

(S. B. 651)

(No. 148)

(Approved August 8, 2006)

AN ACT

To adopt the Electronic Transactions Act in order to regulate electronic transactions, establish its applicability, and for other purposes.

STATEMENT OF MOTIVES

The great advances in information technology and the rapid growth of said technology in the commercial sphere, has enable our citizens to conduct all types of commercial transactions electronically. A few years ago, such transactions would have taken days or weeks to perform, but now they can be completed easily and instantly. Electronic commerce has also transcended state and international frontiers, contributing to promoting globalization, introducing our Island in commercial markets at world level.

In view of these developments, it is of utmost importance for our Government to promulgate legislation that protects and promotes the development of this important technological means for commercial purposes, however, it must also have sufficient controls to prevent the possibility of fraud and abuse to the system. The mechanism to be selected by the Government to comply with these purposes must be guided by the governing principles of openness and flexibility towards commerce in general, and specifically to cyber-commerce, adopting compliance measures that are attuned to technological developments and that shall increase our citizens' trust in electronic transactions.

In 1999, the National Conference of Commissioners on Uniform State Laws prepared a model law entitled “Uniform Electronic Transactions Act.” Said law has been adopted by most of the states in the United States and is one of the main efforts toward the achievement of comprehensive, flexible, and uniform regulations for electronic transactions at state, interstate, and international level. Since this is a model law, its adoption has had the following effects, among others: (1) to facilitate commercial electronic transactions between states that have adopted the law; (2) to facilitate interstate transactions and transactions with the government agencies; and (3) to promote consistency in electronic transactions.

The purpose of this Legislature is to promote and facilitate the participation of Puerto Rico in national and international markets and to promote the development of the necessary legal infrastructure for all our citizens to enjoy, in a reliable and secure manner of the benefits of national and global electronic commerce. With regard to the aforementioned, this Legislature promulgates this Act in order to place Puerto Rico at the level of avantgarde jurisdictions with respect to electronic commerce.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.—Title.—

This Act shall be known as the “Electronic Transactions Act.”

Section 2.—Definitions.—

The following terms shall have the meanings stated hereinbelow:

- (1) “Agreement” – means an arrangement between the parties, arising from an express contractual language, or which may be inferred from the circumstances of the specific transaction and the rules, regulations, legislation or procedures applicable to said transaction which have a binding effect over the parties.

- (2) “Electronic Agent” – means an electronic data message or other automated or electronic means that may be used to initiate an action or to respond to a message, document or transaction without the need for intervention or review by any natural person at the time the action is initiated or a response is given to the message, document or transaction.
- (3) “Consumer” – means a person who acquires or uses products and services for his/her own use and consumption or the use and consumption of his/her family or home.
- (4) “Contract” – means the legal obligation that arises from the agreement between the parties, pursuant to this Act and any other applicable laws.
- (5) “Document” – means the information inscribed on tangible media or stored in electronic media, retrievable in a perceptible manner.
- (6) “Electronic Document” – means a file created, generated, sent, communicated, received or stored in any type of electronic media.
- (7) “Electronic” – means any technology with electrical, digital, magnetic, wireless, optic or electromagnetic capability, or which operates in a similar manner.
- (8) “Government Entity” – means the Executive, Legislative, and Judicial Branches and the municipalities of the Commonwealth of Puerto Rico, a State of the United States or the Federal Government or any division, subdivision, department, instrumentality, commission, board, public corporation or authority attached to the same.
- (9) “State” – means a State of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or any territory

subject to the jurisdiction of the United States. This term includes tribes or Indian groups, or Alaskan villages recognized by a federal law or formally by a State of the United States.

- (10) “Electronic Signature” – the totality of data in electronic format consigned in a message, document or electronic transaction, or attached or logically associated with said message, document or transaction, that may be used to identify the signatory to identify the signatory and indicate that he/she approves the information contained in the message, document or transaction.
- (11) “Information” – means data, text, images, sounds, codes, software programs, databases and any other similar information.
- (12) “Person” – means an individual, corporation, trust, partnership, limited liability company, association, government entity, public corporation or any other legal or commercial entity.
- (13) “Security Procedure” – means the procedure used to verify that the electronic signature, file or action corresponds to a certain person, or to detect changes or errors in the information contained in an electronic document. It also includes any procedure that requires the use of algorithms or other methods of identification, such as codes, identification words or numbers, encryptions, calls or any other recognition procedures.
- (14) “Computer Program” – means a set of instructions to be used directly or indirectly in an information processing system in order to achieve a specific result.
- (15) “Information Processing System” – means the electronic system used to create, generate, send, receive, store, display or process information.

- (16) “Transaction” – means the acts or set of acts between two or more persons with respect to government, commercial or business matters.
- (17) “Automated Transaction” – means a transaction conducted, in whole or in part, by electronic means or through electronic documents, in which the acts or documents of at least one of the parties are not reviewed by an individual in the ordinary course of executing a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.
- (18) “Consumer Transaction” – means the act or acts between two or more persons with respect to, or mainly related to the personal, family or home use of any of these persons.

Section 3.–Scope.–

- (a) Except as provided in Section (b), this Act shall apply to all electronic documents and electronic signatures with respect to a transaction.
- (b) Except as provided by special law, this Act shall not apply to the following transactions:
 - (1) Transactions concerning succession law, including but not limited to, transactions related to wills, estate inventories, the functions of the accountant-auditor and the functions of the executor;
 - (2) Transactions concerning family law, including but not limited to transactions concerning procedures of adoption, child support and custody of minors, recognition of children, marriage, prenuptial agreements and divorce;

- (3) Judicial procedures, including but not limited to notices, documents, court orders, resolutions, judgments or a writ issued or submitted with respect to any judicial procedure in the General Court of Justice of the Commonwealth of Puerto Rico;
- (4) The termination or cancellation of basic services, including any file or document through which the termination or cancellation of electric power, water and sewers, telephone, gas or any other analogous utility service is notified;
- (5) Notices regarding failure to comply, acceleration, repossession, execution, eviction or the right to rectify failures to comply with respect to lease agreements on a main residence and contracts whose object is any debt guaranteed by the main residence of the debtor;
- (6) Notices of the cancellation or termination of an insurance policy, the benefits of a medical insurance plan, or a life insurance policy;
- (7) Notices to withdraw a product from the market or public warnings on an essential defect of a product;
- (8) Transactions executed pursuant to the Uniform Commercial Code (UCC), with the exception of those executed pursuant to Sections 1-107 and 1-206, Article 2 and Article 2(a);
- (9) Transactions governed or regulated by the Notarial Act or the regulations thereof which may apply;
- (10) Any other transaction that is ruled as excluded by a special law;

- (11) Any other transaction or act that needs a requirement of form pursuant to the Civil Code to be valid.
- (c) This Act shall apply to any electronic documents or signatures that otherwise would be excluded from the scope of this Act under subsection (b) of this Section, to the extent that the electronic documents or signatures are regulated by any statute that is not among those listed under subsection (b) of this Section.
- (d) Any transaction that is subject to this Act shall also be subject to any other applicable law. Therefore, the provisions of this Act do not substitute or modify the norms that regulate the obligations corresponding to the officers that have legal power to attest in documents with respect to the scope of their competence, provided that they act in accordance with the requirements of the law.

Section 4.—Prospective Applicability.—

This Act shall only apply to electronic documents or electronic signatures created, generated, sent, communicated or stored after the date of effectiveness of this Act.

Section 5.—Use of Electronic documents and Electronic signatures; Variation of Agreement.—

- (a) This Act shall not require that a certain file, document or signature be created, generated, sent, communicated, received, stored or otherwise processed or used by electronic media.
- (b) This Act shall only apply to transactions between two or more parties, each of which has agreed to conduct transactions by electronic means. Upon determining whether the parties have agreed to conduct transactions by electronic means, the context and

circumstances surrounding the transaction, including the conduct of the parties, shall be taken into consideration.

- (c) Any person who agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. This right shall not be waived by means of agreement.
- (d) Except as provided in this Act, the effect of any of its provisions may be varied by agreement between the parties. The presence of the phrase “unless otherwise agreed” or any phrase of a similar nature in any provision of this Act does not imply that other provisions may not be varied by agreement between the parties.
- (e) The legal consequences of any electronic documents or signatures shall be determined pursuant to this Act and any other applicable laws.

Section 6.—Construction.—

This Act shall be construed in order:

- (1) To facilitate electronic transactions consistent with any other applicable laws;
- (2) To be consistent in reasonable existing practices concerning electronic transactions and with the continuous development of such practices; and
- (3) To further the general purpose that with respect to electronic transactions, the Act is uniform with those of other States that adopt this statute.

Section 7.—Legal Recognition of Electronic Documents, Electronic Signature and Electronic Contracts.—

- (a) No legal effect or validity shall be denied to any electronic documents or signatures solely because they are in electronic form.

- (b) No legal effect or validity shall be denied to a contract because an electronic document was used in its formation.
- (c) Should any law require that a certain document be in writing, an electronic document shall meet said requirement.
- (d) Should any law require a certain document to contain a signature, an electronic signature shall meet said requirement.

Section 8.—Provisions Concerning Written Documentation; Presentation of Documents.—

- (a) If the parties have agreed to conduct a specific transaction by electronic means, and a law requires that the information provided, sent or delivered to any person be in writing, such requirement shall be met if the information is provided, sent or delivered in an electronic document that may be retained by the recipient of the information at the time of the receipt thereof. An electronic document shall not be capable of retention if the sender or the information processing system inhibits the recipient from printing or storing the electronic document.
- (b) If any other law requires that a document be (i) published or displayed in a certain manner; (ii) sent, communicated or transmitted using a specific method; or (iii) that it contain information organized in a specific format, the following rules shall apply:
 - (1) The document shall be published or displayed as required by the law in question.
 - (2) Except as provided in subsection (d)(2) of this section, the document shall be sent, communicated or transmitted as required by the law in question.

- (3) The document shall contain the information in the format required by the law in question.
- (c) If the sender of the electronic document prevents the recipient from printing or storing the file, the electronic document shall not be binding for the recipient.
- (d) The requirements of this Section shall not be varied by agreement, except:
 - (1) To the extent that any other law requires that any specific information be provided, sent or delivered in writing, but allows the variation by agreement of said requirement between the parties, the requirement under subsection (a) of this Section stating that the information shall be in electronic documents that may be retained by the recipient may also be varied by agreement of the parties; and
 - (2) A requirement of any other law indicating that any specific document shall be sent by regular mail, certified mail, or any other method, may be varied by agreement of the parties in the same manner as permitted by said law.

Section 9.—Attribution and Effects of Electronic Documents and Electronic Signatures.—

- (a) An electronic document or electronic signature shall be attributable to a certain person if it exists by the act of said person. The act may be shown in any manner, including a showing of the efficacy of any security procedure used to identify the person to whom the electronic document or signature is attributable.
- (b) The effect of an electronic document or signature attributable to a person under subsection (a) of this Section shall be determined from

the context and circumstances of its creation, execution or adoption, including an agreement between the parties, if any, in accordance with any other applicable law.

Section 10.—Effects of Changes or Errors.—

In the case a change or error should occur in the transmission between the parties of an electronic transaction document, the procedure shall be as follows:

- (1) If the parties have agreed to use any security procedure to detect changes or errors, and one of the parties followed the procedure but the other did not, and the latter party would have detected the error if it had acted according the security procedure agreed upon, the party that acted according to the procedure may extricate itself from the effects of the erroneous or altered electronic document.
- (2) If an individual person commits an error in an automated transaction, and the electronic agent of the other party does not provide the opportunity to prevent or to correct said error, said person may extricate itself from the effects of the electronic document arising from the error if, at the time of learning of the error, the person:
 - (A) Immediately notifies the other person of the error and that he/she did not intend to be bound by the electronic document received by the other person;
 - (B) Takes reasonable steps, including those reasonable steps provided by the other party, to return or destroy, if so instructed by the other party, any consideration arising from the erroneous electronic document; and
 - (C) Does not use or derive any benefit from the consideration received from the other party.

- (3) If the specific situation in either subsection (1) or subsection (2) of this Section does not apply, the change or error shall have the effect provided in any other applicable law or in the contract between the parties, if any.
- (4) Subsections (2) and (3) of this Section shall not be varied by agreement between the parties.

Section 11.—Retention of Electronic Documents; Originals.—

- (a) Should any law or regulation require a specific document to be retained or stored, the requirement shall be met by retaining an electronic document that:
 - (1) Accurately reflects the information contained in the document;
and
 - (2) Remains accessible for the term required to all persons with the right to do so under the law or regulation in question on a medium that allows the electronic document to be reproduced accurately, whether transmitted or printed, for future reference.
- (b) The requirement to retain a document pursuant to subsection (a) of this Section shall not apply to information whose exclusive purpose is to facilitate that the document be sent, communicated or received.
- (c) A person may contract another to retain or store an electronic document, provided that he/she meets the requirements in subsection (a) of this Section.
- (d) Should any law require that a specific document be retained in its original state, or provide specific consequences in case such document is not presented or retained in its original state, said law shall be satisfied by an electronic document retained in accordance with subsection (a) of this Section.

- (e) If any law requires that any check be retained, such requirement shall be met by retaining an electronic document that contains the information on the front and back of the check, pursuant to subsection (a) of this Section.
- (f) A document retained in electronic document format in accordance with subsection (a) of this Section shall satisfy any law that requires a person to retain a specific document for evidentiary purposes, audits or other similar purposes, unless a law approved after the date of effectiveness of this Act specifically prohibits the use of electronic documents for such purposes.
- (g) This Section does not prohibit the establishment by any government entity of additional requirements for retaining documents, subject to the jurisdiction of such entity.

Section 12.—Admissibility as Evidence.—

The evidence of a document or signature cannot be excluded in any judicial or administrative proceeding solely because it is in electronic form.

Section 13.—Consumer Transactions.—

Notwithstanding the provisions in this Act, when any law or regulation requires that specific information be delivered or made available to a consumer in writing, the use of an electronic document shall fulfill said requirement if:

- (a) The consumer consents in an attesting manner to the use of the electronic document and has not otherwise withdrawn his/her consent; and, if prior to giving his/her consent, the consumer is given a clear and conspicuous statement that:
 - (1) Informs the consumer of any right or option to which he/she is entitled for the documents or information to be sent in writing, or an otherwise non-electronic manner, and the right he/she has

to withdraw his/her consent to receive documents or information electronically, once such consent has been given, in addition to any other condition, consequence, (including termination of the relationship between the parties) or any additional expenses resulting from the withdrawal of such consent;

- (2) Informs the consumer whether his/her consent to receive electronic documents or information applies only to the specific transaction that results in the obligation to provide a document or to identified categories of documents that may be provided in the context of the transaction between the parties;
- (3) Describes the procedures to withdraw consent and the procedure to update his/her contact information; and
- (4) Notifies the procedure to be followed and the additional charges that may apply to obtain a written copy of any electronic document or information he/she has received.

(b) The Consumer

- (1) prior to consenting, shall be provided with information on the equipment and software or application required to access and retain electronic documents;
- (2) consents or confirms by electronic or any other means that reasonably shows that he/she, as a consumer, has access to the electronic documents or information in the manner to be used to send electronic documents or information in the transaction for which he/she gave his/her consent;
- (3) after having given his/her consent, if any change in the equipment or application described in subsection (1) above

represents a material risk for said consumer in such a manner that he/she shall not be able to access or retain electronic documents or information afterwards, (i) the person who provides the electronic documents or information shall provide to the consumer an updated itemization of the equipment and applications or software necessary to access and retain electronic documents or information, and (ii) shall provide an itemization of the procedure to be followed to withdraw consent without imposing additional costs, conditions or consequences on the consumer, except those described in subsection (a)(4) of this Section, and shall inform the consumer how to obtain, upon request, a written copy of the electronic documents or information he/she has received and if any additional charges apply for said copy, and once again complies with this Section.

- (c) The provisions in this Section applicable to consumer transactions shall not be altered or modified by agreement between the parties.

Section 14.—Automated Transactions.—

The following rules shall apply to automated transactions:

- (1) A contract may be executed by the interaction of the electronic agents of the parties, even if no specific individual is aware or reviews the actions of the electronic agents or the terms and conditions arising from the transaction.
- (2) A contract may be executed by the interaction of an electronic agent and an individual, acting on his/her own behalf or in representation of another, including through are interaction in which the individual performs actions he/she is free to refuse to perform, and which the

individual knows or should know will cause the electronic agent to execute the transaction.

- (3) The terms of the resulting contract shall be determined in accordance with the substantive law applicable to such contract.

Section 15.—Time and Place of Sending and Receipt.—

(a) Except otherwise agreed between the sender and the recipient, it shall be understood that an electronic document has been sent when:

- (1) It has been properly addressed to an information processing system designated by the recipient, or that the recipient uses to receive electronic documents or information of the type sent, and from which the recipient may store or retrieve the electronic document;

- (2) It is in a form capable of being processed by such system; and

- (3) It enters an information processing system that is outside the control and scope of the sender, or of the person who sent the electronic document on behalf of sender, or it is entered into a region of the information processing system designated or used by the recipient which is under the control of the recipient.

(b) Unless otherwise agreed between the sender and the recipient, an electronic document has been received when:

- (1) It enters an information processing system that has been designated by the recipient or that the recipient uses to receive electronic documents or information of the type

sent and through which the recipient is able to store or retrieve the electronic document; and

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

(c) Subsection (b) of this Section shall apply even if the Information Processing System is located in a place other than in which the electronic document is deemed to be received in accordance with subsection (d) of this Section.

(d) Except as expressly provided in the document, or unless otherwise agreed on between the sender and the recipient, it shall be deemed that an electronic document was sent from the place of business of the sender to be received in the place of business of the recipient. For the purposes of this subsection, the following rules shall apply:

(1) If the sender or the recipient has more than one place of business, the place of business of said party shall be the one that is nearest in relation to the transaction that causes the electronic document to be sent.

If the transaction is a consumer transaction, or if the sender or the recipient do not have a place of business, the place of business shall be the residence of the sender or of the recipient.

(e) An electronic document is considered to be received under subsection (b) of this Section, even if no individual is aware of it being received.

(f) The receipt of an electronic acknowledgment from an information processing system of the type described in

subsection (b) of this Section shall establish that the electronic document was received, but, by itself it shall not establish that the content sent corresponds to the content received.

- (g) If a person is aware that an electronic document that was allegedly sent in accordance with subsection (a) of this Section, or received in accordance with subsection (b) of this Section, was in fact neither sent or received, the legal effect of the sending or receipt shall be determined in accordance with other applicable laws. Except to the extent permitted by other applicable laws, the requirements of this subsection shall not be varied by agreement.

Section 16.– Transferable Documents.–

- (a) In this Section, “Transferable Document” means an electronic document that:
 - (1) Constitutes a commercial document as said term is defined in Act No. 208 of August 17, 1995, known as the “Electronic Transactions Act”; and
 - (2) The issuer of which has expressly agreed that it constitutes a transferable document.
- (b) It shall be understood that a person has control over a transferable document if the system used to evidence the transfer of interest in the transferable document reliably establishes that person, as the person to whom the document was issued or transferred.
- (c) It shall be understood that a system meets the requirements in subsection (b) of this Section, and it shall be understood that a person has control over a transferable document, if the transferable document is created, stored and assigned in such a manner that:

- (1) There is only one authorized copy of the transferable document which is unique, identifiable and, except as provided in subsections (c)(4), (5), and (6) of this Section, inalterable;
 - (2) The authorized copy identifies the person who asserting control as:
 - (A) The person to whom the transferable document was issued; or
 - (B) If the authorized copy indicates that the transferable document has been transferred, the person to whom the transferable document was most recently transferred;
 - (3) The authorized copy is communicated and maintained by the person asserting control or by his/her designated custodian;
 - (4) Any copies or revisions that add or change an identified assignee in the authorized copy shall only be made with the consent of the person asserting control;
 - (5) Each copy of the authorized copy and each copy of a copy shall be readily identifiable as a copy that is not the authorized copy thereof; and
 - (6) Any revision of the authorized copy shall be readily identifiable as authorized or unauthorized.
- (d) Unless otherwise agreed, the person having control over a transferable document shall be the holder thereof, pursuant to Sections 1–201 (20) of the Commercial Transactions Act, and shall have the same rights and defenses as the holder of an equivalent document under the Commercial Transactions Act, including, if the applicable legal requirements under Sections 3–302 (a), 7–501 or 9–308 of the Commercial Transactions Act are met, the rights and defenses

available to a holder in good faith, a holder to which the negotiable of document title has been negotiated, or a purchaser, respectively. Delivery, possession and endorsement of the document shall not be required to obtain or exercise any of the rights established under this subsection.

- (e) Unless otherwise agreed, an obligor under a transferable document shall have the same rights and defenses as an equivalent obligor under equivalent documents pursuant to the Commercial Transactions Act.
- (f) If requested by the person against whom [sic] it is intended to oppose the transferable document, the person seeking to enforce the transferable document shall present reasonable proof that he/she has control of the transferable document. Such proof may include access to the authentic copy of the transferable document and related documents sufficient to review the terms of the transferable document and to establish the identity of the person having control of the transferable document.

Section 17 .– Relation to Other Laws; Severability.–

This Act is promulgated pursuant to and in accordance with the “Federal Electronic Signatures in Global and National Commerce Act” (E-Sign), P.L. No. 106-229, 114 Stat. 464 (2001), 15 U.S.C.A. § 7001 et seq.

This Act does not intend to modify, limit, or supersede the requirements of Section 101(c), (d) or (e) or to authorize the remittance by electronic means of any notification of the type described in Section 103(b) of the Federal Electronic Signatures in Global and National Commerce Act.

Should any provision of this Act be ruled without effect, such ruling shall not affect the remaining provisions of this Act, which shall remain in full force and effect.

Section 18.—Effectiveness.—

This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 148 (S.B. 651) of the 3rd Session of the 15th Legislature of Puerto Rico:

AN ACT to adopt the Electronic Transactions Act in order to regulate electronic transactions, establish its applicability, and for other purposes,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 15th of October of 2007.

Francisco J. Domenech
Director