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THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 21

ELECTRONIC TRANSACTIONS ACT

MR. HORNER

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 21
Mr. Horner

BILL 21

2001

ELECTRONIC TRANSACTIONS ACT

(Assented to , 2001)

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

- Interpretation **1(1)** In this Act,
- (a) “electronic” includes created, recorded, transmitted or stored in digital form or in any other intangible form by electronic, magnetic or optical means or by any other means that have similar capabilities for creation, recording, transmission or storage;
 - (b) “electronic agent” means a computer program or any other electronic means used to initiate an act or to respond to electronic information, records or acts, in whole or in part, without review by an individual at the time of the initiation or response;

- (c) “electronic signature” means electronic information that a person creates or adopts in order to sign a record and that is in, attached to or associated with the record;
- (d) “local public body” means a local public body as defined in the *Freedom of Information and Protection of Privacy Act*;
- (e) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (f) “person” includes a public body;
- (g) “prescribed” means prescribed by regulation;
- (h) “public body” means
 - (i) a department, branch or office of the Government of Alberta,
 - (ii) an agency, board, commission, corporation, office or other body designated as a public body in the regulations for all or part of this Act,
 - (iii) the Executive Council Office,
 - (iv) the office of a member of the Executive Council,
 - (v) the Legislative Assembly Office,
 - (vi) the office of the Auditor General, the Ombudsman, the Chief Electoral Officer, the Ethics Commissioner or the Information and Privacy Commissioner, or
 - (vii) a local public body,
 but does not include
 - (viii) the office of the Speaker of the Legislative Assembly or the office of a Member of the Legislative Assembly, or
 - (ix) the Court of Appeal of Alberta, the Court of Queen’s Bench of Alberta or The Provincial Court of Alberta;
- (i) “record” means a record of information in any form and includes notes, images, audiovisual recordings, x-rays,

books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records.

(2) In this Act, a reference to a legal requirement includes a reference to any enactment or other law

- (a) that imposes consequences if writing is not used or a form is not used, a record is not signed or an original record is not provided or retained, or
- (b) by virtue of which the use of writing or a form, the presence of a signature or the provision or retention of an original record leads to a special permission or other result.

Application of Act

Preservation
of other laws
re information
or records in
electronic form

2(1) This Act does not limit the operation of any enactment or other law that

- (a) expressly authorizes, requires, prohibits or regulates the use of information or records in electronic form, or
- (b) requires information or a record to be posted or displayed in a specified manner or to be transmitted by a specified method.

(2) For the purposes of subsection (1), a reference to “in writing” or “signature” or other similar words or expressions does not by itself prohibit the use of information or records in electronic form.

Preservation
of other laws
re
confidentiality,
privacy and
access to
information

3(1) Nothing in this Act limits the operation of the *Freedom of Information and Protection of Privacy Act*, the *Health Information Act* or any other enactment or law that is intended

- (a) to protect the confidentiality of information,
- (b) to protect the privacy of individuals, or
- (c) to provide rights of access to information and records in the custody or control of public bodies and similar entities.

(2) This Act does not authorize a public body or similar entity to destroy a record whose retention or disposition is otherwise required by an enactment or other law.

Legal requirements to which Act does not apply	<p>4 This Act does not apply to a legal requirement that is prescribed, or that belongs to a class that is prescribed, as a legal requirement or class of legal requirement to which this Act does not apply.</p>
Biometric information	<p>5(1) In this section, “biometric information” means information derived from an individual’s personal characteristics other than a representation of the individual’s signature.</p> <p>(2) This Act does not apply to the collection, use or disclosure of biometric information as an electronic signature or other personal identifier unless another Act expressly provides for the collection, use or disclosure of biometric information for that purpose.</p>
Legislative Assembly Act	<p>6 This Act does not apply to anything done under the <i>Legislative Assembly Act</i>.</p>
Exceptions	<p>7(1) This Act does not apply to</p> <ul style="list-style-type: none"> (a) wills and codicils; (b) trusts created by wills or codicils; (c) enduring powers of attorney under the <i>Powers of Attorney Act</i>; (d) personal directives under the <i>Personal Directives Act</i>; (e) records that create or transfer interests in land, including interests in mines and minerals; (f) guarantees under the <i>Guarantees Acknowledgment Act</i>; (g) negotiable instruments; (h) records that are prescribed, or that belong to a class that is prescribed, as records or a class of records to which this Act does not apply. <p>(2) This Act, except section 31, does not apply to documents of title.</p>

Consent **8(1)** Nothing in this Act requires a person to use, provide or accept information or a record in electronic form without the person's consent.

(2) Subject to section 19, consent for the purposes of subsection (1) may be inferred from a person's conduct if there are reasonable grounds to believe that the consent is genuine and relevant to the information or record.

(3) Subsection (1) applies to information and records of all kinds, including payments.

Crown bound **9** This Act binds the Crown.

Functional Equivalency Rules

Legal recognition of information and records in electronic form **10** Information or a record to which this Act applies must not be denied legal effect or enforceability solely by reason that it is in electronic form.

Legal requirement that information or record be in writing **11** A legal requirement that information or a record be in writing is satisfied if the information or record is

- (a) in electronic form, and
- (b) accessible so as to be usable for subsequent reference.

Legal requirement to provide information or record in writing **12** Subject to section 21, a legal requirement that a person provide information or a record in writing to another person is satisfied if the person provides the information or record in electronic form and the information or record is

- (a) accessible by the other person so as to be usable for subsequent reference, and
- (b) capable of being retained by the other person.

Legal requirement to provide information or record in non-electronic form **13** Subject to section 21, a legal requirement that a person provide information or a record in a specified non-electronic form to another person is satisfied if the person provides the information or record in electronic form and the information or record is

- (a) organized in the same or substantially the same manner as the specified non-electronic form,
- (b) accessible by the other person so as to be usable for subsequent reference, and
- (c) capable of being retained by the other person.

Legal requirement re original records

14(1) Subject to section 21, a legal requirement that a person provide an original record is satisfied by the provision of the record in electronic form if

- (a) there exists a reliable assurance as to the integrity of the information contained in the record in electronic form, and
- (b) the record in electronic form is
 - (i) accessible by the person to whom it is provided so as to be usable for subsequent reference, and
 - (ii) capable of being retained by that person.

(2) A legal requirement that a person retain an original record is satisfied by the retention of the record in electronic form if there exists a reliable assurance as to the integrity of the information contained in the record.

(3) A legal requirement that a person examine an original record is satisfied by the examination of the record in electronic form if there exists a reliable assurance as to the integrity of the information contained in the record.

(4) For the purposes of subsections (1) to (3),

- (a) the criterion for assessing integrity is whether the information has remained complete and unaltered, apart from the introduction of any changes that arise in the normal course of communication, storage and display, and
- (b) whether an assurance is reliable must be determined in light of all the circumstances, including the purpose for which the record was created.

Whether information or record is capable of being retained

15 For the purposes of sections 12, 13 and 14, information or a record in electronic form is not capable of being retained if the person providing the information or record prevents, or does anything to hinder, its printing or storage by the recipient.

Legal requirement that record be signed

16(1) Subject to subsection (2) and section 22, a legal requirement that a record be signed is satisfied by an electronic signature.

(2) If a record is prescribed for the purposes of this subsection or belongs to a class prescribed for those purposes, the legal requirement that the record be signed is satisfied by an electronic signature only if in light of all the circumstances

- (a) the electronic signature is reliable for the purpose of identifying the person, and
- (b) the association of the electronic signature with the relevant record is reliable for the purpose for which the record was created.

Legal requirement re retention of records

17(1) A legal requirement to retain a record that is originally created, sent or received in writing is satisfied by the retention of a record in electronic form if

- (a) the record in electronic form is retained in the same format in which the written record was created, sent or received, or in a format that accurately represents the information contained in the written record, and
- (b) the information in the record in electronic form is accessible so as to be usable for subsequent reference by any person who is entitled to have access to the written record or who is authorized to require its production.

(2) A legal requirement to retain a record that is originally created, sent or received electronically is satisfied by the retention of a record in electronic form if

- (a) the record in electronic form is retained in the same format in which it was created, sent or received, or in a format that accurately represents the information contained in the record that was originally created, sent or received,
- (b) the information in the record in electronic form is accessible so as to be usable for subsequent reference by any person who is entitled to have access to the record that was originally created, sent or received, or who is authorized to require its production, and
- (c) where the record in electronic form was sent or received, information, if any, that identifies its origin and destination

and the date and time when it was sent or received is also retained.

Legal requirement re one or more copies

18 If information or a record may be provided in electronic form, a legal requirement for one or more copies of the information or record to be provided to the same person at the same time is satisfied by providing a single version in electronic form.

Public Bodies

No implied consent

19 For the purposes of section 8, the consent of a public body is given only by an explicit communication that is accessible to the persons likely to seek to communicate with the public body about the matter or purpose in question.

Power to use electronic means

20(1) If a public body has the power to create, collect, receive, use, store, transfer, disclose, distribute, publish or otherwise deal with information and records, it has the power to do so electronically.

(2) Subsection (1) is subject to any law that expressly prohibits the use of electronic means or expressly requires them to be used in specified ways.

(3) For the purposes of subsection (2), a reference to “in writing” or “signature” or other similar words or expressions does not by itself prohibit the use of electronic means.

(4) Nothing in this Act authorizes a public body to require another person to use, provide or accept information or a record in electronic form without the person’s consent.

Additional conditions re information or records in electronic form

21 When information or a record is to be provided to a public body, a legal requirement mentioned in section 12, 13 or 14 is satisfied by the provision of the information or record in electronic form only if

(a) the information or record meets the information technology standards, if any, established

(i) in the case of a public body referred to in section 1(1)(h)(i) or (ii), by the Minister, and

(ii) in the case of a public body referred to in section 1(1)(h)(iii) to (vii), by the public body,

- (b) the public body acknowledges receipt of the information or record in accordance with its own acknowledgment rules, if any, and
- (c) the conditions set out in section 12, 13 or 14, as the case may be, are also satisfied.

Additional conditions re electronic signatures

22 A legal requirement for a signature that is to be provided to a public body is satisfied by an electronic signature only if

- (a) the electronic signature meets the information technology standards, if any, established
 - (i) in the case of a public body referred to in section 1(1)(h)(i) or (ii), by the Minister, and
 - (ii) in the case of a public body referred to in section 1(1)(h)(iii) to (vii), by the public body,
- and
- (b) the electronic signature meets the requirements, if any, of the public body as to the method of making the signature and as to reliability of the signature.

Delegation

23 The Chief Information Officer or another officer of the Government may, on the request of the Minister, establish information technology standards for public bodies referred to in section 1(1)(h)(i) and (ii).

Electronic payments

24(1) A payment to or by a public body other than a department, branch or office of the Government may be made in electronic form in a manner specified by the public body.

(2) A payment to or by a department, branch or office of the Government may be made in electronic form in a manner specified by the Minister of Finance.

Forms

Authority to prescribe electronic form and signature

25(1) Authority in an enactment to prescribe, approve, establish or provide a form includes authority

- (a) to prescribe, approve, establish or provide an electronic form, and

(b) to prescribe requirements for the form's electronic signature.

(2) Authority in an enactment to prescribe or approve the manner of submitting a form includes authority to prescribe or approve that it may be submitted electronically.

(3) If a form is set out in an Act, the Lieutenant Governor in Council may make a regulation under that Act prescribing

(a) an electronic form that is substantially the same as the form set out in the Act, and

(b) requirements for the form's electronic signature.

(4) An electronic form prescribed under subsection (3) may be substituted for the statutory form for all purposes.

Communi-
cation of
information

26(1) If an Act contains a provision that requires a person to communicate information otherwise than by means of a form, that provision is deemed to be authority for the Lieutenant Governor in Council to make a regulation under that provision prescribing electronic means that may be used to communicate the information and prescribing requirements for the electronic signature of the information.

(2) If a regulation under an Act requires a person to communicate information otherwise than by means of a form, the regulation-making authority may make a regulation under that Act prescribing electronic means that may be used to communicate the information and prescribing requirements for the electronic signature of the information.

Electronic Transactions and Electronic Agents

Formation and
operation of
electronic
contracts

27 Unless the parties otherwise agree, an offer, the acceptance of an offer or any other matter that is material to the formation or operation of a contract may be expressed

(a) by means of information or a record in electronic form, or

(b) by an act that is intended to result in electronic communication, such as

(i) touching or clicking on an appropriate icon or other place on a computer screen, or

(ii) speaking.

Involvement of
electronic
agents

28 A contract may be formed by the interaction of an electronic agent and a person or by the interaction of electronic agents.

Errors re
transactions
with electronic
agents

29 An electronic transaction between a person and another person's electronic agent has no legal effect if

- (a) the person makes a material error in the electronic information or an electronic record used in the transaction,
- (b) the electronic agent does not give the person an opportunity to prevent or correct the error,
- (c) on becoming aware of the error, the person promptly notifies the other person, and
- (d) in a case where consideration is received as a result of the error, the person
 - (i) returns or destroys the consideration in accordance with the other person's instructions or, if there are no instructions, deals with the consideration in a reasonable manner, and
 - (ii) does not benefit materially by receiving the consideration.

Time of
sending of
information or
records in
electronic form

30(1) Unless the sender and addressee otherwise agree, information or a record in electronic form is sent when it enters an information system outside the sender's control or, if the sender and the addressee use the same information system, when it becomes capable of being retrieved and processed by the addressee.

(2) Information or a record in electronic form is presumed to be received by the addressee

- (a) if the addressee has designated or uses an information system for the purpose of receiving information or records of the type sent, when the information or record enters that information system and becomes capable of being retrieved and processed by the addressee, or
- (b) if the addressee has not designated or does not use an information system for the purpose of receiving information or records of the type sent, when the addressee

becomes aware of the information or record in the addressee's information system and it becomes capable of being retrieved and processed by the addressee.

(3) Unless the sender and addressee otherwise agree, information or a record in electronic form is deemed to be sent from the sender's place of business and received at the addressee's place of business.

(4) If the sender or the addressee has more than one place of business, the place of business for the purposes of subsection (3) is the one with the closest relationship to the underlying transaction to which the information or record relates or, if there is no underlying transaction, the person's principal place of business.

(5) If the sender or the addressee does not have a place of business, the person's place of habitual residence is deemed to be the place of business for the purposes of subsection (3).

Contracts for the Carriage of Goods

Activities
related to
contracts for
the carriage of
goods

31(1) This section applies to an activity respecting a contract for the carriage of goods, including, but not limited to,

- (a) furnishing the marks, number, quantity or weight of goods,
- (b) stating or declaring the nature or value of goods,
- (c) issuing a receipt for goods,
- (d) confirming that goods have been loaded,
- (e) giving instructions to a carrier of goods,
- (f) claiming delivery of goods,
- (g) authorizing release of goods,
- (h) giving notice of loss of, or damage to, goods,
- (i) undertaking to deliver goods to a named person or a person authorized to claim delivery,
- (j) granting, acquiring, renouncing, surrendering, transferring or negotiating rights in goods,
- (k) notifying a person of terms and conditions of a contract for the carriage of goods,

- (l) giving a notice or statement in connection with the performance of a contract for the carriage of goods, and
 - (m) acquiring or transferring rights and obligations under a contract for the carriage of goods.
- (2) Subject to subsection (3), a legal requirement that an activity referred to in subsection (1) be carried out in writing or by using a written record is satisfied if the activity is carried out using one or more records in electronic form.
- (3) If a right is to be granted to or an obligation is to be acquired by a particular person and there is a legal requirement that this be done by the transfer or use of a written record, the legal requirement is satisfied by the use of one or more records in electronic form only if they are created by a method that gives a reliable assurance that the right or obligation has become the right or obligation of that person.
- (4) For the purposes of subsection (3), whether an assurance is reliable must be determined in light of all the circumstances, including the purpose for which the right or obligation is conveyed and any relevant agreement.
- (5) If one or more records in electronic form are used to carry out an activity referred to in subsection (1)(j) or (m), a written record used to carry out the same activity is not valid with respect to the same goods unless
- (a) the use of the records in electronic form has been terminated with respect to the activity and the goods, and
 - (b) the written record that replaces the records in electronic form contains a statement of the termination.
- (6) The replacement of the records in electronic form by a written record described in subsection (5) does not affect the parties' rights or obligations.
- (7) No rule of law is inapplicable to a contract for the carriage of goods by reason only that the contract is set out in or evidenced by one or more records in electronic form instead of by written records.

Explanatory Notes

- 33** Admissibility of electronic records.

procedures related to the recording and storage of electronic records.

Application

42.2(1) Sections 42.3 to 42.8 do not modify any common law or statutory rule relating to the admissibility of records, except the rules relating to authentication and best evidence.

(2) A court may have regard to evidence adduced under sections 42.3 to 42.8 in applying any common law or statutory rule relating to the admissibility of records.

Authentication

42.3 A person seeking to introduce an electronic record as evidence has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic record is what the person claims it to be.

Application of the best evidence rule

42.4(1) Subject to subsection (3), where the best evidence rule is applicable in respect of an electronic record, it is satisfied on proof of the integrity of the electronic records system.

(2) The integrity of an electronic record may be proved by evidence of the integrity of the electronic records system by or in which the information was recorded or stored, or by evidence that reliable encryption techniques were used to support the integrity of the electronic record.

(3) An electronic record in the form of a printout that has been manifestly or consistently acted on, relied on or used as the record of the information recorded or stored on the printout is the record for the purposes of the best evidence rule.

Presumption of integrity

42.5 For the purposes of section 42.4(1), in the absence of evidence to the contrary, the integrity of the electronic records system in which an electronic record is recorded or stored is proved

- (a) by evidence that supports a finding that at all material times the computer system or other similar device was operating properly or, if it was not, the fact of its not operating properly did not affect the integrity of the electronic record, and there are no other reasonable grounds to doubt the integrity of the electronic records system,
- (b) if it is established that the electronic record was recorded or stored by a party to the proceedings

who is adverse in interest to the party seeking to introduce it, or

- (c) if it is established that the electronic record was recorded or stored in the usual and ordinary course of business by a person who is not a party to the proceedings and who did not record or store it under the control of the party seeking to introduce it.

Standards

42.6 For the purpose of determining under any rule of law whether an electronic record is admissible, evidence may be presented in respect of any standard, procedure, usage or practice on how electronic records are to be recorded or stored, having regard to the type of business or endeavour that used, recorded or stored the electronic record and the nature and purpose of the electronic record.

Proof by affidavit

42.7 The matters referred to in sections 42.4(3), 42.5 and 42.6 may be established by an affidavit given to the best of the deponent's knowledge or belief.

Cross-examination

42.8(1) A deponent of an affidavit referred to in section 42.7 that has been introduced in evidence may be cross-examined as of right by a party to the proceedings who is adverse in interest to the party who introduced the affidavit or caused the affidavit to be introduced.

(2) Any party to the proceedings may, with leave of the court, cross-examine a person referred to in section 42.5(c).

Coming into force

34 This Act comes into force on Proclamation.