

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1170*

Short Title: Electronic Commerce Act.

(Public)

Sponsors: Senators Reeves; Martin of Guilford and Rucho.

Referred to: Commerce.

May 20, 1998

A BILL TO BE ENTITLED

1 AN ACT TO FACILITATE ELECTRONIC COMMERCE WITH AND BY PUBLIC
2 ENTITIES OF THE STATE OF NORTH CAROLINA BY RECOGNIZING THE
3 VALIDITY OF ELECTRONIC SIGNATURES AND BY AUTHORIZING THE
4 SECRETARY OF STATE TO REGULATE ELECTRONIC SIGNATURES AND
5 CERTIFICATION AUTHORITIES.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. Chapter 66 of the General Statutes is amended by adding a new
9 Article to read:

10 **"ARTICLE 11A.**

11 **"ELECTRONIC COMMERCE IN GOVERNMENT.**

12 **"§ 66-58.1. Title; purpose.**

13 (a) This Article shall be known and may be cited as the Electronic Commerce Act.
14 The purpose of this Article is to facilitate electronic commerce with and by public entities
15 of the State by recognizing the validity of electronic signatures, and by providing for the
16 regulation of electronic signatures and certification authorities.

17 (b) Notwithstanding any other provision of law, this Article shall apply to records
18 generated, stored, processed, communicated, or used for any purpose by or with public
19 entities of the State. 'Public entities' as used in this Article shall include but not be

1 limited to State agencies, boards, commissions or institutions and local political
2 subdivisions including cities, counties, school districts or public services districts.

3 **"§ 66-58.2. Definitions.**

4 The following definitions apply in this Article:

- 5 (1) 'Certification authority' means a person authorized by the Secretary of
6 State to facilitate electronic commerce by vouching for the connection
7 between a person and that person's electronic signature.
8 (2) 'Electronic signature' means any identifier or authentication technique
9 attached to or logically associated with an electronic record which is
10 intended by the party using it to have the same force and effect as the
11 party's manual signature.

12 **"§ 66-58.3. Validity of electronic signatures.**

13 (a) When a public entity of the State is a party to a contract, transaction or filing,
14 an electronic signature in such contract, transaction or filing is a valid signature for all
15 purposes under North Carolina law, so long as the entity requesting or requiring the
16 signature accepts electronic signatures as a form of signature.

17 (b) An electronic signature shall have the same force and effect as a manual
18 signature if and only if the electronic signature embodies all of the following attributes:

- 19 (1) It is unique to the person using it;
20 (2) It is capable of certification;
21 (3) It is under sole control of the person using it;
22 (4) It is linked to data in such a manner that if the data are changed, the
23 electronic signature is invalidated; and
24 (5) It conforms to rules adopted by the Secretary of State pursuant to this
25 Article.

26 (c) All public entities of the State of North Carolina may accept electronic
27 signatures.

28 (d) A contract between public and private entities is not unenforceable, nor is it
29 inadmissible into evidence, on the sole ground that the contract is evidenced by an
30 electronic record or that it has been signed with an electronic signature.

31 **"§ 66-58.4. Rulemaking.**

32 (a) The Secretary of State may promulgate rules under this Article. Such rules
33 may include, but are not limited to:

- 34 (1) Definitions, including but not limited to more technical definitions of
35 'certification authority' and 'electronic signature';
36 (2) The creation, accreditation, licensing, operation, regulation, and
37 sanctioning of certification authorities;
38 (3) The imposition of licensing and renewal fees in amounts reasonably
39 related to the cost of administering this Article; and
40 (4) The imposition of civil monetary penalties for noncompliance with this
41 Article or the rules promulgated thereunder.

42 (b) For purposes of administering this Article, the Secretary of State may at all
43 times promulgate and amend rules under this Article using the procedure for adoption of

1 temporary rules under G.S. 150B-21.1. Such rules shall be deemed to meet the criteria
2 for adoption of temporary rules under G.S. 150B-21.1.

3 **"§ 66-58.5. Enforcement; penalty for violation.**

4 (a) The Secretary of State may investigate complaints or other information
5 indicating violations of rules adopted by the Secretary of State under this Article or
6 otherwise indicating fraudulent or unlawful conduct in violation of this Article.

7 (b) The Secretary of State may assess a civil penalty of not more than one hundred
8 thousand dollars (\$100,000) against any person who violates a provision of this Article or
9 any rule promulgated thereunder. In determining the amount of a penalty under this
10 subsection, the Secretary of State shall give due consideration to each of the following
11 factors:

12 (1) The organizational size of the person cited;

13 (2) The good faith of the person cited;

14 (3) The gravity of the violation;

15 (4) The prior record of the violator in complying or failing to comply with
16 this Article or a rule adopted pursuant to this Article; and

17 (5) The risk of harm to the public or to individuals caused by the violation.

18 Civil penalties imposed by the Secretary of State under this subsection shall be
19 deposited in the General Fund. Chapter 150B of the General Statutes governs the
20 imposition of a civil penalty under this subsection. A civil penalty owed under this
21 subsection may be recovered in a civil action brought by the Secretary of State or the
22 Attorney General.

23 **"§ 66-58.6. Restraint of violation; legal representation; rights under other law.**

24 (a) The General Court of Justice has jurisdiction and authority upon application of
25 the Secretary of State to enjoin or restrain violations of this Article.

26 (b) It shall be the duty of the Attorney General, when requested, to represent the
27 Secretary of State in actions or proceedings in connection with this Article.

28 (c) Nothing in this Article shall adversely affect any rights or the enforcement of
29 any rights acquired by any person under any other statute or at common law with respect
30 to matters also covered by this Article.

31 **"§ 66-58.7. Exemptions.**

32 Electronic signatures specifically authorized and employed pursuant to other
33 provisions of the General Statutes are exempt from this Article."

34 Section 2. The Secretary of State shall adopt initial rules pursuant to this act
35 not later than October 30, 1998. In developing these rules, the Secretary of State shall
36 incorporate any national standards for ensuring the integrity of electronic signatures and
37 shall seek the advice of public and private entities, including but not limited to the
38 Information Resource Management Commission and the Department of Administration.
39 Before adoption of the rules, the Secretary of State shall hold at least one public hearing
40 to receive comments.

41 Section 3. This act is effective when it becomes law.