

House Bill 3195

Sponsored by Representative ESQUIVEL

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that if governmental agency conducts transaction by electronic means or in electronic form in ordinary course of business and under authority of law, agreement of person that conducts transaction with agency to conduct transaction by electronic means is presumed.

Provides that if law requires signature in written record to be original, electronic signature satisfies law if electronic signature is made, and is capable of being verified as made, directly from signature impressed upon or contained within original medium party used to sign record.

Provides that for instrument presented for recording that conveys interest in real property and is required by law to be acknowledged or proved, electronic signature is original signature under specified circumstances.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to electronic records; creating new provisions; amending ORS 84.013, 84.019 and 93.804; and
3 declaring an emergency.

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

5 **SECTION 1.** ORS 84.013 is amended to read:

6 84.013. (1) ORS 84.001 to 84.061 do not require a record or signature to be created, generated,
7 sent, communicated, received, stored or otherwise processed or used by electronic means or in
8 electronic form.

9 (2)(a) **Except as provided in paragraph (b) of this subsection**, ORS 84.001 to 84.061 apply
10 only to transactions between parties, each of which has agreed to conduct transactions by electronic
11 means. Whether the parties agree to conduct a transaction by electronic means is determined from
12 the context and surrounding circumstances, including the parties' conduct.

13 **(b) If a governmental agency conducts a transaction by electronic means or in electronic**
14 **form in the ordinary course of business and under authority of law, the agreement of a**
15 **person that conducts the transaction with the agency to conduct the transaction by elec-**
16 **tronic means, as described in paragraph (a) of this subsection, is presumed.**

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

20 (4) Except as otherwise provided in ORS 84.001 to 84.061, the effect of any provision of ORS
21 84.001 to 84.061 may be varied by agreement. The presence in certain provisions of ORS 84.001 to
22 84.061 of the words "unless otherwise agreed," or words of similar import, does not imply that the
23 effect of other provisions of ORS 84.001 to 84.061 may not be varied by agreement.

24 (5) Whether an electronic record or electronic signature has legal consequences is determined
25 by ORS 84.001 to 84.061 and other applicable law.

26 **SECTION 2.** ORS 84.019 is amended to read:

27 84.019. (1) A record or signature may not be denied legal effect or enforceability solely because

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **[it] the record or signature** is in electronic form.

2 (2) A contract may not be denied legal effect or enforceability solely because an electronic re-
3 cord was used in *[its formation]* **forming the contract.**

4 (3) If a law requires a record to be in writing, an electronic record satisfies the law.

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

6 (5) **If a law requires a signature in a written record to be original, an electronic signature**
7 **satisfies the law provided that the electronic signature is made, and is capable of being ver-**
8 **ified as made, directly from the signature impressed upon or contained within the original**
9 **medium the party used to sign the record.**

10 **SECTION 3.** ORS 93.804 is amended to read:

11 93.804. (1) Except as provided in subsection (2) of this section, *[when any]* **if an** instrument
12 presented for recording conveys an interest in real property and is required by law to be acknowl-
13 edged or proved, a county clerk *[shall]* **may** not record the instrument unless the instrument con-
14 tains the original signatures of the persons executing the instrument and the original signature of
15 the officer before whom the acknowledgment was made. **For purposes of this subsection, an**
16 **electronic signature, as defined in ORS 84.004, is an original signature if the electronic sig-**
17 **nature complies with the provisions of ORS 84.019 (5).**

18 (2) A county clerk may record a certified copy of an instrument that conveys an interest in real
19 property *[when]* **if a law authorizes** *[the]* recording *[of]* a certified copy of the instrument *[is au-*
20 *thorized by law]* and the instrument contains the original certification of the certifying officer.

21 **SECTION 4.** The amendments to ORS 84.013, 84.019 and 93.804 by sections 1, 2 and 3 of
22 **this 2011 Act apply to documents recorded or presented for recording before, on or after the**
23 **effective date of this 2011 Act.**

24 **SECTION 5.** This 2011 Act being necessary for the immediate preservation of the public
25 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
26 **on its passage.**

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