



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

SB2363

Introduced 1/18/2006, by Sen. John J. Cullerton

#### SYNOPSIS AS INTRODUCED:

205 ILCS 705/5  
205 ILCS 705/10

Amends the Financial Institutions Electronic Documents and Digital Signature Act. For purposes of the Act, defines "financial institution" to include subsidiaries and affiliates of banks, savings and loan associations, savings banks, and credit unions. If a financial institution is required by law to provide or make available certain information in writing to consumers, provides that the use of an electronic record to provide or make available that information satisfies the writing requirement if the consumer consents and if certain notices are provided. Provides that oral communication or recording of oral communication does not qualify as an electronic record. Contains other provisions concerning the rights of consumers, the effect of failure to obtain electronic consent or confirmation of consent, the effect of withdrawal of consent, and prior consent. Effective immediately.

LRB094 17103 MKM 52389 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Financial Institutions Electronic Documents  
5 and Digital Signature Act is amended by changing Sections 5 and  
6 10 as follows:

7 (205 ILCS 705/5)

8 Sec. 5. Definitions. As used in this Act:

9 "Digital signature" means an encrypted electronic  
10 identifier, created by computer, intended by the party using it  
11 to have the same force and effect as the use of a manual  
12 signature.

13 "Financial institution" means a bank, a savings and loan  
14 association, a savings bank, or a credit union or any  
15 subsidiary or affiliate of a bank, savings and loan  
16 association, savings banks, or credit union.

17 "Substitute check" means a paper reproduction of an  
18 original check, as defined in the Check Clearing for the 21st  
19 Century Act (12 U.S.C. 5001, et seq.), as amended from time to  
20 time, and the rules promulgated thereunder.

21 (Source: P.A. 94-458, eff. 8-4-05.)

22 (205 ILCS 705/10)

23 Sec. 10. Electronic documents; digital signatures;  
24 electronic notices.

25 (a) Electronic documents. If in the regular course of  
26 business, a financial institution possesses, records, or  
27 generates any document, representation, image, substitute  
28 check, reproduction, or combination thereof, of any agreement,  
29 transaction, act, occurrence, or event by any electronic or  
30 computer-generated process that accurately reproduces,  
31 comprises, or records the agreement, transaction, act,

1 occurrence, or event, the recording, comprising, or  
2 reproduction shall have the same force and effect under the  
3 laws of this State as one comprised, recorded, or created on  
4 paper or other tangible form by writing, typing, printing, or  
5 similar means.

6 (b) Digital signatures. In any communication,  
7 acknowledgement, agreement, or contract between a financial  
8 institution and its customer, in which a signature is required  
9 or used, any party to the communication, acknowledgement,  
10 agreement, or contract may affix a signature by use of a  
11 digital signature, and the digital signature, when lawfully  
12 used by the person whose signature it purports to be, shall  
13 have the same force and effect as the use of a manual signature  
14 if it is unique to the person using it, is capable of  
15 verification, is under the sole control of the person using it,  
16 and is linked to data in such a manner that if the data are  
17 changed, the digital signature is invalidated. Nothing in this  
18 Section shall require any financial institution or customer to  
19 use or permit the use of a digital signature.

20 (c) Electronic notices.

21 (1) Consent to electronic records. If a statute,  
22 regulation, or other rule of law requires that information  
23 relating to a transaction or transactions in or affecting  
24 intrastate commerce in this State be provided or made  
25 available by a financial institution to a consumer in  
26 writing, the use of an electronic record to provide or make  
27 available that information satisfies the requirement that  
28 the information be in writing if:

29 (A) the consumer has affirmatively consented to  
30 the use of an electronic record to provide or make  
31 available that information and has not withdrawn  
32 consent;

33 (B) the consumer, prior to consenting, is provided  
34 with a clear and conspicuous statement:

35 (i) informing the consumer of:

36 (I) any right or option of the consumer to

1 have the record provided or made available on  
2 paper or in nonelectronic form, and

3 (II) the right of the consumer to withdraw  
4 the consent to have the record provided or made  
5 available in an electronic form and of any  
6 conditions, consequences (which may include  
7 termination of the parties' relationship), or  
8 fees in the event of a withdrawal of consent;

9 (ii) informing the consumer of whether the  
10 consent applies:

11 (I) only to the particular transaction  
12 that gave rise to the obligation to provide the  
13 record, or

14 (II) to identified categories of records  
15 that may be provided or made available during  
16 the course of the parties' relationship;

17 (iii) describing the procedures the consumer  
18 must use to withdraw consent, as provided in clause  
19 (i), and to update information needed to contact  
20 the consumer electronically; and

21 (iv) informing the consumer:

22 (I) how, after the consent, the consumer  
23 may, upon request, obtain a paper copy of an  
24 electronic record, and

25 (II) whether any fee will be charged for a  
26 paper copy;

27 (C) the consumer:

28 (i) prior to consenting, is provided with a  
29 statement of the hardware and software  
30 requirements for access to and retention of the  
31 electronic records; and

32 (ii) consents electronically, or confirms his  
33 or her consent electronically, in a manner that  
34 reasonably demonstrates that the consumer can  
35 access information in the electronic form that  
36 will be used to provide the information that is the

1 subject of the consent; and

2 (D) after the consent of a consumer in accordance  
3 with subparagraph (A), if a change in the hardware or  
4 software requirements needed to access or retain  
5 electronic records creates a material risk that the  
6 consumer will not be able to access or retain a  
7 subsequent electronic record that was the subject of  
8 the consent, the person providing the electronic  
9 record:

10 (i) provides the consumer with a statement of:

11 (I) the revised hardware and software  
12 requirements for access to and retention of the  
13 electronic records, and

14 (II) the right to withdraw consent without  
15 the imposition of any fees for the withdrawal  
16 and without the imposition of any condition or  
17 consequence that was not disclosed under  
18 subparagraph (B) (i); and

19 (ii) again complies with subparagraph (C).

20 (2) Other rights.

21 (A) Preservation of consumer protections. Nothing  
22 in this subsection (c) affects the content or timing of  
23 any disclosure or other record required to be provided  
24 or made available to any consumer under any statute,  
25 regulation, or other rule of law.

26 (B) Verification or acknowledgment. If a law that  
27 was enacted prior to this amendatory Act of the 94th  
28 General Assembly expressly requires a record to be  
29 provided or made available by a specified method that  
30 requires verification or acknowledgment of receipt,  
31 the record may be provided or made available  
32 electronically only if the method used provides the  
33 required verification or acknowledgment of receipt.

34 (3) Effect of failure to obtain electronic consent or  
35 confirmation of consent. The legal effectiveness,  
36 validity, or enforceability of any contract executed by a

1 consumer shall not be denied solely because of the failure  
2 to obtain electronic consent or confirmation of consent by  
3 that consumer in accordance with paragraph (1)(C)(ii).

4 (4) Prospective effect. Withdrawal of consent by a  
5 consumer shall not affect the legal effectiveness,  
6 validity, or enforceability of electronic records provided  
7 or made available to that consumer in accordance with  
8 paragraph (1) prior to implementation of the consumer's  
9 withdrawal of consent. A consumer's withdrawal of consent  
10 shall be effective within a reasonable period of time after  
11 receipt of the withdrawal by the provider of the record.  
12 Failure to comply with paragraph (1)(D) may, at the  
13 election of the consumer, be treated as a withdrawal of  
14 consent for purposes of this paragraph.

15 (5) Prior consent. This subsection does not apply to  
16 any records that are provided or made available to a  
17 consumer who has consented prior to the effective date of  
18 this amendatory Act of the 94th General Assembly to receive  
19 the records in electronic form as permitted by any statute,  
20 regulation, or other rule of law.

21 (6) Oral communications. An oral communication or a  
22 recording of an oral communication shall not qualify as an  
23 electronic record for purposes of this subsection (c),  
24 except as otherwise provided under applicable law.

25 (Source: P.A. 94-458, eff. 8-4-05.)

26 Section 99. Effective date. This Act takes effect upon  
27 becoming law.