

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 1714, AS REPORTED  
OFFERED BY MR. DINGELL OF MICHIGAN, MR.  
CONYERS OF MICHIGAN, MR. LAFALCE OF  
NEW YORK, OR MR. GEPHARDT OF MISSOURI**

Strike out all after the enacting clause and insert  
the following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Millennium Digital  
3 Commerce Act”.

**4 SEC. 2. FINDINGS.**

5       The Congress makes the following findings:

6           (1) The growth of electronic commerce and  
7       electronic government transactions represent a pow-  
8       erful force for economic growth, consumer choice,  
9       improved civic participation and wealth creation.

10          (2) The promotion of growth in private sector  
11       electronic commerce through Federal legislation is in  
12       the national interest because that market is globally  
13       important to the United States.

14          (3) A consistent legal foundation, across mul-  
15       tiple jurisdictions, for electronic commerce will pro-  
16       mote the growth of such transactions, and that such  
17       a foundation should be based upon a simple, tech-

1 nology neutral, nonregulatory, and market-based ap-  
2 proach.

3 (4) The Nation and the world stand at the be-  
4 ginning of a large scale transition to an information  
5 society which will require innovative legal and policy  
6 approaches, and therefore, States can serve the na-  
7 tional interest by continuing their proven role as lab-  
8 oratories of innovation for quickly evolving areas of  
9 public policy, provided that States also adopt a con-  
10 sistent, reasonable national baseline to eliminate ob-  
11 solete barriers to electronic commerce such as undue  
12 paper and pen requirements, and further, that any  
13 such innovation should not unduly burden inter-ju-  
14 risdictional commerce.

15 (5) To the extent State laws or regulations do  
16 not provide a consistent, reasonable national baseline  
17 or in fact create an undue burden to interstate com-  
18 merce in the important burgeoning area of electronic  
19 commerce, the national interest is best served by  
20 Federal preemption to the extent necessary to pro-  
21 vide such consistent, reasonable national baseline or  
22 eliminate said burden, but that absent such lack of  
23 a consistent, reasonable national baseline or such  
24 undue burdens, the best legal system for electronic

1 commerce will result from continuing experimen-  
2 tation by individual jurisdictions.

3 (6) With due regard to the fundamental need  
4 for a consistent national baseline, each jurisdiction  
5 that enacts such laws should have the right to deter-  
6 mine the need for any exceptions to protect con-  
7 sumers and maintain consistency with existing re-  
8 lated bodies of law within a particular jurisdiction.

9 (7) Industry has developed several electronic  
10 signature technologies for use in electronic trans-  
11 actions, and the public policies of the United States  
12 should serve to promote a dynamic marketplace  
13 within which these technologies can compete. Con-  
14 sistent with this Act, States should permit the use  
15 and development of any authentication technologies  
16 that are appropriate as practicable as between pri-  
17 vate parties and in use with State agencies.

18 **SEC. 3. PURPOSES.**

19 The purposes of this Act are—

20 (1) to permit and encourage the continued ex-  
21 pansion of electronic commerce through the oper-  
22 ation of free market forces rather than proscriptive  
23 governmental mandates and regulations;

1           (2) to promote public confidence in the validity,  
2 integrity and reliability of electronic commerce and  
3 online government under Federal law;

4           (3) to facilitate and promote electronic com-  
5 merce by clarifying the legal status of electronic  
6 records and electronic signatures in the context of  
7 contract formation;

8           (4) to facilitate the ability of private parties en-  
9 gaged in interstate transactions to agree among  
10 themselves on the appropriate electronic signature  
11 technologies for their transactions; and

12           (5) to promote the development of a consistent  
13 national legal infrastructure necessary to support of  
14 electronic commerce at the Federal and State levels  
15 within areas of jurisdiction.

16 **SEC. 4. DEFINITIONS.**

17 In this Act:

18           (1) **ELECTRONIC.**—The term “electronic”  
19 means relating to technology having electrical, dig-  
20 ital, magnetic, wireless, optical, electromagnetic, or  
21 similar capabilities.

22           (2) **ELECTRONIC AGENT.**—The term “electronic  
23 agent” means a computer program or an electronic  
24 or other automated means used to initiate an action  
25 or respond to electronic records or performances in

1 whole or in part without review by an individual at  
2 the time of the action or response.

3 (3) ELECTRONIC RECORD.—The term “elec-  
4 tronic record” means a record created, generated,  
5 sent, communicated, received, or stored by electronic  
6 means.

7 (4) ELECTRONIC SIGNATURE.—The term “elec-  
8 tronic signature” means an electronic sound, symbol,  
9 or process attached to or logically associated with a  
10 record and executed or adopted by a person with the  
11 intent to sign the record.

12 (5) GOVERNMENTAL AGENCY.—The term “gov-  
13 ernmental agency” means an executive, legislative,  
14 or judicial agency, department, board, commission,  
15 authority, or institution of the Federal Government  
16 or of a State or of any county, municipality, or other  
17 political subdivision of a State.

18 (6) RECORD.—The term “record” means infor-  
19 mation that is inscribed on a tangible medium or  
20 that is stored in an electronic or other medium and  
21 is retrievable in perceivable form.

22 (7) TRANSACTION.—The term “transaction”  
23 means an action or set of actions relating to the con-  
24 duct of commerce, between 2 or more persons, nei-  
25 ther of which is the United States Government, a

1 State, or an agency, department, board, commission,  
2 authority, or institution of the United States Gov-  
3 ernment or of a State.

4 (8) UNIFORM ELECTRONIC TRANSACTIONS  
5 ACT.—The term “Uniform Electronic Transactions  
6 Act” means the Uniform Electronic Transactions  
7 Act as provided to State legislatures by the National  
8 Conference of Commissioners on Uniform State Law  
9 in the form or any substantially similar variation.

10 **SEC. 5. INTERSTATE CONTRACT CERTAINTY.**

11 (a) IN GENERAL.—In any commercial transaction af-  
12 fecting interstate commerce, a contract may not be denied  
13 legal effect or enforceability solely because an electronic  
14 signature or electronic record was used in its formation.

15 (b) METHODS.—Parties to a transaction are per-  
16 mitted to determine the appropriate electronic signature  
17 technologies for their transaction, and the means of imple-  
18 menting such technologies.

19 (c) PRESENTATION OF CONTRACTS.—Notwith-  
20 standing subsection (a), if a law requires that a contract  
21 be in writing, the legal effect or enforceability of an elec-  
22 tronic record of such contract shall be denied under such  
23 law, unless it is delivered to all parties to such contract  
24 in a form that—

1           (1) can be retained by the parties for later ref-  
2           erence; and

3           (2) can be used to prove the terms of the agree-  
4           ment.

5           (d) **SPECIFIC EXCLUSIONS.**—The provisions of this  
6 section shall not apply to a statute, regulation, or other  
7 rule of law governing any of the following:

8           (1) The Uniform Commercial Code, as in effect  
9           in a State, other than section 1–107 and 1–206, ar-  
10          ticle 2, and article 2A.

11          (2) Premarital agreements, marriage, adoption,  
12          divorce or other matters of family law.

13          (3) Documents of title which are filed of record  
14          with a governmental unit until such time that a  
15          State or subdivision thereof chooses to accept filings  
16          electronically.

17          (4) Residential landlord-tenant relationships.

18          (5) The Uniform Health-Care Decisions Act as  
19          in effect in a State.

20          (e) **ELECTRONIC AGENTS.**—A contract relating to a  
21 commercial transaction affecting interstate commerce may  
22 not be denied legal effect or enforceability solely because  
23 its formation involved—

24           (1) the interaction of electronic agents of the  
25           parties; or

1           (2) the interaction of an electronic agent of a  
2           party and an individual who acts on that individual's  
3           own behalf or as an agent, for another person.

4           (f) INSURANCE.—It is the specific intent of the Con-  
5           gress that this section apply to the business of insurance.

6           (g) APPLICATION IN UETA STATES.—This section  
7           does not apply in any State in which the Uniform Elec-  
8           tronic Transactions Act is in effect.

9           **SEC. 6. PRINCIPLES GOVERNING THE USE OF ELECTRONIC**  
10                           **SIGNATURES IN INTERNATIONAL TRANS-**  
11                           **ACTIONS.**

12           To the extent practicable, the Federal Government  
13           shall observe the following principles in an international  
14           context to enable commercial electronic transaction:

15           (1) Remove paper-based obstacles to electronic  
16           transactions by adopting relevant principles from the  
17           Model Law on Electronic Commerce adopted in  
18           1996 by the United Nations Commission on Inter-  
19           national Trade Law (UNCITRAL).

20           (2) Permit parties to a transaction to determine  
21           the appropriate authentication technologies and im-  
22           plementation models for their transactions, with as-  
23           surance that those technologies and implementation  
24           models will be recognized and enforced.

1           (3) Permit parties to a transaction to have the  
2           opportunity to prove in court or other proceedings  
3           that their authentication approaches and their trans-  
4           actions are valid.

5           (4) Take a nondiscriminatory approach to elec-  
6           tronic signatures and authentication methods from  
7           other jurisdictions.

8   **SEC. 7. STUDY OF LEGAL AND REGULATORY BARRIERS TO**  
9                                   **ELECTRONIC COMMERCE.**

10          (a) BARRIERS.—Each Federal agency shall, not later  
11          than 6 months after the date of enactment of this Act,  
12          provide a report to the Director of the Office of Manage-  
13          ment and Budget and the Secretary of Commerce identi-  
14          fying any provision of law administered by such agency,  
15          or any regulations issued by such agency and in effect on  
16          the date of enactment of this Act, that may impose a bar-  
17          rier to electronic transactions, or otherwise to the conduct  
18          of commerce online or by electronic means. Such barriers  
19          include, but are not limited to, barriers imposed by a law  
20          or regulation directly or indirectly requiring that signa-  
21          tures, or records of transactions, be accomplished or re-  
22          tained in other than electronic form. In its report, each  
23          agency shall identify the barriers among those identified  
24          whose removal would require legislative action, and shall  
25          indicate agency plans to undertake regulatory action to

1 remove such barriers among those identified as are caused  
2 by regulations issued by the agency.

3 (b) REPORT TO CONGRESS.—The Secretary of Com-  
4 merce, in consultation with the Director of the Office of  
5 Management and Budget, shall, within 18 months after  
6 the date of enactment of this Act, and after the consulta-  
7 tion required by subsection (c) of this section, report to  
8 the Congress concerning—

9 (1) legislation needed to remove barriers to  
10 electronic transactions or otherwise to the conduct of  
11 commerce online or by electronic means; and

12 (2) actions being taken by the Executive  
13 Branch and individual Federal agencies to remove  
14 such barriers as are caused by agency regulations or  
15 policies.

16 (c) CONSULTATION.—In preparing the report re-  
17 quired by this section, the Secretary of Commerce shall  
18 consult with the General Services Administration, the Na-  
19 tional Archives and Records Administration, and the At-  
20 torney General concerning matters involving the authen-  
21 ticity of records, their storage and retention, and their  
22 usability for law enforcement purposes.

23 (d) INCLUDE FINDINGS IF NO RECOMMENDA-  
24 TIONS.—If the report required by this section omits rec-  
25 ommendations for actions needed to fully remove identi-

1 fied barriers to electronic transactions or to online or elec-  
2 tronic commerce, it shall include a finding or findings, in-  
3 cluding substantial reasons therefore, that such removal  
4 is impracticable or would be inconsistent with the imple-  
5 mentation or enforcement of applicable laws.