

GENERAL ASSEMBLY OF NORTH CAROLINA

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HOUSE BILL 1356*

Committee Substitute Favorable 6/24/98

Senate Commerce Committee Substitute Adopted 7/15/98

Senate Finance Committee Substitute #2 Adopted 7/30/98

Short Title: Electronic Commerce Act.

(Public)

Sponsors:

Referred to:

May 20, 1998

A BILL TO BE ENTITLED

AN ACT TO FACILITATE ELECTRONIC COMMERCE WITH AND BY PUBLIC AGENCIES OF THE STATE OF NORTH CAROLINA BY RECOGNIZING THE VALIDITY OF ELECTRONIC SIGNATURES AND BY AUTHORIZING THE SECRETARY OF STATE TO REGULATE ELECTRONIC SIGNATURES AND CERTIFICATION AUTHORITIES.

The General Assembly of North Carolina enacts:

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

“ARTICLE 11A.

“ELECTRONIC COMMERCE IN GOVERNMENT.

“§ 66-58.1. Title; purpose.

This Article shall be known and may be cited as the Electronic Commerce Act. The purpose of this Article is to facilitate electronic commerce with public agencies and regulate the application of electronic signatures when used in commerce with public agencies.

“§ 66-58.2. Definitions.

1 The following definitions apply in this Article:

- 2 (1) 'Certification authority' means a person authorized by the Secretary to
3 facilitate electronic commerce by vouching for the relationship between
4 a person or public agency and that person's or public agency's electronic
5 signature.
- 6 (2) 'Electronic signature' means any identifier or authentication technique
7 attached to or logically associated with an electronic record which is
8 intended by the party using it to have the same force and effect as the
9 party's manual signature.
- 10 (3) 'Person' means any individual, firm, partnership, corporation, or
11 combination thereof of whatsoever form or character.
- 12 (4) 'Public agencies' means and includes every public office, public officer
13 or official (State or local, elected or appointed), institution, board,
14 commission, bureau, council, department, authority, or other unit of
15 government of the State or of any county, unit, special district, or other
16 political subdivision of government.
- 17 (5) 'Secretary' means Secretary of State.
- 18 (6) 'Transaction' means an electronic transmission of data between a person
19 and a public agency, or between public agencies, including, but not
20 limited to, contracts, filings, and legally operative documents.

21 **"§ 66-58.3. Certification authority licensing.**

22 All persons acting as a certification authority with respect to transactions under this
23 Article shall be licensed by the Secretary prior to representing themselves or acting as a
24 certification authority under this Article. Certification authority licensing standards set
25 by the Secretary may include, but are not limited to, technical, physical, procedural, and
26 personnel security controls, repository obligations, and financial responsibility standards.
27 Upon payment of the required fees, a certification authority meeting the standards
28 adopted by the Secretary by rule shall be licensed for a period of one year. Licenses of
29 certification authorities complying with the standards adopted by the Secretary may be
30 renewed for additional one-year terms upon payment of the required renewal fee.

31 **"§ 66-58.4. Use of electronic signatures.**

- 32 (a) All public agencies may accept electronic signatures.
- 33 (b) Signatures that require attestation by a notary public may not be in the form
34 of an electronic signature.

35 **"§ 66-58.5. Validity of electronic signatures.**

36 (a) An electronic signature contained in a transaction between a person and a
37 public agency, or between public agencies, shall have the same force and effect as a
38 manual signature provided all of the following requirements are met:

- 39 (1) The public agency involved in the transaction requests or requires the
40 use of electronic signatures.
- 41 (2) The electronic signature contained in the transaction embodies all of the
42 following attributes:
- 43 a. It is unique to the person using it;

- 1 **b.** It is capable of certification;
2 **c.** It is under sole control of the person using it;
3 **d.** It is linked to data in such a manner that if the data are changed,
4 the electronic signature is invalidated; and
5 **e.** It conforms to rules adopted by the Secretary pursuant to this
6 Article.

7 **(b)** A transaction between a person and a public agency, or between public
8 agencies, is not unenforceable, nor is it inadmissible into evidence, on the sole ground
9 that the transaction is evidenced by an electronic record or that it has been signed with an
10 electronic signature.

11 **"§ 66-58.6. Enforcement.**

12 **(a)** The Secretary may investigate complaints or other information indicating
13 fraudulent or unlawful conduct that violates this Article or the rules promulgated
14 thereunder.

15 **(b)** The Superior Court Division of the General Court of Justice has jurisdiction
16 and authority upon application of the Secretary to enjoin or restrain violations of this
17 Article.

18 **(c)** It shall be the duty of the Attorney General, when requested, to represent the
19 Secretary in actions or proceedings in connection with this Article.

20 **(d)** Nothing in this Article shall adversely affect any rights or the enforcement of
21 any rights acquired by any person or public agency under any other statute or at common
22 law with respect to matters also covered by this Article.

23 **"§ 66-58.7. Civil penalty.**

24 The Secretary may assess a civil penalty of not more than five thousand dollars
25 (\$5,000) per violation against any certification authority that violates a provision of this
26 Article or any rule promulgated thereunder. In determining the amount of a penalty
27 under this section, the Secretary shall give due consideration to each of the following
28 factors:

- 29 **(1)** The organizational size of the certification authority cited;
30 **(2)** The good faith of the certification authority cited;
31 **(3)** The gravity of the violation;
32 **(4)** The prior record of the violator in complying or failing to comply with
33 this Article or a rule adopted pursuant to this Article; and
34 **(5)** The risk of harm caused by the violation.

35 Chapter 150B of the General Statutes governs the imposition of a civil penalty under
36 this section. A civil penalty owed under this section may be recovered in a civil action
37 brought by the Secretary or the Attorney General.

38 **"§ 66-58.8. Criminal penalty.**

39 **(a)** Any person who willfully violates any provision of this Article, or who
40 willfully violates any rule or order under this Article, with intent to defraud, is guilty of a
41 Class I felony.

42 **(b)** The Secretary shall provide such evidence as is available concerning criminal
43 violations of this Article or of any rule or order promulgated hereunder to the proper

1 district attorney, who may, with or without such a reference, institute appropriate
2 criminal proceedings under this Article.

3 (c) Nothing in this Article limits the power of the State to punish any person for
4 any conduct which constitutes a crime by statute or common law.

5 **"§ 66-58.9. Exemptions.**

6 This Article shall not apply to any of the following:

7 (1) Electronic signatures and facsimile signatures that are otherwise
8 allowed by law.

9 (2) The execution of documents filed with, issued, or entered by a court of
10 the General Court of Justice. However, a document or transaction
11 validly executed under this Article is not rendered invalid because it is
12 filed with, or attached to, a document issued or entered by a court of the
13 General Court of Justice.

14 (3) Transactions where a public agency is not a party.

15 **"§ 66-58.10. Rule making.**

16 (a) The Secretary may promulgate rules under this Article. Such rules may
17 include, but are not limited to:

18 (1) Definitions, including, but not limited to, more technical definitions of
19 'certification authority' and 'electronic signature';

20 (2) The creation, accreditation, bonding, licensing, operation, regulation,
21 and sanctioning of certification authorities;

22 (3) The imposition of licensing and renewal fees in amounts not to exceed
23 five thousand dollars (\$5,000) per year; and

24 (4) The imposition of civil monetary penalties for noncompliance with this
25 Article or the rules promulgated thereunder.

26 (b) Notwithstanding G.S. 150B-21.1(a), the Secretary may adopt temporary rules
27 to implement the certification authority technology provisions of this Article using the
28 procedure for adoption of temporary rules under G.S. 150B-21.1(a2).

29 (c) The Secretary shall deposit licensing and renewal fees in the General Fund.

30 **"§ 66-58.11. Reciprocal agreements.**

31 The Secretary is hereby authorized to enter into reciprocal arrangements with
32 appropriate and duly authorized public agencies of other jurisdictions having a law
33 substantially similar to this Article so as to further the purpose of this Article."

34 Section 2. G.S. 150B-21.1 is amended by adding a new subsection to read:

35 "(a2) Notwithstanding the provisions of subsection (a) of this section, the Secretary
36 of State may adopt temporary rules to implement the certification technology provisions
37 of Article 11A of Chapter 66 of the General Statutes. After having the proposed
38 temporary rule published in the North Carolina Register and at least 30 days prior to
39 adopting a temporary rule pursuant to this subsection, the Secretary shall:

40 (1) Notify persons on its mailing list maintained pursuant to G.S. 150B-
41 21.2(d) and any other interested parties of its intent to adopt a temporary
42 rule;

43 (2) Accept oral and written comments on the proposed temporary rule; and

1 (3) Hold at least one public hearing on the proposed temporary rule.
2 When the Secretary adopts a temporary rule pursuant to this subsection, the Secretary
3 must submit a reference to this subsection as the Secretary's statement of need to the
4 Codifier of Rules.

5 Notwithstanding any other provision of this Chapter, the Codifier of Rules shall
6 publish in the North Carolina Register a proposed temporary rule received from the
7 Secretary in accordance with this subsection."

8 Section 3. In developing initial rules pursuant to this act, the Secretary shall
9 consider national standards for ensuring the integrity of electronic signatures and shall
10 seek the advice of public and private agencies, including, but not limited to, the
11 Information Resource Management Commission and the North Carolina Electronics and
12 Information Technologies Association. Before adoption of the rules, the Secretary shall
13 hold at least one public hearing to receive comments.

14 Section 4. The Legislative Research Commission shall study whether the
15 scope of Article 11A of Chapter 66 of the General Statutes should be expanded to include
16 electronic commerce not involving a public agency. The Commission shall report its
17 recommendations to the 1999 General Assembly.

18 ◆ Section 5. Section 1 of this act becomes effective January 1, 1999. The
19 remainder of this act is effective when it becomes law. The Secretary of State may adopt
20 rules prior to January 1, 1999, to become effective on or after January 1, 1999, to
21 implement Section 1 of this act.