



**THE MICHIGAN ELECTRONIC RECORDS STANDARDS
ADOPTED BY
THE MICHIGAN ELECTRONIC RECORDING COMMISSION
ESTABLISHED UNDER
THE MICHIGAN UNIFORM REAL
PROPERTY ELECTRONIC RECORDING ACT**

Effective [Month day,] 2014

Michigan Electronic Recording Commission

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SECTION I: INTRODUCTION

By 2000, innovations in electronic information technology made it technically feasible to create, sign and transmit electronic transactions. That year, Michigan adopted the Michigan Uniform Electronic Transactions Act (MUETA) (MCL 450.831 et seq.), and Congress passed the Electronic Signatures in Global and National Commerce Act (E-Sign) (15 USC 7001 et, seq.). These two acts, among other things, give legal effect to contracts that are executed ~~and transmitted~~ electronically.

Neither act, however, sets out standards for how such electronic documents should be recorded in the public records. So, in 2010 Michigan adopted the Michigan Uniform Real Property Electronic Recording Act (MURPERA) (MCL 565.8~~5~~41 et. seq.).

MURPERA authorizes county registers of deeds to accept electronic documents for recording, provided that they do so in compliance with recording standards to be established by the Michigan Electronic Recording Commission (MERC), a new state commission established under MURPERA. The members of MERC and the advisors to MERC are set out on the prior page.

On [month day], 2013, MERC adopted these recording standards (Michigan Recording Standards), effective [month day], 2014.

As required by MURPERA, in adopting the Michigan Recording Standards, MERC considered: the standards and practices of other jurisdictions; the most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association (PRIA); the views of interested persons and governmental officials and entities; the needs of counties of varying size, population, and resources; and standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.

MERC used the electronic recording standards issued by PRIA as the foundation for the Michigan Recording Standards. The Michigan Recording Standards address the following issues:

- 1) Data Standards
- 2) Document Formats
- 3) Electronic Signatures and Authentications
- 4) Recording Requirements
- 5) Security
- 6) Business Rules
- 7) Payment of Recording Fees
- 8) Records Retention and Preservation

The Michigan Recording Standards will be updated periodically as the need arises.

While a register of deeds in Michigan is not required to accept electronic documents for recording, any register of deeds in Michigan who implements any of the functions set out in MURPERA on or after the effective date of these Standards shall do so only in compliance with these Standards. As provided in MURPERA, any electronic documents recorded prior to the effective date of the Standards are not invalidated.

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SECTION II: MICHIGAN ELECTRONIC RECORDING STANDARDS

1. DATA AND DOCUMENT STANDARDS

The Michigan Electronic Recording Commission (MERC) adopts the Property Records Industry Association (PRIA) data and document standards.

Each register of deeds who accepts electronic documents for recording ([eRecording](#)) shall provide open architecture for reception of electronic documents. All reception software, including portals, must support PRIA standards Version 2.4.1 and subsequent versions.

Comments

PRIA data and document standards are the preferred standard for use by industry participants of eRecording. Additional voluntary guidelines are also available from PRIA. (*See Appendix A – PRIA Standards and Guidelines.*)

Recommendations

MERC recommends that eRecording be offered and conducted at all three models of submission. (*See Appendix B – Electronic Recording Models Explained.*)

2. DOCUMENT FORMATS

eRecordings shall be preserved as TIFF or PDF files along with their associated metadata. (*See Appendix C - Glossary of Terms.*) Model 3 submissions should be converted to TIFF or PDF until the viability of preserving these eRecordings in their native format (i.e., XML, XHTML) has been demonstrated.

Comments

Preservation File Formats

TIFF: The Tagged Image File Format is widely adopted within the property recording industry and by registers of deeds who have imaging systems. TIFF is a non-proprietary format that is recommended for storing scanned images.

PDF: Portable Document Format is another commonly used file format in the property recording industry. PDF files capture the appearance of the original document, can store both text and

images, are difficult to modify, and can be rendered with free, cross-platform viewer software. PDF is based on publicly available specifications and is now an international open standard for electronic document exchange maintained by the International Organization for Standardization (ISO).

XHTML: Extensible Hypertext Markup Language is a newer version of HTML and is the main markup language for creating web pages and other information that can be displayed in a web browser.

XML: Extensible Markup Language is the currently recommended file format for long term preservation of any metadata.

Metadata: Metadata is commonly described as "data about data." Metadata is used to locate and manage information resources by classifying those resources and by capturing information not inherent in the resource. In the eRecording context, metadata may be generated automatically or created manually and it may be internal or external to the digital object itself. Regardless of how it is created or stored, maintaining accurate and reliable metadata is essential to the long-term preservation of eRecordings.

~~**Microfilm:** The archival process for electronic records will require consistent and complex management in order to maintain authenticity and integrity. Digital preservation requires a well-developed plan and implementation with specific policies and procedures.~~

Recommendations

Electronic records are subject to the same threats of destruction from natural or human-made disasters as other media. In addition, there are the added challenges of hardware and software obsolescence, media longevity and migration, infrastructure failures and accidental damage from improper handling.

Therefore, since the majority of records in the custody of a register of deeds must be preserved permanently, and since the durability of electronic records has not been proven to be as enduring as microfilm, MERC recommends security microfilm to secure and preserve information created and stored electronically.

3. ELECTRONIC SIGNATURES AND AUTHENTICATION

While MUETA and MURPERA (*See* Appendix D – Relevant Statutes) allow many types of electronic signatures, registers of deeds are only required to accept electronic signatures that they have the technology to support. eRecordings shall comply with all federal and state

authentication laws. Registers of deeds have no responsibility to authenticate electronic signatures embedded within the body of the document.

4. RECORDING REQUIREMENTS

All eRecordings shall comply with ~~the Michigan eRecording Act~~ laws as to document formatting.

5. SECURITY

Participants in eRecording shall ~~develop~~ follow security standards and policies based on the most recent PRIA ~~property records industry accepted~~ published security practices and protocols.

Comments

Transactional Security: All electronic documents must be secured in such a way that both the transmitting and receiving parties are assured of each other's identity, and that no unauthorized party can view or alter the electronic document during transmission, processing, and delivery. If the electronic document has been subject to those security measures identified in Chapter 6 of the most current *PRIA eRecording XML ~~Implementation~~ Guide* (See Appendix B) throughout the entire electronic document process of execution through recording, then the security obligations under these standards have been satisfied.

Organizational Security: Each register of deeds who elects participation in eRecording shall implement reasonable measures such that each electronic document accepted for recordation is protected from alteration and unauthorized access.

6. BUSINESS RULES

A register of deeds who participates in eRecording shall establish business rules that govern how eRecording will be conducted in that county. eRecording participants agree to abide by the register of deed's business rules.

At a minimum, any register of deeds participating in eRecording shall develop business rules covering the following:

- 1) Hours of operations and processing schedules
- 2) Payment options

- 3) Terms for terminating a party's participation in eRecording
- 4) Document rejection rights
- 5) Statement that any amendments and/or alterations to the business rules will be published with adequate notice before taking effect.

Comments

MERC recommends that the business rules be available ~~and appear~~ on the register of deed's website.

7. PAYMENT OF RECORDING FEES

Electronic payment of recording fees shall be collected by public agencies as prescribed by state and local statutes and in accordance with accepted property records industry standards without incurring unreasonable electronic processing fees.

Comments

Payments are a prerequisite to all methods of recording. Therefore, whether a payment is attached or an authorization of payment is included in an eRecording submission, the submission must incorporate some methodology for payment of fees associated with a particular document or set of documents.

Fees are to be collected according to statute ~~and~~ in a manner consistent with the promotion of eRecording, and in accordance with accepted property records industry standards.

8. RECORDS RETENTION AND PRESERVATION

A register of deeds must retain all records in his/her custody in accordance with requirements detailed in the General Retention Schedule #3, Registers of Deeds Offices, approved by the Michigan Department of Technology, Management, and Budget.

Comments

The Michigan General Retention Schedule #3, Registers of Deeds Offices, is available at:
http://www.michigan.gov/documents/hal/mhc_rm_locals3_176072_7.pdf.

SECTION III: APPENDICES

APPENDIX A: PRIA STANDARDS AND GUIDELINES

The most current version of the following PRIA standards and guidelines may be found at: <http://www.pria.us>. Prior to accessing the documents listed below, the user will be required to agree to the terms and conditions of the PRIA eRecording XML Standards License Agreement found at: http://www.pria.us/files/public/Standards_Publications/License_Agreement2.pdf

- eRecording Business Requirements
- Document Version 2.4.1
- Notary Version 2.4.1
- PRIA Request Version 2.4.2
- PRIA Response Version 2.4.2
- eRecording XML iGuide

APPENDIX B: eRECORDING MODELS EXPLAINED

From the PRA I Guide©

eRecording Models

Electronic recordings, whether as pilot projects or live production initiatives, have occurred in twenty states. From these efforts, three distinct models have emerged. The models are referred to as Models 1, 2 and 3. Each has distinctive characteristics. Each also brings certain benefits to the submitters.

Over time the improvements in delivery methods and document formats have improved the processes as well. From scanned paper documents, to electronically-signed images of the documents wrapped with XML data and securely signed, to completely electronic, XML integrated documents using electronic and digital signatures, these models bring continuing benefits to participating recorders and document submitters. Ongoing progress with increasing value from added benefits are expected as mortgage, legal and recording industry standards are implemented.

Model 1 Description

This model is an extension of the paper-based closing or payoff processes. Documents are prepared and printed. The parties sign and notarize the paper documents with ink signatures. When complete, the signed and notarized paper documents are scanned and electronically sent to the recorder. Transmission is done by the submitting parties logging on to the recorder's computer system over a secure network after first identifying, or authenticating, themselves to the recorder's computer. The recorder makes the same determination of record-ability as with paper documents, visually inspecting them for such things as signatures and acknowledgments as well as determining the recording fees. Fees are usually paid from an escrow account the submitter maintains with the recorder.

Once the recorder accepts the documents for recording the scanned image is "burned" with the recording information, including recording date and time as well as the unique recording reference number, such as book and page number or instrument number. Indexing is performed by the indexing staff of the recorder's office, as are paper documents. A copy of the recorded images is returned to the submitter. Usually a recording receipt, together with the recording endorsement data, is returned to the submitter, who uses the data to create and print a label with the recording endorsement information. The label is affixed to the paper document, which is then processed as usual by the submitter. In other jurisdictions, the paper document is fed through a printer and the recording endorsement information is printed on document (usually on the upper, right-hand corner of the first page).

In jurisdictions that use Model 1, such as Orange County, California, and Maricopa County, Arizona, the average elapsed time for the process is usually under an hour from the time the recorder receives the image until the receipt and data are returned to the submitter.

Model 2 Description

Model 2 recordings may be paper or electronic based. A document image whether from a scanned paper document signed and notarized by ‘wet ink’ signatures or from an electronic document electronically signed and notarized, is wrapped in an XML wrapper containing the data necessary for processing, indexing and returning the document. In the case of a scanned paper document, Model 2 further extends Model 1 by adding data that improves the process, specifically the indexing process in the recorder’s office. In the case of an electronic document, it begins to improve the process for the settlement agent, lender or loan servicer submitting the document.

The model may support one or more of a number of graphics formats. Uncompressed TIFF (Tagged Image File Format) images are commonly used, because this format preserves the image in the most accurate and legible form.

The recordable documents are generally delivered to the county recorder’s site by whatever means the parties agree, including hypertext transport protocol secure (HTTPS), web services, file transport protocol (FTP) and even email. Most counties require some authentication of the submitter, typically based on an account and personal identification number (PIN), although some use digital signatures and certificates in lieu of, or in addition to, the former. The documents are stored in a secure area on the recorder’s web site until the recorder’s system retrieves them.

Once imported into the recorder’s system, the recorder’s legacy system handles the recording functions. In this case the system imports the data from an XML wrapper, including index data. The recording process is partially automated, but the image must be visually inspected to determine that it meets recording requirements as well as possibly to validate against the data in the XML wrapper. The indexing data in the embedded image is not linked to the index data in the XML, so the recorder has no automated means to verify that it is the same.

If a document meets the requirements, it is recorded. The recording information is “burned” onto the image and returned to the submitter by means agreed upon by the parties. In some jurisdictions that use Model 2, the electronic recorded document is embedded into an XML wrapper with the recording information added so that the submitter can use the data in its internal processes.

The average elapsed time from receipt to returning the recorded electronic documents is about five minutes. That compares to about five days for similar closing documents delivered by settlement agents. Average turn around for mail-in documents is about seven days.

Model 3 Description

In a number of counties electronic reconveyances of deeds of trust and satisfactions of mortgages are prepared by loan servicers and electronically submitted. Under Model 3, these real estate documents are generated on a vendor's document preparation system in XHTML (extensible hypertext mark-up language) format. The document preparation person logs on to the system and enters the information necessary to complete the generation of the document. Once the document has been generated, the person signs it if she has the authority, or notifies the person with signing authority to sign. Secure access is required for all parties that must sign the document because signing is done by digital signature.

Once the documents are electronically signed and notarized, they are released for recording. The document preparation system compares each document against recording rules to ensure its recordability, and then calculates recording fees. Documents may be submitted in batches. Submission is by secure hypertext transport protocol (HTTPS) through the vendor's recording server to the recorder's office.

Documents received at the recorder's system are re-checked against the rules to determine whether or not they may be recorded. If not, they are returned to the submitter.

Otherwise they are accepted for recording and the data for recording is extracted from the documents and passed to the legacy recording system. The endorsement data is received from the legacy system and entered onto the respective documents in XML format. If required, the XHTML is transformed to TIFF images for the recorder's archives and the XHTML documents with the recording endorsements are returned to the submitter.

Fee payment information is passed to the legacy system after the rules determine that the recording fees are correct. The recorder collects the fees from escrow accounts maintained by the respective submitters, or by Automated Clearing House (ACH) payment processing.

The average ~~turn-around~~turnaround time is approximately 30 seconds from the time the recorder receives the document until the recorded document is returned. This time includes the entire process, from quality control verification to indexing, when run in an "unattended" or "~~lights out~~lights out" mode.

APPENDIX C: GLOSSARY OF TERMS

Authentication: The act of tying an action or result to the person claiming to have performed the action. Authentication generally requires a password or encryption key to perform, and the process will fail if the password or key is incorrect.

Digital signature: A type of electronic signature consisting of a transformation of an electronic message using an asymmetric encryption system such that a person having the initial message and the signer's public key can accurately determine whether:

- (1) the transformation was created using the private key that corresponds to the signer's public key; and
- (2) the initial message has not been altered since the transformation was made.

Document type definition (DTD): A document created using the Standard Generalized Markup Language (SGML) that defines a unique markup language (such as XHTML or XML). A DTD includes a list of tags, attributes, and rules of usage.

Electronic document: A document that is received by the Register of Deeds in an electronic form.

Electronic record: A record created, generated, sent, communicated, received or stored by electronic means.

Electronic signature: An electronic sound, symbol or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

Encrypt: To apply an encryption key to a message in order to make it unreadable in an effort to prevent unintended use of the information.

Extensible Hypertext Markup Language (XHTML) is a newer version of HTML and is the main markup language for creating web pages and other information that can be displayed in a web browser.

Extensible Markup Language (XML): A computer language used to create markup languages. XML allows developers to specify a document type definition (DTD) or schema in order to devise new markup languages for general or specific uses.

Metadata: Commonly described as "data about data". Metadata is used to locate and manage information resources by classifying those resources and by capturing information not inherent in the resource.

Microfilm: Microfilm is an analog technology that allows documents to be read with magnification and a light source. If necessary, microfilm can be converted into a digital format. Producing microfilm that is created within the guidelines of the American National Standards Institute (ANSI) and properly stored and handled should provide secure records for hundreds of years.

PDF - Portable Document Format: A file format created by Adobe Systems, Inc. that uses the PostScript printer description language to create documents. PDF files capture the appearance of the original document, can store both text and images, are difficult to modify, and can be rendered with free, cross-platform viewer software.

Portal: In eRecording terms, an electronic location where submitters can send their documents for further processing and delivery. A fully featured portal will incorporate specific index rules and information from other tables that assure conformity with the receiving County's backend recording system. A portal should be capable of receiving various document types from various submitting parties and be able to deliver them to virtually any county regardless of their back end recording system or physical location.

Proprietary: Indicates that software or other employed technology is owned or controlled exclusively by the vendor. These solutions are not transferable to other systems and must be used only on the vendor's systems.

Schema: A method for specifying the structure and content of specific types of electronic documents which use XML.

Secure Socket Layer (SSL): A security technology that uses both asymmetric and symmetric cryptography to protect data transmitted over the Internet.

Signature Authentication: The process by which a digital signature is used to confirm a signer's identity and a document's validity.

TIFF - Tagged information file format: An image file format commonly used for photos, scanned documents, or other graphics. TIFF images are graphics that are made up of individual dots or pixels. Files in the TIFF format are distinguished by a .tif filename extension.

Uniform Electronic Transactions Act (UETA): A body of recommended legislation drafted in 1999 by the National Conference of Commissioners on Uniform State Laws (NCCUSL) for adoption by state legislatures. UETA allows electronic documents and digital signatures to stand as equals with their paper counterparts.

Uniform Real Property Electronic Recording Act (URPERA): A body of recommended legislation drafted in 2004 by the National Conference of Commissioners on Uniform State Laws

(NCCUSL) for adoption by state legislatures. URPERA authorizes Registers of Deeds to accept electronic documents for recording in accordance with established standards.

XML: *See* Extensible Markup Language.

XML Schema: *See* Schema.

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APPENDIX D: RELEVANT STATUTES

MICHIGAN UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

Act No. 123
Public Acts of 2010
Approved by the Governor
July 19, 2010
Filed with the Secretary of State
July 19, 2010
EFFECTIVE DATE: July 19, 2010

**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2010**

Introduced by Senator Van Woerkom

ENROLLED SENATE BILL No. 791

AN ACT to create the uniform real property electronic recording act; and to create an electronic recording commission and provide for its powers and duties.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the “uniform real property electronic recording act”.

Sec. 2. As used in this act:

(a) “Commission” means the electronic recording commission created in section 5.

(b) “Document” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form, and that is eligible to be recorded in the land records maintained by the county register of deeds.

(c) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(d) “Electronic document” means a document that is received by the county register of deeds in an electronic form.

(e) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(f) “Paper document” means a document that is received by the county register of deeds in a form that

is not electronic.

(g) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

Sec. 3. (1) If a law requires as a condition for recording that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document.

(2) If a law requires as a condition for recording that a document be signed, the requirement is satisfied by an electronic signature.

(3) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

(4) This section does not require that a register of deeds accept electronic documents for recording.

Sec. 4. (1) A county register of deeds who implements any of the functions listed in subsection (2) shall do so in compliance with any standards established by the electronic recording commission.

(2) A county register of deeds may do any of the following:

(a) Receive, index, store, archive, and transmit electronic documents.

(b) Provide for access to, and for search and retrieval of, documents and information by electronic means.

(c) Convert paper documents accepted for recording into electronic form.

(d) Convert into electronic form information recorded before the county register of deeds began to record electronic documents.

(e) Accept electronically any fee or tax that the county register of deeds is authorized to collect.

(f) Agree with other officials of a state or a political subdivision of a state, or of the United States, on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees or taxes.

(3) A county register of deeds who accepts electronic documents for recording shall continue to accept paper documents for recording as authorized by state law. The county register of deeds shall place entries for both types of documents in the same index.

(4) This act does not invalidate electronic documents recorded under this act, the uniform electronic transactions act, 2000 PA 305, MCL 450.831 to 450.849, or the federal electronic signatures in global and national commerce act, 15 USC 7001 to 7031, before the establishment of standards under this act by the electronic recording commission.

Sec. 5. (1) Effective January 1, 2011, an electronic recording commission is created within the department of technology, management, and budget. The commission consists of 8 members, as follows:

(a) The director of the department of technology, management, and budget or his or her designee, who shall be a nonvoting member.

(b) Seven members appointed by the governor, as follows:

(i) Four shall be county registers of deeds.

(ii) One shall be an individual who is engaged in the land title profession.

(iii) One shall be an individual who is engaged in the business of banking.

(iv) One shall be an individual who is an attorney licensed to practice law in this state and whose practice emphasizes real property matters.

(2) The appointed members of the commission shall serve for terms of 2 years or until a successor is appointed, whichever is later, except that of the members first appointed 3 shall serve for 1 year, 2 shall serve for 2 years, and 2 shall serve for 3 years.

(3) If a vacancy occurs on the commission, the governor shall make an appointment for the unexpired term in the same manner as the original appointment.

(4) The governor may remove an appointed member of the commission for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

(5) The first meeting of the commission shall be called by the director of the department of technology, management, and budget. At the first meeting, the commission shall elect from among its members a chairperson and other officers as it considers necessary or appropriate. After the first meeting, the commission shall meet at least quarterly, or more frequently at the call of the chairperson or if requested by 5 or more members.

(6) A majority of the members of the commission constitute a quorum for the transaction of business at a meeting of the commission. A majority of the members present and serving are required for official action of the commission.

(7) The business that the commission may perform shall be conducted at a public meeting of the commission held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(8) A writing prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(9) Members of the commission shall serve without compensation. However, members of the commission may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the commission.

(10) The commission shall adopt standards to implement this act. To keep the standards and practices of county registers of deeds in this state in harmony with the standards and practices of offices of county registers of deeds in other jurisdictions that enact substantially this act, and to keep the technology used by county registers of deeds in this state compatible with technology used by offices of county registers of deeds in other jurisdictions that enact substantially this act, the commission, so far as is consistent with the purposes, policies, and provisions of this act, in adopting, amending, and repealing standards, shall consider all of the following:

(a) Standards and practices of other jurisdictions.

(b) The most recent standards promulgated by national standard-setting bodies, such as the property records industry association.

(c) The views of interested persons and governmental officials and entities.

(d) The needs of counties of varying size, population, and resources.

(e) Standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.

Sec. 6. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 7. This act modifies, limits, and supersedes the federal electronic signatures in global and national commerce act, 15 USC 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 USC 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 USC 7003(b).

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Richard J. Brown

Clerk of the House of Representatives



MICHIGAN UNIFORM ELECTRONIC TRANSACTIONS ACT

Act No. 305
Public Acts of 2000
Approved by the Governor
October 14, 2000
Filed with the Secretary of State
October 16, 2000
EFFECTIVE DATE: October 16, 2000

**STATE OF MICHIGAN 90TH LEGISLATURE
REGULAR SESSION OF 2000**

Introduced by Rep. Richner

ENROLLED HOUSE BILL No. 5537

AN ACT to authorize and provide the terms and conditions under which information and signatures can be transmitted, received, and stored by electronic means.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the "uniform electronic transactions act".

Sec. 2. As used in this act:

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

(b) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of 1 or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

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

(d) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this act and other applicable law.

(e) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(f) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

(g) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

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

(i) "Governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal, state, or local government.

(j) "Information" means, but is not limited to, data, text, images, sounds, codes, computer programs, software and databases.

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

(l) "Person" means an individual, corporation, partnership, limited liability company, association, governmental entity, or any other legal entity.

(m) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

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

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

(p) "Transaction" means an action or set of actions occurring between 2 or more persons relating to the conduct of business, commercial, or governmental affairs.

Sec. 3. (1) Except as otherwise provided in subsection (2) and section 4, this act applies to electronic records and electronic signatures relating to a transaction.

(2) This act does not apply to a transaction to the extent it is governed by either of the following:

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

(b) Except as otherwise provided in subsection (3), the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102.

(3) This act does apply to a transaction to the extent it is governed by section 1107 or 1206 or article 2 or 2A of the uniform commercial code, 1962 PA 174, MCL 440.1107, 440.1206, and 440.2101 to 440.2982.

(4) A transaction subject to this act is also subject to other applicable substantive law.

Sec. 4. This act applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after the effective date of this act.

Sec. 5. (1) This act does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(2) This act applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

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

(4) Unless otherwise prohibited by this act, a provision of this act may be varied by agreement.

(5) Whether an electronic record or electronic signature has legal consequences is determined by this act and other applicable law.

Sec. 6. This act shall be construed and applied to all of the following:

(a) Electronic transactions consistent with other applicable law.

(b) Be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices.

(c) Effectuate its general purpose to make uniform the law with respect to electronic transactions among the

states.

Sec. 7. (1) A record or signature shall not be denied legal effect or enforceability solely because it is in electronic form.

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

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

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

Sec. 8. (1) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(2) If a law requires a record to be posted or displayed in a certain manner, to be sent, communicated, or transmitted by a specified method, or to contain information that is formatted in a certain manner, all of the following rules apply:

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

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

(c) The record shall contain the information formatted in the manner specified by law.

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

(4) The requirements of this section may be varied by either of the following:

(a) To the same extent a law other than this act that requires information to be provided, sent, or delivered in writing allows that requirement to be varied by agreement.

(b) To the same extent a law other than this act that requires a record be sent, communicated, or transmitted by regular United States mail allows that requirement to be varied by agreement.

Sec. 9. (1) An electronic record or electronic signature is attributable to a person if it is the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

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

Sec. 10. If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

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

(b) In an automated transaction involving an individual, the individual may void the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide for the prevention or correction of the error and, at the time the individual learns of the error, all of the following apply:

(i) The individual promptly notified the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person.

(ii) The individual takes reasonable steps to return to the other person or to destroy any consideration received as a result of the erroneous electronic record.

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

- (c) If neither subdivision (a) nor (b) applies, the error has the same effect as provided by law.
- (d) Subdivisions (b) and (c) cannot be varied by agreement.

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

Sec. 12. (1) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information if the record does both of the following:

- (a) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise.

- (b) Remains accessible for later reference.

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

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

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

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

- (6) A record retained as an electronic record in accordance with subsection (1) satisfies a law requiring a person to retain a record for evidentiary, audit, or similar purposes, unless a law enacted after the effective date of this act specifically prohibits the use of an electronic record for the specified purpose.

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

Sec. 13. In a criminal or civil proceeding, evidence of a record or signature shall not be excluded solely because it is in electronic form.

Sec. 14. In an automated transaction, all of the following rules apply:

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

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

- (c) The terms of the contract are determined by the substantive law applicable to the contract.

Sec. 15. (1) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it complies with all of the following:

- (a) It is addressed properly or otherwise directed properly to an information processing system that the recipient uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record.

- (b) It is in a form capable of being processed by that system.

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

(2) Unless otherwise agreed between a sender and the recipient, an electronic record is received when it complies with all of the following:

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

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

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

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

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

(b) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence.

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

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

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

Sec. 16. (1) As used in this section, "transferable record" means an electronic record that is both of the following:

(a) Would be a note under sections 3101 to 3801 of the uniform commercial code, 1962 PA 174, MCL 440.3101 to 440.3801, or a document under sections 7101 to 7603 of the uniform commercial code, 1962 PA 174, MCL 440.7101 to 440.7603, if the electronic record were in writing.

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

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

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

(a) A single authoritative copy of the transferable record exists that is unique, identifiable, and, except as otherwise provided in subdivisions (d), (e), and (f), unalterable.

(b) The authoritative copy identifies the person asserting control as 1 of the following:

(i) The person to which the transferable record was issued.

(ii) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred.

(c) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian.

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

(e) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy.

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

(4) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section 1201 of the uniform commercial code, 1962 PA 174, MCL 440.1201, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under section 1201 of the uniform commercial code, 1962 PA 174, MCL 440.1201, including, if the applicable statutory requirements under section 1201 of the uniform commercial code, 1962 PA 174, MCL 440.1201, are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this

subsection.

(5) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under section 1201 of the uniform commercial code, 1962 PA 174, MCL 440.1201.

(6) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record. The department of management and budget shall determine for each department whether, and the extent to which, the department will create and retain electronic records and convert written records to electronic records.

Sec. 18. (1) Except as otherwise provided in section 12(6), the department of management and budget shall determine whether, and the extent to which, each state department will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

(2) To the extent that a governmental agency uses electronic records and electronic signatures under subsection (1), the department of management and budget, giving due consideration to security, may specify any or all of the following:

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

(b) If an electronic record is required to be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature is to be affixed to the electronic record, and the identity of or criteria that is to be met by any third party used by a person filing a document.

(c) Control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records.

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

(3) Except as otherwise provided in section 12(6), this act does not require a governmental agency or official of this state to use or permit the use of electronic records or electronic signatures.

Sec. 19. (1) The department of management and budget may encourage and promote consistency and interoperability with similar standards adopted by other governmental agencies of this state and other states and the federal government and nongovernmental persons interacting with governmental agencies of this state.

(2) If appropriate, the standards established under subsection (1) may specify differing requirements from which governmental agencies and officials of this state may choose in implementing the most appropriate standard for a particular application.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

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MICHIGAN RECORDING ACT

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RECORDING REQUIREMENTS

Act 103 of 1937

AN ACT to prescribe certain conditions relative to the execution of instruments entitled to be recorded in the office of the register of deeds.

History: 1937, Act 103, Eff. Oct. 29, 1937.

The People of the State of Michigan enact:

565.201 Requirements for recording with register of deeds.

Sec. 1. (1) An instrument executed after October 29, 1937 by which the title to or any interest in real estate is conveyed, assigned, encumbered, or otherwise disposed of shall not be received for record by the register of deeds of any county of this state unless that instrument complies with each of the following requirements:

- (a) The name of each person purporting to execute the instrument is legibly printed, typewritten, or stamped beneath the original signature or mark of the person.
- (b) A discrepancy does not exist between the name of each person as printed, typewritten, or stamped beneath their signature and the name as recited in the acknowledgment or jurat on the instrument.
- (c) The name of any notary public whose signature appears upon the instrument is legibly printed, typewritten, or stamped upon the instrument immediately beneath the signature of that notary public.
- (d) The address of each of the grantees in each deed of conveyance or assignment of real estate, including the street number address if located within territory where street number addresses are in common use, or, if not, the post office address, is legibly printed, typewritten, or stamped on the instrument.
- (e) If the instrument is executed before April 1, 1997, each sheet of the instrument is all of the following:
 - (i) Typewritten or printed in type not smaller than 8-point size.
 - (ii) Not more than 8-1/2 by 14 inches.
 - (iii) Legible.
 - (iv) On paper of not less than 13 (17x22—500) pound weight.
- (f) If the instrument is executed after April 1, 1997, each sheet of the instrument complies with all of the following requirements:
 - (i) Has a margin of unprinted space that is at least 2-1/2 inches at the top of the first page and at least 1/2 inch on all remaining sides of each page.
 - (ii) Subject to subsection (3), displays on the first line of print on the first page of the instrument a single statement identifying the recordable event that the instrument evidences.
 - (iii) Is electronically, mechanically, or hand printed in 10-point type or the equivalent of 10-point type.
 - (iv) Is legibly printed in black ink on white paper that is not less than 20-pound weight.
 - (v) Is not less than 8-1/2 inches wide and 11 inches long or more than 8-1/2 inches wide and 14 inches long.
 - (vi) Contains no attachment that is less than 8-1/2 inches wide and 11 inches long or more than 8-1/2 inches wide and 14 inches long.
- (g) Unless state or federal law, rule, regulation, or court order or rule requires that all or more than 4 sequential digits of the social security number appear in the instrument, beginning on 1 of the following dates the first 5 digits of any social security number appearing in or on the instrument are obscured or removed:
 - (i) Except as provided in subparagraph (ii), the effective date of the amendatory act that added this subdivision.
 - (ii) For an instrument presented to the register of deeds by the department of treasury, April 1, 2008.

(2) Subsection (1)(e) and (f) does not apply to instruments executed outside this state or to the filing or recording of a plat or other instrument, the size of which is regulated by law.

(3) A register of deeds shall not record an instrument executed after April 1, 1997 if the instrument purports to evidence more than 1 recordable event.

(4) Any instrument received and recorded by a register of deeds shall be conclusively presumed to comply with this act. The requirements contained in this act are cumulative to the requirements imposed by any other act relating to the recording of instruments.

(5) An instrument that complies with the provisions of this act and any other act relating to the recording of instruments shall not be rejected for recording because of the content of the instrument.

History: 1937, Act 103, Eff. Oct. 29, 1937;—Am. 1941, Act 179, Eff. Jan. 10, 1942;—Am. 1945, Act 213, Eff. Sept. 6, 1945;—CL 1948, 565.201;—Am. 1963, Act 150, Eff. Sept. 6, 1963;—Am. 1964, Act 196, Eff. Jan. 1, 1965;—Am. 1996, Act 459, Eff. Apr. 1, 1997;

—Am. 2002, Act 19, Imd. Eff. Mar. 4, 2002;—Am. 2007, Act 56, Imd. Eff. Sept. 12, 2007.

565.201a Recording requirements; scrivener's name and address on recorded instruments.

Sec. 1a. Each instrument described in section 1 executed after January 1, 1964 shall contain the name of the person who drafted the instrument and the business address of such person.

History: Add. 1963, Act 150, Eff. Sept. 6, 1963.

565.202 Affidavit; contents.

Sec. 2. The register of deeds shall, however, receive any such instrument for record, although the same does not comply with the requirements of this act: Provided, There is recorded therewith an affidavit of some person having personal knowledge of the facts, which affidavit shall be either printed or typewritten, shall comply with the requirements of this act, and shall state therein:

(a) The correct name of any person, the name of whom was not printed, typewritten or stamped upon such instrument as required by this act;

(b) In case such instrument does not comply with the requirements of paragraph (b) of section 1, the correct name of such person and shall state that each of the names used in such instrument refer to such person.

History: 1937, Act 103, Eff. Oct. 29, 1937;—CL 1948, 565.202.

565.203 Inapplicability of act.

Sec. 3. The provisions of this act shall not apply to the following instruments: any decree, order, judgment or writ of any court, will, death certificate, or any instrument executed or acknowledged outside of the state of Michigan. The provisions of paragraphs (a), (c) and (d) of section 1 shall not apply to any instrument upon which the signature itself is printed, typewritten or stamped.

History: 1937, Act 103, Eff. Oct. 29, 1937;—CL 1948, 565.203.

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TITLE 15. U.S. CODE, COMMERCE AND TRADE
CHAPTER 96. ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE
ELECTRONIC RECORDS AND SIGNATURES IN COMMERCE

§ 7001. General rule of validity

(a) In general. Notwithstanding any statute, regulation, or other rule of law (other than this title and title II [15 USCS §§ 7001 et seq. and 15 USCS § 7021]), with respect to any transaction in or affecting interstate or foreign commerce--

(1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and

(2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

(b) Preservation of rights and obligations. This *title* [15 USCS §§ 7001 et seq.] does not—

(1) limit, alter, or otherwise affect any requirement imposed by a statute, regulation, or rule of law relating to the rights and obligations of persons under such statute, regulation, or rule of law other than a requirement that contracts or other records be written, signed, or in nonelectronic form; or

(2) require any person to agree to use or accept electronic records or electronic signatures, other than a governmental agency with respect to a record other than a contract to which it is a party.

(c) Consumer disclosures.

(1) Consent to electronic records. Notwithstanding subsection (a), if a statute, regulation, or other rule of law requires that information relating to a transaction or transactions in or affecting interstate or foreign commerce be provided or made available to a consumer in writing, the use of an electronic record to provide or make available (whichever is required) such information satisfies the requirement that such information be in writing if—

(A) the consumer has affirmatively consented to such use and has not withdrawn such consent;

(B) the consumer, prior to consenting, is provided with a clear and conspicuous statement—

(i) informing the consumer of (I) any right or option of the consumer to have the record provided or made available on paper or in nonelectronic form, and (II) the right of the consumer to withdraw the consent to have the record provided or made available in an electronic form and of any conditions, consequences (which may include termination of the parties' relationship), or fees in the event of such withdrawal;

(ii) informing the consumer of whether the consent applies (I) only to the particular transaction which gave rise to the obligation to provide the record, or (II) to identified categories of records that may be provided or made available during the course of the parties' relationship;

(iii) describing the procedures the consumer must use to withdraw consent as provided in clause (i) and to update information needed to contact the consumer electronically; and

(iv) informing the consumer (I) how, after the consent, the consumer may, upon request, obtain a paper copy of an electronic record, and (II) whether any fee will be charged for such copy;

(C) the consumer--

(i) prior to consenting, is provided with a statement of the hardware and software requirements for access to and retention of the electronic records; and

(ii) consents electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent; and

(D) after the consent of a consumer in accordance with subparagraph (A), if a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent, the person providing the electronic record--

(i) provides the consumer with a statement of (I) the revised hardware and software requirements for access to and retention of the electronic records, and (II) the right to withdraw consent without the imposition of any fees for such withdrawal and without the imposition of any condition or consequence that was not disclosed under subparagraph (B)(i); and

(ii) again complies with subparagraph (C).

(2) Other rights.

(A) Preservation of consumer protections. Nothing in this *title* [15 USCS § 7001 et seq.] affects the content or timing of any disclosure or other record required to be provided or made available to any consumer under any statute, regulation, or other rule of law.

(B) Verification or acknowledgment. If a law that was enacted prior to this Act [enacted June 30, 2000] expressly requires a record to be provided or made available by a specified method that requires verification or acknowledgment of receipt, the record may be provided or made

available electronically only if the method used provides verification or acknowledgment of receipt (whichever is required).

(3) Effect of failure to obtain electronic consent or confirmation of consent. The legal effectiveness, validity, or enforceability of any contract executed by a consumer shall not be denied solely because of the failure to obtain electronic consent or confirmation of consent by that consumer in accordance with paragraph (1)(C)(ii).

(4) Prospective effect. Withdrawal of consent by a consumer shall not affect the legal effectiveness, validity, or enforceability of electronic records provided or made available to that consumer in accordance with paragraph (1) prior to implementation of the consumer's withdrawal of consent. A consumer's withdrawal of consent shall be effective within a reasonable period of time after receipt of the withdrawal by the provider of the record. Failure to comply with paragraph (1)(D) may, at the election of the consumer, be treated as a withdrawal of consent for purposes of this paragraph.

(5) Prior consent. This subsection does not apply to any records that are provided or made available to a consumer who has consented prior to the effective date of this title to receive such records in electronic form as permitted by any statute, regulation, or other rule of law.

(6) Oral communications. An oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of this subsection except as otherwise provided under applicable law.

(d) Retention of contracts and records.

(1) Accuracy and accessibility. If a statute, regulation, or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be retained, that requirement is met by retaining an electronic record of the information in the contract or other record that--

(A) accurately reflects the information set forth in the contract or other record; and

(B) remains accessible to all persons who are entitled to access by statute, regulation, or rule of law, for the period required by such statute, regulation, or rule of law, in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise.

(2) Exception. A requirement to retain a contract or other record in accordance with paragraph (1) does not apply to any information whose sole purpose is to enable the contract or other record to be sent, communicated, or received.

(3) Originals. If a statute, regulation, or other rule of law requires a contract or other record relating to a transaction in or affecting interstate or foreign commerce to be provided, available, or retained in its original form, or provides consequences if the contract or other record is not provided, available, or retained in its original form, that statute, regulation, or rule of law is satisfied by an electronic record that complies with paragraph (1).

(4) Checks. If a statute, regulation, or other rule of law requires the retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with paragraph (1).

(e) Accuracy and ability to retain contracts and other records. Notwithstanding subsection (a), if a statute, regulation, or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be in writing, the legal effect, validity, or enforceability of an electronic record of such contract or other record may be denied if such electronic record is not in a form that is capable of being retained and accurately reproduced for later reference by all parties or persons who are entitled to retain the contract or other record.

(f) Proximity. Nothing in this *title* [15 USCS §§ 7001 et seq.] affects the proximity required by any statute, regulation, or other rule of law with respect to any warning, notice, disclosure, or other record required to be posted, displayed, or publicly affixed.

(g) Notarization and acknowledgment. If a statute, regulation, or other rule of law requires a signature or record relating to a transaction in or affecting interstate or foreign commerce to be notarized, acknowledged, verified, or made under oath, that requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable statute, regulation, or rule of law, is attached to or logically associated with the signature or record.

(h) Electronic agents. A contract or other record relating to a transaction in or affecting interstate or foreign commerce may not be denied legal effect, validity, or enforceability solely because its formation, creation, or delivery involved the action of one or more electronic agents so long as the action of any such electronic agent is legally attributable to the person to be bound.

(i) Insurance. It is the specific intent of the Congress that this title and title II [15 USCS §§ 7001 et seq. and 15 USCS § 7021] apply to the business of insurance.

(j) Insurance agents and brokers. An insurance agent or broker acting under the direction of a party that enters into a contract by means of an electronic record or electronic signature may not be held liable for any deficiency in the electronic procedures agreed to by the parties under that contract if--

(1) the agent or broker has not engaged in negligent, reckless, or intentional tortious conduct;

(2) the agent or broker was not involved in the development or establishment of such electronic procedures; and

(3) the agent or broker did not deviate from such procedures.

HISTORY:

(June 30, 2000, P.L. 106-229, Title I, § 101, 114 Stat. 464.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

This section took effect on October 1, 2000, subject to certain exceptions, pursuant to § 107 of Act June 30, 2000, P.L. 106-229, which appears as a note to this section.

Short titles:

Act June 30, 2000, P.L. 106-229, Title I, § 1, 114 Stat. 464, provides: "This Act [15 USCS §§ 7001 et seq. and 47 USCS § 231 note] may be cited as the 'Electronic Signatures in Global and National Commerce Act'."

Other provisions:

Effective date of Act June 30, 2000. Act June 30, 2000, P.L. 106-229, § 107, 114 Stat. 464, provides:

"(a) In general. Except as provided in subsection (b), this *title* [15 USCS §§ 7001 et seq.] shall be effective on October 1, 2000.

"(b) Exceptions.

(1) Record retention.

(A) In general. Subject to subparagraph (B), this *title* [15 USCS §§ 7001 et seq.] shall be effective on March 1, 2001, with respect to a requirement that a record be retained imposed by—

"(i) a Federal statute, regulation, or other rule of law, or

"(ii) a State statute, regulation, or other rule of law administered or promulgated by a State regulatory agency. "(B) Delayed effect for pending rulemakings. If on March 1, 2001, a Federal regulatory agency or State regulatory agency has announced, proposed, or initiated, but not completed, a rulemaking proceeding to prescribe a regulation under section 104(b)(3) [15 USCS § 7004(b)(3)] with respect to a requirement described in subparagraph (A), this *title* [15 USCS §§ 7001 et seq.] shall be effective on June 1, 2001, with respect to such requirement.

"(2) Certain guaranteed and insured loans. With regard to any transaction involving a loan guarantee or loan guarantee commitment (as those terms are defined in section 502 of the Federal Credit Reform Act of 1990 [2 USCS § 661a]), or involving a program listed in the Federal Credit Supplement, Budget of the United States, FY 2001, this *title* [15 USCS §§ 7001 et seq.] applies only to such transactions entered into, and to any loan or mortgage made, insured, or guaranteed by the United States Government thereunder, on and after one year after the date of enactment of this Act.

"(3) Student loans. With respect to any records that are provided or made available to a consumer pursuant to an application for a loan, or a loan made, pursuant to title IV of the Higher Education Act of 1965 [20 USCS §§ 1070 et seq.], *section 101(c)* of this Act [subsec. (c) of this section] shall not apply until the earlier of--

"(A) such time as the Secretary of Education publishes revised promissory notes under section 432(m) of the Higher Education Act of 1965 [20 USCS § 1082(m)]; or

"(B) one year after the date of enactment of this Act."

§ 7002. Exemption to preemption

(a) In general. A State statute, regulation, or other rule of law may modify, limit, or supersede the provisions of section 101 [15 USCS § 7001] with respect to State law only if such statute, regulation, or rule of law--

(1) constitutes an enactment or adoption of the Uniform Electronic Transactions Act as approved and recommended for enactment in all the States by the National Conference of Commissioners on Uniform State Laws in 1999, except that any exception to the scope of such Act enacted by a State under section 3(b)(4) of such Act shall be preempted to the extent such exception is inconsistent with this title or title II [15 USCS §§ 7001 et seq. or 15 USCS § 7021], or would not be permitted under paragraph (2)(A)(ii) of this subsection; or

(2) (A) specifies the alternative procedures or requirements for the use or acceptance (or both) of electronic records or electronic signatures to establish the legal effect, validity, or enforceability of contracts or other records, if--

(i) such alternative procedures or requirements are consistent with this title and title II [15 USCS §§ 7001 et seq. and 15 USCS § 7021]; and

(ii) such alternative procedures or requirements do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures; and

(B) if enacted or adopted after the date of the enactment of this Act [enacted June 30, 2000], makes specific reference to this Act [15 USCS §§ 7001 et seq. and 47 USCS § 231 note].

(b) Exceptions for actions by States as market participants. Subsection (a)(2)(A)(ii) shall not apply to the statutes, regulations, or other rules of law governing procurement by any State, or any agency or instrumentality thereof.

(c) Prevention of circumvention. Subsection (a) does not permit a State to circumvent this title or title II [15 USCS §§ 7001 et seq. or 15 USCS § 7021] through the imposition of nonelectronic delivery methods under section 8(b)(2) of the Uniform Electronic Transactions Act.

HISTORY:

(June 30, 2000, P.L. 106-229, Title I, § 102, 114 Stat. 467.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

This section took effect on October 1, 2000, subject to certain exceptions, pursuant to § 107 of Act June 30, 2000, P.L. 106-229, which appears as 15 USCS § 7001 note.

§ 7003. Specific exceptions

(a) Excepted requirements. The provisions of section 101 [15 USCS § 7001] shall not apply to a contract or other record to the extent it is governed by--

(1) a statute, regulation, or other rule of law governing the creation and execution of wills, codicils, or testamentary trusts;

(2) a State statute, regulation, or other rule of law governing adoption, divorce, or other matters of family law; or

(3) the Uniform Commercial Code, as in effect in any State, other than sections 1-107 and 1-206 and Articles 2 and 2A.

(b) Additional exceptions. The provisions of section 101 [15 USCS § 7001] shall not apply to--

(1) court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings;

(2) any notice of--

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

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

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

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

(3) any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.

(c) Review of exceptions.

(1) Evaluation required. The Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall review the operation of the exceptions in subsections (a) and (b) to evaluate, over a period of 3 years, whether such exceptions continue to be necessary for the protection of consumers. Within 3 years after the date of enactment of this Act [enacted June 30, 2000], the Assistant Secretary shall submit a report to the Congress on the results of such evaluation.

(2) Determinations. If a Federal regulatory agency, with respect to matter within its jurisdiction, determines after notice and an opportunity for public comment, and publishes a finding, that one or more such exceptions are no longer necessary for the protection of consumers and eliminating such exceptions will not increase the material risk of harm to consumers, such agency may extend the application of section 101 [15 USCS § 7001] to the exceptions identified in such finding.

HISTORY:

(June 30, 2000, P.L. 106-229, Title I, § 103, 114 Stat. 468.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

This section took effect on October 1, 2000, subject to certain exceptions, pursuant to § 107 of Act June 30, 2000, P.L. 106-229, which appears as *15 USCS § 7001* note.

§ 7004. Applicability to Federal and State governments

(a) Filing and access requirements. Subject to subsection (c)(2), nothing in this *title* [*15 USCS §§ 7001 et seq.*] limits or supersedes any requirement by a Federal regulatory agency, self-regulatory organization, or State regulatory agency that records be filed with such agency or organization in accordance with specified standards or formats.

(b) Preservation of existing rulemaking authority.

(1) Use of authority to interpret. Subject to paragraph (2) and subsection (c), a Federal regulatory agency or State regulatory agency that is responsible for rulemaking under any other statute may interpret section 101 [*15 USCS § 7001*] with respect to such statute through--

(A) the issuance of regulations pursuant to a statute; or

(B) to the extent such agency is authorized by statute to issue orders or guidance, the issuance of orders or guidance of general applicability that are publicly available and published (in the Federal Register in the case of an order or guidance issued by a Federal regulatory agency).

This paragraph does not grant any Federal regulatory agency or State regulatory agency authority to issue regulations, orders, or guidance pursuant to any statute that does not authorize such issuance.

(2) Limitations on interpretation authority. Notwithstanding paragraph (1), a Federal regulatory agency shall not adopt any regulation, order, or guidance described in paragraph (1), and a State regulatory agency is preempted by section 101 [*15 USCS § 7001*] from adopting any regulation, order, or guidance described in paragraph (1), unless--

(A) such regulation, order, or guidance is consistent with section 101 [*15 USCS § 7001*];

(B) such regulation, order, or guidance does not add to the requirements of such section; and

(C) such agency finds, in connection with the issuance of such regulation, order, or guidance, that—

(i) there is a substantial justification for the regulation, order, or guidance;

(ii) the methods selected to carry out that purpose—

(I) are substantially equivalent to the requirements imposed on records that are not electronic records; and

(II) will not impose unreasonable costs on the acceptance and use of electronic records; and

(iii) the methods selected to carry out that purpose do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures.

(3) Performance standards.

(A) Accuracy, record integrity, accessibility. Notwithstanding paragraph (2)(C)(iii), a Federal regulatory agency or State regulatory agency may interpret section 101(d) [15 USCS § 7001(d)] to specify performance standards to assure accuracy, record integrity, and accessibility of records that are required to be retained. Such performance standards may be specified in a manner that imposes a requirement in violation of paragraph (2)(C)(iii) if the requirement (i) serves an important governmental objective; and (ii) is substantially related to the achievement of that objective. Nothing in this paragraph shall be construed to grant any Federal regulatory agency or State regulatory agency authority to require use of a particular type of software or hardware in order to comply with section 101(d) [15 USCS § 7001(d)].

(B) Paper or printed form. Notwithstanding subsection (c)(1), a Federal regulatory agency or State regulatory agency may interpret section 101(d) [15 USCS § 7001(d)] to require retention of a record in a tangible printed or paper form if--

(i) there is a compelling governmental interest relating to law enforcement or national security for imposing such requirement; and

(ii) imposing such requirement is essential to attaining such interest.

(4) Exceptions for actions by government as market participant. Paragraph (2)(C)(iii) shall not apply to the statutes, regulations, or other rules of law governing procurement by the Federal or any State government, or any agency or instrumentality thereof.

(c) Additional limitations.

(1) Reimposing paper prohibited. Nothing in subsection (b) (other than paragraph (3)(B) thereof) shall be construed to grant any Federal regulatory agency or State regulatory agency authority to impose or reimpose any requirement that a record be in a tangible printed or paper form.

(2) Continuing obligation under Government Paperwork Elimination Act. Nothing in subsection (a) or (b) relieves any

Federal regulatory agency of its obligations under the Government Paperwork Elimination Act (title XVII of Public Law 105-277) [44 USCS § 3504 note].

(d) Authority to exempt from consent provision.

(1) In general. A Federal regulatory agency may, with respect to matter within its jurisdiction, by regulation or order issued after notice and an opportunity for public comment, exempt without condition a specified category or type of record from the requirements relating to consent in section 101(c) [15 USCS § 7001(c)] if such exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers.

(2) Prospectuses. Within 30 days after the date of enactment of this Act [enacted June 30, 2000], the Securities and

Exchange Commission shall issue a regulation or order pursuant to paragraph (1) exempting from section 101(c) [15 USCS § 7001(c)] any records that are required to be provided in order to allow advertising, sales literature, or other information concerning a security issued by an investment company that is registered under the Investment Company Act of 1940, or concerning the issuer thereof, to be excluded from the definition of a prospectus under section 2(a)(10)(A) of the Securities Act of 1933 [15 USCS § 77b(a)(10)(a)].

(e) Electronic letters of agency. The Federal Communications Commission shall not hold any contract for telecommunications service or letter of agency for a preferred carrier change, that otherwise complies with the Commission's rules, to be legally ineffective, invalid, or unenforceable solely because an electronic record or electronic signature was used in its formation or authorization.

HISTORY:

(June 30, 2000, P.L. 106-229, Title I, § 104, 114 Stat. 469.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

The "Investment Company Act of 1940", referred to in this section, is Act Aug. 22, 1940, ch 686, which appears generally as 15 USCS §§ 80a-1 et seq. For full classification of such Act, consult USCS Tables volumes.

Effective date of section:

This section took effect on October 1, 2000, subject to certain exceptions, pursuant to § 107 of Act June 30, 2000, P.L. 106-229, which appears as 15 USCS § 7001 note.

§ 7005. Studies

(a) Delivery. Within 12 months after the date of the enactment of this Act [enacted June 30, 2000], the Secretary of Commerce shall conduct an inquiry regarding the effectiveness of the delivery of electronic records to consumers using electronic mail as compared with delivery of written records via the United States Postal Service and private express mail services. The Secretary shall submit a report to the Congress regarding the results of such inquiry by the conclusion of such 12-month period.

(b) Study of electronic consent. Within 12 months after the date of the enactment of this Act [enacted June 30, 2000], the Secretary of Commerce and the Federal Trade Commission shall submit a report to the Congress evaluating any benefits provided to consumers by the procedure required by section 101(c)(1)(C)(ii) [15 USCS § 7001(c)(1)(C)(ii)]; any burdens imposed on electronic commerce by that provision; whether the benefits outweigh the burdens; whether the absence of the procedure required by section 101(c)(1)(C)(ii) [15 USCS § 7001(c)(1)(C)(ii)] would increase the incidence of fraud directed against consumers; and suggesting any revisions to the provision deemed appropriate by the Secretary and the Commission. In conducting this evaluation, the Secretary and the Commission shall solicit comment from the general public, consumer representatives, and electronic commerce businesses.

HISTORY:

(June 30, 2000, P.L. 106-229, Title I, § 105, 114 Stat. 471.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

This section took effect on October 1, 2000, subject to certain exceptions, pursuant to § 107 of Act June 30, 2000, P.L. 106-229, which appears as 15 USCS § 7001 note.

§ 7006. Definitions

For purposes of this *title* [15 USCS § 7001 et seq.]:

(1) Consumer. The term "consumer" means an individual who obtains, through a transaction, products or services which are used primarily for personal, family, or household purposes, and also means the legal representative of such an individual.

(2) Electronic. The term "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) Electronic agent. The term "electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part without review or action by an individual at the time of the action or response.

(4) Electronic record. The term "electronic record" means a contract or other record created, generated, sent, communicated, received, or stored by electronic means.

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

(6) Federal regulatory agency. The term "Federal regulatory agency" means an agency, as that term is defined in section 552(f) of title 5, United States Code.

(7) Information. The term "information" means data, text, images, sounds, codes, computer programs, software, databases, or the like.

(8) Person. The term "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

(9) Record. The term "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) Requirement. The term "requirement" includes a prohibition.

(11) Self-regulatory organization. The term "self-regulatory organization" means an organization or entity that is not a Federal regulatory agency or a State, but that is under the supervision of a Federal regulatory agency and is authorized under Federal law to adopt and administer rules applicable to its members that are enforced by such organization or entity, by a Federal regulatory agency, or by another self-regulatory organization.

(12) State. The term "State" includes the District of Columbia and the territories and possessions of the United States. (13) Transaction. The term "transaction" means an action or set of actions relating to the conduct of business, consumer, or commercial affairs between two or more persons, including any of the following types of conduct—

(A) the sale, lease, exchange, licensing, or other disposition of (i) personal property, including goods and intangibles, (ii) services, and (iii) any combination thereof; and

(B) the sale, lease, exchange, or other disposition of any interest in real property, or any combination thereof.

HISTORY:
(June 30, 2000, P.L. 106-229, Title I, § 106, 114 Stat. 472.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

This section took effect on October 1, 2000, subject to certain exceptions, pursuant to § 107 of Act June 30, 2000, P.L. 106-229, which appears as *15 USCS § 7001* note.

APPENDIX E: MICHIGAN ELECTRONIC RECORDING COMMISSION BYLAWS

ELECTRONIC RECORDING COMMISSION BYLAWS

ARTICLE I

Electronic Recording Commission

Section 1. Creation. The Electronic Recording Commission (ERC) is created pursuant to the Uniform Real Property Electronic Recording Act, MCL 565.8~~54~~1 *et seq* (Act).

ARTICLE II

ERC Members

Section 1. Membership. The ERC shall consist of eight (8) members, seven (7) of whom shall be voting members, as set forth in the Act.

Section 2. Term of Office. The method for selecting ERC members as well as their terms of office is set forth in the Act.

Section 3. Vacancies. Vacancies of the ERC shall be filled as set forth in the Act.

Section 4. Compensation. ERC members shall serve without compensation but may be reimbursed for actual and necessary travel and expenses incurred in the performance of their official ERC member duties, as set forth in the Act.

ARTICLE III

Officers

Section 1. Officers. The officers of the ERC include a Chairperson, Deputy Chairperson, a Recording Secretary and any other officers that the ERC may deem necessary or appropriate. Officers shall be selected by the ERC in accord with the Act.

Section 2. Chairperson. The Chairperson shall preside at all meetings of the ERC.

Section 3. Deputy Chairperson. The Deputy Chairperson shall serve as acting Chairperson during the absence of the Chairperson or if the Chairperson is recused due to a potential or actual conflict of interest with a matter coming before the ERC for consideration.

Section 4. Recording Secretary. The Chairperson shall designate a person to serve as Recording Secretary for the ERC. The Recording Secretary shall be responsible to keep and maintain a record of all ERC meeting Minutes and Resolutions, and perform such related tasks as requested from time to time by the Chairperson.

Section 5. Absence or Conflict of Chairperson and Deputy Chairperson. Whenever both the Chairperson and Deputy Chairperson are unable to attend an ERC meeting or have both recused themselves due to a potential or actual conflict of interest, the members present and constituting a quorum shall designate a Temporary Deputy Chairperson from among the ERC members present to preside at the meeting.

ARTICLE IV

ERC Meetings

Section 1. Regular Meetings. The ERC shall meet at least quarterly, or more frequently, at the call of the Chairperson or if requested by five (5) or more ERC members.

Section 2. Public Meetings. All meetings of the ERC shall be called and conducted in accord with the Open Meetings Act, MCL 15.261 to 15. 275.

Section 3. Quorum and Voting. Five (5) of the eight (8) ERC members must be physically present to constitute a quorum for the transaction of business at an ERC meeting. A majority of ERC members present and serving are required for official action of the ERC. A member who is recused from deliberating and voting on a proposed ERC action due to a potential or actual conflict of interest shall not be considered part of the quorum for purposes of deliberating or voting on the proposed ERC action.

Section 4. Minutes. Minutes of the ERC meetings, including all votes, shall be kept, corrected and approved at a succeeding meeting. ERC Minutes and Resolutions shall be available to the public, pursuant to the Open Meetings Act, MCL 15.261 to 15. 275, and the Freedom of Information Act, MCL 15.231 *et seq.*

Section 5. Procedures. The rules contained in the current edition of Robert's Rules of Order shall guide ERC parliamentary procedures in all cases, consistent with the Act, these Bylaws, any special rules which may, from time to time, be adopted by the ERC and applicable law.

Section 6. ERC Action. The ERC shall only take actions by resolution. Resolutions shall be adopted at properly convened ERC meetings in accord with Article IV of these Bylaws. Resolutions shall be in writing and shall be indexed and filed with the ERC Minutes by the Recording Secretary. Resolutions shall be effective on the day of passage, upon adjournment of the meeting, unless otherwise specified in the resolution.

Section 7. Signing Documents. The ERC may authorize by resolution the signing of documents on behalf of the ERC by any ERC member.

ARTICLE V

Conflicts of Interest and Liability

Section 1. Conflicts of Interest. Members of the ERC and ERC officers shall be subject to all applicable conflict of interest laws, including but not limited to 1968 PA 317, Contracts of Public Servants with Public Entities and 1968 PA 318, implementing Const 1963, art 4, §10.

Section 2. Liability. No member of the ERC or any officer or agent for the ERC, including any person signing any documents on behalf of the ERC, shall be liable personally for any action taken by the ERC or any document signed on behalf of the ERC.

Section 3. Representation, Indemnification and Immunity. Upon the filing of a complaint against any member or officer of the ERC for breach of duty or responsibility, the member or officer shall immediately provide a copy of the complaint to the ERC Chairperson with a request for legal representation. If the ERC or the ERC Chairperson on behalf of the ERC determines the alleged conduct occurred during the course of the member or officer's service with the ERC and within the member or officer's scope of authority or that the member or officer had a reasonable believe that his or her conduct was within that scope of authority, the ERC or ERC Chairperson shall request that the legal representation be provided by the Attorney General, subject to any applicable state rules or regulations. The ERC is not required to request Attorney General representation in connection with any criminal prosecutions against an ERC member or officer.

MCL 691.1407 generally permits governmental immunity as a defense to a member's alleged negligence in violating his or her duties and responsibilities so long as the member:

a. is acting, or reasonably believes he or she is acting, within the scope of his or her authority; and

b. His or her conduct does not amount to gross negligence, which caused the injury or damage ("gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results).

If the ERC finds that the members conduct was within those parameters and does not constitute willful misconduct, but a judgment for damages is nevertheless rendered against the member, the ERC may choose to allow payment from legally available sources for those damages in accord with ERC indemnification authority, if any, and MCL 691.1408.

ARTICLE VI

Fiscal Year

Section 1. Fiscal Year. The fiscal year of the ERC shall extend from October 1 of each calendar year to the ensuing September 30 of the following calendar year.

ARTICLE VII

Amendment and Suspension of Bylaws

Section 1. Amendment. These Bylaws may be amended by resolution adopted by a majority of the ERC Board appointed and serving at any ERC meeting, if the notice of intention to present the resolution was given at least four (4) days in advance of the meeting at which the motion to adopt the resolution is made.

Notice of the proposed amendment may be included in the meeting agenda or mailed or delivered to the business or home address of each ERC member. Advance notice of motions to amend the proposed amendments to the Bylaws, need not be given.

Section 2. Suspension. Any of these Bylaws, except Article VII Section 1, and those required by state law, may be suspended by unanimous consent of the ERC members physically present at an ERC meeting.