

New "Digital Signature" Law Promotes Electronic Contracting

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After months of political wrangling, Congress overwhelmingly passed a bill earlier this month which will give electronic documents the same legal effect as paper documents. President Clinton has indicated that he will sign that bill into law. Supporters of the "[Electronic Signatures in Global and National Commerce Act](#)" believe that electronic signatures will make it easier and faster for companies and consumers to conduct online transactions.

The new law, which takes effect October 1, 2000, establishes a general rule that electronic signatures, contracts, and other records affecting interstate or foreign commerce shall have the same legal effect as traditional written signatures, contracts, and records. An electronic signature can be an electronic sound, symbol, or process which is either attached to or associated with an electronic contract or record and which is executed or adopted by a person intending to "sign" the document. Voice recordings are specifically excluded and cannot be used as electronic signatures. The law does not establish technical standards for conducting electronic transactions or verifying electronic signatures.

Under the new law, electronic documents may be substituted for any document which is legally required to be made available "in writing" to a consumer, provided the consumer affirmatively consents to the use of electronic records after being informed of any right or option to obtain the documents in paper form. Documents which must be notarized or executed under oath may also be created electronically.

If a law or regulation requires that a record be retained, then the record may be retained in an electronic form so long as it is accurate and can be accurately reproduced for future reference. Electronic records may even be substituted for "original" paper documents, including bank checks.

The new law does not establish the legal validity of the following classes of electronic documents:

- Electronic documents provided or made available to a consumer who consents prior to October 1, 2000. The validity of such documents may still be protected by existing laws authorizing the use of electronic documents for specific purposes.
- Documents relating to wills.
- Documents relating to family law, including adoption and divorce. Presumably, marriage

documents are also excluded.

- Court documents.
- Notices concerning the cancellation of utility services or life or health insurance benefits.
- Default, acceleration, repossession, foreclosure, eviction, or cure notices under residential leases or under home equity loans.
- Notices concerning product recalls or hazardous product failures.
- Documents relating to the handling of hazardous materials.

The law does not force businesses or consumers to use electronic signatures or to accept electronic records, but companies are allowed to encourage the use of electronic documents by charging extra fees for providing paper copies. In addition, consumers may be subjected to fees or potentially significant penalties for withdrawing their consent to use electronic documents, including "termination of the parties' relationship."

The pro-business flavor of the new law worries some consumer advocates, who fear that consumers may be coerced into electronic agreements in order to obtain products or services, while reducing choices for consumers without computer access. Some privacy advocates are concerned that electronic signatures may make consumers more susceptible to electronic fraud, identity theft, and intrusive collection of personal data.

Passed overwhelmingly despite these concerns, the electronic signature law may be the strongest indication yet that Congress supports the continued rapid development of e-commerce. The next challenge will be for the online business community to make suspicious consumers feel more comfortable with electronic transactions, and with the collection of their personal data in particular.

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