

**AMENDMENT IN THE NATURE OF A
SUBSTITUTE TO H.R. 1714, AS REPORTED
OFFERED BY MR. BLILEY OF VIRGINIA**

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Electronic Signatures
3 in Global and National Commerce Act”.

4 **TITLE I—VALIDITY OF ELEC-**
5 **TRONIC RECORDS AND SIG-**
6 **NATURES FOR COMMERCE**

7 **SEC. 101. GENERAL RULE OF VALIDITY.**

8 (a) GENERAL RULE.—With respect to any contract,
9 agreement, or record entered into or provided in, or affect-
10 ing, interstate or foreign commerce, notwithstanding any
11 statute, regulation, or other rule of law, the legal effect,
12 validity, or enforceability of such contract, agreement, or
13 record shall not be denied—

14 (1) on the ground that the contract, agreement,
15 or record is not in writing if the contract, agree-
16 ment, or record is an electronic record; or

17 (2) on the ground that the contract, agreement,
18 or record is not signed or is not affirmed by a signa-

1 ture if the contract, agreement, or record is signed
2 or affirmed by an electronic signature.

3 (b) AUTONOMY OF PARTIES IN COMMERCE.—

4 (1) IN GENERAL.—With respect to any con-
5 tract, agreement, or record entered into or provided
6 in, or affecting, interstate or foreign commerce—

7 (A) the parties to such contract, agree-
8 ment, or record may establish procedures or re-
9 quirements regarding the use and acceptance of
10 electronic records and electronic signatures ac-
11 ceptable to such parties;

12 (B) the legal effect, validity, or enforce-
13 ability of such contract, agreement, or record
14 shall not be denied because of the type or meth-
15 od of electronic record or electronic signature
16 selected by the parties in establishing such pro-
17 cedures or requirements; and

18 (C) nothing in this section requires any
19 party to use or accept electronic records or elec-
20 tronic signatures.

21 (2) CONSENT TO ELECTRONIC RECORDS.—Not-
22 withstanding subsection (a) and paragraph (1) of
23 this subsection—

24 (A) if a statute, regulation, or other rule of
25 law requires that a record be provided or made

1 available to a consumer in writing, that require-
2 ment shall be satisfied by an electronic record
3 if—

4 (i) the consumer has separately and
5 affirmatively consented to the provision or
6 availability of such record, or identified
7 groups of records that include such record,
8 as an electronic record; and

9 (ii) has not withdrawn such consent;
10 and

11 (B) if such statute, regulation, or other
12 rule of law requires that a record be retained,
13 that requirement shall be satisfied if such
14 record complies with the requirements of sub-
15 paragraphs (A) and (B) of subsection (c)(1).

16 (c) RETENTION OF CONTRACTS, AGREEMENTS, AND
17 RECORDS.—

18 (1) ACCURACY AND ACCESSIBILITY.—If a stat-
19 ute, regulation, or other rule of law requires that a
20 contract, agreement, or record be in writing or be
21 retained, that requirement is met by retaining an
22 electronic record of the information in the contract,
23 agreement, or record that—

24 (A) accurately reflects the information set
25 forth in the contract, agreement, or record after

1 it was first generated in its final form as an
2 electronic record; and

3 (B) remains accessible, for the period re-
4 quired by such statute, regulation, or rule of
5 law, for later reference, transmission, and print-
6 ing.

7 (2) EXCEPTION.—A requirement to retain a
8 contract, agreement, or record in accordance with
9 paragraph (1) does not apply to any information
10 whose sole purpose is to enable the contract, agree-
11 ment, or record to be sent, communicated, or re-
12 ceived.

13 (3) ORIGINALS.—If a statute, regulation, or
14 other rule of law requires a contract, agreement, or
15 record to be provided, available, or retained in its
16 original form, or provides consequences if the con-
17 tract, agreement, or record is not provided, avail-
18 able, or retained in its original form, that statute,
19 regulation, or rule of law is satisfied by an electronic
20 record that complies with paragraph (1).

21 (4) CHECKS.—If a statute, regulation, or other
22 rule of law requires the retention of a check, that re-
23 quirement is satisfied by retention of an electronic
24 record of all the information on the front and back
25 of the check in accordance with paragraph (1).

1 **SEC. 102. AUTHORITY TO ALTER OR SUPERSEDE GENERAL**
2 **RULE.**

3 (a) PROCEDURE TO ALTER OR SUPERSEDE.—Except
4 as provided in subsection (b), a State statute, regulation,
5 or other rule of law may modify, limit, or supersede the
6 provisions of section 101 if such statute, regulation, or
7 rule of law—

8 (1)(A) constitutes an enactment or adoption of
9 the Uniform Electronic Transactions Act as reported
10 to the State legislatures by the National Conference
11 of Commissioners on Uniform State Laws; or

12 (B) specifies the alternative procedures or re-
13 quirements for the use or acceptance (or both) of
14 electronic records or electronic signatures to estab-
15 lish the legal effect, validity, or enforceability of con-
16 tracts, agreements, or records; and

17 (2) if enacted or adopted after the date of en-
18 actment of this Act, makes specific reference to this
19 Act.

20 (b) LIMITATIONS ON ALTERATION OR SUPERSEDES-
21 SION.—A State statute, regulation, or other rule of law
22 (including an insurance statute, regulation, or other rule
23 of law), regardless of its date of enactment or adoption,
24 that modifies, limits, or supersedes section 101 shall not
25 be effective to the extent that such statute, regulation, or
26 rule—

1 (1) discriminates in favor of or against a spe-
2 cific technology, process, or technique of creating,
3 storing, generating, receiving, communicating, or au-
4 thenticating electronic records or electronic signa-
5 tures;

6 (2) discriminates in favor of or against a spe-
7 cific type or size of entity engaged in the business
8 of facilitating the use of electronic records or elec-
9 tronic signatures;

10 (3) is based on procedures or requirements that
11 are not specific or that are not publicly available; or

12 (4) is otherwise inconsistent with the provisions
13 of this title.

14 (c) EXCEPTION.—Notwithstanding subsection (b), a
15 State may, by statute, regulation, or rule of law enacted
16 or adopted after the date of enactment of this Act, require
17 specific notices to be provided or made available in writing
18 if such notices are necessary for the protection of the safe-
19 ty or health of an individual consumer. A consumer may
20 not, pursuant to section 101(b)(2), consent to the provi-
21 sion or availability of such notice solely as an electronic
22 record.

1 **SEC. 103. SPECIFIC EXCLUSIONS.**

2 (a) EXCEPTED REQUIREMENTS.—The provisions of
3 section 101 shall not apply to a contract, agreement, or
4 record to the extent it is governed by—

5 (1) a statute, regulation, or other rule of law
6 governing the creation and execution of wills, codi-
7 cils, or testamentary trusts;

8 (2) a statute, regulation, or other rule of law
9 governing adoption, divorce, or other matters of
10 family law;

11 (3) the Uniform Commercial Code, as in effect
12 in any State, other than sections 1-107 and 1-206
13 and Articles 2 and 2A;

14 (4) any requirement by a Federal regulatory
15 agency or self-regulatory organization that records
16 be filed or maintained in a specified standard or
17 standards (including a specified format or formats),
18 except that nothing in this paragraph relieves any
19 Federal regulatory agency of its obligations under
20 the Government Paperwork Elimination Act (title
21 XVII of Public Law 105–277);

22 (5) the Uniform Anatomical Gift Act; or

23 (6) the Uniform Health-Care Decisions Act.

24 (b) ADDITIONAL EXCEPTIONS.—The provisions of
25 section 101 shall not apply to—

1 (1) any contract, agreement, or record entered
2 into between a party and a State agency if the State
3 agency is not acting as a market participant in or
4 affecting interstate commerce;

5 (2) court orders or notices, or official court doc-
6 uments (including briefs, pleadings, and other
7 writings) required to be executed in connection with
8 court proceedings; or

9 (3) any notice concerning—

10 (A) the cancellation or termination of util-
11 ity services (including water, heat, and power);

12 (B) default, acceleration, repossession,
13 foreclosure, or eviction, or the right to cure,
14 under a credit agreement secured by, or a rent-
15 al agreement for, a primary residence of an in-
16 dividual; or

17 (C) the cancellation or termination of
18 health insurance or benefits or life insurance
19 benefits (excluding annuities).

20 **SEC. 104. STUDY.**

21 (a) **FOLLOWUP STUDY.**—Within 5 years after the
22 date of enactment of this Act, the Secretary of Commerce,
23 acting through the Assistant Secretary for Communica-
24 tions and Information, shall conduct an inquiry regarding
25 any State statutes, regulations, or other rules of law en-

1 acted or adopted after such date of enactment pursuant
2 to section 102(a), and the extent to which such statutes,
3 regulations, and rules comply with section 102(b).

4 (b) REPORT.—The Secretary shall submit a report to
5 the Congress regarding the results of such inquiry by the
6 conclusion of such 5-year period.

7 **SEC. 105. DEFINITIONS.**

8 For purposes of this title:

9 (1) ELECTRONIC RECORD.—The term “elec-
10 tronic record” means a writing, document, or other
11 record created, stored, generated, received, or com-
12 municated by electronic means.

13 (2) ELECTRONIC SIGNATURE.—The term “elec-
14 tronic signature” means information or data in elec-
15 tronic form, attached to or logically associated with
16 an electronic record, and executed or adopted by a
17 person or an electronic agent of a person, with the
18 intent to sign a contract, agreement, or record.

19 (3) ELECTRONIC.—The term “electronic”
20 means of or relating to technology having electrical,
21 digital, magnetic, optical, electromagnetic, or similar
22 capabilities regardless of medium.

23 (4) ELECTRONIC AGENT.—The term “electronic
24 agent” means a computer program or an electronic
25 or other automated means used independently to ini-

1 tiate an action or respond to electronic records in
2 whole or in part without review by an individual at
3 the time of the action or response.

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

8 (6) FEDERAL REGULATORY AGENCY.—The
9 term “Federal regulatory agency” means an agency,
10 as that term is defined in section 552(f) of title 5,
11 United States Code, that is authorized by Federal
12 law to impose requirements by rule, regulation,
13 order, or other legal instrument.

14 (7) SELF-REGULATORY ORGANIZATION.—The
15 term “self-regulatory organization” means an orga-
16 nization or entity that is not a Federal regulatory
17 agency or a State, but that is under the supervision
18 of a Federal regulatory agency and is authorized
19 under Federal law to adopt and administer rules ap-
20 plicable to its members that are enforced by such or-
21 ganization or entity, by a Federal regulatory agency,
22 or by another self-regulatory organization.

1 **TITLE II—DEVELOPMENT AND**
2 **ADOPTION OF ELECTRONIC**
3 **SIGNATURE PRODUCTS AND**
4 **SERVICES**

5 **SEC. 201. TREATMENT OF ELECTRONIC SIGNATURES IN**
6 **INTERSTATE AND FOREIGN COMMERCE.**

7 (a) INQUIRY REGARDING IMPEDIMENTS TO COM-
8 MERCE.—

9 (1) INQUIRIES REQUIRED.—Within 180 days
10 after the date of the enactment of this Act, and bi-
11 ennially thereafter, the Secretary of Commerce, act-
12 ing through the Assistant Secretary for Communica-
13 tions and Information, shall complete an inquiry
14 to—

15 (A) identify any domestic and foreign im-
16 pediments to commerce in electronic signature
17 products and services and the manners in which
18 and extent to which such impediments inhibit
19 the development of interstate and foreign com-
20 merce;

21 (B) identify constraints imposed by foreign
22 nations or international organizations that con-
23 stitute barriers to providers of electronic signa-
24 ture products or services; and

1 (C) identify the degree to which other na-
2 tions and international organizations are com-
3 plying with the principles in subsection (b)(2).

4 (2) SUBMISSION.—The Secretary shall submit a
5 report to the Congress regarding the results of each
6 such inquiry within 90 days after the conclusion of
7 such inquiry. Such report shall include a description
8 of the actions taken by the Secretary pursuant to
9 subsection (b) of this section.

10 (b) PROMOTION OF ELECTRONIC SIGNATURES.—

11 (1) REQUIRED ACTIONS.—The Secretary of
12 Commerce, acting through the Assistant Secretary
13 for Communications and Information, shall promote
14 the acceptance and use, on an international basis, of
15 electronic signatures in accordance with the prin-
16 ciples specified in paragraph (2) and in a manner
17 consistent with section 101 of this Act. The Sec-
18 retary of Commerce shall take all actions necessary
19 in a manner consistent with such principles to elimi-
20 nate or reduce, to the maximum extent possible, the
21 impediments to commerce in electronic signatures,
22 including those identified in the inquiries under sub-
23 section (a) for the purpose of facilitating the devel-
24 opment of interstate and foreign commerce.

1 (2) PRINCIPLES.—The principles specified in
2 this paragraph are the following:

3 (A) Free markets and self-regulation, rath-
4 er than government standard-setting or rules,
5 should govern the development and use of elec-
6 tronic records and electronic signatures.

7 (B) Neutrality and nondiscrimination
8 should be observed among providers of and
9 technologies for electronic records and elec-
10 tronic signatures.

11 (C) Parties to a transaction should be per-
12 mitted to establish requirements regarding the
13 use of electronic records and electronic signa-
14 tures acceptable to such parties.

15 (D) Parties to a transaction—

16 (i) should be permitted to determine
17 the appropriate authentication technologies
18 and implementation models for their trans-
19 actions, with assurance that those tech-
20 nologies and implementation models will be
21 recognized and enforced; and

22 (ii) should have the opportunity to
23 prove in court or other proceedings that
24 their authentication approaches and their
25 transactions are valid.

1 (E) Electronic records and electronic sig-
2 natures in a form acceptable to the parties
3 should not be denied legal effect, validity, or en-
4 forceability on the ground that they are not in
5 writing.

6 (F) De jure or de facto imposition of
7 standards on private industry through foreign
8 adoption of regulations or policies with respect
9 to electronic records and electronic signatures
10 should be avoided.

11 (G) Paper-based obstacles to electronic
12 transactions should be removed.

13 (c) CONSULTATION.—In conducting the activities re-
14 quired by this section, the Secretary shall consult with
15 users and providers of electronic signature products and
16 services and other interested persons.

17 (d) PRIVACY.—Nothing in this section shall be con-
18 strued to require the Secretary or the Assistant Secretary
19 to take any action that would adversely affect the privacy
20 of consumers.

21 (e) DEFINITIONS.—As used in this section, the terms
22 “electronic record” and “electronic signature” have the
23 meanings provided in section 104 of the Electronic Signa-
24 tures in Global and National Commerce Act.

1 **TITLE III—USE OF ELECTRONIC**
2 **RECORDS AND SIGNATURES**
3 **UNDER FEDERAL SECURITIES**
4 **LAW**

5 **SEC. 301. GENERAL VALIDITY OF ELECTRONIC RECORDS**
6 **AND SIGNATURES.**

7 Section 3 of the Securities Exchange Act of 1934 (15
8 U.S.C. 78c) is amended by adding at the end the following
9 new subsection:

10 “(h) REFERENCES TO WRITTEN RECORDS AND SIG-
11 NATURES.—

12 “(1) GENERAL VALIDITY OF ELECTRONIC
13 RECORDS AND SIGNATURES.—Except as otherwise
14 provided in this subsection—

15 “(A) if a contract, agreement, or record
16 (as defined in subsection (a)(37)) is required by
17 the securities laws or any rule or regulation
18 thereunder (including a rule or regulation of a
19 self-regulatory organization), and is required by
20 Federal or State statute, regulation, or other
21 rule of law to be in writing, the legal effect, va-
22 lidity, or enforceability of such contract, agree-
23 ment, or record shall not be denied on the
24 ground that the contract, agreement, or record

1 is not in writing if the contract, agreement, or
2 record is an electronic record;

3 “(B) if a contract, agreement, or record is
4 required by the securities laws or any rule or
5 regulation thereunder (including a rule or regu-
6 lation of a self-regulatory organization), and is
7 required by Federal or State statute, regula-
8 tion, or other rule of law to be signed, the legal
9 effect, validity, or enforceability of such con-
10 tract, agreement, or record shall not be denied
11 on the ground that such contract, agreement, or
12 record is not signed or is not affirmed by a sig-
13 nature if the contract, agreement, or record is
14 signed or affirmed by an electronic signature;
15 and

16 “(C) if a broker, dealer, transfer agent, in-
17 vestment adviser, or investment company enters
18 into a contract or agreement with, or accepts a
19 record from, a customer or other counterparty,
20 such broker, dealer, transfer agent, investment
21 adviser, or investment company may accept and
22 rely upon an electronic signature on such con-
23 tract, agreement, or record, and such electronic
24 signature shall not be denied legal effect, valid-

1 ity, or enforceability because it is an electronic
2 signature.

3 “(2) IMPLEMENTATION.—

4 “(A) REGULATIONS.—The Commission
5 may prescribe such regulations as may be nec-
6 essary to carry out this subsection consistent
7 with the public interest and the protection of
8 investors.

9 “(B) NONDISCRIMINATION.—The regula-
10 tions prescribed by the Commission under sub-
11 paragraph (A) shall not—

12 “(i) discriminate in favor of or against
13 a specific technology, method, or technique
14 of creating, storing, generating, receiving,
15 communicating, or authenticating elec-
16 tronic records or electronic signatures; or

17 “(ii) discriminate in favor of or
18 against a specific type or size of entity en-
19 gaged in the business of facilitating the
20 use of electronic records or electronic sig-
21 natures.

22 “(3) EXCEPTIONS.—Notwithstanding any other
23 provision of this subsection—

24 “(A) the Commission, an appropriate regu-
25 latory agency, or a self-regulatory organization

1 may require that records be filed or maintained
2 in a specified standard or standards (including
3 a specified format or formats) if the records are
4 required to be submitted to the Commission, an
5 appropriate regulatory agency, or a self-regu-
6 latory organization, respectively, or are required
7 by the Commission, an appropriate regulatory
8 agency, or a self-regulatory organization to be
9 retained; and

10 “(B) the Commission may require that
11 contracts, agreements, or records relating to
12 purchases and sales, or establishing accounts
13 for conducting purchases and sales, of penny
14 stocks be manually signed, and may require
15 such manual signatures with respect to trans-
16 actions in similar securities if the Commission
17 determines that such securities are susceptible
18 to fraud and that such fraud would be deterred
19 or prevented by requiring manual signatures.

20 “(4) RELATION TO OTHER LAW.—The provi-
21 sions of this subsection apply in lieu of the provi-
22 sions of title I of the Electronic Signatures in Global
23 and National Commerce Act to a contract, agree-
24 ment, or record (as defined in subsection (a)(37))
25 that is required by the securities laws.

1 “(5) SAVINGS PROVISION.—Nothing in this sub-
2 section applies to any rule or regulation under the
3 securities laws (including a rule or regulation of a
4 self-regulatory organization) that is in effect on the
5 date of enactment of the Electronic Signatures in
6 Global and National Commerce Act and that re-
7 quires a contract, agreement, or record to be in writ-
8 ing, to be submitted or retained in original form, or
9 to be in a specified standard or standards (including
10 a specified format or formats).

11 “(6) DEFINITIONS.—As used in this subsection:

12 “(A) ELECTRONIC RECORD.—The term
13 ‘electronic record’ means a writing, document,
14 or other record created, stored, generated, re-
15 ceived, or communicated by electronic means.

16 “(B) ELECTRONIC SIGNATURE.—The term
17 ‘electronic signature’ means information or
18 data in electronic form, attached to or logically
19 associated with an electronic record, and exe-
20 cuted or adopted by a person or an electronic
21 agent of a person, with the intent to sign a con-
22 tract, agreement, or record.

23 “(C) ELECTRONIC.—The term ‘electronic’
24 means of or relating to technology having elec-
25 trical, digital, magnetic, optical, electro-

1 magnetic, or similar capabilities regardless of
2 medium.”.