

I MINA'TRENTAI DOS NA LIHESLATURAN GUAHÃN  
2014 (SECOND) Regular Session

Bill No. 383-32(COP)

Introduced by:

Michael F.Q. San Nicolas 

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AN ACT TO ADOPT THE UNIFORM ELECTRONIC  
TRANSACTIONS ACT (UETA) BY ADDING A NEW  
DIVISION 11 TO TITLE 13 OF THE GUAM CODE  
ANNOTATED.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

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

11 *I Liheslatura* further finds that with the expanded use of information  
12 technology and, in particular, the internet, in conducting routine business,  
13 lacking such basic legal infrastructure hinders the development of  
14 technological services which would routinely use electronic signatures and

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1 add costs unnecessarily to local businesses which seek to comply with  
2 Guam's laws in running their business.

3 It is therefore the intent of *I Liheslaturan Guåhan* that the Uniform  
4 Electronic Transactions Act be enacted, providing a legal framework for the  
5 use of electronic signatures and records in Guam by adding a new Division  
6 11 to Title 13 of the Guam Code Annotated.

7 **Section 2. Uniform Electronic Transactions Act.** A *new* Division 11  
8 is hereby *added* to Title 13 of the Guam Code Annotated, to read:

9 **"DIVISION 11**

10 **UNIFORM ELECTRONIC TRANSACTIONS ACT**

11

12 § 11101. Short Title.

13 § 11102. Definitions.

14 § 11103. Scope.

15 § 11104. Prospective Application.

16 § 11105. Use of Electronic Records and Electronic Signatures; Variation  
17 by Agreement.

18 § 11106. Construction and Application.

19 § 11107. Legal Recognition of Electronic Records, Electronic Signatures,  
20 and Electronic Contracts.

21 § 11108. Provision of Information in Writing; Presentation of Records.

22 § 11109. Attribution and Effect of Electronic Record and Electronic  
23 Signature.

- 1       § 11110. Effect of Change or Error.
- 2       § 11111. Notarization and Acknowledgment.
- 3       § 11112. Retention of Electronic Records; originals.
- 4       § 11113. Admissibility in Evidence.
- 5       § 11114. Automated Transaction.
- 6       § 11115. Time and Place of Sending and Receipt.
- 7       § 11116. Transferable Records.
- 8       § 11117. Creation and Retention of Electronic Records and Conversion
- 9       of Written Records by Governmental Agencies.
- 10      § 11118. Acceptance and Distribution of Electronic Records by
- 11      Governmental Agencies.
- 12      § 11119. Interoperability.
- 13      § 11120. Severability Clause.

14

15      **§ 11101. Short Title.**

16             This Division *shall* be cited as the ‘Uniform Electronic  
17      Transactions Act’.

18      **§ 11102. Definitions.**

19             In this Title:

20             (1) ‘Agreement’ means the bargain of the parties in fact, as  
21      found in their language or inferred from other circumstances and  
22      from rules, regulations, and procedures given the effect of

1 agreements under laws otherwise applicable to a particular  
2 transaction.

3 (2) 'Automated transaction' means a transaction conducted or  
4 performed, in whole or in part, by electronic means or electronic  
5 records, in which the acts or records of one or both parties are not  
6 reviewed by an individual in the ordinary course in forming a  
7 contract, performing under an existing contract, or fulfilling an  
8 obligation required by the transaction.

9 (3) 'Computer program' means a set of statements or  
10 instructions to be used directly or indirectly in an information  
11 processing system in order to bring about a certain result.

12 (4) 'Contract' means the total legal obligation resulting from the  
13 parties' agreement as affected by this Division and other applicable  
14 law.

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

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

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

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

4 (9) 'Governmental agency' means an executive, legislative, or  
5 judicial agency, department, board, commission, authority,  
6 institution, or instrumentality of the federal government or of a State  
7 or of a county, municipality, or other political subdivision of a State.

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

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

13 (12) 'Person' means an individual, corporation, business trust,  
14 estate, trust, partnership, limited liability company, association, joint  
15 venture, governmental agency, public corporation, or any other legal  
16 or commercial entity.

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

20 (14) 'Security procedure' means a procedure employed for the  
21 purpose of verifying that an electronic signature, record, or  
22 performance is that of a specific person or for detecting changes or  
23 errors in the information in an electronic record. The term includes a

1 procedure that requires the use of algorithms or other codes,  
2 identifying words or numbers, encryption, or callback or other  
3 acknowledgment procedures.

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

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

14 **§ 11103. Scope.**

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

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

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

1           (2) Title 13 of the Guam Code Annotated [The Uniform  
2           Commercial Code] other than Division 1 §1210 [Presumptions  
3           Affect Burden of Producing Evidence] and Division 2 [Sales].

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

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

10       **§ 11104. Prospective Application.**

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

14       **§ 11105. Use of Electronic Records and Electronic Signatures;  
15       Variation by Agreement.**

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

20           (b) This Division applies only to transactions between parties  
21           each of which has agreed to conduct transactions by electronic  
22           means. Whether the parties agree to conduct a transaction by

1 electronic means is determined from the context and surrounding  
2 circumstances, including the parties' conduct.

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

7 (d) Except as otherwise provided in this Division, the effect of  
8 any of its provisions may be varied by agreement. The presence in  
9 certain provisions of this Division of the words 'unless otherwise  
10 agreed', or words of similar import, does not imply that the effect of  
11 other provisions may not be varied by agreement.

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

15 **§ 11106. Construction and Application.**

16 This Division must be construed and applied:

17 (1) to facilitate electronic transactions consistent with other  
18 applicable law;

19 (2) to be consistent with reasonable practices concerning  
20 electronic transactions and with the continued expansion of those  
21 practices; and

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



1       **§ 11107. Legal Recognition of Electronic Records, Electronic**  
2       **Signatures, and Electronic Contracts.**

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

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

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

9           (d) If a law requires a signature, an electronic signature satisfies  
10      the law.

11       **§ 11108. Provision of Information in Writing; Presentation of**  
12       **Records.**

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

21           (b) If a law other than this Division requires a record (i) to be  
22      posted or displayed in a certain manner, (ii) to be sent,  
23      communicated, or transmitted by a specified method, or (iii) to

1 contain information that is formatted in a certain manner, the  
2 following rules apply:

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

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

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

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

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

15 (1) to the extent a law other than this Division requires  
16 information to be provided, sent, or delivered in writing but  
17 permits that requirement to be varied by agreement, the  
18 requirement under subsection (a) that the information be in the  
19 form of an electronic record capable of retention may also be  
20 varied by agreement; and

21 (2) a requirement under a law other than this Division to  
22 send, communicate, or transmit a record by first-class mail,

1 postage prepaid or regular United States mail, may be varied  
2 by agreement to the extent permitted by the other law.

3 **§ 11109. Attribution and Effect of Electronic Record and Electronic**  
4 **Signature.**

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

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

15 **§ 11110. Effect of Change or Error.**

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

19 (1) If the parties have agreed to use a security procedure to  
20 detect changes or errors and one party has conformed to the  
21 procedure, but the other party has not, and the nonconforming party  
22 would have detected the change or error had that party also

1 conformed, the conforming party may avoid the effect of the changed  
2 or erroneous electronic record.

3 (2) In an automated transaction involving an individual, the  
4 individual may avoid the effect of an electronic record that resulted  
5 from an error made by the individual in dealing with the electronic  
6 agent of another person if the electronic agent did not provide an  
7 opportunity for the prevention or correction of the error and, at the  
8 time the individual learns of the error, the individual:

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

12 (B) takes reasonable steps, including steps that conform to  
13 the other person's reasonable instructions, to return to the other  
14 person or, if instructed by the other person, to destroy the  
15 consideration received, if any, as a result of the erroneous  
16 electronic record; and

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

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

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

23 **§ 11111. Notarization and Acknowledgment.**

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

7           **§ 11112. Retention of Electronic Records; Originals.**

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

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

14                 (2) remains accessible for later reference.

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

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

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

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

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

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

12 **§ 11113. Admissibility in Evidence.**

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

15 **§ 11114. Automated Transaction.**

16 In an automated transaction, the following rules apply:

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

20 (2) A contract may be formed by the interaction of an electronic  
21 agent and an individual, acting on the individual's own behalf or for  
22 another person, including by an interaction in which the individual  
23 performs actions that the individual is free to refuse to perform and

1 which the individual knows or has reason to know will cause the  
2 electronic agent to complete the transaction or performance.

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

5 **§ 11115. Time and Place of Sending and Receipt.**

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

8 (1) is addressed properly or otherwise directed properly  
9 to an information processing system that the recipient has  
10 designated or uses for the purpose of receiving electronic  
11 records or information of the type sent and from which the  
12 recipient is able to retrieve the electronic record;

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

15 (3) enters an information processing system outside the  
16 control of the sender or of a person that sent the electronic  
17 record on behalf of the sender or enters a region of the  
18 information processing system designated or used by the  
19 recipient which is under the control of the recipient.

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

22 (1) it enters an information processing system that the  
23 recipient has designated or uses for the purpose of receiving

1 electronic records or information of the type sent and from  
2 which the recipient is able to retrieve the electronic record; and

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

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

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

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

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

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

21 (f) Receipt of an electronic acknowledgment from an  
22 information processing system described in subsection (b) establishes



1 that a record was received but, by itself, does not establish that the  
2 content sent corresponds to the content received.

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

9 **§ 11116. Transferable Records.**

10 (a) In this section, 'transferable record' means an electronic  
11 record that:

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

17 (2) the issuer of the electronic record expressly has agreed  
18 is a transferable record.

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

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

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

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

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

11 (B) if the authoritative copy indicates that the  
12 transferable record has been transferred, the person to  
13 which the transferable record was most recently  
14 transferred;

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

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

21 (5) each copy of the authoritative copy and any copy of a  
22 copy is readily identifiable as a copy that is not the  
23 authoritative copy; and

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

3                   (d) Except as otherwise agreed, a person having control of a  
4                   transferable record is the holder, as defined in Division 1 §1201(20) of  
5                   the Uniform Commercial Code, of the transferable record and has the  
6                   same rights and defenses as a holder of an equivalent record or  
7                   writing under the Uniform Commercial Code, including, if the  
8                   applicable statutory requirements under §§ 3302, 7501, or 9303 of the  
9                   Uniform Commercial Code are satisfied, the rights and defenses of a  
10                  holder in due course, a holder to which a negotiable document of title  
11                  has been duly negotiated, or a purchaser, respectively. Delivery,  
12                  possession, and endorsement are not required to obtain or exercise  
13                  any of the rights under this subsection.

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

18                  (f) If requested by a person against which enforcement is  
19                  sought, the person seeking to enforce the transferable record shall  
20                  provide reasonable proof that the person is in control of the  
21                  transferable record. Proof may include access to the authoritative  
22                  copy of the transferable record and related business records sufficient

1 to review the terms of the transferable record and to establish the  
2 identity of the person having control of the transferable record.

3 **§ 11117. Creation and Retention of Electronic Records and**  
4 **Conversion of Written Records by Governmental Agencies.**

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

8 **§ 11118. Acceptance and Distribution of Electronic Records by**  
9 **Governmental Agencies.**

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

16 (b) To the extent that a governmental agency uses electronic  
17 records and electronic signatures under subsection (a), the  
18 governmental agency, giving due consideration to security, may  
19 specify:

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

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

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

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

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

16 **§ 11119. Interoperability.**

17 The governmental agency of this State which adopts standards  
18 pursuant to §11118 of this Division may encourage and promote  
19 consistency and interoperability with similar requirements adopted  
20 by other governmental agencies of this and other States and the  
21 federal government and nongovernmental persons interacting with  
22 governmental agencies

1 of this State. If appropriate, those standards may specify differing  
2 levels of standards from which governmental agencies of this State  
3 may choose in implementing the most appropriate standard for a  
4 particular application.

5 **§ 11120. Severability Clause.**

6 If any provision of this Division or its application to any person  
7 or circumstance is held invalid, the invalidity does not affect other  
8 provisions or applications of this Division which can be given effect  
9 without the invalid provision or application, and to this end the  
10 provisions of this Division are severable.”