

GEORGIA ADOPTS THE UNIFORM ELECTRONIC TRANSACTIONS ACT

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Within the past 10 years, the Internet has rapidly removed geographic barriers and revolutionized the way the world communicates and transacts business. In response to this move towards a more paperless society, the Georgia Legislature recently passed the Uniform Electronic Transactions Act. Georgia is the 47th state to adopt the Act, which will go into effect on July 1, 2009.

The Act establishes guidance and uniform standards for the enforceability of electronic transactions. Importantly, the Act is voluntary and does not require parties to conduct business electronically. For it to apply, parties must intend to conduct transactions electronically. In those instances, the Act sets the following ground rules for e-commerce transactions:

1. Electronic records and signatures are expressly recognized under the law.

Under the Act, a record or signature will not be denied enforceability simply because it is in electronic form. Instead, electronic records and signatures have the same legal effect as their paper and parchment ancestors. The party seeking to rely on an electronic record or signature must lay an evidentiary foundation just as with a paper equivalent.

2. If the law requires a writing, an electronic record satisfies the law.

While oral contracts are generally enforceable (albeit difficult to prove), there are certain situations and subject matters for which the law requires a written document. For example, under Georgia's "Statute of Frauds," contracts for the sale of real estate and service contracts that require more than a year to complete generally must be in writing to be enforceable. The Act simply confirms that an electronic record satisfies this "writing" requirement. To constitute a "writing" under the Act, an electronic record must be capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

3. If the law requires a signature, an electronic signature satisfies the law.

As with writings, there are many instances in which the law requires that a party sign a document to be bound by it. Under the Act, an electronic signature will satisfy that requirement. The Act also allows a notary public to notarize the signature of another electronically.

An electronic signature can be an electronic sound, symbol, or process. This can include a digitized image of a traditional ink signature, a typed name, a click through on a dialogue box, biometric measurements, or an encrypted authentication system. To constitute an electronic signature, the sound, symbol or process must be attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. The existence and intent of electronic signature may be proven by any means, including surrounding circumstances or the efficacy of an agreed-upon security procedure. The burden of proof is on the party seeking to enforce the signature.

While no Georgia court has yet addressed the Act, courts in several other states have. At least two jurisdictions hold that sending an email can be tantamount to affixing an electronic signature to that email and its contents. Another court opined that because a sound can constitute an electronic signature, a digital recording of a party assenting to an agreement may be the equivalent of affixing an electronic signature to the agreement.

4. Computers can form contracts with other computers.

The Act expressly recognizes that contracts can be formed between “electronic agents” without any direct human interaction. Where two computers are programmed with parameters that can cause them to institute certain transactions automatically, an enforceable contract can be formed between them. For example, if Automaker and Supplier do business through Electronic Data Interchange, Automaker's computer, upon receiving information within certain pre-programmed parameters, will send an electronic order to Supplier's computer. If the order falls within pre-programmed parameters in Supplier's computer and Supplier's computer confirms the order and processes the shipment, this fully automated transaction would constitute a binding contract under the Act.

Similarly, an individual may search a travel website for the cheapest plane ticket to Chicago. In that situation, the individual sets the parameters for his or her computer to communicate with the travel website (i.e., price, airport, travel time, seat restrictions). When the individual finds a ticket that matches his or her criteria and then proceeds through “checkout”, the individual forms a binding contract with an electronic agent.

Naturally, typos or other errors can occur in electronic transactions. Accidentally adding one extra “0” could change a purchase price in a proposed transaction significantly. The Act anticipates that such errors may occur and establishes comprehensive ground rules for correcting them. Generally, the better the prophylactic measures in place to avoid errors, and the more proactively and reasonably errors that do occur are addressed, the more protections the Act provides.

5. Documents can be stored and maintained electronically.

Another important aspect of the Act is that the retention of records solely in an electronic format is generally sufficient to satisfy a record retention requirement imposed by law. Moreover, the maintenance of electronic records may be outsourced and need not be physically maintained by the person or entity charged with retaining the records. The two primary requirements are that the records (1) must be accurate and (2) remain accessible for later reference. Remaining accessible requires that the electronic records must be converted to new formats if the evolution of technology would render the records inaccessible otherwise.

6. Negotiable instruments, memorialized electronically, may be transferred electronically.

The Act provides that negotiable instruments such as promissory notes and other commercial paper that are created electronically, may also be transferred electronically. If the prerequisites of the Act are complied with, these electronic instruments maintain the primary attributes of a negotiable document; that is, freedom from most defenses on third party claims. Among these criteria are that the obligor must agree at the outset that the record is transferrable electronically. The instrument must contain an electronic signature. The electronic instrument cannot contain terms that would be impermissible in a paper counterpart. There must be a single authoritative copy of the transferable record that is unique, identifiable, and unalterable. The authoritative copy must also identify the holder as the party to whom the record was issued, or transferred, or a designated custodian. If these criteria are met, the holder of the instrument enjoys holder in due course status.

Despite the revolutionary nature of its subject matter, the Act represents not so much a sea change, but an evolution of the law as it relates to e-commerce transactions. In what some have termed a “minimalistic” approach, the Act does not impose heavy burdens on businesses and individuals. Instead, the Act aims to provide certainty that the same legal principles that are applicable to contract formation, the authenticity of evidence, and the transferability of rights are just as applicable to electronic transactions as they are to transactions memorialized on paper. The Act reflects that, although technology continues to evolve, fundamental principles of law remain constant.

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