

I Mina'Trentai Tres Na Liheslaturan Received
Bill Log Sheet

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES
38-33 (LS)	Michael F.Q. San Nicolas	AN ACT TOMODERNIZE THE BUSINESS ENVIRONMENT BY ADOPTING THE UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA);BY ADDING A NEWCHAPTER 91 TO DIVISION3,TITLE 18, GUAM CODE ANNOTATED.	02/19/15 2:15 p.m.	02/19/15	Committee on Finance & Taxation, General Government Operations and Youth Development			



COMMITTEE ON RULES

I Mina'trentai Tres na Liheslaturan Guåhan • The 33rd Guam Legislature

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February 19, 2015

MEMORANDUM

To: **Rennae Meno**
Clerk of the Legislature

Attorney Therese M. Terlaje
Legislative Legal Counsel

From: **Senator Rory J. Respicio** 
Chairperson, Committee on Rules

Subject: Referral of Bill No. 38-33(LS)

As the Chairperson of the Committee on Rules, I am forwarding my referral of **Bill No. 38-33(LS)**.

Please ensure that the subject bill is referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Tres Na Liheslaturan Guåhan*.

Should you have any questions, please feel free to contact our office at 472-7679.


Si Yu'os Ma'åse!

Attachment

I MINA'TRENTAI TRES NA LIHESLATURAN GUAHÁN
2015 (FIRST) Regular Session

Bill No. 39-33 (LS)

Introduced by:

Michael F.Q. San Nicolas 

AN ACT TO MODERNIZE THE BUSINESS ENVIRONMENT BY ADOPTING THE UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA); BY ADDING A NEW CHAPTER 91 TO DIVISION 3, TITLE 18, GUAM CODE ANNOTATED.

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that the Uniform Electronic Transactions Act (UETA), promulgated by the
4 National Conference of Commissioners on Uniform State Laws, has been adopted
5 by forty-seven states, the District of Columbia, Puerto Rico, and the Virgin Islands.
6 UETA was developed by the National Conference of Commissioners on Uniform
7 State Laws to provide a legal framework for the use of electronic signatures and
8 records in government and business transactions. UETA makes electronic records
9 and signatures as legal as paper and manually signed signatures.

10 *I Liheslatura* further finds that with the expanded use of information
11 technology and, in particular, the internet, in conducting routine business, lacking
12 such basic legal infrastructure hinders the development of technological services
13 which would routinely use electronic signatures and add costs unnecessarily to
14 local businesses which seek to comply with Guam's laws in running their business.

15 It is therefore the intent of *I Liheslaturan Guåhan* that the Uniform
16 Electronic Transactions Act be enacted, providing a legal framework for the use of

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1 electronic signatures and records in Guam by adding a new Chapter 91 to Division
2 3, Title 18 of the Guam Code Annotated.

3 **Section 2. Uniform Electronic Transactions Act.** A *new* Chapter 91 is
4 hereby *added* to Division 3, Title 18, Guam Code Annotated, to read:

5 **“CHAPTER 91**

6 **UNIFORM ELECTRONIC TRANSACTIONS ACT**

7
8 § 91101. Short Title.

9 § 91102. Definitions.

10 § 91103. Scope.

11 § 91104. Prospective Application.

12 § 91105. Use of Electronic Records and Electronic Signatures; Variation by
13 Agreement.

14 § 91106. Construction and Application.

15 § 91107. Legal Recognition of Electronic Records, Electronic Signatures, and
16 Electronic Contracts.

17 § 91108. Provision of Information in Writing; Presentation of Records.

18 § 91109. Attribution and Effect of Electronic Record and Electronic
19 Signature.

20 § 91110. Effect of Change or Error.

21 § 91111. Notarization and Acknowledgment.

22 § 91112. Retention of Electronic Records; originals.

23 § 91113. Admissibility in Evidence.

24 § 91114. Automated Transaction.

25 § 91115. Time and Place of Sending and Receipt.

26 § 91116. Transferable Records.

1 § 91117. Creation and Retention of Electronic Records and Conversion of
2 Written Records by Governmental Agencies.

3 § 91118. Acceptance and Distribution of Electronic Records by
4 Governmental Agencies.

5 § 91119. Interoperability.

6 § 91120. Severability Clause.

7
8 **§ 91101. Short Title.**

9 This Division *shall* be cited as the ‘Uniform Electronic Transactions
10 Act’.

11 **§ 91102. Definitions.**

12 In this Division:

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

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

22 (3) ‘Computer program’ means a set of statements or instructions to
23 be used directly or indirectly in an information processing system in order to
24 bring about a certain result.

25 (4) ‘Contract’ means the total legal obligation resulting from the
26 parties’ agreement as affected by this Division and other applicable law.

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

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

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

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

12 (9) 'Governmental agency' means an executive, legislative, or judicial
13 agency, department, board, commission, authority, institution, or
14 instrumentality of the federal government or of a State or of a county,
15 municipality, or other political subdivision of a State.

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

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

21 (12) 'Person' means an individual, corporation, business trust, estate,
22 trust, partnership, limited liability company, association, joint venture,
23 governmental agency, public corporation, or any other legal or commercial
24 entity.

25 (13) 'Record' means information that is inscribed on a tangible
26 medium or that is stored in an electronic or other medium and is retrievable
27 in perceivable form.

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

7 (15) 'State' means a State of the United States, the District of
8 Columbia, Puerto Rico, the United States Virgin Islands, Guam, the
9 Northern Mariana Islands, American Samoa, or any territory or insular
10 possession subject to the jurisdiction of the United States. The term includes
11 an Indian tribe or band, or Alaskan native village, which is recognized by
12 federal law or formally acknowledged by a State.

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

16 **§ 91103. Scope.**

17 (a) Except as otherwise provided in subsection (b), this Division
18 applies to electronic records and electronic signatures relating to a
19 transaction.

20 (b) This Division does not apply to a transaction to the extent it is
21 governed by:

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

24 (2) Title 13 of the Guam Code Annotated [The Uniform
25 Commercial Code] other than Division 1 §1107 [Waiver or
26 renunciation of claim or right after breach], Division 1 §1210

1 [Presumptions Affect Burden of Producing Evidence], and Division 2
2 [Sales].

3 (c) This Division applies to an electronic record or electronic
4 signature otherwise excluded from the application of this Division under
5 subsection (b) to the extent it is governed by a law other than those specified
6 in subsection (b).

7 (d) A transaction subject to this Division is also subject to other
8 applicable substantive law.

9 **§ 91104. Prospective Application.**

10 This Division applies to any electronic record or electronic signature
11 created, generated, sent, communicated, received, or stored on or after the
12 effective date of this Division.

13 **§ 91105. Use of Electronic Records and Electronic Signatures; Variation**
14 **by Agreement.**

15 (a) This Division does not require a record or signature to be created,
16 generated, sent, communicated, received, stored, or otherwise processed or
17 used by electronic means or in electronic form.

18 (b) This Division applies only to transactions between parties each of
19 which has agreed to conduct transactions by electronic means. Whether the
20 parties agree to conduct a transaction by electronic means is determined
21 from the context and surrounding circumstances, including the parties'
22 conduct.

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

26 (d) Except as otherwise provided in this Division, the effect of any of
27 its provisions may be varied by agreement. The presence in certain

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

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

6 **§ 91106. Construction and Application.**

7 This Division must be construed and applied:

8 (1) to facilitate electronic transactions consistent with other applicable
9 law;

10 (2) to be consistent with reasonable practices concerning electronic
11 transactions and with the continued expansion of those practices; and

12 (3) to effectuate its general purpose to make uniform the law with
13 respect to the subject of this Division among States enacting it.

14 **§ 91107. Legal Recognition of Electronic Records, Electronic**
15 **Signatures, and Electronic Contracts.**

16 (a) A record or signature may not be denied legal effect or
17 enforceability solely because it is in electronic form.

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

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

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

24 **§ 91108. Provision of Information in Writing; Presentation of Records.**

25 (a) If parties have agreed to conduct a transaction by electronic means
26 and a law requires a person to provide, send, or deliver information in
27 writing to another person, the requirement is satisfied if the information is

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

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

10 (1) The record must be posted or displayed in the manner
11 specified in the other law.

12 (2) Except as otherwise provided in subsection (d)(2), the
13 record must be sent, communicated, or transmitted by the method
14 specified in the other law.

15 (3) The record must contain the information formatted in the
16 manner specified in the other law.

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

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

22 (1) to the extent a law other than this Division requires
23 information to be provided, sent, or delivered in writing but permits
24 that requirement to be varied by agreement, the requirement under
25 subsection (a) that the information be in the form of an electronic
26 record capable of retention may also be varied by agreement; and

1 (2) a requirement under a law other than this Division to send,
2 communicate, or transmit a record by first-class mail, postage prepaid
3 or regular United States mail, may be varied by agreement to the
4 extent permitted by the other law.

5 **§ 91109. Attribution and Effect of Electronic Record and Electronic**
6 **Signature.**

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

12 (b) The effect of an electronic record or electronic signature attributed
13 to a person under subsection (a) is determined from the context and
14 surrounding circumstances at the time of its creation, execution, or adoption,
15 including the parties' agreement, if any, and otherwise as provided by law.

16 **§ 91110. Effect of Change or Error.**

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

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

24 (2) In an automated transaction involving an individual, the individual
25 may avoid the effect of an electronic record that resulted from an error made
26 by the individual in dealing with the electronic agent of another person if the
27 electronic agent did not provide an opportunity for the prevention or

1 correction of the error and, at the time the individual learns of the error, the
2 individual:

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

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

10 (C) has not used or received any benefit or value from the
11 consideration, if any, received from the other person.

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

15 (4) Subsections (2) and (3) may not be varied by agreement.

16 **§ 91111. Notarization and Acknowledgment.**

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

22 **§ 91112. Retention of Electronic Records; Originals.**

23 (a) If a law requires that a record be retained, the requirement is
24 satisfied by retaining an electronic record of the information in the record
25 which:

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

4 (2) remains accessible for later reference.

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

8 (c) A person may satisfy subsection (a) by using the services of
9 another person if the requirements of that subsection are satisfied.

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

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

17 (f) A record retained as an electronic record in accordance with
18 subsection (a) satisfies a law requiring a person to retain a record for
19 evidentiary, audit, or like purposes, unless a law enacted after the effective
20 date of this Division specifically prohibits the use of an electronic record for
21 the specified purpose.

22 (g) This section does not preclude a governmental agency of this State
23 from specifying additional requirements for the retention of a record subject
24 to the agency's jurisdiction.

25 **§ 91113. Admissibility in Evidence.**

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

1 **§ 91114. Automated Transaction.**

2 In an automated transaction, the following rules apply:

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

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

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

14 **§ 91115. Time and Place of Sending and Receipt.**

15 (a) Unless otherwise agreed between the sender and the recipient, an
16 electronic record is sent when it:

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

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

23 (3) enters an information processing system outside the control
24 of the sender or of a person that sent the electronic record on behalf of
25 the sender or enters a region of the information processing system
26 designated or used by the recipient which is under the control of the
27 recipient.

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

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

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

8 (c) Subsection (b) applies even if the place the information processing
9 system is located is different from the place the electronic record is deemed
10 to be received under subsection (d).

11 (d) Unless otherwise expressly provided in the electronic record or
12 agreed between the sender and the recipient, an electronic record is deemed
13 to be sent from the sender's place of business and to be received at the
14 recipient's place of business. For purposes of this subsection, the following
15 rules apply:

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

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

22 (e) An electronic record is received under subsection (b) even if no
23 individual is aware of its receipt.

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

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

7 **§ 91116. Transferable Records.**

8 (a) In this section, ‘transferable record’ means an electronic record
9 that:

10 (1) would be a note under Division 3 [Commercial Paper] of the
11 Uniform Commercial Code or a document under Division 7
12 [Warehouse Receipts, Bills of Lading and Other Documents of Title]
13 of the Uniform Commercial Code if the electronic record were in
14 writing; and

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

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

21 (c) A system satisfies subsection (b), and a person is deemed to have
22 control of a transferable record, if the transferable record is created, stored,
23 and assigned in such a manner that:

24 (1) a single authoritative copy of the transferable record exists
25 which is unique, identifiable, and, except as otherwise provided in
26 subsections (4), (5), and (6), unalterable;

1 (2) the authoritative copy identifies the person asserting control
2 as:

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

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

8 (3) the authoritative copy is communicated to and maintained
9 by the person asserting control or its designated custodian;

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

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

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

17 (d) Except as otherwise agreed, a person having control of a
18 transferable record is the holder, as defined in Division 1 §1201(20) of the
19 Uniform Commercial Code, of the transferable record and has the same
20 rights and defenses as a holder of an equivalent record or writing under the
21 Uniform Commercial Code, including, if the applicable statutory
22 requirements under §§ 3302, 7501, or 9303 of the Uniform Commercial
23 Code are satisfied, the rights and defenses of a holder in due course, a holder
24 to which a negotiable document of title has been duly negotiated, or a
25 purchaser, respectively. Delivery, possession, and endorsement are not
26 required to obtain or exercise any of the rights under this subsection.

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

4 (f) If requested by a person against which enforcement is sought, the
5 person seeking to enforce the transferable record shall provide reasonable
6 proof that the person is in control of the transferable record. Proof may
7 include access to the authoritative copy of the transferable record and related
8 business records sufficient to review the terms of the transferable record and
9 to establish the identity of the person having control of the transferable
10 record.

11 **§ 91117. Creation and Retention of Electronic Records and Conversion**
12 **of Written Records by Governmental Agencies.**

13 Each governmental agency of this State shall determine whether, and
14 the extent to which, it will create and retain electronic records and convert
15 written records to electronic records.

16 **§ 91118. Acceptance and Distribution of Electronic Records by**
17 **Governmental Agencies.**

18 (a) Except as otherwise provided in §11112(f) of this Division, each
19 governmental agency of this State shall determine whether, and the extent to
20 which, it will send and accept electronic records and electronic signatures to
21 and from other persons and otherwise create, generate, communicate, store,
22 process, use, and rely upon electronic records and electronic signatures.

23 (b) To the extent that a governmental agency uses electronic records
24 and electronic signatures under subsection (a), the governmental agency,
25 giving due consideration to security, may specify:

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

4 (2) if electronic records must be signed by electronic means,
5 the type of electronic signature required, the manner and format in
6 which the electronic signature must be affixed to the electronic record,
7 and the identity of, or criteria that must be met by, any third party
8 used by a person filing a document to facilitate the process;

9 (3) control processes and procedures as appropriate to ensure
10 adequate preservation, disposition, integrity, security, confidentiality,
11 and auditability of electronic records; and

12 (4) any other required attributes for electronic records which
13 are specified for corresponding non-electronic records or reasonably
14 necessary under the circumstances.

15 (c) Except as otherwise provided in § 11112(f) of this Division, this
16 Division does not require a governmental agency of this State to use or
17 permit the use of electronic records or electronic signatures.

18 **§ 91119. Interoperability.**

19 The governmental agency of this State which adopts standards
20 pursuant to §11118 of this Division may encourage and promote consistency
21 and interoperability with similar requirements adopted by other
22 governmental agencies of this and other States and the federal government
23 and nongovernmental persons interacting with governmental agencies
24 of this State. If appropriate, those standards may specify differing levels of
25 standards from which governmental agencies of this State may choose in
26 implementing the most appropriate standard for a particular application.

27 **§ 91120. Severability Clause.**

1 If any provision of this Division or its application to any person or
2 circumstance is held invalid, the invalidity does not affect other provisions
3 or applications of this Division which can be given effect without the invalid
4 provision or application, and to this end the provisions of this Division are
5 severable.”

6