to 21, inclusive, of this act is  
109 also subject to other applicable substantive law.

110 Sec. 4. (NEW) (*Effective October 1, 2002*) Sections 1 to 21, inclusive, of  
111 this act apply to any electronic record or electronic signature created,  
112 generated, sent, communicated, received or stored on or after the  
113 effective date of sections 1 to 21, inclusive, of this act.

114 Sec. 5. (NEW) (*Effective October 1, 2002*) (a) Sections 1 to 21, inclusive,  
115 of this act do not require a record or signature to be created, generated,  
116 sent, communicated, received, stored or otherwise processed or used  
117 by electronic means or in electronic form.

118 (b) Sections 1 to 21, inclusive, of this act apply only to transactions  
119 between parties each of which has agreed to conduct transactions by  
120 electronic means. Whether the parties agree to conduct a transaction  
121 by electronic means is determined from the context of the transaction  
122 and surrounding circumstances, including the parties' conduct.

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

126 (d) Except as otherwise provided in sections 1 to 21, inclusive, of  
127 this act, the effect of any provision of sections 1 to 21, inclusive, of this  
128 act may be varied by agreement. The presence in certain provisions of  
129 sections 1 to 21, inclusive, of this act of the words "unless otherwise  
130 agreed", or words of similar import, does not imply that the effect of  
131 other provisions may not be varied by agreement.

132 (e) Whether an electronic record or electronic signature has legal  
133 consequences is determined by sections 1 to 21, inclusive, of this act  
134 and other applicable law.

135 Sec. 6. (NEW) (*Effective October 1, 2002*) Sections 1 to 21, inclusive, of  
136 this act shall be construed and applied:

137 (1) To facilitate electronic transactions consistent with other  
138 applicable law;

139 (2) To be consistent with reasonable practices concerning electronic  
140 transactions and with the continued expansion of such practices; and

141 (3) To effectuate their general purpose to make uniform the law  
142 with respect to the subject of sections 1 to 21, inclusive, of this act  
143 among states enacting such law.

144 Sec. 7. (NEW) (*Effective October 1, 2002*) (a) A record or signature  
145 may not be denied legal effect or enforceability solely because the  
146 record or signature is in electronic form.

147 (b) A contract may not be denied legal effect or enforceability solely  
148 because an electronic record was used in the formation of the contract.

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

151 (d) If a law requires a signature, an electronic signature satisfies the  
152 law.

153 Sec. 8. (NEW) (*Effective October 1, 2002*) (a) If the parties to a  
154 transaction have agreed to conduct the transaction by electronic means  
155 and a law requires a person to provide, send or deliver information in  
156 writing to another person, the requirement is satisfied if the  
157 information is provided, sent or delivered, as the case may be, in an  
158 electronic record capable of retention by the recipient at the time of  
159 receipt. An electronic record is not capable of retention by the recipient  
160 if the sender or the sender's information processing system inhibits the

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

162 (b) If a law other than sections 1 to 21, inclusive, of this act requires  
163 a record to (1) be posted or displayed in a certain manner, (2) be sent,  
164 communicated or transmitted by a specified method, or (3) contain  
165 information that is formatted in a certain manner, the following rules  
166 apply:

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

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

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

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

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

179 (1) To the extent a law other than sections 1 to 21, inclusive, of this  
180 act requires information to be provided, sent or delivered in writing  
181 but permits such requirement to be varied by agreement, the  
182 requirement under subsection (a) of this section that the information  
183 be in the form of an electronic record capable of retention may also be  
184 varied by agreement; and

185 (2) A requirement under a law other than sections 1 to 21, inclusive,  
186 of this act to send, communicate or transmit a record by a specified  
187 means of delivery may be varied by agreement to the extent permitted  
188 by the other law.

189 Sec. 9. (NEW) (*Effective October 1, 2002*) (a) An electronic record or

190 electronic signature is attributable to a person if it was the act of the  
191 person. The act of the person may be shown in any manner, including  
192 a showing of the efficacy of any security procedure applied to  
193 determine the person to which the electronic record or electronic  
194 signature was attributable.

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

200 Sec. 10. (NEW) (*Effective October 1, 2002*) If a change or error in an  
201 electronic record occurs in a transmission between parties to a  
202 transaction, the following rules apply:

203 (1) If the parties have agreed to use a security procedure to detect  
204 changes or errors and one party has conformed to the procedure, but  
205 the other party has not, and the nonconforming party would have  
206 detected the change or error had that party also conformed, the  
207 conforming party may avoid the effect of the changed or erroneous  
208 electronic record.

209 (2) In an automated transaction involving an individual, the  
210 individual may avoid the effect of an electronic record that resulted  
211 from an error made by the individual in dealing with the electronic  
212 agent of another person if the electronic agent did not provide an  
213 opportunity for the prevention or correction of the error and, at the  
214 time the individual learns of the error, the individual:

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

218 (B) Takes reasonable steps, including steps that conform to the other  
219 person's reasonable instructions, to return to the other person or, if  
220 instructed by the other person, to destroy the consideration received, if

221 any, as a result of the erroneous electronic record; and

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

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

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

229 Sec. 11. (NEW) (*Effective October 1, 2002*) If a law requires a signature  
230 or record to be notarized, acknowledged, verified or made under oath,  
231 the requirement is satisfied if the electronic signature of the person  
232 authorized to perform such acts, together with all other information  
233 required to be included by other applicable law, is attached to or  
234 logically associated with the signature or record.

235 Sec. 12. (NEW) (*Effective October 1, 2002*) (a) If a law requires that a  
236 record be retained, the requirement is satisfied by retaining an  
237 electronic record of the information in the record that:

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

241 (2) Remains accessible for later reference.

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

245 (c) A person may satisfy subsection (a) of this section by using the  
246 services of another person if the requirements of said subsection are  
247 satisfied.

248 (d) If a law requires a record to be presented or retained in its  
249 original form, or provides consequences if the record is not presented

250 or retained in its original form, such law is satisfied by an electronic  
251 record retained in accordance with subsection (a) of this section.

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

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

260 (g) This section does not preclude a governmental agency in this  
261 state from specifying additional requirements for the retention of a  
262 record subject to the agency's jurisdiction, except as otherwise required  
263 by the State Librarian or the Public Records Administrator in  
264 accordance with sections 11-8 and 11-8a of the general statutes.

265 Sec. 13. (NEW) (*Effective October 1, 2002*) In a proceeding, evidence  
266 of a record or signature may not be excluded solely because such  
267 record or signature is in electronic form.

268 Sec. 14. (NEW) (*Effective October 1, 2002*) In an automated  
269 transaction, the following rules apply:

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

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

279 (3) The terms of the contract are determined by the substantive law

280 applicable to the contract.

281 Sec. 15. (NEW) (*Effective October 1, 2002*) (a) Unless otherwise agreed  
282 between the sender and the recipient, an electronic record is sent when  
283 it:

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

289 (2) Is in a form capable of being processed by such system; and

290 (3) Enters an information processing system outside the control of  
291 the sender or of a person that sent the electronic record on behalf of the  
292 sender or enters a region of the information processing system  
293 designated or used by the recipient that is under the control of the  
294 recipient.

295 (b) Unless otherwise agreed between the sender and the recipient,  
296 an electronic record is received when it:

297 (1) Enters an information processing system that the recipient has  
298 designated or uses for the purpose of receiving electronic records or  
299 information of the type sent and from which the recipient is able to  
300 retrieve the electronic record; and

301 (2) Is in a form capable of being processed by such system.

302 (c) Subsection (b) of this section applies even if the place where the  
303 information processing system is located is different from the place  
304 where the electronic record is deemed to be received under subsection  
305 (d) of this section.

306 (d) Unless otherwise expressly provided in the electronic record or  
307 agreed between the sender and the recipient, an electronic record is  
308 deemed to be sent from the sender's place of business and to be

309 received at the recipient's place of business. For the purposes of this  
310 subsection, the following rules apply:

311 (1) If the sender or the recipient has more than one place of business,  
312 the place of business of the sender or the recipient, as the case may be,  
313 is the sender's or recipient's place of business having the closest  
314 relationship to the underlying transaction.

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

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

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

324 (g) If a person is aware that an electronic record purportedly sent  
325 under subsection (a) of this section, or purportedly received under  
326 subsection (b) of this section, was not actually sent or received, the  
327 legal effect of the sending or receipt is determined by other applicable  
328 law. Except to the extent permitted by the other law, the requirements  
329 of this subsection may not be varied by agreement.

330 Sec. 16. (NEW) (*Effective October 1, 2002*) (a) As used in this section,  
331 "transferable record" means an electronic record that:

332 (1) Would be a note under article 3 of title 42a of the general  
333 statutes, or other similar law, or a document under article 7 of title 42a  
334 of the general statutes, or other similar law, if the electronic record  
335 were in writing; and

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

338 (b) A person has control of a transferable record if a system  
339 employed for evidencing the transfer of interests in the transferable  
340 record reliably establishes such person as the person to which the  
341 transferable record was issued or transferred.

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

345 (1) A single authoritative copy of the transferable record exists that  
346 is unique, identifiable and, except as otherwise provided in  
347 subdivisions (4), (5) and (6) of this subsection, unalterable;

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

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

350 (B) If the authoritative copy indicates that the transferable record  
351 has been transferred, the person to which the transferable record was  
352 most recently transferred;

353 (3) The authoritative copy is communicated to and maintained by  
354 the person asserting control or such person's designated custodian;

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

358 (5) Each copy of the authoritative copy, and any copy of a copy, is  
359 readily identifiable as a copy that is not the authoritative copy; and

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

362 (d) Except as otherwise agreed, a person having control of a  
363 transferable record is the holder, as defined in subdivision (20) of  
364 section 42a-1-201 of the general statutes, or other similar law, of the  
365 transferable record and has the same rights and defenses as a holder of  
366 an equivalent record or writing under the Uniform Commercial Code,

367 or other similar law, including, if the applicable statutory requirements  
368 under subsection (a) of section 42a-3-302 or section 42a-7-501 of the  
369 general statutes or section 42a-9-308 of the general statutes, as  
370 amended, or other similar law, are satisfied, the rights and defenses of  
371 a holder in due course, a holder to which a negotiable document of  
372 title has been duly negotiated or a purchaser, respectively. Delivery,  
373 possession and endorsement are not required to obtain or exercise any  
374 of the rights under this subsection.

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

379 (f) If requested by a person against which enforcement is sought, the  
380 person seeking to enforce the transferable record shall provide  
381 reasonable proof that the person seeking enforcement is in control of  
382 the transferable record. Such proof may include access to the  
383 authoritative copy of the transferable record and related business  
384 records sufficient to review the terms of the transferable record and to  
385 establish the identity of the person having control of the transferable  
386 record.

387 Sec. 17. (NEW) (*Effective October 1, 2002*) Except as otherwise  
388 required by the State Librarian or the Public Records Administrator in  
389 accordance with sections 11-8 and 11-8a of the general statutes, each  
390 governmental agency in this state shall determine whether, and the  
391 extent to which, it will create and retain electronic records and convert  
392 written records to electronic records.

393 Sec. 18. (NEW) (*Effective October 1, 2002*) (a) Except as otherwise  
394 provided in subsection (f) of section 12 of this act, each governmental  
395 agency in this state shall determine whether, and the extent to which, it  
396 will send and accept electronic records and electronic signatures to and  
397 from other persons and otherwise create, generate, communicate,  
398 store, process, use and rely upon electronic records and electronic  
399 signatures.

400 (b) Except as provided in subsection (d) of this section, to the extent  
401 that an executive branch governmental agency of this state uses  
402 electronic records and electronic signatures under subsection (a) of this  
403 section, the Department of Information Technology, giving due  
404 consideration to the security of such electronic records and electronic  
405 signatures, may adopt regulations, in accordance with the provisions  
406 of chapter 54 of the general statutes, specifying:

407 (1) The manner and format in which such electronic records shall be  
408 created, generated, sent, communicated, received and stored and the  
409 systems established for such purposes;

410 (2) If such electronic records may be signed by electronic means, the  
411 type of electronic signature required, the manner and format in which  
412 the electronic signature shall be affixed to the electronic record and the  
413 identity of, or criteria that shall be met by, any third party used by a  
414 person filing a document to facilitate the electronic signature and filing  
415 process;

416 (3) Processes and procedures as appropriate to ensure adequate  
417 control, preservation, disposition, integrity, security and  
418 confidentiality of such electronic records and adequate ability to audit  
419 such electronic records; and

420 (4) Any other required attributes for such electronic records that are  
421 specified for corresponding nonelectronic records or reasonably  
422 necessary under specific circumstances.

423 (c) Any regulations adopted by the Department of Information  
424 Technology pursuant to subsection (b) of this section may promote  
425 consistency and interoperability with any similar requirements  
426 adopted by governmental agencies in this state, of other states and of  
427 the federal government, and by nongovernmental persons, interacting  
428 with executive branch governmental agencies of this state. If  
429 appropriate, such regulations may specify differing levels of standards  
430 from which executive branch governmental agencies of this state may  
431 choose in implementing the most appropriate standard for a particular

432 application.

433 (d) Any regulations adopted by the Department of Information  
434 Technology pursuant to subsection (b) of this section shall not apply to  
435 the offices of the State Treasurer, Comptroller, Secretary of the State  
436 and Attorney General. Each of said offices may adopt regulations, in  
437 accordance with the provisions of chapter 54 of the general statutes, to  
438 carry out the purposes of subsections (b) and (c) of this section with  
439 regard to said office.

440 (e) Except as otherwise provided in subsection (f) of section 12 of  
441 this act, sections 1 to 21, inclusive, of this act do not require a  
442 governmental agency in this state to use or permit the use of electronic  
443 records or electronic signatures.

444 (f) This section is subject to any requirements established by the  
445 State Librarian or the Public Records Administrator in accordance with  
446 sections 11-8 and 11-8a of the general statutes.

447 Sec. 19. (NEW) (*Effective October 1, 2002*) (a) As used in this section,  
448 "consumer" means (1) an individual who obtains, through a  
449 transaction, products or services that are used primarily for personal,  
450 family or household purposes, and (2) the legal representative of such  
451 an individual.

452 (b) For the purposes of sections 1 to 21, inclusive, of this act, it is  
453 presumed that a consumer has not received an electronic record if the  
454 sender of the electronic record has actual knowledge that the consumer  
455 did not receive the electronic record. The provisions of this section  
456 may not be varied by agreement.

457 Sec. 20. (NEW) (*Effective October 1, 2002*) If any provision of sections  
458 1 to 21, inclusive, of this act or its application to any person or  
459 circumstance is held invalid or inconsistent with the Electronic  
460 Signatures in Global and National Commerce Act, 15 USC 7001 et seq.,  
461 as from time to time amended, such invalidity or inconsistency does  
462 not affect other provisions or applications of sections 1 to 21, inclusive,

463 of this act which can be given effect without the invalid or inconsistent  
 464 provision or application, and to this end the provisions of sections 1 to  
 465 21, inclusive, of this act are severable.

466 Sec. 21. (NEW) (*Effective October 1, 2002*) The provisions of sections 1  
 467 to 21, inclusive, of this act governing the legal effect, validity or  
 468 enforceability of electronic records or signatures, and of contracts  
 469 formed or performed with the use of such records or signatures,  
 470 conform to the requirements of Section 102 of the Electronic Signatures  
 471 in Global and National Commerce Act, 15 USC 7002, and supersede,  
 472 modify and limit said federal act as provided in said section.

473 Sec. 22. (*Effective October 1, 2002*) Sections 1-260 to 1-265, inclusive, of  
 474 the general statutes are repealed.

This act shall take effect as follows:	
Section 1	<i>October 1, 2002</i>
Sec. 2	<i>October 1, 2002</i>
Sec. 3	<i>October 1, 2002</i>
Sec. 4	<i>October 1, 2002</i>
Sec. 5	<i>October 1, 2002</i>
Sec. 6	<i>October 1, 2002</i>
Sec. 7	<i>October 1, 2002</i>
Sec. 8	<i>October 1, 2002</i>
Sec. 9	<i>October 1, 2002</i>
Sec. 10	<i>October 1, 2002</i>
Sec. 11	<i>October 1, 2002</i>
Sec. 12	<i>October 1, 2002</i>
Sec. 13	<i>October 1, 2002</i>
Sec. 14	<i>October 1, 2002</i>
Sec. 15	<i>October 1, 2002</i>
Sec. 16	<i>October 1, 2002</i>
Sec. 17	<i>October 1, 2002</i>
Sec. 18	<i>October 1, 2002</i>
Sec. 19	<i>October 1, 2002</i>
Sec. 20	<i>October 1, 2002</i>
Sec. 21	<i>October 1, 2002</i>
Sec. 22	<i>October 1, 2002</i>

**JUD**      *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:**

Fund-Type	Agency Affected	FY 03 \$	FY 04 \$
GF - Cost	Inf. Technol., Dept.; Various	Potential Minimal	Potential Minimal

Note: GF=General Fund

**Municipal Impact:**

Effect	Municipalities	FY 03 \$	FY 04 \$
Cost	Various Municipalities	Potential Minimal	Potential Minimal

**Explanation**

Passage of this bill may result in a potential minimal cost to the state and municipalities. The bill establishes a legal foundation for the use of electronic communications in transactions where private parties have agreed to conduct business electronically.

The bill allows the Department of Information Technology (DOIT) to adopt regulations on the use of electronic records and signatures by the state's executive branch agencies. (DOIT regulations would not apply to the State Treasurer, State Comptroller, Secretary of the State or 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.

The bill also permits, but does not require, a state or local government agency 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.

**OLR Bill Analysis**

sSB 561

**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.

The bill, referred to as "CUETA," (Connecticut UETA) 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 bill supersedes and repeals the electronic records and signature law enacted in 1999.

EFFECTIVE DATE: October 1, 2002

**PURPOSE OF CUETA (§ 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 (§§ 2 - 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 make other arrangements.

The bill applies to electronic records and signatures created, generated, sent, communicated, received, or stored on and after October 1, 2002. "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 state's 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 television or other services, electric, heat, oil, and telephone services; or
6. documents required in transporting or handling hazardous materials, pesticides, or other toxic or dangerous materials.

The bill applies to the following only if they are subject UETA:

1. notice that health or health insurance benefits or life insurance are being cancelled or terminated, other than with respect to annuities;
2. recall notices of products that could endanger health or safety;
3. notice of the material failure of products that could endanger health or safety; or
4. notice of eviction, foreclosure, repossession, acceleration, default, or the right to cure, under a rental or credit agreement secured by someone's primary residence.

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**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 (§§ 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 (§ 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 (§ 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 (§ 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.

**NOTARIZATION AND ACKNOWLEDGEMENT (§ 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 (§ 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, 2002 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 state or local governmental agency located in Connecticut from imposing additional retention requirements. Any additional requirements are subject to the record retention schedule established by the state librarian or public records administrator.

A third party may be used to retain records.

#### **AUTOMATED TRANSACTIONS (§ 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.

#### **SENDING AND RECEIVING ELECTRONIC RECORDS (§§ 15 AD 19)**

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.

With one exception and 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. The bill creates a presumption that a consumer has not received an electronic record if the sender has actual knowledge that the consumer did not receive it. This presumption may not be 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).

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 (§ 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 state's 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 (“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 state’s 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 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.

### **GOVERNMENT RECORDS (§§ 17 AND 18)**

The bill does not require a state or local government agency or entity to use or permit the use of electronic records or signatures. But if an 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. But any law passed after October 1, 2002 that prohibits the use of electronic records for evidentiary, audit, or like purposes will prevent a governmental agency from retaining them in electronic form. State agency decisions

regarding the retention and destruction of public records are subject to the laws giving the state librarian and the public records administrator over all public records.

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 to file an electronic record, and any criteria the third party must meet;
3. how the records will be preserved, disposed of, secured, and audited and how their integrity and confidentiality will be maintained; and
4. any other requirements concerning nonelectronic records that apply to electronic records.

### **Regulations**

DOIT's regulations regarding electronic records may encourage and promote consistency and interoperability with similar regulatory requirements adopted by governmental agencies in this state and other states, the federal government, and nongovernmental entities and people interacting with Connecticut executive-branch 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 (§ 20)**

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 (§ 21)**

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**

### ***National Conference of Commissioners on Uniform State Laws***

NCCUSL is a nonprofit, 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 the law 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 §§ 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.

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute  
Yea 41 Nay 0