ALAN WILSON
ATTORNEY GENERAL

January 10, 2012

Kevin A. Shwedo, Executive Director
South Carolina Department of Motor Vehicles
P.O. Box 1498
Blythewood, SC 29016

Dear Director Shwedo:

We received your letter requesting an opinion of this office as to the sufficiency, as evidence of receipt, of an electronically-generated and stored facsimile signature on certified mail. This question is raised in reference to the provisions of the Uniform Electronic Transactions Act of 2004 (the "UETA").

By way of background, you note that the South Carolina Department of Motor Vehicles (the "DMV") must send certain notices of suspension return receipt requested. See, *e.g.*, S.C. Code Ann. §56-1-810 [points], §§56-1-460, -465 [driving under suspension], §56-10-530 [uninsured vehicles]. Additionally, as Executive Director of the DMV, §§15-9-350 through -370 direct you to act as the agent for service of process for non-resident motor vehicle operators or non-resident motor carriers that are involved in collisions on South Carolina roads. These provisions further require the DMV to send pleadings in lawsuits to parties through certified mail, and to append the return receipt to the processes filed in these cases. You state that "[d]isputes can arise as to the adequacy of service in either the suspension situations mentioned above or in the case of service of process on non-residents."

You inform us that the DMV has discussed with a private company the purchase of a service ("service") which provides electronic return receipts. You note that the United States Postal Service ("USPS") has approved electronic return receipts provided by this private company and other vendors. Basically, the recipient's signature is collected and stored digitally so, unlike the typical "green cards," it cannot be lost. The sender may then print the digital receipt when needed, or download the delivery date into a spreadsheet or data file. You explain that:

> [this service] involves capturing digitalized signature of a recipient of return receipt mail similar to those created for screen signatures for credit card purchases at merchants or screen receipt signatures by couriers such as UPS. The process generates savings to the mailer because it eliminates the necessity to physically transport the "green card" back to the mailer. It also saves staff from manually filling out return receipt cards. . . .

You indicate this service is in use elsewhere and that the DMV would like to take advantage of the cost savings the service would provide. However, you are concerned the electronic "green cards"

might not be regarded as adequate evidence of notices of suspension or service of process in South Carolina.

Law/Analysis

Your opinion request presents a novel question. The UETA is codified in S.C. Code Ann. §§26-6-10 *et seq.*[1] In §26-6-10, the Legislature explained the purposes of the UETA as follows:

> [c]onsistent with the provisions of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7002(a) [the "E-Sign Act"], this chapter provides alternative procedures or requirements for the use of electronic records to establish the legal effect or validity of records in electronic transactions.

The UETA provides that electronic records and electronic signatures meet "writing," "signing," or "original" requirements in other South Carolina laws without having to amend existing laws or regulations.

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Media General Communications, Inc. v. South Carolina Dept. of Revenue, 388 S.C. 138, 694 S.E.2d 525, 529 (2010). The best evidence of intent is in the statute itself: What the Legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the Legislature. Id., 694 S.E.2d at 530. "In construing statutory language, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." South Carolina State Ports Authority v. Jasper County, 368 S.C. 388, 629 S.E.2d 624, 629 (2006).

The clear intent of the Legislature in enacting the UETA is to support and encourage electronic commerce and electronic government, by allowing people and commercial and government entities to use electronic signatures and electronic records in lieu of handwritten signatures and paper documents. Pursuant to §26-6-60, the UETA "must be construed and applied" to:

> (1) facilitate electronic transactions consistent with other applicable law;

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[1]We note the Uniform Electronic Transactions Act (the "Model Act"), which was approved and recommended for enactment in all states by the National Conference of Commissioners on Uniform State Laws at its annual conference in 1999. The Commissioners released a Prefatory Note and Comments ("Draft Comments") to provide assistance to the states then considering adoption of the Model Act. The Draft Comments are intended to help explain the Model Act's purpose, and also its limitations. Because the Model Act served as the basis for enacting the UETA in South Carolina, we believe it is appropriate and relevant for us to look to these Draft Comments to better understand the UETA and its likely application to the questions presented. A complete text of the Model Act, Prefatory Note, and Draft Comments is available by accessing: http://www.law.upenn.edu/bll/archives/ulc/eucicta/eta1299.htm.

> (2) be consistent with reasonable practice concerning electronic transactions and with continued expansion of those practices . . .

The Draft Comments to the identical Model Act further elaborate on the intent of the provisions. They state:

> [t]his Act has been drafted to permit flexible application consistent with its purpose to validate electronic transactions. The provisions of this Act validating and effectuating the employ of electronic media allow the courts to apply them to new and unforeseen technologies and practices. As time progresses, it is anticipated that what is new and unforeseen today will be commonplace tomorrow. Accordingly, this legislation is intended to set a framework for the validation of media which may be developed in the future and which demonstrate the same qualities as the electronic media contemplated and validated under this Act.

Among the substantive provisions of the UETA, §26-6-70 provides:

> (A) A record or signature must not be denied legal effect or enforceability solely because it is in electronic form.
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> (B) A contract must not be denied legal effect or enforceability solely because an electronic record is used in its formation.
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> (C) An electronic record satisfies a law requiring a record to be in writing.
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> (D) An electronic signature satisfies a law requiring a signature.

The above provision sets forth the fundamental premise of the UETA; namely, that the medium in which a record, signature or contract is created, presented or retained does not affect its legal significance. The UETA is thus designed to eliminate the single element of medium as a reason to deny effect or enforceability to an electronic record, signature or contract. In our view, this language could not be more straightforward; an electronic signature will satisfy any law that demands a signature.

The UETA defines an "electronic signature" in §26-6-20(8) as "an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record." This definition of "electronic signature" is derived verbatim from the Model Act. The definition is broad and technologically neutral, thereby permitting any number of actions or processes to create a signature: a typed name, a click-through procedure on a computer, a recorded voice, use of a PIN or password or, as we believe, a digital capture of a hand-written signature. In the Draft Comments elucidating the UETA, the drafters wrote in Section 2:

> "[t]he idea of a signature is broad. . . [The Model] Act establishes, to the greatest extent possible, the equivalency of electronic signatures and manual

> signatures. The purpose is to overcome unwarranted biases against electronic methods of signing and authenticating records. Therefore the term "signature" has been used to connote and convey that equivalency. The term "authentication," used in other laws, often has a narrower meaning and purpose than an electronic signature as used in this Act. However, an authentication under any of those other laws constitutes an electronic signature under this Act.

See also Anderson v. Bell, 234 P.3d 1147, 1152 (Utah 2010) [holding that while a person's signature is usually made by writing his name, the same purpose can be accomplished by placing any writing, indicia or symbol which the signer chooses to adopt and use as his signature and by which it may be proved: *e.g.*, by finger or thumb prints, by a cross or other mark, or by any type of mechanically reproduced or stamped facsimile of his signature, as effectively as by his own handwriting]; 17A Am. Jur.2d. Contracts §176 (2004) ("[A] signature is whatever mark, symbol, or device one may choose to employ to represent oneself, and may include fingerprints. . . . 'Electronic' signatures are valid, and legislation has been enacted specifically to authorize them"); cf. Smith v. Greenville County, 188 S.C. 349, 199 S.E. 416, 418 (1938) [holding that stamped signature of the County Treasurer was valid and that, generally, a signature "may be written by hand, or printed, or stamped, or typewritten, or engraved, or photographed, or cut from one instrument and attached to another. A signature lithographed on an instrument by a party is sufficient for the purpose of signing it, and it has been held that it is immaterial with what kind of instrument a signature is made"].

The focus of the law is on (1) the intent of the signer rather than the choice of sound, symbol (*i.e.*, a digital signature) or process; and (2) whether the electronic signature can be linked to or logically associated with the record; not whether the signature is in electronic form. Thus, an important element is the intention to execute or adopt the sound, symbol (*i.e.*, a digital signature) or process for the purpose of signing the related record. The Draft Comments note:

> [t]he essential attribute of a signature involves applying a sound, symbol or process with an intent to do a legally significant act. It is the intention that is understood in the law as a part of the word "sign," without the need for a definition.

It is relevant that the Draft Comments include the following example:

> [t]his definition [of electronic signature] includes as an electronic signature the standard webpage click through process. For example, when a person orders goods or services through a vendor's website, the person will be required to provide information as part of a process which will result in receipt of the goods or services. When the customer ultimately gets to the last step and clicks "I agree," the person has adopted the process and has done so with the intent to associate the person with the record of that process. The actual effect of the electronic signature will be determined from all the surrounding circumstances, however, the person adopted a process which the circumstances indicate s/he intended to have the effect of getting the goods/services and being bound to pay

> for them. The adoption of the process carried the intent to do a legally significant act, the hallmark of a signature.

With these parameters in mind, we note the DMV has broad authority to conduct its business through electronic means provided, of course, the procedures and requirements set forth under the UETA are followed. The DMV is not, however, required to accept electronic signatures. See §26-6-180(C); see also Ops. S.C. Atty. Gen., May 12, 2009; October 31, 2005. As provided in §26-6-180 (A):

> [e]ach governmental agency of this State shall determine if, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

The Draft Comments explain the intent of these provisions in the Model Act is:

> . . . [t]o authorize[] state agencies to use electronic records and electronic signatures generally for intra-governmental purposes, and to convert written records and manual signatures to electronic records and electronic signatures. By its terms the section gives enacting legislatures the option to leave the decision to use electronic records or convert written records and signatures to the governmental agency or assign that duty to a designated state officer. It also authorizes the destruction of written records after conversion to electronic form . . . [and] . . . broadly authorizes state agencies to send and receive electronic records and signatures in dealing with non-governmental persons. Again, the provision is permissive and not obligatory.

Further, under §26-6-180(B) it is provided that:

> [t]o the extent that a governmental agency uses electronic records and electronic signatures pursuant to subsection (A), the governmental agency, in consultation with the South Carolina State Budget and Control Board, giving due consideration to security, may specify:
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> (1) the manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;
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> (2) if electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, a third party used by a person filing a document to facilitate the process;

> (3) control processes and procedures appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and
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> (4) other attributes required for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

Subsection (A) of §26-6-190 further provides that:

> [t]he South Carolina State Budget and Control Board shall adopt standards to coordinate, create, implement, and facilitate the use of common approaches and technical infrastructure, as appropriate, to enhance the utilization of electronic records, electronic signatures, and security procedures by and for public entities of the State. Local political subdivisions may consent to be governed by these standards.

We note the South Carolina Budget and Control Board (the "Board") issued "Standards for Electronic Signatures" on the UETA on February 28, 2007.[2] These guidelines provide specific standards for electronic signatures under the UETA. In brief summary, these guidelines provide that an electronic signature must uniquely identify the signer thus making it unlikely that any other unauthorized entity provided the signature. There must be either explicit or implicit agreement that the electronic signature will serve as a signature for the electronic documents or record. The application of the electronic signature must be an intentional act, which may be determined from the contents of the document or record, and the facts and circumstances surrounding the transaction. The electronic signature must be physically or logically associated with the electronic record that is signed, and that association must persist as long as the signature is in effect, which may be the life of the record. These conditions are discussed in context of security concerns regarding electronic signatures: authentication, non-repudiation, and integrity. The scope and limits of the guidelines as applicable to government agencies are essentially policy decisions for the Board and not an opinion of this office. Therefore, we strongly suggest you contact the Board for guidance as to any issues before implementing a policy.

In enacting the UETA, the Legislature specifically provided in §26-6-30(A) that, except for specified transactions listed in subsection (B), the UETA applies to electronic records and electronic signatures. We note the Legislature specifically excluded prescription drugs, wills, codicils, testamentary trusts, as transactions within the scope of the Uniform Commercial Code, and certain transactions governed by the E-Sign Act from the provisions of the UETA. This list demonstrates to us the Legislature intended that only these particular transactions are not appropriately authenticated through electronic means.

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[2]These guidelines may be viewed on the website of the Division of State Information Technology at www.cio.sc.gov.

The UETA further provides in §26-6-50 that: "this chapter applies to electronic records and electronic signatures relating to a transaction." [Emphasis added]. A "transaction" is defined in §26-6-20(17) as "an action or set of actions occurring between two or more persons relating to the conduct of business, commercial or governmental affairs." Consequently, transactions with no relation to business, commercial or government transactions would not appear to be subject to the UETA. Although Section 2 of the Draft Comments describes a number of commercial and business transactions involving individuals that would constitute a "transaction," no further examples of transactions are provided by the drafters. You indicated to us that the DMV is directed by law to provide notice of suspension and to act as the agent for service of process for non-resident motor vehicle operators or non-resident motor carriers. The recipient signs an electronic digital facsimile signature to signify receipt. We believe a court would likely find that this relationship between the DMV and the recipient of the notice of suspension or service of process would meet the definition of a "transaction" under the UETA.

You note that Section 2 of the Draft Comments, which attempts to explain "transactions" to which the Model Act applies and those to which it does not, states the following:

> [t]he definition [of "transactions"] has been limited to actions between people taken in the context of business, commercial or governmental activities. The term includes all interactions between people for business, commercial, including specifically consumer, or governmental purposes. However, the term does not include unilateral or non-transactional actions. As such, it provides a structural limitation on the Scope of the Act as stated in [§26-6-30]. [Emphasis added].

You therefore question whether there is a potential for ambiguity presented by the service of suspension notices or process by the DMV, which are clearly "government activities" required by law, but also may be considered "unilateral," since the recipient performs no act of volition other than to electronically sign for receipt of service.

As you point out, however, the UETA also defines "agreement" in §26-6-20(1) as: "the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures giving the effect of agreements under law otherwise applicable to a particular transaction." Section 2 of the Draft Comments further quotes with approval the Restatement of Contracts 2d, §3, which states: "[a]n agreement is a manifestation of mutual assent on the part of two or more persons." We agree with your suggestion that by separately explicating "agreement" in the Model Act and the UETA, this is strong evidence the drafters and the Legislature did not intend the term "transaction" to imply strict mutual assent.

We further note that §26-6-50(B) sets forth the scope of the UETA in other respects. Specifically, the provision states: "[t]his chapter applies only to transactions between parties who agree to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct." [Emphasis added]. The Draft Comments explain the identical provision of the Model Act, stating:

> [t]his Section limits the applicability of this Act to transactions which parties have agreed to conduct electronically. Accordingly, a broad interpretation of the term agreement is necessary to assure that this Act has the widest possible application consistent with its purpose of removing barriers to electronic commerce.
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> 1. This section makes clear that this Act is intended to facilitate the use of electronic means, but does not require the use of electronic records and signatures. This fundamental principle is set forth in subsection (a) and elaborated by subsections (b) and (c), which require an intention to conduct transactions electronically and preserve the right of a party to refuse to use electronics in any subsequent transaction.
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> 2. The paradigm of this Act is two willing parties doing transactions electronically. It is therefore appropriate that the Act is voluntary and preserves the greatest possible party autonomy to refuse electronic transactions. The requirement that party agreement be found from all the surrounding circumstances is a limitation on the scope of this Act.
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> 3. If this Act is to serve to facilitate electronic transactions, it must be applicable under circumstances not rising to a full-fledged contract to use electronics. While absolute certainty can be accomplished by obtaining an explicit contract before relying on electronic transactions, such an explicit contract should not be necessary before one may feel safe in conducting transactions electronically. Indeed, such a requirement would itself be an unreasonable barrier to electronic commerce, at odds with the fundamental purpose of this Act. Accordingly, the requisite agreement, express or implied, must be determined from all available circumstances and evidence.
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> 4. Subsection (b) provides that the Act applies to transactions in which the parties have agreed to conduct the transaction electronically. In this context it is essential that the parties' actions and words be broadly construed in determining whether the requisite agreement exists. Accordingly, the Act expressly provides that the party's agreement is to be found from all circumstances, including the parties' conduct. The critical element is the intent of a party to conduct a transaction electronically. Once that intent is established, this Act applies.

We are again mindful that the Legislature intended an electronic signature to fulfill the requirement of a written signature, and that an electronic signature will not be denied legal effect. A court would likely find that conduct by the recipient in providing the electronic signature upon receipt of the notice or process denotes the acceptance of the service. We see no distinction between the digital signature to be provided by the recipient and the current practice by the USPS of presenting the recipient with the "green card" for acknowledgement of receipt. It is important for us to note that this office is <u>not</u> a

fact-finding entity. The ultimate legal determination regarding adequate service of a notice or process premised upon any particular circumstances is, therefore, a question of fact beyond the scope of an opinion of this office. See Op. S.C. Atty. Gen., April 6, 2006 ("[T]he investigation and determination of facts are matters beyond the scope of an opinion of this office").

We find the decision of the South Carolina Supreme Court in Patel v. Southern Brokers, Ltd., 277 S.C. 490, 289 S.E.2d 642 (1982), somewhat instructive. In Patel, the plaintiff attempted service of process under the long-arm statute, because the defendant was a North Carolina corporation. The summons and complaint were sent to the defendant by certified mail, return receipt requested. The plaintiff could not enter proof of service, because the postal service returned the unopened envelope as refused. Noting "technical objections to service of process" had been overruled "where the defendant had not been denied due process," the Court determined that a defendant could not avoid process by refusing to accept registered mail known to contain a summons and complaint. Id., 289 S.E.2d at 645. Citing other authority, the Court explained:

> . . . one, who is subject to the jurisdiction of the courts of this state under the act, cannot defeat the jurisdiction by the simple expedient of refusing to accept a registered letter. The avoidance of authorized service of proper process by a willful act or refusal to act on the part of the defendant would create an intolerable situation and should not be permitted.

Id., 289 S.E.2d at 644. The Court indicated that "[o]nce the documents were made available to the defendant, "the mailman was not required to ram them down the Defendant's throat." Id., 289 S.E.2d at 645. The Court concluded the defendant had been served with process and that the trial court had jurisdiction over the defendant. We see no distinction here between the recipient's refusal to sign the "green card," and a refusal to provide the electronic signature. Both would be treated the same.

Although not dispositive, we note the UETA specifically addresses service of process through electronic means by government agencies. It is provided in §26-6-190(C) that:

> [i]n accordance with Sections 26-6-20(18) and 26-6-195, and in reference to all South Carolina laws, rules, and regulations pertaining to service of process where service shall be made on entities described in Rule 4(d) (3) of the South Carolina Rules of Civil Procedure, those entities shall be served under Rule 4(d) (8) of the South Carolina Rules of Civil Procedure by:
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> (1) registered or certified mail-return receipt requested, addressed to the office of the registered agent;
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> (2) registered or certified mail-return receipt requested, addressed to the office of the secretary of the corporation at its principal office;
> (3) e-mailing the service of process that has been postmarked by a United States Postal Service Electronic Postmark in a manner approved by the

> South Carolina Supreme Court to an e-mail address registered with the Secretary of State for the corporation; or
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> (4) e-mailing the service of process that has been postmarked by a United States Postal Service Electronic Postmark in a manner approved by the South Carolina Supreme Court to an e-mail address registered with the Secretary of State for the agent for service of process for the corporation.

Further addressing the service of process to an e-mail address by a government agency, §26-6-195 provides:

> [n]otwithstanding any other provisions in this chapter, a governmental agency may use, in accordance with policies and procedures developed by the South Carolina Budget and Control Board and as circumstances allow, in order to perfect service of process of any communication, an e-mail address from any vendor, entity, or individual the governmental agency regulates or does business with, or an e-mail address from the agent for service of process of that vendor, entity, or individual. Such communication postmarked by a United States Postal Service Electronic Postmark shall have the same force of law as the United States Post Office certified mail-return receipt requested. The South Carolina Budget and Control Board shall devise policies and procedures for the use of the United States Postal Service Electronic Postmark in respect to state agencies and operations. These policies and procedures, where necessary, must consider the persons or entities which do not have an e-mail address.

These provisions demonstrate intent to facilitate the various means of service of process through electronic means by government entities. This process is facilitated by a "United States Postal Service Electronic Postmark," defined in §26-6-20(18) as "an electronic service provided by the United States Postal Service that provides evidentiary proof that an electronic document existed in a certain form at a certain time and the electronic document was opened or the contents of the electronic document were displayed at a time and date documented by the United States Post Office." The UETA states this service has "the same force of law as the United States Post Office certified mail-return receipt requested," as required by the South Carolina Rules of Civil Procedure. The inclusion of electronic service of process in the UETA strongly suggests legislative intent that an Electronic Postmark from the USPS or another "certifying" authority is equivalent to or an adequate substitute for service of process previously facilitated by certified, return-receipt mail.[3] Because government entities are authorized to accept

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[3]We have been unable to find anything to indicate that electronic service of process has been "approved by the South Carolina Supreme Court" pursuant to §26-6-190(C). However, we note an Administrative Order of the Court dated November 15, 2004, permitting a private law firm to experiment with the use of electronic e-mail for the service of legal documents, and to prove feedback to the Court, subject to the following conditions:

electronic signatures in their ordinary course of business, a court would likely find an electronic signature would be adequate evidence of receipt of notices of suspension or service of process as are the ink-signed copies of the "green card." Additionally, these provisions allowing for electronic service of process would refute an argument that electronically-generated and stored signatures are beyond the scope of the definition of "transaction" under the UETA, as discussed above.

Lastly, we note the UETA addresses evidentiary issues which may arise regarding electronic signatures. The UETA makes clear in §26-6-130 that "a . . . signature may not be excluded in a proceeding solely because the . . . signature is in electronic form." Additionally, the UETA clarifies in §26-3-30(D) that transactions subject to the UETA are "also subject to other applicable substantive law." In fact, throughout the UETA, the Legislature carefully notes that the provisions of the UETA are to be consistent with other applicable law. See, *e.g.*, §26-6-50 (E) ("Whether an electronic record or electronic signature has legal consequences is determined by this chapter and other applicable laws."); §26-6-60 ("This chapter must be construed and applied to: ... facilitate electronic transactions consistent with other applicable law. . . ."). The Model Act's corresponding Draft Comments in Section 13 explain: "[n]othing in this section relieves a party from establishing the necessary foundation for the admission of an electronic record. See Uniform Rules of Evidence 1001(3), 1002, 1003 and 1004."

Accordingly, we advise that evidence of electronic records must otherwise meet the admissibility requirements on a case-by-case basis within the existing framework of the South Carolina Rules of Evidence and case law in South Carolina. One court has even acknowledged that "courts increasingly are demanding that proponents of evidence obtained from electronically stored information pay more attention to the foundational requirements than has been customary for introducing evidence not produced from electronic sources." Lorraine v. Markel American Ins. Co., 241 F.R.D. 534, 543 (D. Md. 2007). For example, a court may consider whether or not there has been a foundational showing of the manner by which a particular electronic record was stored, maintained or retrieved in determining whether the exhibit is a true and accurate representation of such electronic record. See, *e.g.*, §§26-6-80, -90, -150, and -160. Additionally, the evidentiary use of electronically stored information may raise issues regarding the rules on original writings. Pursuant to the UETA, an electronic record that bears an electronic or digital signature would be admissible as if the signature were an original. Cf. §19-5-610 [recognizing that a

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> [a]ttorneys must first agree in writing to serve and receive documents through e-mail. In such instances, service pursuant to Rule 5(b) (1), SCRCP, upon a party represented by an attorney may be effected by e-mail provided that the service has been postmarked by the United States Postal Service Electronic Postmark, as defined in S.C. Code Ann. §26-6-20(18) (enacted July 16, 2004), and sent to the attorney's e-mail address as provided by the attorney for the purpose of receiving service of legal documents and other correspondence. When service is made via e-mail, the sender must include a description of the contents of the document(s), as well as the caption and civil action number of the case. Such service, postmarked by the United States Postal Service Electronic Postmark, shall have the same effect as service via the United States mail. Service via e-mail shall be in conformity with the requirements contained in the [UETA].

facsimile copy of a record of a business or public official may be offered as evidence just as the original record might be offered, assuming the requirements set forth therein are met]. We note that a presiding judge possesses wide discretion in the admission of this evidence, as any other. The admission of the evidence would, therefore, ultimately rest in the sound discretion of the trial judge. See State v. Tyner, 273 S.C. 646, 258 S.E.2d 559 (1979).

Conclusion

The UETA authorizes the use and acceptance of electronic signatures and electronic records in conducting transactions, including government affairs. Electronic signatures and records have the same legal force and effect as written signatures. The UETA expressly permits an electronic signature to satisfy any law that requires a signature. The UETA allows the use of electronic signatures so long as the parties agree to conduct the transaction by electronic means, which must be determined from all the circumstances, including the conduct of the parties. The transaction must otherwise comply with all statutory requirements. Also, a transaction under the UETA is subject to other applicable substantive law. The DMV has been granted authority to determine how and the extent to which it will create, send, receive, store, recognize, accept, be bound by, or otherwise use electronic records and electronic signatures pursuant to the UETA. We advise that the DMV should contact the South Carolina Budget and Control Board for guidance in this matter. However, it is the opinion of this office that the service under consideration by the DMV, which generates a detailed report of an electronic signature designating acceptant of receipt, would likely be considered by a court as adequate evidence of delivery of statutory notices of suspension or service of process as are the ink-signed copies of the "green card." If a law requires that a record of a signature be retained, we believe the requirement is satisfied by retaining the electronic form of the signature as a record by the government entity. To hold otherwise simply because technological advances have allowed for electronic records and signatures would run afoul of the expressed intent of our Legislature in enacting the UETA.

If you have any further questions, please advise.

Very truly yours,

N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

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