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1 The General Assembly of the Commonwealth of Pennsylvania  
2 hereby enacts as follows:

3 CHAPTER 1  
4 PRELIMINARY PROVISIONS

5 Section 101. Short title.

6 (a) General.--This act shall be known and may be cited as  
7 the Electronic Transactions Act.

8 (b) Uniform.--Chapters 1, 3 and 5 shall be known and may be  
9 cited as the Uniform Electronic Transactions Act.

10 Section 102. Legislative findings.

11 The General Assembly finds and declares as follows:

12 (1) electronic commerce is expanding rapidly and is an  
13 engine for economic growth in this Commonwealth and the  
14 United States; and

15 (2) uniformity among state laws recognizing the validity  
16 and enforceability of electronic signatures, records and  
17 writings is important to the continued expansion of  
18 electronic commerce; and

19 (3) The rights of consumers under existing laws should  
20 be protected and preserved.

21 The General Assembly should enact the Uniform Electronic  
22 Transactions Act submitted to the state legislatures by the  
23 National Conference of Commissioners of Uniform State Laws with  
24 additions to enhance and promote the reliability of electronic  
25 commerce.

26 Section 103. Definitions.

27 The following words and phrases when used in this act shall  
28 have the meanings given to them in this section unless the  
29 context clearly indicates otherwise:

30 "Agreement." The bargain of the parties in fact, as found in

1 their language or inferred from other circumstances and from  
2 rules, regulations and procedures given the effect of agreements  
3 under laws otherwise applicable to a particular transaction.

4 "Automated transaction." A transaction conducted or  
5 performed, in whole or in part, by electronic means or  
6 electronic records, in which the acts or records of one or both  
7 parties are not reviewed by an individual in the ordinary course  
8 in forming a contract, performing under an existing contract or  
9 fulfilling an obligation required by the transaction.

10 "Computer program." A set of statements or instructions to  
11 be used directly or indirectly in an information processing  
12 system in order to bring about a certain result.

13 "Consumer." An individual involved in an electronic  
14 transaction primarily for personal, family or household  
15 purposes.

16 "Contract." The total legal obligation resulting from the  
17 parties' agreement as affected by this act and other applicable  
18 law.

19 "Electronic." Relating to technology having electrical,  
20 digital, magnetic, wireless, optical, electromagnetic or similar  
21 capabilities.

22 "Electronic agent." A computer program or an electronic or  
23 other automated means used independently to initiate an action  
24 or respond to electronic records or performances, in whole or in  
25 part, without review or action by an individual.

26 "Electronic record." A record created, generated, sent,  
27 communicated, received or stored by electronic means.

28 "Electronic signature." An electronic sound, symbol or  
29 process attached to or logically associated with a record and  
30 executed or adopted by a person with the intent to sign the

1 record.

2 "Executive agency." A department, board, commission,  
3 authority, officer or agency, of the Executive Department,  
4 subject to the policy, supervision and control of the Governor.

5 "Governmental agency." An executive agency, an independent  
6 agency, a State-affiliated entity or other instrumentality of  
7 the Commonwealth. The term includes authorities, political  
8 subdivisions and State-related institutions.

9 "Independent agency." A board, commission or other agency or  
10 officer of the Executive Department, that is not subject to the  
11 policy supervision and control of the Governor.

12 "Information." Data, text, images, sounds, codes, computer  
13 programs, software, data bases or the like.

14 "Information processing system." An electronic system for  
15 creating, generating, sending, receiving, storing, displaying or  
16 processing information.

17 "Person." Any individual, corporation, business trust,  
18 estate, trust, partnership, limited liability company,  
19 association, joint venture, governmental agency, public  
20 corporation or other legal or commercial entity.

21 "Record." Information which is inscribed on a tangible  
22 medium or is stored in an electronic or other medium and which  
23 is retrievable in perceivable form.

24 "Security procedure." A procedure employed for the purpose  
25 of verifying that an electronic signature, record or performance  
26 is that of a specific person or for detecting changes or errors  
27 in the information in an electronic record. The term includes a  
28 procedure which requires the use of algorithms or other codes,  
29 identifying words or numbers, encryption or callback or other  
30 acknowledgment procedures.

1 "State." A state of the United States, the District of  
2 Columbia, Puerto Rico, the United States Virgin Islands or any  
3 territory or insular possession subject to the jurisdiction of  
4 the United States. The term includes an Indian Tribe or Band or  
5 an Alaskan Native Village, which is recognized by Federal law or  
6 formally acknowledged by a state.

7 "State-affiliated entity or other instrumentality." A  
8 Commonwealth authority or a Commonwealth entity or  
9 instrumentality. The term includes the Pennsylvania Turnpike  
10 Commission, the Pennsylvania Housing Finance Agency, the  
11 Pennsylvania Municipal Retirement System, the Pennsylvania  
12 Infrastructure Investment Authority, the State Public School  
13 Building Authority, the Pennsylvania Higher Educational  
14 Facilities Authority and the State System of Higher Education.

15 "State-related institution." The Pennsylvania State  
16 University, the University of Pittsburgh, Lincoln University or  
17 Temple University.

18 "Transaction." An action or set of actions occurring between  
19 two or more persons relating to the conduct of business,  
20 commercial or governmental affairs.

21 Section 104. Scope.

22 (a) General rule.--Except as provided in subsection (b),  
23 this act applies to electronic records and electronic signatures  
24 relating to a transaction.

25 (b) Exception.--Subject to subsection (c), this act does not  
26 apply to a transaction to the extent it is governed by any of  
27 the following:

28 (1) A law governing the creation and execution of wills,  
29 codicils or testamentary trusts.

30 (2) The provisions of 13 Pa.C.S. (relating to commercial

1 code) other than:

2 (i) sections 1107 (relating to waiver or  
3 renunciation of claim or right after breach) and 1206  
4 (relating to statute of frauds for kinds of personal  
5 property not otherwise covered);

6 (ii) Division 2 (relating to sales); and

7 (iii) Division 2A (relating to leases).

8 (c) Limitation of exception.--This act applies to an  
9 electronic record or electronic signature otherwise excluded  
10 from the application of this act under subsection (b) to the  
11 extent it is governed by a law other than those specified in  
12 subsection (b).

13 (d) Other law.--A transaction subject to this act is also  
14 subject to other applicable substantive law.

15 Section 105. Prospective application.

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

19 CHAPTER 3

20 UNIFORM ELECTRONIC TRANSACTIONS

21 Section 301. Use of electronic records and electronic  
22 signatures; variation by agreement.

23 (a) Electronic means or form not required.--This act does  
24 not require a record or signature to be created, generated,  
25 sent, communicated, received, stored or otherwise processed or  
26 used by electronic means or in electronic form.

27 (b) Consent.--This act applies only to transactions between  
28 parties each of which has agreed to conduct transactions by  
29 electronic means. Whether the parties agree to conduct a  
30 transaction by electronic means is determined from the context

1 and surrounding circumstances, including the parties' conduct.

2 (c) Other transactions.--A party that agrees to conduct a  
3 transaction by electronic means may refuse to conduct other  
4 transactions by electronic means. The right granted by this  
5 subsection may not be waived by agreement.

6 (d) Variation by agreement.--Except as otherwise provided in  
7 this act, the effect of any of its provisions may be varied by  
8 agreement. The presence in certain provisions of this act of the  
9 words "unless otherwise agreed," or words of similar import,  
10 does not imply that the effect of other provisions may not be  
11 varied by agreement.

12 (e) Conclusions of law.--Whether an electronic record or  
13 electronic signature has legal consequences is determined by  
14 this act and other applicable law.

15 Section 302. Construction and application.

16 This act must be construed and applied:

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

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

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

25 Section 303. Legal recognition of electronic records,  
26 electronic signatures and electronic contracts.

27 (a) Form.--A record or signature may not be denied legal  
28 effect or enforceability solely because it is in electronic  
29 form.

30 (b) Formation.--A contract may not be denied legal effect or

1 enforceability solely because an electronic record was used in  
2 its formation.

3 (c) Writing.--If a law requires a record to be in writing,  
4 an electronic record satisfies the law.

5 (d) Signature.--If a law requires a signature, an electronic  
6 signature satisfies the law.

7 Section 304. Provision of information in writing; presentation  
8 of records.

9 (a) Writing.--If parties have agreed to conduct a  
10 transaction by electronic means and a law requires a person to  
11 provide, send or deliver information in writing to another  
12 person, the requirement is satisfied if the information is  
13 provided, sent or delivered, as the case may be, in an  
14 electronic record capable of retention by the recipient at the  
15 time of receipt. An electronic record is not capable of  
16 retention by the recipient if the sender or its information  
17 processing system inhibits the ability of the recipient to print  
18 or store the electronic record.

19 (b) Records.--If a law other than this act requires a record  
20 to be posted or displayed in a certain manner, to be sent,  
21 communicated or transmitted by a specified method or to contain  
22 information which is formatted in a certain manner, the  
23 following rules apply:

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

26 (2) Except as otherwise provided in subsection (d)(2),  
27 the record must be sent, communicated or transmitted by the  
28 method specified in the other law.

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

1 (c) Unenforceable.--If a sender inhibits the ability of a  
2 recipient to store or print an electronic record, the electronic  
3 record is not enforceable against the recipient.

4 (d) Variation by agreement.--The requirements of this  
5 section may not be varied by agreement except as follows:

6 (1) To the extent a law other than this act requires  
7 information to be provided, sent or delivered, in writing,  
8 but permits that requirement to be varied by agreement, the  
9 requirement under subsection (a) that the information be in  
10 the form of an electronic record capable of retention may  
11 also be varied by agreement.

12 (2) A requirement under a law other than this act to  
13 send, communicate or transmit a record by first-class mail,  
14 postage prepaid, regular United States mail, may be varied by  
15 agreement to the extent permitted by the other law.

16 Section 305. Attribution and effect of electronic records and  
17 signatures.

18 (a) Attribution.--An electronic record or electronic  
19 signature is attributable to a person if it was the act of the  
20 person. The act of the person may be shown in any manner,  
21 including a showing of the efficacy of any security procedure  
22 applied to determine the person to which the electronic record  
23 or electronic signature was attributable.

24 (b) Effect.--The effect of an electronic record or  
25 electronic signature attributed to a person under subsection (a)  
26 is determined:

27 (1) from the context and surrounding circumstances at  
28 the time of its creation, execution or adoption, including  
29 the parties' agreement, if any; and

30 (2) otherwise as provided by law.

1 Section 306. Effect of change or error.

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

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

12 (2) In an automated transaction involving an individual,  
13 the individual may avoid the effect of an electronic record  
14 that resulted from an error made by the individual in dealing  
15 with the electronic agent of another person if the electronic  
16 agent did not provide an opportunity for the prevention or  
17 correction of the error and, at the time the individual  
18 learns of the error, the individual:

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

22 (ii) takes reasonable steps, including steps which  
23 conform to the other person's reasonable instructions, to  
24 return to the other person or, if instructed by the other  
25 person, to destroy the consideration received, if any, as  
26 a result of the erroneous electronic record; and

27 (iii) has not used or received any benefit or value  
28 from the consideration, if any, received from the other  
29 person.

30 (3) If neither paragraph (1) nor paragraph (2) applies,

1 the change or error has the effect provided by other law,  
2 including the law of mistake, and the parties' contract, if  
3 any.

4 (4) Paragraphs (2) and (3) may not be varied by  
5 agreement.

6 Section 307. Notarization and acknowledgment.

7 If a law requires a signature or record to be notarized,  
8 acknowledged, verified or made under oath, the requirement is  
9 satisfied if the electronic signature of the person authorized  
10 to perform those services, together with all other information  
11 required to be included by other applicable law, is attached to  
12 or logically associated with the signature or record.

13 Section 308. Retention of electronic records; originals.

14 (a) Requirement.--Subject to subsection (b), if a law  
15 requires that a record be retained, the requirement is satisfied  
16 by retaining an electronic record of the information in the  
17 record which:

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

21 (2) remains accessible for later reference.

22 (b) Transmission information.--A requirement to retain a  
23 record in accordance with subsection (a) does not apply to any  
24 information the sole purpose of which is to enable the record to  
25 be sent, communicated or received.

26 (c) Agents.--A person may satisfy subsection (a) by using  
27 the services of another person if the requirements of that  
28 subsection are satisfied.

29 (d) Originals.--If a law requires a record to be presented  
30 or retained in its original form, or provides consequences if

1 the record is not presented or retained in its original form,  
2 that law is satisfied by an electronic record retained in  
3 accordance with subsection (a).

4 (e) Checks.--If a law requires retention of a check, that  
5 requirement is satisfied by retention of an electronic record of  
6 the information on the front and back of the check in accordance  
7 with subsection (a).

8 (f) Evidence; audits.--A record retained as an electronic  
9 record in accordance with subsection (a) satisfies a law  
10 requiring a person to retain a record for evidentiary, audit or  
11 like purposes.

12 (g) Governmental agencies.--This section does not preclude a  
13 governmental agency of this Commonwealth from specifying  
14 additional requirements for the retention of a record subject to  
15 the governmental agency's jurisdiction, including the  
16 requirement that a record be retained in a nonelectronic form.  
17 Section 309. Admissibility in evidence.

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

20 Section 310. Automated transaction.

21 In an automated transaction, the following rules apply:

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

26 (2) A contract may be formed by the interaction of an  
27 electronic agent and an individual, acting on the  
28 individual's own behalf or for another person, including by  
29 an interaction in which the individual performs actions which  
30 the individual is free to refuse to perform and which the

1 individual knows or has reason to know will cause the  
2 electronic agent to complete the transaction or performance.

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

5 Section 311. Time and place of sending and receipt.

6 (a) Sending.--Unless otherwise agreed between the sender and  
7 the recipient, an electronic record is sent when it:

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

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

15 (3) enters an information processing system outside the  
16 control of the sender or of a person that sent the electronic  
17 record on behalf of the sender or enters a region of the  
18 information processing system designated or used by the  
19 recipient which is under the control of the recipient.

20 (b) Receipt.--Unless otherwise agreed between a sender and  
21 the recipient, an electronic record is received when:

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

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

29 (c) Physical location.--Subsection (b) applies even if the  
30 place the information processing system is located is different

1 from the place the electronic record is deemed to be received  
2 under subsection (d).

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

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

13 (2) If the sender or the recipient does not have a place  
14 of business, the place of business is the sender's or  
15 recipient's residence, as the case may be.

16 (e) Actual receipt.--An electronic record is received under  
17 subsection (b) even if no individual is aware of its receipt.

18 (f) Contents.--Receipt of an electronic acknowledgment from  
19 an information processing system described in subsection (b)  
20 establishes that a record was received but by itself does not  
21 establish that the content sent corresponds to the content  
22 received.

23 (g) Legal effect.--If a person is aware that an electronic  
24 record purportedly sent under subsection (a), or purportedly  
25 received under subsection (b), was not actually sent or  
26 received, the legal effect of the sending or receipt is  
27 determined by other applicable law. Except to the extent  
28 permitted by the other law, the requirements of this subsection  
29 may not be varied by agreement.

30 Section 312. Transferable records.

1 (a) Control.--A person has control of a transferable record  
2 if a system employed for evidencing the transfer of interests in  
3 the transferable record reliably establishes that person as the  
4 person to which the transferable record was issued or  
5 transferred.

6 (b) Compliance.--A system satisfies subsection (a), and a  
7 person is deemed to have control of a transferable record, if  
8 the transferable record is created, stored and assigned in such  
9 a manner that all of the following paragraphs apply:

10 (1) A single authoritative copy of the transferable  
11 record exists which is unique, identifiable and, except as  
12 otherwise provided in paragraphs (4), (5) and (6),  
13 unalterable.

14 (2) The authoritative copy identifies the person  
15 asserting control as:

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

18 (ii) if the authoritative copy indicates that the  
19 transferable record has been transferred, the person to  
20 which the transferable record was most recently  
21 transferred.

22 (3) The authoritative copy is communicated to and  
23 maintained by the person asserting control or that person's  
24 designated custodian.

25 (4) Copies or revisions which add or change an  
26 identified assignee of the authoritative copy can be made  
27 only with the consent of the person asserting control.

28 (5) Each copy of the authoritative copy and any copy of  
29 a copy is readily identifiable as a copy which is not the  
30 authoritative copy.

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

3           (c) Holders.--Except as otherwise agreed, a person having  
4           control of a transferable record is the holder, as defined in  
5           paragraph (2) of the definition of "holder" in 13 Pa.C.S. § 1201  
6           (relating to general definitions), of the transferable record  
7           and has the same rights and defenses as a holder of an  
8           equivalent record or writing under 13 Pa.C.S. (relating to  
9           commercial code), including, if the applicable statutory  
10          requirements are satisfied, sections 3302(a) (relating to holder  
11          in due course), 7501 (relating to form of negotiation and  
12          requirements of "due negotiation") and 9308 (relating to  
13          purchase of chattel paper and instruments). Delivery, possession  
14          and endorsement are not required to obtain or exercise any of  
15          the rights under this subsection.

16          (d) Obligors.--Except as otherwise agreed, an obligor under  
17          a transferable record has the same rights and defenses as an  
18          equivalent obligor under equivalent records or writings under 13  
19          Pa.C.S (relating to commercial code).

20          (e) Proof.--If requested by a person against which  
21          enforcement is sought, the person seeking to enforce the  
22          transferable record shall provide reasonable proof that the  
23          person is in control of the transferable record. Proof may  
24          include access to the authoritative copy of the transferable  
25          record and related business records sufficient to review the  
26          terms of the transferable record and to establish the identity  
27          of the person having control of the transferable record.

28          (f) Definition.--As used in this section, the term  
29          "transferable record" means an electronic record:

30                (1) which would be a note under 13 Pa.C.S. Div. 3

1 (relating to negotiable instruments) or a document under 13  
2 Pa.C.S. Div. 7 (relating to warehouse receipts, bills of  
3 lading and other documents of title) if the electronic record  
4 were in writing; and

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

7 CHAPTER 5

8 GOVERNMENTAL AGENCIES

9 Section 501. Creation and retention of electronic records and  
10 conversion of written records.

11 Each governmental agency ~~of~~ IN this Commonwealth shall ←  
12 determine whether, and the extent to which, it will create and  
13 retain electronic records and convert written records to  
14 electronic records. Executive agencies shall also comply with  
15 standards published by the Office of Administration.

16 Section 502. Acceptance and distribution of electronic records.

17 (a) Option.--Each governmental agency ~~of~~ IN this ←  
18 Commonwealth shall determine whether, and the extent to which,  
19 it will send and accept electronic records and electronic  
20 signatures to and from other persons and otherwise create,  
21 generate, communicate, store, process, use and rely upon  
22 electronic records and electronic signatures.

23 (b) Specifics.--To the extent that a governmental agency  
24 uses electronic records and electronic signatures under  
25 subsection (a), the governmental agency, giving due  
26 consideration to security, may specify all of the following:

27 (1) The manner and format in which the electronic  
28 records must be created, generated, sent, communicated,  
29 received and stored and the systems established for those  
30 purposes.

1 (2) If electronic records must be signed by electronic  
2 means, the type of electronic signature required, the manner  
3 and format in which the electronic signature must be affixed  
4 to the electronic record, and the identity of or criteria  
5 that must be met by any third party used by a person filing a  
6 document to facilitate the process.

7 (3) Control processes and procedures as appropriate to  
8 ensure adequate preservation, disposition, integrity,  
9 security, confidentiality and auditability of electronic  
10 records.

11 (4) Any other required attributes for electronic records  
12 which are specified for corresponding nonelectronic records  
13 or reasonably necessary under the circumstances.

14 (c) Not mandatory.--This chapter does not require a  
15 governmental agency to use or permit the use of electronic  
16 records or electronic signatures.

17 Section 503. Interoperability.

18 The standards published by the Office of Administration under  
19 section 501 should encourage and promote consistency and  
20 interoperability with similar requirements adopted by other  
21 governmental agencies of this and other states and the Federal  
22 Government and nongovernmental persons interacting with a  
23 governmental agency. If appropriate, those standards may specify  
24 differing levels of standards from which a governmental agency  
25 may choose in implementing the most appropriate standard for a  
26 particular application.

27 ~~Section 504. Legislative Budget and Finance Committee study.~~ <—

28 ~~The Legislative Budget and Finance Committee is directed to~~  
29 ~~study the feasibility of electronic bidding, including the use~~  
30 ~~of Internet auction procedures, for bonds issued by the~~

1 ~~Commonwealth, its agencies, authorities and commissions. The~~  
2 ~~study, together with any recommendations, shall be completed~~  
3 ~~within six months of the effective date of this act and shall be~~  
4 ~~forwarded to the Department of General Services and each member~~  
5 ~~of the General Assembly for review.~~

6 CHAPTER 7

7 ATTRIBUTION OF RECORDS AND SIGNATURES

8 Section 701. Use of security procedures.

9 If there is a security procedure between the parties with  
10 respect to the electronic signature or electronic record, the  
11 following rules apply:

12 (1) The effect of compliance with a security procedure  
13 established by a law or regulation is determined by that law  
14 or regulation.

15 (2) In all other cases, if the parties agree to use or  
16 otherwise knowingly adopt a security procedure to verify the  
17 person from which an electronic signature or electronic  
18 record has been sent, the electronic signature or electronic  
19 record is attributable to the person identified by the  
20 security procedure if the person relying on the attribution  
21 satisfies the burden of establishing that:

22 (i) the security procedure was commercially  
23 reasonable;

24 (ii) the party accepted or relied on the electronic  
25 message in good faith and in compliance with the security  
26 procedure and any additional agreement with or separate  
27 instructions of the other party; and

28 (iii) the security procedure indicated that the  
29 electronic message was from the person to which  
30 attribution is sought.

1 (3) If the electronic signature or electronic record is  
2 not attributable to a person under section 305 but would be  
3 attributable to the person under this section, the electronic  
4 signature or electronic record is nevertheless not  
5 attributable to the person under this section if the person  
6 satisfies the burden of establishing that the electronic  
7 signature or electronic record was caused directly or  
8 indirectly by a person:

9 (i) that was not entrusted at any time with the  
10 right or duty to act for the person with respect to such  
11 electronic signature or electronic record or security  
12 procedure;

13 (ii) that lawfully obtained access to transmitting  
14 facilities of the person if such access facilitated the  
15 misuse of the security procedure; or

16 (iii) that obtained, from a source controlled by the  
17 person, information facilitating misuse of the security  
18 procedure.

19 Section 702. Effect of using security procedure to detect  
20 errors or changes.

21 If the parties use a commercially reasonable security  
22 procedure to detect errors or changes with respect to an  
23 electronic signature or electronic record, the following rules  
24 shall apply:

25 (1) The effect of a security procedure is determined by  
26 the agreement between the parties or, in the absence of  
27 agreement, by this section or any law establishing the  
28 security procedure.

29 (2) Unless the circumstances indicate otherwise, if a  
30 security procedure indicates that an electronic signature or

1 electronic record has not been altered since a particular  
2 time, it is treated as not having been altered since that  
3 time.

4 Section 703. Commercial reasonableness.

5 The efficacy and commercial reasonableness of a security  
6 procedure is to be determined by the court. In making this  
7 determination, the following rules apply:

8 (1) A security procedure established by statute or  
9 regulation is effective for transactions covered by the  
10 statute or regulation.

11 (2) Except as otherwise provided in paragraph (1),  
12 commercial reasonableness and effectiveness is determined in  
13 light of the purposes of the security procedure and the  
14 commercial circumstances at the time the parties agree to or  
15 adopt the procedure.

16 Section 704. Inapplicability to consumers.

17 The provisions of this chapter shall not apply to any  
18 electronic transaction to which a consumer is a party.

19 Section 705. Variation by agreement.

20 Except as otherwise provided by statute or regulation, any  
21 provision of this chapter other than section 704 may be varied  
22 by agreement.

## 23 CHAPTER 9

### 24 CONSUMER AGREEMENTS

25 Section 901. Limitation on consumer agreements.

26 In the case of a nonelectronic consumer contract or  
27 agreement, the contract or agreement may not contain a provision  
28 authorizing the conducting of the transaction or any part  
29 thereof by electronic means unless the consumer agrees to such a  
30 provision by a separate and express acknowledgment. Such an

1 agreement shall specifically indicate the parts of the  
2 transaction to be conducted by electronic means, and shall  
3 indicate the manner in which the electronic transaction or a  
4 part thereof shall be conducted. An agreement to conduct a  
5 consumer transaction or a part thereof electronically may not be  
6 inferred solely from the fact that the consumer has used  
7 electronic means to pay an account or register a purchase or  
8 warranty.

9 Section 902. Sending and receipt.

10 If a party to a consumer transaction has actual knowledge  
11 that an electronic record purportedly sent to or purportedly  
12 received by the other party was not actually sent to or received  
13 by the other party, the purported sending or receipt of the  
14 electronic record shall be of no legal force or effect.

15 Section 903. Variation by agreement.

16 The provisions of this chapter may not be varied by agreement  
17 of the parties to a consumer contract or transaction.

## 18 CHAPTER 51

### 19 MISCELLANEOUS PROVISIONS

20 ~~Section 5101. Applicability.~~ <—

21 ~~Except as provided in the act of August 21, 1953 (P.L.1323,~~  
22 ~~No.373), known as The Notary Public Law, or its successor,~~  
23 ~~section 307 shall not apply to the actions of a notary pursuant~~  
24 ~~to The Notary Public Law or its successor with regard to~~  
25 ~~electronic notarization, acknowledgment and verification.~~

26 ~~Section 5102. Effective date.~~

27 ~~This act shall take effect in 30 days.~~

28 SECTION 5101. EFFECTIVE DATE. <—

29 THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

30 (1) SECTION 307 SHALL TAKE EFFECT 30 DAYS FOLLOWING THE

1 PUBLICATION IN THE PENNSYLVANIA BULLETIN OF A NOTICE BY THE  
2 SECRETARY OF THE COMMONWEALTH THAT THE PROVISIONS OF SECTION  
3 307 NO LONGER CONFLICT WITH THE REQUIREMENTS AND PROCEDURES  
4 OF THE ACT OF AUGUST 21, 1953 (P.L.1323, NO.373), KNOWN AS  
5 THE NOTARY PUBLIC LAW, OR ITS SUCCESSOR WITH REGARD TO  
6 ELECTRONIC NOTARIZATION, ACKNOWLEDGMENT AND VERIFICATION.

7 (2) THIS SECTION SHALL TAKE EFFECT IMMEDIATELY.

8 (3) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 30  
9 DAYS.