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COMMERCE AND TRADE

Electronic Records and Signatures: Authorize the Use of Electronic Records and Signatures Instead of Written Records and Signatures

CODE SECTIONS: O.C.G.A. §§ 10-12-1 to -5 (new), 50-18-72 (amended), 50-29-12 (new)

BILL NUMBER: SB 103

ACT NUMBER: 394

GEORGIA LAWS: 1997 Ga. Laws 1052

SUMMARY: The Act adds a new chapter to the Georgia Code, the "Georgia Electronic Records and Signatures Act," the goal of which is to promote the use of electronic media by government and commerce. The purpose of the Act is to allow the use of electronic records and signatures when written records and signatures have previously been required. The Act also provides for a cause of action against anyone who engages in the negligent, reckless, or intentional unauthorized use of an electronic signature. The Act also provides for the development of pilot projects in state agencies for the application of electronic signatures technology. Finally, the Act creates an Electronic Commerce Study Committee to study issues involved with electronic records and signatures.

EFFECTIVE DATE: April 22, 1997¹

History

As technology advances, progressively more business is being conducted via electronic means, rather than in person or by mail through the use of paper documents.² Unfortunately, it was not clear whether, under existing law, electronic documents and signatures would qualify as writings and signatures under laws that require writings and signatures.

David Rabin of Morris, Manning & Martin, L.L.P., led the push to develop a Georgia law for dealing with these issues.³ Mr. Rabin

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1. The Act became effective upon approval by the Governor.
 2. See Interview with Prof. Mark E. Budnitz, Georgia State University College of Law, who consulted with the drafters of this legislation (Apr. 21, 1997) [hereinafter Budnitz Interview].
 3. See Telephone Interview with Sen. James Tysinger, Senate District No. 41

believed that it was inevitable that laws of this type would be needed and he wanted Georgia to be in the forefront of the movement.⁴ He and others formed the Georgia Digital Signature Task Force, consisting of interested parties from areas such as banking, state government, education, and technology.⁵ The task force drafted a digital signature bill, which was presented by Senator James Tysinger in the 1996 legislative session.⁶ The bill was patterned after the Utah digital signature statute⁷ and would have created a certifying authority and a bureaucracy for dealing with the issues of electronic records and electronic signatures,⁸ but the bill was tabled. The task force subsequently decided to move away from the Utah approach and develop a simpler plan.⁹ The new approach was modeled after Florida's statute.¹⁰ SB 103 was an abbreviated bill, providing for a simpler plan to deal with electronic records and electronic signatures.¹¹

SB 103

SB 103 was introduced by Senator James Tysinger during the 1997 Session of the General Assembly.¹² The Act allows, but does not require, personal and government agencies to accept an electronic record with an electronic signature.¹³ When an agency does accept such a record, any law requiring a written record is deemed satisfied, and any law requiring a signature is deemed satisfied.¹⁴ The House proposed an amendment that would create a private cause of action for anyone whose electronic signature was used in an unauthorized fashion.¹⁵ This amendment was adopted without objection by the Senate Corrections Committee and added to the final bill, which was enacted into law.¹⁶

(Apr. 22, 1997) [hereinafter Tysinger Interview].

4. Telephone Interview with David Rabin, Chairman of Georgia Digital Signature Task Force (Apr. 22, 1997) [hereinafter Rabin Interview]. Mr. Rabin's law firm has an active practice in technology-related law. *See id.*

5. Tysinger Interview, *supra* note 3.

6. *See id.*

7. UTAH CODE ANN. § 46-3-101 (Supp. 1997).

8. *See* Budnitz Interview, *supra* note 2.

9. *See id.*

10. *See* Rabin Interview, *supra* note 4; FLA. STAT. ANN. §§ 282.70-282.75 (West 1996).

11. *See* Budnitz Interview, *supra* note 2.

12. SB 103, as introduced, 1997 Ga. Gen. Assem.

13. O.C.G.A. § 10-12-4 (Supp. 1997).

14. *See id.*

15. SB 103 (HFA), 1997 Ga. Gen. Assem.

16. *See* Final Composite Status Sheet, Mar. 28, 1997; O.C.G.A. § 10-12-5 (1997); *see also* Rabin Interview, *supra* note 4.

From the introduction of the bill, the only significant change made was the addition of the private cause of action section.¹⁷ This section was added in response to concerns expressed by the Georgia Chapter of the American Civil Liberties Union.¹⁸ Teresa Nelson, Director of the Georgia Chapter, indicated that she believed that a specific cause of action should be included so that potential plaintiffs would not have to sue under Georgia's fraud statute.¹⁹ Given the rapidly changing nature of technology in this area, she believed that it was important that the bill provide a way for the average person to enforce his rights against someone using his electronic signature without authorization.²⁰

The Act adds a new chapter to title 10, which is entitled the "Georgia Electronic Records and Signatures Act."²¹ This new chapter was enacted "to provide for legislative construction and definitions; to authorize the use of electronic records and electronic signatures instead of written ones and provide for the legal effect of such usage; [and] to provide for recovery by a person whose electronic signature is used in an unauthorized fashion. . . ."²²

The Act includes four criteria for defining the term "electronic signature."²³ An electronic signature is "unique to the person using it, is capable of verification, is under the sole control of the person using it, and is linked to data in such a manner that if the data are changed the electronic signature is invalidated."²⁴

The Act also amends Code section 50-18-72 by adding subsection (a)(12), which provides that public disclosure is not required when "[p]ublic records containing information that would disclose or might lead to disclosure of any component in the process used to execute or adopt an electronic signature, if such disclosure would or might cause the electronic signature to cease being under the sole control of the person using it."²⁵

The Act also creates new Code section 50-29-12,²⁶ to "promote economic development and efficient delivery of government services by

17. Compare SB 103, as introduced, 1997 Ga. Gen. Assem., with O.C.G.A. § 10-12-5 (Supp. 1997).

18. See Telephone Interview with Teresa Nelson, Director of the Georgia Chapter of the American Civil Liberties Union (Apr. 22, 1997).

19. *Id.*

20. *Id.*

21. See O.C.G.A. § 10-12-1 (Supp. 1997).

22. 1997 Ga. Laws 1052 (quote contained in introduction of Act).

23. O.C.G.A. § 10-12-3(1) (Supp. 1997).

24. *Id.*; see also Budnitz Interview, *supra* note 2. A signature on a document sent by fax would not qualify as an electronic signature under the Act because, *e.g.*, it is not "linked to data in such a manner that if the data are changed the electronic signature is invalidated," as required under the Act. Budnitz Interview, *supra* note 2.

25. *Id.* § 50-18-72(a)(12).

26. *Id.* § 50-29-12.

encouraging state governmental agencies and private sector entities to conduct their business and transactions using electronic media.²⁷ This Code section also provides for state agencies to establish pilot projects for the application of technology and the creation of the Electronic Commerce Study Committee to “study the issues relating to electronic records and signatures.”²⁸ Senator Tysinger explained that the purpose of these pilot programs and the Electronic Commerce Study Committee is to promote new technology and bring state government departments up to date.²⁹

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27. *Id.* § 50-29-12(a); see also *id.* § 50-29-12(d).

28. *Id.* § 50-29-12(d) (explaining function and composition of committees).

29. Tysinger Interview, *supra* note 3. Senator Tysinger further explained that people are reluctant to embrace new technology and one of the purposes of the Act is to encourage people to modernize their ways of doing business. *Id.*