

# Esign

E-Sign Act<sup>1</sup> – Electronic Negotiable Instrument (Electronic Promissory Note)

## Transferable Record - Authoritative Copy 15 USC 7021 Definitions

*(d) Status as Holder.--Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section 1-201(20) of the Uniform Commercial Code, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under section 3-302(a), 9-308, or revised section 9-330 of the Uniform Commercial Code are satisfied, the rights and defenses of a holder in due course or a purchaser, respectively.*

*Delivery, possession, and endorsement are not required to obtain or exercise any of the rights under this subsection.*

### **E-Sign 15 USC 7003 excludes the Uniform Commercial Code Article 3 Negotiable Instruments**

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

### **What is reasonable Proof?**

Submission of a Business Affidavit that claims the electronic data contained within a computer system that was inputted by another along with a printed out copy of an electronic digitized scanned graphic image—reasonable proof? One has to wonder if the Federal Rules of Evidence 802 & 803<sup>2</sup> would agree.

### **Simply**

**A Transferable Record is not a Written Paper Tangible  
An Authoritative Copy is not a Written Paper Tangible**

The banks must lie to protect their interests in the

**“Trillion Dollar FUBAR”**

<sup>1</sup> <http://www.gpo.gov/fdsys/pkg/PLAW-106publ229/content-detail.html>

<sup>2</sup> Murray, 804 S. W. 2d at 284 (computer printout is often simply “the feeding back of data placed into a computer by a person, although the data may be in a different form than it was when it was fed into the computer, it retains its status as the statement or statements made by a person: and thus fits the definition of hearsay.)