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COMMERCE AND REGULATION

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BY JACOBS

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Passed House, Date 3/8/00
Vote: Ayes 93 Nays 0
Approved 5/15/00

(P. 1280)
Passed Senate, Date 4-19-00
Vote: Ayes 46 Nays 2

A BILL FOR

1 An Act relating to electronic commerce by establishing
2 requirements for electronic transactions and electronic
3 records and providing penalties.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2205

1 Section 1. NEW SECTION. 554D.101 SHORT TITLE.

2 This chapter shall be known and may be cited as the
3 "Uniform Electronic Transactions Act".

4 Sec. 2. NEW SECTION. 554D.102 LEGISLATIVE INTENT.

5 It is the intent of the general assembly in enacting this
6 chapter to effectuate all of the following purposes:

7 1. Facilitate electronic communications by means of
8 reliable electronic records.

9 2. Facilitate and promote electronic commerce, by
10 eliminating barriers resulting from uncertainties over writing
11 and signature requirements, and promote the development of the
12 legal and business infrastructure necessary to implement
13 secure electronic commerce.

14 3. Facilitate electronic filing of documents with state
15 and local government agencies and promote efficient delivery
16 of government services by means of reliable electronic
17 records.

18 4. Minimize the incidence of forged electronic records,
19 intentional and unintentional alteration of records, and fraud
20 in electronic commerce.

21 5. Promote public confidence in the integrity,
22 reliability, and legality of electronic records and electronic
23 commerce.

24 Sec. 3. NEW SECTION. 554D.103 DEFINITIONS.

25 As used in this chapter, unless the context otherwise
26 requires:

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

32 2. "Automated transaction" means a transaction conducted
33 or performed, in whole or in part, by electronic means or
34 electronic records, in which the acts or records of one or
35 both parties are not reviewed by an individual in the ordinary

1 course of forming a contract, performing under an existing
2 contract, or fulfilling an obligation required by the
3 transaction.

4 3. "Computer program" means a set of statements or
5 instructions to be used directly or indirectly in an
6 information processing system in order to bring about a
7 certain result.

8 4. "Consumer" means an individual engaged in a transaction
9 for personal, family, or household purposes.

10 5. "Consumer transaction" means a transaction by an
11 individual for personal, family, or household use.

12 6. "Contract" means the total legal obligation resulting
13 from the parties' agreement as affected by this chapter and
14 other applicable law.

15 7. "Digital signature" means a type of electronic
16 signature consisting of a transformation of electronic record
17 using a message digest function that is encrypted with an
18 asymmetric cryptosystem using the signer's private key in a
19 manner providing that any person having the initial
20 untransformed electronic record, the encrypted transformation,
21 and the signer's public key may accurately determine all of
22 the following:

23 a. Whether the transformation was created using the
24 private key that corresponds to the signer's public key.

25 b. Whether the initial electronic record has been altered
26 since the transformation was made.

27 8. "Electronic" means relating to technology having
28 electrical, digital, magnetic, wireless, optical,
29 electromagnetic, or similar capabilities.

30 9. "Electronic agent" means a computer program or an
31 electronic or other automated means used independently to
32 initiate an action or respond to electronic records or
33 performances in whole or in part, without review or action by
34 an individual.

35 10. "Electronic record" means a record created, generated,

1 sent, communicated, received, or stored by electronic means.

2 11. "Electronic signature" means an electronic sound,
3 symbol, or process attached to or logically associated with a
4 record and executed or adopted by a person with the intent to
5 sign the record.

6 12. "Governmental agency" means an executive, legislative,
7 or judicial agency, department, board, commission, authority,
8 institution, or instrumentality of the federal government or
9 of a state or of a county, municipality, or other political
10 subdivision of a state.

11 13. "Information" means data, text, images, sounds, codes,
12 computer programs, software, databases, or the like.

13 14. "Information processing system" means an electronic
14 system for creating, generating, sending, receiving, storing,
15 displaying, or processing information.

16 15. "Person" means an individual, corporation, business
17 trust, estate, trust, partnership, limited liability company,
18 association, joint venture, governmental agency, public
19 corporation, or any other legal or commercial entity.

20 16. "Record" means information that is inscribed on a
21 tangible medium or that is stored in an electronic or other
22 medium and is retrievable in perceivable form.

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

31 18. "State" means a state of the United States, the
32 District of Columbia, Puerto Rico, the United States Virgin
33 Islands, or any territory or insular possession subject to the
34 jurisdiction of the United States. "State" includes an Indian
35 tribe or band, or Alaskan native village, which is recognized

1 by federal law or formally acknowledged by a state.

2 19. "Transaction" means an action or set of actions
3 occurring between two or more persons relating to the conduct
4 of business, consumer, commercial, or governmental affairs.

5 Sec. 4. NEW SECTION. 554D.104 SCOPE.

6 1. Except as provided in subsection 2, this chapter
7 applies to electronic records and electronic signatures
8 relating to a transaction.

9 2. a. (1) This chapter does not apply to the following:

10 (a) An application which would involve construction of a
11 rule of law that is clearly inconsistent with the manifest
12 intent of the body imposing the requirement or repugnant to
13 the context of the same rule of law. However, the mere
14 requirement that information be in writing, written, or
15 printed shall not by itself be sufficient to establish an
16 intent which is inconsistent with the requirement of this
17 section.

18 (b) A record that serves as a unique and transferable
19 physical expression of rights and obligations including,
20 without limitation, negotiable instruments and other
21 instruments of title where possession of the instrument is
22 deemed to confer title in a consumer transaction.

23 (c) A record that grants a legal or equitable interest in
24 real property, including a deed, mortgage, deed of trust,
25 pledge, security interest, or other lien or encumbrance.

26 (2) Except as provided under paragraph "b", this chapter
27 does not apply to a transaction to the extent it is governed
28 by any of the following:

29 (a) A disclosure requirement associated with a consumer
30 transaction, including, but not limited to, such disclosures
31 required under chapter 13C, sections 321.69 and 321.71,
32 chapters 516D, 523B, 523E, 523G, 533D, 537, 537B, 538A, 552,
33 552A, 555A, 557A, 557B, 558A, and 562A, section 714.16, and
34 chapter 714B, or an administrative rule adopted pursuant to
35 such sections or chapters.

1 (b) A rule of law governing the creation or execution of a
2 will or trust, living will, a general, durable, or healthcare
3 power of attorney, or a voluntary, involuntary, or standby
4 guardianship or conservatorship.

5 (c) Chapter 554 other than articles 2 and 13 and sections
6 554.1107 and 554.2106.

7 b. This chapter applies to an electronic record or
8 electronic signature otherwise excluded from the application
9 of this chapter under paragraph "a" to the extent it is
10 governed by a law other than those specified in paragraph "a",
11 subparagraph (2).

12 3. A transaction subject to this chapter is also subject
13 to other applicable substantive law.

14 Sec. 5. NEW SECTION. 554D.105 PROSPECTIVE APPLICATION.

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

18 Sec. 6. NEW SECTION. 554D.106 USE OF ELECTRONIC RECORDS
19 AND ELECTRONIC SIGNATURES -- VARIATION BY AGREEMENT.

20 1. This chapter does not require a record or signature to
21 be created, generated, sent, communicated, received, stored,
22 or otherwise processed or used by electronic means or in
23 electronic form.

24 2. This chapter applies only to transactions between
25 parties each of which has agreed to conduct transactions by
26 electronic means. Whether the parties agree to conduct a
27 transaction by electronic means is determined from the context
28 and surrounding circumstances, including the parties' conduct.

29 3. A party who agrees to conduct a transaction by
30 electronic means may refuse to conduct other transactions by
31 electronic means. The right granted by this subsection may
32 not be waived by agreement.

33 4. Except as otherwise provided in this chapter, the
34 effect of any of its provisions may be varied by agreement.
35 The presence in certain provisions of this chapter of the

1 words "unless otherwise agreed", or words of similar import,
2 does not imply that the effect of other provisions may not be
3 varied by agreement.

4 5. Whether an electronic record or electronic signature
5 has legal consequences is determined by this chapter and other
6 applicable law.

7 Sec. 7. NEW SECTION. 554D.107 CONSTRUCTION AND
8 APPLICATION.

9 This chapter shall be construed and applied as follows:

10 1. To facilitate electronic transactions consistent with
11 other applicable law.

12 2. To be consistent with reasonable practices concerning
13 electronic transactions and with the continued expansion of
14 those practices.

15 3. To effectuate its general purpose to make uniform the
16 law with respect to the subject of this chapter among states
17 enacting the uniform law.

18 Sec. 8. NEW SECTION. 554D.108 LEGAL RECOGNITION OF
19 ELECTRONIC RECORDS, ELECTRONIC SIGNATURES, AND ELECTRONIC
20 CONTRACTS.

21 1. A record or signature shall not be denied legal effect
22 or enforceability solely because it is in electronic form.

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

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

28 4. If a law requires a signature, an electronic signature
29 satisfies the law.

30 Sec. 9. NEW SECTION. 554D.109 PROVISION OF INFORMATION
31 IN WRITING -- PRESENTATION OF RECORDS.

32 1. If parties have agreed to conduct a transaction by
33 electronic means and a law requires a person to provide, send,
34 or deliver information in writing to another person, the
35 requirement is satisfied if the information is provided, sent,

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

6 2. If a law other than this chapter requires a record to
7 be posted or displayed in a certain manner; to be sent,
8 communicated, or transmitted by a specified method; or to
9 contain information that is formatted in a certain manner, all
10 of the following apply:

11 a. The record must be posted or displayed in the manner
12 specified in the other law.

13 b. Except as otherwise provided in subsection 4, paragraph
14 "b", the record must be sent, communicated, or transmitted by
15 the method specified in the other law.

16 c. The record must contain the information formatted in
17 the manner specified in the other law.

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

21 4. The requirements of this section shall not be varied by
22 agreement, except as follows:

23 a. To the extent a law other than this chapter requires
24 information to be provided, sent, or delivered in writing but
25 permits that requirement to be varied by agreement, the
26 requirement under subsection 1 that the information be in the
27 form of an electronic record capable of retention may also be
28 varied by agreement.

29 b. A requirement under a law other than this chapter to
30 send, communicate, or transmit a record by delivery in person,
31 by mail postage prepaid, or by courier may be varied by
32 agreement to the extent permitted by the other law.

33 Sec. 10. NEW SECTION. 554D.110 ATTRIBUTION AND EFFECT OF
34 ELECTRONIC RECORD AND ELECTRONIC SIGNATURE.

35 1. An electronic record or electronic signature is

1 attributable to a person if it was the act of the person. The
2 act of the person may be shown in any manner, including a
3 showing of the efficacy of any security procedure applied to
4 determine the person to which the electronic record or
5 electronic signature was attributable.

6 2. The effect of an electronic record or electronic
7 signature attributed to a person under subsection 1 is
8 determined from the context and surrounding circumstances at
9 the time of its creation, execution, or adoption, including
10 the parties' agreement, if any, and otherwise as provided by
11 law.

12 Sec. 11. NEW SECTION. 554D.111 EFFECT OF CHANGE OR
13 ERROR.

14 If a change or error in an electronic record occurs in a
15 transmission between parties to a transaction, the following
16 rules apply:

17 1. If the parties have agreed to use a security procedure
18 to detect changes or errors and one party has conformed to the
19 procedure, but the other party has not, and the nonconforming
20 party would have detected the change or error had that party
21 also conformed, the conforming party may avoid the effect of
22 the changed or erroneous electronic record.

23 2. In an automated transaction involving an individual,
24 the individual may avoid the effect of an electronic record
25 that resulted from an error made by the individual in dealing
26 with the electronic agent of another person if the electronic
27 agent did not provide an opportunity for the prevention or
28 correction of the error and, at the time the individual learns
29 of the error, all of the following apply:

30 a. The individual promptly notifies the other person of
31 the error and that the individual does not intend to be bound
32 by the electronic record received by the other person.

33 b. The individual takes reasonable steps, including steps
34 that conform to the other person's reasonable instructions, to
35 return to the other person or, if instructed by the other

1 person, to destroy the consideration received, if any, as a
2 result of the erroneous electronic record.

3 c. The individual has not used or received any benefit or
4 value from the consideration, if any, received from the other
5 person.

6 3. If subsection 1 or 2 does not apply, the change or
7 error has the effect provided by other law, including the law
8 of mistake, and the parties' contract, if any.

9 4. In a consumer transaction, any substantive law limiting
10 a consumer's liability shall apply to an electronic
11 transaction.

12 5. Subsections 2, 3, and 4 shall not be varied by
13 agreement of the parties.

14 Sec. 12. NEW SECTION. 554D.112 NOTARIZATION AND
15 ACKNOWLEDGMENT.

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

22 Sec. 13. NEW SECTION. 554D.113 RETENTION OF ELECTRONIC
23 RECORDS -- ORIGINALS.

24 1. If a law requires that a record be retained, the
25 requirement is satisfied by retaining an electronic record of
26 the information in the record which does both of the
27 following:

28 a. Accurately reflects the information set forth in the
29 record after it was first generated in its final form as an
30 electronic record or otherwise.

31 b. Remains accessible for later reference.

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

1 3. A person may satisfy subsection 1 by using the services
2 of another person if the requirements of that subsection are
3 satisfied.

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

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

13 6. A record retained as an electronic record in accordance
14 with subsection 1 satisfies a law requiring a person to retain
15 a record for evidentiary, audit, or like purposes, unless a
16 law enacted after the effective date of this Act specifically
17 prohibits the use of an electronic record for the specified
18 purpose.

19 7. This section does not preclude a governmental agency
20 from specifying additional requirements for the retention of a
21 record subject to the agency's jurisdiction.

22 Sec. 14. NEW SECTION. 554D.114 ADMISSIBILITY IN
23 EVIDENCE.

24 In a proceeding, evidence of a record or signature shall
25 not be excluded solely because it is in electronic form.

26 Sec. 15. NEW SECTION. 554D.115 AUTOMATED TRANSACTION.

27 In an automated transaction, the following rules apply:

28 1. A contract may be formed by the interaction of
29 electronic agents of the parties, even if no individual was
30 aware of or reviewed the electronic agents' actions or the
31 resulting terms and agreements.

32 2. A contract may be formed by the interaction of an
33 electronic agent and an individual, acting on the individual's
34 own behalf or for another person, including by an interaction
35 in which the individual performs actions that the individual

1 is free to refuse to perform and which the individual knows or
2 has reason to know will cause the electronic agent to complete
3 the transaction or performance.

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

6 Sec. 16. NEW SECTION. 554D.116 TIME AND PLACE OF SENDING
7 AND RECEIPT.

8 1. Unless otherwise agreed between the sender and the
9 recipient, an electronic record is sent when all of the
10 following occur:

11 a. The electronic record is addressed properly or
12 otherwise directed properly to an information processing
13 system that the recipient has designated or uses for the
14 purpose of receiving electronic records or information of the
15 type sent and from which the recipient is able to retrieve the
16 electronic record.

17 b. The electronic record is in a form capable of being
18 processed by that information processing system.

19 c. The electronic record enters an information processing
20 system outside the control of the sender or of a person who
21 sent the electronic record on behalf of the sender or enters a
22 region of the information processing system designated or used
23 by the recipient which is under the control of the recipient.

24 2. Unless otherwise agreed between a sender and the
25 recipient, an electronic record is received when both of the
26 following occur:

27 a. The electronic record enters an information processing
28 system that the recipient has designated or uses for the
29 purpose of receiving electronic records or information of the
30 type sent and from which the recipient is able to retrieve the
31 electronic record.

32 b. The electronic record is in a form capable of being
33 processed by that information processing system.

34 3. Subsection 2 applies even if the place the information
35 processing system is located is different from the place the

1 electronic record is deemed to be received under subsection 4.

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

8 a. If the sender or recipient has more than one place of
9 business, the place of business of such person is the place
10 having the closest relationship to the underlying transaction.

11 b. If the sender or the recipient does not have a place of
12 business, the place of business is the sender's or recipient's
13 residence, as the case may be.

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

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

21 7. If a person is aware that an electronic record
22 purportedly sent under subsection 1, or purportedly received
23 under subsection 2, was not actually sent or received, the
24 legal effect of the sending or receipt is determined by other
25 applicable law. Except to the extent permitted or required by
26 the other law, the requirements of this subsection shall not
27 be varied by agreement.

28 Sec. 17. NEW SECTION. 554D.117 TRANSFERABLE RECORDS.

29 1. For purposes of this section, "transferable record"
30 means an electronic record that satisfies both of the
31 following:

32 a. The electronic record would be a note under chapter
33 554, article 3, or a document under chapter 554, article 7, if
34 the electronic record were in writing.

35 b. The issuer of the electronic record expressly has

1 agreed such electronic record is a transferable record.

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

7 3. A system satisfies subsection 2, and a person is deemed
8 to have control of a transferable record, if the transferable
9 record is created, stored, and assigned in such a manner that
10 satisfies all of the following:

11 a. A single authoritative copy of the transferable record
12 exists which is unique, identifiable, and, except as otherwise
13 provided in paragraphs "d", "e", and "f", unalterable.

14 b. The authoritative copy identifies the person asserting
15 control as one of the following:

16 (1) The person to which the transferable record was
17 issued.

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

21 c. The authoritative copy is communicated to and
22 maintained by the person asserting control or such person's
23 designated custodian.

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

27 e. Each copy of the authoritative copy and any copy of a
28 copy is readily identifiable as a copy that is not the
29 authoritative copy.

30 f. A revision of the authoritative copy is readily
31 identifiable as authorized or unauthorized.

32 4. Except as otherwise agreed, a person having control of
33 a transferable record is the holder, as defined in section
34 554.1201, of the transferable record and has the same rights
35 and defenses as a holder of an equivalent record or writing

1 under chapter 554, including, if the applicable statutory
2 requirements under section 554.3302, subsection 1, section
3 554.7501, or section 554.9308 are satisfied, the rights and
4 defenses of a holder in due course, a holder to which a
5 negotiable document of title has been duly negotiated, or a
6 purchaser, respectively. Delivery, possession, and
7 endorsement are not required to obtain or exercise any of the
8 rights under this subsection.

9 5. Except as otherwise agreed, an obligor under a
10 transferable record has the same rights and defenses as an
11 equivalent obligor under equivalent records or writings under
12 chapter 554.

13 6. If requested by a person against which enforcement is
14 sought, the person seeking to enforce the transferable record
15 shall provide reasonable proof that the person is in control
16 of the transferable record. Proof may include access to the
17 authoritative copy of the transferable record and related
18 business records sufficient to review the terms of the
19 transferable record and to establish the identity of the
20 person having control of the transferable record.

21 Sec. 18. NEW SECTION. 554D.118 CREATION AND RETENTION OF
22 ELECTRONIC RECORDS AND CONVERSION OF WRITTEN RECORDS BY
23 GOVERNMENTAL AGENCIES.

24 A governmental agency of this state shall determine
25 whether, and the extent to which, the governmental agency will
26 create and retain electronic records and convert written
27 records to electronic records.

28 Sec. 19. NEW SECTION. 554D.119 ACCEPTANCE AND
29 DISTRIBUTION OF ELECTRONIC RECORDS BY GOVERNMENTAL AGENCIES.

30 1. Except as otherwise provided in section 554D.113,
31 subsection 6, a governmental agency of this state shall
32 determine whether, and the extent to which, the governmental
33 agency will send and accept electronic records and electronic
34 signatures to and from other persons and otherwise create,
35 generate, communicate, store, process, use, and rely upon

1 electronic records and electronic signatures.

2 2. To the extent that a governmental agency of this state
3 uses electronic records and electronic signatures under
4 subsection 1, the office of the secretary of state, in
5 consultation with the division of information technology
6 services of the department of general services and the office
7 of the attorney general, giving due consideration to security,
8 may specify by rule all of the following:

9 a. The manner and format in which the electronic records
10 must be created, generated, sent, communicated, received, and
11 stored and the information processing systems established for
12 those purposes.

13 b. If electronic records must be signed by electronic
14 means, the type of electronic signature required, the manner
15 and format in which the electronic signature must be affixed,
16 to the electronic record, and the identity of, or criteria
17 that must be met by, any third party used by a person filing a
18 document to facilitate the process.

19 c. Control processes and procedures as appropriate to
20 ensure adequate preservation, disposition, integrity,
21 security, confidentiality, and auditability of electronic
22 records.

23 d. Any other required attributes for electronic records
24 which are specified for corresponding nonelectronic records or
25 reasonably necessary under the circumstances.

26 3. Except as otherwise provided in section 554D.113,
27 subsection 6, this chapter does not require a governmental
28 agency of this state to use or permit the use of electronic
29 records or electronic signatures.

30 Sec. 20. NEW SECTION. 554D.120 INTEROPERABILITY.

31 The standards adopted pursuant to section 554D.119 should
32 encourage and promote consistency and interoperability with
33 similar requirements adopted by another governmental agency
34 and nongovernmental persons interacting with governmental
35 agencies of this state. If appropriate, such standards may

1 specify differing levels of standards from which a
2 governmental agency of this state may choose in implementing
3 the most appropriate standard for a particular application.

4 Sec. 21. NEW SECTION. 554D.121 FRAUDULENT PURPOSE --
5 PENALTY.

6 A person shall not knowingly create, publish, alter, or
7 otherwise use an electronic record or an electronic signature
8 for a fraudulent or other unlawful purpose. A person
9 convicted of violating this section is guilty of a serious
10 misdemeanor. A person convicted of a second or subsequent
11 violation of this section is guilty of a class "D" felony.

12 Sec. 22. NEW SECTION. 554D.122 FALSE OR UNAUTHORIZED
13 REQUEST -- PENALTY.

14 A person shall not knowingly misrepresent the person's
15 identity or authorization to obtain a private key for use in a
16 digital signature or in requesting suspension or revocation of
17 a private key for use in a digital signature. "Private key"
18 means the key of a key pair used to create a digital
19 signature. A person convicted of violating this section is
20 guilty of a serious misdemeanor. A person convicted of a
21 second or subsequent violation of this section is guilty of a
22 class "D" felony.

23 Sec. 23. Section 4.1, subsection 39, unnumbered paragraph
24 1, Code Supplement 1999, is amended to read as follows:

25 The words "written" and "in writing" may include any mode
26 of representing words or letters in general use, and includes
27 an electronic record as defined in section ~~554E-201~~ 554D.103.
28 A signature, when required by law, must be made by the writing
29 or markings of the person whose signature is required.

30 "Signature" includes an electronic or digital signature as
31 defined in section ~~554E-201~~ 554D.103. If a person is unable
32 due to a physical disability to make a written signature or
33 mark, that person may substitute either of the following in
34 lieu of a signature required by law:

35 Sec. 24. Section 22.7, subsection 38, Code Supplement

1 1999, is amended as follows:

2 38. a. Records containing information that would
3 disclose, or might lead to the disclosure of, private keys
4 used in a digital signature or other similar technologies as
5 provided in chapter 554E 554D.

6 b. Records which if disclosed might jeopardize the
7 security of ~~an-issued-certificate-or-a-certificate-to-be~~
8 issued an electronic transaction pursuant to chapter 554E
9 554D.

10 Sec. 25. Chapter 554C, Code Supplement 1999, is repealed.

11 EXPLANATION

12 This bill creates a new Code chapter 554D relating to
13 electronic transactions intended to replace existing Code
14 chapter 554C.

15 New Code section 554D.101 establishes the title of the new
16 Code chapter as the "Uniform Electronic Transactions Act".

17 New Code section 554D.102 states the legislature's intent.

18 New Code section 554D.103 sets forth the definitions of
19 terms used in the new Code chapter.

20 New Code section 554D.104 sets forth the scope of the
21 chapter and provides that the new Code chapter applies to
22 electronic records and electronic signatures relating to a
23 transaction, except for certain transactions set forth in the
24 Code section.

25 New Code section 554D.105 provides that the new Code
26 chapter applies to an electronic record or electronic
27 signature created, generated, sent, communicated, received, or
28 stored on or after the effective date of the bill.

29 New Code section 554D.106 provides that the Code chapter
30 applies only to transactions between parties each of which has
31 agreed to conduct transactions by electronic means. The Code
32 section also provides that except as otherwise provided in the
33 Code chapter, the effect of any of its provisions may be
34 varied by agreement of the parties.

35 New Code section 554D.107 provides for the construction and

1 application of the new Code chapter.

2 New Code section 554D.108 provides for the legal
3 recognition of electronic records, electronic signatures, and
4 electronic contracts.

5 New Code section 554D.109 provides that if parties have
6 agreed to conduct a transaction by electronic means and a law
7 requires a person to provide, send, or deliver information in
8 writing to another person, the requirement is satisfied if the
9 information is provided, sent, or delivered in an electronic
10 record capable of retention by the recipient at the time of
11 receipt. The Code section sets forth additional requirements
12 if a law other than new Code chapter 554D establishes certain
13 requirements for a record.

14 New Code section 554D.110 provides for the attribution and
15 effect of an electronic record and an electronic signature.

16 New Code section 554D.111 establishes the rules to be
17 followed with respect to a change or error in an electronic
18 record which occurs in a transmission between parties to a
19 transaction.

20 New Code section 554D.112 provides that if a law requires a
21 signature or record to be notarized, acknowledged, verified,
22 or made under oath, the requirement is satisfied if the
23 electronic signature of the person authorized to perform those
24 acts, together with all other information required to be
25 included by other applicable law, is attached to or logically
26 associated with the signature or record.

27 New Code section 554D.113 sets forth the requirements
28 regarding retention of electronic records.

29 New Code section 554D.114 provides that in a legal
30 proceeding, evidence of a record or signature shall not be
31 excluded solely because it is in electronic form.

32 New Code section 554D.115 sets forth the rules to be
33 followed with respect to automated transactions.

34 New Code section 554D.116 sets forth the manner for
35 determining the time and place of sending and receipt of an

1 electronic record.

2 New Code section 554D.117 establishes a definition for and
3 the manner in which transferable records are to be treated
4 under the new Code chapter.

5 New Code section 554D.118 provides that a governmental
6 agency of this state shall determine whether, and the extent
7 to which, it will create and retain electronic records and
8 convert written records to electronic records.

9 New Code section 554D.119 provides for the acceptance and
10 distribution of electronic records by state governmental
11 agencies. The new Code section provides that a governmental
12 agency of this state shall determine whether, and the extent
13 to which, it will send and accept electronic records and
14 electronic signatures to and from other persons and otherwise
15 create, generate, communicate, store, process, use, and rely
16 upon electronic records and electronic signatures.

17 New Code section 554D.120 provides that the standards
18 adopted under this new Code chapter may encourage and promote
19 consistency and interoperability with similar requirements
20 adopted by another governmental agency and nongovernmental
21 persons interacting with governmental agencies of this state.

22 New Code section 554D.121 provides that a person shall not
23 knowingly create, publish, alter, or otherwise use an
24 electronic record or an electronic signature for a fraudulent
25 or other unlawful purpose. A person convicted of violation is
26 guilty of a serious misdemeanor for a first offense, and a
27 class "D" felony upon conviction of a second or subsequent
28 violation.

29 New Code section 554D.122 provides that a person shall not
30 knowingly misrepresent the person's identity or authorization
31 to obtain a private key for use in a digital signature or in
32 requesting suspension or revocation of a private key for use
33 in a digital signature.

34 Code sections 4.1 and 22.7 are amended to correct internal
35 cites and conform language to the new Code chapter.

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Code chapter 554C is repealed.

HOUSE FILE 2205

H-8232

1 Amend House File 2205 as follows:
2 1. Page 5, by inserting after line 13 the
3 following:
4 "4. A transaction that is subject to a computer
5 information contract which provides that the contract
6 is to be interpreted pursuant to the laws of a state
7 that has enacted the uniform computer information
8 transactions Act, as proposed by the national
9 conference of commissioners on uniform state laws, or
10 any substantially similar law, is null and void and
11 the contract shall be interpreted pursuant to the laws
12 of this state if at least one party to the contract is
13 a resident or has its principal place of business
14 located in this state. For purposes of this
15 subsection, a "computer information contract" means a
16 contract that would be governed by the uniform
17 computer information transactions Act or substantially
18 similar law as enacted in the state of residence of
19 the other person to the contract if that state's law
20 were applied to the contract."

By JACOBS of Polk

H-8232 FILED MARCH 7, 2000

2

Adopted
3/8/00
(p. 601)

HOUSE FILE 2205

H-8233

1 Amend House File 2205 as follows:
2 1. Page 15, by striking lines 4 through 6 and
3 inserting the following: "subsection 1, the office of
4 the secretary of state and the division of information
5 technology services of the department of general
6 services, jointly, and in consultation with the
7 office".

By JACOBS of Polk

H-8233 FILED MARCH 7, 2000

Adopted
3/8/00
(p. 602)

HOUSE FILE 2205

H-8042

- 1 Amend House File 2205 as follows:
2 1. Page 4, line 18, by striking the word "A" and
3 inserting the following: "With respect to a consumer
4 transaction, a".
5 2. Page 4, by striking line 22 and inserting the
6 following: "deemed to confer title."
7 3. Page 4, line 32, by inserting after the figure
8 "516D," the following: "523A,".
9 4. Page 4, line 33, by striking the word and
10 figure "and 562A" and inserting the following: "562A,
11 and 562B".
12 5. Page 4, line 34, by striking the word and
13 figure "chapter 714B" and inserting the following:
14 "chapters 714B and 714D".
15 6. Page 8, by inserting after line 11 the
16 following:
17 "3. Notwithstanding subsections 1 and 2, in a
18 consumer transaction, the attribution and effect of an
19 electronic record and an electronic signature is
20 determined by the substantive law governing the
21 transaction."

By COMMITTEE COMMERCE AND REGULATION
METCALF of Polk, Chairperson

H-8042 FILED FEBRUARY 17, 2000

Adopted
3/8/00
(P.601)

5-3/100
5-3/5/00 Amend/Do Pass
w/ 55162
H-4/20/00 Motion to R/C
2205 by millage +
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HOUSE FILE
BY JACOBS

(As Amended and Passed by the House, March 8, 2000)

Passed House, (P. 1666) Date 4/20/00 Passed Senate, (P. 1280) Date 4-19-00
Vote: Ayes 95 Nays 1 Vote: Ayes 46 Nays 2
Approved 5/15/00

A BILL FOR

1 An Act relating to electronic commerce by establishing
2 requirements for electronic transactions and electronic
3 records and providing penalties.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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House Amendments _____

HF 2205

1 Section 1. NEW SECTION. 554D.101 SHORT TITLE.

2 This chapter shall be known and may be cited as the
3 "Uniform Electronic Transactions Act".

4 Sec. 2. NEW SECTION. 554D.102 LEGISLATIVE INTENT.

5 It is the intent of the general assembly in enacting this
6 chapter to effectuate all of the following purposes:

7 1. Facilitate electronic communications by means of
8 reliable electronic records.

9 2. Facilitate and promote electronic commerce, by
10 eliminating barriers resulting from uncertainties over writing
11 and signature requirements, and promote the development of the
12 legal and business infrastructure necessary to implement
13 secure electronic commerce.

14 3. Facilitate electronic filing of documents with state
15 and local government agencies and promote efficient delivery
16 of government services by means of reliable electronic
17 records.

18 4. Minimize the incidence of forged electronic records,
19 intentional and unintentional alteration of records, and fraud
20 in electronic commerce.

21 5. Promote public confidence in the integrity,
22 reliability, and legality of electronic records and electronic
23 commerce.

24 Sec. 3. NEW SECTION. 554D.103 DEFINITIONS.

25 As used in this chapter, unless the context otherwise
26 requires:

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

32 2. "Automated transaction" means a transaction conducted
33 or performed, in whole or in part, by electronic means or
34 electronic records, in which the acts or records of one or
35 both parties are not reviewed by an individual in the ordinary

1 course of forming a contract, performing under an existing
2 contract, or fulfilling an obligation required by the
3 transaction.

4 3. "Computer program" means a set of statements or
5 instructions to be used directly or indirectly in an
6 information processing system in order to bring about a
7 certain result.

8 4. "Consumer" means an individual engaged in a transaction
9 for personal, family, or household purposes.

10 5. "Consumer transaction" means a transaction by an
11 individual for personal, family, or household use.

12 6. "Contract" means the total legal obligation resulting
13 from the parties' agreement as affected by this chapter and
14 other applicable law.

15 7. "Digital signature" means a type of electronic
16 signature consisting of a transformation of electronic record
17 using a message digest function that is encrypted with an
18 asymmetric cryptosystem using the signer's private key in a
19 manner providing that any person having the initial
20 untransformed electronic record, the encrypted transformation,
21 and the signer's public key may accurately determine all of
22 the following:

23 a. Whether the transformation was created using the
24 private key that corresponds to the signer's public key.

25 b. Whether the initial electronic record has been altered
26 since the transformation was made.

27 8. "Electronic" means relating to technology having
28 electrical, digital, magnetic, wireless, optical,
29 electromagnetic, or similar capabilities.

30 9. "Electronic agent" means a computer program or an
31 electronic or other automated means used independently to
32 initiate an action or respond to electronic records or
33 performances in whole or in part, without review or action by
34 an individual.

35 10. "Electronic record" means a record created, generated,

1 sent, communicated, received, or stored by electronic means.

2 11. "Electronic signature" means an electronic sound,
3 symbol, or process attached to or logically associated with a
4 record and executed or adopted by a person with the intent to
5 sign the record.

6 12. "Governmental agency" means an executive, legislative,
7 or judicial agency, department, board, commission, authority,
8 institution, or instrumentality of the federal government or
9 of a state or of a county, municipality, or other political
10 subdivision of a state.

11 13. "Information" means data, text, images, sounds, codes,
12 computer programs, software, databases, or the like.

13 14. "Information processing system" means an electronic
14 system for creating, generating, sending, receiving, storing,
15 displaying, or processing information.

16 15. "Person" means an individual, corporation, business
17 trust, estate, trust, partnership, limited liability company,
18 association, joint venture, governmental agency, public
19 corporation, or any other legal or commercial entity.

20 16. "Record" means information that is inscribed on a
21 tangible medium or that is stored in an electronic or other
22 medium and is retrievable in perceivable form.

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

31 18. "State" means a state of the United States, the
32 District of Columbia, Puerto Rico, the United States Virgin
33 Islands, or any territory or insular possession subject to the
34 jurisdiction of the United States. "State" includes an Indian
35 tribe or band, or Alaskan native village, which is recognized

1 by federal law or formally acknowledged by a state.

2 19. "Transaction" means an action or set of actions
3 occurring between two or more persons relating to the conduct
4 of business, consumer, commercial, or governmental affairs.

5 Sec. 4. NEW SECTION. 554D.104 SCOPE.

6 1. Except as provided in subsection 2, this chapter
7 applies to electronic records and electronic signatures
8 relating to a transaction.

9 2. a. (1) This chapter does not apply to the following:

10 (a) An application which would involve construction of a
11 rule of law that is clearly inconsistent with the manifest
12 intent of the body imposing the requirement or repugnant to
13 the context of the same rule of law. However, the mere
14 requirement that information be in writing, written, or
15 printed shall not by itself be sufficient to establish an
16 intent which is inconsistent with the requirement of this
17 section.

18 (b) With respect to a consumer transaction, a record that
19 serves as a unique and transferable physical expression of
20 rights and obligations including, without limitation,
21 negotiable instruments and other instruments of title where
22 possession of the instrument is deemed to confer title.

23 (c) A record that grants a legal or equitable interest in
24 real property, including a deed, mortgage, deed of trust,
25 pledge, security interest, or other lien or encumbrance.

26 (2) Except as provided under paragraph "b", this chapter
27 does not apply to a transaction to the extent it is governed
28 by any of the following:

29 (a) A disclosure requirement associated with a consumer
30 transaction, including, but not limited to, such disclosures
31 required under chapter 13C, sections 321.69 and 321.71,
32 chapters 516D, 523A, 523B, 523E, 523G, 533D, 537, 537B, 538A,
33 552, 552A, 555A, 557A, 557B, 558A, 562A, and 562B, section
34 714.16, and chapters 714B and 714D, or an administrative rule
35 adopted pursuant to such sections or chapters.

1 (b) A rule of law governing the creation or execution of a
2 will or trust, living will, a general, durable, or healthcare
3 power of attorney, or a voluntary, involuntary, or standby
4 guardianship or conservatorship.

5 (c) Chapter 554 other than articles 2 and 13 and sections
6 554.1107 and 554.2106.

7 b. This chapter applies to an electronic record or
8 electronic signature otherwise excluded from the application
9 of this chapter under paragraph "a" to the extent it is
10 governed by a law other than those specified in paragraph "a",
11 subparagraph (2).

12 3. A transaction subject to this chapter is also subject
13 to other applicable substantive law.

14 4. A transaction that is subject to a computer information
15 contract which provides that the contract is to be interpreted
16 pursuant to the laws of a state that has enacted the uniform
17 computer information transactions Act, as proposed by the
18 national conference of commissioners on uniform state laws, or
19 any substantially similar law, is null and void and the
20 contract shall be interpreted pursuant to the laws of this
21 state if at least one party to the contract is a resident or
22 has its principal place of business located in this state.
23 For purposes of this subsection, a "computer information
24 contract" means a contract that would be governed by the
25 uniform computer information transactions Act or substantially
26 similar law as enacted in the state of residence of the other
27 person to the contract if that state's law were applied to the
28 contract.

29 Sec. 5. NEW SECTION. 554D.105 PROSPECTIVE APPLICATION.

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

33 Sec. 6. NEW SECTION. 554D.106 USE OF ELECTRONIC RECORDS
34 AND ELECTRONIC SIGNATURES -- VARIATION BY AGREEMENT.

35 1. This chapter does not require a record or signature to

1 be created, generated, sent, communicated, received, stored,
2 or otherwise processed or used by electronic means or in
3 electronic form.

4 2. This chapter applies only to transactions between
5 parties each of which has agreed to conduct transactions by
6 electronic means. Whether the parties agree to conduct a
7 transaction by electronic means is determined from the context
8 and surrounding circumstances, including the parties' conduct.

9 3. A party who agrees to conduct a transaction by
10 electronic means may refuse to conduct other transactions by
11 electronic means. The right granted by this subsection may
12 not be waived by agreement.

13 4. Except as otherwise provided in this chapter, the
14 effect of any of its provisions may be varied by agreement.
15 The presence in certain provisions of this chapter of the
16 words "unless otherwise agreed", or words of similar import,
17 does not imply that the effect of other provisions may not be
18 varied by agreement.

19 5. Whether an electronic record or electronic signature
20 has legal consequences is determined by this chapter and other
21 applicable law.

22 Sec. 7. NEW SECTION. 554D.107 CONSTRUCTION AND
23 APPLICATION.

24 This chapter shall be construed and applied as follows:

25 1. To facilitate electronic transactions consistent with
26 other applicable law.

27 2. To be consistent with reasonable practices concerning
28 electronic transactions and with the continued expansion of
29 those practices.

30 3. To effectuate its general purpose to make uniform the
31 law with respect to the subject of this chapter among states
32 enacting the uniform law.

33 Sec. 8. NEW SECTION. 554D.108 LEGAL RECOGNITION OF
34 ELECTRONIC RECORDS, ELECTRONIC SIGNATURES, AND ELECTRONIC
35 CONTRACTS.

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

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

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

8 4. If a law requires a signature, an electronic signature
9 satisfies the law.

10 Sec. 9. NEW SECTION. 554D.109 PROVISION OF INFORMATION
11 IN WRITING -- PRESENTATION OF RECORDS.

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

21 2. If a law other than this chapter requires a record to
22 be posted or displayed in a certain manner; to be sent,
23 communicated, or transmitted by a specified method; or to
24 contain information that is formatted in a certain manner, all
25 of the following apply:

26 a. The record must be posted or displayed in the manner
27 specified in the other law.

28 b. Except as otherwise provided in subsection 4, paragraph
29 "b", the record must be sent, communicated, or transmitted by
30 the method specified in the other law.

31 c. The record must contain the information formatted in
32 the manner specified in the other law.

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

1 4. The requirements of this section shall not be varied by
2 agreement, except as follows:

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

9 b. A requirement under a law other than this chapter to
10 send, communicate, or transmit a record by delivery in person,
11 by mail postage prepaid, or by courier may be varied by
12 agreement to the extent permitted by the other law.

13 Sec. 10. NEW SECTION. 554D.110 ATTRIBUTION AND EFFECT OF
14 ELECTRONIC RECORD AND ELECTRONIC SIGNATURE.

15 1. An electronic record or electronic signature is
16 attributable to a person if it was the act of the person. The
17 act of the person may be shown in any manner, including a
18 showing of the efficacy of any security procedure applied to
19 determine the person to which the electronic record or
20 electronic signature was attributable.

21 2. The effect of an electronic record or electronic
22 signature attributed to a person under subsection 1 is
23 determined from the context and surrounding circumstances at
24 the time of its creation, execution, or adoption, including
25 the parties' agreement, if any, and otherwise as provided by
26 law.

27 3. Notwithstanding subsections 1 and 2, in a consumer
28 transaction, the attribution and effect of an electronic
29 record and an electronic signature is determined by the
30 substantive law governing the transaction.

31 Sec. 11. NEW SECTION. 554D.111 EFFECT OF CHANGE OR
32 ERROR.

33 If a change or error in an electronic record occurs in a
34 transmission between parties to a transaction, the following
35 rules apply:

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

7 2. In an automated transaction involving an individual,
8 the individual may avoid the effect of an electronic record
9 that resulted from an error made by the individual in dealing
10 with the electronic agent of another person if the electronic
11 agent did not provide an opportunity for the prevention or
12 correction of the error and, at the time the individual learns
13 of the error, all of the following apply:

14 a. The individual promptly notifies the other person of
15 the error and that the individual does not intend to be bound
16 by the electronic record received by the other person.

17 b. The individual takes reasonable steps, including steps
18 that conform to the other person's reasonable instructions, to
19 return to the other person or, if instructed by the other
20 person, to destroy the consideration received, if any, as a
21 result of the erroneous electronic record.

22 c. The individual has not used or received any benefit or
23 value from the consideration, if any, received from the other
24 person.

25 3. If subsection 1 or 2 does not apply, the change or
26 error has the effect provided by other law, including the law
27 of mistake, and the parties' contract, if any.

28 4. In a consumer transaction, any substantive law limiting
29 a consumer's liability shall apply to an electronic
30 transaction.

31 5. Subsections 2, 3, and 4 shall not be varied by
32 agreement of the parties.

33 Sec. 12. NEW SECTION. 554D.112 NOTARIZATION AND
34 ACKNOWLEDGMENT.

35 If a law requires a signature or record to be notarized,

1 acknowledged, verified, or made under oath, the requirement is
2 satisfied if the electronic signature of the person authorized
3 to perform those acts, together with all other information
4 required to be included by other applicable law, is attached
5 to or logically associated with the signature or record.

6 Sec. 13. NEW SECTION. 554D.113 RETENTION OF ELECTRONIC
7 RECORDS -- ORIGINALS.

8 1. If a law requires that a record be retained, the
9 requirement is satisfied by retaining an electronic record of
10 the information in the record which does both of the
11 following:

12 a. Accurately reflects the information set forth in the
13 record after it was first generated in its final form as an
14 electronic record or otherwise.

15 b. Remains accessible for later reference.

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

20 3. A person may satisfy subsection 1 by using the services
21 of another person if the requirements of that subsection are
22 satisfied.

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

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

32 6. A record retained as an electronic record in accordance
33 with subsection 1 satisfies a law requiring a person to retain
34 a record for evidentiary, audit, or like purposes, unless a
35 law enacted after the effective date of this Act specifically

1 prohibits the use of an electronic record for the specified
2 purpose.

3 7. This section does not preclude a governmental agency
4 from specifying additional requirements for the retention of a
5 record subject to the agency's jurisdiction.

6 Sec. 14. NEW SECTION. 554D.114 ADMISSIBILITY IN
7 EVIDENCE.

8 In a proceeding, evidence of a record or signature shall
9 not be excluded solely because it is in electronic form.

10 Sec. 15. NEW SECTION. 554D.115 AUTOMATED TRANSACTION.

11 In an automated transaction, the following rules apply:

12 1. A contract may be formed by the interaction of
13 electronic agents of the parties, even if no individual was
14 aware of or reviewed the electronic agents' actions or the
15 resulting terms and agreements.

16 2. A contract may be formed by the interaction of an
17 electronic agent and an individual, acting on the individual's
18 own behalf or for another person, including by an interaction
19 in which the individual performs actions that the individual
20 is free to refuse to perform and which the individual knows or
21 has reason to know will cause the electronic agent to complete
22 the transaction or performance.

23 3. The terms of the contract are determined by the
24 substantive law applicable to it.

25 Sec. 16. NEW SECTION. 554D.116 TIME AND PLACE OF SENDING
26 AND RECEIPT.

27 1. Unless otherwise agreed between the sender and the
28 recipient, an electronic record is sent when all of the
29 following occur:

30 a. The electronic record is addressed properly or
31 otherwise directed properly to an information processing
32 system that the recipient has designated or uses for the
33 purpose of receiving electronic records or information of the
34 type sent and from which the recipient is able to retrieve the
35 electronic record.

1 b. The electronic record is in a form capable of being
2 processed by that information processing system.

3 c. The electronic record enters an information processing
4 system outside the control of the sender or of a person who
5 sent the electronic record on behalf of the sender or enters a
6 region of the information processing system designated or used
7 by the recipient which is under the control of the recipient.

8 2. Unless otherwise agreed between a sender and the
9 recipient, an electronic record is received when both of the
10 following occur:

11 a. The electronic record enters an information processing
12 system that the recipient has designated or uses for the
13 purpose of receiving electronic records or information of the
14 type sent and from which the recipient is able to retrieve the
15 electronic record.

16 b. The electronic record is in a form capable of being
17 processed by that information processing system.

18 3. Subsection 2 applies even if the place the information
19 processing system is located is different from the place the
20 electronic record is deemed to be received under subsection 4.

21 4. Unless otherwise expressly provided in the electronic
22 record or agreed between the sender and the recipient, an
23 electronic record is deemed to be sent from the sender's place
24 of business and to be received at the recipient's place of
25 business. For purposes of this subsection, both of the
26 following apply:

27 a. If the sender or recipient has more than one place of
28 business, the place of business of such person is the place
29 having the closest relationship to the underlying transaction.

30 b. If the sender or the recipient does not have a place of
31 business, the place of business is the sender's or recipient's
32 residence, as the case may be.

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

35 6. Receipt of an electronic acknowledgment from an

1 information processing system described in subsection 2
2 establishes that a record was received but, by itself, does
3 not establish that the content sent corresponds to the content
4 received.

5 7. If a person is aware that an electronic record
6 purportedly sent under subsection 1, or purportedly received
7 under subsection 2, was not actually sent or received, the
8 legal effect of the sending or receipt is determined by other
9 applicable law. Except to the extent permitted or required by
10 the other law, the requirements of this subsection shall not
11 be varied by agreement.

12 Sec. 17. NEW SECTION. 554D.117 TRANSFERABLE RECORDS.

13 1. For purposes of this section, "transferable record"
14 means an electronic record that satisfies both of the
15 following:

16 a. The electronic record would be a note under chapter
17 554, article 3, or a document under chapter 554, article 7, if
18 the electronic record were in writing.

19 b. The issuer of the electronic record expressly has
20 agreed such electronic record is a transferable record.

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

26 3. A system satisfies subsection 2, and a person is deemed
27 to have control of a transferable record, if the transferable
28 record is created, stored, and assigned in such a manner that
29 satisfies all of the following:

30 a. A single authoritative copy of the transferable record
31 exists which is unique, identifiable, and, except as otherwise
32 provided in paragraphs "d", "e", and "f", unalterable.

33 b. The authoritative copy identifies the person asserting
34 control as one of the following:

35 (1) The person to which the transferable record was

1 issued.

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

5 c. The authoritative copy is communicated to and
6 maintained by the person asserting control or such person's
7 designated custodian.

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

11 e. Each copy of the authoritative copy and any copy of a
12 copy is readily identifiable as a copy that is not the
13 authoritative copy.

14 f. A revision of the authoritative copy is readily
15 identifiable as authorized or unauthorized.

16 4. Except as otherwise agreed, a person having control of
17 a transferable record is the holder, as defined in section
18 554.1201, of the transferable record and has the same rights
19 and defenses as a holder of an equivalent record or writing
20 under chapter 554, including, if the applicable statutory
21 requirements under section 554.3302, subsection 1, section
22 554.7501, or section 554.9308 are satisfied, the rights and
23 defenses of a holder in due course, a holder to which a
24 negotiable document of title has been duly negotiated, or a
25 purchaser, respectively. Delivery, possession, and
26 endorsement are not required to obtain or exercise any of the
27 rights under this subsection.

28 5. Except as otherwise agreed, an obligor under a
29 transferable record has the same rights and defenses as an
30 equivalent obligor under equivalent records or writings under
31 chapter 554.

32 6. If requested by a person against which enforcement is
33 sought, the person seeking to enforce the transferable record
34 shall provide reasonable proof that the person is in control
35 of the transferable record. Proof may include access to the

1 authoritative copy of the transferable record and related
2 business records sufficient to review the terms of the
3 transferable record and to establish the identity of the
4 person having control of the transferable record.

5 Sec. 18. NEW SECTION. 554D.118 CREATION AND RETENTION OF
6 ELECTRONIC RECORDS AND CONVERSION OF WRITTEN RECORDS BY
7 GOVERNMENTAL AGENCIES.

8 A governmental agency of this state shall determine
9 whether, and the extent to which, the governmental agency will
10 create and retain electronic records and convert written
11 records to electronic records.

12 Sec. 19. NEW SECTION. 554D.119 ACCEPTANCE AND
13 DISTRIBUTION OF ELECTRONIC RECORDS BY GOVERNMENTAL AGENCIES.

14 1. Except as otherwise provided in section 554D.113,
15 subsection 6, a governmental agency of this state shall
16 determine whether, and the extent to which, the governmental
17 agency will send and accept electronic records and electronic
18 signatures to and from other persons and otherwise create,
19 generate, communicate, store, process, use, and rely upon
20 electronic records and electronic signatures.

21 2. To the extent that a governmental agency of this state
22 uses electronic records and electronic signatures under
23 subsection 1, the office of the secretary of state and the
24 division of information technology services of the department
25 of general services, jointly, and in consultation with the
26 office of the attorney general, giving due consideration to
27 security, may specify by rule all of the following:

28 a. The manner and format in which the electronic records
29 must be created, generated, sent, communicated, received, and
30 stored and the information processing systems established for
31 those purposes.

32 b. If electronic records must be signed by electronic
33 means, the type of electronic signature required, the manner
34 and format in which the electronic signature must be affixed
35 to the electronic record, and the identity of, or criteria

1 that must be met by, any third party used by a person filing a
2 document to facilitate the process.

3 c. Control processes and procedures as appropriate to
4 ensure adequate preservation, disposition, integrity,
5 security, confidentiality, and auditability of electronic
6 records.

7 d. Any other required attributes for electronic records
8 which are specified for corresponding nonelectronic records or
9 reasonably necessary under the circumstances.

10 3. Except as otherwise provided in section 554D.113,
11 subsection 6, this chapter does not require a governmental
12 agency of this state to use or permit the use of electronic
13 records or electronic signatures.

14 Sec. 20. NEW SECTION. 554D.120 INTEROPERABILITY.

15 The standards adopted pursuant to section 554D.119 should
16 encourage and promote consistency and interoperability with
17 similar requirements adopted by another governmental agency
18 and nongovernmental persons interacting with governmental
19 agencies of this state. If appropriate, such standards may
20 specify differing levels of standards from which a
21 governmental agency of this state may choose in implementing
22 the most appropriate standard for a particular application.

23 Sec. 21. NEW SECTION. 554D.121 FRAUDULENT PURPOSE --
24 PENALTY.

25 A person shall not knowingly create, publish, alter, or
26 otherwise use an electronic record or an electronic signature
27 for a fraudulent or other unlawful purpose. A person
28 convicted of violating this section is guilty of a serious
29 misdemeanor. A person convicted of a second or subsequent
30 violation of this section is guilty of a class "D" felony.

31 Sec. 22. NEW SECTION. 554D.122 FALSE OR UNAUTHORIZED
32 REQUEST -- PENALTY.

33 A person shall not knowingly misrepresent the person's
34 identity or authorization to obtain a private key for use in a
35 digital signature or in requesting suspension or revocation of

1 a private key for use in a digital signature. "Private key"
2 means the key of a key pair used to create a digital
3 signature. A person convicted of violating this section is
4 guilty of a serious misdemeanor. A person convicted of a
5 second or subsequent violation of this section is guilty of a
6 class "D" felony.

7 Sec. 23. Section 4.1, subsection 39, unnumbered paragraph
8 1, Code Supplement 1999, is amended to read as follows:

9 The words "written" and "in writing" may include any mode
10 of representing words or letters in general use, and includes
11 an electronic record as defined in section ~~554E-201~~ 554D.103.
12 A signature, when required by law, must be made by the writing
13 or markings of the person whose signature is required.
14 "Signature" includes an electronic or digital signature as
15 defined in section ~~554E-201~~ 554D.103. If a person is unable
16 due to a physical disability to make a written signature or
17 mark, that person may substitute either of the following in
18 lieu of a signature required by law:

19 Sec. 24. Section 22.7, subsection 38, Code Supplement
20 1999, is amended as follows:

21 38. a. Records containing information that would
22 disclose, or might lead to the disclosure of, private keys
23 used in a digital signature or other similar technologies as
24 provided in chapter ~~554E~~ 554D.

25 b. Records which if disclosed might jeopardize the
26 security of ~~an-issued-certificate-or-a-certificate-to-be~~
27 issued an electronic transaction pursuant to chapter ~~554E~~
28 554D.

29 Sec. 25. Chapter 554C, Code Supplement 1999, is repealed.
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HOUSE FILE 2205

S-5162

1 Amend House File 2205, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 4, by striking lines 23 through 25.
4 2. Page 4, line 32, by striking the figure
5 "537,".
6 3. Page 4, line 33, by striking the figure
7 "558A,".
8 4. Page 15, line 15, by inserting after the word
9 "state" the following: "other than a state executive
10 branch agency, department, board, commission,
11 authority, or institution,".
12 5. Page 15, by inserting after line 20 the
13 following:
14 "1A. Except as otherwise provided in section
15 554D.113, subsection 6, on or before July 1, 2003, a
16 state executive branch agency, department, board,
17 commission, authority, or institution, in consultation
18 and cooperation with the information technology
19 services division of the department of general
20 services, shall send and accept electronic records and
21 electronic signatures to and from other persons and
22 otherwise create, generate, communicate, store,
23 process, use, and rely upon electronic records and
24 signatures. The department of management, upon the
25 written request of a state executive branch agency,
26 department, board, commission, authority, or
27 institution and for good cause shown, may grant a
28 waiver from the July 1, 2003, deadline established in
29 this section to the state executive branch agency,
30 department, board, commission, authority, or
31 institution."
32 6. Page 15, line 23, by inserting after the
33 figure "1" the following: "or 1A".
34 7. Page 17, by inserting after line 28 the
35 following:
36 "Sec. ____ . NEW SECTION. 75.14 ELECTRONIC
37 BIDDING.
38 Notwithstanding contrary provisions of this
39 chapter, a public body authorized to issue bonds,
40 notes, or other obligations may elect to receive bids
41 to purchase such bonds, notes, or other obligations by
42 means of electronic, internet or wireless
43 communication, a proprietary bidding procedure or
44 system, or by facsimile transmission to a location
45 deemed appropriate by the governing body, in each
46 instance as may be approved by the governing body and
47 provided for in the notice of sale. An electronic bid
48 shall be submitted in substantial conformity with the
49 requirements of chapter 554D and any rules adopted
50 pursuant to that chapter with respect to the
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1 acceptance of electronic records by a governmental
2 agency. Additionally, before approving the use of an
3 electronic bidding procedure, the public body shall
4 find and determine that the specific procedure to be
5 used will provide reasonable security and maintain the
6 integrity of the competitive bidding process, and
7 facilitate the delivery of bids by interested parties
8 under the circumstances of the particular sale."
9 8. By renumbering as necessary.

By COMMITTEE ON COMMERCE
JOHN W. JENSEN, Chairperson

S-5162 FILED MARCH 15, 2000

adopted
4-19-00
(P.1279)

HOUSE FILE 2205

S-5481

1 Amend the amendment, S-5162, to House File 2205, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. Page 1, by inserting after line 3 the
5 following:

6 "____. Page 4, by inserting before line 26 the
7 following:

8 "() An electronic transaction initiated at a
9 satellite terminal, as defined in section 527.2, or
10 the processing and routing of transaction data by a
11 central routing unit or a data processing center, each
12 as defined in section 527.2."

13 2. Page 1, by striking lines 4 through 7.

14 3. Page 1, by inserting before line 8 the
15 following:

16 "____. Page 5, by striking lines 14 through 28 and
17 inserting the following:

18 "4. A choice of law provision, which is contained
19 in a computer information agreement that governs a
20 transaction subject to this chapter, that provides
21 that the contract is to be interpreted pursuant to the
22 laws of a state that has enacted the uniform computer
23 information transactions Act, as proposed by the
24 national conference of commissioners on uniform state
25 laws, or any substantially similar law, is voidable
26 and the agreement shall be interpreted pursuant to the
27 laws of this state if the party against whom
28 enforcement of the choice of law provision is sought
29 is a resident of this state or has its principal place
30 of business located in this state. For purposes of
31 this subsection, a "computer information agreement"
32 means an agreement that would be governed by the
33 uniform computer information transactions Act or
34 substantially similar law as enacted in the state
35 specified in the choice of laws provision if that
36 state's law were applied to the agreement."

37 _____. Page 8, line 27, by striking the word
38 "Notwithstanding" and inserting the following: "In
39 addition to"."

40 4. Page 2, line 8, by striking the word "sale."
41 and inserting the following: "sale."

42 Sec. _____. ADVISORY COMMITTEE CREATED. An advisory
43 committee is created to study issues associated with
44 the electronic filing, recording, and indexing of
45 instruments affecting real property pursuant to
46 chapter 558, and the electronic use of real property
47 disclosures required pursuant to chapter 558A. The
48 advisory committee shall consider matters relating to
49 the facilitation of electronic filing, recording, and
50 indexing of instruments affecting real property. The

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1 advisory committee may consider matters including, but
2 not limited to, access to electronic transactions,
3 reliability and security, storage of records, training
4 of public officials, conversion from a paper recording
5 system to an electronic system, and other issues as
6 are necessary and appropriate with respect to
7 establishing a statewide uniform electronic filing
8 system for real property transactions. The membership
9 of the advisory committee shall be appointed by the
10 legislative council and shall include, but is not
11 limited to, representatives of the Iowa county
12 recorders association, the Iowa state bar association,
13 the Iowa state association of counties, Iowa title
14 guaranty, the Iowa land title association, the Iowa
15 bankers association, the Iowa independent bankers
16 association, the Iowa association of realtors, the
17 Iowa mortgage bankers association, and the office of
18 the attorney general. The advisory committee shall
19 provide an initial written report, including any
20 recommendations, to the general assembly by no later
21 than January 20, 2001. Such report shall include a
22 recommendation for the initiation of a pilot program
23 for electronic land transfers, including a date
24 certain by which such program may be initiated and the
25 cost of such pilot program. The advisory committee
26 shall provide a written report to the general assembly
27 in January of each year subsequent to the commencement
28 of the pilot program including the results of the
29 pilot program; any additional recommendations; a
30 schedule for the implementation of a statewide uniform
31 electronic land transfer system, if appropriate; and
32 the costs associated with such implementation
33 including any identifiable ongoing costs and costs for
34 training associated with the system."

35 _____. Page 17, by inserting after line 29 the
36 following:

37 "Sec. _____. REPEAL -- EFFECTIVE DATE.

38 1. Section 554D.104, subsection 4, as enacted in
39 this Act, is amended by striking the subsection.

40 2. This section of this Act takes effect July 1,
41 2001.

42 Sec. _____. LEGISLATIVE INTENT. It is the intent of
43 the general assembly that the general assembly
44 consider the proposed uniform computer information
45 transactions Act, as adopted by the national
46 conference of commissioners on uniform state laws,
47 during the 2001 regular session.""

48 5. By renumbering as necessary.

By STEVE KING
JEFF LAMBERTI

S-5481 FILED APRIL 18, 2000

adopted
4-19-00
(P. 1279)

HOUSE FILE 2205

S-5501

1 Amend the amendment, S-5162, to House File 2205, as
2 amended, passed, and reprinted, by the House, as
3 follows:

4 1. Page 1, by striking lines 3 through 7.

5 2. Page 2, by inserting after line 8 the
6 following:

7 "____. Page 17, by inserting after line 28 the
8 following:

9 "Sec. ____ . ADVISORY COMMITTEE CREATED. An
10 advisory committee is created to study issues
11 associated with the electronic filing, recording, and
12 indexing of instruments affecting real property
13 pursuant to chapter 558, and the electronic use of
14 real property disclosures required pursuant to chapter
15 558A. The advisory committee shall consider matters
16 relating to the facilitation of electronic filing,
17 recording, and indexing of instruments affecting real
18 property. The advisory committee may consider matters
19 including, but not limited to, access to electronic
20 transactions, reliability and security, storage of
21 records, training of public officials, conversion from
22 a paper recording system to an electronic system, and
23 other issues as are necessary and appropriate with
24 respect to establishing a statewide uniform electronic
25 filing system for real property transactions. The
26 membership of the advisory committee shall be
27 appointed by the legislative council and shall
28 include, but is not limited to, representatives of the
29 Iowa county recorders association, the Iowa state bar
30 association, the Iowa state association of counties,
31 Iowa title guaranty, the Iowa land title association,
32 the Iowa bankers association, the Iowa independent
33 bankers association, the Iowa association of realtors,
34 the Iowa mortgage bankers association, and the office
35 of the attorney general. The advisory committee shall
36 provide an initial written report, including any
37 recommendations, to the general assembly by no later
38 than January 20, 2001. Such report shall include a
39 recommendation for the initiation of a pilot program
40 for electronic land transfers, including a date
41 certain by which such program may be initiated and the
42 cost of such pilot program. The advisory committee
43 shall provide a written report to the general assembly
44 in January of each year subsequent to the commencement
45 of the pilot program including the results of the
46 pilot program; any additional recommendations; a
47 schedule for the implementation of a statewide uniform
48 electronic land transfer system, if appropriate; and
49 the costs associated with such implementation
50 including any identifiable ongoing costs and costs for
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1 training associated with the system.""

2 3. By renumbering as necessary.

By LARRY MCKIBBEN

DONALD B. REDFERN

ANDY MCKEAN

DERRYL McLAREN

JEFF ANGELO

WALLY E. HORN

O. GENE MADDOX

JOHN P. KIBBIE

MATT McCOY

NANCY BOETTGER

S-5501 FILED APRIL 19, 2000

LOST

(P. 1275)

HOUSE FILE 2205

S-5515

1 Amend House File 2205, as amended, passed, and

2 reprinted by the House, as follows:

3 1. Page 16, by inserting after line 13 the

4 following:

5 "4. Notwithstanding this section, an institution
6 governed under chapter 262 shall conform with national
7 standards with respect to electronic records and
8 electronic signatures, as such standards are
9 developed."

By STEVE KING

JOE BOLKCOM

S-5515 FILED APRIL 19, 2000

ADOPTED

(P. 1280)

HOUSE FILE 2205

S-5523

1 Amend House File 2205, as amended, passed, and

2 reprinted by the House, as follows:

3 1. Page 5, line 6, by striking the figure

4 "554.2106" and inserting the following: "554.1206".

By STEVE KING

S-5523 FILED APRIL 19, 2000

ADOPTED

(P. 1279)

HOUSE FILE 2205

S-5524

1 Amend House File 2205, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 17, by inserting after line 28 the
4 following:

5 "Sec. 105. Section 421.60, subsection 2, Code
6 1999, is amended by adding the following new
7 paragraph:

8 NEW PARAGRAPH. m. (1) The director may abate
9 unpaid state sales and use taxes and local sales and
10 services taxes owed by a retailer in the event that
11 the retailer failed to collect tax from the purchaser
12 as a result of erroneous written advice issued by the
13 department that was specially directed to the retailer
14 by the department and the retailer is unable to
15 collect the tax, interest, or penalties from the
16 purchaser. Before the tax, interest, and penalties
17 shall be abated on the basis of erroneous written
18 advice, the retailer must present a copy of the
19 retailer's request for written advice to the
20 department and a copy of the department's reply. The
21 department shall not maintain a position against the
22 retailer that is inconsistent with the erroneous
23 written advice, except on the basis of subsequent
24 written advice sent by the department to that
25 retailer, or a change in state or federal law, a
26 reported court case to the contrary, a contrary rule
27 adopted by the department, a change in material facts
28 or circumstances relating to the retailer, or the
29 retailer's misrepresentation or incomplete or
30 inadequate representation of material facts and
31 circumstances in requesting the written advice.

32 (2) The director shall abate the unpaid state
33 sales and use taxes and any local sales and services
34 taxes owed by a retailer where the retailer failed to
35 collect the tax from the purchaser on the charges paid
36 for access to on-line computer services as a result of
37 erroneous written advice issued by the department
38 regarding the taxability of charges paid for access to
39 on-line computer services. To qualify for the
40 abatement under this subparagraph, the erroneous
41 written advice shall have been issued by the
42 department prior to July 1, 1999, and shall have been
43 specially directed to the retailer by the department.

44 (3) The director shall prepare quarterly reports
45 summarizing each case in which abatement of tax,
46 interest, or penalties was made. However, the report
47 shall not disclose the identity of the taxpayer. An
48 abatement authorized by this paragraph to a retailer
49 shall not preclude the department from proceeding to
50 collect the liability from a purchaser.

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1 Sec. 106. Section 422.45, subsection 56, Code
2 Supplement 1999, is amended to read as follows:
3 56. The gross receipts from charges paid to a
4 provider for access to on-line computer services. For
5 purposes of this subsection, "on-line computer
6 service" means a service that provides or enables
7 computer access by multiple users to the internet or
8 to other information made available through a computer
9 server."

10 2. Page 17, by inserting after line 29 the
11 following:

12 "Sec. ____ . EFFECTIVE DATE. Sections 105 and 106
13 of this Act, being deemed of immediate importance,
14 take effect upon enactment."

15 3. Title page, line 3, by inserting after the
16 word "records" the following: ", relating to sales
17 and use tax exemption for access to electronic
18 commerce,".

By JOANN JOHNSON

S-5524 FILED APRIL 19, 2000

ADOPTED

(p. 1280)

HOUSE FILE 2205

S-5529

1 Amend the amendment, S-5524, to House File 2205, as
2 passed by the House, as follows:

3 1. Page 2, by striking line 9 and inserting the
4 following: "server.

5 Sec. 107. Section 422.52, subsection 6, paragraph
6 a, Code Supplement 1999, is amended to read as
7 follows:

8 a. If a purchaser fails to pay tax imposed by this
9 division to the retailer required to collect the tax,
10 then in addition to all of the rights, obligations,
11 and remedies provided, the tax is payable by the
12 purchaser directly to the department, and sections
13 422.50, 422.51, 422.52, 422.54, 422.55, 422.56,
14 422.57, 422.58, and 422.59 apply to the purchaser.
15 For failure, the retailer and purchaser are liable,
16 unless the circumstances described in section 421.60,
17 subsection 2, paragraph "m", or section 422.47,
18 subsection 3, paragraph "b" or "e", or subsection 4,
19 paragraph "b" or "d", are applicable."

20 2. Page 2, line 12, by striking the word and
21 figure "and 106" and inserting the following: ", 106,
22 and 107".

By JOANN JOHNSON

S-5529 FILED APRIL 19, 2000

ADOPTED

(p. 1280)

**HOUSE FILE 2205
FISCAL NOTE**

A fiscal note for House File 2205 as amended by S-5162 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 2205 as amended by S-5162 establishes requirements for electronic transactions and electronic records and provides penalties.

ASSUMPTIONS

1. Approximately \$18.0 million annually is currently appropriated to State agencies for technology including electronic transactions and electronic records.
2. State agencies are required to begin accepting electronic transactions by FY 2003.
3. Electronic transfers may result in cost savings, however, the savings are unknown.
4. Charge, conviction, and sentencing patterns will remain stable.
5. Costs associated with telecommunication, training, maintenance, and incidental programming are unknown.
6. Counties will accept electronic records dealing with deeds, mortgages, deeds of trust, pledges, security interests, and liens.
7. The cost per county to accept electronic records dealing with deeds, mortgages, deeds of trust, pledges, security interests, and liens will cost between \$50,000 and \$100,000 for hardware, software, and connectivity.

CORRECTIONAL IMPACT

House File 2205 as amended by S-5162 is not expected to have any significant correctional impact.

FISCAL IMPACT

House File 2205 as amended by S-5162 is not expected to result in any significant cost increase in current General Fund technology expenditure levels. Currently, approximately \$18.0 million is allocated annually to State agencies for technology. It is anticipated that the current funding level, for technology, will meet the requirements of HF 2205 as amended by S-5162.

The cost of House File 2205 as amended by S-5162 to counties will be between \$50,000 \$100,000 per county or \$5,000,000 to \$10,000,000 statewide.

SOURCES

Information Technology Services
Department of General Services

(LSB 6483HH, CRS)

HOUSE FILE 2205

S-5539

1 Amend the amendment, S-5162, to House File 2205, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. Page 1, by inserting before line 8 the
5 following:

6 "____. Page 7, by inserting after line 9 the
7 following:

8 "Sec. ____ . NEW SECTION. 554D.108A LEGAL
9 RECOGNITION OF ELECTRONIC RECORDS AFFECTING INTERESTS
10 IN REAL PROPERTY.

11 An electronic record that grants a legal or
12 equitable interest in real property, including a deed,
13 mortgage, deed of trust, pledge, security interest, or
14 other lien or encumbrance, and any disclosure required
15 under chapter 558A shall comply with all of the
16 following:

17 1. Be created using a security procedure and
18 signed by use of a digital signature.

19 2. Shall not be recorded or have effect against
20 third parties until a duplicate paper original of the
21 electronic record is executed in writing by the
22 parties, acknowledged, and recorded. The burden of
23 proof that the duplicate paper original of the
24 electronic record is identical to the original
25 electronic record rests upon the party submitting the
26 duplicate paper original.

27 3. Comply with all requirements of Iowa law
28 regarding the recording of instruments and all other
29 applicable state requirements.""

30 2. By renumbering as necessary.

By LARRY MCKIBBEN

S-5539 FILED APRIL 19, 2000

ADOPTED

(P. 1279)

SENATE AMENDMENT TO HOUSE FILE 2205

H-9015

1 Amend House File 2205, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 4, by striking lines 23 through 25.

4 2. Page 4, by inserting before line 26 the
5 following:

6 "() An electronic transaction initiated at a
7 satellite terminal, as defined in section 527.2, or
8 the processing and routing of transaction data by a
9 central routing unit or a data processing center, each
10 as defined in section 527.2."

11 3. Page 5, line 6, by striking the figure
12 "554.2106" and inserting the following: "554.1206".

13 4. Page 5, by striking lines 14 through 28 and
14 inserting the following:

15 "4. A choice of law provision, which is contained
16 in a computer information agreement that governs a
17 transaction subject to this chapter, that provides
18 that the contract is to be interpreted pursuant to the
19 laws of a state that has enacted the uniform computer
20 information transactions Act, as proposed by the
21 national conference of commissioners on uniform state
22 laws, or any substantially similar law, is voidable
23 and the agreement shall be interpreted pursuant to the
24 laws of this state if the party against whom
25 enforcement of the choice of law provision is sought
26 is a resident of this state or has its principal place
27 of business located in this state. For purposes of
28 this subsection, a "computer information agreement"
29 means an agreement that would be governed by the
30 uniform computer information transactions Act or
31 substantially similar law as enacted in the state
32 specified in the choice of laws provision if that
33 state's law were applied to the agreement."

34 5. Page 7, by inserting after line 9 the
35 following:

36 "Sec. ____ . NEW SECTION. 554D.108A LEGAL
37 RECOGNITION OF ELECTRONIC RECORDS AFFECTING INTERESTS
38 IN REAL PROPERTY.

39 An electronic record that grants a legal or
40 equitable interest in real property, including a deed,
41 mortgage, deed of trust, pledge, security interest, or
42 other lien or encumbrance, and any disclosure required
43 under chapter 558A shall comply with all of the
44 following:

45 1. Be created using a security procedure and
46 signed by use of a digital signature.

47 2. Shall not be recorded or have effect against
48 third parties until a duplicate paper original of the
49 electronic record is executed in writing by the
50 parties, acknowledged, and recorded. The burden of

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1 proof that the duplicate paper original of the
2 electronic record is identical to the original
3 electronic record rests upon the party submitting the
4 duplicate paper original.

5 3. Comply with all requirements of Iowa law
6 regarding the recording of instruments and all other
7 applicable state requirements."

8 6. Page 8, line 27, by striking the word
9 "Notwithstanding" and inserting the following: "In
10 addition to".

11 7. Page 15, line 15, by inserting after the word
12 "state" the following: "other than a state executive
13 branch agency, department, board, commission,
14 authority, or institution,".

15 8. Page 15, by inserting after line 20 the
16 following:

17 "1A. Except as otherwise provided in section
18 554D.113, subsection 6, on or before July 1, 2003, a
19 state executive branch agency, department, board,
20 commission, authority, or institution, in consultation
21 and cooperation with the information technology
22 services division of the department of general
23 services, shall send and accept electronic records and
24 electronic signatures to and from other persons and
25 otherwise create, generate, communicate, store,
26 process, use, and rely upon electronic records and
27 signatures. The department of management, upon the
28 written request of a state executive branch agency,
29 department, board, commission, authority, or
30 institution and for good cause shown, may grant a
31 waiver from the July 1, 2003, deadline established in
32 this section to the state executive branch agency,
33 department, board, commission, authority, or
34 institution."

35 9. Page 15, line 23, by inserting after the
36 figure "1" the following: "or 1A".

37 10. Page 16, by inserting after line 13 the
38 following:

39 "4. Notwithstanding this section, an institution
40 governed under chapter 262 shall conform with national
41 standards with respect to electronic records and
42 electronic signatures, as such standards are
43 developed."

44 11. Page 17, by inserting after line 28 the
45 following:

46 "Sec. ____ . NEW SECTION. 75.14 ELECTRONIC
47 BIDDING.

48 Notwithstanding contrary provisions of this
49 chapter, a public body authorized to issue bonds,
50 notes, or other obligations may elect to receive bids

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1 to purchase such bonds, notes, or other obligations by
2 means of electronic, internet or wireless
3 communication, a proprietary bidding procedure or
4 system, or by facsimile transmission to a location
5 deemed appropriate by the governing body, in each
6 instance as may be approved by the governing body and
7 provided for in the notice of sale. An electronic bid
8 shall be submitted in substantial conformity with the
9 requirements of chapter 554D and any rules adopted
10 pursuant to that chapter with respect to the
11 acceptance of electronic records by a governmental
12 agency. Additionally, before approving the use of an
13 electronic bidding procedure, the public body shall
14 find and determine that the specific procedure to be
15 used will provide reasonable security and maintain the
16 integrity of the competitive bidding process, and
17 facilitate the delivery of bids by interested parties
18 under the circumstances of the particular sale.

19 Sec. ____ . ADVISORY COMMITTEE CREATED. An advisory
20 committee is created to study issues associated with
21 the electronic filing, recording, and indexing of
22 instruments affecting real property pursuant to
23 chapter 558, and the electronic use of real property
24 disclosures required pursuant to chapter 558A. The
25 advisory committee shall consider matters relating to
26 the facilitation of electronic filing, recording, and
27 indexing of instruments affecting real property. The
28 advisory committee may consider matters including, but
29 not limited to, access to electronic transactions,
30 reliability and security, storage of records, training
31 of public officials, conversion from a paper recording
32 system to an electronic system, and other issues as
33 are necessary and appropriate with respect to
34 establishing a statewide uniform electronic filing
35 system for real property transactions. The membership
36 of the advisory committee shall be appointed by the
37 legislative council and shall include, but is not
38 limited to, representatives of the Iowa county
39 recorders association, the Iowa state bar association,
40 the Iowa state association of counties, Iowa title
41 guaranty, the Iowa land title association, the Iowa
42 bankers association, the Iowa independent bankers
43 association, the Iowa association of realtors, the
44 Iowa mortgage bankers association, and the office of
45 the attorney general. The advisory committee shall
46 provide an initial written report, including any
47 recommendations, to the general assembly by no later
48 than January 20, 2001. Such report shall include a
49 recommendation for the initiation of a pilot program
50 for electronic land transfers, including a date

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1 certain by which such program may be initiated and the
2 cost of such pilot program. The advisory committee
3 shall provide a written report to the general assembly
4 in January of each year subsequent to the commencement
5 of the pilot program including the results of the
6 pilot program; any additional recommendations; a
7 schedule for the implementation of a statewide uniform
8 electronic land transfer system, if appropriate; and
9 the costs associated with such implementation
10 including any identifiable ongoing costs and costs for
11 training associated with the system."

12 12. Page 17, by inserting after line 28 the
13 following:

14 "Sec. 105. Section 421.60, subsection 2, Code
15 1999, is amended by adding the following new
16 paragraph:

17 NEW PARAGRAPH. m. (1) The director may abate
18 unpaid state sales and use taxes and local sales and
19 services taxes owed by a retailer in the event that
20 the retailer failed to collect tax from the purchaser
21 as a result of erroneous written advice issued by the
22 department that was specially directed to the retailer
23 by the department and the retailer is unable to
24 collect the tax, interest, or penalties from the
25 purchaser. Before the tax, interest, and penalties
26 shall be abated on the basis of erroneous written
27 advice, the retailer must present a copy of the
28 retailer's request for written advice to the
29 department and a copy of the department's reply. The
30 department shall not maintain a position against the
31 retailer that is inconsistent with the erroneous
32 written advice, except on the basis of subsequent
33 written advice sent by the department to that
34 retailer, or a change in state or federal law, a
35 reported court case to the contrary, a contrary rule
36 adopted by the department, a change in material facts
37 or circumstances relating to the retailer, or the
38 retailer's misrepresentation or incomplete or
39 inadequate representation of material facts and
40 circumstances in requesting the written advice.

41 (2) The director shall abate the unpaid state
42 sales and use taxes and any local sales and services
43 taxes owed by a retailer where the retailer failed to
44 collect the tax from the purchaser on the charges paid
45 for access to on-line computer services as a result of
46 erroneous written advice issued by the department
47 regarding the taxability of charges paid for access to
48 on-line computer services. To qualify for the
49 abatement under this subparagraph, the erroneous
50 written advice shall have been issued by the

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1 department prior to July 1, 1999, and shall have been
2 specially directed to the retailer by the department.

3 (3) The director shall prepare quarterly reports
4 summarizing each case in which abatement of tax,
5 interest, or penalties was made. However, the report
6 shall not disclose the identity of the taxpayer. An
7 abatement authorized by this paragraph to a retailer
8 shall not preclude the department from proceeding to
9 collect the liability from a purchaser.

10 Sec. 106. Section 422.45, subsection 56, Code
11 Supplement 1999, is amended to read as follows:

12 56. The gross receipts from charges paid to a
13 provider for access to on-line computer services. For
14 purposes of this subsection, "on-line computer
15 service" means a service that provides or enables
16 computer access by multiple users to the internet or
17 to other information made available through a computer
18 server.

19 Sec. 107. Section 422.52, subsection 6, paragraph
20 a, Code Supplement 1999, is amended to read as
21 follows:

22 a. If a purchaser fails to pay tax imposed by this
23 division to the retailer required to collect the tax,
24 then in addition to all of the rights, obligations,
25 and remedies provided, the tax is payable by the
26 purchaser directly to the department, and sections
27 422.50, 422.51, 422.52, 422.54, 422.55, 422.56,
28 422.57, 422.58, and 422.59 apply to the purchaser.
29 For failure, the retailer and purchaser are liable,
30 unless the circumstances described in section 421.60,
31 subsection 2, paragraph "m", or section 422.47,
32 subsection 3, paragraph "b" or "e", or subsection 4,
33 paragraph "b" or "d", are applicable."

34 13. Page 17, by inserting after line 29 the
35 following:

36 "Sec. _____. REPEAL -- EFFECTIVE DATE.

37 1. Section 554D.104, subsection 4, as enacted in
38 this Act, is amended by striking the subsection.

39 2. This section of this Act takes effect July 1,
40 2001.

41 Sec. _____. LEGISLATIVE INTENT. It is the intent of
42 the general assembly that the general assembly
43 consider the proposed uniform computer information
44 transactions Act, as adopted by the national
45 conference of commissioners on uniform state laws,
46 during the 2001 regular session."

47 14. Page 17, by inserting after line 29 the
48 following:

49 "Sec. _____. EFFECTIVE DATE. Sections 105, 106, and
50 107 of this Act, being deemed of immediate importance,

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1 take effect upon enactment."

2 15. Title page, line 3, by inserting after the
3 word "records" the following: ", relating to sales
4 and use tax exemption for access to electronic
5 commerce,".

6 16. By renumbering, relettering, or redesignating
7 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-9015 FILED APRIL 20, 2000

House Concurred

4/20/00

(P.1666)

Motion to R/c by Mallage + Van Fossen

WID

HOUSE FILE 2205

H-9043

1 Amend the Senate amendment, H-9015, to House File
2 2205, as amended, passed, and reprinted by the House,
3 as follows:

4 1. By striking page 4, line 12 through page 5,
5 line 33.

6 2. By striking page 5, line 47 through page 6,
7 line 5.

By VAN FOSSEN of Scott

H-9043 FILED APRIL 24, 2000

0/0 4/26/00

**HOUSE FILE 2205
FISCAL NOTE**

A fiscal note for House File 2205 as amended by S-5162 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 2205 as amended by S-5162 establishes requirements for electronic transactions and electronic records and provides penalties.

ASSUMPTIONS

1. Approximately \$18.0 million annually is currently appropriated to State agencies for technology including electronic transactions and electronic records.
2. State agencies are required to begin accepting electronic transactions by FY 2003.
3. Electronic transfers may result in cost savings, however, the savings are unknown.
4. Charge, conviction, and sentencing patterns will remain stable.
5. Costs associated with telecommunication, training, maintenance, and incidental programming are unknown.
6. Counties will determine the extent to which they will accept electronic records dealing with deeds, mortgages, deeds of trust, pledges, security interests, and liens.
7. The Bill is permissive in allowing a county to accept electronic records dealing with deeds, mortgages, deeds of trust, pledges, security interests, and liens. The cost per county to implement electronic transactions and electronic records will be between \$50,000 and \$100,000 for hardware, software, and connectivity.

CORRECTIONAL IMPACT

House File 2205 as amended by S-5162 is not expected to have any significant correctional impact.

FISCAL IMPACT

House File 2205 as amended by S-5162 is not expected to result in any significant cost increase in current General Fund technology expenditure levels. Currently, approximately \$18.0 million is allocated annually to State agencies for technology. It is anticipated that the current funding level, for technology, will meet the requirements of HF 2205 as amended by S-5162.

House File 2205 as amended by S-5162 is permissive to counties regarding implementation of electronic records and electronic transactions. For each county deciding to implement the provisions of House File 2205 as amended by S-5162, the one-time cost to implement electronic transactions and records would be between \$50,000 and \$100,000.

SOURCES

Information Technology Services
Department of General Services

(LSB 6483HH.2, CRS)

FILED APRIL 5, 2000

BY DENNIS PROUTY, FISCAL DIRECTOR

REVISED

**HOUSE FILE 2205
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SOURCES

Information Technology Services
Department of General Services

(LSB 6483HH.2, CRS)

FILED APRIL 6, 2000

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 2205

AN ACT
RELATING TO ELECTRONIC COMMERCE BY ESTABLISHING REQUIREMENTS
FOR ELECTRONIC TRANSACTIONS AND ELECTRONIC RECORDS, RELATING
TO SALES AND USE TAX EXEMPTION FOR ACCESS TO ELECTRONIC
COMMERCE, AND PROVIDING PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 554D.101 SHORT TITLE.

This chapter shall be known and may be cited as the
"Uniform Electronic Transactions Act".

Sec. 2. NEW SECTION. 554D.102 LEGISLATIVE INTENT.

It is the intent of the general assembly in enacting this
chapter to effectuate all of the following purposes:

1. Facilitate electronic communications by means of
reliable electronic records.
2. Facilitate and promote electronic commerce, by
eliminating barriers resulting from uncertainties over writing
and signature requirements, and promote the development of the
legal and business infrastructure necessary to implement
secure electronic commerce.
3. Facilitate electronic filing of documents with state
and local government agencies and promote efficient delivery
of government services by means of reliable electronic
records.
4. Minimize the incidence of forged electronic records,
intentional and unintentional alteration of records, and fraud
in electronic commerce.
5. Promote public confidence in the integrity,
reliability, and legality of electronic records and electronic
commerce.

Sec. 3. NEW SECTION. 554D.103 DEFINITIONS.

As used in this chapter, unless the context otherwise
requires:

1. "Agreement" means the bargain of the parties in fact,
as found in their language or inferred from other
circumstances and from rules, regulations, and procedures
given the effect of agreements under laws otherwise applicable
to a particular transaction.
2. "Automated transaction" means a transaction conducted
or performed, in whole or in part, by electronic means or
electronic records, in which the acts or records of one or
both parties are not reviewed by an individual in the ordinary
course of forming a contract, performing under an existing
contract, or fulfilling an obligation required by the
transaction.
3. "Computer program" means a set of statements or
instructions to be used directly or indirectly in an
information processing system in order to bring about a
certain result.
4. "Consumer" means an individual engaged in a transaction
for personal, family, or household purposes.
5. "Consumer transaction" means a transaction by an
individual for personal, family, or household use.
6. "Contract" means the total legal obligation resulting
from the parties' agreement as affected by this chapter and
other applicable law.
7. "Digital signature" means a type of electronic
signature consisting of a transformation of electronic record
using a message digest function that is encrypted with an
asymmetric cryptosystem using the signer's private key in a
manner providing that any person having the initial
untransformed electronic record, the encrypted transformation,
and the signer's public key may accurately determine all of
the following:
 - a. Whether the transformation was created using the
private key that corresponds to the signer's public key.

b. Whether the initial electronic record has been altered since the transformation was made.

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

9. "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.

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

11. "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.

12. "Governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.

13. "Information" means data, text, images, sounds, codes, computer programs, software, databases, or the like.

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

15. "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.

16. "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.

17. "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. "Security procedure" includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures, and includes digital signature technology.

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

19. "Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, consumer, commercial, or governmental affairs.

Sec. 4. NEW SECTION. 554D.104 SCOPE.

1. Except as provided in subsection 2, this chapter applies to electronic records and electronic signatures relating to a transaction.

2. a. (1) This chapter does not apply to the following:

(a) An application which would involve construction of a rule of law that is clearly inconsistent with the manifest intent of the body imposing the requirement or repugnant to the context of the same rule of law. However, the mere requirement that information be in writing, written, or printed shall not by itself be sufficient to establish an intent which is inconsistent with the requirement of this section.

(b) With respect to a consumer transaction, a record that serves as a unique and transferable physical expression of rights and obligations including, without limitation, negotiable instruments and other instruments of title where possession of the instrument is deemed to confer title.

(c) An electronic transaction initiated at a satellite terminal, as defined in section 527.2, or the processing and

routing of transaction data by a central routing unit or a data processing center, each as defined in section 527.2.

(2) Except as provided under paragraph "b", this chapter does not apply to a transaction to the extent it is governed by any of the following:

(a) A disclosure requirement associated with a consumer transaction, including, but not limited to, such disclosures required under chapter 13C, sections 321.69 and 321.71, chapters 516D, 523A, 523B, 523E, 523G, 533D, 537, 537B, 538A, 552, 552A, 555A, 557A, 557B, 558A, 562A, and 562B, section 714.16, and chapters 714B and 714D, or an administrative rule adopted pursuant to such sections or chapters.

(b) A rule of law governing the creation or execution of a will or trust, living will, a general, durable, or healthcare power of attorney, or a voluntary, involuntary, or standby guardianship or conservatorship.

(c) Chapter 554 other than articles 2 and 13 and sections 554.1107 and 554.1206.

b. This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under paragraph "a" to the extent it is governed by a law other than those specified in paragraph "a", subparagraph (2).

3. A transaction subject to this chapter is also subject to other applicable substantive law.

4. A choice of law provision, which is contained in a computer information agreement that governs a transaction subject to this chapter, that provides that the contract is to be interpreted pursuant to the laws of a state that has enacted the uniform computer information transactions Act, as proposed by the national conference of commissioners on uniform state laws, or any substantially similar law, is voidable and the agreement shall be interpreted pursuant to the laws of this state if the party against whom enforcement of the choice of law provision is sought is a resident of this

state or has its principal place of business located in this state. For purposes of this subsection, a "computer information agreement" means an agreement that would be governed by the uniform computer information transactions Act or substantially similar law as enacted in the state specified in the choice of laws provision if that state's law were applied to the agreement.

Sec. 5. NEW SECTION. 554D.105 PROSPECTIVE APPLICATION.

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

Sec. 6. NEW SECTION. 554D.106 USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES -- VARIATION BY AGREEMENT.

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

2. This chapter 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 who 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. Except as otherwise provided in this chapter, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this chapter of the words "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

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

Sec. 7. NEW SECTION. 554D.107 CONSTRUCTION AND APPLICATION.

This chapter shall be construed and applied as follows:

1. To facilitate electronic transactions consistent with other applicable law.
2. To be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices.
3. To effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting the uniform law.

Sec. 8. NEW SECTION. 554D.108 LEGAL RECOGNITION OF ELECTRONIC RECORDS, ELECTRONIC SIGNATURES, AND ELECTRONIC CONTRACTS.

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. 9. NEW SECTION. 554D.108A LEGAL RECOGNITION OF ELECTRONIC RECORDS AFFECTING INTERESTS IN REAL PROPERTY.

An electronic record that grants a legal or equitable interest in real property, including a deed, mortgage, deed of trust, pledge, security interest, or other lien or encumbrance, and any disclosure required under chapter 558A shall comply with all of the following:

1. Be created using a security procedure and signed by use of a digital signature.
2. Shall not be recorded or have effect against third parties until a duplicate paper original of the electronic record is executed in writing by the parties, acknowledged,

and recorded. The burden of proof that the duplicate paper original of the electronic record is identical to the original electronic record rests upon the party submitting the duplicate paper original.

3. Comply with all requirements of Iowa law regarding the recording of instruments and all other applicable state requirements.

Sec. 10. NEW SECTION. 554D.109 PROVISION OF INFORMATION IN WRITING -- PRESENTATION OF RECORDS.

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 other than this chapter 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 apply:

- a. The record must be posted or displayed in the manner specified in the other law.
 - b. Except as otherwise provided in subsection 4, paragraph "b", the record must be sent, communicated, or transmitted by the method specified in the other law.
 - c. The record must contain the information formatted in the manner specified in the other 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 shall not be varied by agreement, except as follows:

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

b. A requirement under a law other than this chapter to send, communicate, or transmit a record by delivery in person, by mail postage prepaid, or by courier may be varied by agreement to the extent permitted by the other law.

Sec. 11. NEW SECTION. 554D.110 ATTRIBUTION AND EFFECT OF ELECTRONIC RECORD AND ELECTRONIC SIGNATURE.

1. An electronic record or electronic signature is attributable to a person if it was 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 the parties' agreement, if any, and otherwise as provided by law.

3. In addition to subsections 1 and 2, in a consumer transaction, the attribution and effect of an electronic record and an electronic signature is determined by the substantive law governing the transaction.

Sec. 12. NEW SECTION. 554D.111 EFFECT OF CHANGE OR ERROR.

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

1. If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the

procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

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

a. The individual promptly notifies the other person of the error and that the individual does not intend to be bound by the electronic record received by the other person.

b. The individual takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record.

c. The individual has not used or received any benefit or value from the consideration, if any, received from the other person.

3. If subsection 1 or 2 does not apply, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

4. In a consumer transaction, any substantive law limiting a consumer's liability shall apply to an electronic transaction.

5. Subsections 2, 3, and 4 shall not be varied by agreement of the parties.

Sec. 13. NEW SECTION. 554D.112 NOTARIZATION AND ACKNOWLEDGMENT.

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. 14. NEW SECTION. 554D.113 RETENTION OF ELECTRONIC RECORDS -- ORIGINALS.

1. If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which 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 that subsection 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 like 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 from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

Sec. 15. NEW SECTION. 554D.114 ADMISSIBILITY IN EVIDENCE.

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

Sec. 16. NEW SECTION. 554D.115 AUTOMATED TRANSACTION.

In an automated transaction, the following rules apply:

1. 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.

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

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

Sec. 17. NEW SECTION. 554D.116 TIME AND PLACE OF SENDING AND RECEIPT.

1. Unless otherwise agreed between the sender and the recipient, an electronic record is sent when all of the following occur:

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

b. The electronic record is in a form capable of being processed by that information processing system.

c. The electronic record enters an information processing system outside the control of the sender or of a person who sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

2. Unless otherwise agreed between a sender and the recipient, an electronic record is received when both of the following occur:

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

b. The electronic record is in a form capable of being processed by that information processing system.

3. Subsection 2 applies even if the place the information processing system is located is different from the place the electronic record is deemed 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 deemed 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, both of the following apply:

a. If the sender or recipient has more than one place of business, the place of business of such 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, as the case may be.

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 or required by the other law, the requirements of this subsection shall not be varied by agreement.

Sec. 18. NEW SECTION. 554D.117 TRANSFERABLE RECORDS.

1. For purposes of this section, "transferable record" means an electronic record that satisfies both of the following:

a. The electronic record would be a note under chapter 554, article 3, or a document under chapter 554, article 7, if the electronic record were in writing.

b. The issuer of the electronic record expressly has agreed such electronic record 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 deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that satisfies all of the following:

a. A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in paragraphs "d", "e", and "f", unalterable.

b. The authoritative copy identifies the person asserting control as one of the following:

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

(2) 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 such person's 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. A 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 554.1201, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under chapter 554, including, if the applicable statutory requirements under section 554.3302, subsection 1, section 554.7501, or section 554.9308 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, respectively. Delivery, possession, and endorsement 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 chapter 554.

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.

Sec. 19. NEW SECTION. 554D.118 CREATION AND RETENTION OF ELECTRONIC RECORDS AND CONVERSION OF WRITTEN RECORDS BY GOVERNMENTAL AGENCIES.

A governmental agency of this state shall determine whether, and the extent to which, the governmental agency will create and retain electronic records and convert written records to electronic records.

Sec. 20. NEW SECTION. 554D.119 ACCEPTANCE AND DISTRIBUTION OF ELECTRONIC RECORDS BY GOVERNMENTAL AGENCIES.

1. Except as otherwise provided in section 554D.113, subsection 6, a governmental agency of this state other than a state executive branch agency, department, board, commission, authority, or institution, shall determine whether, and the extent to which, the governmental agency 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. Except as otherwise provided in section 554D.113, subsection 6, on or before July 1, 2003, a state executive branch agency, department, board, commission, authority, or institution, in consultation and cooperation with the information technology services division of the department of general services, shall 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 signatures. The department of management, upon the written request of a state executive branch agency, department, board, commission, authority, or institution and for good cause shown, may grant a waiver from the July 1, 2003, deadline established in this section to the state executive branch agency, department, board, commission, authority, or institution.

3. To the extent that a governmental agency of this state uses electronic records and electronic signatures under subsection 1 or 2, the office of the secretary of state and the division of information technology services of the department of general services, jointly, and in consultation with the office of the attorney general, giving due consideration to security, may specify by rule 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 information processing systems established for those purposes.

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

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 which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

4. Except as otherwise provided in section 554D.113, subsection 6, this chapter does not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures.

5. Notwithstanding this section, an institution governed under chapter 262 shall conform with national standards with respect to electronic records and electronic signatures, as such standards are developed.

Sec. 21. NEW SECTION. 554D.120 INTEROPERABILITY.

The standards adopted pursuant to section 554D.119 should encourage and promote consistency and interoperability with similar requirements adopted by another governmental agency and nongovernmental persons interacting with governmental agencies of this state. If appropriate, such standards may specify differing levels of standards from which a governmental agency of this state may choose in implementing the most appropriate standard for a particular application.

Sec. 22. NEW SECTION. 554D.121 FRAUDULENT PURPOSE -- PENALTY.

A person shall not knowingly create, publish, alter, or otherwise use an electronic record or an electronic signature for a fraudulent or other unlawful purpose. A person convicted of violating this section is guilty of a serious misdemeanor. A person convicted of a second or subsequent violation of this section is guilty of a class "D" felony.

Sec. 23. NEW SECTION. 554D.122 FALSE OR UNAUTHORIZED REQUEST -- PENALTY.

A person shall not knowingly misrepresent the person's identity or authorization to obtain a private key for use in a digital signature or in requesting suspension or revocation of a private key for use in a digital signature. "Private key" means the key of a key pair used to create a digital signature. A person convicted of violating this section is guilty of a serious misdemeanor. A person convicted of a second or subsequent violation of this section is guilty of a class "D" felony.

Sec. 24. Section 4.1, subsection 39, unnumbered paragraph 1, Code Supplement 1999, is amended to read as follows:

The words "written" and "in writing" may include any mode of representing words or letters in general use, and includes an electronic record as defined in section ~~554C.201~~ 554D.103. A signature, when required by law, must be made by the writing or markings of the person whose signature is required. "Signature" includes an electronic or digital signature as

defined in section ~~554E-20~~ 554D.103. If a person is unable due to a physical disability to make a written signature or mark, that person may substitute either of the following in lieu of a signature required by law:

Sec. 25. Section 22.7, subsection 38, Code Supplement 1999, is amended to read as follows:

38. a. Records containing information that would disclose, or might lead to the disclosure of, private keys used in a digital signature or other similar technologies as provided in chapter ~~554E~~ 554D.

b. Records which if disclosed might jeopardize the security of ~~an issued certificate or a certificate to be issued~~ an electronic transaction pursuant to chapter ~~554E~~ 554D.

Sec. 26. **NEW SECTION.** 75.14 ELECTRONIC BIDDING.

Notwithstanding contrary provisions of this chapter, a public body authorized to issue bonds, notes, or other obligations may elect to receive bids to purchase such bonds, notes, or other obligations by means of electronic, internet or wireless communication, a proprietary bidding procedure or system, or by facsimile transmission to a location deemed appropriate by the governing body, in each instance as may be approved by the governing body and provided for in the notice of sale. An electronic bid shall be submitted in substantial conformity with the requirements of chapter 554D and any rules adopted pursuant to that chapter with respect to the acceptance of electronic records by a governmental agency. Additionally, before approving the use of an electronic bidding procedure, the public body shall find and determine that the specific procedure to be used will provide reasonable security and maintain the integrity of the competitive bidding process, and facilitate the delivery of bids by interested parties under the circumstances of the particular sale.

Sec. 27. **ADVISORY COMMITTEE CREATED.** An advisory committee is created to study issues associated with the

electronic filing, recording, and indexing of instruments affecting real property pursuant to chapter 558, and the electronic use of real property disclosures required pursuant to chapter 558A. The advisory committee shall consider matters relating to the facilitation of electronic filing, recording, and indexing of instruments affecting real property. The advisory committee may consider matters including, but not limited to, access to electronic transactions, reliability and security, storage of records, training of public officials, conversion from a paper recording system to an electronic system, and other issues as are necessary and appropriate with respect to establishing a statewide uniform electronic filing system for real property transactions. The membership of the advisory committee shall be appointed by the legislative council and shall include, but is not limited to, representatives of the Iowa county recorders association, the Iowa state bar association, the Iowa state association of counties, Iowa title guaranty, the Iowa land title association, the Iowa bankers association, the Iowa independent bankers association, the Iowa association of realtors, the Iowa mortgage bankers association, and the office of the attorney general. The advisory committee shall provide an initial written report, including any recommendations, to the general assembly by no later than January 20, 2001. Such report shall include a recommendation for the initiation of a pilot program for electronic land transfers, including a date certain by which such program may be initiated and the cost of such pilot program. The advisory committee shall provide a written report to the general assembly in January of each year subsequent to the commencement of the pilot program including the results of the pilot program; any additional recommendations; a schedule for the implementation of a statewide uniform electronic land transfer system, if appropriate; and the costs associated with such implementation including any identifiable ongoing costs and costs for training associated with the system.

Sec. 28. Section 421.60, subsection 2, Code 1999, is amended by adding the following new paragraph:

NEW PARAGRAPH. m. (1) The director may abate unpaid state sales and use taxes and local sales and services taxes owed by a retailer in the event that the retailer failed to collect tax from the purchaser as a result of erroneous written advice issued by the department that was specially directed to the retailer by the department and the retailer is unable to collect the tax, interest, or penalties from the purchaser. Before the tax, interest, and penalties shall be abated on the basis of erroneous written advice, the retailer must present a copy of the retailer's request for written advice to the department and a copy of the department's reply. The department shall not maintain a position against the retailer that is inconsistent with the erroneous written advice, except on the basis of subsequent written advice sent by the department to that retailer, or a change in state or federal law, a reported court case to the contrary, a contrary rule adopted by the department, a change in material facts or circumstances relating to the retailer, or the retailer's misrepresentation or incomplete or inadequate representation of material facts and circumstances in requesting the written advice.

(2) The director shall abate the unpaid state sales and use taxes and any local sales and services taxes owed by a retailer where the retailer failed to collect the tax from the purchaser on the charges paid for access to on-line computer services as a result of erroneous written advice issued by the department regarding the taxability of charges paid for access to on-line computer services. To qualify for the abatement under this subparagraph, the erroneous written advice shall have been issued by the department prior to July 1, 1999, and shall have been specially directed to the retailer by the department.

(3) The director shall prepare quarterly reports summarizing each case in which abatement of tax, interest, or penalties was made. However, the report shall not disclose the identity of the taxpayer. An abatement authorized by this paragraph to a retailer shall not preclude the department from proceeding to collect the liability from a purchaser.

Sec. 29. Section 422.45, subsection 56, Code Supplement 1999, is amended to read as follows:

56. The gross receipts from charges paid to a provider for access to on-line computer services. For purposes of this subsection, "on-line computer service" means a service that provides or enables computer access by multiple users to the internet or to other information made available through a computer server.

Sec. 30. Section 422.52, subsection 6, paragraph a, Code Supplement 1999, is amended to read as follows:

a. If a purchaser fails to pay tax imposed by this division to the retailer required to collect the tax, then in addition to all of the rights, obligations, and remedies provided, the tax is payable by the purchaser directly to the department, and sections 422.50, 422.51, 422.52, 422.54, 422.55, 422.56, 422.57, 422.58, and 422.59 apply to the purchaser. For failure, the retailer and purchaser are liable, unless the circumstances described in section 421.60, subsection 2, paragraph "m", or section 422.47, subsection 3, paragraph "b" or "e", or subsection 4, paragraph "b" or "d", are applicable.

Sec. 31. Chapter 554C, Code Supplement 1999, is repealed.

Sec. 32. REPEAL -- EFFECTIVE DATE.

1. Section 554D.104, subsection 4, as enacted in this Act, is amended by striking the subsection.

2. This section of this Act takes effect July 1, 2001.

Sec. 33. LEGISLATIVE INTENT. It is the intent of the general assembly that the general assembly consider the proposed uniform computer information transactions Act, as

adopted by the national conference of commissioners on uniform state laws, during the 2001 regular session.

Sec. 34. EFFECTIVE DATE. Sections 28, 29, and 30 of this Act, being deemed of immediate importance, take effect upon enactment.

BRENT SIEGRIST
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2205, Seventy-eighth General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved 5/15, 2000

THOMAS J. VILSACK
Governor