

NEW YORK STATE TECHNOLOGY LAW

ARTICLE 3

ELECTRONIC SIGNATURES AND RECORDS ACT

§ 301. Short title. This article shall be known and may be cited as the "electronic signatures and records act".

§ 302. Definitions. For the purpose of this article:

1. "Electronic" shall mean of or relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

2. "Electronic record" shall mean information, evidencing any act, transaction, occurrence, event, or other activity, produced or stored by electronic means and capable of being accurately reproduced in forms perceptible by human sensory capabilities.

3. "Electronic signature" shall mean an electronic sound, symbol, or process, attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the record.

4. "Person" shall mean a natural person, corporation, trust, estate, partnership, incorporated or unincorporated association or any other legal entity, and also includes any department, agency, authority, or instrumentality of the state or its political subdivisions.

5. "Governmental entity" shall mean any state department, board, bureau, division, commission, committee, public authority, public benefit corporation, council, office, or other governmental entity or officer of the state having statewide authority, except the state legislature, and any political subdivision of the state.

§ 303. Electronic facilitator. 1. The office of information technology services shall be the electronic facilitator and administer this article. In addition to the authority, duties and responsibilities set forth in article one of this chapter, the electronic facilitator shall have the authority, duties and responsibilities granted in this article.

2. The electronic facilitator shall have the following functions, powers, and duties:

(a) To promulgate rules and regulations consistent with the provisions of this article. In developing rules and regulations, the electronic facilitator shall seek the advice of the attorney general, the state comptroller, the director of budget, government and private entities and individuals as the electronic facilitator deems appropriate.

(b) To cooperate with government and private entities and individuals in order to assist in the development and implementation of this article.

(c) To develop guidelines for the improvement of business and commerce by electronic means. Such guidelines shall identify preferred technology standards relating to security, confidentiality and privacy of electronic signatures and electronic records.

§ 304. Use of electronic signatures.

1. The electronic facilitator shall establish rules and regulations governing the use of electronic signatures and authentication. The electronic facilitator shall not establish rules or regulations that seek to apportion fault or impose or limit liability relating to the use of electronic signatures.

2. In accordance with this section unless specifically provided otherwise by law, an electronic signature may be used by a person in lieu of a signature affixed by hand. The use of an electronic signature shall have the same validity and effect as the use of a signature affixed by hand.

§ 305. Use of electronic records.

1. In accordance with rules and regulations promulgated by the electronic facilitator, government entities are authorized and empowered to produce, receive, accept, acquire, record, file, transmit, forward, and store information by use of electronic means. If any such government entity uses electronic

records, it must also ensure that anyone who uses the services of such government entity may obtain access to records as permitted by statute, and receive copies of such records in paper form in accordance with fees prescribed by statute. No person shall be required to submit or file any record electronically to any government entity except as otherwise provided by law. Government entities that obtain, store, or utilize electronic records shall not refuse to accept hard copy, non-electronic forms, reports, and other paper documents for submission or filing except as otherwise provided by law.

2. A government entity shall have the authority to dispose of or destroy a record in accordance with the arts and cultural affairs law, regardless of format or media.

3. An electronic record shall have the same force and effect as those records not produced by electronic means.

4. The director shall study how electronic documents and the mechanisms and processes for obtaining access to and reading electronic data can be created, maintained, exchanged, and preserved by the state in a manner that encourages appropriate government control, access, choice, interoperability, and vendor neutrality. The study shall consider, but not be limited to, the policies of other states and nations, management guidelines for state archives as they pertain to electronic documents, public access, expected storage life of electronic documents, costs of implementation, and savings. The director shall solicit comments regarding the creation, maintenance, exchange, and preservation of electronic documents by the state from stakeholders including but not limited to, the office of the state comptroller, the office of the attorney general, the state archives, and the state historian. The director shall also solicit comments from members of the public. The director shall report findings and recommendations to the governor, the speaker of the assembly, and the temporary president of the senate on or before January fifteenth, two thousand eight.

§ 306. Admissibility into evidence. In any legal proceeding where the provisions of the civil practice law and rules are applicable, an electronic record or electronic signature may be admitted into evidence pursuant to the provisions of article forty-five of the civil practice law and rules including, but not limited to section four thousand five hundred thirty-nine of such law and rules.

§ 307. Exceptions. This article shall not apply:

* 1. To any document providing for the disposition of an individual's person or property upon death or incompetence, or appointing a fiduciary of an individual's person or property, including, without limitation, wills, trusts, decisions consenting to orders not to resuscitate, and powers of attorney, with the exception of: (a) contractual beneficiary designations; (b) the registration of making, amending, or revoking an anatomical gift under section forty-three hundred ten of the public health law; (c) documents and forms authorizing or accepting funeral, cemetery and cremation services; and (d) the execution of a valid power of attorney for the purpose of transferring a salvage certificate of title and the execution of an odometer and damage disclosure statement in connection with such title whenever a loss in connection with a private automobile is determined by an insurer to be a total loss or constructive total loss under section three thousand four hundred twelve of the insurance law.

* NB Effective until December 12, 2027

* 1. To any document providing for the disposition of an individual's person or property upon death or incompetence, or appointing a fiduciary of an individual's person or property, including, without limitation, wills, unless such will is executed pursuant to part six of article three of the estates, powers and trusts law, trusts, decisions consenting to orders not to resuscitate, and powers of attorney, with the exception of: (a) contractual beneficiary designations; (b) the registration of making, amending, or revoking an anatomical gift under section forty-three hundred ten of the public health law; (c) documents and forms authorizing or accepting funeral, cemetery and cremation services; and (d) the execution of a valid power of attorney for the purpose of transferring a salvage certificate of title and the execution of an odometer and damage disclosure statement in connection with such title whenever a loss in connection with a private automobile is determined by an insurer to be a total loss or constructive total loss under section three thousand four hundred twelve of the insurance law.

* NB Effective December 12, 2027

2. To any negotiable instruments and other instruments of title wherein possession of the instrument is deemed to confer title, unless an electronic version of such record is created, stored or transferred pursuant to this article in a manner that allows for the existence of only one unique, identifiable and

unalterable version which cannot be copied except in a form that is readily identifiable as a copy.

3. To any other document that the electronic facilitator has specifically excepted, pursuant to the rules and regulations of the electronic facilitator, from the application of this article.

§ 308. Personal privacy protection. 1. Any information reported to the electronic facilitator by a government entity in connection with the authorization of an electronic signature shall continue to be withheld from public disclosure if such information was withheld from public disclosure by such government entity. Electronic records shall be considered and treated as any other records for the purposes of the freedom of information law as set forth in article six of the public officers law and the personal privacy protection law as set forth in article six-A of the public officers law.

2. A person or an entity that acts as an authenticator of electronic signatures shall not disclose to a third party any personal information reported to it by the electronic signatory other than the information necessary to authenticate the signature unless the disclosure is made pursuant to a court order or statute, or if the information or data is used solely for statistical purposes in aggregate form. For purposes of this section, "personal information" shall mean data that identifies a specific person, including but not limited to home and work addresses, telephone number, e-mail address, social security number, birthdate, gender, marital status, mother's maiden name, and health data.

§ 309. Use of electronic records and signatures to be voluntary. Nothing in this article shall require any entity or person to use an electronic record or an electronic signature unless otherwise provided by law.