

## HOUSE SUMMARY OF SENATE AMENDMENTS

House Bill No. 888 by Representative Pinac

### Synopsis of Senate Amendments

1. Changes provisions referencing agencies "in" the state to agencies "of" the state.
2. Adds provision directing the Louisiana State Law Institute to prepare official comments to accompany the proposed law and to be published with the text of the statutes enacted by this proposed law.

### Digest of Bill as Finally Passed by Senate

**Abstract:** The proposed law, enacts the Uniform Electronic Transactions Act (UETA), provides for the implementation and use of electronic records and electronic signatures in order to form a valid and binding contract. UETA provides for definitions and general concepts which allow the parties to choose whether or not to form the contract by electronic means as well as the technology and security procedures employed to form the contract. An "electronic signature" is defined as an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. The proposed law also contains interoperability provisions for government agencies.

Proposed law enacts the Uniform Electronic Transactions Act (UETA).

Proposed law (R.S. 9:2602) provides definitions for "agreement", "automated transaction", "computer program", "contract", "electronic", "electronic agent", "electronic record", "electronic signature", "governmental agency", "information", "information processing system", "person", "record", "security procedure", "state", and "transaction".

Proposed law (R.S. 9:2603) provides for applicability to electronic records and electronic signatures and for certain enumerated exclusions as provided in R.S. 9:2603(B)(1) through (5).

Proposed law (R.S. 9:2604) provides for prospective application only.

Proposed law (R.S. 9:2605) does not require the use of electronic means to create, generate, send, communicate, receive, or store a record or signature and is applicable only to transactions between parties, each of which has agreed to conduct transactions by electronic means.

Proposed law (R.S. 9:2606) provides that whether parties have agreed to conduct a transaction electronically is determined from the context and surrounding circumstances, including the conduct of the parties.

Proposed law (R.S. 9:2607) provides that a record or signature may not be denied legal effect solely because it is in electronic form and that an electronic record or signature satisfies the requirement of a written record or signature.

Proposed law (R.S. 9:2608) provides that if other law requires a person to provide,

send, or deliver information in writing, the requirement is satisfied if the electronic record is capable of retention by the recipient. If the information processing system inhibits the recipient's ability to print or store the record, then the electronic record is not capable of retention by the recipient, and if the sender inhibits the recipient's ability to store or print the electronic record, the electronic record is not enforceable against the recipient. Additionally, if required by other law, the record must be sent, communicated, transmitted, formatted, displayed, or posted in the manner specified by the other law. The requirements for providing, sending, or delivering may not be varied by agreement, except to the extent permitted by the other law.

Proposed law (R.S. 9:2609) provides that an electronic record or signature is attributable to a person if it was the act of the person or his authorized agent, and that the act of the person may be established by the efficacy of the applied security procedures as well as by the circumstances surrounding the creation, execution, or adoption of the electronic record or signature.

Proposed law (R.S. 9:2610) establishes certain applicable rules if an error occurs in the transmission of an electronic record which include:

- (1) The party conforming to an agreed upon security procedure may avoid the effects of a changed or erroneous electronic record if the error would have been detected had the nonconforming party conformed to the security procedure.
- (2) If the electronic agent did not provide an opportunity to prevent or correct the error in an automated transaction, an individual may avoid the effect of an error made by the individual if the individual provides prompt notice of the error, takes reasonable steps to return the consideration received as a result of the error, and has not received any benefit or value from the consideration received as a result of the error.
- (3) If (1) and (2) above do not apply, other law may apply, including the law of error.
- (4) Paragraphs (2) and (3) above may not be varied by agreement.

Proposed law (R.S. 9:2611) permits a notary public or other authorized officer to act electronically, effectively removing the stamp/seal requirements, while retaining all other requirements of notarial laws and allowing the signing and information to be accomplished in an electronic form.

Proposed law (R.S. 9:2612) provides that the retention of records in electronic form satisfies requirements for the retention of written records so long as the electronic record accurately reflects the original record and remains accessible for later reference.

Proposed law (R.S. 9:2613) prohibits evidence of a record or signature from being excluded from evidence solely because it is in electronic form.

Proposed law (R.S. 9:2614) confirms that contracts can be formed by machines functioning as electronic agents for parties to a transaction, either by electronic agent to electronic agent or by electronic agent to individual. It negates any claim that lack of human intent, at the time of contract formation, prevents contract formation.

Proposed law (R.S. 9:2615) provides default rules regarding when and from where an electronic record is sent and when and where an electronic record is received, but does not address the effectiveness of the record that is sent or received. Proposed law

provides that other substantive laws on interpretation and enforceability of the particular transaction are to be applied when determining the effectiveness of an illegible record.

Proposed law (R.S. 9:2616) defines "transferable record" as an electronic record that would be a note pursuant to R.S. 10:3-101 et seq., or a document under R.S. 10:7-101 et seq., if the electronic record were in writing and the issuer has expressly agreed that the electronic record is a transferable record.

Proposed law provides for the development of electronic systems which will permit the retention of copies which reflect the same integrity as the original and provides for a system employed for evidencing the transfer of interests in the transferable record and establishing and identifying the person to which the record was issued or transferred and who has control.

Proposed law (R.S. 9:2617-2619) provides optional provisions for the implementation by the state for the use of electronic transactions among the various governmental agencies as well as for the retention of information and filings which must be made with governmental agencies and departments.

Proposed law (R.S. 9:2617) authorizes state agencies to use electronic records and electronic signatures generally for intragovernmental purposes and to convert written records and manual signatures to electronic records and electronic signatures. This Section also authorizes the destruction of written records after conversion to electronic form.

Proposed law (R.S. 9:2618) authorizes state agencies to send and receive electronic records and signatures when transacting with nongovernmental persons. Also provides with respect to electronic records used for evidentiary purposes.

Proposed law (R.S. 9:2619) requires governmental agencies to take into account consistency in applications and interoperability to the extent practicable when promulgating standards.

Proposed law directs the Louisiana State Law Institute to prepare official comments to accompany the provisions of proposed law and to instruct West Publishing Company to print such official comments together with the text of the statutes enacted by proposed law.

Effective July 1, 2001.

(Adds R.S. 9:2601-2620)