

Union Calendar No. 222

106TH CONGRESS
1ST SESSION

H. R. 1714

[Report No. 106-341, Parts I and II]

A BILL

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

OCTOBER 15, 1999

Reported with an amendment, committed to the Com-
mittee of the Whole House on the State of the Union,
and ordered to be printed

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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

SEPTEMBER 27, 1999

Reported with an amendment and referred to the Committee on the Judiciary for a period ending not later than October 15, 1999, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(k), rule X

[Strike out all after the enacting clause and insert the part printed in *italic*]

OCTOBER 15, 1999

Additional sponsors: Mr. DREIER, Mr. BURR of North Carolina, Mr. PICKERING, Mr. SHADEGG, and Mr. CANNON

OCTOBER 15, 1999

Reported from the Committee on the Judiciary with an amendment, committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in boldface roman]

[For text introduced bill, see copy of bill as introduced on May 6, 1999]

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”.*

6 **TITLE I—VALIDITY OF ELEC-**
7 **TRONIC RECORDS AND SIG-**
8 **NATURES FOR COMMERCE**

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

10 (a) *GENERAL RULE.*—*With respect to any contract or*
11 *agreement entered into in or affecting interstate or foreign*
12 *commerce, notwithstanding any statute, regulation, or other*
13 *rule of law, the legal effect, validity, or enforceability of*
14 *such contract or agreement shall not be denied—*

15 (1) *on the ground that the contract or agreement*
16 *is not in writing if the contract or agreement is an*
17 *electronic record; or*

18 (2) *on the ground that the contract or agreement*
19 *is not signed or is not affirmed by a signature if the*

1 to the State legislatures by the National Conference of
2 Commissioners on Uniform State Laws; or

3 (B) specifies the alternative procedures or re-
4 quirements for the use or acceptance of electronic
5 records or electronic signatures to establish the legal
6 effect, validity, or enforceability of contracts or agree-
7 ments;

8 (2) is enacted or adopted within 4 years after the
9 date of enactment of this Act; and

10 (3) makes specific reference to the provisions of
11 section 101.

12 (b) *LIMITATIONS ON ALTERATION OR SUPERSESION.*—A State statute, regulation, or other rule of law (in-
13 cluding an insurance statute, regulation, or other rule of
14 law), regardless of its date of enactment or adoption, that
15 modifies, limits, or supersedes section 101 shall not be effec-
16 tive to the extent that such statute, regulation, or rule—

17 (1) discriminates in favor of or against a spe-
18 cific technology, method, or technique of creating,
19 storing, generating, receiving, communicating, or au-
20 thenticating electronic records or electronic signa-
21 tures;

22 (2) discriminates in favor of or against a spe-
23 cific type or size of entity engaged in the business of
24

1 *facilitating the use of electronic records or electronic*
2 *signatures;*

3 *(3) is based on procedures or requirements that*
4 *are not specific or that are not publicly available; or*
5 *(4) is otherwise inconsistent with the provisions*
6 *of section 101.*

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

15 **SEC. 103. SPECIFIC EXCLUSIONS.**

16 *The provisions of section 101 shall not apply to—*

17 *(1) a statute, regulation, or other rule of law*
18 *governing the creation and execution of wills, codicils,*
19 *or testamentary trusts; or*

20 *(2) a statute, regulation, or other rule of law*
21 *governing adoption, divorce, or other matters of fam-*
22 *ily law.*

23 **SEC. 104. DEFINITIONS.**

24 *For purposes of this title:*

1 (1) *ELECTRONIC RECORD.*—The term “electronic
2 *record*” means a writing, document, or other record
3 created, stored, generated, received, or communicated
4 by electronic means.

5 (2) *ELECTRONIC SIGNATURE.*—The term “elec-
6 *tronic signature*” means information or data in elec-
7 tronic form, attached to or logically associated with
8 an electronic record by a person or an electronic
9 agent, that is intended by a party to signify agree-
10 ment to a contract or agreement.

11 (3) *ELECTRONIC.*—The term “electronic” means
12 of or relating to technology having electrical, digital,
13 magnetic, optical, electromagnetic, or similar capa-
14 bilities regardless of medium.

15 (4) *ELECTRONIC AGENT.*—The term “electronic
16 agent” means a computer program or an electronic or
17 other automated means used independently to initiate
18 an action or respond to electronic records in whole or
19 in part without review by an individual at the time
20 of the action or response.

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 after*
10 *the date of the enactment of this Act, and annually*
11 *thereafter, the Secretary of Commerce, acting through*
12 *the Assistant Secretary for Communications and In-*
13 *formation, 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 Com-
10 merce, acting through the Assistant Secretary for
11 Communications and Information, shall promote the
12 acceptance and use, on an international basis, of elec-
13 tronic signatures in accordance with the principles
14 specified in paragraph (2) and in a manner con-
15 sistent with section 101 of this Act. The Secretary of
16 Commerce shall take all actions necessary in a man-
17 ner consistent with such principles to eliminate or re-
18 duce, to the maximum extent possible, the impedi-
19 ments to commerce in electronic signatures, including
20 those identified in the inquiries under subsection (a)
21 for the purpose of facilitating the development of
22 interstate and foreign commerce.

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

1 (A) *Free markets and self-regulation, rather*
2 *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 tech-*
7 *nologies for electronic records and electronic sig-*
8 *natures.*

9 (C) *Parties to a transaction should be per-*
10 *mitted to establish requirements regarding the*
11 *use of electronic records and electronic signatures*
12 *acceptable to such parties.*

13 (D) *Parties to a transaction—*

14 (i) *should be permitted to determine*
15 *the appropriate authentication technologies*
16 *and implementation models for their trans-*
17 *actions, with assurance that those tech-*
18 *nologies and implementation models will be*
19 *recognized and enforced; and*

20 (ii) *should have the opportunity to*
21 *prove in court or other proceedings that*
22 *their authentication approaches and their*
23 *transactions are valid.*

24 (E) *Electronic records and electronic signa-*
25 *tures in a form acceptable to the parties should*

1 *not be denied legal effect, validity, or enforce-*
2 *ability on the ground that they are not in writ-*
3 *ing.*

4 *(F) De jure or de facto imposition of stand-*
5 *ards on private industry through foreign adop-*
6 *tion of regulations or policies with respect to*
7 *electronic records and electronic signatures*
8 *should be avoided.*

9 *(G) Paper-based obstacles to electronic*
10 *transactions should be removed.*

11 *(c) FOLLOWUP STUDY.—Within 5 years after the date*
12 *of enactment of this Act, the Secretary of Commerce, acting*
13 *through the Assistant Secretary for Communications and*
14 *Information, shall conduct an inquiry regarding any State*
15 *statutes, regulations, or other rules of law enacted or adopt-*
16 *ed after such date of enactment pursuant to section 102(a),*
17 *and the extent to which such statutes, regulations, and rules*
18 *comply with section 102(b). The Secretary shall submit a*
19 *report to the Congress regarding the results of such inquiry*
20 *by the conclusion of such 5-year period and such report*
21 *shall identify any actions taken by the Secretary pursuant*
22 *to section 102(c) and subsection (b) of this section.*

23 *(d) CONSULTATION.—In conducting the activities re-*
24 *quired by this section, the Secretary shall consult with users*

1 *and providers of electronic signature products and services*
2 *and other interested persons.*

3 (e) *PRIVACY.—Nothing in this section shall be con-*
4 *strued to require the Secretary or the Assistant Secretary*
5 *to take any action that would adversely affect the privacy*
6 *of consumers.*

7 (f) *DEFINITIONS.—As used in this section, the terms*
8 *“electronic record” and “electronic signature” have the*
9 *meanings provided in section 104 of the Electronic Signa-*
10 *tures in Global and National Commerce Act.*

11 ***TITLE III—USE OF ELECTRONIC***
12 ***RECORDS AND SIGNATURES***
13 ***UNDER FEDERAL SECURITIES***
14 ***LAW***

15 ***SEC. 301. GENERAL VALIDITY OF ELECTRONIC RECORDS***
16 ***AND SIGNATURES.***

17 *Section 3 of the Securities Exchange Act of 1934 (15*
18 *U.S.C. 78c) is amended by adding at the end the following*
19 *new subsection:*

20 *“(h) REFERENCES TO WRITTEN RECORDS AND SIGNA-*
21 *TURES.—*

22 *“(1) GENERAL VALIDITY OF ELECTRONIC*
23 *RECORDS AND SIGNATURES.—Except as otherwise*
24 *provided in this subsection—*

1 “(A) if a contract, agreement, or record (as
2 defined in subsection (a)(37)) is required by the
3 securities laws or any rule or regulation there-
4 under (including a rule or regulation of a self-
5 regulatory organization), and is required by
6 other Federal or State statute, regulation, or
7 other rule of law to be in writing, the legal effect,
8 validity, or enforceability of such contract, agree-
9 ment, or record shall not be denied on the ground
10 that the contract, agreement, or record is not in
11 writing if the contract, agreement, or record is
12 an electronic record;

13 “(B) if a contract, agreement, or record is
14 required by the securities laws or any rule or
15 regulation thereunder (including a rule or regu-
16 lation of a self-regulatory organization), and is
17 required by other Federal or State statute, regu-
18 lation, or other rule of law to be signed, the legal
19 effect, validity, or enforceability of such contract,
20 agreement, or record shall not be denied on the
21 ground that such contract, agreement, or record
22 is not signed or is not affirmed by a signature
23 if the contract, agreement, or record is signed or
24 affirmed by an electronic signature; and

1 “(C) if a broker, dealer, transfer agent, in-
2 vestment adviser, or investment company enters
3 into a contract or agreement with, or accepts a
4 record from, a customer or other counterparty,
5 such broker, dealer, transfer agent, investment
6 adviser, or investment company may accept and
7 rely upon an electronic signature on such con-
8 tract, agreement, or record, and such electronic
9 signature shall not be denied legal effect, valid-
10 ity, or enforceability because it is an electronic
11 signature.

12 “(2) IMPLEMENTATION.—

13 “(A) REGULATIONS.—The Commission may
14 prescribe such regulations as may be necessary to
15 carry out this subsection consistent with the pub-
16 lic interest and the protection of investors.

17 “(B) NONDISCRIMINATION.—The regulations
18 prescribed by the Commission under subpara-
19 graph (A) shall not—

20 “(i) discriminate in favor of or against
21 a specific technology, method, or technique
22 of creating, storing, generating, receiving,
23 communicating, or authenticating electronic
24 records or electronic signatures; or

1 “(ii) *discriminate in favor of or*
2 *against a specific type or size of entity en-*
3 *gaged in the business of facilitating the use*
4 *of electronic records or electronic signatures.*

5 “(3) *EXCEPTIONS.—Notwithstanding any other*
6 *provision of this subsection—*

7 “(A) *the Commission, an appropriate regu-*
8 *latory agency, or a self-regulatory organization*
9 *may require that records be filed in a specified*
10 *electronic format or formats if the records are re-*
11 *quired to be submitted to the Commission, an*
12 *appropriate regulatory agency, or a self-regu-*
13 *latory organization, respectively; and*

14 “(B) *the Commission may require that con-*
15 *tracts, agreements, or records relating to pur-*
16 *chases and sales, or establishing accounts for*
17 *conducting purchases and sales, of penny stocks*
18 *be manually signed, and may require such man-*
19 *ual signatures with respect to transactions in*
20 *similar securities if the Commission determines*
21 *that such securities are susceptible to fraud and*
22 *that such fraud would be deterred or prevented*
23 *by requiring manual signatures.*

24 “(4) *RELATION TO OTHER LAW.—The provisions*
25 *of this subsection apply in lieu of the provisions of*

1 *title I of the Electronic Signatures in Global and Na-*
2 *tional Commerce Act to a contract, agreement, or*
3 *record (as defined in subsection (a)(37)) that is re-*
4 *quired by the securities laws.*

5 “(5) *DEFINITIONS.—As used in this subsection:*

6 “(A) *ELECTRONIC RECORD.—The term ‘elec-*
7 *tronic record’ means a writing, document, or*
8 *other record created, stored, generated, received,*
9 *or communicated by electronic means.*

10 “(B) *ELECTRONIC SIGNATURE.—The term*
11 *‘electronic signature’ means information or data*
12 *in electronic form, attached to or logically associ-*
13 *ated with an electronic record, that is intended*
14 *by a party to signify agreement to a contract or*
15 *agreement.*

16 “(C) *ELECTRONIC.—The term ‘electronic’*
17 *means of or relating to technology having elec-*
18 *trical, digital, magnetic, optical, electromagnetic,*
19 *or similar capabilities regardless of medium.’.*

20 **SECTION 1. SHORT TITLE.**

21 **This Act may be cited as the “Electronic**
22 **Signatures in Global and National Commerce**
23 **Act”.**

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

4 **SEC. 101. FINDINGS.**

5 **The Congress makes the following find-**
6 **ings:**

7 (1) **The growth of electronic com-**
8 **merce and electronic government trans-**
9 **actions represents a powerful force for**
10 **economic growth, consumer choice, im-**
11 **proved civic participation, and wealth**
12 **creation.**

13 (2) **The promotion of growth in pri-**
14 **vate sector electronic commerce through**
15 **Federal legislation is in the national in-**
16 **terest because that market is globally im-**
17 **portant to the United States.**

18 (3) **A consistent legal foundation,**
19 **across multiple jurisdictions, for elec-**
20 **tronic commerce will promote the growth**
21 **of such transactions, and that such a**
22 **foundation should be based upon a sim-**
23 **ple, technology neutral, nonregulatory,**
24 **and market-based approach.**

1 **(4) The Nation and the world stand at**
2 **the beginning of a large-scale transition**
3 **to an information society which will re-**
4 **quire innovative legal and policy ap-**
5 **proaches, and therefore, States can serve**
6 **the national interest by continuing their**
7 **proven role as laboratories of innovation**
8 **for quickly evolving areas of public pol-**
9 **icy, provided that States also adopt a**
10 **consistent, reasonable national baseline**
11 **to eliminate obsolete barriers to elec-**
12 **tronic commerce such as undue paper**
13 **and pen requirements, and further, that**
14 **any such innovation should not unduly**
15 **burden interjurisdictional commerce.**

16 **(5) To the extent State laws or regula-**
17 **tions do not provide a consistent, reason-**
18 **able national baseline or in fact create an**
19 **undue burden to interstate commerce in**
20 **the important burgeoning area of elec-**
21 **tronic commerce, the national interest is**
22 **best served by Federal preemption to the**
23 **extent necessary to provide such con-**
24 **sistent, reasonable national baseline and**
25 **eliminate said burden, but that absent**

1 **such lack of consistent, reasonable na-**
2 **tional baseline or such undue burdens,**
3 **the best legal system for electronic com-**
4 **merce will result from continuing experi-**
5 **mentation by individual jurisdictions.**

6 **(6) With due regard to the funda-**
7 **mental need for a consistent national**
8 **baseline, each jurisdiction that enacts**
9 **such laws should have the right to deter-**
10 **mine the need for any exceptions to pro-**
11 **tect consumers and maintain consistency**
12 **with existing related bodies of law within**
13 **a particular jurisdiction.**

14 **(7) Industry has developed several**
15 **electronic signature technologies for use**
16 **in electronic transactions, and the public**
17 **policies of the United States should serve**
18 **to promote a dynamic marketplace with-**
19 **in which these technologies can compete.**
20 **Consistent with this Act, States should**
21 **permit the use and development of any**
22 **authentication technologies that are ap-**
23 **propriate as practicable as between pri-**
24 **ivate parties and in use with State agen-**
25 **cies.**

1 SEC. 102. PURPOSES.

2 **The purposes of this Act are—**

3 **(1) to permit and encourage the con-**
4 **tinued expansion of electronic commerce**
5 **through the operation of free market**
6 **forces rather than proscriptive govern-**
7 **mental mandates and regulations;**

8 **(2) to promote public confidence in**
9 **the validity, integrity, and reliability of**
10 **electronic commerce and online govern-**
11 **ment under Federal law;**

12 **(3) to facilitate and promote elec-**
13 **tronic commerce by clarifying the legal**
14 **status of electronic records and elec-**
15 **tronic signatures in the context of writ-**
16 **ing and signing requirements imposed by**
17 **law;**

18 **(4) to facilitate the ability of private**
19 **parties engaged in interstate transactions**
20 **to agree among themselves on the terms**
21 **and conditions on which they use and ac-**
22 **cept electronic signatures and electronic**
23 **records; and**

24 **(5) to promote the development of a**
25 **consistent national legal infrastructure**
26 **necessary to support electronic com-**

1 merce at the Federal and State levels
2 within existing areas of jurisdiction.

3 **SEC. 103. DEFINITIONS.**

4 **In this Act:**

5 (1) **ELECTRONIC.**—The term “elec-
6 tronic” means relating to technology hav-
7 ing electrical, digital, magnetic, wireless,
8 optical, electromagnetic, or similar capa-
9 bilities.

10 (2) **ELECTRONIC AGENT.**—The term
11 “electronic agent” means a computer pro-
12 gram or an electronic or other automated
13 means used to initiate an action or re-
14 spond to electronic records or perform-
15 ances in whole or in part without review
16 by an individual at the time of the action
17 or response.

18 (3) **ELECTRONIC RECORD.**—The term
19 “electronic record” means a record cre-
20 ated, generated, sent, communicated, re-
21 ceived, or stored by electronic means.

22 (4) **ELECTRONIC SIGNATURE.**—The term
23 “electronic signature” means an elec-
24 tronic sound, symbol, or process attached
25 to or logically associated with an elec-

1 **tronic record and executed or adopted by**
2 **a person with the intent to sign the elec-**
3 **tronic record.**

4 **(5) RECORD.—The term “record”**
5 **means information that is inscribed on a**
6 **tangible medium or that is stored in an**
7 **electronic or other medium and is re-**
8 **trievable in perceivable form.**

9 **(6) TRANSACTION.—The term “trans-**
10 **action” means an action or set of actions**
11 **relating to the conduct of commerce be-**
12 **tween 2 or more persons, neither of**
13 **which is the United States Government, a**
14 **State, or an agency, department, board,**
15 **commission, authority, institution, or in-**
16 **strumentality of the United States Gov-**
17 **ernment or of a State.**

18 **(7) UNIFORM ELECTRONIC TRANSACTIONS**
19 **ACT.—The term “Uniform Electronic**
20 **Transactions Act” means the Uniform**
21 **Electronic Transactions Act as enacted**
22 **by a State based on the form provided by**
23 **the National Conference of Commis-**
24 **sioners on Uniform State Law in the form**

1 **or any substantially similar variation**
2 **thereof.**

3 **SEC. 104. PRINCIPLES GOVERNING THE USE OF ELEC-**
4 **TRONIC SIGNATURES IN INTERNATIONAL**
5 **TRANSACTIONS.**

6 **To the extent practicable, the Federal**
7 **Government shall observe the following prin-**
8 **ciples in an international context to enable**
9 **commercial electronic transaction:**

10 **(1) Remove paper-based obstacles to**
11 **electronic transactions by adopting rel-**
12 **evant principles from the Model Law on**
13 **Electronic Commerce adopted in 1996 by**
14 **the United Nations Commission on Inter-**
15 **national Trade Law (UNCITRAL).**

16 **(2) Permit parties to a transaction to**
17 **determine the appropriate authentication**
18 **technologies and implementation models**
19 **for their transactions, with assurance**
20 **that those technologies and implementa-**
21 **tion models will be recognized and en-**
22 **forced.**

23 **(3) Permit parties to a transaction to**
24 **have the opportunity to prove in court or**
25 **other proceedings that their authentica-**

1 **tion approaches and their transactions**
2 **are valid.**

3 **(4) Take a nondiscriminatory ap-**
4 **proach to electronic signatures and au-**
5 **thentication methods from other jurisdic-**
6 **tions.**

7 **SEC. 105. INTERSTATE CONTRACT CERTAINTY.**

8 **(a) IN GENERAL.—In any commercial trans-**
9 **action affecting interstate commerce, a con-**
10 **tract may not be denied legal effect or en-**
11 **forceability solely because an electronic sig-**
12 **nature or electronic record was used in its**
13 **formation.**

14 **(b) METHODS.—In commercial transactions**
15 **affecting interstate commerce, the parties to**
16 **a contract may agree on the terms and condi-**
17 **tions on which they will use and accept elec-**
18 **tronic signatures and electronic records, ex-**
19 **cept to the extent a law or regulation gov-**
20 **erning the record provides otherwise.**

21 **(c) RECORD RETENTION.—When a law re-**
22 **quires that a contract be in writing, that re-**
23 **quirement is satisfied by an electronic record**
24 **of the information in the record provided to**
25 **the parties which—**

1 **(1) accurately reflects the information**
2 **set forth in the record after it was first**
3 **generated in its final form as an elec-**
4 **tronic record or otherwise; and**

5 **(2) remains capable of retention in a**
6 **form that can be accessed for later ref-**
7 **erence and used to prove the terms of the**
8 **agreement.**

9 **(d) FORMULATION OF CONTRACT.—A con-**
10 **tract relating to a commercial transaction af-**
11 **fecting interstate commerce may not be de-**
12 **nied legal effect solely because its formation**
13 **involved—**

14 **(1) the interaction of electronic**
15 **agents of the parties; or**

16 **(2) the interaction of an electronic**
17 **agent of a party and an individual who**
18 **acts on that individual's own behalf or**
19 **for another person.**

20 **(e) APPLICATION IN UETA STATES.—This**
21 **section does not apply in any State in which**
22 **the Uniform Electronic Transactions Act is in**
23 **effect.**

1 SEC. 106. STUDY OF LEGAL AND REGULATORY BARRIERS
2 TO ELECTRONIC COMMERCE.

3 (a) **BARRIERS.**—Each Federal agency shall,
4 not later than 6 months after the date of en-
5 actment of this Act, provide a report to the Di-
6 rector of the Office of Management and Budg-
7 et and the Secretary of Commerce identifying
8 any provision of law administered by such
9 agency, or any regulations issued by such
10 agency and in effect on the date of enactment
11 of this Act, that may impose a barrier to elec-
12 tronic transactions, or otherwise to the con-
13 duct of commerce online or by electronic
14 means. Such barriers include, but are not lim-
15 ited to, barriers imposed by a law or regula-
16 tion directly or indirectly requiring that sig-
17 natures, or records of transactions, be accom-
18 plished or retained in other than electronic
19 form. In its report, each agency shall identify
20 the barriers among those identified whose re-
21 moval would require legislative action, and
22 shall indicate agency plans to undertake reg-
23 ulatory action to remove such barriers among
24 those identified as are caused by regulations
25 issued by the agency.

1 **(b) REPORT TO CONGRESS.**—The Secretary
2 of Commerce, in consultation with the Direc-
3 tor of the Office of Management and Budget,
4 shall, within 18 months after the date of en-
5 actment of this Act, and after the consultation
6 required by subsection (c) of this section, re-
7 port to the Congress concerning—

8 (1) legislation needed to remove bar-
9 riers to electronic transactions or other-
10 wise to the conduct of commerce online
11 or by electronic means; and

12 (2) actions being taken by the execu-
13 tive branch and individual Federal agen-
14 cies to remove such barriers as are
15 caused by agency regulations or policies.

16 **(c) CONSULTATION.**—In preparing the re-
17 port required by this section, the Secretary of
18 Commerce shall consult with the General
19 Services Administration, the National Ar-
20 chives and Records Administration, and the
21 Attorney General concerning matters involv-
22 ing the authenticity of records, their storage
23 and retention, and their usability for law en-
24 forcement purposes.

1 **(d) INCLUDE FINDINGS IF NO RECOMMENDA-**
2 **TIONS.—If the report required by this section**
3 **omits recommendations for actions needed to**
4 **fully remove identified barriers to electronic**
5 **transactions or to online or electronic com-**
6 **merce, it shall include a finding or findings,**
7 **including substantial reasons therefor, that**
8 **such removal is impracticable or would be in-**
9 **consistent with the implementation or en-**
10 **forcement of applicable laws.**

11 **SEC. 107. STUDY OF EFFECTS OF ELECTRONIC COMMERCE.**

12 **(a) IN GENERAL.—The Federal Trade Com-**
13 **mission and the Secretary of Commerce shall**
14 **conduct a study of electronic commerce**
15 **issues.**

16 **(b) RESPONSIBILITY OF EACH AGENCY.—**

17 **(1) FTC.—The Federal Trade Commis-**
18 **sion, in consultation with the Secretary**
19 **of Commerce, shall conduct a portion of**
20 **the study to determine the effectiveness**
21 **of Federal and State consumer protection**
22 **laws with respect to electronic trans-**
23 **actions involving consumers.**

24 **(2) COMMERCE DEPARTMENT.—The Sec-**
25 **retary of Commerce, in consultation with**

1 **the Federal Trade Commission, shall con-**
2 **duct a portion of the study to determine**
3 **the extent to which a uniform commer-**
4 **cial legal framework would facilitate and**
5 **enforce interstate electronic trans-**
6 **actions.**

7 **(c) REPORT.—Not later than 2 years after**
8 **the date of the enactment of this Act, the Fed-**
9 **eral Trade Commission and the Secretary of**
10 **Commerce shall transmit a report to Congress**
11 **containing —**

12 **(1) findings from the study required**
13 **under subsection (a); and**

14 **(2) such recommendations for legisla-**
15 **tion or administrative actions as the Fed-**
16 **eral Trade Commission and the Secretary**
17 **of Commerce, respectively, deem appro-**
18 **priate.**

19 **(d) BIENNIAL UPDATES.—The Federal Trade**
20 **Commission and the Secretary of Commerce**
21 **shall update the report every 2 years there-**
22 **after and transmit the updated report to the**
23 **Congress.**

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**
8 **COMMERCE.—**

9 **(1) INQUIRIES REQUIRED.—Within 90**
10 **days after the date of the enactment of**
11 **this Act, and annually thereafter, the Sec-**
12 **retary of Commerce, acting through the**
13 **Assistant Secretary for Communications**
14 **and Information, shall complete an in-**
15 **quiry to—**

16 **(A) identify any domestic and for-**
17 **ign impediments to commerce in**
18 **electronic signature products and**
19 **services and the manners in which**
20 **and extent to which such impedi-**
21 **ments inhibit the development of**
22 **interstate and foreign commerce;**

23 **(B) identify constraints imposed**
24 **by foreign nations or international**
25 **organizations that constitute barriers**

1 to providers of electronic signature
2 products or services; and

3 (C) identify the degree to which
4 other nations and international orga-
5 nizations are complying with the
6 principles in subsection (b)(2).

7 (2) SUBMISSION.—The Secretary shall
8 submit a report to the Congress regard-
9 ing the results of each such inquiry with-
10 in 90 days after the conclusion of such in-
11 quiry.

12 (b) PROMOTION OF ELECTRONIC SIGNA-
13 TURES.—

14 (1) REQUIRED ACTIONS.—The Secretary
15 of Commerce, acting through the Assist-
16 ant Secretary for Communications and
17 Information, shall promote the accept-
18 ance and use, on an international basis,
19 of electronic signatures in accordance
20 with the principles specified in para-
21 graph (2) and in a manner consistent
22 with section 105 of this Act. The Sec-
23 retary of Commerce shall take all actions
24 necessary in a manner consistent with
25 such principles to eliminate or reduce, to

1 **the maximum extent possible, the impedi-**
2 **ments to commerce in electronic signa-**
3 **tures, including those identified in the in-**
4 **quiries under subsection (a) for the pur-**
5 **pose of facilitating the development of**
6 **interstate and foreign commerce.**

7 **(2) PRINCIPLES.—The principles speci-**
8 **fied in this paragraph are the following:**

9 **(A) Free markets and self-regula-**
10 **tion, rather than government stand-**
11 **ard-setting or rules, should govern**
12 **the development and use of electronic**
13 **records and electronic signatures.**

14 **(B) Neutrality and nondiscrimina-**
15 **tion should be observed among pro-**
16 **viders of and technologies for elec-**
17 **tronic records and electronic signa-**
18 **tures.**

19 **(C) Parties to a transaction**
20 **should be permitted to establish re-**
21 **quirements regarding the use of elec-**
22 **tronic records and electronic signa-**
23 **tures acceptable to such parties.**

24 **(D) Parties to a transaction—**

1 **(i) should be permitted to de-**
2 **termine the appropriate authen-**
3 **tication technologies and imple-**
4 **mentation models for their trans-**
5 **actions, with assurance that those**
6 **technologies and implementation**
7 **models will be recognized and en-**
8 **forced; and**

9 **(ii) should have the oppor-**
10 **tunity to prove in court or other**
11 **proceedings that their authen-**
12 **tication approaches and their**
13 **transactions are valid.**

14 **(E) Electronic records and elec-**
15 **tronic signatures in a form accept-**
16 **able to the parties should not be de-**
17 **nyied legal effect, validity, or enforce-**
18 **ability on the ground that they are**
19 **not in writing.**

20 **(F) De jure or de facto imposition**
21 **of standards on private industry**
22 **through foreign adoption of regula-**
23 **tions or policies with respect to elec-**
24 **tronic records and electronic signa-**
25 **tures should be avoided.**

1 **(G) Paper-based obstacles to elec-**
2 **tronic transactions should be re-**
3 **moved.**

4 **(c) FOLLOWUP STUDY.—Within 5 years after**
5 **the date of enactment of this Act, the Sec-**
6 **retary of Commerce, acting through the As-**
7 **sistant Secretary for Communications and In-**
8 **formation, shall conduct an inquiry regarding**
9 **any State statutes, regulations, or other rules**
10 **of law enacted or adopted after such date of**
11 **enactment. The Secretary shall submit a re-**
12 **port to the Congress regarding the results of**
13 **such inquiry by the conclusion of such 5-year**
14 **period and such report shall identify any ac-**
15 **tions taken by the Secretary pursuant to sub-**
16 **section (b) of this section.**

17 **(d) CONSULTATION.—In conducting the ac-**
18 **tivities required by this section, the Secretary**
19 **shall consult with users and providers of elec-**
20 **tronic signature products and services and**
21 **other interested persons.**

22 **(e) PRIVACY.—Nothing in this section shall**
23 **be construed to require the Secretary or the**
24 **Assistant Secretary to take any action that**

1 would adversely affect the privacy of con-
2 sumers.

3 (f) DEFINITIONS.—As used in this section,
4 the terms “electronic record” and “electronic
5 signature” have the meanings provided in sec-
6 tion 103 of the Electronic Signatures in Global
7 and National Commerce Act.

8 **TITLE III—USE OF ELECTRONIC**
9 **RECORDS AND SIGNATURES**
10 **UNDER FEDERAL SECURITIES**
11 **LAW**

12 **SEC. 301. GENERAL VALIDITY OF ELECTRONIC RECORDS**
13 **AND SIGNATURES.**

14 **Section 3 of the Securities Exchange Act**
15 **of 1934 (15 U.S.C. 78c) is amended by adding**
16 **at the end the following new subsection:**

17 **“(h) REFERENCES TO WRITTEN RECORDS AND**
18 **SIGNATURES.—**

19 **“(1) GENERAL VALIDITY OF ELECTRONIC**
20 **RECORDS AND SIGNATURES.—Except as oth-**
21 **erwise provided in this subsection—**

22 **“(A) if a contract, agreement, or**
23 **record (as defined in subsection**
24 **(a)(37)) is required by the securities**
25 **laws or any rule or regulation there-**

1 **under (including a rule or regulation**
2 **of a self-regulatory organization), and**
3 **is required by other Federal or State**
4 **statute, regulation, or other rule of**
5 **law to be in writing, the legal effect,**
6 **validity, or enforceability of such con-**
7 **tract, agreement, or record shall not**
8 **be denied on the ground that the con-**
9 **tract, agreement, or record is not in**
10 **writing if the contract, agreement, or**
11 **record is an electronic record;**

12 **“(B) if a contract, agreement, or**
13 **record is required by the securities**
14 **laws or any rule or regulation there-**
15 **under (including a rule or regulation**
16 **of a self-regulatory organization), and**
17 **is required by other Federal or State**
18 **statute, regulation, or other rule of**
19 **law to be signed, the legal effect, va-**
20 **lidity, or enforceability of such con-**
21 **tract, agreement, or record shall not**
22 **be denied on the ground that such**
23 **contract, agreement, or record is not**
24 **signed or is not affirmed by a signa-**
25 **ture if the contract, agreement, or**

1 record is signed or affirmed by an
2 electronic signature; and

3 “(C) if a broker, dealer, transfer
4 agent, investment adviser, or invest-
5 ment company enters into a contract
6 or agreement with, or accepts a
7 record from, a customer or other
8 counterparty, such broker, dealer,
9 transfer agent, investment adviser, or
10 investment company may accept and
11 rely upon an electronic signature on
12 such contract, agreement, or record,
13 and such electronic signature shall
14 not be denied legal effect, validity, or
15 enforceability because it is an elec-
16 tronic signature.

17 “(2) IMPLEMENTATION.—

18 “(A) REGULATIONS.—The Commis-
19 sion may prescribe such regulations
20 as may be necessary to carry out this
21 subsection consistent with the public
22 interest and the protection of inves-
23 tors.

24 “(B) NONDISCRIMINATION.—The
25 regulations prescribed by the Com-

1 mission under subparagraph (A) shall
2 not—

3 “(i) discriminate in favor of or
4 against a specific technology,
5 method, or technique of creating,
6 storing, generating, receiving,
7 communicating, or authenticating
8 electronic records or electronic
9 signatures; or

10 “(ii) discriminate in favor of
11 or against a specific type or size
12 of entity engaged in the business
13 of facilitating the use of elec-
14 tronic records or electronic signa-
15 tures.

16 “(3) EXCEPTIONS.—Notwithstanding
17 any other provision of this subsection—

18 “(A) the Commission, an appro-
19 priate regulatory agency, or a self-
20 regulatory organization may require
21 that records be filed in a specified
22 electronic format or formats if the
23 records are required to be submitted
24 to the Commission, an appropriate

1 regulatory agency, or a self-regu-
2 latory organization, respectively; and

3 “(B) the Commission may require
4 that contracts, agreements, or
5 records relating to purchases and
6 sales, or establishing accounts for
7 conducting purchases and sales, of
8 penny stocks be manually signed, and
9 may require such manual signatures
10 with respect to transactions in simi-
11 lar securities if the Commission de-
12 termines that such securities are sus-
13 ceptible to fraud and that such fraud
14 would be deterred or prevented by
15 requiring manual signatures.

16 “(4) RELATION TO OTHER LAW.—The
17 provisions of this subsection apply in lieu
18 of the provisions of title I of the Elec-
19 tronic Signatures in Global and National
20 Commerce Act to a contract, agreement,
21 or record (as defined in subsection
22 (a)(37)) that is required by the securities
23 laws.

24 “(5) DEFINITIONS.—As used in this sub-
25 section:

1 **“(A) ELECTRONIC RECORD.—The**
2 **term ‘electronic record’ means a writ-**
3 **ing, document, or other record cre-**
4 **ated, stored, generated, received, or**
5 **communicated by electronic means.**

6 **“(B) ELECTRONIC SIGNATURE.—The**
7 **term ‘electronic signature’ means in-**
8 **formation or data in electronic form,**
9 **attached to or logically associated**
10 **with an electronic record, that is in-**
11 **tended by a party to signify agree-**
12 **ment to a contract or agreement.**

13 **“(C) ELECTRONIC.—The term ‘elec-**
14 **tronic’ means of or relating to tech-**
15 **nology having electrical, digital, mag-**
16 **netic, optical, electromagnetic, or**
17 **similar capabilities regardless of me-**
18 **dium.”.**