

1 HOUSE BILL NO. 234

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3 BY REQUEST OF THE SECRETARY OF STATE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM ELECTRONIC TRANSACTIONS ACT;
6 ALLOWING BUSINESS, COMMERCIAL, AND GOVERNMENTAL TRANSACTIONS TO OCCUR
7 ELECTRONICALLY; PROVIDING RECOGNITION OF ELECTRONIC RECORDS, SIGNATURES, AND
8 TRANSACTIONS; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11

12 NEW SECTION. **Section 1. Short title.** [Sections 1 through 18] may be cited as the "Uniform
13 Electronic Transactions Act".

14

15 NEW SECTION. **Section 2. Definitions.** In [sections 1 through 18]:

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

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

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

25 (4) "contract" means the total legal obligation resulting from the parties' agreement as affected
26 by [sections 1 through 18] and other applicable law.

27 (5) "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical,
28 electromagnetic, or similar capabilities.

29 (6) "electronic agent" means a computer program or an electronic or other automated means used
30 independently to initiate an action or respond to electronic records or performances, in whole or in part,

1 without review or action by an individual.

2 (7) "electronic record" means a record created, generated, sent, communicated, received, or
3 stored by electronic means.

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

6 (9) "governmental agency" means an executive, legislative, or judicial agency, department, board,
7 commission, authority, institution, or instrumentality of the federal government or of a state or of a county,
8 municipality, or other political subdivision of a state.

9 (10) "information" means data, text, images, sounds, codes, computer programs, software,
10 databases, or the like.

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

13 (12) "person" means an individual, corporation, business trust, estate, trust, partnership, limited
14 liability company, association, joint venture, governmental agency, public corporation, or any other legal
15 or commercial entity.

16 (13) "record" means information that is inscribed on a tangible medium or that is stored in an
17 electronic or other medium and is retrievable in perceivable form.

18 (14) "security procedure" means a procedure employed for the purpose of verifying that an
19 electronic signature, record, or performance is that of a specific person or for detecting changes or errors
20 in the information in an electronic record. The term includes a procedure that requires the use of algorithms
21 or other codes, identifying words or numbers, encryption, or callback or other acknowledgment
22 procedures.

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

27 (16) "transaction" means an action or set of actions occurring between two or more persons
28 relating to the conduct of business, commercial, or governmental affairs.

29

30 NEW SECTION. **Section 3. Scope.** (1) Except as otherwise provided in subsection (2), [sections

1 1 through 18] apply to electronic records and electronic signatures relating to a transaction.

2 (2) [Sections 1 through 18] do not apply to a transaction to the extent it is governed by:

3 (a) a law governing the creation and execution of wills, codicils, or testamentary trusts; and

4 (b) Title 30, chapter 1, other than 30-1-107 and 30-1-206, and chapters 3 through 9.

5 (3) [Sections 1 through 18] apply to an electronic record or electronic signature otherwise
6 excluded from the application of [sections 1 through 18] under subsection (2) to the extent it is governed
7 by a law other than those specified in subsection (2).

8 (4) A transaction subject to [sections 1 through 18] is also subject to other applicable substantive
9 law.

10

11 NEW SECTION. **Section 4. Use of electronic records and electronic signatures -- variation by**
12 **agreement.** (1) [Sections 1 through 18] do not require a record or signature to be created, generated,
13 sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic
14 form.

15 (2) [Sections 1 through 18] apply only to transactions between parties each of which has agreed
16 to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by
17 electronic means is determined from the context and surrounding circumstances, including the parties'
18 conduct.

19 (3) A party that agrees to conduct a transaction by electronic means may refuse to conduct other
20 transactions by electronic means. The right granted by this subsection may not be waived by agreement.

21 (4) Except as otherwise provided in [sections 1 through 18], the effect of any of its provisions
22 may be varied by agreement. The presence in certain provisions of [sections 1 through 18] of the words
23 "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions
24 may not be varied by agreement.

25 (5) Whether an electronic record or electronic signature has legal consequences is determined by
26 [sections 1 through 18] and other applicable law.

27

28 NEW SECTION. **Section 5. Construction and application.** [Sections 1 through 18] must be
29 construed and applied:

30 (1) to facilitate electronic transactions consistent with other applicable law;

1 (2) to be consistent with reasonable practices concerning electronic transactions and with the
2 continued expansion of those practices; and

3 (3) to effectuate its general purpose to make uniform the law with respect to the subject of
4 [sections 1 through 18] among states enacting it.

5

6 **NEW SECTION. Section 6. Legal recognition of electronic records, electronic signatures, and**
7 **electronic contracts.** (1) A record or signature may not be denied legal effect or enforceability solely
8 because it is in electronic form.

9 (2) A contract may not be denied legal effect or enforceability solely because an electronic record
10 was used in its formation.

11 (3) If a law requires a record to be in writing, an electronic record satisfies the law.

12 (4) If a law requires a signature, an electronic signature satisfies the law.

13

14 **NEW SECTION. Section 7. Provision of information in writing -- presentation of records.** (1) If
15 parties have agreed to conduct a transaction by electronic means and a law requires a person to provide,
16 send, or deliver information in writing to another person, the requirement is satisfied if the information is
17 provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the
18 recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the
19 sender or its information processing system inhibits the ability of the recipient to print or store the
20 electronic record.

21 (2) If a law other than [sections 1 through 18] requires a record to be posted or displayed in a
22 certain manner, to be sent, communicated, or transmitted by a specified method, or to contain information
23 that is formatted in a certain manner, the following rules apply:

24 (a) The record must be posted or displayed in the manner specified in the other law.

25 (b) Except as otherwise provided in subsection (4)(b), the record must be sent, communicated,
26 or transmitted by the method specified in the other law.

27 (c) The record must contain the information formatted in the manner specified in the other law.

28 (3) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic
29 record is not enforceable against the recipient.

30 (4) The requirements of this section may not be varied by agreement, but:

1 (a) to the extent a law other than [sections 1 through 18] requires information to be provided,
2 sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under
3 subsection (1) that the information be in the form of an electronic record capable of retention may also
4 be varied by agreement; and

5 (b) a requirement under a law other than [sections 1 through 18] to send, communicate, or
6 transmit a record by first-class mail, postage prepaid, or regular United States mail may be varied by
7 agreement to the extent permitted by the other law.

8

9 **NEW SECTION. Section 8. Attribution and effect of electronic record and electronic signature.**

10 (1) An electronic record or electronic signature is attributable to a person if it was the act of the person.
11 The act of the person may be shown in any manner, including a showing of the efficacy of any security
12 procedure applied to determine the person to which the electronic record or electronic signature was
13 attributable.

14 (2) The effect of an electronic record or electronic signature attributed to a person under
15 subsection (1) is determined from the context and surrounding circumstances at the time of its creation,
16 execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

17

18 **NEW SECTION. Section 9. Effect of change or error.** If a change or error in an electronic record
19 occurs in a transmission between parties to a transaction, the following rules apply:

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

24 (2) In an automated transaction involving an individual, the individual may avoid the effect of an
25 electronic record that resulted from an error made by the individual in dealing with the electronic agent of
26 another person if the electronic agent did not provide an opportunity for the prevention or correction of
27 the error and, at the time the individual learns of the error, the individual:

28 (a) promptly notifies the other person of the error and that the individual did not intend to be
29 bound by the electronic record received by the other person;

30 (b) takes reasonable steps, including steps that conform to the other person's reasonable

1 instructions, to return to the other person or, if instructed by the other person, to destroy the consideration
2 received, if any, as a result of the erroneous electronic record; and

3 (c) has not used or received any benefit or value from the consideration, if any, received from the
4 other person.

5 (3) If neither subsection (1) nor (2) applies, the change or error has the effect provided by other
6 law, including the law of mistake, and the parties' contract, if any.

7 (4) Subsections (2) and (3) may not be varied by agreement.

8

9 NEW SECTION. **Section 10. Notarization and acknowledgment.** If a law requires a signature or
10 record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the
11 electronic signature of the person authorized to perform those acts, together with all other information
12 required to be included by other applicable law, is attached to or logically associated with the signature
13 or record.

14

15 NEW SECTION. **Section 11. Retention of electronic records -- originals.** (1) If a law requires that
16 a record be retained, the requirement is satisfied by retaining an electronic record of the information in the
17 record that:

18 (a) accurately reflects the information set forth in the record after it was first generated in its final
19 form as an electronic record or otherwise; and

20 (b) remains accessible for later reference.

21 (2) A requirement to retain a record in accordance with subsection (1) does not apply to any
22 information the sole purpose of which is to enable the record to be sent, communicated, or received.

23 (3) A person may satisfy subsection (1) by using the services of another person if the
24 requirements of that subsection are satisfied.

25 (4) If a law requires a record to be presented or retained in its original form, or provides
26 consequences if the record is not presented or retained in its original form, that law is satisfied by an
27 electronic record retained in accordance with subsection (1).

28 (5) If a law requires retention of a check, that requirement is satisfied by retention of an electronic
29 record of the information on the front and back of the check in accordance with subsection (1).

30 (6) A record retained as an electronic record in accordance with subsection (1) satisfies a law

1 requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after [the
2 effective date of this act] specifically prohibits the use of an electronic record for the specified purpose.

3 (7) This section does not preclude a governmental agency of this state from specifying additional
4 requirements for the retention of a record subject to the agency's jurisdiction.

5

6 NEW SECTION. **Section 12. Admissibility in evidence.** In a proceeding, evidence of a record or
7 signature may not be excluded solely because it is in electronic form.

8

9 NEW SECTION. **Section 13. Automated transaction.** In an automated transaction, the following
10 rules apply:

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

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

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

18

19 NEW SECTION. **Section 14. Time and place of sending and receipt.** (1) Unless otherwise agreed
20 between the sender and the recipient, an electronic record is sent when it:

21 (a) is addressed properly or otherwise directed properly to an information processing system that
22 the recipient has designated or uses for the purpose of receiving electronic records or information of the
23 type sent and from which the recipient is able to retrieve the electronic record;

24 (b) is in a form capable of being processed by that system; and

25 (c) enters an information processing system outside the control of the sender or of a person that
26 sent the electronic record on behalf of the sender or enters a region of the information processing system
27 designated or used by the recipient that is under the control of the recipient.

28 (2) Unless otherwise agreed between a sender and the recipient, an electronic record is received
29 when:

30 (a) it enters an information processing system that the recipient has designated or uses for the

1 purpose of receiving electronic records or information of the type sent and from which the recipient is able
2 to retrieve the electronic record; and

3 (b) it is in a form capable of being processed by that system.

4 (3) Subsection (2) applies even if the place the information processing system is located is
5 different from the place the electronic record is considered to be received under subsection (4).

6 (4) Unless otherwise expressly provided in the electronic record or agreed between the sender and
7 the recipient, an electronic record is considered to be sent from the sender's place of business and to be
8 received at the recipient's place of business. For purposes of this subsection, the following rules apply:

9 (a) If the sender or the recipient has more than one place of business, the place of business of that
10 person is the place having the closest relationship to the underlying transaction.

11 (b) If the sender or the recipient does not have a place of business, the place of business is the
12 sender's or recipient's residence, as the case may be.

13 (5) An electronic record is received under subsection (2) even if no individual is aware of its
14 receipt.

15 (6) Receipt of an electronic acknowledgment from an information processing system described
16 in subsection (2) establishes that a record was received but, by itself, does not establish that the content
17 sent corresponds to the content received.

18 (7) If a person is aware that an electronic record purportedly sent under subsection (1), or
19 purportedly received under subsection (2), was not actually sent or received, the legal effect of the sending
20 or receipt is determined by other applicable law. Except to the extent permitted by the other law, the
21 requirements of this subsection may not be varied by agreement.

22

23 NEW SECTION. Section 15. Transferable records. (1) In this section, "transferable record" means
24 an electronic record that:

25 (a) would be a note under Title 30, chapter 3, or a document under Title 30, chapter 7, if the
26 electronic record were in writing; and

27 (b) the issuer of the electronic record expressly has agreed is a transferable record.

28 (2) A person has control of a transferable record if a system employed for evidencing the transfer
29 of interests in the transferable record reliably establishes that person as the person to which the
30 transferable record was issued or transferred.

1 (3) A system satisfies subsection (2), and a person is considered to have control of a transferable
2 record, if the transferable record is created, stored, and assigned in a manner that:

3 (a) a single authoritative copy of the transferable record exists that is unique, identifiable, and,
4 except as otherwise provided in subsections (3)(d) through (3)(f), unalterable;

5 (b) the authoritative copy identifies the person asserting control as:

6 (i) the person to which the transferable record was issued; or

7 (ii) if the authoritative copy indicates that the transferable record has been transferred, the person
8 to which the transferable record was most recently transferred;

9 (c) the authoritative copy is communicated to and maintained by the person asserting control or
10 its designated custodian;

11 (d) copies or revisions that add or change an identified assignee of the authoritative copy can be
12 made only with the consent of the person asserting control;

13 (e) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy
14 that is not the authoritative copy; and

15 (f) any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

16 (4) Except as otherwise agreed, a person having control of a transferable record is the holder, as
17 defined in 30-1-201(20), of the transferable record and has the same rights and defenses as a holder of
18 an equivalent record or writing under Title 30, chapters 1 through 9, including, if the applicable statutory
19 requirements under 30-3-302(1), 30-7-501, or 30-9-350 are satisfied, the rights and defenses of a holder
20 in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser,
21 respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights
22 under this subsection.

23 (5) Except as otherwise agreed, an obligor under a transferable record has the same rights and
24 defenses as an equivalent obligor under equivalent records or writings under Title 30, chapters 1 through
25 9.

26 (6) If requested by a person against which enforcement is sought, the person seeking to enforce
27 the transferable record shall provide reasonable proof that the person is in control of the transferable
28 record. Proof may include access to the authoritative copy of the transferable record and related business
29 records sufficient to review the terms of the transferable record and to establish the identity of the person
30 having control of the transferable record.

1

2 **NEW SECTION. Section 16. Creation and retention of electronic records and conversion of written**
3 **records by governmental agencies.** Each governmental agency shall determine whether, and the extent
4 to which, it will create and retain electronic records and convert written records to electronic records.

5

6 **NEW SECTION. Section 17. Acceptance and distribution of electronic records by governmental**
7 **agencies.** (1) Except as otherwise provided in [section 11(5)], each governmental agency shall determine
8 whether, and the extent to which, it will send and accept electronic records and electronic signatures to
9 and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon
10 electronic records and electronic signatures.

11 (2) To the extent that a governmental agency uses electronic records and electronic signatures
12 under subsection (1), the secretary of state, giving due consideration to security, may specify:

13 (a) the manner and format in which the electronic records must be created, generated, sent,
14 communicated, received, and stored and the systems established for those purposes;

15 (b) if electronic records must be signed by electronic means, the type of electronic signature
16 required, the manner and format in which the electronic signature must be affixed to the electronic record,
17 and the identity of, or criteria that must be met by, any third party used by a person filing a document to
18 facilitate the process;

19 (c) control processes and procedures as appropriate to ensure adequate preservation, disposition,
20 integrity, security, confidentiality, and auditability of electronic records; and

21 (d) any other required attributes for electronic records that are specified for corresponding
22 nonelectronic records or reasonably necessary under the circumstances.

23 (3) Except as otherwise provided in [section 11(5)], [sections 1 through 18] do not require a
24 governmental agency of this state to use or permit the use of electronic records or electronic signatures.

25

26 **NEW SECTION. Section 18. Interoperability.** (1) The secretary of state may encourage and
27 promote consistency and interoperability with similar requirements adopted by other governmental
28 agencies of this and other states and the federal government and nongovernmental persons interacting
29 with governmental agencies of this state. If appropriate, those standards may specify differing levels of
30 standards from which governmental agencies of this state may choose in implementing the most

1 appropriate standard for a particular application.

2 (2) The secretary of state may adopt rules to implement [sections 1 through 18] for state
3 government that are consistent with the provisions of Title 2, chapter 20, HOWEVER, GOVERNMENTAL AGENCIES
4 ARE NOT LIMITED TO THE USE OF A CRYPTOSYSTEM, AS DEFINED IN 2-20-103, OR ANY OTHER SPECIFIC TECHNOLOGY FOR
5 ELECTRONIC TRANSACTIONS PROVIDED FOR IN [SECTIONS 1 THROUGH 18].

6

7 NEW SECTION. Section 19. Codification instruction. [Sections 1 through 18] are intended to be
8 codified as an integral part of Title 30, and the provisions of Title 30 apply to [sections 1 through 18].

9

10 NEW SECTION. Section 20. Severability. If a part of [this act] is invalid, all valid parts that are
11 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
12 applications, the part remains in effect in all valid applications that are severable from the invalid
13 applications.

14

15 NEW SECTION. Section 21. Effective date. [This act] is effective July 1, 2001.

16

17 NEW SECTION. Section 22. Applicability. [This act] applies to any electronic record or electronic
18 signature created, generated, sent, communicated, received, or stored on or after July 1, 2001.

19

- END -