
THIS SEARCH

[Next Hit](#)

[Prev Hit](#)

[Hit List](#)

THIS DOCUMENT

[Forward](#)

[Back](#)

[Best Sections](#)

[Doc Contents](#)

GO TO

[New Bills Search](#)

[HomePage](#)

[Help](#)

Bill 4 of 4

There are 3 [other versions](#) of this bill.

GPO's PDF version of this bill	References to this bill in the Congressional Record	Link to the Bill Summary & Status file .	Full Display - 25,697 bytes. [Help]
--	--	--	--

Electronic Signatures in Global and National Commerce Act (Referred in Senate)

HR 1714 RFS

106th CONGRESS

1st Session

H. R. 1714

IN THE SENATE OF THE UNITED STATES

November 10, 1999

Received

November 19, 1999

Read twice and referred to the Committee on Commerce, Science, and Transportation

AN ACT

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Electronic Signatures in Global and National Commerce Act'.

TITLE I--VALIDITY OF ELECTRONIC RECORDS AND SIGNATURES FOR COMMERCE

SEC. 101. GENERAL RULE OF VALIDITY.

(a) GENERAL RULE- With respect to any contract, agreement, or record entered into or provided in, or affecting, interstate or foreign commerce, notwithstanding any statute, regulation, or other rule of law, the legal effect, validity, or enforceability of such contract, agreement, or record shall not be denied--

(1) on the ground that the contract, agreement, or record is not in writing if the contract, agreement, or record is an electronic record; or

(2) on the ground that the contract, agreement, or record is not signed or is not affirmed by a signature if the contract, agreement, or record is signed or affirmed by an electronic signature.

(b) AUTONOMY OF PARTIES IN COMMERCE-

(1) IN GENERAL- With respect to any contract, agreement, or record entered into or provided in, or affecting, interstate or foreign commerce--

(A) the parties to such contract, agreement, or record may establish procedures or requirements regarding the use and acceptance of electronic records and electronic signatures acceptable to such parties;

(B) the legal effect, validity, or enforceability of such contract, agreement, or record shall not be denied because of the type or method of electronic record or electronic signature selected by the parties in establishing such procedures or requirements; and

(C) nothing in this section requires any party to use or accept electronic records or electronic signatures.

(2) CONSENT TO ELECTRONIC RECORDS- Notwithstanding subsection (a) and paragraph (1) of this subsection--

(A) if a statute, regulation, or other rule of law requires that a record be provided or made available to a consumer in writing, that requirement shall be satisfied by an electronic record if--

(i) the consumer has affirmatively consented, by means of a consent that is conspicuous and visually separate from other terms, to the provision or availability (whichever is required) of such record (or identified groups of records that include such record) as an electronic record, and has not withdrawn such consent;

(ii) prior to consenting, the consumer is provided with a statement of the hardware and software requirements for access to and retention of electronic records; and

(iii) the consumer affirmatively acknowledges, by means of an acknowledgement that is conspicuous and visually separate from other terms, that--

(I) the consumer has an obligation to notify the provider of electronic records of any change in the consumer's electronic mail address or other location to which the electronic records may be provided; and

(II) if the consumer withdraws consent, the consumer has the obligation

to notify the provider to notify the provider of electronic records of the electronic mail address or other location to which the records may be provided; and

(B) the record is capable of review, retention, and printing by the recipient if accessed using the hardware and software specified in the statement under subparagraph (A)(ii) at the time of the consumer's consent; and

(C) if such statute, regulation, or other rule of law requires that a record be retained, that requirement shall be satisfied if such record complies with the requirements of subparagraphs (A) and (B) of subsection (c)(1).

(c) RETENTION OF CONTRACTS, AGREEMENTS, AND RECORDS-

(1) **ACCURACY AND ACCESSIBILITY-** If a statute, regulation, or other rule of law requires that a contract, agreement, or record be in writing or be retained, that requirement is met by retaining an electronic record of the information in the contract, agreement, or record that--

(A) accurately reflects the information set forth in the contract, agreement, or record after it was first generated in its final form as an electronic record; and

(B) remains accessible, for the period required by such statute, regulation, or rule of law, for later reference, transmission, and printing.

(2) **EXCEPTION-** A requirement to retain a contract, agreement, or record in accordance with paragraph (1) does not apply to any information whose sole purpose is to enable the contract, agreement, or record to be sent, communicated, or received.

(3) **ORIGINALS-** If a statute, regulation, or other rule of law requires a contract, agreement, or record to be provided, available, or retained in its original form, or provides consequences if the contract, agreement, or record is not provided, available, or retained in its original form, that statute, regulation, or rule of law is satisfied by an electronic record that complies with paragraph (1).

(4) **CHECKS-** If a statute, regulation, or other rule of law requires the retention of a check, that requirement is satisfied by retention of an electronic record of all the information on the front and back of the check in accordance with paragraph (1).

(d) **ABILITY TO CONTEST SIGNATURES AND CHARGES-** Nothing in this section shall be construed to limit or otherwise affect the rights of any person to assert that an electronic signature is a forgery, is used without authority, or otherwise is invalid for reasons that would invalidate the effect of a signature in written form. The use or acceptance of an electronic record or electronic signature by a consumer shall not constitute a waiver of any substantive protections afforded consumers under the Consumer Credit Protection Act.

(e) **SCOPE-** This Act is intended to clarify the legal status of electronic records and electronic signatures in the context of writing and signing requirements imposed by law. Nothing in this Act affects the content or timing of any disclosure required to be provided to any consumer under any statute, regulation, or other rule of law.

SEC. 102. AUTHORITY TO ALTER OR SUPERSEDE GENERAL RULE.

(a) **PROCEDURE TO ALTER OR SUPERSEDE**- Except as provided in subsection (b), a State statute, regulation, or other rule of law may modify, limit, or supersede the provisions of section 101 if such statute, regulation, or rule of law--

(1)(A) constitutes an enactment or adoption of the Uniform Electronic Transactions Act as reported to the State legislatures by the National Conference of Commissioners on Uniform State Laws; or

(B) specifies the alternative procedures or requirements for the use or acceptance (or both) of electronic records or electronic signatures to establish the legal effect, validity, or enforceability of contracts, agreements, or records; and

(2) if enacted or adopted after the date of the enactment of this Act, makes specific reference to this Act.

(b) **LIMITATIONS ON ALTERATION OR SUPERSESSSION**- A State statute, regulation, or other rule of law (including an insurance statute, regulation, or other rule of law), regardless of its date of the enactment or adoption, that modifies, limits, or supersedes section 101 shall not be effective to the extent that such statute, regulation, or rule--

(1) discriminates in favor of or against a specific technology, process, or technique of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures;

(2) discriminates in favor of or against a specific type or size of entity engaged in the business of facilitating the use of electronic records or electronic signatures;

(3) is based on procedures or requirements that are not specific or that are not publicly available; or

(4) is otherwise inconsistent with the provisions of this title.

(c) **EXCEPTION**- Notwithstanding subsection (b), a State may, by statute, regulation, or rule of law enacted or adopted after the date of the enactment of this Act, require specific notices to be provided or made available in writing if such notices are necessary for the protection of the public health or safety of consumers. A consumer may not, pursuant to section 101(b)(2), consent to the provision or availability of such notice solely as an electronic record.

SEC. 103. SPECIFIC EXCLUSIONS.

(a) **EXCEPTED REQUIREMENTS**- The provisions of section 101 shall not apply to a contract, agreement, or record to the extent it is governed by--

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

(2) a statute, regulation, or other rule of law governing adoption, divorce, or other matters of family law;

(3) the Uniform Commercial Code, as in effect in any State, other than sections 1-107 and 1-206 and Articles 2 and 2A;

(4) any requirement by a Federal regulatory agency or self-regulatory organization that

records be filed or maintained in a specified standard or standards (including a specified format or formats), except that nothing in this paragraph relieves any Federal regulatory agency of its obligations under the Government Paperwork Elimination Act (title XVII of Public Law 105-277);

(5) the Uniform Anatomical Gift Act; or

(6) the Uniform Health-Care Decisions Act.

(b) **ADDITIONAL EXCEPTIONS-** The provisions of section 101 shall not apply to--

(1) any contract, agreement, or record entered into between a party and a State agency if the State agency is not acting as a market participant in or affecting interstate commerce;

(2) court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings; or

(3) any notice concerning--

(A) the cancellation or termination of utility services (including water, heat, and power);

(B) default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual; or

(C) the cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities).

SEC. 104. STUDY.

(a) **FOLLOWUP STUDY-** Within 5 years after the date of the enactment of this Act, the Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall conduct an inquiry regarding any State statutes, regulations, or other rules of law enacted or adopted after such date of the enactment pursuant to section 102(a), and the extent to which such statutes, regulations, and rules comply with section 102(b).

(b) **REPORT-** The Secretary shall submit a report to the Congress regarding the results of such inquiry by the conclusion of such 5-year period.

(c) **ADDITIONAL STUDY OF DELIVERY-** Within 18 months after the date of the enactment of this Act, the Secretary of Commerce shall conduct an inquiry regarding the effectiveness of the delivery of electronic records to consumers using electronic mail as compared with delivery of written records via the United States Postal Service and private express mail services. The Secretary shall submit a report to the Congress regarding the results of such inquiry by the conclusion of such 18-month period.

SEC. 105. DEFINITIONS.

For purposes of this title:

(1) **ELECTRONIC RECORD-** The term `electronic record' means a writing, document, or other record created, stored, generated, received, or communicated by electronic means.

(2) **ELECTRONIC SIGNATURE-** The term `electronic signature' means information or

data in electronic form, attached to or logically associated with an electronic record, and executed or adopted by a person or an electronic agent of a person, with the intent to sign a contract, agreement, or record.

(3) ELECTRONIC- The term `electronic' means of or relating to technology having electrical, digital, magnetic, optical, electromagnetic, or similar capabilities regardless of medium.

(4) ELECTRONIC AGENT- The term `electronic agent' means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records in whole or in part without review by an individual at the time of the action or response.

(5) RECORD- The term `record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(6) FEDERAL REGULATORY AGENCY- The term `Federal regulatory agency' means an agency, as that term is defined in section 552(f) of title 5, United States Code, that is authorized by Federal law to impose requirements by rule, regulation, order, or other legal instrument.

(7) SELF-REGULATORY ORGANIZATION- The term `self-regulatory organization' means an organization or entity that is not a Federal regulatory agency or a State, but that is under the supervision of a Federal regulatory agency and is authorized under Federal law to adopt and administer rules applicable to its members that are enforced by such organization or entity, by a Federal regulatory agency, or by another self-regulatory organization.

TITLE II--DEVELOPMENT AND ADOPTION OF ELECTRONIC SIGNATURE PRODUCTS AND SERVICES

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

(a) INQUIRY REGARDING IMPEDIMENTS TO COMMERCE-

(1) INQUIRIES REQUIRED- Within 180 days after the date of the enactment of this Act, and biennially thereafter, the Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall complete an inquiry to--

(A) identify any domestic and foreign impediments to commerce in electronic signature products and services and the manners in which and extent to which such impediments inhibit the development of interstate and foreign commerce;

(B) identify constraints imposed by foreign nations or international organizations that constitute barriers to providers of electronic signature products or services; and

(C) identify the degree to which other nations and international organizations are complying with the principles in subsection (b)(2).

(2) SUBMISSION- The Secretary shall submit a report to the Congress regarding the results of each such inquiry within 90 days after the conclusion of such inquiry. Such report shall include a description of the actions taken by the Secretary pursuant to subsection (b) of this section.

(b) PROMOTION OF ELECTRONIC SIGNATURES-

(1) **REQUIRED ACTIONS-** The Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall promote the acceptance and use, on an international basis, of electronic signatures in accordance with the principles specified in paragraph (2) and in a manner consistent with section 101 of this Act. The Secretary of Commerce shall take all actions necessary in a manner consistent with such principles to eliminate or reduce, to the maximum extent possible, the impediments to commerce in electronic signatures, including those identified in the inquiries under subsection (a) for the purpose of facilitating the development of interstate and foreign commerce.

(2) **PRINCIPLES-** The principles specified in this paragraph are the following:

(A) Free markets and self-regulation, rather than Government standard-setting or rules, should govern the development and use of electronic records and electronic signatures.

(B) Neutrality and nondiscrimination should be observed among providers of and technologies for electronic records and electronic signatures.

(C) Parties to a transaction should be permitted to establish requirements regarding the use of electronic records and electronic signatures acceptable to such parties.

(D) Parties to a transaction--

(i) should be permitted to determine the appropriate authentication technologies and implementation models for their transactions, with assurance that those technologies and implementation models will be recognized and enforced; and

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

(E) Electronic records and electronic signatures in a form acceptable to the parties should not be denied legal effect, validity, or enforceability on the ground that they are not in writing.

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

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

(c) **CONSULTATION-** In conducting the activities required by this section, the Secretary shall consult with users and providers of electronic signature products and services and other interested persons.

(d) **PRIVACY-** Nothing in this section shall be construed to require the Secretary or the Assistant Secretary to take any action that would adversely affect the privacy of consumers.

(e) **DEFINITIONS-** As used in this section, the terms `electronic record' and `electronic signature' have the meanings provided in section 104 of the Electronic Signatures in Global and National Commerce Act.

TITLE III--USE OF ELECTRONIC RECORDS AND SIGNATURES UNDER FEDERAL SECURITIES LAW

SEC. 301. GENERAL VALIDITY OF ELECTRONIC RECORDS AND SIGNATURES.

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

`(h) REFERENCES TO WRITTEN RECORDS AND SIGNATURES-

`(1) GENERAL VALIDITY OF ELECTRONIC RECORDS AND SIGNATURES- Except as otherwise provided in this subsection--

`(A) if a contract, agreement, or record (as defined in subsection (a)(37)) is required by the securities laws or any rule or regulation thereunder (including a rule or regulation of a self-regulatory organization), and is required by Federal or State statute, regulation, or other rule of law to be in writing, the legal effect, validity, or enforceability of such contract, agreement, or record shall not be denied on the ground that the contract, agreement, or record is not in writing if the contract, agreement, or record is an electronic record;

`(B) if a contract, agreement, or record is required by the securities laws or any rule or regulation thereunder (including a rule or regulation of a self-regulatory organization), and is required by Federal or State statute, regulation, or other rule of law to be signed, the legal effect, validity, or enforceability of such contract, agreement, or record shall not be denied on the ground that such contract, agreement, or record is not signed or is not affirmed by a signature if the contract, agreement, or record is signed or affirmed by an electronic signature; and

`(C) if a broker, dealer, transfer agent, investment adviser, or investment company enters into a contract or agreement with, or accepts a record from, a customer or other counterparty, such broker, dealer, transfer agent, investment adviser, or investment company may accept and rely upon an electronic signature on such contract, agreement, or record, and such electronic signature shall not be denied legal effect, validity, or enforceability because it is an electronic signature.

`(2) IMPLEMENTATION-

`(A) REGULATIONS- The Commission may prescribe such regulations as may be necessary to carry out this subsection consistent with the public interest and the protection of investors.

`(B) NONDISCRIMINATION- The regulations prescribed by the Commission under subparagraph (A) shall not--

`(i) discriminate in favor of or against a specific technology, method, or technique of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures; or

`(ii) discriminate in favor of or against a specific type or size of entity engaged in the business of facilitating the use of electronic records or electronic signatures.

`(3) EXCEPTIONS- Notwithstanding any other provision of this subsection--

`(A) the Commission, an appropriate regulatory agency, or a self-regulatory

organization may require that records be filed or maintained in a specified standard or standards (including a specified format or formats) if the records are required to be submitted to the Commission, an appropriate regulatory agency, or a self-regulatory organization, respectively, or are required by the Commission, an appropriate regulatory agency, or a self-regulatory organization to be retained; and

`(B) the Commission may require that contracts, agreements, or records relating to purchases and sales, or establishing accounts for conducting purchases and sales, of penny stocks be manually signed, and may require such manual signatures with respect to transactions in similar securities if the Commission determines that such securities are susceptible to fraud and that such fraud would be deterred or prevented by requiring manual signatures.

`(4) RELATION TO OTHER LAW- The provisions of this subsection apply in lieu of the provisions of title I of the Electronic Signatures in Global and National Commerce Act to a contract, agreement, or record (as defined in subsection (a)(37)) that is required by the securities laws.

`(5) SAVINGS PROVISION- Nothing in this subsection applies to any rule or regulation under the securities laws (including a rule or regulation of a self-regulatory organization) that is in effect on the date of the enactment of the Electronic Signatures in Global and National Commerce Act and that requires a contract, agreement, or record to be in writing, to be submitted or retained in original form, or to be in a specified standard or standards (including a specified format or formats).

`(6) DEFINITIONS- As used in this subsection:

`(A) ELECTRONIC RECORD- The term `electronic record' means a writing, document, or other record created, stored, generated, received, or communicated by electronic means.

`(B) ELECTRONIC SIGNATURE- The term `electronic signature' means information or data in electronic form, attached to or logically associated with an electronic record, and executed or adopted by a person or an electronic agent of a person, with the intent to sign a contract, agreement, or record.

`(C) ELECTRONIC- The term `electronic' means of or relating to technology having electrical, digital, magnetic, optical, electromagnetic, or similar capabilities regardless of medium.'

Passed the House of Representatives November 9, 1999.

Attest:

JEFF TRANDAHL,

Clerk.

THIS SEARCH

Next Hit

[Prev Hit](#)

THIS DOCUMENT

Forward

Back

GO TO

[New Bills Search](#)

[HomePage](#)

[Hit List](#)

Best Sections
Doc Contents

[Help](#)
