

HEINONLINE

Citation: 4 Bernard D. Reams Jr. Law of E-SIGN A Legislative
of the Electronic Signatures in Global and National
Act Public Law No. 106-229 2000 S4684 2002

Content downloaded/printed from
HeinOnline (<http://heinonline.org>)
Sun Apr 21 21:26:11 2013

-- Your use of this HeinOnline PDF indicates your acceptance
of HeinOnline's Terms and Conditions of the license
agreement available at <http://heinonline.org/HOL/License>

-- The search text of this PDF is generated from
uncorrected OCR text.

position with the Democratic Legislative Campaign Committee (DLCC) last July.

As a Senate staffer, Jeff displayed the thirst for knowledge and eagerness to serve that characterizes many idealistic youth who come to Washington. He fulfilled his duties capably and supported me and my legislative staff in my Senate responsibilities. He gave much, Mr. President, and he learned much about the duties and responsibilities of public service.

But it was clear from the start that Jeff chafed to do more. His endless interest in the political drama of our times, coupled with his youthful energy, finally turned him to the arena that he truly was born for: electoral politics, the art and science of political campaigning.

Never was there an operative so constitutionally fitted for the rock and roll of modern, media-age politics as he. Jeff loved the ups and downs of elections, the cat-or-be eaten nature of the democratic process, whether in the form of a Presidential campaign or a race for the local school board. He had a Texas-size appetite where these things applied.

But Jeff was not merely interested in the process. He was driven by a real concern for the people of our country. He had a passion to help ordinary Americans, and an abiding confidence in the ability, and indeed the obligation, of government to help the less fortunate. That is why he worked long hours, well into the evenings, to learn more about the political profession.

Indeed, Jeff had a personal vision, one that he shared with some of my staff. He hoped to use the Internet as a communication tool for campaigns. His idea was to establish a multicandidate, multiparty bulletin board on the Internet for campaign literature and party platforms. Through this means, he hoped that everyone might have access to the information they needed to make better decisions about candidates and campaigns. Campaigns would thus be fairer and more informed.

So when Jeff left my office last July to take up a position with the DLCC, the organization within the national Democratic Party that focuses on electing Democrats to State legislatures, I felt the loss of his departure but understood that he was going forward in the right direction. And when I heard that his success at the DLCC led to a position with the Tennessee Democratic Party, I knew he had found his dream.

Jeff's unexpected death the third Monday in April was thus doubly tragic, for in addition to his youth, he seemingly has at last found a position that exactly meshed with his temperament, interests, and abilities. His opportunities appeared boundless.

But if Jeff was taken from us just as he appeared to be fully engaged in life, we must remember that he died doing that which he truly loved. How many of us can say the same?

Mr. President, Jeff's years among us were far too few, but let us take comfort in the knowledge that he lived them fully. May his parents and loved ones take solace in his bright memory. ♦

TRIBUTE TO DOROTHY CALLAGHAN, NEW HAMPSHIRE'S MOTHER OF THE YEAR

♦ Mr. SMITH of New Hampshire. Mr. President, I rise today to pay tribute to Mrs. Dorothy McGettigan Callaghan of Rochester, NH, for receiving New Hampshire's Mother of the Year Award.

Dorothy has strengthened her family with pride, dedication, and love, always putting the interests of her children first. She was raised with eight brothers and sisters, on a large farm in Wilton. Dorothy received her B.A. and her master of education degrees from Keene State College in Keene, NH. She has taught school in Rochester for 27 years and coached many youth sport teams. She is an active member of local school committees. Dorothy is also a eucharistic minister and has been honored as Rochester's Citizen of the Year and Teacher of the Year. Her courageous fight against leukemia has created more volunteer opportunities, including Daffodil Days for the Cancer Society, the Jimmy Fund Marathon for the Dana Farber Cancer Institute, as well as making bandannas for cancer patients. She has turned a personal battle into a way to help others in unfortunate situations.

Dorothy was chosen for her contributions and dedication to her community and family in accordance with the national mission of American Mothers, Inc. Dorothy is the mother of seven children and grandmother of six grandchildren. She has been married 33 years to Frank Callaghan.

I commend Dorothy Callaghan for her long career of excellence as a mother and as a teacher who believes that children are individuals and should be treated that way. New Hampshire is fortunate to be blessed by her leadership and dedication. I applaud Dorothy Callaghan for her outstanding work with the children of New Hampshire and am proud to represent her in the U.S. Senate. Congratulations Dorothy. ♦

THE SECURE PUBLIC NETWORKS ACT

♦ Mr. KERREY. Mr. President, over the last several weeks, I have been meeting with colleagues about the need to aggressively pursue legislation to facilitate the creation of secure public networks for communication, commerce, education, research, telemedicine, and Government. There is an urgent need to enact legislation this year which can advance the creation of new networks and balance America's compelling interests in commerce and security.

Secure networks are critical for the protection of personal privacy and the promotion of commerce on the Internet and other interactive computer systems.

The Congress has been gridlocked for more than a year in a debate about the Nation's export policy for encryption software. I believe that meaningful compromise can be found on this issue which can clear the way for the consideration of broader legislation which fosters the creation of secure networks.

If we are successful, a powerhouse of economic activity and opportunity can be unleashed.

Senators BURNS and LEAHY as well as Congressman GOOLATTE have introduced legislation which identifies a real problem with the current law on the export of encryption software. Thanks to their leadership, there is a growing consensus that reform is needed. In many ways, the introduction of their legislation has already motivated meaningful changes in the administration's policy on software exports. Yet, even with those changes, the underlying law needs to be changed and a broader agenda for secure networks needs to be adopted.

What must happen in a relatively quick fashion is an agreement on a bipartisan, bicameral process to enact secure network legislation which includes a solution to the encryption export riddle. Our goal should be to enact legislation which the President can sign by October 1, 1997.

The ability to use strong encryption is an important element in creating secure networks. Through encryption, messages are encoded and decoded. Encryption protects privacy and security. The American people need to know that their communications are safe and that the most private, confidential personal information can be confidentially communicated on computer networks.

Encryption however, poses some very serious problems for law enforcement and national security which cannot be ignored. The challenge is to promote the use of encryption in a manner that does not unduly compromise national security or public safety and does not unnecessarily burden industry.

What needs to be created is an electronic environment which gives users total confidence in the security of commercial transactions and personal communications. To do so, a largely private infrastructure must be developed to provide for authentication of messages, keys, and digital signatures and when necessary, the recovery of keys.

As the largest purchaser of computer software and hardware, the Federal Government can create important incentives to help the market swiftly respond to this need.

I see three big interests at stake—network commerce, network government, and network security. First, the need to facilitate commerce, both in advancing America's leading position as an exporter of software and in the

promotion of commerce on the Internet, grows in importance every day. Second, there is the civic interest of Government. The American people should be able to have secure access to their Government, for the resolution of problems, the communication of ideas and access to services via electronic networks. Third, there is a security interest of law enforcement and national defense. Defensively, that interest is to protect citizens from foreign or criminal violations of privacy. Offensively, there needs to be a means fully consistent with our Constitution for discreet access to communications. That digital access should be no more or less expansive than exists in the nondigital world.

Mr. President, there needs to be a commitment to a process for resolving a host of issues. First and foremost what is needed is a commitment by the leadership of this Congress to work together in good faith to find a resolution that can be signed into law by the President.

I have proposed a discussion outline for compromise. If there can be agreement on principle and process, I am confident good faith negotiations between all interested parties can meet the ambitious goal of new legislation before the end of this session of Congress. This outline is meant to spark discussion and facilitate compromise on some very challenging issues. It is by no means etched in stone and I welcome suggestions for improvement and additions.

Mr. President, I ask that the text of the Secure Public Networks Act discussion outline be printed in the RECORD.

**THE MATERIAL FOLLOWS:
THE SECURE PUBLIC NETWORKS ACT DISCUSSION
FORNS**

PURPOSE

To encourage and facilitate the creation of secure public networks for communication, commerce, education, research, tele-medicine and government.

A. DOMESTIC USES OF ENCRYPTION

(1) Lawful Use of Encryption: Domestic use of encryption for any lawful purpose shall be permitted. No mandatory third party key escrow system for domestic encryption.

(2) Unlawful Use of Encryption: Penalty for the use of encryption technology in the furtherance of a crime—5 years or fine for 1st offense, and 10 years or fine for 2nd offense.

(3) Privacy Protection:

Penalties for:

- (a) Unauthorized use of keys, authentication or identity;
- (b) Unauthorized breaking of another's encryption codes;
- (c) Theft of intellectual property on line through unauthorized interception of messages;

- (d) Issuing key to unauthorized person;
- (e) Impersonating another to obtain key;
- (f) Knowingly issuing key in furtherance of criminal activity.

(4) Access to Encrypted Messages by U.S. Government Agencies: Access to encryption key by government entities only through properly executed court order (or certification under Foreign Intelligence Surveillance Act).

(5) Access to Encrypted Messages by Foreign Governments: Attorney General may

seek a court order for a foreign government pursuant to treaty and U.S. law.

(6) Civil Recovery: Recovery against the USA when information is improperly obtained or released.

(7) Destruction of Intercepted Information: Once lawful use of intercepted information is complete, intercepted information shall be destroyed.

(8) Illegal Disclosure: Violation of law to disclose recovery of information or execution of order.

B. GOVERNMENT PROCUREMENT

(1) Policy: It is the policy of the U.S. Government to create secure networks which permit public to interact with government through networks which protect privacy, intellectual property and personal security of network users.

(2) Government Purchases of Software: All encryption software purchased by the U.S. Government for use in secure government networks shall be software based on a system of key recovery.

(3) Software Purchased With Federal Funds: All encryption software purchased with federal funds shall be software based on a system of key recovery.

(4) U.S. Government Networks: All networks established by the U.S. Government which use encryption shall use encryption based on a system of key recovery.

(5) Networks Established With Federal Funds: All encrypted networks established with the use of federal funds shall use encryption based on a system of key recovery.

(6) Product Labels: Products may be labeled to inform user such product is authorized for sale or use in transactions with the U.S. Government.

(7) No Private Mandate: No federal mandate of private sector encryption standards other than for use in federal computer systems, networks or systems created with federal funds.

C. EXPORT OF ENCRYPTION

(1) Department of Commerce: The Department of Commerce shall be the lead agency on encryption software exports and have sole duty to issue export licenses on commercial encryption products and technologies.

(2) General License: Exports of encryption software up to * * * and software with encryption capabilities up to * * * shall be subject to a general license (license exception) provided, the product, or software being exported:

- (a) Is otherwise qualified for export;
- (b) Is otherwise legal;
- (c) Does not violate U.S. law;
- (d) Does not violate the intellectual property rights of another; and
- (e) The recipient individual is otherwise qualified to receive such product or software.

The President may by executive order increase permissible encryption strength which is exportable under general license (license exception).

(3) General License (license exception)—Unlimited Strength: Exports of encryption software with unlimited strength permitted under general license (license exception) provided there is a qualified key recovery system or trusted third party system for encryption product.

(4) Fast Track Review: Fast Track consideration of licenses for certain institutions:

- (a) Banks;
 - (b) Financial institutions; and
 - (c) Health Care Providers.
- (5) Prohibited Exports: Export shall be prohibited when Secretary of Commerce finds significant evidence that product for export would be used in acts against the national security, public safety, integrity of transportation, communications, financial institu-

tions or other essential systems of interstate commerce; diverted to a military, terrorist or criminal use, or re-exported w/o US authorization.

(6) License Review: In evaluating requests for export licenses for products with encryption capabilities, (in strengths above the level described in (C)(2)), the following factors shall be among those considered by the Secretary:

- (a) Whether a product is generally available and is designed for installation without alteration by purchaser;
- (b) Whether the product is generally available in the country to which the product would be exported; and
- (c) Whether products offering comparable security and level of encryption is available in the country to which the product would be exported.

Licenses will be granted at the Secretary's discretion.

D. VOLUNTARY REGISTRATION SYSTEM

(1) Certificate Authorities: Secretary may establish procedures to register certificate authorities. Certificate authorities shall verify use of public keys and digital signatures.

(2) Agent Registry: Secretary may establish procedures to register key recovery agents.

(3) Public Key Certificates: Secretary or Certificate Authority may issue public key certificates.

(4) Voluntary System: Use of key management system is voluntary.

(5) Incentive to Use Voluntary System: Use of registered key management system shall be treated as evidence of due diligence and reasonable care in any civil or criminal proceeding.

E. LIABILITY LIMITATIONS

(1) Compliance with Request: No liability for disclosing recovery information to government agency with properly executed order;

(2) Compliance defense: No liability for complying with Act;

(3) Good Faith Defense: Good faith reliance on court order is a complete defense.

F. INTERNATIONAL AGREEMENTS

The President shall conduct negotiations with other countries for the purpose of mutual recognition of Key Recovery and Certificate Authorities registered in USA.

G. CIVIL PENALTIES

(1) Civil Penalties: In addition to criminal penalties, Secretary shall establish civil penalties for violations of this act.

(2) Injunctive Relief: Attorney General may bring action to enjoin violations of act and enforce recovery of civil penalties.

(3) Jurisdiction: Original Jurisdiction of Federal District Courts for actions under this section.

H. RESEARCH

(1) Information Security Board: The Information Security Board shall be established to make recommendations to President and Congress on measures to establish secure networks, protect intellectual property on computer networks, promote exports of software, protect national security and public safety.

(2) Coordination: Coordination between federal, state and local law enforcement shall be encouraged.

(3) Network Research: Secure network research shall be encouraged.

(4) Annual Report: The NTIA in consultation with other federal agencies shall issue an annual report on secure network developments. The report shall review available information and report to the Congress and the President on developments in encryption, authentication, identification and security

on communications networks and make policy recommendations to the President and Congress.

1. PRESIDENTIAL POWER

The President may waive provisions of this Act with a finding of danger to national security, public safety, economic security, or public interest. President must report waiver to Congress in classified or unclassified form w/ 30 days of Presidential action.

J. MSC

- (1) Severability.
- (2) Interpretation: Will not affect intelligence activities outside USA; and will not weaken intellectual property protection.
- (3) Definitions.
- (4) Dates of regulations.
- (5) Authority for fees.

TRIBUTE TO ALEX HENLIN, BISHOP GUERTIN SENIOR, AND WINNER OF THE AMERICAN LEGION'S NATIONAL ORATORICAL CONTEST.

• Mr. SMITH of New Hampshire. Mr. President, I rise today to congratulate Alex Henlin, a Bishop Guertin High School senior, on winning the American Legion's National Oratorical Contest. This is certainly an accomplishment of which he should be very proud and I salute him for his achievement.

Alex, 18, resides in Dracut, MA. He is president of his senior class and plans to study government next fall at Georgetown University. He was one of the State's representatives to the American Legion's 1996 Boys' Nation conference in Washington.

His speech, "A More Perfect Union," reported the U.S. Constitution as being a versatile, living document able to address unforeseen circumstances. Alex warned that amendments should not be created to address trivial issues. As a former history teacher, I admire and commend Alex's commitment to our Nation's most precious document.

Alex brought home an \$18,000 college scholarship in addition to a \$2,000 scholarship he received from the State contest. The national contest was hosted by Indiana University and Purdue University in Indianapolis.

I congratulate Alex Henlin on his outstanding accomplishments. I commend his hard work and perseverance and wish him luck at Georgetown in the fall semester. •

BAXTER BLACK COMMENTARY ON RANCHERS IN THE DAKOTAS

• Mr. CONRAD. Mr. President, livestock producers across the Dakotas have suffered immeasurable losses this winter. Baxter Black, cowboy poet and commentator on National Public Radio, wrote a touching piece describing the struggles of ranchers facing the realities of the season's severe weather. National Public Radio aired the commentary on April 23.

Mr. President, I ask that the following transcript of Mr. Black's commentary be printed in the RECORD.

The transcript follows:

WE UNDERSTAND

Repeat after me: I do solemnly swear as shepherd of the flock to accept the respon-

sibility for the animals put in my care, to tend to their basic needs of food and shelter, to minister to their ailments, to put their well being before my own if need be, and to relieve their pain and suffering up to, and including, the final bullet. I swear to treat them with respect, to always remember that we have made them dependent on us, and therefore have put their lives in our hands, as God is my witness.

Helpless. The worst winter in Dakota's memory. Cattle losses already predicted up to 50,000 head. And how did they die? From exposure and lack of feed. Basic needs—food and shelter. And now the flooding.

You think those Dakota ranchers said, "Well, I'll just close down the store and put on the answering machine, we'll wait'll the storm blows over, no harm done?" No, they couldn't. Wouldn't.

Charlie, you can't go out there. The cows are clear over in the west pasture. You can't even see the barn from here." But he tried anyway. Tried to get the machinery running, tried to clear a path, tried to load the hay.

These are not people who live a pampered life. These are not people who are easily defeated. These are not people who quit trying. But days and weeks on end of blizzards, blowing snow, and fatal wind chills took their toll.

Cattle stranded on the open plains with no cover, no protection, no feed, place to go, and relief from the Arctic fury died in singles and bunches and hundreds and thousands, frozen as hard as iron.

And back in the house sat the rancher and his family, stranded, unable to do what every fiber in their bodies willed them to do, knowing that every hour he could not tend his cows diminished him in some deep, permanent, undefinable way, changing him forever.

The losses will eventually be tallied, the number of head, and extrapolated to dollars. But dollars were not what kept him pacing the floor at night, looking out the window every two minutes, walking out in it 50 times a day, trying, trying, trying, knowing if he could only get to them he could save them. And then finally having to face the loss, his failure as a shepherd. That's what kept him trying. Exhausting, depression, and despair.

It's hard to comfort a person who has had his spirit battered like that. "It couldn't be helped, there's nothing you could do," is small consolation.

So, all I can say to our fellow stockman in the Dakotas is, in our own way, we understand. •

TRIBUTE TO GARY HODSON ON BEING NAMED THE 1997 SOMERSWORTH CITIZEN OF THE YEAR

• Mr. SMITH of New Hampshire. Mr. President, I rise today to pay tribute to Gary Hodson, postal carrier of Somersworth, on being named the Citizen of the Year by the Greater Somersworth Chamber of Commerce. I commend his outstanding community commitment and congratulate him on this well-deserved honor.

Gary's community involvements are numerous but his special dedication was directed to youth. Gary serves as director of youth education at Holy Trinity Church and volunteers teaching on evenings and weekends. He is president of the baseball, football, and hockey boosters.

Gary is known to many as always willing to take responsibility to make

his community a better place to live and raise children. He puts forth his time and energy to help the youth of the community. Whatever he commits to, he always gets the job done.

Gary has dedicated his time, talent, and energy to serving the residents of Somersworth in an exemplary way. I am proud to honor Gary Hodson's outstanding community commitment, which is so important to the youth and their future. We are indeed indebted to him for his efforts. Congratulations to Dan for this distinguished recognition. I am honored to represent him in the U.S. Senate. •

PARTIAL-BIRTH ABORTION—THE TRUTH

• Mr. ABRAHAM. Mr. President, I would like to submit the following testimony for the RECORD. Dr. Curtis Cook is a board-certified obstetrician/gynecologist and a subspecialist in maternal-fetal medicine in Michigan. In March, Dr. Cook testified before the House-Senate joint hearing on "Partial-Birth Abortion—The Truth." His expert testimony speaks to both the medical necessity of the partial-birth procedure and the issue of fetal pain during this procedure.

The testimony follows:

TESTIMONY BY CURTIS COOK, M.D., MATERNAL-FETAL MEDICINE, BUTTERWORTH HOSPITAL, MICHIGAN STATE COLLEGE OF HUMAN MEDICINE

My name is Dr. Curtis Cook. I am a board-certified Obstetrician/Gynecologist and a subspecialist in Maternal-Fetal Medicine (also known as Perinatology or High Risk Obstetrics). In my practice I take care of referred complicated pregnancies because of preexisting chronic medical conditions of the mother, or suspected abnormalities in the baby. I am also the Associate Director of our region's Maternal-Fetal Medicine division and also serve as Assistant Residency Director for our Obstetrics and Gynecology training program. I am an Assistant Clinical Professor at Michigan State University of College of Human Medicine, and a member of the American College of OB/GYN, The Society of Perinatal Obstetricians, The American Medical Association, and the Association of Professors of Gynecology and Obstetrics. I am a founding member of PHACT (Physicians Ad Hoc Coalition for Truth about Partial Birth Abortion), which I helped organize after hearing the appalling medical misinformation circulated in the media regarding this procedure. PHACT includes in its membership over 400 physicians from Obstetrics, Maternal-Fetal Medicine and Pediatrics. Many of these physicians are educators or heads of departments, and also include the former Surgeon General, C. Everett Koop. All that is required of a physician for membership in an interest in maternal and child health, and a desire to educate the population on this single issue.

I must begin my statement by defining partial birth abortion as the feet first delivery of a living infant up to the level of its after coming head, before puncturing the base of its skull with a sharp instrument and sucking out the brain contents, thereby killing it and allowing the collapse of its skull and subsequent delivery. This description is based upon the technique of Dr. Haskell of Ohio, who has subsequently identified it as accurate. He has referred to his technique as

Document No. 53

