

106TH CONGRESS
1ST SESSION

H. R. 1714

To facilitate the use of electronic records and signatures in interstate or foreign commerce.

IN THE HOUSE OF REPRESENTATIVES

MAY 6, 1999

Mr. BLILEY (for himself, Mr. DAVIS of Virginia, Mr. TAUZIN, Mr. OXLEY, Mr. TOWNS, and Mr. FOSSELLA) introduced the following bill; which was referred to the Committee on Commerce

A BILL

To facilitate the use of electronic records and signatures in interstate or foreign commerce.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Electronic Signatures
5 in Global and National Commerce Act”.

1 **TITLE I—VALIDITY OF ELEC-**
2 **TRONIC RECORDS AND SIG-**
3 **NATURES FOR COMMERCE**

4 **SEC. 101. GENERAL RULE OF VALIDITY.**

5 (a) GENERAL RULE.—With respect to any contract
6 or agreement entered into in or affecting interstate or for-
7 eign commerce—

8 (1) no statute, regulation, or other rule of law
9 shall deny the legal effect of such contract or agree-
10 ment on the ground that the instrument is not in
11 writing if the instrument is an electronic record; and

12 (2) no statute, regulation, or other rule of law
13 shall deny the legal effect of such contract or agree-
14 ment on the ground that the contract or agreement
15 is not signed or is not affirmed by a signature if the
16 contract or agreement is signed or affirmed by an
17 electronic signature.

18 (b) AUTONOMY OF PARTIES IN COMMERCE.—With
19 respect to any contract or agreement entered into in or
20 affecting interstate or foreign commerce, the parties to
21 such contract or agreement may establish reasonable re-
22 quirements regarding the types of electronic records and
23 electronic signatures acceptable to such parties.

1 **SEC. 102. AUTHORITY TO ALTER OR SUPERSEDE GENERAL**
2 **RULE.**

3 (a) IN GENERAL.—Except as provided in subsection
4 (b), a Federal or State statute, regulation, or other rule
5 of law enacted or adopted after the date of enactment of
6 this Act may modify, limit, or supersede the provisions of
7 section 101 if—

8 (1) such statute, regulation, or rule makes spe-
9 cific reference to the provisions of section 101;

10 (2) specifies the alternative procedures or re-
11 quirements for the use of electronic records or elec-
12 tronic signatures to establish the legal validity of
13 contracts or agreements; and

14 (3) in the case of a State statute, regulation, or
15 other rule of law, is enacted or adopted within 2
16 years after the date of enactment of this Act.

17 (b) EFFECT ON OTHER LAWS.—A State statute, reg-
18 ulation, or other rule of law that modifies, limits, or super-
19 sedes section 101 shall not be effective to the extent that
20 such statute, regulation, or rule—

21 (1) discriminates in favor of or against a spe-
22 cific technology, method, or technique of creating,
23 storing, generating, receiving, communicating, or au-
24 thenticating electronic records or electronic signa-
25 tures;

1 (2) discriminates in favor of or against a spe-
2 cific type or size of entity engaged in the business
3 of facilitating the use of electronic records or elec-
4 tronic signatures;

5 (3) is not based on specific and publicly avail-
6 able criteria; or

7 (4) is otherwise inconsistent with the provisions
8 of section 101.

9 (c) ACTIONS TO ENJOIN.—Whenever it shall appear
10 to the Secretary of Commerce that a State has enacted
11 or adopted a statute, regulation, or other law that is pro-
12 hibited by subsection (b), the Secretary may bring an ac-
13 tion to enjoin the enforcement of such statute, regulation,
14 or rule, and upon a proper showing a permanent or tem-
15 porary injunction or restraining order shall be granted
16 without bond.

17 **SEC. 103. SPECIFIC EXCLUSIONS.**

18 The provisions of section 101 shall not apply to—

19 (1) a statute, regulation, or other rule of law
20 governing the creation and execution of wills, codi-
21 cils, or testamentary trusts; or

22 (2) a statute, regulation, or other rule of law
23 governing adoption, divorce, or other matters of
24 family law.

1 **SEC. 104. DEFINITIONS.**

2 For purposes of this title:

3 (1) **ELECTRONIC RECORD.**—The term “elec-
4 tronic record” means a writing, document, or other
5 record created, stored, generated, received, or com-
6 municated by electronic means.

7 (2) **ELECTRONIC SIGNATURE.**—The term “elec-
8 tronic signature” means a signature in electronic
9 form, attached to or logically associated with an
10 electronic record, that—

11 (A) is intended by the parties to signify
12 agreement to a contract or agreement;

13 (B) is capable of verifying the identity of
14 the person using the signature; and

15 (C) is linked to the electronic record in a
16 manner that prevents alteration of the record
17 after signature.

18 (3) **ELECTRONIC.**—The term “electronic”
19 means of or relating to technology having electrical,
20 digital, magnetic, optical, electromagnetic, or similar
21 capabilities regardless of medium.

1 **TITLE II—DEVELOPMENT AND**
2 **ADOPTION OF ELECTRONIC**
3 **SIGNATURE PRODUCTS AND**
4 **SERVICES**

5 **SEC. 201. TREATMENT OF ELECTRONIC SIGNATURES IN**
6 **INTERSTATE AND FOREIGN COMMERCE.**

7 (a) INQUIRY REGARDING IMPEDIMENTS TO COM-
8 MERCE.—

9 (1) INQUIRIES REQUIRED.—Within 90 days
10 after the date of the enactment of this Act, and an-
11 nually thereafter, the Secretary of Commerce, acting
12 through the Assistant Secretary for Communications
13 and Information, shall complete an inquiry to—

14 (A) identify any domestic and foreign im-
15 pediments to commerce in electronic signature
16 products and services and the manners in which
17 and extent to which such impediments inhibit
18 the development of interstate and foreign com-
19 merce;

20 (B) identify constraints imposed by foreign
21 nations or international organizations that con-
22 stitute barriers to providers of electronic signa-
23 ture products or services; and

1 (C) identify the degree to which other na-
2 tions and international organizations are com-
3 plying with the principles in subsection (b)(2).

4 (2) SUBMISSION.—The Secretary shall submit a
5 report to the Congress regarding the results of each
6 such inquiry within 90 days after the conclusion of
7 such inquiry.

8 (b) PROMOTION OF ELECTRONIC SIGNATURES.—

9 (1) REQUIRED ACTIONS.—The Secretary of
10 Commerce, acting through the Assistant Secretary
11 for Communications and Information, shall promote
12 the acceptance and use, on an international basis, of
13 electronic signatures in accordance with the prin-
14 ciples specified in paragraph (2) and in a manner
15 consistent with section 101 of this Act. The Sec-
16 retary of Commerce shall take all actions necessary
17 in a manner consistent with such principles to elimi-
18 nate or reduce, to the maximum extent possible, the
19 impediments to commerce in electronic signatures,
20 including those identified in the inquiries under sub-
21 section (a) for the purpose of facilitating the devel-
22 opment of interstate and foreign commerce.

23 (2) PRINCIPLES.—The principles specified in
24 this paragraph are the following:

1 (A) Free markets and self-regulation, rath-
2 er than government standard-setting or rules,
3 should govern the development and use of elec-
4 tronic records and electronic signatures.

5 (B) Neutrality and nondiscrimination
6 should be observed among providers of and
7 technologies for electronic records and elec-
8 tronic signatures.

9 (C) Parties to a transaction should be per-
10 mitted to establish reasonable requirements re-
11 garding the types of electronic records and elec-
12 tronic signatures acceptable to such parties.

13 (D) Electronic records and electronic sig-
14 natures in a form acceptable to the parties
15 should not be denied legal validity on the
16 ground that they are not in writing.

17 (E) De jure or de facto imposition of
18 standards on private industry through foreign
19 adoption of regulations or policies with respect
20 to electronic records and electronic signatures
21 should be avoided.

22 (c) FOLLOWUP STUDY.—Within 3 years after the
23 date of enactment of this Act, the Secretary of Commerce,
24 acting through the Assistant Secretary for Communica-
25 tions and Information, shall conduct an inquiry regarding

1 any State statutes, regulations, or other rules of law en-
2 acted or adopted after such date of enactment pursuant
3 to section 102(a), and the extent to which such statutes,
4 regulations, and rules comply with section 102(b). The
5 Secretary shall submit a report to the Congress regarding
6 the results of such inquiry by the conclusion of such 3-
7 year period and such report shall identify any actions
8 taken by the Secretary pursuant to section 102(e) and
9 subsection (b) of this section.

10 (d) CONSULTATION.—In conducting the activities re-
11 quired by this section, the Secretary shall consult with
12 users and providers of electronic signature products and
13 services and other interested persons.

14 **TITLE III—USE OF ELECTRONIC**
15 **RECORDS AND SIGNATURES**
16 **UNDER FEDERAL SECURITIES**
17 **LAW**

18 (a) AMENDMENT.—Section 3 of the Securities Ex-
19 change Act of 1934 (15 U.S.C. 78c) is amended by adding
20 at the end the following:

21 “(h) REQUIREMENTS RELATING TO WRITTEN DOCU-
22 MENTS AND SIGNATURES.—

23 “(1) USE OF ELECTRONIC RECORDS AND SIG-
24 NATURES.—Notwithstanding any State statute, reg-
25 ulation, or rule of law, whenever in the securities

1 laws, or in the rules or regulations thereunder (in-
2 cluding the rules of any self-regulatory organiza-
3 tion)—

4 “(A) a contract, agreement, or record (as
5 defined in subsection (a)(37)) is required to be
6 in writing, or is required to be authenticated by
7 means of an instrument in writing, the legal ef-
8 fect of such contract, agreement, or record shall
9 not be denied on the ground that the instru-
10 ment is not in writing if the instrument is an
11 electronic record; and

12 “(B) a contract, agreement, or record is
13 required to be signed, the legal effect of such
14 contract, agreement, or record shall not be de-
15 nied on the ground that contract, agreement, or
16 record is not signed or is not affirmed by a sig-
17 nature if the contract, agreement, or record is
18 signed or affirmed by an electronic signature.

19 “(2) AUTHORITY OF COMMISSION.—Notwith-
20 standing any State statute, regulation, or rule of
21 law, the Commission may, consistent with the public
22 interest and the protection of investors, prescribe
23 regulations to carry out this subsection, but such
24 regulations shall not—

1 “(A) discriminate in favor of or against a
2 specific technology, method, or technique of cre-
3 ating, storing, generating, receiving, commu-
4 nicating, or authenticating electronic records or
5 electronic signatures; or

6 “(B) discriminate in favor of or against a
7 specific type or size of entity engaged in the
8 business of facilitating the use of electronic
9 records or electronic signatures.

10 “(3) DEFINITIONS.—The terms ‘electronic
11 record’ and ‘electronic signature’ have the meanings
12 provided such terms by section 104 of the Electronic
13 Signatures In Global and National Commerce Act.”.

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