

105TH CONGRESS
2D SESSION

S. 1594

To amend the Bank Protection Act of 1968 for purposes of facilitating the use of electronic authentication techniques by financial institutions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 1998

Mr. BENNETT introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Bank Protection Act of 1968 for purposes of facilitating the use of electronic authentication techniques by financial institutions, 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 “Digital Signature and
5 Electronic Authentication Law (SEAL) of 1998”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

8 (1) technology has had a tremendous impact on
9 the manner in which banks and other financial insti-

1 tutions conduct their businesses, and has affected
2 virtually all aspects of their operations;

3 (2) such changes relate not only to the creation,
4 retention, and delivery of documents and other infor-
5 mation, but also to the receipt and payment of
6 funds, the purchase and sale of goods and services,
7 and other aspects of the ability of a financial institu-
8 tion to communicate with and service its customer
9 base;

10 (3) financial and other transactions will increas-
11 ingly be carried over open electronic networks such
12 as the Internet, and through other methods where
13 the identity of the parties participating in such
14 transactions may not be easily verifiable and where
15 there is a need to assure that information transmit-
16 ted among the parties has not been altered;

17 (4) banks, by virtue of their role in the Nation's
18 payment system, their relationships with their cus-
19 tomers, and through the prudent use of technology,
20 are well placed to facilitate financial transactions
21 over such electronic media as the Internet;

22 (5) the parties to such financial and other
23 transactions may previously have entered into agree-
24 ments or system rules pursuant to which the trans-

1 actions subsequently take place (known as “closed
2 system transactions”);

3 (6) if the formation of system rules and agree-
4 ments are otherwise valid and effective under appli-
5 cable law, such as under State contract law, the par-
6 ties should be able to use electronic authentication
7 under the terms and conditions of those system rules
8 and agreements, to help ensure that the development
9 of electronic authentication will be appropriately
10 market driven;

11 (7) premature, conflicting, or unwise regulation
12 can inadvertently discourage the use of technology in
13 financial transactions, can inhibit the development of
14 electronic commerce, and can reduce security in fi-
15 nancial transactions;

16 (8) it is appropriate for Congress to enable a
17 framework under which banks and their subsidiaries
18 and affiliates can participate in electronic commerce
19 and electronic banking without undue premature or
20 unnecessary regulation, but under which appropriate
21 oversight is provided; and

22 (9) in particular, it is appropriate for the Board
23 of Governors of the Federal Reserve System to con-
24 sult with the other Federal and State banking regu-
25 lators and report to the Congress regarding the use

1 of electronic authentication techniques, in order to
2 facilitate electronic commerce and electronic bank-
3 ing, and to study the need for and wisdom of con-
4 sumer protection in the context of the developing
5 area of electronic commerce.

6 (b) PURPOSES.—The purposes of this Act are—

7 (1) to facilitate the participation by financial in-
8 stitutions in the burgeoning area of electronic com-
9 merce and electronic banking;

10 (2) to ensure that the interests of consumers
11 are adequately protected; and

12 (3) to avoid the effects of premature or conflict-
13 ing regulation that could inadvertently impede the
14 development of electronic banking and commerce or
15 imperil the security of electronic banking and com-
16 merce.

17 **SEC. 3. AMENDMENTS TO THE BANK PROTECTION ACT OF**
18 **1968.**

19 (a) DEFINITIONS.—Section 2 of the Bank Protection
20 Act of 1968 (12 U.S.C. 1881) is amended—

21 (1) by inserting “(a) FEDERAL SUPERVISORY
22 AGENCY.—” before “As used”;

23 (2) in paragraph (4), by inserting “associa-
24 tions” before the period; and

25 (3) by adding at the end the following:

1 “(b) AFFILIATE.—The term ‘affiliate’ has the same
2 meaning as in section 2(k) of the Bank Holding Company
3 Act of 1956.

4 “(c) APPROPRIATE FEDERAL BANKING AGENCY.—
5 The term ‘appropriate Federal banking agency’ has the
6 same meaning as in section 3 of the Federal Deposit In-
7 surance Act, and includes the National Credit Union Ad-
8 ministration with respect to an insured credit union under
9 the Federal Credit Union Act.

10 “(d) ASSOCIATION.—The term ‘association’ means an
11 organization or association engaged in receiving, sending,
12 and settling payment transactions and instructions, and
13 includes credit and charge card associations, payment
14 clearinghouses, and automated teller machine networks in
15 which insured depository institutions are members or
16 stockholders or in which they participate, or which are su-
17 pervised and examined by 1 or more of the Federal bank-
18 ing agencies.

19 “(e) BANK HOLDING COMPANY.—The term ‘bank
20 holding company’ has the same meaning as in section 2
21 of the Bank Holding Company Act of 1956.

22 “(f) DOCUMENT.—The term ‘document’ means any
23 message, instrument, information, data, image, text, pro-
24 gram, software, database, or the similar item, regardless

1 of how created, if such item can be retrieved or displayed
2 in a tangible form.

3 “(g) ELECTRONIC AUTHENTICATION.—The term
4 ‘electronic authentication’ means a cryptographic or other
5 secure electronic technique that allows the user of the
6 technique—

7 “(1) to authenticate the identity of or informa-
8 tion associated with a sender of a document;

9 “(2) to determine that a document was not al-
10 tered, changed, or modified during its transmission
11 to a recipient; or

12 “(3) to verify that a document received was
13 sent by the identified party claiming to be the send-
14 er.

15 “(h) FEDERAL BANKING AGENCY.—The term ‘Fed-
16 eral banking agency’ has the same meaning as in section
17 3 of the Federal Deposit Insurance Act, and includes the
18 National Credit Union Administration.

19 “(i) FINANCIAL INSTITUTION.—The term ‘financial
20 institution’ means—

21 “(1) an insured depository institution and any
22 branch, representative office, or subsidiary thereof;

23 “(2) a bank holding company and any subsidi-
24 ary thereof;

1 “(3) an affiliate of an insured depository insti-
2 tution;

3 “(4) an association;

4 “(5) a foreign bank maintaining an agency or
5 branch (as such terms are defined in section 1(b) of
6 the International Banking Act of 1978) in the
7 United States; or

8 “(6) any entity that is not described in para-
9 graphs (1) through (5) that is a financial institution,
10 as defined in section 903 of the Electronic Fund
11 Transfer Act, or a card issuer, as defined in section
12 103 of the Truth in Lending Act, but only to the ex-
13 tent that the transactions of such entity are subject
14 to those Acts, respectively,

15 that affirmatively elects to be subject to the provisions of
16 this Act by providing appropriate notice of such election
17 in accordance with any commercially reasonable practice.

18 “(j) INSURED DEPOSITORY INSTITUTION.—The term
19 ‘insured depository institution’ has the same meaning as
20 in section 3 of the Federal Deposit Insurance Act.

21 “(k) STATE BANK SUPERVISOR.—The term ‘State
22 bank supervisor’ has the same meaning as in section 3
23 of the Federal Deposit Insurance Act.

24 “(l) SUBSIDIARY.—The term ‘subsidiary’—

1 “(1) has the same meaning as in section 2(d)
2 of the Bank Holding Company Act of 1956; and

3 “(2) includes a ‘subsidiary’, as defined in sec-
4 tion 23A(b)(4) of the Federal Reserve Act.”.

5 (b) ELECTRONIC COMMERCE.—The Bank Protection
6 Act of 1968 (12 U.S.C. 1881 et seq.) is amended by add-
7 ing at the end the following new sections:

8 **“SEC. 6. ELECTRONIC AUTHENTICATION OF DOCUMENTS.**

9 “(a) ELECTRONIC AUTHENTICATION OF DOCU-
10 MENTS, INFORMATION, AND IDENTITY.—

11 “(1) IN GENERAL.—A financial institution may
12 use electronic authentication in the conduct of its
13 business if it has entered into an agreement regard-
14 ing the use of electronic authentication with any
15 counterparty, or if it has established a banking, fi-
16 nancial, or transactional system using electronic au-
17 thentication.

18 “(2) APPLICABLE RULES.—The establishment
19 and use of electronic authentication pursuant to this
20 section shall be valid according to the relevant agree-
21 ments or system rules.

22 “(b) OVERSIGHT.—

23 “(1) IN GENERAL.—The appropriate Federal
24 banking agency or the appropriate State bank super-
25 visor may preclude, by regulation or order, an in-

1 sured depository institution or a subsidiary or affili-
 2 ate thereof, or other institution subject to its juris-
 3 diction, from using electronic authentication in the
 4 conduct of its business if it determines that—

5 “(A) such use would not be consistent with
 6 safe and sound banking practices; or

7 “(B) such use would threaten the safety
 8 and soundness of the institution, subsidiary, or
 9 affiliate.

10 “(2) STATE AUTHORITY.—

11 “(A) IN GENERAL.—No financial institu-
 12 tion shall—

13 “(i) be regulated by, be required to
 14 register with, or be certified, licensed, or
 15 approved by; or

16 “(ii) be limited by or required to act
 17 or operate under standards, rules, or regu-
 18 lations promulgated by,

19 a State government or agency or instrumental-
 20 ity thereof with regard to the use of electronic
 21 authentication, including acting as a digital cer-
 22 tification authority or performing a similar role,
 23 pursuant to this Act.

24 “(B) LIMITATION ON FEES.—No State
 25 may—

1 “(i) impose a fee with respect to elec-
 2 tronic authentication services performed by
 3 a financial institution subject to the provi-
 4 sions of this Act; or

5 “(ii) impose any required minimum
 6 fee or otherwise limit the fee that may be
 7 charged by a financial institution with re-
 8 spect to electronic authentication services
 9 subject to the provisions of this Act.

10 “(C) OTHER REGULATORY AUTHORITY.—
 11 Nothing in this subsection precludes a State
 12 bank supervisor from regulating a State-char-
 13 tered financial institution that is otherwise sub-
 14 ject to its jurisdiction.

15 “(D) CONSUMER PROTECTION.—Nothing
 16 in this section impairs the rights afforded to
 17 consumers under State general consumer pro-
 18 tection laws.

19 **“SEC. 7. CONSUMER PROTECTION.**

20 “Nothing in section 6(a) shall be construed to impair
 21 the rights afforded to consumers under—

22 “(1) the Truth in Lending Act or the Electronic
 23 Fund Transfer Act, or the implementing regulations
 24 of the Federal Reserve Board thereunder applicable

1 to electronic funds transfers from a consumer ac-
2 count or extension of credit to consumers; or

3 “(2) any State law of a similar nature or pur-
4 pose.”.

5 **SEC. 4. FEDERAL RESERVE BOARD STUDY.**

6 (a) REPORT.—Not later than July 1, 2000, the
7 Board of Governors of the Federal Reserve System (here-
8 after in this section referred to as the “Board”), in con-
9 sultation with the Federal banking agencies and State
10 bank supervisors, shall report to the Congress regarding
11 the use of electronic authentication under section 6 of the
12 Bank Protection Act of 1968, as added by this Act by
13 financial institutions.

14 (b) CONSIDERATIONS.—In preparing the report re-
15 quired under subsection (a), the Board shall include con-
16 sideration of—

17 (1) the appropriateness of applying the con-
18 sumer protection provisions of the Truth in Lending
19 Act, and the Electronic Fund Transfer Act, or the
20 implementing regulations of the Board promulgated
21 thereunder, to such transactions;

22 (2) whether protections for consumers should
23 be changed in light of the experience of financial in-
24 stitutions and consumers in transactions where elec-

1 tronic authentication is used in connection with
2 third-party assurances; and

3 (3) the need for consultation and coordination
4 with other nations concerning the international use
5 of electronic authentication by financial institutions
6 and others, with the purposes of—

7 (A) encouraging simplified regulatory gov-
8 ernance, foreign recognition of electronic au-
9 thentication under this Act, and United States
10 recognition of foreign electronic authentication;

11 (B) encouraging the greatest possible
12 interoperability across borders;

13 (C) imposing the least possible regulation
14 consistent with security and safety and sound-
15 ness considerations;

16 (D) promoting the smooth functioning of
17 the payments system; and

18 (E) facilitating the opportunity for finan-
19 cial institutions to participate freely and fairly
20 in foreign markets.

21 (c) INCORPORATION OF DEFINED TERMS.—Any term
22 used in this section that is defined in section 2 of the Bank
23 Protection Act of 1968 (as amended by this Act) shall
24 have the same meaning as in that section 2.

1 **SEC. 5. RULES OF CONSTRUCTION.**

2 (a) EFFECT ON USE.—Nothing in this Act or the
3 amendments made by this Act may be construed to limit
4 the right of any financial institution or other entity to use
5 electronic authentication or other authentication technique
6 in the conduct of its business.

7 (b) EFFECT ON OTHERWISE LAWFUL AGREE-
8 MENTS.—Except as otherwise specifically provided, noth-
9 ing in this Act or the Bank Protection Act of 1968, as
10 amended by this Act, shall be construed to affect the valid-
11 ity of the formation of relevant agreements or system rules
12 in accordance with the provisions of otherwise applicable
13 Federal or State law.

