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I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN

THIRTY-THIRD GUAM LEGISLATURE

155 Hesler Place, Hagåtña, Guam 96910


March 23, 2015

The Honorable Edward J.B. Calvo
I Maga'lahaen Guåhan
Ufisinan I Maga'lahi
Hagåtña, Guam


Dear *Maga'lahi* Calvo:

Transmitted herewith are Bill Nos. 3-33(LS), 7-33(COR), 11-33(COR), 23-33(COR), 24-33(COR), 38-33(LS), 39-33(LS) and 43-33(COR); and Substitute Bill Nos. 42-33(COR) and 46-33(COR), which were passed by *I Mina'Trentai Tres Na Liheslaturan Guåhan* on March 20, 2015.

Sincerely,


RORY J. RESPICIO
Acting Legislative Secretary

Enclosure (10)

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

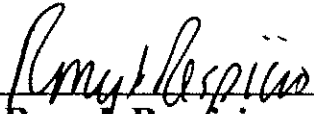
CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LAHEN GUÅHAN*

This is to certify that **Bill No. 38-33 (LS)**, "AN ACT TO *ADD A NEW CHAPTER 91 TO DIVISION 3 OF TITLE 18, GUAM CODE ANNOTATED, RELATIVE TO MODERNIZING THE BUSINESS ENVIRONMENT BY ADOPTING THE UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)*," was on the 20th day of March, 2015, duly and regularly passed.



Judith T. Won Pat, Ed.D.
Speaker

Attested:



Rory J. Respicio
Acting Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 23rd day of March,
2015, at 5:05 o'clock P.M.



Assistant Staff Officer
Maga'lahaen's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahaen Guåhan

Date: _____

Public Law No. _____

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

Bill No. 38-33 (LS)

As amended by the Committee on Finance & Taxation,
General Government Operations, and Youth Development;
and further amended on the Floor.

Introduced by:

Michael F.Q. San Nicolas

Frank F. Blas, Jr.

T. C. Ada

V. Anthony Ada

FRANK B. AGUON, JR.

B. J.F. Cruz

James V. Espaldon

Brant T. McCreadie

Tommy Morrison

T. R. Muña Barnes

R. J. Respicio

Dennis G. Rodriguez, Jr.

Mary Camacho Torres

N. B. Underwood, Ph.D.

Judith T. Won Pat, Ed.D.

**AN ACT TO *ADD* A NEW CHAPTER 91 TO DIVISION 3
OF TITLE 18, GUAM CODE ANNOTATED, RELATIVE
TO MODERNIZING THE BUSINESS ENVIRONMENT
BY ADOPTING THE UNIFORM ELECTRONIC
TRANSACTIONS ACT (UETA).**

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 (47) states, the District of Columbia, Puerto Rico, and the Virgin

1 Islands. The UETA was developed by the National Conference of Commissioners
2 on Uniform State Laws to provide a legal framework for the use of electronic
3 signatures and records in government and business transactions. The UETA makes
4 electronic records and signatures as legal as paper and manually signed signatures.

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

10 It is, therefore, the intent of *I Liheslaturan Guåhan* that the Uniform
11 Electronic Transactions Act be enacted, providing a legal framework for the use of
12 electronic signatures and records on Guam, by adding a new Chapter 91 to
13 Division 3, Title 18 of the Guam Code Annotated.

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

16 **“CHAPTER 91**

17 **UNIFORM ELECTRONIC TRANSACTIONS ACT**

- 18 § 91101. Short Title.
19 § 91102. Definitions.
20 § 91103. Scope.
21 § 91104. Prospective Application.
22 § 91105. Use of Electronic Records and Electronic Signatures; Variation by
23 Agreement.
24 § 91106. Construction and Application.
25 § 91107. Legal Recognition of Electronic Records, Electronic Signatures,
26 and Electronic Contracts.
27 § 91108. Provision of Information in Writing; Presentation of Records.

1 individual in the ordinary course in forming a contract, performing under an
2 existing contract, or fulfilling an obligation required by the transaction.

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

6 (d) *Contract* means the total legal obligation resulting from the
7 parties' agreement as affected by this Chapter, and other applicable laws.

8 (e) *Electronic* means relating to technology having electrical,
9 digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

10 (f) *Electronic agent* means a computer program or an electronic or
11 other automated means used independently to initiate an action or respond to
12 electronic records or performances in whole or in part, without review or
13 action by an individual.

14 (g) *Electronic record* means a record created, generated, sent,
15 communicated, received, or stored by electronic means.

16 (h) *Electronic signature* means an electronic sound, symbol, or
17 process attached to or logically associated with a record and executed or
18 adopted by a person with the intent to sign the record.

19 (i) *Governmental agency* means an executive, legislative, or
20 judicial agency, department, board, commission, authority, institution, or
21 instrumentality of the federal government or of a state or of a county,
22 municipality, or other political subdivision of a state.

23 (j) *Information* means data, text, images, sounds, codes, computer
24 programs, software, databases, or the like.

25 (k) *Information processing system* means an electronic system for
26 creating, generating, sending, receiving, storing, displaying, or processing
27 information.

1 (l) *Person* means an individual, corporation, business trust, estate,
2 trust, partnership, limited liability company, association, joint venture,
3 governmental agency, public corporation, or any other legal or commercial
4 entity.

5 (m) *Record* means information that is inscribed on a tangible
6 medium or that is stored in an electronic or other medium and is retrievable
7 in perceivable form.

8 (n) *Security procedure* means a procedure employed for the
9 purpose of verifying that an electronic signature, record, or performance is
10 that of a specific person or for detecting changes or errors in the information
11 in an electronic record. The term includes a procedure that requires the use
12 of algorithms or other codes, identifying words or numbers, encryption, or
13 callback or other acknowledgment procedures.

14 (o) *State* means a state of the United States, the District of
15 Columbia, Puerto Rico, the United States Virgin Islands, Guam, the
16 Northern Mariana Islands, American Samoa, or any territory or insular
17 possession subject to the jurisdiction of the United States. The term includes
18 an Indian tribe or band, or Alaskan native village, which is recognized by
19 federal law or formally acknowledged by a state.

20 (p) *Transaction* means an action or set of actions occurring
21 between two (2) or more persons relating to the conduct of business,
22 commercial, or governmental affairs.

23 **§ 91103. Scope.**

24 (a) Except as otherwise provided in Subsection (b), this Chapter
25 applies to electronic records and electronic signatures relating to a
26 transaction.

1 (b) This Chapter does not apply to a transaction to the extent it is
2 governed by:

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

5 (2) Title 13 of the Guam Code Annotated [The Uniform
6 Commercial Code] other than Division 1 §1107 [Waiver or
7 renunciation of claim or right after breach], Division 1 §1210
8 [Presumptions Affect Burden of Producing Evidence], and Division 2
9 [Sales].

10 (c) This Chapter applies to an electronic record or electronic
11 signature otherwise excluded from the application of this Chapter under
12 Subsection (b) to the extent it is governed by a law other than those specified
13 in Subsection (b).

14 (d) A transaction subject to this Chapter is also subject to other
15 applicable substantive law.

16 **§ 91104. Prospective Application.**

17 This Chapter applies to any electronic record or electronic signature
18 created, generated, sent, communicated, received, or stored on or after the
19 effective date of this Chapter.

20 **§ 91105. Use of Electronic Records and Electronic Signatures;
21 Variation by Agreement.**

22 (a) This Chapter does not require a record or signature to be
23 created, generated, sent, communicated, received, stored, or otherwise
24 processed or used by electronic means or in electronic form.

25 (b) This Chapter applies only to transactions between parties each
26 of which has agreed to conduct transactions by electronic means. Whether
27 the parties agree to conduct a transaction by electronic means is determined

1 from the context and surrounding circumstances, including the parties'
2 conduct.

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

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

11 (e) Whether an electronic record or electronic signature has legal
12 consequences is determined by this Chapter, and other applicable laws.

13 **§ 91106. Construction and Application.**

14 This Chapter must be construed and applied:

15 (a) to facilitate electronic transactions consistent with other
16 applicable laws;

17 (b) to be consistent with reasonable practices concerning
18 electronic transactions, and with the continued expansion of those
19 practices; and

20 (c) to effectuate its general purpose to make uniform the law
21 with respect to the subject of this Chapter among the states enacting it.

22 **§ 91107. Legal Recognition of Electronic Records, Electronic**
23 **Signatures, and Electronic Contracts.**

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

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

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

3 (d) If a law requires a signature, an electronic signature satisfies the
4 law.

5 **§ 91108. Provision of Information in Writing; Presentation of**
6 **Records.**

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

15 (b) If a law other than this Chapter requires a record (i) to be posted
16 or displayed in a certain manner, (ii) to be sent, communicated, or
17 transmitted by a specified method, or (iii) to contain information that is
18 formatted in a certain manner, the following rules apply:

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

21 (2) Except as otherwise provided in Subsection (d)(2), the
22 record must be sent, communicated, or transmitted by the method
23 specified in the other law.

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

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

4 (d) The requirements of this Section may not be varied by
5 agreement, but:

6 (1) to the extent a law other than this Chapter requires
7 information to be provided, sent, or delivered in writing but permits
8 that requirement to be varied by agreement, the requirement under
9 Subsection (a) that the information be in the form of an electronic
10 record capable of retention may also be varied by agreement; and

11 (2) a requirement under a law other than this Chapter to
12 send, communicate, or transmit a record by first-class mail, postage
13 prepaid or regular United States mail, may be varied by agreement to
14 the extent permitted by the other law.

15 **§ 91109. Attribution and Effect of Electronic Record and**
16 **Electronic Signature.**

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

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

27 **§ 91110. Effect of Change or Error.**

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

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

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

15 (1) promptly notifies the other person of the error and
16 that the individual did not intend to be bound by the electronic
17 record received by the other person;

18 (2) takes reasonable steps, including steps that
19 conform to the other person's reasonable instructions, to return
20 to the other person or, if instructed by the other person, to
21 destroy the consideration received, if any, as a result of the
22 erroneous electronic record; and

23 (3) has not used or received any benefit or value from
24 the consideration, if any, received from the other person.

25 (c) If neither Subsection (a) nor Subsection (b) applies, the
26 change or error has the effect provided by other law, including the law
27 of mistake, and the parties' contract, if any.

1 (d) Subsections (b) and (c) may not be varied by agreement.

2 **§ 91111. Notarization and Acknowledgment.**

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

8 **§ 91112. Retention of Electronic Records; Originals.**

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

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

15 (2) remains accessible for later reference.

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

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

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

25 (e) If a law requires retention of a check, that requirement is
26 satisfied by retention of an electronic record of the information on the front
27 and back of the check in accordance with Subsection (a).

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

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

9 **§ 91113. Admissibility in Evidence.**

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

12 **§ 91114. Automated Transaction.**

13 In an automated transaction, the following rules apply:

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

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

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

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

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

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

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

8 (3) enters an information processing system outside the
9 control of the sender or of a person that sent the electronic record on
10 behalf of the sender or enters a region of the information processing
11 system designated or used by the recipient which is under the control
12 of the recipient.

13 (b) Unless otherwise agreed between the sender and the recipient,
14 an electronic record is received when:

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

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

20 (c) Subsection (b) applies even if the place the information
21 processing system is located is different from the place the electronic record
22 is deemed to be received under Subsection (d).

23 (d) Unless otherwise expressly provided in the electronic record or
24 agreed between the sender and the recipient, an electronic record is deemed
25 to be sent from the sender's place of business and to be received at the
26 recipient's place of business. For purposes of this Subsection, the following
27 rules apply:

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

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

7 (e) An electronic record is received under Subsection (b) even if no
8 individual is aware of its receipt.

9 (f) Receipt of an electronic acknowledgment from an information
10 processing system described in Subsection (b) establishes that a record was
11 received but, by itself, does not establish that the content sent corresponds to
12 the content received.

13 (g) If a person is aware that an electronic record purportedly sent
14 under Subsection (a), or purportedly received under Subsection (b), was not
15 actually sent or received, the legal effect of the sending or receipt is
16 determined by any other applicable law. Except to the extent permitted by
17 the other law, the requirements of this Subsection may not be varied by
18 agreement.

19 **§ 91116. Transferable Records.**

20 (a) In this Section, 'transferable record' means an electronic record
21 that:

22 (1) would be a note under Division 3 [Commercial Paper] of
23 the Uniform Commercial Code or a document under Division 7
24 [Warehouse Receipts, Bills of Lading and Other Documents of Title]
25 of the Uniform Commercial Code if the electronic record were in
26 writing; and

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

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

7 (c) A system satisfies Subsection (b), and a person is deemed to
8 have control of a transferable record, if the transferable record is created,
9 stored, and assigned in such a manner that:

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

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

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

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

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

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

25 (5) each copy of the authoritative copy and any copy of a
26 copy is readily identifiable as a copy that is not the authoritative copy;
27 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 the
5 Uniform Commercial Code, of the transferable record and has the same
6 rights and defenses as a holder of an equivalent record or writing under the
7 Uniform Commercial Code, including, if the applicable statutory
8 requirements under §§ 3302, 7501, or 9303 of the Uniform Commercial
9 Code are satisfied, the rights and defenses of a holder in due course, a holder
10 to which a negotiable document of title has been duly negotiated, or a
11 purchaser, respectively. Delivery, possession, and endorsement are not
12 required to obtain or exercise any of the rights under this Subsection.

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

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

23 **§ 91117. Creation and Retention of Electronic Records and**
24 **Conversion of Written Records by Governmental Agencies.**

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

1 **§ 91118. Acceptance and Distribution of Electronic Records by**
2 **Governmental Agencies.**

3 (a) Except as otherwise provided in § 91112(f) of this Chapter,
4 each governmental agency of this state *shall* determine whether, and the
5 extent to which, it will send and accept electronic records and electronic
6 signatures to and from other persons and otherwise create, generate,
7 communicate, store, process, use, and rely upon electronic records and
8 electronic signatures.

9 (b) To the extent that a governmental agency uses electronic
10 records and electronic signatures under Subsection (a), the governmental
11 agency, giving due consideration to security, may specify:

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

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

20 (3) control processes and procedures as appropriate to ensure
21 adequate preservation, disposition, integrity, security, confidentiality,
22 and audit ability of electronic records; and

23 (4) any other required attributes for electronic records which
24 are specified for corresponding non-electronic records or reasonably
25 necessary under the circumstances.

1 (c) Except as otherwise provided in § 91112(f) of this Chapter, this
2 Chapter does not require a governmental agency of this state to use or permit
3 the use of electronic records or electronic signatures.

4 **§ 91119. Interoperability.**

5 The governmental agency of this state which adopts standards
6 pursuant to § 91118 of this Chapter may encourage and promote consistency
7 and interoperability with similar requirements adopted by other
8 governmental agencies of this and other states, and the federal government
9 and nongovernmental persons interacting with governmental agencies of this
10 state. If appropriate, those standards may specify differing levels of
11 standards from which governmental agencies of this state may choose in
12 implementing the most appropriate standard for a particular application.

13 **§ 91120. Severability Clause.**

14 If any provision of this Chapter or its application to any person or
15 circumstance is held invalid, the invalidity does not affect other provisions
16 or applications of this Chapter which can be given effect without the invalid
17 provision or application, and to this end the provisions of this Chapter are
18 severable.”