

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

SESSION LAW 1998-127
HOUSE BILL 1356

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.

The following definitions apply in this Article:

- (1) 'Certification authority' means a person authorized by the Secretary to facilitate electronic commerce by vouching for the relationship between a person or public agency and that person's or public agency's electronic signature.
- (2) 'Electronic signature' means any identifier or authentication technique attached to or logically associated with an electronic record which is intended by the party using it to have the same force and effect as the party's manual signature.
- (3) 'Person' means any individual, firm, partnership, corporation, or combination thereof of whatsoever form or character.
- (4) 'Public agencies' means and includes every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority, or other unit of government of the State or of any county, unit, special district, or other political subdivision of government.
- (5) 'Secretary' means Secretary of State.

- (6) 'Transaction' means an electronic transmission of data between a person and a public agency, or between public agencies, including, but not limited to, contracts, filings, and legally operative documents.

"§ 66-58.3. Certification authority licensing.

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

"§ 66-58.4. Use of electronic signatures.

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

"§ 66-58.5. Validity of electronic signatures.

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

- (1) The public agency involved in the transaction requests or requires the use of electronic signatures.
(2) The electronic signature contained in the transaction embodies all of the following attributes:
a. It is unique to the person using it;
b. It is capable of certification;
c. It is under sole control of the person using it;
d. It is linked to data in such a manner that if the data are changed, the electronic signature is invalidated; and
e. It conforms to rules adopted by the Secretary pursuant to this Article.

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

"§ 66-58.6. Enforcement.

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

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

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

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

"§ 66-58.7. Civil penalty.

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

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

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

"§ 66-58.8. Criminal penalty.

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

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

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

"§ 66-58.9. Exemptions.

This Article shall not apply to any of the following:

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

"§ 66-58.10. Rule making.

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

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

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

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

"§ 66-58.11. Reciprocal agreements.

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

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

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

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

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

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

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

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

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

In the General Assembly read three times and ratified this the 20th day of August, 1998.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 8:50 p.m. this 31st day of August, 1998