

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 3102

By: Perry and Deutschendorf

AS INTRODUCED

An Act relating to telecommunications; creating the Electronic Transactions Act; providing definitions; stating purpose of the Act; providing for scope of the Act; providing for transactions subject to other law; providing for variation by agreement; providing for applicable law; providing for application to consumer transactions; providing for a choice of forum; providing for application and construction; establishing course of performance, dealing and usage of trade standards; requiring the legal recognition of electronic records; providing for writing requirements; providing for signature requirements; providing for the effect and proof of an electronic record; providing for signatures by electronic agents; providing for original form requirements; providing criteria for assessing accuracy of information; establishing the admissibility of electronic records; providing for retention of electronic records; establishing criteria for a secure electronic record; establishing criteria for a secure electronic signature; providing for a rebuttable presumption regarding electronic records; providing for the effectiveness of an electronic record; providing

for the formation and validity of an electronic record; providing criteria for establishing attribution of an electronic record; providing criteria for establishing transmission of errors; establishing the time and place of sending and receiving an electronic record; providing criteria for acknowledging receipt of an electronic record; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

Part 1. Short Title and General Provisions

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-101 of Title 12A, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Electronic Transactions Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-102 of Title 12A, unless there is created a duplication in numbering, reads as follows:

As used in the Electronic Transactions Act:

1. "Agreement" means the bargain of the parties in fact as found in their language, records or terms in records to which a party has manifested assent, or by implication from other circumstances including course of performance, course of dealing and usage of trade as provided for in this act. Whether an agreement has legal consequences shall be determined by this act, if applicable; otherwise, by other applicable law;

2. "Authenticate" means to identify the authenticating party, adopt or accept a term or a record, or establish the informational integrity of a record;

3. "Automated transaction" means a transaction formed or performed, in whole or in part, by electronic records in which the records of one or both parties will not be reviewed by an individual as an expected step in forming a contract or performing under an existing contract;

4. "Computer program" means a set of statements or instructions to be used directly or indirectly to operate an information processing system in order to bring about a certain result. The term does not include any information created or communicated as a result of the operation of the system;

5. "Conspicuous" means so displayed or presented that a reasonable individual against whom or whose principal it operates ought to have noticed it. A term is conspicuous if it is:

- a. a heading in all capitals (e.g. NON-NEGOTIABLE BILL OF LADING) equal or greater in size to the surrounding text,
- b. language in the body or text of a record or display in larger or other contrasting type or color than other language,
- c. a term prominently referenced in the body or text of an electronic record or display which can be readily accessed from the record or display,
- d. language so positioned in a record or display that a party cannot proceed without taking some additional action with respect to the term or the reference, or
- e. language readily distinguishable in another manner.

In the case of an electronic record intended to evoke a response without the need for review by an individual, a term is conspicuous if it is in a form that would enable a reasonably configured

electronic agent to take it into account or react to it without review of the record by an individual;

6. "Consumer" means an individual who, at the time of entering into a transaction, does so primarily for personal, family, or household purposes. The term does not include a person that enters into a transaction primarily for profit making, professional, or commercial purposes, including agricultural, investments, research, and business and investment management, other than management of an ordinary person's personal or family assets;

7. "Contract" means the total legal obligation which results from the parties' agreement as affected by this act as supplemented by other applicable rules of law;

8. "Electronic" means electrical, digital, magnetic, optical, electromagnetic, or any other form of technology that includes capabilities similar to these technologies;

9. "Electronic agent" means a computer program or other electronic or automated means used, selected, or programmed by a party to initiate or respond to electronic records or performances in whole or in part without review by an individual;

10. "Electronic record" means a record stored, generated, received, or communicated by electronic means for use by, or storage in, an information system or for transmission from one information system to another;

11. "Electronic signature" means letters, characters, numbers, or other symbols in electronic form, attached to or logically associated with an electronic record, executed or adopted by a party with present intent to authenticate the electronic record;

12. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing;

13. "Information" means data, text, images, sounds, codes, computer programs, software, databases, and the like;

14. "Information systems" means a system for generating, sending, receiving, storing, or otherwise processing information, including electronic records;

15. "Manifest of assent" means that a party or its electronic agent has signed or otherwise clearly indicated that a record or term in a record has been adopted or accepted by the party or its electronic agent. A party or its electronic agent manifests assent by engaging in affirmative conduct or operations with actual knowledge of the terms or after having an opportunity to review the terms, and with the opportunity to decline to sign or engage in the conduct. A manifestation of assent to a record or term in a record does not result merely by retention of the record to term without objection by the party or its electronic agent. If assent to a particular term in addition to assent to a record is required, action taken by a party or its electronic agent does not manifest assent to that term unless there was an opportunity to review the term and the action taken relates specifically to that term;

16. "Merchant" means a person that is a professional in the business involved in the transaction, that by occupation purports to have knowledge or skill peculiar to the practices involved in the transaction, or to which knowledge or skill may be attributed by the person's employment of an agent or broker or other intermediary that purports to have the knowledge or skill;

17. "Notify" means to communicate, or make available, information to another person in a form and manner as appropriate or required under the circumstances;

18. "Opportunity to review" means that a record or a term of a record is made available in a manner designed to call it to the attention of the party and to permit review of its terms or to enable an electronic agent to react to the record or term;

19. "Organization" means a person other than an individual;

20. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity;

21. "Receive" with respect to an electronic record means that the electronic record has entered an information system in a form capable of being processed by a system of that type, and the recipient uses or has designated that system for the purpose of receiving such records or information;

22. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

23. "Rule of law" means a statute, regulation, ordinance, common-law rule, court decision, or other law relating to commercial or governmental transactions, enacted, established, or promulgated by this state, or any agency, commission, department, court, other authority or political subdivision of this state;

24. "Security procedure" with respect to either an electronic record or electronic signature, means a commercially reasonable procedure or methodology, established by agreement, mutually adopted by the parties, or otherwise established to be a commercially reasonable procedure, for verifying:

- a. the identity of the sender, or source, of an electronic record, or
- b. the integrity of, or detecting errors in, the transmission or informational content of an electronic record.

A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback or other acknowledgment procedures, key escrow, or any other procedures that are reasonable under the circumstances;

25. "Signature" means any symbol executed or adopted by a person with a present intent to authenticate a record;

26. "Transferable record" means a record, other than a writing, that is an instrument or chattel paper under Article 9 of the Uniform Commercial Code or a document of title under Article 1 of the Uniform Commercial Code; and

27. "Writing" means a printing, typewriting, or any other reduction to tangible form. "Written" has a corresponding meaning.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-103 of Title 12A, unless there is created a duplication in numbering, reads as follows:

The purposes of the Electronic Transactions Act are:

1. To facilitate and promote commerce transactions by validating and authorizing the use of electronic records and electronic signatures;
2. To eliminate barriers to electronic commerce transactions resulting from uncertainties relating to writing and signature requirements;
3. To simplify, clarify, and modernize the law governing commerce transactions through the use of electronic means;
4. To permit the continued expansion of commercial electronic practices through custom, usage, and agreement of the parties;
5. To promote uniformity of the law among the states and worldwide relating to the use of electronic and similar technological means of effecting and performing commercial transactions;
6. To promote public confidence in the validity, integrity, and reliability of electronic commerce transactions; and
7. To promote the development of the legal and business infrastructure necessary to implement electronic commerce transactions.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-104 of Title 12A, unless there is created a duplication in numbering, reads as follows:

Except as otherwise provided in Section 5 of this act, the Electronic Transactions Act applies to records generated, stored, processed, communicated, or used for any purpose in any commercial transaction.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-105 of Title 12A, unless there is created a duplication in numbering, reads as follows:

A. Unless otherwise expressly agreed to by the parties, the Electronic Transactions Act shall not apply to the extent that a transaction is governed by:

1. Rules of law relating to the creation or execution of a will;

2. Rules of law relating to the creation, performance, or enforcement of an indenture, declaration of trust, or power of attorney;

3. Rules of law relating to the conveyancing of real property;

4. Requirement by the recipient of the information that the information be in writing, except as otherwise provided for in this act;

5. Rules of law which expressly establish the conditions or circumstances under which a record other than a writing satisfies the requirements of such rule of law, in which case the conditions or circumstances described in such rule of law shall control; and

6. Rules of law which expressly prohibit the use of a record other than a writing to convey information, except as otherwise provided in this act. The mere requirement in a rule of law that such information be "in writing" shall not be sufficient to satisfy the requirement of an express prohibition.

B. A transaction subject to this act shall also be subject to any applicable rules of law relating to consumer protection.

C. In the case of a conflict between this act and a rule of law referenced in subsection B of this section, the rule of law referenced in subsection B of this section shall govern.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-106 of Title 12A, unless there is created a duplication in numbering, reads as follows:

A. As between parties involved in generating, storing, sending, receiving, or otherwise processing or using electronic records or electronic signatures, and except as otherwise provided, the provisions of this act may be varied by agreement.

B. The presence in certain provisions of this act of the words "unless otherwise agreed" or words of similar import shall not imply that the effect of other provisions may not be varied by agreement under subsection A of this section.

C. This act shall not, nor shall it be construed to, require that information or signatures be created, stored, transmitted, or otherwise used or communicated by electronic means or in electronic form.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-107 of Title 12A, unless there is created a duplication in numbering, reads as follows:

A. An agreement by parties to a transaction governed in whole or in part by this act that their rights and obligations are to be determined by the law of this state or another state or country is effective, whether or not the transaction bears a reasonable relation to that state or country, unless:

1. The transaction is a consumer transaction and that state or country is neither:

- a. the state or country in which the consumer resides at the time the transaction becomes enforceable or will reside within thirty (30) days thereafter,

- b. the state or country in which, pursuant to the contract establishing the transaction, the goods, services, or other consideration flowing to the consumer are to be received by the consumer or person designated by the consumer, or
- c. the state or county in which the goods or services originates;

2. The law of that state or country is contrary to a fundamental public policy of the state or country whose law would govern if the parties had not selected the governing law by agreement; or

3. The agreement of the parties selects the law of a country other than the United States, and the transaction does not bear a reasonable relationship to a country other than the United States.

B. If subsection A of this section does not apply or the agreement of the parties under subsection A of this section is ineffective, this act shall apply to transactions bearing an appropriate relation to this state.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-108 of Title 12A, unless there is created a duplication in numbering, reads as follows:

The parties may choose an exclusive judicial forum. Provided, in a consumer contract the choice shall not be enforceable if the chosen jurisdiction would not otherwise have jurisdiction over the consumer, the consumer did not have adequate notice of the choice of forum term, and the choice is fundamentally unfair to and unreasonably burdens the consumer. A choice of forum in the terms of an agreement is not exclusive unless the agreement expressly so provides.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-109 of Title 12A, unless there is created a duplication in numbering, reads as follows:

The Electronic Transactions Act shall be liberally construed and applied consistently with commercially reasonable practices under the circumstances to promote its underlying purposes and policies.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-110 of Title 12A, unless there is created a duplication in numbering, reads as follows:

A. A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:

1. The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party;

2. That party performs on one or more occasions; and

3. The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces to it, without objection.

B. A "course of dealing" is a sequence of previous conduct between the parties to a particular transaction that is to be fairly regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

C. A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

D. A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are, or should be aware, is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade is applicable where only part of the performance under the agreement

is to occur and may be so utilized as to that part of the performance.

E. The express terms of an agreement, terms with respect to which a party has manifested assent, and any applicable course of performance, course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other. If such construction is unreasonable:

1. Express terms prevail over terms with respect to which either party has manifested assent, course of performance, course of dealing, and usage of trade;

2. Terms with respect to which either party has manifested assent prevail over course of performance, course of dealing, and usage of trade;

3. Course of performance prevails over course of dealing and usage of trade; and

4. Course of dealing prevails over usage of trade.

F. Evidence of a relevant usage of trade offered by one party shall not be admissible unless that party has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.

Part 2. Electronic Record and Signatures Generally

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-201 of Title 12A, unless there is created a duplication in numbering, reads as follows:

A record shall not be denied legal effect, validity, or enforceability solely because it is in the form of an electronic record.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-202 of Title 12A, unless there is created a duplication in numbering, reads as follows:

Except for those transactions listed in Section 5 of this act, if a rule of law requires a record to be in writing, or provides

consequences if it is not, an electronic record satisfies that rule of law.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-203 of Title 12A, unless there is created a duplication in numbering, reads as follows:

A. If a rule of law requires a signature, or provides consequences in the absence of a signature, that rule of law is satisfied with respect to an electronic record if the electronic record includes an electronic signature.

B. A party may establish reasonable requirements regarding the method and type of signature which will be acceptable to the party.

C. The provisions of this act shall not apply to those transactions subject to other rules of law as provided for in Section 5 of this act.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-204 of Title 12A, unless there is created a duplication in numbering, reads as follows:

A. Unless the circumstances otherwise indicate that a party intends less than all of the effect, an electronic signature is intended to establish the signing party's identity, the party's adoption and acceptance of a record or a term, and the authenticity of the record or term.

B. Operations of an electronic agent constitute the electronic signature of a party if the party designed, programmed, or selected the electronic agent for the purpose of achieving results of that type.

C. An electronic record is signed as a matter of law if the party complied with a security procedure. Otherwise, an electronic signature may be proved in any manner sufficient to demonstrate:

1. The signer's intention to authenticate the electronic record, or term thereof, to which the electronic signature is attached or relates, including by showing that a procedure existed

by which a party must of necessity have executed a symbol, or manifested assent, in order to proceed further in the processing of the transaction; or

2. That the party is bound by virtue of the operations of its electronic agent.

D. The authenticity of, and authority to make, an electronic signature is admitted unless specifically denied in the pleading. If the validity of an electronic signature is denied in the pleading, the burden of establishing validity is on the person claiming validity.

E. If a rule of law requires that a signature be notarized or acknowledged for the electronic record to be enforceable or filed of record, that requirement shall be deemed satisfied with respect to an electronic record which has not been notarized if:

1. The electronic record includes a secure electronic signature; or

2. The creation, transmission and storage of the electronic record itself or the symbol or methodology adopted for signing such electronic record provide substantial evidence of the identity of the person signing the electronic record.

Whether the substantial evidence standard has been met is for decision by the court.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-205 of Title 12A, unless there is created a duplication in numbering, reads as follows:

A. If a rule of law or a commercial practice requires a record to be presented or retained in its original form or provides consequences for the record not being presented or retained in its original form, that requirement is met by an electronic record if the electronic record is shown to reflect accurately the information set forth in the electronic record from the time when it was first generated to its final form, as an electronic record to otherwise.

B. The criteria for assessing the integrity and accuracy of the information in an electronic record shall be determined by whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change which arises in the normal course of communication, storage, and display. The standard of reliability required shall be assessed in the light of the purpose for which the information was generated and in the light of all the relevant circumstances.

C. The provisions of this section shall not apply to those transactions subject to other rules of law as provided for in Section 5 of this act.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-206 of Title 12A, unless there is created a duplication in numbering, reads as follows:

A. In any legal proceeding, nothing in the application of the rules of evidence shall apply so as to deny the admissibility of an electronic record or electronic signature into evidence:

1. On the sole ground that it is an electronic record or electronic signature; or

2. On the ground that it is not in its original form or is not an original.

B. Admissible information in the form of an electronic record or electronic signature shall be given evidential weight by the trier of fact. In assessing the evidential weight of an electronic record or electronic signature, the trier of fact shall consider the manner in which the electronic record or electronic signature was generated, stored, communicated, or retrieved, the reliability of the manner in which the integrity of the electronic record or electronic signature was maintained, the manner in which its originator was identified or the electronic record was signed, and any other relevant information or circumstances.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-207 of Title 12A, unless there is created a duplication in numbering, reads as follows:

A. If a rule of law requires that certain documents, records, or information be retained, that requirement is met by retaining electronic records, provided the following conditions are satisfied:

1. The information contained in the electronic record remains accessible so as to be usable for subsequent reference;

2. The electronic record is retained in the format in which it was generated, stored, sent, or received, or in a format which can be demonstrated to reflect accurately the information as originally generated, stored, sent, or received; and

3. The information, if any, is retained as enables the identification of the source of origin and destination of an electronic record and the date and time when it was sent or received.

B. A requirement to retain documents, records, or information in accordance with subsection A of this section shall not extend to any information the sole purpose of which is to enable the record to be sent or received.

C. A person may satisfy the requirement referred to in subsection A of this section by using the services of any other person, provided that the conditions set forth in paragraphs 1, 2 and 3 of subsection A of this section are met.

D. The provisions of this section shall not apply to documents, records, or information excluded from the provisions of Section 12 or 13 of this act.

E. Nothing in this section shall preclude any federal or state agency from specifying additional requirements for the retention of records, either written or electronic, that are subject to the jurisdiction of that entity.

Part 3. Secure Electronic Records and Signatures

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-301 of Title 12A, unless there is created a duplication in numbering, reads as follows:

If, through the application of a security procedure, it can be verified that an electronic record has remained unaltered since a specified time, the record is a secure electronic record from that time forward.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-302 of Title 12A, unless there is created a duplication in numbering, reads as follows:

If, through the application of a security procedure, it can be verified that an electronic signature was, at the time it was made, unique to the person using it, capable of verification, under the sole control of the person using it, and linked to the electronic record to which it relates in a manner such that, if the record was changed the electronic signature would be invalidated, the signature is a secure electronic signature.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-303 of Title 12A, unless there is created a duplication in numbering, reads as follows:

A. With respect to a secure electronic record, there is a rebuttable presumption that the electronic record has not been altered since the specific time to which the secure status relates.

B. With respect to a secure electronic signature there is a rebuttable presumption that:

1. The secure electronic signature is the signature of the party to whom it relates; and

2. The secure electronic signature was affixed by that party with the intention of signing the record.

C. In the absence of a secure electronic record or a secure electronic signature, this act shall not create any presumption

regarding the authenticity and integrity of an electronic record or an electronic signature.

Part 4. Electronic Contracts and Communications

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-401 of Title 12A, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided for in subsection B of this section, as between the sender and the recipient of an electronic record, a communication or other statement may not be denied legal effect, validity, or enforceability solely on the grounds that it is in the form of an electronic record.

B. This section shall not apply to those transactions subject to other rules of law as provided for in Section 5 of this act.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-402 of Title 12A, unless there is created a duplication in numbering, reads as follows:

A. Unless otherwise agreed, an offer and the acceptance of an offer may be expressed by means of electronic records. If an electronic record is used in the formation of a contract, the contract may not be denied validity or enforceability on the sole ground that an electronic record was used for that purpose.

B. Subject to subsection C of this section, operations of one or more electronic agents which confirm the existence of a contract are effective to form a contract even if no individual representing either party was aware of or reviewed the action or its results.

C. In an automated transaction, the following rules apply:

1. A contract is formed by the interaction of two electronic agents if the interaction results in each agent engaging in operations that signify agreement, such as by engaging in performing the contract, ordering or instructing performance, accepting performance, or making a record of the existence of a contract;

2. A contract may be formed by the interaction of an electronic agent and an individual. A contract is formed if an individual has reason to know that the individual is dealing with an electronic agent and performs actions the person should know will cause the electronic agent to perform or to permit further use, or that are clearly indicated as constituting acceptance regardless of other contemporaneous expressions by the individual to which the electronic agent cannot react;

3. The terms of a contract resulting from an automated transaction include terms of the parties' agreement, terms which the electronic agent could take into account, and, to the extent not covered by the foregoing, terms provided by law; and

4. If an electronic record initiated by a party or an electronic agent evokes an electronic record in response and the records reflect an intent to be bound, a contract exists when:

- a. the response signifying acceptance is received, or
- b. if the response consists of electronically performing the requested consideration in whole or in part, when the requested consideration, to be performed electronically, is received, unless the originating record prohibited that form of response.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-403 of Title 12A, unless there is created a duplication in numbering, reads as follows:

A. As between the parties, an electronic record received by a party is attributable to the party indicated as the sender if:

1. It was sent by that party, the agent of that party, or electronic agent;

2. The receiving party, in good faith and in compliance with a security procedure, concluded that it was sent by the other party;

or

3. Subject to subsection B of this section, the electronic record:

- a. resulted from acts of a person that obtained access to a security procedure, access numbers, codes, computer programs, or the like from a source under the control of the alleged sender creating the appearance that the electronic record came from the alleged sender,
- b. the access occurred under circumstances constituting a failure to exercise reasonable care by the alleged sender, and
- c. the receiving party reasonably relied to its detriment on the apparent source of the electronic record;

B. In a case governed by paragraph 3 of subsection A of this section, the following rules apply:

1. The receiving party has the burden of proving reasonable reliance, and the alleged sender has the burden of proving reasonable care; and

2. Reliance on an electronic record that does not comply with an agreed security procedure is not reasonable unless authorized by an individual representing the alleged sender.

C. If an electronic record was transmitted pursuant to a security procedure for the detection of error and the record contained an error, the following rules apply:

1. If the sender complied with the security procedure and the error would have been detected had the receiving party also complied with the security procedure, the sender is not bound; and

2. If the sender, pursuant to a security procedure, receives a notice of the content of the record as received, the sender has a duty to review the notice and report any error detected by it, in a commercially reasonable manner.

D. Except as otherwise provided for in paragraph 1 of subsection A of this section and subsection C of this section, if a

loss occurs because a party complies with a security procedure that was not commercially reasonable, the party that required use of the commercially unreasonable security procedure bears the loss unless it disclosed the nature of the risk to the other party or offered commercially reasonable alternatives that the party rejected. The party's liability under this section is limited to losses that could not have been prevented by the exercise of reasonable care by the other party.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-404 of Title 12A, unless there is created a duplication in numbering, reads as follows:

A. Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it enters an information system outside the control of the sender or of a person who sent the electronic record on behalf of the sender.

B. Unless otherwise agreed between the sender and the recipient, the time of receipt of an electronic record is determined as follows:

1. If the recipient has designated a specific information system for the purpose of receiving electronic records, receipt occurs;

- a. at the time when the electronic record enters the designated information system, or
- b. if the electronic record is sent to an information system of the addressee that is not the designated information system, at the time when the electronic record is retrieved by the recipient; or

2. If the recipient has not designated a specific information system, receipt occurs when the electronic record enters an information system of the recipient.

C. Subsection B of this section applies notwithstanding that the place where the information system is located may be different

from the place where the electronic record is considered to be received under subsection D of this section.

D. Unless otherwise agreed between the sender and the recipient, an electronic record is considered to be sent from the place where the sender has its place of business and is considered to be received at the place where the recipient has its place of business. For purposes of this subsection:

1. If the sender or the recipient has more than one place of business, the place of business is that which has the closest relationship to the underlying transaction or, if there is not an underlying transaction, the principal place of business; or

2. If the sender or the recipient does not have a place of business, reference is to be made to its habitual residence.

E. Subjection to Section 25 of this act, an electronic record is effective when received, even if no individual is aware of its receipt.

F. The provisions of this section shall not apply to those transactions subject to other rules of law as provided for in Section 5 of this act.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-405 of Title 12A, unless there is created a duplication in numbering, reads as follows:

A. If the sender of a record requests or agrees with the recipient of the record that receipt of the record shall be acknowledged electronically, the following rules apply:

1. If the sender indicates in the record or otherwise that the record is conditional on receipt of an electronic acknowledgment, or the record does not bind the sender until acknowledgment is received and lapses if acknowledgment is not received in a reasonable time;

2. If the sender requests electronic acknowledgment but does not state that the record is conditional on electronic acknowledgment, or does not specify a time for receipt and

electronic acknowledgment is not received within a reasonable time after the record is sent, on notice to the other party, the sender may either revoke the record or specify a further reasonable time within which electronic acknowledgment must be received or the message will be treated as not having binding effect. If electronic acknowledgment is not received within that additional time, the sender may treat the record as not having binding effect; and

3. If the sender requests electronic acknowledgment and specifies a time for receipt and, if receipt does not occur within that time, the sender may treat the record as not having binding effect.

B. Receipt of electronic acknowledgment establishes that the record was received but, in itself, does not establish that the content sent corresponds to the content received.

SECTION 26. This act shall become effective July 1, 1998.

SECTION 27. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-2-8235

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