

Regular Session, 2001

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HOUSE BILL NO. 888

BY REPRESENTATIVE PINAC

CONTRACTS: Enacts the Uniform Electronic Transactions Act

AN ACT

To enact Chapter 1 of Code Title IV of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:2601 through 2620, relative to uniform electronic transactions; to enact the Uniform Electronic Transactions Act; to provide for definitions; to provide for the applicability of electronic records and electronic signatures; to provide for exceptions to the use of electronic records and electronic signatures; to provide for variation by agreement in certain circumstances; to provide for legal recognition and enforceability; to provide for satisfaction of requirements for written records; to provide for attribution of electronic records and electronic signatures to individuals; to provide for the effect of changes or errors in electronic records; to provide for the use of security procedures; to provide for notarization and acknowledgment; to provide for the retention of electronic records; to provide for the admissibility of electronic records and electronic signatures into evidence; to provide

1 rules for automated transactions; to provide for the sending, receiving,  
2 and retrieving of electronic records and electronic signatures; to  
3 provide for transferable electronic records; to provide for the creation,  
4 retention, acceptance, distribution, and interoperability of electronic  
5 records by governmental agencies; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Chapter 1 of Code Title IV of Code Book III of Title 9 of  
8 the Louisiana Revised Statutes of 1950, comprised of R.S. 9:2601 through  
9 2620, is hereby enacted to read as follows:

10 CHAPTER 1. LOUISIANA UNIFORM ELECTRONIC  
11 TRANSACTIONS ACT

12 §2601. Short title

13 This Chapter may be cited as the "Louisiana Uniform Electronic  
14 Transactions Act".

15 §2602. Definitions

16 As used in this Chapter, unless the context otherwise requires:

17 (1) "Agreement" means the bargain of the parties in fact, as  
18 found in their language or inferred from other circumstances and from  
19 rules, regulations, and procedures given the effect of agreements under  
20 laws otherwise applicable to a particular transaction.

21 (2) "Automated transaction" means a transaction conducted or  
22 performed, in whole or in part, by electronic means or electronic  
23 records, in which the acts or records of one or both parties are not  
24 reviewed by an individual in the ordinary course of forming a contract,  
25 performing under an existing contract, or fulfilling an obligation  
26 required by the transaction.

1           (3) "Computer program" means a set of statements or  
2           instructions to be used directly or indirectly in an information  
3           processing system in order to bring about a certain result.

4           (4) "Contract" means the total legal obligation resulting from  
5           the agreement of the parties as affected by this Chapter and other  
6           applicable law.

7           (5) "Electronic" means relating to technology having electrical,  
8           digital, magnetic, wireless, optical, electromagnetic, or similar  
9           capabilities.

10          (6) "Electronic agent" means a computer program or an  
11          electronic or other automated means used independently to initiate an  
12          action or respond to electronic records or performances in whole or in  
13          part without review or action by an individual.

14          (7) "Electronic record" means a record created, generated, sent,  
15          communicated, received, or stored by electronic means.

16          (8) "Electronic signature" means an electronic sound, symbol,  
17          or process attached to or logically associated with a record and  
18          executed or adopted by a person with the intent to sign the record.

19          (9) "Governmental agency" means an executive, legislative, or  
20          judicial agency, department, board, commission, authority, institution,  
21          unit, or instrumentality of the federal government or of a state or of a  
22          county or parish, municipality, or other political subdivision of a state.

23          (10) "Information" includes data, text, images, sounds, codes,  
24          computer programs, software, and databases, or the like.

1           (11) "Information processing system" means an electronic  
2           system for creating, generating, sending, receiving, storing, displaying,  
3           or processing information.

4           (12) "Person" means an individual, corporation, business trust,  
5           estate, trust, partnership, limited liability company, association, joint  
6           venture, governmental agency, public corporation, or any other legal or  
7           commercial entity.

8           (13) "Record" means information that is inscribed on a tangible  
9           medium or that is stored in an electronic or other medium and is  
10          retrievable in perceivable form.

11          (14) "Security procedure" means a procedure employed for the  
12          purpose of verifying that an electronic signature, record, or  
13          performance is that of a specific person or for detecting changes or  
14          errors in the information in an electronic record. The term includes a  
15          procedure that requires the use of algorithms or other codes, identifying  
16          words or numbers, encryption, or callback or other acknowledgment  
17          procedures.

18          (15) "State" means this state or another state of the United  
19          States, the District of Columbia, Puerto Rico, the United States Virgin  
20          Islands, or any territory or insular possession subject to the jurisdiction  
21          of the United States. The term includes an Indian tribe or band, or  
22          Alaskan native village, which is recognized by federal law or formally  
23          acknowledged by a state.

24          (16) "Transaction" means an action or set of actions occurring  
25          between two or more persons relating to the conduct of business,  
26          commercial, or governmental affairs.

1           §2603. Scope

2                   A. Except as otherwise provided in Subsections B, C, and D of  
3           this Section, this Chapter applies to electronic records and electronic  
4           signatures relating to a transaction.

5                   B. This Chapter shall not apply to:

6                   (1) A transaction to the extent it is governed by a law governing  
7           the creation and execution of wills, codicils, or testamentary trusts.

8                   (2) A transaction to the extent it is governed by the provisions  
9           of Title 10 of the Louisiana Revised Statutes of 1950, other than R.S.  
10          10:1-107.

11                  (3) (Reserved).

12                  (4)(a) A law governing adoption, divorce, or other matters of  
13          family law.

14                  (b) Court orders or notices, or official court documents,  
15          including briefs, pleadings, and other writings, required to be executed  
16          in connection with court proceedings, except as otherwise provided by  
17          law.

18                  (c) Any notice of:

19                  (i) The cancellation or termination of utility services, including  
20          water, heat, and power.

21                  (ii) Default, acceleration, repossession, foreclosure, or eviction,  
22          or the right to cure, under a credit agreement secured by, or a rental  
23          agreement for, a primary residence of an individual.

24                  (iii) The cancellation or termination of health insurance or  
25          benefits or life insurance benefits, excluding annuities.

1                    (iv) Recall of a product, or material failure of a product, that  
2                    risks endangering health or safety.

3                    (d) Any document required to accompany any transportation or  
4                    handling of hazardous materials, pesticides, or other toxic or dangerous  
5                    materials.

6                    (5) Publications required by law to be published in the official  
7                    journals provided for in Chapters 2, 4, and 5 of Title 43 of the  
8                    Louisiana Revised Statutes of 1950.

9                    C. This Chapter applies to an electronic record or electronic  
10                   signature otherwise excluded from the application of this Chapter under  
11                   Subsection B of this Section to the extent it is governed by a law other  
12                   than those specified by Subsection B of this Section.

13                   D. A transaction subject to this Chapter is also subject to other  
14                   applicable substantive law.

15                   §2604. Prospective application; exemption from preemption

16                   A. This Chapter applies to any electronic record or electronic  
17                   signature created, generated, sent, communicated, received, or stored  
18                   on or after July 1, 2001.

19                   B. This Chapter is intended and shall be construed to constitute  
20                   an enactment or adoption of the Uniform Electronic Transactions Act  
21                   as approved and recommended for enactment in all states by the  
22                   National Conference of Commissioners on Uniform State Laws in  
23                   1999. If a court of competent jurisdiction finds that any provision of  
24                   this Chapter is inconsistent with 15 U.S.C. 7002(a)(1) (the Electronic  
25                   Signatures in Global and National Commerce Act), then any

1 inconsistent provision is intended to comply with 15 U.S.C.  
2 7002(a)(2)(A) and (B).

3 §2605. Use of electronic records and electronic signatures; variation  
4 by agreement

5 A. This Chapter does not require a record or signature to be  
6 created, generated, sent, communicated, received, stored, or otherwise  
7 processed or used by electronic means or in electronic form.

8 B.(1) This Chapter applies only to transactions between parties,  
9 each of which has agreed to conduct transactions by electronic means.

10 (2) The context and surrounding circumstances, including the  
11 conduct of the parties, shall determine whether the parties have agreed  
12 to conduct a transaction by electronic means.

13 C.(1) A party that agrees to conduct a transaction by electronic  
14 means may refuse to conduct other transactions by electronic means.

15 (2) The right granted by this Subsection may not be waived by  
16 agreement.

17 D.(1) Except as otherwise provided in this Chapter, the effect  
18 of any of its provisions may be varied by agreement.

19 (2) The presence in provisions of this Chapter of the words  
20 "unless otherwise agreed", or words of similar import, does not imply  
21 that the effect of other provisions may not be varied by agreement.

22 E. Whether an electronic record or electronic signature has legal  
23 consequences is determined by this Chapter and other applicable law.

1       §2606. Construction and application

2               This Chapter shall be construed and applied as follows:

3               (1) To facilitate electronic transactions consistent with other  
4               applicable law.

5               (2) To be consistent with reasonable practices concerning  
6               electronic transactions and with the continued expansion of those  
7               practices.

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

10       §2607. Legal recognition of electronic records, electronic signatures,  
11       and electronic contracts

12               A. A record or signature may not be denied legal effect or  
13               enforceability solely because it is in electronic form.

14               B. A contract may not be denied legal effect or enforceability  
15               solely because an electronic record was used in its formation.

16               C. If a law requires a record to be in writing, an electronic  
17               record satisfies the law.

18               D. If a law requires a signature, an electronic signature satisfies  
19               the law.

20       §2608. Provision of information in writing; presentation of records

21               A.(1) If parties have agreed to conduct a transaction by  
22               electronic means and a law requires a person to provide, send, or  
23               deliver information in writing to another person, the requirement is  
24               satisfied if the information is provided, sent, or delivered in an  
25               electronic record capable of retention by the recipient at the time of  
26               receipt.



1           (2) An electronic record is not capable of retention by the  
2           recipient if the sender or its information processing system inhibits the  
3           ability of the recipient to print or store the electronic record.

4           B. If a law, other than this Chapter, requires a record to be  
5           posted or displayed in a certain manner, to be sent, communicated, or  
6           transmitted by a specified method, or to contain information that is  
7           formatted in a certain manner, the following rules apply:

8                 (1) The record must be posted or displayed in the manner  
9                 specified in the other law.

10                (2) Except as otherwise provided in Paragraph (D)(2) of this  
11                Section, the record must be sent, communicated, or transmitted by the  
12                method specified in the other law.

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

15           C. If a sender inhibits the ability of a recipient to store or print  
16           an electronic record, the electronic record is not enforceable against the  
17           recipient.

18           D. The requirements of this Section may not be varied by  
19           agreement, but:

20                (1) To the extent a law other than this Chapter requires  
21                information to be provided, sent, or delivered in writing but permits  
22                that requirement to be varied by agreement, the requirement under  
23                Subsection A of this Section that the information be in the form of an  
24                electronic record capable of retention may also be varied by agreement.

25                (2) A requirement under a law other than this Chapter to send,  
26                communicate, or transmit a record by first class mail, postage prepaid,

1           ~~or by regular United States mail, may be varied by agreement to the~~  
2           ~~extent permitted by the other law.~~

3           §2609. Attribution and effect of electronic record and electronic  
4           signature

5           A.(1) An electronic record or electronic signature is attributable  
6           to a person if it was the act of the person.

7           (2) The act of the person may be shown in any manner,  
8           including a showing of the efficacy of any security procedure applied  
9           to determine the person to which the electronic record or electronic  
10          signature was attributable.

11          B. The effect of an electronic record or electronic signature  
12          attributed to a person under Subsection A of this Section is determined  
13          from the context and surrounding circumstances at the time of its  
14          creation, execution, or adoption, including the agreement of the parties,  
15          if any, and otherwise as provided by law.

16          §2610. Effect of change or error

17          If a change or error in an electronic record occurs in a  
18          transmission between parties to a transaction, the following rules apply:

19          (1) If the parties have agreed to use a security procedure to  
20          detect changes or errors and one party has conformed to the procedure  
21          but the other party has not, and the nonconforming party would have  
22          detected the change or error had that party also conformed, the  
23          conforming party may avoid the effect of the changed or erroneous  
24          electronic record.

25          (2) In an automated transaction involving an individual, the  
26          individual may avoid the effect of an electronic record that resulted

1 from an error made by the individual in dealing with the electronic  
2 agent of another person if the electronic agent did not provide an  
3 opportunity for the prevention or correction of the error and, at the time  
4 the individual learns of the error, the individual:

5 (a) Promptly notifies the other person of the error and that the  
6 individual did not intend to be bound by the electronic record received  
7 by the other person.

8 (b) Takes reasonable steps, including steps that conform to the  
9 reasonable instructions of the other person, to return to the other person  
10 or, if instructed by the other person, to destroy the consideration  
11 received, if any, as a result of the erroneous electronic record.

12 (c) Has not used or received any benefit or value from the  
13 consideration, if any, received from the other person.

14 (3) If neither Paragraph (1) nor Paragraph (2) of this Subsection  
15 is applicable, the change or error has the effect provided by other law,  
16 including the law of error, and the contract of the parties, if any.

17 (4) Paragraphs (2) and (3) of this Subsection may not be varied  
18 by agreement.

19 §2611. Notarization and acknowledgment

20 If a law requires a signature or record to be notarized,  
21 acknowledged, verified, or made under oath, the requirement is  
22 satisfied if the electronic signature of the person authorized to perform  
23 those acts, together with all other information required to be included  
24 by other applicable law, is attached to or logically associated with the  
25 signature or record.

1        §2612. Retention of electronic records; originals

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

5                (1) Accurately reflects the information set forth in the record  
6        after it was first generated in its final form as an electronic record or  
7        otherwise.

8                (2) Remains accessible for later reference.

9                B. A requirement to retain a record in accordance with  
10        Subsection A of this Section does not apply to any information the sole  
11        purpose of which is to enable the record to be sent, communicated, or  
12        received.

13               C. A person may satisfy Subsection A of this Section by using  
14        the services of another person if the requirements of Subsection A of  
15        this Section are satisfied.

16               D. If a law requires a record to be presented or retained in its  
17        original form, or provides consequences if the record is not presented  
18        or retained in its original form, that law is satisfied by an electronic  
19        record retained in accordance with Subsection A of this Section.

20               E. If a law requires retention of a check, that requirement is  
21        satisfied by retention of an electronic record of the information on the  
22        front and back of the check in accordance with Subsection A of this  
23        Section.

24               F. A record retained as an electronic record in accordance with  
25        Subsection A of this Section satisfies a law requiring a person to retain  
26        a record for evidentiary, audit, or like purposes, unless a law enacted

1       after July 1, 2001, specifically prohibits the use of an electronic record  
2       for the specified purpose.

3               G. This Section shall not preclude a governmental agency in  
4       this state from specifying additional requirements for the retention of  
5       a record subject to the jurisdiction of the agency.

6       §2613. Admissibility in evidence

7               In a proceeding, evidence of a record or signature may not be  
8       excluded solely because it is in electronic form.

9       §2614. Automated transaction

10              In an automated transaction, the following rules apply:

11              (1) A contract may be formed by the interaction of electronic  
12       agents of the parties, even if no individual was aware of or reviewed  
13       the actions of the electronic agents or the resulting terms and  
14       agreements.

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

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

23       §2615. Time and place of sending and receipt

24              A. Unless otherwise agreed between the sender and the  
25       recipient, an electronic record is sent when it:

1           (1) Is addressed properly or is otherwise directed properly to an  
2           information processing system that the recipient has designated or uses  
3           for the purpose of receiving electronic records or information of the  
4           type sent and from which the recipient is able to retrieve the electronic  
5           record.

6           (2) Is in a form capable of being processed by that system.

7           (3) Enters an information processing system outside the control  
8           of the sender or of a person that sent the electronic record on behalf of  
9           the sender or enters a region of the information processing system  
10          designated or used by the recipient which is under the control of the  
11          recipient.

12          B. Unless otherwise agreed between the sender and the  
13          recipient, an electronic record is received when it:

14          (1) Enters an information processing system that the recipient  
15          has designated or uses for the purpose of receiving electronic records  
16          or information of the type sent and from which the recipient is able to  
17          retrieve the electronic record.

18          (2) Is in a form capable of being processed by that system.

19          C. Subsection B of this Section applies even if the place where  
20          the information processing system is located is different from the place  
21          where the electronic record is deemed to be received under Subsection  
22          D of this Section.

23          D. Unless otherwise expressly provided in the electronic record  
24          or agreed between the sender and the recipient, an electronic record is  
25          deemed to be sent from the place of business of the sender and to be

1       received at the place of business of the recipient. For purposes of this  
2       Subsection, the following rules apply:

3               (1) If the sender or recipient has more than one place of  
4       business, the place of business of that person is the place having the  
5       closest relationship to the underlying transaction.

6               (2) If the sender or the recipient does not have a place of  
7       business, the place of business is the residence of the sender or  
8       recipient, as the case may be.

9               E. An electronic record is received under Subsection B of this  
10       Section even if no individual is aware of its receipt.

11              F. Receipt of an electronic acknowledgment from an  
12       information processing system described in Subsection B of this  
13       Section establishes that a record was received but, by itself, does not  
14       establish that the content sent corresponds to the content received.

15              G.(1) If a person is aware that an electronic record purportedly  
16       sent under Subsection A of this Section, or purportedly received under  
17       Subsection B of this Section, was not actually sent or received, the  
18       legal effect of the sending or receipt is determined by other applicable  
19       law.

20              (2) Except to the extent allowed by the other law, the  
21       requirements of this Subsection may not be varied by agreement.

22       §2616. Transferable records

23              A. In this Section, "transferable record" means an electronic  
24       record that:

1                   (1) Would be a note as defined in R.S. 10:3-101 et seq., or a  
2                   document under R.S. 10:7-101 et seq., if the electronic record were in  
3                   writing.

4                   (2) The issuer of the electronic record expressly has agreed is  
5                   a transferable record.

6                   B. A person has control of a transferable record if a system  
7                   employed for evidencing the transfer of interests in the transferable  
8                   record reliably establishes that person as the person to which the  
9                   transferable record was issued or transferred.

10                  C. A system employed for evidencing the transfer of interests  
11                  in the transferable record satisfies Subsection B of this Section, and a  
12                  person is deemed to have control of a transferable record, if the  
13                  transferable record is created, stored, and assigned in such a manner  
14                  that:

15                  (1) A single authoritative copy of the transferable record exists  
16                  that is unique, identifiable, and, except as otherwise provided in  
17                  Paragraphs (4), (5), and (6) of this Subsection, unalterable.

18                  (2) The authoritative copy identifies the person asserting control  
19                  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 record  
23                  was most recently transferred.

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



1                   (4) Copies or revisions that add or change an identified assignee  
2                   of the authoritative copy can be made only with the consent of the  
3                   person asserting control.

4                   (5) Each copy of the authoritative copy and any copy of a copy  
5                   is readily identifiable as a copy that is not the authoritative copy.

6                   (6) Any revision of the authoritative copy is readily identifiable  
7                   as authorized or unauthorized.

8                   D.(1) Except as otherwise agreed, a person having control of a  
9                   transferable record is the holder, as defined in R.S. 10:1-201(20), of the  
10                  transferable record and has the same rights and defenses as a holder of  
11                  an equivalent record or writing under Title 10 of the Louisiana Revised  
12                  Statutes of 1950, including, if the applicable statutory requirements  
13                  under R.S. 10:3-302(a), 7-501, or 9-308 are satisfied, the rights and  
14                  defenses of a holder in due course, a holder to which a negotiable  
15                  document of title has been duly negotiated, or a purchaser, respectively.

16                  (2) Delivery, possession, and endorsement are not required to  
17                  obtain or exercise any of the rights under this Subsection.

18                  E. Except as otherwise agreed, an obligor under a transferable  
19                  record has the same rights and defenses as an equivalent obligor under  
20                  equivalent records or writings under Title 10 of the Louisiana Revised  
21                  Statutes of 1950.

22                  F.(1) If requested by a person against which enforcement is  
23                  sought, the person seeking to enforce the transferable record shall  
24                  provide reasonable proof that the person is in control of the transferable  
25                  record.

1                   (2) Proof may include access to the authoritative copy of the  
2                   transferable record and related business records sufficient to review the  
3                   terms of the transferable record and to establish the identity of the  
4                   person having control of the transferable record.

5                   §2617. Creation and retention of electronic records and conversion of  
6                   written records by governmental agencies in this state

7                   Each governmental agency in this state shall determine whether,  
8                   and the extent to which, it will create and retain electronic records and  
9                   convert written records to electronic records.

10                  §2618. Acceptance and distribution of electronic records by  
11                  governmental agencies in this state

12                  A. Except as otherwise provided in R.S. 9:2612(F), each  
13                  governmental agency in this state shall determine whether, and the  
14                  extent to which, it will send and accept electronic records and  
15                  electronic signatures to and from other persons and otherwise create,  
16                  generate, communicate, store, process, use, and rely upon electronic  
17                  records and electronic signatures.

18                  B. To the extent a governmental agency uses electronic records  
19                  and electronic signatures under Subsection A of this Section, the  
20                  governmental agency, giving due consideration to security, may specify  
21                  the following:

22                         (1) The manner and format in which the electronic records must  
23                         be created, generated, sent, communicated, received, and stored and the  
24                         systems established for those purposes.

25                         (2) The electronic records must be signed by electronic means,  
26                         the type of electronic signature required, the manner and format in

1       which the electronic signature must be affixed to the electronic record,  
2       and the identity of, or criteria that must be met by, any third party used  
3       by a person filing a document to facilitate the process.

4               (3) Control processes and procedures as appropriate to ensure  
5       adequate preservation, disposition, integrity, security, confidentiality,  
6       and audit ability of electronic records.

7               (4) Any other required attributes for electronic records which  
8       are specified for corresponding nonelectronic records or reasonably  
9       necessary under the circumstances.

10              C. Except as otherwise provided in R.S. 9:2612(F), this Chapter  
11       does not require a governmental agency in this state to use or permit the  
12       use of electronic records or electronic signatures.

13       §2619. Interoperability

14              A. The commissioner of administration shall encourage and  
15       promote consistency and interoperability with similar requirements  
16       adopted by other governmental agencies in this state, other states, the  
17       federal government, and nongovernmental persons interacting with  
18       governmental agencies in this state.

19              B. If appropriate, those standards may specify differing levels  
20       of standards from which governmental agencies in this state may  
21       choose in implementing the most appropriate standard for a particular  
22       application.

23       §2620. Severability clause

24              The provisions of this Chapter are severable as provided in R.S.  
25       24:175.

1           Section 2. This Act shall become effective on July 1, 2001; if vetoed  
2       by the governor and subsequently approved by the legislature, this Act shall  
3       become effective on July 1, 2001, or on the day following such approval by  
4       the legislature, whichever is later.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument.

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Pinac

HB No. 888

**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.

Effective July 1, 2001.

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

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Adds provisions consistent with federal law regarding various exclusions from the Uniform Electronic Transactions Act.
2. Adds exclusions for publications required by state law to be published in certain official journals.
3. Adds a provision relative to federal preemption of non-uniform language.
4. Changes provision referencing "registered or certified" mail to "first class" mail.

2001 REGULAR SESSION  
HOUSE BILL NO. 888 – ENGROSSED  
BY REPRESENTATIVE PINAC

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