

106TH CONGRESS  
1ST SESSION

# S. 761

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## AN ACT

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”.

1 **SEC. 2. FINDINGS.**

2 The Congress makes the following findings:

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

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

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

17 (4) The Nation and the world stand at the be-  
18 ginning of a large scale transition to an information  
19 society which will require innovative legal and policy  
20 approaches, and therefore, States can serve the na-  
21 tional interest by continuing their proven role as lab-  
22 oratories of innovation for quickly evolving areas of  
23 public policy, provided that States also adopt a con-  
24 sistent, reasonable national baseline to eliminate ob-  
25 solete barriers to electronic commerce such as undue  
26 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 provide a consistent, reasonable national baseline  
5 or in fact create an undue burden to interstate com-  
6 merce in the important burgeoning area of electronic  
7 commerce, the national interest is best served by  
8 Federal preemption to the extent necessary to pro-  
9 vide such consistent, reasonable national baseline or  
10 eliminate said burden, but that absent such lack of  
11 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      contract formation;

18          (4) to facilitate the ability of private parties en-  
19      gaged in interstate transactions to agree among  
20      themselves on the appropriate electronic signature  
21      technologies for their transactions; and

22          (5) to promote the development of a consistent  
23      national legal infrastructure necessary to support  
24      electronic commerce at the Federal and State levels  
25      within existing areas of jurisdiction.

1 **SEC. 4. DEFINITIONS.**

2 In this Act:

3 (1) **ELECTRONIC.**—The term “electronic”  
4 means relating to technology having electrical, dig-  
5 ital, magnetic, wireless, optical, electromagnetic, or  
6 similar capabilities.

7 (2) **ELECTRONIC AGENT.**—The term “electronic  
8 agent” means a computer program or an electronic  
9 or other automated means used to initiate an action  
10 or respond to electronic records or performances in  
11 whole or in part without review by an individual at  
12 the time of the action or response.

13 (3) **ELECTRONIC RECORD.**—The term “elec-  
14 tronic record” means a record created, generated,  
15 sent, communicated, received, or stored by electronic  
16 means.

17 (4) **ELECTRONIC SIGNATURE.**—The term “elec-  
18 tronic signature” means an electronic sound, symbol,  
19 or process attached to or logically associated with a  
20 record and executed or adopted by a person with the  
21 intent to sign the record.

22 (5) **GOVERNMENTAL AGENCY.**—The term “gov-  
23 ernmental agency” means an executive, legislative,  
24 or judicial agency, department, board, commission,  
25 authority, or institution of the Federal Government

1 or of a State or of any county, municipality, or other  
2 political subdivision of a State.

3 (6) RECORD.—The term “record” means infor-  
4 mation that is inscribed on a tangible medium or  
5 that is stored in an electronic or other medium and  
6 is retrievable in perceivable form.

7 (7) TRANSACTION.—The term “transaction”  
8 means an action or set of actions relating to the con-  
9 duct of commerce, between 2 or more persons, nei-  
10 ther of which is the United States Government, a  
11 State, or an agency, department, board, commission,  
12 authority, or institution of the United States Gov-  
13 ernment or of a State.

14 (8) UNIFORM ELECTRONIC TRANSACTIONS  
15 ACT.—The term “Uniform Electronic Transactions  
16 Act” means the Uniform Electronic Transactions  
17 Act as provided to State legislatures by the National  
18 Conference of Commissioners on Uniform State Law  
19 in that form or any substantially similar variation  
20 thereof.

21 **SEC. 5. INTERSTATE CONTRACT CERTAINTY.**

22 (a) IN GENERAL.—In any commercial transaction af-  
23 fecting interstate commerce, a contract may not be denied  
24 legal effect or enforceability solely because an electronic  
25 signature or electronic record was used in its formation.

1           (b) METHODS.—Parties to a transaction are per-  
2 mitted to determine the appropriate electronic signature  
3 technologies for their transaction, and the means of imple-  
4 menting such technologies.

5           (c) PRESENTATION OF CONTRACTS.—Notwith-  
6 standing subsection (a), if a law requires that a contract  
7 be in writing, the legal effect or enforceability of an elec-  
8 tronic record of such contract shall be denied under such  
9 law, unless it is delivered to all parties to such contract  
10 in a form that—

11                 (1) can be retained by the parties for later ref-  
12 erence; and

13                 (2) can be used to prove the terms of the agree-  
14 ment.

15           (d) SPECIFIC EXCLUSIONS.—The provisions of this  
16 section shall not apply to a statute, regulation, or other  
17 rule of law governing any of the following:

18                 (1) The Uniform Commercial Code, as in effect  
19 in a State, other than sections 1–107 and 1–206,  
20 Article 2, and Article 2A.

21                 (2) Premarital agreements, marriage, adoption,  
22 divorce or other matters of family law.

23                 (3) Documents of title which are filed of record  
24 with a governmental unit until such time that a

1 State or subdivision thereof chooses to accept filings  
2 electronically.

3 (4) Residential landlord-tenant relationships.

4 (5) The Uniform Health-Care Decisions Act as  
5 in effect in a State.

6 (e) ELECTRONIC AGENTS.—A contract relating to a  
7 commercial transaction affecting interstate commerce may  
8 not be denied legal effect or enforceability solely because  
9 its formation involved—

10 (1) the interaction of electronic agents of the  
11 parties; or

12 (2) the interaction of an electronic agent of a  
13 party and an individual who acts on that individual's  
14 own behalf or as an agent for another person.

15 (f) INSURANCE.—It is the specific intent of the Con-  
16 gress that this section apply to the business of insurance.

17 (g) APPLICATION IN UETA STATES.—This section  
18 does not apply in any State in which the Uniform Elec-  
19 tronic Transactions Act is in effect.

20 **SEC. 6. PRINCIPLES GOVERNING THE USE OF ELECTRONIC**  
21 **SIGNATURES IN INTERNATIONAL TRANS-**  
22 **ACTIONS.**

23 To the extent practicable, the Federal Government  
24 shall observe the following principles in an international  
25 context to enable commercial electronic transaction:

1           (1) Remove paper-based obstacles to electronic  
2 transactions by adopting relevant principles from the  
3 Model Law on Electronic Commerce adopted in  
4 1996 by the United Nations Commission on Inter-  
5 national Trade Law.

6           (2) Permit parties to a transaction to determine  
7 the appropriate authentication technologies and im-  
8 plementation models for their transactions, with as-  
9 surance that those technologies and implementation  
10 models will be recognized and enforced.

11           (3) Permit parties to a transaction to have the  
12 opportunity to prove in court or other proceedings  
13 that their authentication approaches and their trans-  
14 actions are valid.

15           (4) Take a nondiscriminatory approach to elec-  
16 tronic signatures and authentication methods from  
17 other jurisdictions.

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

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

1 the date of enactment of this Act, that may impose a bar-  
2 rier to electronic transactions, or otherwise to the conduct  
3 of commerce online or by electronic means, including bar-  
4 riers imposed by a law or regulation directly or indirectly  
5 requiring that signatures, or records of transactions, be  
6 accomplished or retained in other than electronic form. In  
7 its report, each agency shall identify the barriers among  
8 those identified whose removal would require legislative  
9 action, and shall indicate agency plans to undertake regu-  
10 latory action to remove such barriers among those identi-  
11 fied as are caused 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 barriers to  
19 electronic transactions or otherwise to the conduct of  
20 commerce online or by electronic means; and

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

Passed the Senate November 19, 1999.

Attest:

*Secretary.*

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