

## Calendar No. 638

116TH CONGRESS  
2D SESSION**S. 4159**

To amend the Electronic Signatures in Global and National Commerce Act  
to accommodate emerging technologies.

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## IN THE SENATE OF THE UNITED STATES

JULY 2, 2020

Mr. THUNE (for himself, Mr. MORAN, Mr. YOUNG, and Mrs. BLACKBURN) in-  
troduced the following bill; which was read twice and referred to the Com-  
mittee on Commerce, Science, and Transportation

DECEMBER 15, 2020

Reported by Mr. WICKER, with an amendment

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

**A BILL**

To amend the Electronic Signatures in Global and National  
Commerce Act to accommodate emerging technologies.

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 “~~E-SIGN~~ Modernization  
5 Act of 2020”.

1 **SEC. 2. REQUIREMENTS FOR CONSENT TO ELECTRONIC**  
2 **DISCLOSURES.**

3 (a) **IN GENERAL.**—Title I of the Electronic Signa-  
4 tures in Global and National Commerce Act (15 U.S.C.  
5 7001 et seq.) is amended—

6 (1) in section 101(c) (15 U.S.C. 7001(c))—

7 (A) in paragraph (1), by striking subpara-  
8 graphs (C) and (D) and inserting the following:

9 “(C) the consumer, prior to consenting, is  
10 provided with a statement of the hardware and  
11 software requirements for access to and reten-  
12 tion of the electronic records; and

13 “(D) after the consent of a consumer in  
14 accordance with subparagraph (A), if a change  
15 in the hardware or software requirements need-  
16 ed to access or retain electronic records creates  
17 a material risk that the consumer will not be  
18 able to access or retain a subsequent electronic  
19 record that was the subject of the consent, the  
20 person providing the electronic record provides  
21 the consumer with a statement of—

22 “(i) the revised hardware and soft-  
23 ware requirements for access to and reten-  
24 tion of the electronic records; and

25 “(ii) the right to withdraw consent  
26 without the imposition of any fees for such

1 withdrawal and without the imposition of  
 2 any condition or consequence that was not  
 3 disclosed under subparagraph (B)(i).”;  
 4 (B) by striking paragraph (3); and  
 5 (C) by redesignating paragraphs (4), (5),  
 6 and (6) as paragraphs (3), (4), and (5), respec-  
 7 tively; and  
 8 (2) by striking section 105 (15 U.S.C. 7005).

9 (b) **RULE OF CONSTRUCTION.**—Nothing in this sec-  
 10 tion, or the amendments made by this section, may be con-  
 11 strued as affecting the consent provided by any consumer  
 12 under section 101(e) of the Electronic Signatures in Glob-  
 13 al and National Commerce Act (15 U.S.C. 7001(e)) before  
 14 the date of enactment of this Act.

15 **SECTION 1. SHORT TITLE.**

16 *This Act may be cited as the “E-SIGN Modernization*  
 17 *Act of 2020”.*

18 **SEC. 2. REQUIREMENTS FOR CONSENT TO ELECTRONIC**

19 **DISCLOSURES.**

20 (a) *IN GENERAL.*—*Title I of the Electronic Signatures*  
 21 *in Global and National Commerce Act (15 U.S.C. 7001 et*  
 22 *seq.) is amended—*

23 (1) *in section 101(c) (15 U.S.C. 7001(c))—*

24 (A) *in paragraph (1), by striking subpara-*  
 25 *graphs (C) and (D) and inserting the following:*

1           “(C) the consumer, prior to consenting, is  
2           provided with a statement of the hardware and  
3           software requirements for access to and retention  
4           of the electronic records; and

5           “(D) after the consent of a consumer in ac-  
6           cordance with subparagraph (A), if a change in  
7           the hardware or software requirements needed to  
8           access or retain electronic records creates a mate-  
9           rial risk that the consumer will not be able to ac-  
10          cess or retain a subsequent electronic record that  
11          was the subject of the consent, the person pro-  
12          viding the electronic record provides the con-  
13          sumer with a statement of—

14               “(i) the revised hardware and software  
15               requirements for access to and retention of  
16               the electronic records; and

17               “(ii) the right to withdraw consent  
18               without the imposition of any fees for such  
19               withdrawal and without the imposition of  
20               any condition or consequence that was not  
21               disclosed under subparagraph (B)(i).”;

22               (B) by striking paragraph (3); and

23               (C) by redesignating paragraphs (4), (5),  
24               and (6) as paragraphs (3), (4), and (5), respec-  
25               tively;

1           (2) *by striking section 105 (15 U.S.C. 7005);*  
2           *and*

3           (3) *by redesignating sections 106 and 107 (15*  
4           *U.S.C. 7006, 7001 note) as sections 105 and 106, re-*  
5           *spectively.*

6           **(b) TECHNICAL AND CONFORMING AMENDMENTS.—**

7           (1) *ECONOMIC GROWTH, REGULATORY RELIEF,*  
8           *AND CONSUMER PROTECTION ACT.—Section 215(f)(2)*  
9           *of the Economic Growth, Regulatory Relief, and Con-*  
10           *sumer Protection Act (42 U.S.C. 405b(f)(2)) is*  
11           *amended by striking “section 106 of the Electronic*  
12           *Signatures in Global and National Commerce Act (15*  
13           *U.S.C. 7006)” and inserting “section 105 of the Elec-*  
14           *tronic Signatures in Global and National Commerce*  
15           *Act”.*

16           (2) *ELECTRONIC FUND TRANSFER ACT.—Section*  
17           *920(g)(2)(A) of the Electronic Fund Transfer Act (15*  
18           *U.S.C. 1693o–1(g)(2)(A)) is amended by striking*  
19           *“section 106(2) of the Electronic Signatures in Global*  
20           *and National Commerce Act (15 U.S.C. 7006(2))”*  
21           *and inserting “section 105(2) of the Electronic Signa-*  
22           *tures in Global and National Commerce Act”.*

23           (3) *ELECTRONIC SIGNATURES IN GLOBAL AND*  
24           *NATIONAL COMMERCE ACT.—The Electronic Signa-*

1        *tures in Global and National Commerce Act (15*  
2        *U.S.C. 7001 et seq.) is amended—*

3                *(A) in section 201(a)(2) (15 U.S.C.*  
4                *7021(a)(2)), by striking “section 106” and in-*  
5                *serting “section 105”; and*

6                *(B) in section 301(c) (15 U.S.C. 7031(c)),*  
7                *by striking “section 106” and inserting “section*  
8                *105”.*

9        *(c) RULE OF CONSTRUCTION.—Nothing in this section,*  
10        *or the amendments made by this section, may be construed*  
11        *as affecting the consent provided by any consumer under*  
12        *section 101(c) of the Electronic Signatures in Global and*  
13        *National Commerce Act (15 U.S.C. 7001(c)) before the date*  
14        *of enactment of this Act.*



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