

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1612

Short Title: Electronic Commerce Act of 2000.

(Public)

Sponsors: Representative Tolson and Wainwright.

Referred to: Technology.

May 18, 2000

A BILL TO BE ENTITLED

1 AN ACT TO FACILITATE THE USE OF ELECTRONIC AND DIGITAL
2 TRANSACTIONS BY STATE AGENCIES TO REDUCE COSTS, INCREASE
3 EFFICIENCIES, AND IMPROVE GOVERNMENT SERVICES TO CITIZENS
4 AND BUSINESSES, AND TO CREATE THE STATE ELECTRONIC
5 COMMERCE FUND.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. Article 11A of Chapter 66 of the General Statutes reads as
9 rewritten:

10 **"ARTICLE 11A.**

11 **"ELECTRONIC COMMERCE IN GOVERNMENT.**

12 **"PART 1. PRELIMINARY PROVISIONS.**

13 **"§ 66-58.1. Title; purpose.**

14 This Article shall be known and may be cited as the Electronic Commerce Act. The
15 purpose of this Article is to facilitate electronic commerce with public agencies and
16 regulate the application of electronic signatures when used in commerce with public
17 agencies.
18

19 **"§ 66-58.2. Definitions.**

20 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 (1a) 'Convenience fee' means a charge that is applied to cover the costs of
6 permitting a person to complete a transaction or access services via the
7 World Wide Web or other means of electronic access.
- 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 (3) "Person" means any individual, firm, partnership, corporation, or
13 combination thereof of whatsoever form or character.
- 14 (4) "Public agencies" means and includes every public office, public officer
15 or official (State or local, elected or appointed), institution, community
16 college, local school administrative unit, board, commission, bureau,
17 council, department, authority, or other unit of government of the State
18 or of any county, unit, special district, or other political subdivision of
19 government. government, unless specifically exempted by the General
20 Assembly.
- 21 (5) "Secretary" means Secretary of State.
- 22 (6) "Transaction" means an electronic transmission of data between a person
23 and a public agency, or between public agencies, including, but not
24 limited to, contracts, filings, and legally operative documents.
- 25 (7) 'Transaction fee' means a charge that is applied on a per-transaction
26 basis and that is calculated either as a flat fee or a percentage fee, under
27 an agreement between a person and a public agency.
- 28 (8) 'Web portal' means a centralized electronic information system by
29 which public information may be disseminated or collected via the
30 Internet, including a site location on the World Wide Web that is or
31 proposes to be a major starting site that persons may visit as an anchor
32 site to reach government services. A Web portal may offer services or
33 provide a directory of interconnected Web sites, a facility to search for
34 other sites, phone and map information, or other information likely to be
35 of interest to users of the site.

"PART 2. ELECTRONIC SIGNATURES.

"§ 66-58.3. Certification authority licensing.

38 All persons acting as a certification authority with respect to transactions under this
39 Article shall be licensed by the Secretary prior to representing themselves or acting as a
40 certification authority under this ~~Article~~ Part. Certification authority licensing standards
41 set by the Secretary may include, but are not limited to, technical, physical, procedural,
42 and personnel security controls, repository obligations, and financial responsibility
43 standards. Upon payment of the required fees, a certification authority meeting the

1 standards adopted by the Secretary by rule shall be licensed for a period of one year.
2 Licenses of certification authorities complying with the standards adopted by the
3 Secretary may be renewed for additional one-year terms upon payment of the required
4 renewal fee.

5 **"§ 66-58.4. Use of electronic signatures.**

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

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

9 **"§ 66-58.5. Validity of electronic signatures.**

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

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

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

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

18 b. It is capable of certification;

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

20 d. It is linked to data in such a manner that if the data are changed,
21 the electronic signature is invalidated; and

22 e. It conforms to rules adopted by the Secretary pursuant to this
23 ~~Article-Part.~~

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

28 **"§ 66-58.6. Enforcement.**

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

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

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

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

40 **"§ 66-58.7. Civil penalty.**

41 The Secretary may assess a civil penalty of not more than five thousand dollars
42 (\$5,000) per violation against any certification authority that violates a provision of this
43 ~~Article-Part~~ or any rule promulgated thereunder. In determining the amount of a penalty

1 under this section, the Secretary shall give due consideration to each of the following
2 factors:

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

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

12 **"§ 66-58.8. Criminal penalty.**

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

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

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

22 **"§ 66-58.9. Exemptions.**

23 This ~~Article-Part~~ shall not apply to any of the following:

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

32 **"§ 66-58.10. Rule making.**

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

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

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

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

5 **"§ 66-58.11. Reciprocal agreements.**

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

9 **"PART 3. ELECTRONIC ACCESS TO STATE SERVICES.**

10 **"§ 66-58.12. Agencies may provide access to services through electronic and digital**
11 **transactions; fees authorized.**

12 Public agencies are encouraged to maximize citizen and business access to their
13 services through the use of electronic and digital transactions. A public agency may
14 determine, through program and transaction analysis, which of its services may be made
15 available to the public through electronic means, including the Internet. The agency shall
16 identify any inhibitors to electronic transactions between the agency and the public,
17 including legal, policy, financial, or privacy concerns and specific inhibitors unique to the
18 agency or type of transaction. An agency shall not provide a transaction through the
19 Internet that is impractical, unreasonable, or not permitted by laws pertaining to privacy
20 or security. An agency may charge reasonable user fees for electronic and digital
21 transactions, including subscription charges, transaction fees, or convenience fees. The
22 fee may be collected by the agency or by its third-party agent.

23 **"§ 66-58.13. Development and implementation of Web portals; public agency links;**
24 **confidentiality.**

25 (a) The Office of Information Technology Services (ITS) shall develop the
26 architecture, requirements, and standards for the development, implementation and
27 operation of one or more centralized Web portals that will allow persons to access State
28 government services on a 24-hour basis. Information Technology Services shall submit
29 its plan for the implementation of the Web portals to the Information Resource
30 Management Commission (IRMC) for its review and approval. When the plan is
31 approved by the IRMC, ITS shall move forward with development and implementation
32 of the statewide Web portal system.

33 (b) Each public agency shall functionally link its Internet or electronic services to
34 a centralized Web portal system established pursuant to subsection (a) of this section.

35 (c) Any information provided to a person by way of a State government Web
36 portal shall be confidential unless otherwise specifically required by law to be public
37 information.

38 **"PART 4. ELECTRONIC PROCUREMENT.**

39 **"§ 66-58.14. Electronic procurement authorized.**

40 (a) Procurements by public agencies may be conducted by electronic or digital
41 means through auctions, reverse auctions, bidding, proposals, payments, requisitions, and
42 other on-line procurement functions, including procurement catalogues.

1 (b) ITS shall act as an Application Service Provider for electronic procurement
2 services and shall provide for the establishment, management, and operation of an
3 electronic procurement system through State ownership or commercial leasing. The
4 Office of the State Controller, with assistance from the Department of Administration, the
5 Office of Information Technology Services, the Office of the State Auditor and the Office
6 of the State Treasurer, shall develop requirements and operating standards for an
7 electronic procurement system.

8 (c) Rates for use of the electronic procurement system shall be established by ITS
9 subject to approval of the IRMC. Vendors may be charged a fee for use of electronic
10 procurement services, and the fee may be collected by ITS or its agent. The fee may be
11 charged as a percentage of the winning bid or as a subscription service, transaction fee, or
12 convenience fee. Fees shall be sufficient to cover the costs of providing the electronic
13 services, and any amount in excess of actual costs shall be credited to the Electronic
14 Commerce Fund.

15 (d) All State agencies shall utilize the electronic procurement system where those
16 services are available.

17 **"PART 5. STATE ELECTRONIC COMMERCE FUND.**

18 **"§ 66-58.15. State Electronic Commerce Fund.**

19 (a) There is established under the control and direction of the Office of
20 Information Technology Services the State Electronic Commerce Fund. This Fund shall
21 be a special revenue fund established by a one-time payment of four million dollars
22 (\$4,000,000) from ITS reserves and shall otherwise consist of receipts from subscription
23 charges, convenience fees, and transaction fees as authorized in this Article, and any
24 gifts, bequests, or grants for the benefit of this Fund. No General Fund appropriations
25 shall be credited to this Fund. Any balance remaining in this Fund at the end of any
26 fiscal year shall not revert.

27 (b) The Fund shall be disbursed in consultation with the Governor's Electronic
28 Commerce Committee and shall be allocated to public agencies based upon agency
29 requests and statewide electronic commerce service priorities.

30 (c) A public agency may use funds allocated to it from this Fund to implement its
31 agency plan for electronic commerce or as otherwise specified by the Office of
32 Information Technology Services.

33 (d) ITS shall make monthly reports to the IRMC and quarterly reports to the
34 legislature on the disbursement of the Fund."

35 Section 2. This act becomes effective July 1, 2000.