

By Mr. Magnani, a petition (accompanied by bill, Senate, No. 1915) of David P. Magnani, Jarrett T. Barrios, Brian A. Joyce, Cheryl A. Jacques and other members of the General Court for legislation to adopt the Uniform Electronic Transactions Act to remove barriers to electronic commerce by validating and effectuating electronic records and signatures. Senate Science and Technology.

The Commonwealth of Massachusetts

In the Year Two Thousand and Three.

AN ACT TO PROVIDE ELECTRONIC TRANSACTIONS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. SHORT TITLE. This Act may be cited as the Uni-  
2 form Electronic Transactions Act.

1 SECTION 2. DEFINITIONS. In this Act:

2 (1) "Agreement" means the bargain of the parties in fact, as  
3 found in their language or inferred from other circumstances and  
4 from rules, regulations, and procedures given the effect of agree-  
5 ments under laws otherwise applicable to a particular transaction.

6 (2) "Automated transaction" means a transaction conducted or  
7 performed, in whole or in part, by electronic means or electronic  
8 records, in which the acts or records of one or both parties are not  
9 reviewed by an individual in the ordinary course in forming a con-  
10 tract, performing under an existing contract, or fulfilling an oblig-  
11 ation required by the transaction.

12 (3) "Chief information officer" means the chief information  
13 officer of the information technology division within the execu-  
14 tive office for administration and finance as defined in section  
15 4A(d) of chapter 7 of the General Laws.

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

19 (5) "Consumer" means a natural person acting with respect to  
20 or affecting primarily personal, household, or family purposes or  
21 interests.

22 (6) "Contract" means the total legal obligation resulting from  
23 the parties' agreement as affected by this Act and other applicable  
24 law.

25 (7) "Electronic" means relating to technology having electrical,  
26 digital, magnetic, wireless, optical, electromagnetic, or similar  
27 capabilities.

28 (8) "Electronic agent" means a computer program or an elec-  
29 tronic or other automated means used independently to initiate an  
30 action or respond to electronic records or performances in whole  
31 or in part, without review or action by an individual.

32 (9) "Electronic record" means a record created, generated, sent,  
33 communicated, received, or stored by electronic means.

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

37 (11) "Executive branch agencies" means the departments, com-  
38 missions, offices, boards, divisions, institutions and other agencies  
39 within the executive department.

40 (12) "Governmental agency" means an executive, legislative, or  
41 judicial agency, department, board, commission, authority, institu-  
42 tion, or instrumentality of the federal government or of a State or  
43 of a county, municipality, or other political subdivision of a State.

44 (13) "Information" means data, text, images, sounds, codes,  
45 computer programs, software, databases, or the like.

46 (14) "Information processing system" means an electronic  
47 system for creating, generating, sending, receiving, storing, dis-  
48 playing, or processing information.

49 (15) "Person" means an individual, corporation, business trust,  
50 estate, trust, partnership, limited liability company, association,  
51 joint venture, governmental agency, public corporation, or any  
52 other legal or commercial entity.

53 (16) "Record" means information that is inscribed on a tangible  
54 medium or that is stored in an electronic or other medium and is  
55 retrievable in perceivable form.

56 (17) "Security procedure" means a procedure employed for the  
57 purpose of verifying that an electronic signature, record, or perfor-

58 mance is that of a specific person or for detecting changes or  
59 errors in the information in an electronic record. The term  
60 includes a procedure that requires the use of algorithms or other  
61 codes, identifying words or numbers, encryption, or callback or  
62 other acknowledgment procedures.

63 (18) "State" means a State of the United States, the District of  
64 Columbia, Puerto Rico, the United States Virgin Islands, or any  
65 territory or insular possession subject to the jurisdiction of the  
66 United States. The term includes an Indian tribe or band, or  
67 Alaskan native village, which is recognized by federal law or for-  
68 mally acknowledged by a State.

69 (19) "Transaction" means an action or set of actions occurring  
70 between two or more persons relating to the conduct of business,  
71 commercial, or governmental affairs.

### 1 SECTION 3. SCOPE.

2 (a) Except as otherwise provided in subsection (b), this Act  
3 applies to electronic records and electronic signatures relating to a  
4 transaction.

5 (b) This Act does not apply to a transaction to the extent it is  
6 governed by:

7 (1) a law governing the creation and execution of wills, codi-  
8 cils, or testamentary trusts;

9 (2) The Massachusetts General Laws Chapter 106 Sections 1-  
10 107 and 1-206, Article 2, and Article 2A;

11 (c) This Act applies to an electronic record or electronic signa-  
12 ture otherwise excluded from the application of this Act under  
13 subsection (b) to the extent it is governed by a law other than  
14 those specified in subsection (b).

15 (d) A transaction subject to this Act is also subject to other  
16 applicable substantive law.

1 SECTION 4. PROSPECTIVE APPLICATION. This Act  
2 applies to any electronic record or electronic signature created,  
3 generated, sent, communicated, received or stored on or after the  
4 effective date of this Act.

1 SECTION 5. USE OF ELECTRONIC RECORDS AND ELEC-  
2 TRONIC SIGNATURES; VARIATION BY AGREEMENT.

3 (a) This Act does not require a record or signature to be cre-  
4 ated, generated, sent, communicated, received, stored, or other-  
5 wise processed or used by electronic means or in electronic form.

6 (b) This Act applies only to transactions between parties each  
7 of which has agreed to conduct transactions by electronic means.  
8 Whether the parties agree to conduct a transaction by electronic  
9 means is determined from the context and surrounding circum-  
10 stances, including the parties' conduct, except with respect to con-  
11 sumer transactions governed under Section 17 of this Act.

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

16 (d) Except as otherwise provided in this Act, the effect of any  
17 of its provisions may be varied by agreement. The presence in cer-  
18 tain provisions of this Act of the words "unless otherwise agreed",  
19 or words of similar import, does not imply that the effect of other  
20 provisions may not be varied by agreement.

21 (e) Nothing in the Act affects the content or timing of any dis-  
22 closure or other record required to be provided or made available  
23 to any consumer under any statute, regulation, or other rule of law.

24 (f) Whether an electronic record or electronic signature has legal  
25 consequences is determined by this Act and other applicable law.

1 SECTION 6. CONSTRUCTION AND APPLICATION. This  
2 Act must be construed and applied:

3 (1) to facilitate electronic transactions consistent with other  
4 applicable law;

5 (2) to be consistent with reasonable practices concerning elec-  
6 tronic transactions and with the continued expansion of those  
7 practices; and

8 (3) to effectuate its general purpose to make uniform the law  
9 with respect to the subject of this Act among States enacting it.

1 SECTION 7. LEGAL RECOGNITION OF ELECTRONIC  
2 RECORDS, ELECTRONIC SIGNATURES, AND ELECTRONIC  
3 CONTRACTS.

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

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

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

10 (d) If a law requires a signature, an electronic signature satis-  
11 fies the law.

1 SECTION 8. PROVISION OF INFORMATION IN WRITING;  
2 PRESENTATION OF RECORDS.

3 (a) If parties have agreed to conduct a transaction by electronic  
4 means and a law requires a person to provide, send, or deliver  
5 information in writing to another person, the requirement is satis-  
6 fied if the information is provided, sent, or delivered, as the case  
7 may be, in an electronic record capable of retention by the recip-  
8 ient at the time of receipt. An electronic record is not capable of  
9 retention by the recipient if the sender or its information pro-  
10 cessing system inhibits the ability of the recipient to print or store  
11 the electronic record.

12 (b) If a law other than this Act requires a record (i) to be posted  
13 or displayed in a certain manner, (ii) to be sent, communicated, or  
14 transmitted by a specified method, or (iii) to contain information  
15 that is formatted in a certain manner, the following rules apply:

16 (1) The record must be posted or displayed in the manner speci-  
17 fied in the other law.

18 (2) Except as otherwise provided in subsection (d)(2), the  
19 record must be sent, communicated, or transmitted by the method  
20 specified in the other law.

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

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

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

28 (1) to the extent a law other than this Act requires information  
29 to be provided, sent, or delivered in writing but permits that  
30 requirement to be varied by agreement, the requirement under  
31 subsection (a) that the information be in the form of an electronic  
32 record capable of retention may also be varied by agreement; and

33 (2) a requirement under a law other than this Act to send, commu-  
34 nicate, or transmit a record by first-class mail, postage prepaid, may  
35 be varied by agreement to the extent permitted by the other law.

1 SECTION 9. ATTRIBUTION AND EFFECT OF ELEC-  
2 TRONIC RECORD AND ELECTRONIC SIGNATURE.

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

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

1 SECTION 10. EFFECT OF CHANGE OR ERROR. If a change  
2 or error in an electronic record occurs in a transmission between  
3 parties to a transaction, the following rules apply:

4 (1) If the parties have agreed to use a security procedure to  
5 detect changes or errors and one party has conformed to the proce-  
6 dure, but the other party has not, and the nonconforming party  
7 would have detected the change or error had that party also con-  
8 formed, the conforming party may avoid the effect of the changed  
9 or erroneous electronic record.

10 (2) In an automated transaction involving an individual, the  
11 individual may avoid the effect of an electronic record that  
12 resulted from an error made by the individual in dealing with the  
13 electronic agent of another person if at the time the individual  
14 learns of the error, the individual:

15 (A) promptly notifies the other person of the error and that the  
16 individual did not intend to be bound by the electronic record  
17 received by the other person;

18 (B) takes reasonable steps, including steps that conform to the  
19 other person's reasonable instructions, to return to the other  
20 person or, if instructed by the other person, to destroy the consid-  
21 eration received, if any, as a result of the erroneous electronic  
22 record; and

23 (C) has not used or received any benefit or value from the con-  
24 sideration, if any, received from the other person.

25 (3) If neither paragraph (1) nor paragraph (2) applies, the  
26 change or error has the effect provided by other law, including the  
27 law of mistake, and the parties' contract, if any.

28 (4) Paragraphs (2) and (3) may not be varied by agreement.

1 SECTION 11. NOTARIZATION AND ACKNOWLEDG-  
2 MENT. If a law requires a signature or record to be notarized,  
3 acknowledged, verified, or made under oath, the requirement is  
4 satisfied if the electronic signature of the person authorized to per-  
5 form those acts, together with all other information required to be  
6 included by other applicable law, is attached to or logically associ-  
7 ated with the signature or record.

1 SECTION 12. RETENTION OF ELECTRONIC RECORDS;  
2 ORIGINALS.

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

6 (1) accurately reflects the information set forth in the contract  
7 or other record; and

8 (2) remains accessible to all persons who are entitled to access  
9 by law, for the period required by such law, in a form that is  
10 capable of being accurately reproduced for later reference,  
11 whether by transmission, printing, or otherwise.

12 (b) A requirement to retain a record in accordance with subsec-  
13 tion (a) does not apply to any information the sole purpose of  
14 which is to enable the record to be sent, communicated, or  
15 received.

16 (c) A person may satisfy subsection (a) by using the services of  
17 another person if the requirements of that subsection are satisfied.

18 (d) If a law requires a record to be presented or retained in its  
19 original form, or provides consequences if the record is not pre-  
20 sented or retained in its original form, that law is satisfied by an  
21 electronic record retained in accordance with subsection (a).

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

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

30 (g) This section does not preclude a governmental agency of  
31 this State from specifying additional requirements for the reten-  
32 tion of a record subject to the agency's jurisdiction.

1 SECTION 13. ADMISSIBILITY IN EVIDENCE. In any legal  
2 proceeding, evidence of a record or signature may not be excluded  
3 solely because it is in electronic form.

1 SECTION 14. AUTOMATED TRANSACTION. In an auto-  
2 mated transaction, the following rules apply:

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

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

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

1 SECTION 15. TIME AND PLACE OF SENDING AND  
2 RECEIPT.

3 (a) Unless otherwise agreed between the sender and the recip-  
4 ient, an electronic record is sent when it:

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

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

11 (3) enters an information processing system outside the control  
12 of the sender or of a person that sent the electronic record on

13 behalf of the sender or enters a region of the information pro-  
14 cessing system designated or used by the recipient which is under  
15 the control of the recipient.

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

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

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

23 (c) Subsection (b) applies even if the place the information pro-  
24 cessing system is located is different from the place the electronic  
25 record is deemed to be received under subsection (e).

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

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

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

37 (e) An electronic record is received under subsection (b) even if  
38 no individual is aware of its receipt.

39 (f) Receipt of an electronic acknowledgment from an informa-  
40 tion processing system described in subsection (b) establishes that  
41 a record was received but, by itself, does not establish that the  
42 content sent corresponds to the content received.

43 (g) If a person is aware that an electronic record purportedly  
44 sent under subsection (a), or purportedly received under subsec-  
45 tion (b), was not actually sent or received, the legal effect of the  
46 sending or receipt is determined by other applicable law. Except  
47 to the extent permitted by the other law, the requirements of this  
48 subsection may not be varied by agreement.

49 (h) Notwithstanding any other sections of this Act, in a con-  
50 sumer transaction, a record has not been received by the intended

51 recipient until the record has been acknowledged or read. This sub-  
52 section may not be varied by agreement.

1 SECTION 16. TRANSFERABLE RECORDS.

2 (a) In this section, "transferable record" means an electronic  
3 record that:

4 (1) would be a note under Massachusetts General Law Chapter  
5 106 Article 3 or a document under Massachusetts General Law  
6 Chapter 106 Article 7 if the electronic record were in writing; and

7 (2) the issuer of the electronic record expressly has agreed is a  
8 transferable record.

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

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

16 (1) a single authoritative copy of the transferable record exists  
17 which is unique, identifiable, and, except as otherwise provided in  
18 paragraphs (4), (5), and (6), unalterable;

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

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

21 (B) if the authoritative copy indicates that the transferable  
22 record has been transferred, the person to which the transferable  
23 record was most recently transferred;

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

26 (4) copies or revisions that add or change an identified assignee  
27 of the authoritative copy can be made only with the consent of the  
28 person asserting control;

29 (5) each copy of the authoritative copy and any copy of a copy  
30 is readily identifiable as a copy that is not the authoritative copy;  
31 and

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

34 (d) Except as otherwise agreed, a person having control of a  
35 transferable record is the holder, as defined in Massachusetts  
36 General Law Chapter 106 Section 1-201(20), of the transferable

37 record and has the same rights and defenses as a holder of an  
38 equivalent record or writing under Massachusetts General Law  
39 Chapter 106, including, if the applicable statutory requirements  
40 under Section 3-302(a), 7-501, or 9-308 of Chapter 106 are satis-  
41 fied, the rights and defenses of a holder in due course, a holder to  
42 which a negotiable document of title has been duly negotiated, or  
43 a purchaser, respectively. Delivery, possession, and indorsement  
44 are not required to obtain or exercise any of the rights under this  
45 subsection.

46 (e) Except as otherwise agreed, an obligor under a transferable  
47 record has the same rights and defenses as an equivalent obligor  
48 under equivalent records or writings under Massachusetts General  
49 Law Chapter 106.

50 (f) If requested by a person against which enforcement is  
51 sought, the person seeking to enforce the transferable record shall  
52 provide reasonable proof that the person is in control of the trans-  
53 ferable record. Proof may include access to the authoritative copy  
54 of the transferable record and related business records sufficient to  
55 review the terms of the transferable record and to establish the  
56 identity of the person having control of the transferable record.

1 SECTION 17. CREATION, ACCEPTANCE, DISTRIBUTION  
2 AND RETENTION OF ELECTRONIC RECORDS AND CON-  
3 VERSION OF WRITTEN RECORDS BY EXECUTIVE  
4 BRANCH AGENCIES.

5 (a) Except as otherwise provided in Section 12(f), the chief  
6 information officer shall determine whether, and the extent to  
7 which, executive branch agencies will:

- 8 (1) convert written records to electronic records; and  
9 (2) create, send, accept, store, process and rely upon electronic  
10 records and electronic signatures.

11 (b) Giving due consideration to security, for each executive  
12 branch agency that uses electronic records or electronic signatures  
13 under subsection (a), the chief information officer shall specify in  
14 a manner appropriate to the transaction:

- 15 (1) the systems, manner and format in which an electronic  
16 record is created, sent, accepted, stored and processed;  
17 (2) if a record is to be signed by electronic means,  
18 a. the type of electronic signature required,

- 19 b. the manner and format in which the electronic signature is  
20 attached to or logically associated with the electronic record, and,  
21 c. the identity of, or criteria that must be met by, any third party  
22 used by a person filing a document to facilitate the process;
- 23 (3) policies and procedures to ensure adequate preservation, dis-  
24 position, integrity, and confidentiality of electronic records; and  
25 (4) any other requirements reasonably necessary.
- 26 (c) Except as otherwise provided in Section 12(f), this act does not  
27 require the chief information officer to use or permit the use of elec-  
28 tronic records or electronic signatures by executive branch agencies.

1 SECTION 18. CREATION, ACCEPTANCE, DISTRIBUTION  
2 AND RETENTION OF ELECTRONIC RECORDS AND CON-  
3 VERSION OF WRITTEN RECORDS BY GOVERNMENTAL  
4 AGENCIES, EXCEPT EXECUTIVE BRANCH AGENCIES.

- 5 (a) Except as otherwise provided in Section 12(f), each govern-  
6 mental agency of the commonwealth, except executive branch  
7 agencies, shall determine whether, and the extent to which, it will:  
8 (1) convert written records to electronic records; and  
9 (2) create, send, accept, store, process and rely upon electronic  
10 records and electronic signatures.
- 11 (b) Giving due consideration to security, each governmental  
12 agency that uses electronic records or electronic signatures under  
13 subsection (a) shall specify in a manner appropriate to the transac-  
14 tion:
- 15 (1) the systems, manner and format in which an electronic  
16 record is created, sent, accepted, stored and processed;
- 17 (2) if a record is to be signed by electronic means,  
18 a. the type of electronic signature required,  
19 b. the manner and format in which the electronic signature is  
20 attached to or logically associated with the electronic record, and,  
21 c. the identity of, or criteria that must be met by, any third party  
22 used by a person filing a document to facilitate the process;
- 23 (3) policies and procedures to ensure adequate preservation, dis-  
24 position, integrity, and confidentiality of electronic records; and  
25 (4) any other requirements reasonably necessary.
- 26 (c) Except as otherwise provided in Section 12(f), this act does  
27 not require a governmental agency of the commonwealth to use or  
28 permit the use of electronic records or electronic signatures.

1 SECTION 19. INTEROPERABILITY.

2 The chief information officer shall encourage and promote con-  
3 sistency and interoperability with other governmental agencies  
4 and nongovernmental persons. If appropriate, those standards may  
5 specify differing levels of standards from which governmental  
6 agencies of the Commonwealth may choose in implementing the  
7 most appropriate standard for a particular application.

1 SECTION 20. CONSUMER TRANSACTIONS.

2 (a) Consistent with the provisions of Section 102(a)(2)(A) of  
3 the federal Electronic Signatures in global and National Com-  
4 merce Act, the use and acceptance of electronic records or elec-  
5 tronic signatures in consumer transactions shall be subject to the  
6 requirements set out in this section. The requirements of this  
7 section may not be varied by agreement of the parties.

8 (b) This Act shall not apply to:

9 (1) Any notice of the cancellation or termination of utility serv-  
10 ices, including water, heat, and power.

11 (2) Any notice of default, acceleration, repossession, foreclo-  
12 sure or eviction, or the right to cure, under a credit agreement  
13 secured by, or a rental agreement for, a primary residence of an  
14 individual.

15 (3) Any notice of the cancellation or termination of health  
16 insurance or benefits, or life insurance or benefits, excluding  
17 annuities.

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

20 (5) Any document required to accompany the transportation or  
21 handling of hazardous materials, pesticides, or other toxic or dan-  
22 gerous materials.

23 (c) In a consumer transaction, the consumer's agreement to  
24 conduct a transaction by electronic means shall be evidence as  
25 provided in Section 5 of this Act, and in compliance with this  
26 section. The consumer's agreement to conduct the transaction by  
27 electronic means shall be found only when the following apply:

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

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

32 (i) Informing the consumer of any right or option of the con-  
33 sumer to have the record provided or made available on paper or  
34 in non-electronic form.

35 (ii) Informing the consumer of the right to withdraw consent to  
36 have the record provided or made available in an electronic form  
37 and of any conditions or consequences of such withdrawal. Those  
38 consequences may include termination of the parties' relationship  
39 but may not include the imposition of fees.

40 (iii) Informing the consumer whether the consent to have the  
41 record provided or made available in an electronic form applies  
42 only to the particular transaction which gave rise to the obligation  
43 to provide the record, or to identified categories of records that  
44 may be provided or made available during the course of the par-  
45 ties' relationship.

46 (iv) Describing the procedures the consumer must use to with-  
47 draw consent as provided in this section or to update information  
48 needed to contact the consumer electronically.

49 (v) Informing the consumer how, after consent to have the  
50 record provided or made available in an electronic form, the con-  
51 sumer may request and obtain a paper copy of an electronic record.

52 (3) The consumer, prior to consenting to the use of electronic  
53 means, is provided with a statement of the hardware and software  
54 requirements for access to and retention of the electronic records;  
55 and the consumer consents electronically, or confirms his or her con-  
56 sent electronically, in a manner that reasonably demonstrates that the  
57 consumer can access information in the electronic form that will be  
58 used to provide the information that is the subject of the consent.

59 (4) After consent of a consumer in accordance with this section,  
60 if a change in the hardware or software requirements needed to  
61 access or retain electronic records creates a material risk that the  
62 consumer will not be able to access or retain a subsequent elec-  
63 tronic record that was the subject of the consent, the person pro-  
64 viding the electronic record provides the consumer with a  
65 statement of the revised hardware and software requirements for  
66 access to and retention of the electronics records, provides a state-  
67 ment of the right to withdraw consent without the imposition of  
68 any condition or consequence that was not disclosed under para-  
69 graph 2(b) of the subsection, and again complies with paragraph  
70 (3) of this section.

71 (d) Notwithstanding section 5 paragraph (b) of this Act, in a  
72 consumer transaction where the consumer conducts the transaction  
73 on electronic equipment provided by or through the seller, the con-  
74 sumer shall be given a written copy of the contract which is not in  
75 electronic form. A consumer's consent to receive future notices  
76 regarding the transaction in an electronic form is valid only if the  
77 consumer confirms electronically, using equipment other than that  
78 provided by the seller, that (i) the consumer has the software speci-  
79 fied by the seller as necessary to read future notices, and (ii) the  
80 consumer agrees to receive the notices in an electronic form.

81 (e) An oral communication or a recording of an oral communi-  
82 cation shall not qualify as an electronic record with respect to  
83 consumer transactions.

84 (f) When a consumer is required to provide notice to exercise  
85 or preserve the consumer's rights, the consumer may exercise or  
86 preserve that right in the same manner in which the consumer was  
87 provided with notice of that right.

88 (g) A transaction entered into by a consumer electronically is  
89 entered into at the individual's place of residence.

1 SECTION 21. SEVERABILITY CLAUSE. If any provision of  
2 this Act or its application to any person or circumstance is held  
3 invalid, the invalidity does not affect other provisions or applica-  
4 tions of this Act which can be given effect without the invalid  
5 provision or application, and to this end the provisions of this Act  
6 are severable. To the extent that Section 20 of this Act is held  
7 invalid, the consumer protection provisions of the Electronic Sig-  
8 natures in Global and National Commerce Act shall be substituted  
9 and be in effect as part of this Act.

1 SECTION 22. EFFECTIVE DATE. This Act takes effect Sep-  
2 tember 1, 2003.

