

106TH CONGRESS  
1ST SESSION

# S. 761

To regulate interstate commerce by electronic means by permitting and encouraging the continued expansion of electronic commerce through the operation of free market forces, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 25, 1999

Mr. ABRAHAM (for himself, Mr. MCCAIN, Mr. WYDEN, and Mr. BURNS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To regulate interstate commerce by electronic means by permitting and encouraging the continued expansion of electronic commerce through the operation of free market forces, and for other purposes.

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 “Millennium Digital  
5       Commerce Act”.

6       **SEC. 2. FINDINGS.**

7       The Congress makes the following findings:

1           (1) The growth of electronic commerce and  
2           electronic government transactions represent a pow-  
3           erful force for economic growth, consumer choice,  
4           improved civic participation and wealth creation.

5           (2) The promotion of growth in private sector  
6           electronic commerce through federal legislation is in  
7           the national interest because that market is globally  
8           important to the United States.

9           (3) A consistent legal foundation, across mul-  
10          tiple jurisdictions, for electronic commerce will pro-  
11          mote the growth of such transactions, and that such  
12          a foundation should be based upon a simple, tech-  
13          nology neutral, non-regulatory, and market-based  
14          approach.

15          (4) The Nation and the world stand at the be-  
16          ginning of a large scale transition to an information  
17          society which will require innovative legal and policy  
18          approaches, and therefore, States can serve the na-  
19          tional interest by continuing their proven role as lab-  
20          oratories of innovation for quickly evolving areas of  
21          public policy, provided that States also adopt a con-  
22          sistent, reasonable national baseline to eliminate ob-  
23          solete barriers to electronic commerce such as undue  
24          paper and pen requirements, and further, that any

1       such innovation should not unduly burden inter-ju-  
2       risdictional commerce.

3           (5) To the extent State laws or regulations do  
4       not currently provide a consistent, reasonable na-  
5       tional baseline or in fact create an undue burden to  
6       interstate commerce in the important burgeoning  
7       area of electronic commerce, the national interest is  
8       best served by Federal preemption to the extent nec-  
9       essary to provide such consistent national baseline  
10      and eliminate said burden, but that absent such lack  
11      of a consistent, reasonable national baseline or such  
12      undue burdens, the best legal system for electronic  
13      commerce will result from continuing experimen-  
14      tation by individual jurisdictions.

15          (6) With due regard to the fundamental need  
16      for a consistent national baseline, each jurisdiction  
17      that enacts such laws should have the right to deter-  
18      mine the need for any exceptions to protect con-  
19      sumers and maintain consistency with existing re-  
20      lated bodies of law within a particular jurisdiction.

21          (7) Industry has developed several electronic  
22      signature technologies for use in electronic trans-  
23      actions, and the public policies of the United States  
24      should serve to promote a dynamic marketplace  
25      within which these technologies can compete. Con-

1       sistent with this Act, States should permit the use  
2       and development of any authentication technologies  
3       that are appropriate as practicable as between pri-  
4       vate parties and in use with State agencies.

5   **SEC. 3. PURPOSES.**

6       The purposes of this Act are—

7           (1) to permit and encourage the continued ex-  
8       pansion of electronic commerce through the oper-  
9       ation of free market forces rather than proscriptive  
10      governmental mandates and regulations;

11           (2) to promote public confidence in the validity,  
12      integrity and reliability of electronic commerce and  
13      online government under Federal law;

14           (3) to facilitate and promote electronic com-  
15      merce by clarifying the legal status of electronic  
16      records and electronic signatures in the context of  
17      writing and signing requirements imposed by law;

18           (4) to facilitate the ability of private parties en-  
19      gaged in interstate transactions to agree among  
20      themselves on the terms and conditions on which  
21      they use and accept electronic signatures and elec-  
22      tronic records; and

23           (5) to promote the development of a consistent  
24      national legal infrastructure necessary to support of

1 electronic commerce at the Federal and state levels  
2 within areas of jurisdiction.

3 **SEC. 4. DEFINITIONS.**

4 In this Act:

5 (1) **ELECTRONIC.**—The term “electronic”  
6 means of or relating to technology having electrical,  
7 digital, magnetic, wireless, optical, electromagnetic,  
8 or similar capabilities.

9 (2) **ELECTRONIC RECORD.**—The term “elec-  
10 tronic record” means a record created, stored, gen-  
11 erated, received, or communicated by electronic  
12 means.

13 (3) **ELECTRONIC SIGNATURE.**—The term “elec-  
14 tronic signature” means a signature in electronic  
15 form, attached to or logically associated with an  
16 electronic record.

17 (4) **GOVERNMENTAL AGENCY.**—The term “gov-  
18 ernmental agency” means an executive, legislative,  
19 or judicial agency, department, board, commission,  
20 authority, institution, or instrumentality of the Fed-  
21 eral government or of a State or of any county, mu-  
22 nicipality, or other political subdivision of a state.

23 (5) **RECORD.**—The term “record” means infor-  
24 mation that is inscribed on a tangible medium or

1       that is stored in an electronic or other medium and  
2       is retrievable in perceivable form.

3           (6) SIGN.—The term “sign” means to execute  
4       or adopt a signature.

5           (7) SIGNATURE.—The term “signature” means  
6       any symbol, sound, or process executed or adopted  
7       by a person or entity, with intent to authenticate or  
8       accept a record.

9           (8) TRANSACTION.—The term “transaction”  
10      means an action or set of actions occurring between  
11      2 or more persons relating to the conduct of com-  
12      merce.

13   **SEC. 5. PRINCIPLES GOVERNING THE USE OF ELECTRONIC**  
14                   **SIGNATURES IN INTERNATIONAL TRANS-**  
15                   **ACTIONS.**

16      (a) IN GENERAL.—To the extent practicable, the  
17      Federal Government shall observe the following principles  
18      in an international context to enable commercial electronic  
19      transaction:

20           (1) Remove paper-based obstacles to electronic  
21      transactions by adopting relevant principles from the  
22      Model Law on Electronic Commerce adopted in  
23      1996 by the United Nations Commission on Inter-  
24      national Trade Law (UNCITRAL).

1           (2) Permit parties to a transaction to determine  
2           the appropriate authentication technologies and im-  
3           plementation models for their transactions, with as-  
4           surance that those technologies and implementation  
5           models will be recognized and enforced.

6           (3) Permit parties to a transaction to have the  
7           opportunity to prove in court or other proceedings  
8           that their authentication approaches and their trans-  
9           actions are valid.

10          (4) Take a nondiscriminatory approach to elec-  
11          tronic signatures and authentication methods from  
12          other jurisdictions.

13 **SEC. 6. INTERSTATE CONTRACT CERTAINTY.**

14          (a) INTERSTATE COMMERCIAL CONTRACTS.—A con-  
15          tract relating to an interstate transaction shall not be de-  
16          nied legal effect solely because an electronic signature or  
17          electronic record was used in its formation.

18          (b) METHODS.—Notwithstanding any rule of law  
19          that specifies one or more acceptable or required tech-  
20          nologies or business models, including legal or other proce-  
21          dures, necessary to create, use, receive, validate, or invali-  
22          date electronic signatures or electronic records, the parties  
23          to an interstate transaction may establish by contract,  
24          electronically or otherwise, such technologies or business  
25          models, including legal or other procedures, to create, use,

1 receive, validate, or invalidate electronic signatures and  
 2 electronic records.

3 (c) NOT PREEMPT STATE LAW.—Nothing in this sec-  
 4 tion shall be construed to preempt the law of a State that  
 5 enacts legislation governing electronic transactions that is  
 6 consistent with subsections (a) and (b). A State that en-  
 7 acts, or has in effect, uniform electronic transactions legis-  
 8 lation substantially as reported to State legislatures by the  
 9 National Conference of Commissioners on Uniform State  
 10 Law shall be deemed to have satisfied this criterion, pro-  
 11 vided such legislation as enacted is not inconsistent with  
 12 subsections (a) and (b).

13 (d) INTENT.—The intent of a person to execute or  
 14 adopt an electronic signature shall be determined from the  
 15 context and surrounding circumstances, which may in-  
 16 clude accepted commercial practices.

17 **SEC. 7. STUDY OF LEGAL AND REGULATORY BARRIERS TO**  
 18 **ELECTRONIC COMMERCE.**

19 (a) BARRIERS.—Each Federal agency shall, not later  
 20 than 6 months after the date of enactment of this Act,  
 21 provide a report to the Director of the Office of Manage-  
 22 ment and Budget and the Secretary of Commerce identi-  
 23 fying any provision of law administered by such agency,  
 24 or any regulations issued by such agency and in effect on  
 25 the date of enactment of this Act, that may impose a bar-



1 rier to electronic transactions, or otherwise to the conduct  
2 of commerce online or by electronic means. Such barriers  
3 include, but are not limited to, barriers imposed by a law  
4 or regulation directly or indirectly requiring that signa-  
5 tures, or records of transactions, be accomplished or re-  
6 tained in other than electronic form. In its report, each  
7 agency shall identify the barriers among those identified  
8 whose removal would require legislative action, and shall  
9 indicate agency plans to undertake regulatory action to  
10 remove such barriers among those identified as are caused  
11 by regulations issued by the agency.

12 (b) REPORT TO CONGRESS.—The Secretary of Com-  
13 merce, in consultation with the Director of the Office of  
14 Management and Budget, shall, within 18 months after  
15 the date of enactment of this Act, and after the consulta-  
16 tion required by subsection (c) of this section, report to  
17 the Congress concerning—

18 (1) legislation needed to remove any existing  
19 barriers to electronic transacts or otherwise to the  
20 conduct of commerce online or by electronic means;  
21 and

22 (2) actions being taken by the Executive  
23 Branch and individual Federal agencies to remove  
24 such barriers as are caused by agency regulations or  
25 policies.

1       (c) CONSULTATION.—In preparing the report re-  
2       quired by this section, the Secretary of Commerce shall  
3       consult with the General Services Administration, the Na-  
4       tional Archives and Records Administration, and the At-  
5       torney General concerning matters involving the authen-  
6       ticity of records, their storage and retention, and their  
7       usability for law enforcement purposes.

8       (d) INCLUDE FINDINGS IF NO RECOMMENDA-  
9       TIONS.—If the report required by this section omits rec-  
10      ommendations for actions needed to fully remove identi-  
11      fied barriers to electronic transactions or to online or elec-  
12      tronic commerce, it shall include a finding or findings, in-  
13      cluding substantial reasons therefore, that such removal  
14      is impracticable or would be inconsistent with the imple-  
15      mentation or enforcement of applicable laws.

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