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CS FOR HOUSE BILL NO. 285(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 1/23/04

Referred: Rules

Sponsor(s): REPRESENTATIVES MCGUIRE, Lynn, Dahlstrom

SENATOR Dyson

A BILL

FOR AN ACT ENTITLED

1 **"An Act adopting the Uniform Electronic Transactions Act; repealing certain statutes**
2 **relating to electronic records and electronic signatures; amending Rule 402, Alaska**
3 **Rules of Evidence; and providing for an effective date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 09 is amended by adding a new chapter to read:

6 **Chapter 80. Uniform Electronic Transactions Act.**

7 **Sec. 09.80.010. Scope.** (a) Except as otherwise provided in (b) and (c) of this
8 section, this chapter applies to electronic records and electronic signatures relating to a
9 transaction.

10 (b) This chapter does not apply to a transaction to the extent it is governed by

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

13 (2) the Uniform Commercial Code other than AS 45.01.107,
14 45.01.206, AS 45.02, and AS 45.12.

1 (c) This chapter applies to a transaction governed by 15 U.S.C. 7001 - 7031
 2 (Electronic Signatures in Global and National Commerce Act), but this chapter is not
 3 intended to limit, modify, or supersede 15 U.S.C. 7001(c). To the extent excluded
 4 from the scope of 15 U.S.C. 7001 - 7031 under 15 U.S.C. 7003, this chapter does not
 5 apply to a notice to the extent that it is governed by a law requiring the furnishing of

6 (1) any notice of

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

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

12 (C) the cancellation or termination of health insurance or
 13 benefits or life insurance benefits, excluding annuities; or

14 (D) recall of a product, or material failure of a product, that
 15 risks endangering health or safety; or

16 (2) a document to accompany any transportation or handling of
 17 hazardous materials, pesticides, or other toxic or dangerous materials.

18 (d) This chapter applies to an electronic record or electronic signature
 19 otherwise excluded from the application of this chapter under (b) or (c) of this section
 20 to the extent it is governed by a law other than those specified in (b) or (c) of this
 21 section.

22 (e) A transaction subject to this chapter is also subject to other applicable
 23 substantive law.

24 **Sec. 09.80.020. Use of electronic records and electronic signatures;**
 25 **variation by agreement.** (a) This chapter does not require a record or signature to be
 26 created, generated, sent, communicated, received, stored, or otherwise processed or
 27 used by electronic means or in electronic form.

28 (b) This chapter applies only to transactions between parties each of whom has
 29 agreed to conduct transactions by electronic means. Whether the parties agree to
 30 conduct a transaction by electronic means is determined from the context and
 31 surrounding circumstances, including the parties' conduct.

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

4 (d) Except as otherwise provided in this chapter, the effect of any of the
5 provisions of this chapter may be varied by agreement. The presence in certain
6 provisions of this chapter of the words "unless otherwise agreed," or words of similar
7 meaning, does not imply that the effect of other provisions may not be varied by
8 agreement.

9 (e) Whether an electronic record or electronic signature has legal
10 consequences is determined by this chapter and other applicable law.

11 **Sec. 09.80.030. Construction and application.** This chapter shall be
12 construed and applied to

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

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

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

19 **Sec. 09.80.040. Legal recognition of electronic records, electronic**
20 **signatures, and electronic contracts.** (a) A record or signature may not be denied
21 legal effect or enforceability solely because it is in electronic form.

22 (b) A contract may not be denied legal effect or enforceability solely because
23 an electronic record was used in its formation.

24 (c) If a law requires a record to be in writing, an electronic record satisfies the
25 law.

26 (d) If a law requires a signature, an electronic signature satisfies the law.

27 **Sec. 09.80.050. Provision of information in writing; presentation of**
28 **records.** (a) If parties have agreed to conduct a transaction by electronic means and a
29 law requires a person to provide, send, or deliver information in writing to another
30 person, the requirement is satisfied if the information is provided, sent, or delivered, as
31 the case may be, in an electronic record capable of retention by the recipient at the

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

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

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

10 (2) except as otherwise provided in (d)(2) of this section, the record
 11 shall be sent, communicated, or transmitted by the method specified in the other law;

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

14 (c) If a sender inhibits the ability of a recipient to store or print an electronic
 15 record, the electronic record is not enforceable against the recipient.

16 (d) The requirements of this section may not be varied by agreement, but

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

21 (2) a requirement under a law other than this chapter to send,
 22 communicate, or transmit a record by regular United States mail may be varied by
 23 agreement to the extent permitted by the other law.

24 **Sec. 09.80.060. Attribution and effect of electronic record and electronic**
 25 **signature.** (a) An electronic record or electronic signature is attributable to a person
 26 if it was the act of the person. The act of the person may be shown in any manner,
 27 including a showing of the efficacy of any security procedure applied to determine the
 28 person to whom the electronic record or electronic signature was attributable.

29 (b) The effect of an electronic record or electronic signature attributed to a
 30 person under (a) of this section is determined from the context and surrounding
 31 circumstances at the time of its creation, execution, or adoption, including the parties'

1 agreement, if any, and otherwise as provided by law.

2 **Sec. 09.80.070. Effect of change or error.** If a change or an error in an
3 electronic record occurs in a transmission between parties to a transaction, the
4 following rules apply:

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

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

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

18 (B) takes reasonable steps, including steps that conform to the
19 other person's reasonable instructions, to return to the other person or, if
20 instructed by the other person, to destroy the consideration received, if any, as
21 a result of the erroneous electronic record; and

22 (C) has not used or received any benefit or value from the
23 consideration, if any, received from the other person;

24 (3) if (1) and (2) of this section do not apply, the change or error has
25 the effect provided by other law, including the law of mistake, and the parties'
26 contract, if any;

27 (4) paragraphs (2) and (3) of this section may not be varied by
28 agreement.

29 **Sec. 09.80.080. Notarization and acknowledgment.** If a law requires a
30 signature or record to be notarized, acknowledged, verified, or made under oath, the
31 requirement is satisfied if the electronic signature of the person authorized to perform

1 those acts, together with all other information required to be included by other
2 applicable law, is attached to or logically associated with the signature or record.

3 **Sec. 09.80.090. Retention of electronic records; originals.** (a) If a law
4 requires that a record be retained, the requirement is satisfied by retaining an
5 electronic record of the information in the record that

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

8 (2) remains accessible for later reference.

9 (b) A requirement to retain a record under (a) of this section does not apply to
10 any information the sole purpose of which is to enable the record to be sent,
11 communicated, or received.

12 (c) A person may satisfy (a) of this section by using the services of another
13 person if the requirements of that subsection are satisfied.

14 (d) If a law requires a record to be presented or retained in its original form, or
15 provides consequences if the record is not presented or retained in its original form,
16 that law is satisfied by an electronic record retained in accordance with (a) of this
17 section.

18 (e) If a law requires retention of a check, that requirement is satisfied by
19 retention of an electronic record of the information on the front and back of the check
20 in accordance with (a) of this section.

21 (f) A record retained as an electronic record in accordance with (a) of this
22 section satisfies a law requiring a person to retain a record for evidentiary, audit, or
23 like purposes, unless a law enacted after the effective date of this Act specifically
24 prohibits the use of an electronic record for the specified purpose.

25 (g) This section does not preclude a governmental agency of this state from
26 specifying additional requirements for the retention of a record subject to the agency's
27 jurisdiction.

28 **Sec. 09.80.100. Admissibility in evidence.** In a proceeding, evidence of a
29 record or signature may not be excluded solely because it is in electronic form.

30 **Sec. 09.80.110. Automated transaction.** In an automated transaction, the
31 following rules apply:

1 (1) a contract may be formed by the interaction of electronic agents of
 2 the parties, even if no individual was aware of or reviewed the electronic agents'
 3 actions or the resulting terms and agreements;

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

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

11 **Sec. 09.80.120. Time and place of sending and receipt.** (a) Unless
 12 otherwise agreed between the sender and the recipient, an electronic record is sent
 13 when it

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

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

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

23 (b) Unless otherwise agreed between a sender and the recipient, an electronic
 24 record is received when it

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

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

29 (c) Subsection (b) of this section applies even if the place the information
 30 processing system is located is different from the place the electronic record is
 31 considered to be received under (d) of this section.

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

5 (1) if the sender or recipient has more than one place of business, the
 6 place of business of that person is the place having the closest relationship to the
 7 underlying transaction;

8 (2) if the sender or the recipient does not have a place of business, the
 9 place of business is the sender's or recipient's residence, as the case may be.

10 (e) An electronic record is received under (b) of this section even if no
 11 individual is aware of its receipt.

12 (f) Receipt of an electronic acknowledgment from an information processing
 13 system described in (b) of this section establishes that a record was received but, by
 14 itself, does not establish that the content sent corresponds to the content received.

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

20 **Sec. 09.80.130. Transferable records.** (a) A person has control of a
 21 transferable record if a system employed for evidencing the transfer of interests in the
 22 transferable record reliably establishes that person as the person to whom the
 23 transferable record was issued or transferred.

24 (b) A system satisfies (a) of this section, and a person is considered to have
 25 control of a transferable record, if the transferable record is created, stored, and
 26 assigned in such a manner that

27 (1) a single authoritative copy of the transferable record exists that is
 28 unique, identifiable, and, except as otherwise provided in (4) - (6) of this subsection,
 29 unalterable;

30 (2) the authoritative copy identifies the person asserting control as

31 (A) the person to whom the transferable record was issued; or

1 (B) the person to whom the transferable record was most
2 recently transferred if the authoritative copy indicates that the transferable
3 record has been transferred;

4 (3) the authoritative copy is communicated to and maintained by the
5 person asserting control or the person's designated custodian;

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

8 (5) each copy of the authoritative copy and any copy of a copy is
9 readily identifiable as a copy that is not the authoritative copy; and

10 (6) any revision of the authoritative copy is readily identifiable as
11 authorized or unauthorized.

12 (c) Except as otherwise agreed, a person having control of a transferable
13 record is the holder, as defined in AS 45.01.201, of the transferable record and has the
14 same rights and defenses as a holder of an equivalent record or writing under the
15 Uniform Commercial Code, including, if the applicable statutory requirements under
16 AS 45.03.302(a), AS 45.07.501, or AS 45.29.308 are satisfied, the rights and defenses
17 of a holder in due course, a holder to which a negotiable document of title has been
18 duly negotiated, or a purchaser, respectively. Delivery, possession, and endorsement
19 are not required to obtain or exercise any of the rights under this subsection.

20 (d) Except as otherwise agreed, an obligor under a transferable record has the
21 same rights and defenses as an equivalent obligor under equivalent records or writings
22 under the Uniform Commercial Code.

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

29 (f) In this section, "transferable record" means an electronic record that

30 (1) would be a note under AS 45.03 or a document under AS 45.07 if
31 the electronic record were in writing; and

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

3 **Sec. 09.80.140. Creation and retention of electronic records and**
4 **conversion of written records by governmental agencies.** Each governmental
5 agency of this state shall determine whether, and the extent to which, the
6 governmental agency will create and retain electronic records and convert written
7 records to electronic records.

8 **Sec. 09.80.150. Acceptance and distribution of electronic records by**
9 **governmental agencies.** (a) Except as otherwise provided in AS 09.80.090(f), each
10 governmental agency of this state shall determine whether, and the extent to which,
11 the governmental agency will send and accept electronic records and electronic
12 signatures to and from other persons and otherwise create, generate, communicate,
13 store, process, use, and rely upon electronic records and electronic signatures.

14 (b) To the extent that a governmental agency uses electronic records and
15 electronic signatures under (a) of this section, the governmental agency, giving due
16 consideration to security, may specify

17 (1) the manner and format in which the electronic records must be
18 created, generated, sent, communicated, received, and stored and the systems
19 established for those purposes;

20 (2) if electronic records must be signed by electronic means, the type
21 of electronic signature required, the manner and format in which the electronic
22 signature must be affixed to the electronic record, and the identity of, or criteria that
23 must be met by, a third party used by a person filing a document to facilitate the
24 process;

25 (3) control processes and procedures as appropriate to ensure adequate
26 preservation, disposition, integrity, security, confidentiality, and auditability of
27 electronic records; and

28 (4) any other required attributes for electronic records that are
29 specified for corresponding nonelectronic records or that are reasonably necessary
30 under the circumstances.

31 (c) Except as otherwise provided in AS 09.80.090(f), this chapter does not

1 require a governmental agency of this state to use or permit the use of electronic
2 records or electronic signatures.

3 **Sec. 09.80.160. Interoperability.** A governmental agency of this state that
4 adopts standards under AS 09.80.150 may encourage and promote consistency and
5 interoperability with similar requirements adopted by other governmental agencies of
6 this and other states and the federal government and nongovernmental persons
7 interacting with governmental agencies of this state. If appropriate, those standards
8 may specify differing levels of standards from which governmental agencies of this
9 state may choose in implementing the most appropriate standard for a particular
10 application.

11 **Sec. 09.80.190. Definitions.** In this chapter,

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

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

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

24 (4) "contract" means the total legal obligation resulting from the
25 parties' agreement as affected by this chapter and other applicable law;

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

28 (6) "electronic agent" means a computer program or an electronic or
29 other automated means used independently to initiate an action or respond to
30 electronic records or performances in whole or in part, without review or action by an
31 individual;

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

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

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

10 (10) "information" means data, text, images, sounds, codes, computer
11 programs, software, databases, or similar items;

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

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

18 (13) "record" means information that is inscribed on a tangible
19 medium or that is stored in an electronic or other medium and is retrievable in
20 perceivable form;

21 (14) "security procedure" means a procedure employed for the purpose
22 of verifying that an electronic signature, record, or performance is that of a specific
23 person or for detecting changes or errors in the information in an electronic record;
24 "security procedure" includes a procedure that requires the use of algorithms or other
25 codes, identifying words or numbers, encryption, or call-backs or other
26 acknowledgment procedures;

27 (15) "state" means a state of the United States, the District of
28 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular
29 possession subject to the jurisdiction of the United States, and includes an Indian tribe
30 or band or Alaska Native village that is recognized by federal law or formally
31 acknowledged by a state;

1 (16) "transaction" means an action or set of actions occurring between
 2 two or more persons relating to the conduct of business, commercial, or governmental
 3 affairs;

4 (17) "Uniform Commercial Code" means AS 45.01 - AS 45.08,
 5 AS 45.12, AS 45.14, and AS 45.29.

6 **Sec. 09.80.195. Short title.** This chapter may be cited as the Uniform
 7 Electronic Transactions Act.

8 * **Sec. 2.** AS 09.25.500, 09.25.510, and 09.25.520 are repealed.

9 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
 10 read:

11 **INDIRECT COURT RULE AMENDMENT.** AS 09.80.100, enacted by sec. 1 of this
 12 Act, has the effect of changing Rule 402, Alaska Rules of Evidence, by adding a provision
 13 that prevents electronic evidence of a record or signature from being inadmissible as evidence
 14 just because it is in electronic form.

15 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
 16 read:

17 **APPLICABILITY.** This Act applies to any electronic record or electronic signature
 18 created, generated, sent, communicated, received, or stored on or after the effective date of
 19 this Act. In this section, "electronic record" and "electronic signature" have the meanings
 20 given in AS 09.80.190, enacted by sec. 1 of this Act.

21 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new subsection
 22 to read:

23 **SAVING CLAUSE.** A rule of law that is satisfied under AS 09.25.510(a), repealed by
 24 sec. 2 of this Act, before the effective date of this Act by an electronic record executed or
 25 adopted with an electronic signature remains satisfied on and after the effective date of this
 26 Act notwithstanding the repeal of AS 09.25.510 by sec. 2 of this Act. In this section,
 27 "electronic signature" and "record" have the meanings given in AS 09.25.520, repealed by
 28 sec. 2 of this Act.

29 * **Sec. 6.** This Act takes effect July 1, 2004.