

## CHAPTER 96—ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE

### SUBCHAPTER I—ELECTRONIC RECORDS AND SIGNATURES IN COMMERCE

Sec.	
7001.	General rule of validity.
7002.	Exemption to preemption.
7003.	Specific exceptions.
7004.	Applicability to Federal and State governments.
7005.	Studies.
7006.	Definitions.

### SUBCHAPTER II—TRANSFERABLE RECORDS

7021.	Transferable records.
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### SUBCHAPTER III—PROMOTION OF INTERNATIONAL ELECTRONIC COMMERCE

7031.	Principles governing the use of electronic signatures in international transactions.
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### SUBCHAPTER I—ELECTRONIC RECORDS AND SIGNATURES IN COMMERCE

#### § 7001. General rule of validity

##### (a) In general

Notwithstanding any statute, regulation, or other rule of law (other than this subchapter and subchapter II), with respect to any transaction in or affecting interstate or foreign commerce—

(1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and

(2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

##### (b) Preservation of rights and obligations

This subchapter does not—

(1) limit, alter, or otherwise affect any requirement imposed by a statute, regulation, or rule of law relating to the rights and obligations of persons under such statute, regulation, or rule of law other than a requirement that contracts or other records be written, signed, or in nonelectronic form; or

(2) require any person to agree to use or accept electronic records or electronic signatures, other than a governmental agency with respect to a record other than a contract to which it is a party.

##### (c) Consumer disclosures

###### (1) Consent to electronic records

Notwithstanding subsection (a), if a statute, regulation, or other rule of law requires that information relating to a transaction or transactions in or affecting interstate or foreign commerce be provided or made available to a consumer in writing, the use of an electronic record to provide or make available (whichever is required) such information satisfies the requirement that such information be in writing if—

(A) the consumer has affirmatively consented to such use and has not withdrawn such consent;

(B) the consumer, prior to consenting, is provided with a clear and conspicuous statement—

(i) informing the consumer of (I) any right or option of the consumer to have the record provided or made available on paper or in nonelectronic form, and (II) the right of the consumer to withdraw the consent to have the record provided or made available in an electronic form and of any conditions, consequences (which may include termination of the parties' relationship), or fees in the event of such withdrawal;

(ii) informing the consumer of whether the consent applies (I) only to the particular transaction which gave rise to the obligation to provide the record, or (II) to identified categories of records that may be provided or made available during the course of the parties' relationship;

(iii) describing the procedures the consumer must use to withdraw consent as provided in clause (i) and to update information needed to contact the consumer electronically; and

(iv) informing the consumer (I) how, after the consent, the consumer may, upon request, obtain a paper copy of an electronic record, and (II) whether any fee will be charged for such copy;

(C) the consumer—

(i) prior to consenting, is provided with a statement of the hardware and software requirements for access to and retention of the electronic records; and

(ii) consents electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent; and

(D) after the consent of a consumer in accordance with subparagraph (A), if a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent, the person providing the electronic record—

(i) provides the consumer with a statement of (I) the revised hardware and software requirements for access to and retention of the electronic records, and (II) the right to withdraw consent without the imposition of any fees for such withdrawal and without the imposition of any condition or consequence that was not disclosed under subparagraph (B)(i); and

(ii) again complies with subparagraph (C).

##### (2) Other rights

###### (A) Preservation of consumer protections

Nothing in this subchapter affects the content or timing of any disclosure or other record required to be provided or made available to any consumer under any statute, regulation, or other rule of law.

###### (B) Verification or acknowledgment

If a law that was enacted prior to this chapter expressly requires a record to be

provided or made available by a specified method that requires verification or acknowledgment of receipt, the record may be provided or made available electronically only if the method used provides verification or acknowledgment of receipt (whichever is required).

**(3) Effect of failure to obtain electronic consent or confirmation of consent**

The legal effectiveness, validity, or enforceability of any contract executed by a consumer shall not be denied solely because of the failure to obtain electronic consent or confirmation of consent by that consumer in accordance with paragraph (1)(C)(ii).

**(4) Prospective effect**

Withdrawal of consent by a consumer shall not affect the legal effectiveness, validity, or enforceability of electronic records provided or made available to that consumer in accordance with paragraph (1) prior to implementation of the consumer's withdrawal of consent. A consumer's withdrawal of consent shall be effective within a reasonable period of time after receipt of the withdrawal by the provider of the record. Failure to comply with paragraph (1)(D) may, at the election of the consumer, be treated as a withdrawal of consent for purposes of this paragraph.

**(5) Prior consent**

This subsection does not apply to any records that are provided or made available to a consumer who has consented prior to the effective date of this subchapter to receive such records in electronic form as permitted by any statute, regulation, or other rule of law.

**(6) Oral communications**

An oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of this subsection except as otherwise provided under applicable law.

**(d) Retention of contracts and records**

**(1) Accuracy and accessibility**

If a statute, regulation, or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be retained, that requirement is met by retaining an electronic record of the information in the contract or other record that—

(A) accurately reflects the information set forth in the contract or other record; and

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

**(2) Exception**

A requirement to retain a contract or other record in accordance with paragraph (1) does not apply to any information whose sole purpose is to enable the contract or other record to be sent, communicated, or received.

**(3) Originals**

If a statute, regulation, or other rule of law requires a contract or other record relating to a transaction in or affecting interstate or foreign commerce to be provided, available, or retained in its original form, or provides consequences if the contract or other record is not provided, available, or retained in its original form, that statute, regulation, or rule of law is satisfied by an electronic record that complies with paragraph (1).

**(4) Checks**

If a statute, regulation, or other rule of law requires the retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with paragraph (1).

**(e) Accuracy and ability to retain contracts and other records**

Notwithstanding subsection (a), if a statute, regulation, or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be in writing, the legal effect, validity, or enforceability of an electronic record of such contract or other record may be denied if such electronic record is not in a form that is capable of being retained and accurately reproduced for later reference by all parties or persons who are entitled to retain the contract or other record.

**(f) Proximity**

Nothing in this subchapter affects the proximity required by any statute, regulation, or other rule of law with respect to any warning, notice, disclosure, or other record required to be posted, displayed, or publicly affixed.

**(g) Notarization and acknowledgment**

If a statute, regulation, or other rule of law requires a signature or record relating to a transaction in or affecting interstate or foreign commerce to be notarized, acknowledged, verified, or made under oath, that requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable statute, regulation, or rule of law, is attached to or logically associated with the signature or record.

**(h) Electronic agents**

A contract or other record relating to a transaction in or affecting interstate or foreign commerce may not be denied legal effect, validity, or enforceability solely because its formation, creation, or delivery involved the action of one or more electronic agents so long as the action of any such electronic agent is legally attributable to the person to be bound.

**(i) Insurance**

It is the specific intent of the Congress that this subchapter and subchapter II apply to the business of insurance.

**(j) Insurance agents and brokers**

An insurance agent or broker acting under the direction of a party that enters into a contract by means of an electronic record or electronic

signature may not be held liable for any deficiency in the electronic procedures agreed to by the parties under that contract if—

- (1) the agent or broker has not engaged in negligent, reckless, or intentional tortious conduct;
- (2) the agent or broker was not involved in the development or establishment of such electronic procedures; and
- (3) the agent or broker did not deviate from such procedures.

(Pub. L. 106-229, title I, §101, June 30, 2000, 114 Stat. 464.)

#### Editorial Notes

##### REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(2)(B), was in the original “this Act”, meaning Pub. L. 106-229, June 30, 2000, 114 Stat. 464, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

For the effective date of this subchapter, referred to in subsec. (c)(5), see Effective Date note below.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Pub. L. 106-229, title I, §107, June 30, 2000, 114 Stat. 473, provided that:

“(a) IN GENERAL.—Except as provided in subsection (b), this title [enacting this subchapter] shall be effective on October 1, 2000.

“(b) EXCEPTIONS.—

“(1) RECORD RETENTION.—

“(A) IN GENERAL.—Subject to subparagraph (B), this title [enacting this subchapter] shall be effective on March 1, 2001, with respect to a requirement that a record be retained imposed by—

“(i) a Federal statute, regulation, or other rule of law, or

“(ii) a State statute, regulation, or other rule of law administered or promulgated by a State regulatory agency.

“(B) DELAYED EFFECT FOR PENDING RULEMAKINGS.—If on March 1, 2001, a Federal regulatory agency or State regulatory agency has announced, proposed, or initiated, but not completed, a rulemaking proceeding to prescribe a regulation under section 104(b)(3) [15 U.S.C. 7004(b)(3)] with respect to a requirement described in subparagraph (A), this title shall be effective on June 1, 2001, with respect to such requirement.

“(2) CERTAIN GUARANTEED AND INSURED LOANS.—

With regard to any transaction involving a loan guarantee or loan guarantee commitment (as those terms are defined in section 502 of the Federal Credit Reform Act of 1990 [2 U.S.C. 661a]), or involving a program listed in the Federal Credit Supplement, Budget of the United States, FY 2001, this title applies only to such transactions entered into, and to any loan or mortgage made, insured, or guaranteed by the United States Government thereunder, on and after one year after the date of enactment of this Act [June 30, 2000].

“(3) STUDENT LOANS.—With respect to any records that are provided or made available to a consumer pursuant to an application for a loan, or a loan made, pursuant to title IV of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq.], section 101(c) of this Act [15 U.S.C. 7001(c)] shall not apply until the earlier of—

“(A) such time as the Secretary of Education publishes revised promissory notes under section 432(m) of the Higher Education Act of 1965 [20 U.S.C. 1082(m)]; or

“(B) one year after the date of enactment of this Act [June 30, 2000].”

##### SHORT TITLE

Pub. L. 106-229, §1, June 30, 2000, 114 Stat. 464, provided that: “This Act [enacting this chapter and

amending provisions set out as a note under section 231 of Title 47, Telecommunications] may be cited as the ‘Electronic Signatures in Global and National Commerce Act’.”

#### § 7002. Exemption to preemption

##### (a) In general

A State statute, regulation, or other rule of law may modify, limit, or supersede the provisions of section 7001 of this title with respect to State law only if such statute, regulation, or rule of law—

- (1) constitutes an enactment or adoption of the Uniform Electronic Transactions Act as approved and recommended for enactment in all the States by the National Conference of Commissioners on Uniform State Laws in 1999, except that any exception to the scope of such Act enacted by a State under section 3(b)(4) of such Act shall be preempted to the extent such exception is inconsistent with this subchapter or subchapter II, or would not be permitted under paragraph (2)(A)(ii) of this subsection; or
- (2)(A) specifies the alternative procedures or requirements for the use or acceptance (or both) of electronic records or electronic signatures to establish the legal effect, validity, or enforceability of contracts or other records, if—

- (i) such alternative procedures or requirements are consistent with this subchapter and subchapter II; and
- (ii) such alternative procedures or requirements do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures; and

(B) if enacted or adopted after June 30, 2000, makes specific reference to this chapter.

##### (b) Exceptions for actions by States as market participants

Subsection (a)(2)(A)(ii) shall not apply to the statutes, regulations, or other rules of law governing procurement by any State, or any agency or instrumentality thereof.

##### (c) Prevention of circumvention

Subsection (a) does not permit a State to circumvent this subchapter or subchapter II through the imposition of nonelectronic delivery methods under section 8(b)(2) of the Uniform Electronic Transactions Act.

(Pub. L. 106-229, title I, §102, June 30, 2000, 114 Stat. 467.)

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective Oct. 1, 2000, with exceptions relating to record retention and certain loans, see section 107 of Pub. L. 106-229, set out as a note under section 7001 of this title.

#### § 7003. Specific exceptions

##### (a) Excepted requirements

The provisions of section 7001 of this title shall not apply to a contract or other record to the extent it is governed by—