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CHAPTER 6.

UNIFORM ELECTRONIC TRANSACTIONS ACT

SECTION 26-6-10. Short title; purpose.

- (A) This chapter may be cited as the “Uniform Electronic Transactions Act”.
- (B) Consistent with the provisions of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7002(a), this chapter provides alternative procedures or requirements for the use of electronic records to establish the legal effect or validity of records in electronic transactions.

SECTION 26-6-20. Definitions.

As used in this chapter:

- (1) “Agreement” means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures giving the effect of agreements under law otherwise applicable to a particular transaction.
- (2) “Automated transaction” means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of any of the parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.
- (3) “Computer program” means a set of statements or instructions used directly or indirectly in an information processing system to bring about a certain result.
- (4) “Contract” means the total legal obligation resulting from the agreement of the parties as affected by this chapter and other applicable law.
- (5) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (6) “Electronic agent” means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.
- (7) “Electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means.
- (8) “Electronic signature” means 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.
- (9) “Governmental agency” means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.
- (10) “Individual” means a single natural person; one human being.
- (11) “Information” means data, text, images, sounds, codes, computer programs, software, databases, or other forms for the communication or reception of knowledge.
- (12) “Information processing system” means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.
- (13) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or other legal or commercial entity.
- (14) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (15) “Security procedure” means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

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

(17) “Transaction” means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

(18) “United States Postal Service Electronic Postmark” means an electronic service provided by the United States Postal Service that provides evidentiary proof that an electronic document existed in a certain form at a certain time and the electronic document was opened or the contents of the electronic document were displayed at a time and date documented by the United States Post Office.

SECTION 26-6-30. Applicability to electronic records and electronic signatures relating to transaction; exceptions.

(A) Except as otherwise provided in subsection (B), this chapter applies to electronic records and electronic signatures relating to a transaction.

(B) This chapter does not apply to a transaction:

(1) in connection with an order for prescription drugs; or

(2) to the extent the transaction is governed by:

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

(b) the Uniform Commercial Code, other than Sections 36-1-107 and 36-1-206, Chapter 2 of Title 36, and Chapter 2A of Title 36; or

(c) the Electronic Signatures in Global and National Commerce Act, 114 Stat. 464, 15 U.S.C. at 7001 et seq., but it is not intended to limit, modify, or supersede Section 101(c) of the act, and to the extent that the notices exempted below are excluded from the scope of the Electronic Signatures in Global and National Commerce Act, 114 Stat. 464, 15 U.S.C. at 7003, this chapter of Title 26 does not apply to a notice required by law regarding:

(i) the cancellation or termination of utility services (including water, heat, and power);

(ii) default, acceleration, repossession, foreclosure, eviction, or the right to cure under a credit agreement secured by a primary residence of an individual or a rental agreement for a primary residence of an individual;

(iii) the cancellation or termination of health insurance or benefits or life insurance benefits, excluding annuities;

(iv) the recall of a product or material failure of a product, that risks endangering health or safety; or

(v) a law requiring a document to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.

(C) This chapter applies to an electronic record or electronic signature otherwise excluded from the application of the chapter pursuant to subsection (B) to the extent it is governed by a law other than those specified in subsection (B).

(D) A transaction subject to this chapter is also subject to other applicable substantive law.

SECTION 26-6-40. Prospective application of chapter.

This chapter applies to an electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after the effective date of this chapter.

SECTION 26-6-50. Agreement of parties to conduct transactions by electronic means.

(A) This chapter does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(B) This chapter applies only to transactions between parties who agree to conduct transactions by

electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the conduct of the parties.

(C) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. This right of refusal shall not be waived by agreement.

(D) Except as otherwise provided in this chapter, the effect of its provisions may be varied by agreement. The presence in certain provisions of this chapter of the words “unless otherwise agreed”, or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(E) Whether an electronic record or electronic signature has legal consequences is determined by this chapter and other applicable laws.

SECTION 26-6-60. Construction and application.

This chapter must be construed and applied to:

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

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

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

SECTION 26-6-70. Legality of electronic contracts, records, and signatures.

(A) A record or signature must not be denied legal effect or enforceability solely because it is in electronic form.

(B) A contract must not be denied legal effect or enforceability solely because an electronic record is used in its formation.

(C) An electronic record satisfies a law requiring a record to be in writing.

(D) An electronic signature satisfies a law requiring a signature.

SECTION 26-6-80. Satisfying requirement that information be in writing; complying with manner of transmission and format requirements; exceptions.

(A) If parties agree to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(B) If another provision of law requires a record to be posed or displayed in a certain manner, be sent, communicated, or transmitted by a specified method, or contain information formatted in a certain manner, the record must:

(1) be posted or displayed in the manner specified in the other law;

(2) be sent, communicated, or transmitted by the method specified in the other law, except as otherwise provided in subsection (D)(2); and

(3) contain the information formatted in the manner specified in the other law.

(C) The electronic record is not enforceable against the recipient if a sender inhibits the ability of a recipient to store or print an electronic record.

(D) The requirements of this section shall not be varied by agreement, except that:

(1) to the extent a law other than this chapter requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement pursuant to subsection (A) that the information be in the form of an electronic record capable of retention also may be varied by agreement; and

(2) a requirement pursuant to a law other than this chapter to send, communicate, or transmit a record by

first-class mail, postage prepaid, or regular United States mail, may be varied by agreement to the extent permitted by the other law.

SECTION 26-6-90. Showing that electronic record or signature is attributable to a person; effect of electronic record or signature.

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

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

SECTION 26-6-100. Change or error in transmission of electronic record; circumstances under which effect may be avoided; applicability of other law.

(A) If a change or error occurs in the transmission of an electronic record between parties to a transaction:

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

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

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

(b) takes reasonable steps, including steps that conform to the reasonable instructions of the other person, to return or destroy, as instructed, the consideration received as a result of the erroneous electronic record; and

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

(B) If subsection (A) does not apply, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

(C) The provisions of subsections (A)(2) and (B) shall not be varied by agreement.

SECTION 26-6-110. Satisfying requirement that signature or record be notarized.

A law requiring a signature or record to be notarized, acknowledged, verified, or made under oath 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 law, is attached to or logically associated with the signature or record.

SECTION 26-6-120. Satisfying law requiring a record to be maintained; checks.

(A) A law requiring a record to be retained is satisfied by retaining an electronic record of the information that:

(1) accurately reflects the information in the record after it was first generated in its final form as an electronic record or otherwise; and

(2) remains accessible for later reference.

(B) A requirement to retain a record in accordance with subsection (A) does not apply to information whose only purpose is to enable the record to be sent, communicated, or received.

(C) A person may satisfy subsection (A) by using the services of another person if the requirements of that subsection are satisfied otherwise.

(D) A law requiring a record to be presented or retained in its original form, or providing consequences if the record is not presented or retained in its original form, is satisfied by an electronic record retained in accordance with subsection (A).

(E) A law requiring retention of a check is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (A).

(F) A record retained as an electronic record in accordance with subsection (A) satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after the effective date of this chapter specifically prohibits the use of an electronic record for the specified purpose.

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

SECTION 26-6-130. Admissibility as evidence.

Evidence of a record or signature may not be excluded in a proceeding solely because the record or signature is in electronic form.

SECTION 26-6-140. Automated transactions; formation of contract.

In an automated transaction:

(1) a contract may be formed by the interaction of electronic agents of the parties, even if an individual was not aware of or reviewed the electronic agents' actions or the resulting terms and agreements;

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

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

SECTION 26-6-150. When electronic record sent and received.

(A) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

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

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

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

(B) Unless otherwise agreed between a sender and the recipient, an electronic record is received when it:

(1) enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

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

(C) Subsection (B) applies even if the place the information processing system is located is different from the place the electronic record is considered to be received pursuant to subsection (D).

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

- (1) the place having the closest relationship to the underlying transaction, if the sender or recipient has more than one place of business; and
- (2) the sender's or recipient's residence, if the sender or the recipient does not have a place of business.
- (E) An electronic record is received pursuant to subsection (B) even if an individual is not aware of its receipt.
- (F) Receipt of an electronic acknowledgment from an information processing system described in subsection (B) establishes that a record was received but is not sufficient to establish that the content sent corresponds to the content received.
- (G) If a person is aware that an electronic record purportedly sent pursuant to subsection (A), or purportedly received pursuant to subsection (B), was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection shall not be varied by agreement.

SECTION 26-6-160. Establishing person as having control of transferable record; rights and defenses; proof of control.

- (A) In this section, "transferable record" means an electronic record that:
 - (1) would be a negotiable instrument under Chapter 3 of Title 36 or a document of title under Chapter 7 of Title 36 if the electronic record were in writing; and
 - (2) the issuer of the electronic record expressly has agreed is a transferable record.
- (B) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.
- (C) A system satisfies subsection (B), and a person is considered to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that:
 - (1) there exists a single authoritative copy of the transferable record that is unique, identifiable, and, except as otherwise provided in items (4), (5), and (6), unalterable;
 - (2) the authoritative copy identifies the person asserting control as the person to which the transferable record was:
 - (a) issued; or
 - (b) most recently transferred, if the authoritative copy indicates that the transferable record has been transferred;
 - (3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;
 - (4) copies or revisions that add or change an identified assignee of the authoritative copy are made only with the consent of the person asserting control;
 - (5) each copy of the authoritative copy and a copy of a copy are readily identifiable as copies that are not the authoritative copy; and
 - (6) a revision of the authoritative copy is readily identifiable as authorized or unauthorized.
- (D) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in Section 36-1-201(20), of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing pursuant to Title 36, including the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively if the applicable statutory requirements pursuant to Section 36-3-302, 36-7-501, or 36-9-308 are satisfied. Delivery, possession, and endorsement are not required to obtain or exercise the rights pursuant to this subsection.
- (E) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings pursuant to Title 36.
- (F) The person seeking to enforce the transferable record shall provide, upon request, reasonable proof that he is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record

and to establish the identity of the person having control of the transferable record.

SECTION 26-6-170. Creation and retention of electronic records by government agencies.

Each governmental agency of this State shall determine if, and the extent to which, it will create and retain electronic records and convert written records to electronic records.

SECTION 26-6-180. Government agencies sending and accepting electronic records and signatures; format.

(A) Each governmental agency of this State shall determine if, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

(B) To the extent that a governmental agency uses electronic records and electronic signatures pursuant to subsection (A), the governmental agency, in consultation with the South Carolina State Budget and Control Board, giving due consideration to security, may specify:

- (1) the manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;
- (2) if electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, a third party used by a person filing a document to facilitate the process;
- (3) control processes and procedures appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and
- (4) other attributes required for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

(C) Except as otherwise provided in Section 26-6-120, this chapter does not require a governmental agency of this State to use or permit the use of electronic records or electronic signatures.

SECTION 26-6-190. Development of standards and procedures; service of process.

(A) The South Carolina State Budget and Control Board shall adopt standards to coordinate, create, implement, and facilitate the use of common approaches and technical infrastructure, as appropriate, to enhance the utilization of electronic records, electronic signatures, and security procedures by and for public entities of the State. Local political subdivisions may consent to be governed by these standards.

(B) The Secretary of State may develop, implement, and facilitate the use of model procedures for the use of electronic records, electronic signatures, and security procedures for all other purposes, including private commercial transactions and contracts. The Secretary of State also may promulgate regulations as to methods, means, and standards for secure electronic transactions including administration by the Secretary of State or the licensing of third parties to serve in that capacity, or both.

(C) In accordance with Sections 26-6-20(18) and 26-6-195, and in reference to all South Carolina laws, rules, and regulations pertaining to service of process where service shall be made on entities described in Rule 4(d)(3) of the South Carolina Rules of Civil Procedure, those entities shall be served under Rule 4(d)(8) of the South Carolina Rules of Civil Procedure by:

- (1) registered or certified mail-return receipt requested, addressed to the office of the registered agent;
- (2) registered or certified mail-return receipt requested, addressed to the office of the secretary of the corporation at its principal office;
- (3) e-mailing the service of process that has been postmarked by a United States Postal Service Electronic Postmark in a manner approved by the South Carolina Supreme Court to an e-mail address registered with the Secretary of State for the corporation; or
- (4) e-mailing the service of process that has been postmarked by a United States Postal Service Electronic

Postmark in a manner approved by the South Carolina Supreme Court to an e-mail address registered with the Secretary of State for the agent for service of process for the corporation.

SECTION 26-6-195. Service of process to e-mail address by government agency.

Notwithstanding any other provisions in this chapter, a governmental agency may use, in accordance with policies and procedures developed by the South Carolina Budget and Control Board and as circumstances allow, in order to perfect service of process of any communication, an e-mail address from any vendor, entity, or individual the governmental agency regulates or does business with, or an e-mail address from the agent for service of process of that vendor, entity, or individual. Such communication postmarked by a United States Postal Service Electronic Postmark shall have the same force of law as the United States Post Office certified mail-return receipt requested. The South Carolina Budget and Control Board shall devise policies and procedures for the use of the United States Postal Service Electronic Postmark in respect to state agencies and operations. These policies and procedures, where necessary, must consider the persons or entities which do not have an e-mail address.

SECTION 26-6-210. Applicability of Computer Crime Act.

The Computer Crime Act, as contained in Chapter 16 of Title 16, is expressly made applicable to and incorporated into this chapter.