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CHAPTER 31

(Bill No. 25)

Electronic Commerce Act

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Attorney General

GOVERNMENT BILL

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CHAPTER 31

Electronic Commerce Act

(Assented to May 15, 2001)

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

1. (1) In this Act

Definitions

(a) “electronic” includes created, recorded, transmitted or stored in digital form or in other intangible form by electronic, magnetic or optical means or by any other means that has capabilities for creation, recording, transmission or storage similar to those means and “electronically” has a corresponding meaning;

electronic

(b) “electronic signature” means information in electronic form that a person has created or adopted in order to sign a document and that is in, attached to or associated with the document, and has the following characteristics:

electronic signature

- (i) it is uniquely linked to the signatory;
- (ii) it is capable of identifying the signatory;
- (iii) it is created using means that the signatory can maintain under his sole control; and
- (iv) it is linked to the data to which it relates in such a manner that any subsequent change of the data is detectable.

(c) “Government” means

Government

- (i) the Government of Prince Edward Island,
- (ii) any department or agency of the Government, and includes any corporation, board, commission or committee established under an Act, and
- (iii) any city, town or rural government structure, however designated, incorporated or established by or under an Act;

(d) “Minister” means the Executive Council Member responsible for the administration of this Act.

Minister

(2) “person” includes Government except in sections 5, 7, 8 and 10.

person

2. (1) Subject to this section, this Part applies in respect of any enactment.

Application

Lieutenant Governor in Council	(2) The Lieutenant Governor in Council may, by regulation, specify provisions of or requirements under other enactments in respect of which this Act does not apply.
Does not apply	(3) This Act does not apply to <ol style="list-style-type: none"> (a) wills and their codicils; (b) trusts created by wills or by codicils to wills; (c) powers of attorney, to the extent that they are in respect of the financial affairs or personal care of an individual; (d) documents that create or transfer interests in land and that require registration to be effective against third parties.
Negotiable instrument	(4) Except for Part 3, this Act does not apply in respect of negotiable instruments, including negotiable documents of title.
Limitations	(5) Nothing in this Act limits the operation of any provision of any enactment that expressly authorizes, prohibits or regulates the use of electronic documents.
Lieutenant Governor may amend	(6) The Lieutenant Governor in Council may, by order, amend subsection (3) to <ol style="list-style-type: none"> (a) add any document or class of documents; or (b) remove any document or class of documents previously added under this subsection.
In writing and signature	(7) For the purpose of subsection (5), the use of words and expressions such as “in writing” and “signature” and other similar words and expressions does not by itself prohibit the use of electronic documents.
Application	3. The provisions of this Act relating to the satisfaction of a requirement of law apply whether or not the law creates an obligation or provides consequences for the failure to do any specific thing

PART 1

PROVISION AND RETENTION OF INFORMATION

Legal recognition	4. Information shall not be denied legal effect or enforceability solely by reason that it is in electronic form.
Use not mandatory	5. (1) Subject to section 2, this Act does not require a person to provide, receive or retain information or a record in electronic form without the person’s consent.
Consent inferred	(2) Consent by a person to provide, receive or retain information or a record in electronic form may be inferred from the person’s conduct.

(3) Notwithstanding subsection (2), the consent of the Government to provide, receive or retain information in electronic form may not be inferred by its conduct, but must be expressed by communication accessible to the public or to those likely to communicate with it for particular purposes.

Consent of Government not inferred

6. A requirement under any enactment that information be in writing is satisfied by information in electronic form if the information is accessible so as to be usable for subsequent reference.

Requirement for information to be in writing

7. A requirement under any enactment for a person to provide information in writing to another person is satisfied by the provision of the information in an electronic document,

Providing information in writing

- (a) if the electronic document that is provided to the person is accessible by the other person and capable of being retained by the other person so as to be usable for subsequent reference; and
- (b) where the information is to be provided to the Government, if
 - (i) the Government has consented to accept electronic documents in satisfaction of the requirement, and
 - (ii) the electronic document meets the information technology standards and acknowledgement rules, if any, established by the Government.

8. A requirement under any enactment for a person to provide information in a specific non-electronic form to another person is satisfied by the provision of the information in an electronic document,

Providing Information in specific form

- (a) if the information is provided in the same or substantially the same form and the electronic document is accessible by the other person and capable of being retained by the other person so as to be usable for subsequent reference; and
- (b) where the information is to be provided to the Government, if
 - (i) the Government has consented to accept electronic documents in satisfaction of the requirement, and
 - (ii) the electronic document meets the information technology standards and acknowledgement rules, if any, established by the Government.

9. (1) A requirement under any enactment for a signature is satisfied by an electronic signature.

Signatures

(2) For the purpose of subsection (1), the Lieutenant Governor in Council may make a regulation that

Reliability of signature

- (a) the electronic signature shall be reliable for the purpose of identifying the person, in the light of all the circumstances, including any relevant agreement and the time the electronic signature was made; and

(b) the association of the electronic signature with the relevant electronic document shall be reliable for the purpose for which the electronic document was made, in the light of all the circumstances, including any relevant agreement and the time the electronic signature was made.

Conditions

(3) For the purposes of subsection (1), where the signature or signed document is to be provided to the Government, the requirement is satisfied only if

- (a) the Government has consented to accept electronic signatures; and
- (b) the electronic document meets the information technology standards and requirements as to method and as to reliability of the signature, if any, established by the Government.

Provision of originals

10. (1) A requirement under any enactment that requires a person to present or retain a document in its original form is satisfied by the provision or retention of an electronic document if

- (a) there exists a reliable assurance as to the integrity of the information contained in the electronic document from the time the document to be presented or retained was first made in its final form, whether as a paper document or as an electronic document;
- (b) where the document in its original form is to be provided to a person, the electronic document that is provided to the person is accessible by the person and capable of being retained by the person so as to be usable for subsequent reference; and
- (c) where the document in its original form is to be provided to the Government,
 - (i) the Government has consented to accept electronic documents in satisfaction of the requirement, and
 - (ii) the electronic document meets the information technology standards and acknowledgement rules, if any, established by the Government.

Assessing integrity

(2) For the purpose of clause (1)(a),

- (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;
- (b) the standard of reliability required shall be assessed in the light of the purpose for which the document was made and in the light of all the circumstances.

Whether document is capable of being retained

11. An electronic document is deemed not to be capable of being retained if the person providing the electronic document inhibits the printing or storage of the electronic document by the recipient.

- 12.** A requirement under any enactment to retain a document is satisfied by the retention of an electronic document if
- (a) the electronic document is retained in the format in which it was made, sent or received, or in a format that does not materially change the information contained in the document that was originally made, sent or received;
 - (b) the information in the electronic document will be accessible so as to be usable for subsequent reference by any person who is entitled to have access to the document or who is authorized to require its production; and
 - (c) where the electronic document was sent or received, information, if any, that identifies the origin and destination of the electronic document and the date and time when it was sent or received is also retained.
- 13.** Where a document may be submitted in electronic form, a requirement under a provision of any enactment for one or more copies of a document to be submitted to a single addressee at the same time is satisfied by the submission of a single version of an electronic document.
- 14.** Nothing in this Part limits the operation of any requirement under any enactment for information to be posted or displayed in a specified manner or for any information or document to be transmitted by a specified method.
- 15.** (1) If a provision of an enactment requires a person to communicate information, the Minister responsible for the provision may prescribe electronic means to be used for the communication of the information and the use of those means satisfies that requirement.
- (2) If an enactment sets out a form, the Minister responsible for the administration of the enactment may make an electronic form that is substantially the same as the form set out in the enactment and the electronic form is to be considered as the form set out in the enactment.
- (3) A provision of an enactment that authorizes the prescription of a form or the manner of filing a form includes the authority to prescribe an electronic form or electronic means of filing the form, as the case may be.
- (4) In this section
- (a) “filing” includes all manner of submitting, regardless of how it is designated;
 - (b) “prescribe” includes all manner of issuing, making and establishing, regardless of how it is designated.

Retention of documents

Copies

Other requirements continue to apply

Authority to prescribe forms and manner of filing forms

Electronic form of enactment

Idem

Definitions

filing

prescribe

Collection, storage, etc.	16. (1) In the absence of an express provision in any enactment that electronic means may not be used or that they must be used in specified ways, a Minister or an entity referred to in subclauses 1(c)(ii) or (iii) of the definition of “Government” may use electronic means to create, collect, receive, store, transfer, distribute, publish or otherwise deal with documents or information.
In writing, signature	(2) For the purpose of subsection (1), the use of words and expressions such as “in writing” and “signature” and other similar words and expressions does not by itself constitute an express provision that electronic means may not be used.
Electronic Payments	17. (1) A payment that is authorized or required to be made to the Government may be made in electronic form in any manner specified by the Provincial Treasury or an entity referred to in section 1(c)(iii).
Form specified	(2) A payment that is authorized or required to be made by the Government may be made in electronic form in any manner specified by the Provincial Treasury or an entity referred to in section 1(c)(iii).

PART 2

COMMUNICATION OF ELECTRONIC DOCUMENTS

electronic agent	18. In this Part, “electronic agent” means a computer program or any electronic means used to initiate an action or to respond to electronic documents or actions in whole or in part without review by an individual at the time of the response or action.
Formation and operation of contracts	19. (1) Unless the parties agree otherwise, an offer or the acceptance of an offer, or any other matter that is material to the formation or operation of a contract, may be expressed by means of an electronic document.
Electronic document contract legal	(2) A contract shall not be denied legal effect or enforceability solely by reason that an electronic document was used in its formation.
Involvement of electronic agents	20. A contract may be formed by the interaction of an electronic agent and an individual or by the interaction of electronic agents.
Errors when dealing with electronic agents	21. An electronic document made by an individual with the electronic agent of another person has no legal effect and is not enforceable by the other person if the individual made a material error in the document and <ol style="list-style-type: none"> (a) the electronic agent did not provide the individual with an opportunity to prevent or correct the error; (b) the individual notifies the other person of the error as soon as practicable after the individual learns of the error and indicates that he or she made an error in the electronic document;

- (c) the individual takes reasonable steps, including steps that conform to the other person's instructions, to return the consideration received, if any, as a result of the error or, if instructed to do so, to destroy the consideration; and
- (d) the individual has not used or received any material benefit or value from the consideration, if any, received from the other person.

22. (1) Unless the originator and the addressee agree otherwise, an electronic document is sent when it enters an information system outside the control of the originator or, if the originator and the addressee are in the same information system, when it becomes capable of being retrieved and processed by the addressee.

Time and place of sending and receipt of electronic documents

(2) An electronic document is presumed to be received by the addressee,

Receipt of electronic document

- (a) when it enters an information system designated or used by the addressee for the purpose of receiving documents of the type sent, and it is 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 documents of the type sent, when the addressee becomes aware of the electronic document in the addressee's information system and the electronic document is capable of being retrieved and processed by the addressee.

(3) Unless the originator and the addressee agree otherwise, an electronic document is deemed to be sent from the originator's place of business and is deemed to be received at the addressee's place of business.

Place of business

(4) For the purposes of subsection (3)

Other sites

- (a) if the originator or the addressee has more than one place of business, the place of business is that which has the closest relationship to the underlying transaction to which the electronic document relates or, if there is no underlying transaction, the principal place of business of the originator or the addressee; and
- (b) if the originator or the addressee does not have a place of business, the references to "place of business" in subsection (3) are to be read as references to "habitual residence".

PART 3

CARRIAGE OF GOODS

23. This Part applies to any action in connection with a contract of carriage of goods, including, but not limited to

Actions related to contracts of carriage of goods

- (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 of carriage of goods;
- (l) giving a notice or statement in connection with the performance of a contract of carriage of goods;
- (m) acquiring or transferring rights and obligations under a contract of carriage of goods.

Documents

24. (1) Subject to subsection (2), a requirement under an enactment that an action referred to in any of clauses 23(a) to (m) be carried out in writing or by using a paper document is satisfied if the action is carried out by using one or more electronic documents.

Reliable assurance

(2) If a right is to be granted to or an obligation is to be acquired by one person and no other person, and there is a legal requirement that this be done by the transfer or use of a document in writing, that legal requirement is satisfied by the use of one or more electronic documents only if they are created by a method that gives reliable assurance that the right or obligation has become that of that person and of no other person.

Standard of reliability

(3) For the purposes of subsection (2), the standard of reliability required shall be assessed in the light of the purpose for which the right or obligation was conveyed and in the light of all the circumstances, including any relevant agreement.

Termination and replacement

(4) If one or more electronic documents are used to accomplish an action referred to in clause 23(j) or (m), no document in writing used to effect the action is valid unless the use of electronic documents has been terminated and replaced by the use of documents in writing. A document in writing issued in these circumstances must contain a statement of the termination, and the replacement of the electronic documents by documents in writing does not affect the rights or obligations of the parties involved.

Electronic contracts

(5) If a rule of Prince Edward Island law is compulsorily applicable to a contract of carriage of goods that is set out in, or is evidenced by, a

document in writing, that rule shall not be inapplicable to a contract of carriage of goods that is evidenced by one or more electronic documents by reason of the fact that the contract is evidenced by electronic documents instead of by a document in writing.

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Hon. Jeffrey E. Lantz
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GOVERNMENT BILL

