

Enrolled House Bill 2112

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CHAPTER

AN ACT

Relating to electronic transactions; creating new provisions; amending ORS 79.4016, 79.6025, 165.002, 192.825, 192.830, 192.835, 192.850, 194.582 and 709.335 and section 2, chapter 851, Oregon Laws 1999; repealing ORS 192.840 and 192.855 and section 1, chapter 122, Oregon Laws 2001 (Enrolled House Bill 2040); and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Short Title. Sections 1 to 21 of this 2001 Act may be cited as the Uniform Electronic Transactions Act.

SECTION 2. Definitions. As used in sections 1 to 21 of this 2001 Act:

(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 in 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) "Contract" means the total legal obligation resulting from the parties' agreement under sections 1 to 21 of this 2001 Act and other applicable law.

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

(6) "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.

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

(8) "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.

(9) "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.

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

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

(12) "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.

(13) "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.

(14) "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.

(15) "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 an Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

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

SECTION 3. Scope. (1) Except as otherwise provided in subsection (2) of this section, sections 1 to 21 of this 2001 Act apply to electronic records and electronic signatures relating to a transaction.

(2) Sections 1 to 21 of this 2001 Act do not apply to a transaction to the extent it is governed by:

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

(b) The Uniform Commercial Code other than ORS 71.1070, 71.2060 and 72.1010 to 72.7250 and ORS chapter 72A.

(3) Sections 1 to 21 of this 2001 Act apply to an electronic record or electronic signature otherwise excluded from the application of sections 1 to 21 of this 2001 Act under subsection (2) of this section to the extent it is governed by a law other than those specified in subsection (2) of this section.

(4) A transaction subject to sections 1 to 21 of this 2001 Act is also subject to other applicable substantive law.

SECTION 4. Prospective Application. Sections 1 to 21 of this 2001 Act apply to any electronic record or electronic signature created, generated, sent, communicated, received or stored on or after the effective date of this 2001 Act.

SECTION 5. Use of Electronic Records and Electronic Signatures; Variation by Agreement. (1) Sections 1 to 21 of this 2001 Act do 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) Sections 1 to 21 of this 2001 Act apply only to transactions between parties, each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

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

(4) Except as otherwise provided in sections 1 to 21 of this 2001 Act, the effect of any provision of sections 1 to 21 of this 2001 Act may be varied by agreement. The presence in certain provisions of sections 1 to 21 of this 2001 Act of the words "unless otherwise

agreed,” or words of similar import, does not imply that the effect of other provisions of sections 1 to 21 of this 2001 Act may not be varied by agreement.

(5) Whether an electronic record or electronic signature has legal consequences is determined by sections 1 to 21 of this 2001 Act and other applicable law.

SECTION 6. Construction and Application. Sections 1 to 21 of this 2001 Act must be construed and applied:

(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; and

(3) To effectuate the general purpose of sections 1 to 21 of this 2001 Act to make uniform the law with respect to the subject of sections 1 to 21 of this 2001 Act among states enacting it.

SECTION 7. Legal Recognition of Electronic Records, Electronic Signatures and Electronic Contracts. (1) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(2) A contract may 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.

SECTION 8. 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, as the case may be, 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 sections 1 to 21 of this 2001 Act requires a record (i) to be posted or displayed in a certain manner, (ii) to be sent, communicated or transmitted by a specified method, or (iii) to contain information that is formatted in a certain manner, the following rules 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)(b) of this section, 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 may not be varied by agreement, but:

(a) To the extent a law other than sections 1 to 21 of this 2001 Act requires information to be provided, sent or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection (1) of this section that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(b) A requirement under a law other than sections 1 to 21 of this 2001 Act to send, communicate or transmit a record by first-class mail, postage prepaid may be varied by agreement to the extent permitted by the other law.

SECTION 9. 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) of this section 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.

SECTION 10. 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, the individual:

(a) Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(b) 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; and

(c) Has not used or received any benefit or value from the consideration, if any, received from the other person.

(3) If neither subsection (1) nor (2) of this section applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

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

SECTION 11. 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.

SECTION 12. 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 that:

(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; and

(b) Remains accessible for later reference.

(2) A requirement to retain a record in accordance with subsection (1) of this section 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) of this section by using the services of another person if the requirements of subsection (1) of this section 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) of this section.

(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) of this section.

(6) A record retained as an electronic record in accordance with subsection (1) of this section 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 2001 Act specifically prohibits the use of an electronic record for the specified purpose.

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

SECTION 13. Admissibility in Evidence. In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

SECTION 14. 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 that the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

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

SECTION 15. Time and Place of Sending and Receipt. (1) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(a) 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) Is in a form capable of being processed by that system; and

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

(2) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(a) It 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; and

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

(3) Subsection (2) of this section 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) of this section.

(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, the following rules apply:

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

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

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

(6) Receipt of an electronic acknowledgment from an information processing system described in subsection (2) of this section 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) of this section, or purportedly received under subsection (2) of this section, was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

SECTION 16. Transferable Records. (1) As used in this section, “transferable record” means an electronic record that:

(a) Would be a note under ORS chapter 73 or a document under ORS chapter 77 if the electronic record were in writing; and

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

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

(3) A system satisfies subsection (2) of this section, 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:

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

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

(A) The person to which the transferable record was issued; or

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

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

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

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

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

(4) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in ORS 71.2010, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under ORS 73.0302 (1), 77.5010 or 79.3080 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 indorsement are not required to obtain or exercise any of the rights under this subsection.

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

(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.

SECTION 17. Creation and Retention of Electronic Records and Conversion of Written Records by Governmental Agencies. Each governmental agency of this state shall determine whether, and the extent to which, it will create and retain electronic records and convert written records to electronic records.

SECTION 18. Acceptance and Distribution of Electronic Records by Governmental Agencies. (1) Except as otherwise provided in section 12 (6) of this 2001 Act, each governmental agency of this state shall determine whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and oth-

erwise create, generate, communicate, store, process, use and rely upon electronic records and electronic signatures.

(2) To the extent that a governmental agency uses electronic records and electronic signatures under subsection (1) of this section, the governmental agency, giving due consideration to security, may specify:

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

(b) If 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; and

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

(3) Except as otherwise provided in section 12 (6) of this 2001 Act, sections 1 to 21 of this 2001 Act do not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures.

SECTION 19. Interoperability. A governmental agency in this state that adopts standards pursuant to section 18 of this 2001 Act may encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this state and other states and the federal government and nongovernmental persons interacting with governmental agencies of this state. If appropriate, those standards may specify differing levels of standards from which governmental agencies of this state may choose in implementing the most appropriate standard for a particular application.

SECTION 20. Severability Clause. If any provision of sections 1 to 21 of this 2001 Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions of sections 1 to 21 of this 2001 Act that can be given effect without the invalid provision or application, and to this end the provisions of sections 1 to 21 of this 2001 Act are severable.

SECTION 21. Sections 1 to 21 of this 2001 Act constitute the adoption of the Uniform Electronic Transactions Act as approved and recommended for enactment by the National Conference of Commissioners on Uniform State Laws in 1999 and supersede the provisions of section 101 of the federal Electronic Signatures in Global and National Commerce Act (P.L. 106-229) in accordance with section 102(a) of the federal Act.

SECTION 22. For purposes of sections 17, 18 and 19 of this 2001 Act, the Oregon Department of Administrative Services shall make determinations and adopt standards for state agencies. As used in this section, "state agency" includes every state officer and board, commission, department, institution, branch and agency of the state government whose costs are paid wholly or in part from funds held in the State Treasury, except the Legislative Assembly, the courts, the district attorney for each county and their officers and committees.

SECTION 23. Nothing in section 17 of this 2001 Act limits or modifies the powers and duties of the State Archivist under ORS 192.005 to 192.170 and 357.805 to 357.895.

SECTION 24. (1) As used in this section:

(a) "Consumer" means:

(A) An individual who obtains, through a transaction, products or services that are used primarily for personal, family or household purposes; and

(B) The legal representative of the individual.

(b) "Electronic record," "information" and "transaction" have the meanings given those terms in section 2 of this 2001 Act.

(2) Notwithstanding sections 1 to 21 of this 2001 Act, if a statute, rule or other rule of law requires that information relating to a transaction be provided or made available to a consumer in writing, the use of an electronic record to provide or make available, whichever is required, the information satisfies the requirement that the information be in writing if:

(a) The consumer has affirmatively consented to the use of the electronic record and has not withdrawn the consent;

(b) The consumer, before consenting, is provided with a clear and conspicuous statement:

(A) Informing the consumer of:

(i) Any right or option of the consumer to have the record provided or made available on paper or in other nonelectronic form; and

(ii) The right of the consumer to withdraw the consent to have the record provided or made available in an electronic form and of any conditions, consequences, which may include termination of the parties' relationship, or fees in the event of the withdrawal of the consent;

(B) Informing the consumer of whether the consent applies:

(i) Only to the particular transaction that gave rise to the obligation to provide or make available the record; or

(ii) To identified categories of records that may be provided or made available during the course of the parties' relationship;

(C) Describing the procedures the consumer must use to withdraw consent as provided in subparagraph (A) of this paragraph and to update information needed to contact the consumer electronically; and

(D) Informing the consumer:

(i) How, after the consent, the consumer may, upon request, obtain a paper copy of an electronic record; and

(ii) Whether any fee will be charged for the paper copy of an electronic record;

(c) The consumer:

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

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

(d) After the consent of a consumer in accordance with paragraph (a) of this subsection, if a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent, the person providing the record:

(A) Provides the consumer with a statement of:

(i) The revised hardware and software requirements for access to and retention of the electronic records; and

(ii) The consumer's right to withdraw consent without imposition of any fees for the withdrawal and without the imposition of any condition or consequence that was not disclosed under paragraph (b)(A) of this subsection; and

(B) Again complies with paragraph (c) of this subsection.

(3)(a) Nothing in sections 1 to 21 of this 2001 Act affects the content or timing of any disclosure or other record required to be provided or made available to any consumer under any statute, rule or other rule of law.

(b) If a law enacted before October 1, 2000, expressly requires a record to be provided or made available by a specified method that requires verification or acknowledgment of receipt, the record may be provided or made available electronically only if the method used provides verification or acknowledgment of receipt, whichever is required.

(4) The legal effectiveness, validity or enforceability of any contract executed by a consumer may not be denied solely because of the failure of obtain electronic consent or confirmation of consent by that consumer in accordance with subsection (2)(c)(B) of this section.

(5) Withdrawal of consent by a consumer may not affect the legal effectiveness, validity or enforceability of electronic records provided or made available to that consumer in accordance with subsection (2) of this section before implementation of the consumer's withdrawal of consent. A consumer's withdrawal of consent shall be effective within a reasonable period of time after receipt of the withdrawal by the provider of the record. Failure to comply with subsection (2)(d) of this section may, at the election of the consumer, be treated as a withdrawal of consent for purposes of this subsection.

(6) If a statute, rule or other rule of law requires that information relating to a transaction be provided or made available to a consumer in writing, an oral communication or a recording of an oral communication may not qualify as an electronic record for purposes of this section except as otherwise provided under applicable law.

(7) Subsections (2) to (6) of this section do not apply to any records that are provided or made available to a consumer who has consented before the effective date of this 2001 Act to receive such records in electronic form as permitted by any statute, rule or other rule of law.

(8) Notwithstanding sections 1 to 21 of this 2001 Act, if a statute, rule or other rule of law requires that a contract or other record relating to a transaction be provided or made available to a consumer in writing, the legal effectiveness, validity or enforceability of an electronic record of the contract or other record may be denied if the electronic record is not in a form that is capable of being retained and accurately reproduced for later reference by all parties or persons who are entitled to retain the contract or other record.

(9) Nothing in sections 1 to 21 of this 2001 Act authorizes using an electronic record to provide or deliver any notice of:

(a) The cancellation or termination of utility services, including water, heat and power;

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

(c) The cancellation or termination of health insurance or benefits or life insurance benefits, excluding annuities; or

(d) Recall of a product, or material failure of a product, that risks endangering health or safety.

(10) Sections 1 to 21 of this 2001 Act do not apply to any document required to accompany any transportation or handling of hazardous materials, pesticides or other toxic or dangerous materials.

SECTION 25. ORS 79.4016 is amended to read:

79.4016. (1) A financing statement, continuation statement, statement of assignment, statement of partial release, termination statement or other statement filed with the Secretary of State under ORS 79.1010 to 79.5070 may be filed in an electronic format.

(2) Statements filed electronically under this section shall conform to the technical specifications for electronic filing as prescribed by the Secretary of State by rule.

(3) Signatures required on any statement filed in an electronic format shall be supplied as electronic signatures as [described in ORS 192.825 to 192.855] **defined in section 2 of this 2001 Act.**

SECTION 25a. If Senate Bill 171 becomes law, section 25 of this 2001 Act (amending ORS 79.4016) is repealed.

SECTION 26. ORS 79.6025 is amended to read:

79.6025. (1) An effective financing statement, amendment to an effective financing statement, continuation statement, statement that an effective financing statement has lapsed or other state-

ment filed with the Secretary of State under ORS 79.6020 to 79.7010 may be filed in an electronic format.

(2) Statements filed electronically under this section shall conform to the technical specifications for electronic filing as prescribed by the Secretary of State by rule.

(3) Signatures required on any statement filed in an electronic format shall be supplied as electronic signatures as [described in ORS 192.825 to 192.855] **defined in section 2 of this 2001 Act.**

SECTION 27. ORS 165.002 is amended to read:

165.002. As used in ORS 165.002 to 165.022, and 165.032 to 165.070, unless the context requires otherwise:

(1) "Written instrument" means any paper, document, instrument, [or] article **or electronic record** containing written or printed matter or the equivalent thereof, whether complete or incomplete, used for the purpose of reciting, embodying, conveying or recording information or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

(2) "Complete written instrument" means one which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof.

(3) "Incomplete written instrument" means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.

(4) To "falsely make" a written instrument means to make or draw a complete written instrument in its entirety, or an incomplete written instrument which purports to be an authentic creation of its ostensible maker, but which is not, either because the ostensible maker is fictitious or because, if real, the ostensible maker did not authorize the making or drawing thereof.

(5) To "falsely complete" a written instrument means to transform, by adding, inserting or changing matter, an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by the ostensible maker.

(6) To "falsely alter" a written instrument means to change, without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that the instrument so altered falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by the ostensible maker.

(7) To "utter" means to issue, deliver, publish, circulate, disseminate, transfer or tender a written instrument or other object to another.

(8) "Forged instrument" means a written instrument which has been falsely made, completed or altered.

(9) "Electronic record" has the meaning given that term in section 2 of this 2001 Act.

(10) "Signature" includes, but is not limited to, an electronic signature, as defined in section 2 of this 2001 Act.

SECTION 28. ORS 165.027 is added to and made a part of ORS 165.002 to 165.022.

SECTION 29. ORS 194.582 is amended to read:

194.582. (1) As used in this section, "electronic signature" has the meaning given that term in [ORS 192.835] **section 2 of this 2001 Act.**

(2) Notwithstanding any provision of ORS 194.005 to 194.200 or 194.505 to 194.595:

(a) A person may use an electronic signature in the manner prescribed by the Secretary of State by rule whenever the signature of the person is required on any electronic document presented for notarization;

(b) In performing any notarial act involving an electronic signature of a person described in paragraph (a) of this subsection, a notarial officer, in the manner prescribed by the Secretary of State by rule, shall accept the electronic signature of the person; and

(c) In addition to the requirements of ORS 194.505 to 194.595, the notarial certificate of an act signed with an electronic signature shall be attached electronically by the notarial officer in the manner prescribed by the Secretary of State by rule and shall contain the phrase “signed by electronic signature” or words to that effect.

(3) The Secretary of State shall adopt rules necessary to implement this section.

SECTION 30. Section 2, chapter 851, Oregon Laws 1999, is amended to read:

Sec. 2. (1) Notwithstanding any other provision of law, if a city authorized to do so by section 1 [of this 1999 Act], **chapter 851, Oregon Laws 1999**, chooses to operate a camera demonstration project that complies with [this 1999 Act] **chapter 851, Oregon Laws 1999**, a citation for violation of ORS 811.265 may be issued on the basis of photographs from a camera taken without the presence of a police officer if the following conditions are met:

(a) Signs are posted, so far as is practicable, on all major routes entering the jurisdiction indicating that compliance with traffic control devices is enforced through cameras.

(b) Signs are posted near each traffic control device at which a camera is installed, indicating that a camera may be in operation at that device.

(c) The citation is mailed to the registered owner of the vehicle, or to the driver if identifiable, within 10 business days of the alleged violation.

(d) The registered owner is given 30 days from the date the citation is mailed to respond to the citation.

(e) A police officer who has reviewed the photograph signs the citation. The citation may be prepared on a digital medium, and the signature may be electronic in accordance with the provisions of [ORS 192.825 to 192.855] **sections 1 to 21 of this 2001 Act**.

(2) If the person named as the registered owner of a vehicle in the current records of the Department of Transportation fails to respond to a citation issued under subsection (1) of this section, the provisions of ORS 153.555 shall apply, and a judgment may be entered for failure to appear after notice has been given that the judgment will be entered.

(3) A rebuttable presumption exists that the registered owner of the vehicle was the driver of the vehicle when the citation was issued and delivered as provided in this section.

(4) A person issued a citation under subsection (1) of this section may respond to the citation by submitting a certificate of innocence or a certificate of nonliability under subsection (6) of this section or any other response allowed by law.

(5) A citation for violation of ORS 811.265 issued on the basis of photographs from a camera installed as provided in [this 1999 Act] **chapter 851, Oregon Laws 1999**, may be delivered by mail or otherwise to the registered owner of the vehicle or to the driver if the driver is identifiable from the photograph.

(6)(a) If a registered owner of a vehicle responds to a citation issued under subsection (1) of this section by submitting, within 30 days from the mailing of the citation, a certificate of innocence swearing or affirming that the owner was not the driver of the vehicle and a photocopy of the owner's driver license, the citation shall be dismissed. The citation may be reissued if the jurisdiction verifies that the registered owner appears to have been the driver at the time of the violation.

(b) If a business or public agency responds to a citation issued under subsection (1) of this section by submitting, within 30 days from the mailing of the citation, a certificate of nonliability stating that at the time of the alleged violation the vehicle was in the custody and control of an employee or was in the custody and control of a renter or lessee under the terms of a motor vehicle rental agreement or lease, and if the business or public agency provides the driver license number, name and address of the employee, renter or lessee, the citation shall be dismissed with respect to the business or public agency. The citation may then be reissued and delivered by mail or otherwise to the employee, renter or lessee identified in the certificate of nonliability.

(7) The penalties for and all consequences of a violation of ORS 811.265 initiated by the use of a camera installed as provided in [this 1999 Act] **chapter 851, Oregon Laws 1999**, are the same as for a violation initiated by any other means.

(8) A registered owner or an employee, renter or lessee against whom a judgment for failure to appear is entered may move the court to relieve the owner or the employee, renter or lessee from the judgment as provided in ORS 153.555 if the failure to appear was due to mistake, inadvertence, surprise or excusable neglect.

SECTION 30a. If House Bill 2380 becomes law, section 30 of this 2001 Act (amending section 2, chapter 851, Oregon Laws 1999) is repealed and section 2, chapter 851, Oregon Laws 1999, as amended by section 2, chapter _____, Oregon Laws 2001 (Enrolled House Bill 2380), is amended to read:

Sec. 2. (1) Notwithstanding any other provision of law, if a city authorized to do so by section 1, chapter 851, Oregon Laws 1999, chooses to operate a camera that complies with this section and section 1, chapter 851, Oregon Laws 1999, a citation for violation of ORS 811.265 may be issued on the basis of photographs from a camera taken without the presence of a police officer if the following conditions are met:

(a) Signs are posted, so far as is practicable, on all major routes entering the jurisdiction indicating that compliance with traffic control devices is enforced through cameras.

(b) Signs are posted near each traffic control device at which a camera is installed, indicating that a camera may be in operation at that device.

(c) The citation is mailed to the registered owner of the vehicle, or to the driver if identifiable, within 10 business days of the alleged violation.

(d) The registered owner is given 30 days from the date the citation is mailed to respond to the citation.

(e) A police officer who has reviewed the photograph signs the citation. The citation may be prepared on a digital medium, and the signature may be electronic in accordance with the provisions of [ORS 192.825 to 192.855] **sections 1 to 21 of this 2001 Act.**

(2) If the person named as the registered owner of a vehicle in the current records of the Department of Transportation fails to respond to a citation issued under subsection (1) of this section, a default judgment under ORS 153.102 may be entered for failure to appear after notice has been given that the judgment will be entered.

(3) A rebuttable presumption exists that the registered owner of the vehicle was the driver of the vehicle when the citation was issued and delivered as provided in this section.

(4) A person issued a citation under subsection (1) of this section may respond to the citation by submitting a certificate of innocence or a certificate of nonliability under subsection (6) of this section or any other response allowed by law.

(5) A citation for violation of ORS 811.265 issued on the basis of photographs from a camera installed as provided in this section and section 1, chapter 851, Oregon Laws 1999, may be delivered by mail or otherwise to the registered owner of the vehicle or to the driver if the driver is identifiable from the photograph.

(6)(a) If a registered owner of a vehicle responds to a citation issued under subsection (1) of this section by submitting, within 30 days from the mailing of the citation, a certificate of innocence swearing or affirming that the owner was not the driver of the vehicle and a photocopy of the owner's driver license, the citation shall be dismissed. The citation may be reissued if the jurisdiction verifies that the registered owner appears to have been the driver at the time of the violation.

(b) If a business or public agency responds to a citation issued under subsection (1) of this section by submitting, within 30 days from the mailing of the citation, a certificate of nonliability stating that at the time of the alleged violation the vehicle was in the custody and control of an employee or was in the custody and control of a renter or lessee under the terms of a motor vehicle rental agreement or lease, and if the business or public agency provides the driver license number, name and address of the employee, renter or lessee, the citation shall be dismissed with respect to the business or public agency. The citation may then be reissued and delivered by mail or otherwise to the employee, renter or lessee identified in the certificate of nonliability.

(7) The penalties for and all consequences of a violation of ORS 811.265 initiated by the use of a camera installed as provided in this section and section 1, chapter 851, Oregon Laws 1999, are the same as for a violation initiated by any other means.

(8) A registered owner or an employee, renter or lessee against whom a judgment for failure to appear is entered may move the court to relieve the owner or the employee, renter or lessee from the judgment as provided in ORS 153.105 if the failure to appear was due to mistake, inadvertence, surprise or excusable neglect.

SECTION 30b. The repeal of section 30 of this 2001 Act (amending section 2, chapter 851, Oregon Laws 1999) and the amendments to section 2, chapter 851, Oregon Laws 1999, by section 30a of this 2001 Act become operative on the effective date of chapter _____, Oregon Laws 2001 (Enrolled House Bill 2380).

SECTION 31. ORS 192.825 is amended to read:

192.825. ORS 192.825 to 192.855 shall be known as the *[Electronic]* **Digital** Signature Act.

SECTION 32. ORS 192.830 is amended to read:

192.830. It is the intent of the Legislative Assembly that ORS 192.825 to 192.855:

(1) Facilitate economic development and efficient delivery of government services by means of reliable electronic messages.

(2) Enhance public confidence in the use of *[electronic]* **digital** signatures.

(3) Minimize the incidence of forged *[electronic]* **digital** signatures and fraud in electronic commerce.

(4) Foster the development of electronic commerce through the use of *[electronic]* **digital** signatures to lend authenticity and integrity to writings in any electronic medium.

(5) Ensure that proper management oversight and accountability are maintained for agency-conducted electronic commerce.

SECTION 33. ORS 192.835 is amended to read:

192.835. As used in ORS 192.825 to 192.855:

(1) "Asymmetric cryptosystem" means an algorithm or series of algorithms that provide a secure key pair.

(2) "Certificate" means a computer-based record that:

(a) Identifies the certification authority;

(b) Identifies the subscriber;

(c) Contains the subscriber's public key;

(d) Is digitally signed by the certification authority; and

(e) Specifies its operational period.

(3) "Certification authority" means a person who issues and authenticates a certificate.

(4) "Digital signature" means a type of electronic signature that transforms a message using an asymmetric cryptosystem such that a person having the initial message and the signer's public key can accurately determine:

(a) Whether the transformation was created using the private key that corresponds to the signer's public key; and

(b) Whether the initial message has been altered since the transformation was made.

(5) "Electronic signature" *[means any letters, characters or symbols, manifested by electronic or similar means, executed or adopted by a party with an intent to authenticate a writing. A writing is electronically signed if an electronic signature is logically associated with such writing]* **has the meaning given that term in section 2 of this 2001 Act.**

(6) "Key pair" means a private key and its corresponding public key in an asymmetric cryptosystem, under which the public key verifies a digital signature the private key creates.

(7) "Repository" means a system for storing and retrieving certificates and information about certificates.

[(8) "Writing" includes handwriting, printing, typewriting and all other methods and means of forming letters and characters upon paper, stone, wood or other materials. "Writing" also includes information that is created or stored in any electronic medium and is retrievable in perceivable form.]

SECTION 34. ORS 192.850 is amended to read:

192.850. The Oregon Department of Administrative Services shall [*be responsible for adopting and implementing*] **adopt rules for the use of digital signatures by state agencies. The rules shall include** control processes and procedures to ensure adequate integrity, security and confidentiality of **state agency** business transactions conducted using electronic commerce, and to ensure that those transactions can be audited as may be necessary for the normal conduct of business. **As used in this section, "state agency" has the meaning given that term in section 22 of this 2001 Act.**

SECTION 34a. Section 1, chapter 122, Oregon Laws 2001 (Enrolled House Bill 2040) (amending ORS 192.850), is repealed.

SECTION 35. ORS 709.335 is amended to read:

709.335. As provided in ORS 192.825 to 192.855, a trust company may conduct transactions using [*electronic and*] digital signatures, may be a certification authority and may issue certificates for the purpose of verifying digital signatures.

SECTION 36. ORS 192.840 and 192.855 are repealed.

SECTION 37. The section captions used in this 2001 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2001 Act.

SECTION 38. This 2001 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2001 Act takes effect on its passage.

Passed by House May 3, 2001

Received by Governor:

Repassed by House June 6, 2001

.....M,....., 2001

Approved:

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Chief Clerk of House

.....M,....., 2001

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Speaker of House

.....
Governor

Passed by Senate June 4, 2001

Filed in Office of Secretary of State:

.....M,....., 2001

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President of Senate

.....
Secretary of State