

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1356\*  
Committee Substitute Favorable 6/24/98

Short Title: Electronic Commerce Act.

(Public)

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Sponsors:

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Referred to:

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May 20, 1998

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

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

17 **“§ 66-58.2. Definitions.**

18 The following definitions apply in this Article:

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

20 **"§ 66-58.3. Certification authority licensing.**

21 All persons acting as a certification authority with respect to transactions under this  
22 Article shall be licensed by the Secretary prior to representing themselves or acting as a  
23 certification authority under this Article. Upon payment of the required fees, a  
24 certification authority meeting the standards adopted by the Secretary by rule shall be  
25 licensed for a period of one year. Licenses of certification authorities complying with the  
26 standards adopted by the Secretary may be renewed for additional one-year terms upon  
27 payment of the required renewal fee.

28 **"§ 66-58.4. Use of electronic signatures.**

29       (a) All public agencies may accept electronic signatures.

30       (b) Signatures that require attestation by a notary public may not be in the form  
31 of an electronic signature.

32 **"§ 66-58.5. Validity of electronic signatures.**

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

36           (1) The public agency involved in the transaction requests or requires the  
37 use of electronic signatures.

38           (2) The electronic signature contained in the transaction embodies all of the  
39 following attributes:

40           a. It is unique to the person using it;

41           b. It is capable of certification;

42           c. It is under sole control of the person using it;

- 1           d.     It is linked to data in such a manner that if the data are changed,  
2                 the electronic signature is invalidated; and  
3           e.     It conforms to rules adopted by the Secretary pursuant to this  
4                 Article.

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

9   **"§ 66-58.6. Enforcement.**

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

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

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

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

21   **"§ 66-58.7. Civil penalty.**

22   The Secretary may assess a civil penalty of not more than five thousand dollars  
23   (\$5,000) per violation against any certification authority that violates a provision of this  
24   Article or any rule promulgated thereunder. In determining the amount of a penalty  
25   under this section, the Secretary shall give due consideration to each of the following  
26   factors:

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

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

36   **"§ 66-58.8. Criminal penalty.**

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

40   (b)   The Secretary shall provide such evidence as is available concerning criminal  
41   violations of this Article or of any rule or order promulgated hereunder to the proper  
42   district attorney, who may, with or without such a reference, institute appropriate  
43   criminal proceedings under this Article.

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

3 **"§ 66-58.9. Exemptions.**

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

- 5 (1) Electronic signatures and facsimile signatures that are otherwise  
6 allowed by law.  
7 (2) The execution of documents filed with, issued, or entered by a court of  
8 the General Court of Justice. However, a document or transaction  
9 validly executed under this Article is not rendered invalid because it is  
10 filed with, or attached to, a document issued or entered by a court of the  
11 General Court of Justice.  
12 (3) Transactions where a public agency is not a party.

13 **"§ 66-58.10. Rule making.**

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

- 16 (1) Definitions, including, but not limited to, more technical definitions of  
17 'certification authority' and 'electronic signature';  
18 (2) The creation, accreditation, bonding, licensing, operation, regulation,  
19 and sanctioning of certification authorities;  
20 (3) The imposition of licensing and renewal fees in amounts not to exceed  
21 five thousand dollars (\$5,000) per year; and  
22 (4) The imposition of civil monetary penalties for noncompliance with this  
23 Article or the rules promulgated thereunder.

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

27 (c) The Secretary shall deposit licensing and renewal fees in the General Fund."  
28 Section 2. G.S. 150B-21.1 is amended by adding a new subsection to read:

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

- 34 (1) Notify persons on its mailing list maintained pursuant to G.S. 150B-  
35 21.2(d) and any other interested parties of its intent to adopt a temporary  
36 rule;  
37 (2) Accept oral and written comments on the proposed temporary rule; and  
38 (3) Hold at least one public hearing on the proposed temporary rule.

39 When the Secretary adopts a temporary rule pursuant to this subsection, the Secretary  
40 must submit a reference to this subsection as the Secretary's statement of need to the  
41 Codifier of Rules.

1       Notwithstanding any other provision of this Chapter, the Codifer of Rules shall  
2 publish in the North Carolina Register a proposed temporary rule received from the  
3 Secretary in accordance with this subsection."

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

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

14       ♦       Section 5. Section 1 of this act becomes effective January 1, 1999. The  
15 remainder of this act is effective when it becomes law. The Secretary of State may adopt  
16 rules prior to January 1, 1999, to become effective on or after January 1, 1999, to  
17 implement Section 1 of this act.