

## As Introduced

125th General Assembly  
Regular Session  
2003-2004

H. B. No. 145

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### A B I L L

To amend section 1306.20 and to enact sections 1  
1306.25, 1306.26, 1306.27, 1306.28, and 1306.29 of 2  
the Revised Code to adopt the Electronic 3  
Government Services Act to prohibit a government 4  
agency from providing duplicative or competing 5  
electronic commerce services with the private 6  
sector, other than described cable service, unless 7  
the government agency complies with procedures 8  
established by the Act. 9

#### BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

**Section 1.** That section 1306.20 be amended and sections 10  
1306.25, 1306.26, 1306.27, 1306.28, and 1306.29 of the Revised 11  
Code be enacted to read as follows: 12

**Sec. 1306.20.** (A) Subject to section 1306.11 and to sections 13  
1306.25 to 1306.29 of the Revised Code, each state agency shall 14  
determine if, and the extent to which, it will send and receive 15  
electronic records and electronic signatures to and from other 16  
persons and otherwise create, generate, communicate, store, 17  
process, use, and rely upon electronic records and electronic 18  
signatures. 19

(B)(1) Subject to division (B)(2) of this section, a state agency may waive a requirement in the Revised Code, other than a requirement in sections 1306.01 to 1306.15 of the Revised Code, that relates to any of the following:

(a) The method of posting or displaying records;

(b) The manner of sending, communicating, or transmitting records;

(c) The manner of formatting records.

(2) A state agency may exercise its authority to waive a requirement under division (B)(1) of this section only if the following apply:

(a) The requirement relates to a matter over which the state agency has jurisdiction;

(b) The waiver is consistent with criteria set forth in rules adopted by the state agency. The criteria, to the extent reasonable under the circumstances, shall contain standards to facilitate the use of electronic commerce by persons under the jurisdiction of the state agency consistent with rules adopted by the department of administrative services pursuant to division (A) of section 1306.21 of the Revised Code.

(C) If a state agency creates, uses, receives, or retains electronic records, both of the following apply:

(1) Any rules adopted by a state agency relating to electronic records shall be consistent with rules adopted by the department of administrative services pursuant to division (A) of section 1306.21 of the Revised Code.

(2) Each state agency shall create, use, receive, and retain electronic records in accordance with section 149.40 of the Revised Code.

(D) If a state agency creates, uses, or receives electronic

signatures, the state agency shall create, use, or receive the 50  
signatures in accordance with rules adopted by the department of 51  
administrative services pursuant to division (A) of section 52  
1306.21 of the Revised Code. 53

(E)(1) To the extent a state agency retains an electronic 54  
record, the state agency may retain a record in a format that is 55  
different from the format in which the record was originally 56  
created, used, sent, or received only if it can be demonstrated 57  
that the alternative format used accurately and completely 58  
reflects the record as it was originally created, used, sent, or 59  
received. 60

(2) If a state agency in retaining any set of electronic 61  
records pursuant to division (E)(1) of this section alters the 62  
format of the records, the state agency shall create a certificate 63  
of authenticity for each set of records that is altered. 64

(3) The department of administrative services, in 65  
consultation with the state archivist, shall adopt rules in 66  
accordance with section 111.15 of the Revised Code that establish 67  
the methods for creating certificates of authenticity pursuant to 68  
division (E)(2) of this section. 69

(F) Whenever any rule of law requires or authorizes the 70  
filing of any information, notice, lien, or other document or 71  
record with any state agency, a filing made by an electronic 72  
record shall have the same force and effect as a filing made on 73  
paper in all cases where the state agency has authorized or agreed 74  
to such electronic filing and the filing is made in accordance 75  
with applicable rules or agreement. 76

(G) Nothing in sections 1306.01 to 1306.23 of the Revised 77  
Code shall be construed to require any state agency to use or 78  
permit the use of electronic records and electronic signatures. 79

(H)(1) Notwithstanding division (C)(1) or (D) of this 80

section, any state agency that, prior to ~~the effective date of~~ 81  
~~this section~~ September 14, 2000, used or permitted the use of 82  
electronic records or electronic signatures pursuant to laws 83  
enacted, rules adopted, or agency policies adopted before ~~the~~ 84  
~~effective date of this section~~ September 14, 2000, may use or 85  
permit the use of electronic records or electronic signatures 86  
pursuant to those previously enacted laws, adopted rules, or 87  
adopted policies for a period of two years after ~~the effective~~ 88  
~~date of this section~~ September 14, 2000. 89

(2) Subject to division (H)(3) of this section, after the 90  
two-year period described in division (H)(1) of this section has 91  
concluded, all state agencies that use or permit the use of 92  
electronic records or electronic signatures before ~~the effective~~ 93  
~~date of this section~~ September 14, 2000, shall only use or permit 94  
the use of electronic records or electronic signatures consistent 95  
with rules adopted by the department of administrative services 96  
pursuant to division (A) of section 1306.21 of the Revised Code. 97

(3) After the two-year period described in division (H)(1) of 98  
this section has concluded, the department of administrative 99  
services may permit a state agency to use electronic records or 100  
electronic signatures that do not comply with division (H)(2) of 101  
this section, if the state agency files a written request with the 102  
department. 103

(I) For the purposes of this section, "state agency" means 104  
every organized body, office, or agency established by the laws of 105  
the state for the exercise of any function of state government, 106  
but does not include the general assembly, any legislative agency, 107  
the supreme court, the other courts of record in this state, or 108  
any judicial agency. 109

**Sec. 1306.25.** As used in sections 1306.25 to 1306.29 of the 110  
Revised Code: 111

(A) "Commercial activity" means performing services or providing goods that normally can be obtained from a private enterprise. 112  
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(B) "Direct costs" means all costs, whether capital costs, operating costs, or otherwise, that would be eliminated if the service or function to which the costs relate is discontinued. 115  
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(C) "Electronic commerce services" means services relating to commercial activity that are the same as, similar to, or overlap information technology-based services provided to the public by two or more competing private enterprises. "Electronic commerce services" includes services made in connection with a transaction completed over a computer network, such as the buying of goods or services over the internet. 118  
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(D) "Full cost accounting" means, in accordance with generally accepted accounting principles, accounting for all direct costs and indirect costs, including capital costs, that are incurred in the ownership, management, or operation of electronic commerce services. 125  
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(E) "Government agency" means either of the following: 130

(1) A state agency as defined in section 117.01 of the Revised Code or a similar agency of a county, township, municipal corporation, or other political subdivision of this state; 131  
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(2) Any entity that is not majority-owned as private property and is established by law or by order or action of a state agency or similar agency of a county, township, municipal corporation, or other political subdivision, or an officer of that state or similar agency. 134  
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(F) "Indirect costs" means all costs, whether capital costs, operating costs, or otherwise, that are not direct costs. 139  
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(G) "Private enterprise" means an individual, firm, 141

partnership, joint venture, corporation, association, or other 142  
legal entity engaging, in the private sector, in the 143  
manufacturing, processing, sale, offering for sale, rental, 144  
leasing, delivery, dispensing, distributing, or advertising of 145  
goods or services for profit. 146

**Sec. 1306.26.** (A) The general assembly finds and declares 147  
that the growth of private enterprises is essential to the health, 148  
welfare, and prosperity of this state, and that government 149  
competes with the private sector when it provides goods and 150  
services to the public. 151

(B) It is the intent of the general assembly and the purpose 152  
of sections 1306.25 to 1306.29 of the Revised Code to protect 153  
economic opportunities for private industry against unfair 154  
competition by government agencies and to enhance the efficient 155  
provision of public goods and services. 156

(C) Sections 1306.25 to 1306.29 of the Revised Code may be 157  
cited as the "electronic government services act." 158

**Sec. 1306.27.** (A) Except as provided in section 1306.28 of 159  
the Revised Code, if two or more competing private enterprises 160  
provide electronic commerce services, a government agency shall 161  
not engage, through the expenditure of public moneys, in any 162  
activity to provide or offer those electronic commerce services to 163  
the public or expand similar electronic commerce services to the 164  
public. 165

(B) Any provider of electronic commerce services that resides 166  
or does business in this state has standing to bring a cause of 167  
action for appropriate relief in a court of competent jurisdiction 168  
challenging the provision of electronic commerce services by a 169  
government agency not made in accordance with sections 1306.25 to 170  
1306.29 of the Revised Code. 171

(C) Nothing in sections 1306.25 to 1306.29 of the Revised Code prohibits a government agency from providing electronic commerce services to the public in the absence of two or more competing private enterprises providing those services. 172  
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**Sec. 1306.28.** (A) A government agency may provide duplicative or competing electronic commerce services to the public if the agency complies with this section. 176  
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(B)(1) Before a government agency provides duplicative or competing electronic commerce services to the public, the government agency shall hold a public hearing to allow public comment about the agency's proposed electronic commerce services. 179  
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(2) The government agency shall provide at least thirty days' public notice of the time and place of the public hearing described in division (B)(1) of this section in one or more newspapers of general circulation in the county or counties within the jurisdiction of the government agency. During the thirty-day period before the public hearing, the government agency shall make its proposal for providing duplicative or competing electronic commerce services to the public available for public inspection in a prominent public location within the county or counties where the public notice described in this division is provided. 183  
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(C) The public notice described in division (B) of this section also shall set forth all of the following: 193  
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(1) The government agency's proposed findings of fact and conclusions of law describing the reasons why it believes it is necessary and in the public interest to provide duplicative or competing electronic commerce services to the public and citing the legal authority that permits the government agency to do so; 195  
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(2) The initial and total lifecycle costs of the proposed duplicative or competing electronic commerce services, which 200  
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<u>include, but are not limited to, all technology, infrastructure,</u>	202
<u>services, contracts, and direct or indirect personnel costs;</u>	203
<u>(3) The individual per taxpayer cost of the proposed</u>	204
<u>duplicative or competing electronic commerce services on an</u>	205
<u>annualized basis and the cost of these services per user on an</u>	206
<u>annualized basis;</u>	207
<u>(4) The government agency's reasons for believing that the</u>	208
<u>cost benefits of providing duplicative or competing electronic</u>	209
<u>commerce services require the expenditure of public moneys;</u>	210
<u>(5) An identification of unmet needs in the consumer</u>	211
<u>marketplace that the proposed duplicative or competing electronic</u>	212
<u>commerce services would fulfill;</u>	213
<u>(6) A description of how the proposed duplicative or</u>	214
<u>competing electronic commerce services would differ from those</u>	215
<u>provided by two or more competing private enterprises;</u>	216
<u>(7) An economic impact analysis demonstrating that the</u>	217
<u>offering of the proposed duplicative or competing electronic</u>	218
<u>commerce services by the government agency will not be</u>	219
<u>anticompetitive in its effect on the existing industry and will</u>	220
<u>not adversely impact or distort the marketplace of two or more</u>	221
<u>competing private enterprises providing the same or similar</u>	222
<u>electronic commerce services.</u>	223
<u>(D)(1) After reviewing comments from the public following the</u>	224
<u>public hearing described in this section, if the head of a</u>	225
<u>government agency decides to proceed with offering duplicative or</u>	226
<u>competing electronic commerce services to the public, the head of</u>	227
<u>the government agency shall sign factual and legal conclusions</u>	228
<u>addressing the comments and each of the factors set forth in the</u>	229
<u>public notice described in division (C) of this section, and send</u>	230
<u>a written notice to the controlling board that sets forth these</u>	231
<u>conclusions and the government agency's decision to proceed.</u>	232

(2) A government agency shall not offer duplicative or competing electronic commerce services to the public without the approval of the controlling board. 233  
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(3) The controlling board may continue to exercise oversight with respect to any approval decision it makes under division (D)(2) of this section. 236  
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(E)(1) Any government agency providing electronic commerce services in a jurisdiction where a private enterprise provides the same electronic commerce services shall prepare and publish an annual report about its electronic commerce services. 239  
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(2) The annual report described in division (E)(1) of this section substantially shall be in accordance with full cost accounting and shall disclose the amount, source, and cost of working capital utilized by the government agency for providing electronic commerce services. 243  
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(F) For purposes of providing the public notice and preparing and publishing the annual report described in this section, a government agency, by any reasonable method consistent with applicable generally accepted accounting principles, shall allocate indirect costs that support multiple electronic commerce services or functions among those services and functions in proportion to the relative burden each service or function places on the cost category. 248  
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**Sec. 1306.29.** (A) Nothing in sections 1306.25 to 1306.28 of the Revised Code applies to the installation, construction, expansion, maintenance, or operation of any physical infrastructure by a political subdivision that is a public cable service provider, in accordance with Chapter 1332. of the Revised Code and whether on its own or in conjunction with other public cable service providers or private cable service providers, for 256  
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the sole purpose of providing cable service under such authority 263  
as otherwise conferred by law. 264

(B) For purposes of division (A) of this section, "public 265  
cable service provider," "private cable service provider," and 266  
"cable service" have the same meanings as in section 1332.01 of 267  
the Revised Code. 268

**Section 2.** That existing section 1306.20 of the Revised Code 269  
is hereby repealed. 270