

106TH CONGRESS
1ST SESSION

H. R. 1320

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 other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 1999

Ms. ESHOO introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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 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, nonregulatory, and market-based ap-
14 proach.

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 interjuris-
2 dictional 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 existing 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 transactions or otherwise to
20 the conduct of commerce online or by electronic
21 means; 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 therefor, that such removal is
14 impracticable or would be inconsistent with the implemen-
15 tation or enforcement of applicable laws.

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