H. R. 1714

[Report No. 106–341, Parts I and II]

A BILL

To facilitate the use of electronic records and signatures in interstate or foreign commerce.

OCTOBER 15, 1999

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed
To facilitate the use of electronic records and signatures in interstate or foreign commerce.
A BILL

To facilitate the use of electronic records and signatures in interstate or foreign commerce.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Electronic Signatures in Global and National Commerce Act”.

TITLE I—VALIDITY OF ELECTRONIC RECORDS AND SIGNATURES FOR COMMERCE

SEC. 101. GENERAL RULE OF VALIDITY.

(a) General Rule.—With respect to any contract or agreement entered into in or affecting interstate or foreign commerce, notwithstanding any statute, regulation, or other rule of law, the legal effect, validity, or enforceability of such contract or agreement shall not be denied—

(1) on the ground that the contract or agreement is not in writing if the contract or agreement is an electronic record; or

(2) on the ground that the contract or agreement is not signed or is not affirmed by a signature if the
contract or agreement is signed or affirmed by an electronic signature.

(b) AUTONOMY OF PARTIES IN COMMERCE.—With respect to any contract or agreement entered into in or affecting interstate or foreign commerce—

(1) the parties to such contract or agreement may establish procedures or requirements regarding the use and acceptance of electronic records and electronic signatures acceptable to such parties; and

(2) the legal effect, validity, or enforceability of such contract or agreement shall not be denied because of the type or method of electronic record or electronic signature selected by the parties in establishing such procedures or requirements.

SEC. 102. AUTHORITY TO ALTER OR SUPERSEDE GENERAL RULE.

(a) Procedure To Alter or Supercede.—Except as provided in subsection (b), a State statute, regulation, or other rule of law enacted or adopted after the date of enactment of this Act may modify, limit, or supersede the provisions of section 101 if such statute, regulation, or rule of law—

(1)(A) constitutes an enactment or adoption of the Uniform Electronic Transactions Act as reported

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to the State legislatures by the National Conference of
Commissioners on Uniform State Laws; or

(B) specifies the alternative procedures or re-
quirements for the use or acceptance of electronic
records or electronic signatures to establish the legal
effect, validity, or enforceability of contracts or agree-
ments;

(2) is enacted or adopted within 4 years after the
date of enactment of this Act; and

(3) makes specific reference to the provisions of
section 101.

(b) LIMITATIONS ON ALTERATION OR SUPERSES-
SION.—A State statute, regulation, or other rule of law (in-
cluding an insurance statute, regulation, or other rule of
law), regardless of its date of enactment or adoption, that
modifies, limits, or supersedes section 101 shall not be effec-
tive to the extent that such statute, regulation, or rule—

(1) discriminates in favor of or against a spe-
cific technology, method, or technique of creating,
storage, generating, receiving, communicating, or au-
thenticating electronic records or electronic signa-
tures;

(2) discriminates in favor of or against a spe-
cific type or size of entity engaged in the business of
facilitating the use of electronic records or electronic signatures;

(3) is based on procedures or requirements that are not specific or that are not publicly available; or

(4) is otherwise inconsistent with the provisions of section 101.

(c) ACTIONS TO ENJOIN.—Whenever it shall appear to the Secretary of Commerce that a State has enacted or adopted a statute, regulation, or other rule of law that is prohibited by subsection (b), the Secretary may bring an action to enjoin the enforcement of such statute, regulation, or rule, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond.

SEC. 103. SPECIFIC EXCLUSIONS.

The provisions of section 101 shall not apply to—

(1) a statute, regulation, or other rule of law governing the creation and execution of wills, codicils, or testamentary trusts; or

(2) a statute, regulation, or other rule of law governing adoption, divorce, or other matters of family law.

SEC. 104. DEFINITIONS.

For purposes of this title:
(1) Electronic record.—The term “electronic record” means a writing, document, or other record created, stored, generated, received, or communicated by electronic means.

(2) Electronic signature.—The term “electronic signature” means information or data in electronic form, attached to or logically associated with an electronic record by a person or an electronic agent, that is intended by a party to signify agreement to a contract or agreement.

(3) Electronic.—The term “electronic” means of or relating to technology having electrical, digital, magnetic, optical, electromagnetic, or similar capabilities regardless of medium.

(4) Electronic agent.—The term “electronic agent” means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records in whole or in part without review by an individual at the time of the action or response.
TITLE II—DEVELOPMENT AND ADOPTION OF ELECTRONIC SIGNATURE PRODUCTS AND SERVICES

SEC. 201. TREATMENT OF ELECTRONIC SIGNATURES IN INTERSTATE AND FOREIGN COMMERCE.

(a) Inquiry Regarding Impediments to Commerce.—

(1) Inquiries Required.—Within 90 days after the date of the enactment of this Act, and annually thereafter, the Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall complete an inquiry to—

(A) identify any domestic and foreign impediments to commerce in electronic signature products and services and the manners in which and extent to which such impediments inhibit the development of interstate and foreign commerce;

(B) identify constraints imposed by foreign nations or international organizations that constitute barriers to providers of electronic signature products or services; and
(C) identify the degree to which other nations and international organizations are complying with the principles in subsection (b)(2).

(2) SUBMISSION.—The Secretary shall submit a report to the Congress regarding the results of each such inquiry within 90 days after the conclusion of such inquiry.

(b) PROMOTION OF ELECTRONIC SIGNATURES.—

(1) REQUIRED ACTIONS.—The Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall promote the acceptance and use, on an international basis, of electronic signatures in accordance with the principles specified in paragraph (2) and in a manner consistent with section 101 of this Act. The Secretary of Commerce shall take all actions necessary in a manner consistent with such principles to eliminate or reduce, to the maximum extent possible, the impediments to commerce in electronic signatures, including those identified in the inquiries under subsection (a) for the purpose of facilitating the development of interstate and foreign commerce.

(2) PRINCIPLES.—The principles specified in this paragraph are the following:
(A) Free markets and self-regulation, rather than government standard-setting or rules, should govern the development and use of electronic records and electronic signatures.

(B) Neutrality and nondiscrimination should be observed among providers of and technologies for electronic records and electronic signatures.

(C) Parties to a transaction should be permitted to establish requirements regarding the use of electronic records and electronic signatures acceptable to such parties.

(D) Parties to a transaction—

   (i) should be permitted to determine the appropriate authentication technologies and implementation models for their transactions, with assurance that those technologies and implementation models will be recognized and enforced; and

   (ii) should have the opportunity to prove in court or other proceedings that their authentication approaches and their transactions are valid.

(E) Electronic records and electronic signatures in a form acceptable to the parties should
not be denied legal effect, validity, or enforceability on the ground that they are not in writing.

(F) De jure or de facto imposition of standards on private industry through foreign adoption of regulations or policies with respect to electronic records and electronic signatures should be avoided.

(G) Paper-based obstacles to electronic transactions should be removed.

(c) FOLLOWUP STUDY.—Within 5 years after the date of enactment of this Act, the Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall conduct an inquiry regarding any State statutes, regulations, or other rules of law enacted or adopted after such date of enactment pursuant to section 102(a), and the extent to which such statutes, regulations, and rules comply with section 102(b). The Secretary shall submit a report to the Congress regarding the results of such inquiry by the conclusion of such 5-year period and such report shall identify any actions taken by the Secretary pursuant to section 102(c) and subsection (b) of this section.

(d) CONSULTATION.—In conducting the activities required by this section, the Secretary shall consult with users
and providers of electronic signature products and services
and other interested persons.

(e) PRIVACY.—Nothing in this section shall be con-
strued to require the Secretary or the Assistant Secretary
to take any action that would adversely affect the privacy
of consumers.

(f) DEFINITIONS.—As used in this section, the terms
“electronic record” and “electronic signature” have the
meanings provided in section 104 of the Electronic Signa-
tures in Global and National Commerce Act.

TITLE III—USE OF ELECTRONIC
RECORDS AND SIGNATURES
UNDER FEDERAL SECURITIES
LAW

SEC. 301. GENERAL VALIDITY OF ELECTRONIC RECORDS
AND SIGNATURES.

Section 3 of the Securities Exchange Act of 1934 (15
U.S.C. 78c) is amended by adding at the end the following
new subsection:

“(h) REFERENCES TO WRITTEN RECORDS AND SIGNA-
TURES.—

“(1) GENERAL VALIDITY OF ELECTRONIC
RECORDS AND SIGNATURES.—Except as otherwise
provided in this subsection—
“(A) if a contract, agreement, or record (as defined in subsection (a)(37)) is required by the securities laws or any rule or regulation thereunder (including a rule or regulation of a self-regulatory organization), and is required by other Federal or State statute, regulation, or other rule of law to be in writing, the legal effect, validity, or enforceability of such contract, agreement, or record shall not be denied on the ground that the contract, agreement, or record is not in writing if the contract, agreement, or record is an electronic record;

“(B) if a contract, agreement, or record is required by the securities laws or any rule or regulation thereunder (including a rule or regulation of a self-regulatory organization), and is required by other Federal or State statute, regulation, or other rule of law to be signed, the legal effect, validity, or enforceability of such contract, agreement, or record shall not be denied on the ground that such contract, agreement, or record is not signed or is not affirmed by a signature if the contract, agreement, or record is signed or affirmed by an electronic signature; and
“(C) if a broker, dealer, transfer agent, investment adviser, or investment company enters into a contract or agreement with, or accepts a record from, a customer or other counterparty, such broker, dealer, transfer agent, investment adviser, or investment company may accept and rely upon an electronic signature on such contract, agreement, or record, and such electronic signature shall not be denied legal effect, validity, or enforceability because it is an electronic signature.

“(2) IMPLEMENTATION.—

“(A) REGULATIONS.—The Commission may prescribe such regulations as may be necessary to carry out this subsection consistent with the public interest and the protection of investors.

“(B) NONDISCRIMINATION.—The regulations prescribed by the Commission under subparagraph (A) shall not—

“(i) discriminate in favor of or against a specific technology, method, or technique of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures; or
“(ii) discriminate in favor of or against a specific type or size of entity engaged in the business of facilitating the use of electronic records or electronic signatures.

“(3) EXCEPTIONS.—Notwithstanding any other provision of this subsection—

“(A) the Commission, an appropriate regulatory agency, or a self-regulatory organization may require that records be filed in a specified electronic format or formats if the records are required to be submitted to the Commission, an appropriate regulatory agency, or a self-regulatory organization, respectively; and

“(B) the Commission may require that contracts, agreements, or records relating to purchases and sales, or establishing accounts for conducting purchases and sales, of penny stocks be manually signed, and may require such manual signatures with respect to transactions in similar securities if the Commission determines that such securities are susceptible to fraud and that such fraud would be deterred or prevented by requiring manual signatures.

“(4) RELATION TO OTHER LAW.—The provisions of this subsection apply in lieu of the provisions of
title I of the Electronic Signatures in Global and National Commerce Act to a contract, agreement, or record (as defined in subsection (a)(37)) that is required by the securities laws.

“(5) DEFINITIONS.—As used in this subsection:

“(A) ELECTRONIC RECORD.—The term ‘electronic record’ means a writing, document, or other record created, stored, generated, received, or communicated by electronic means.

“(B) ELECTRONIC SIGNATURE.—The term ‘electronic signature’ means information or data in electronic form, attached to or logically associated with an electronic record, that is intended by a party to signify agreement to a contract or agreement.

“(C) ELECTRONIC.—The term ‘electronic’ means of or relating to technology having electrical, digital, magnetic, optical, electromagnetic, or similar capabilities regardless of medium.”.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Electronic Signatures in Global and National Commerce Act”.
TITLE I—VALIDITY OF ELECTRONIC RECORDS AND SIGNATURES FOR COMMERCE

SEC. 101. FINDINGS.

The Congress makes the following findings:

(1) The growth of electronic commerce and electronic government transactions represents a powerful force for economic growth, consumer choice, improved civic participation, and wealth creation.

(2) The promotion of growth in private sector electronic commerce through Federal legislation is in the national interest because that market is globally important to the United States.

(3) A consistent legal foundation, across multiple jurisdictions, for electronic commerce will promote the growth of such transactions, and that such a foundation should be based upon a simple, technology neutral, nonregulatory, and market-based approach.
(4) The Nation and the world stand at the beginning of a large-scale transition to an information society which will require innovative legal and policy approaches, and therefore, States can serve the national interest by continuing their proven role as laboratories of innovation for quickly evolving areas of public policy, provided that States also adopt a consistent, reasonable national baseline to eliminate obsolete barriers to electronic commerce such as undue paper and pen requirements, and further, that any such innovation should not unduly burden interjurisdictional commerce.

(5) To the extent State laws or regulations do not provide a consistent, reasonable national baseline or in fact create an undue burden to interstate commerce in the important burgeoning area of electronic commerce, the national interest is best served by Federal preemption to the extent necessary to provide such consistent, reasonable national baseline and eliminate said burden, but that absent
such lack of consistent, reasonable na-
tional baseline or such undue burdens,
the best legal system for electronic com-
merce will result from continuing experi-
mentation by individual jurisdictions.

(6) With due regard to the funda-
mental need for a consistent national
baseline, each jurisdiction that enacts
such laws should have the right to deter-
mine the need for any exceptions to pro-
tect consumers and maintain consistency
with existing related bodies of law within
a particular jurisdiction.

(7) Industry has developed several
electronic signature technologies for use
in electronic transactions, and the public
policies of the United States should serve
to promote a dynamic marketplace with-
in which these technologies can compete.
Consistent with this Act, States should
permit the use and development of any
authentication technologies that are ap-
propriate as practicable as between pri-
vate parties and in use with State agen-
cies.
SEC. 102. PURPOSES.

The purposes of this Act are—

(1) to permit and encourage the continued expansion of electronic commerce through the operation of free market forces rather than proscriptive governmental mandates and regulations;

(2) to promote public confidence in the validity, integrity, and reliability of electronic commerce and online government under Federal law;

(3) to facilitate and promote electronic commerce by clarifying the legal status of electronic records and electronic signatures in the context of writing and signing requirements imposed by law;

(4) to facilitate the ability of private parties engaged in interstate transactions to agree among themselves on the terms and conditions on which they use and accept electronic signatures and electronic records; and

(5) to promote the development of a consistent national legal infrastructure necessary to support electronic com-
merce at the Federal and State levels within existing areas of jurisdiction.

SEC. 103. DEFINITIONS.

In this Act:

1. ELECTRONIC.—The term “electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

2. ELECTRONIC AGENT.—The term “electronic agent” means a computer program or an electronic or other automated means used to initiate an action or respond to electronic records or performances in whole or in part without review by an individual at the time of the action or response.

3. ELECTRONIC RECORD.—The term “electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means.

4. ELECTRONIC SIGNATURE.—The term “electronic signature” means an electronic sound, symbol, or process attached to or logically associated with an elec-
tronic record and executed or adopted by
a person with the intent to sign the elec-
tronic record.

(5) RECORD.—The term “record”
means information that is inscribed on a
tangible medium or that is stored in an
electronic or other medium and is re-
trievable in perceivable form.

(6) TRANSACTION.—The term “trans-
action” means an action or set of actions
relating to the conduct of commerce be-
tween 2 or more persons, neither of
which is the United States Government, a
State, or an agency, department, board,
commission, authority, institution, or in-
strumentality of the United States Gov-
ernment or of a State.

(7) UNIFORM ELECTRONIC TRANSACTIONS
ACT.—The term “Uniform Electronic
Transactions Act” means the Uniform
Electronic Transactions Act as enacted
by a State based on the form provided by
the National Conference of Commis-
sioners on Uniform State Law in the form
or any substantially similar variation thereof.

SEC. 104. PRINCIPLES GOVERNING THE USE OF ELECTRONIC SIGNATURES IN INTERNATIONAL TRANSACTIONS.

To the extent practicable, the Federal Government shall observe the following principles in an international context to enable commercial electronic transaction:


(2) Permit parties to a transaction to determine the appropriate authentication technologies and implementation models for their transactions, with assurance that those technologies and implementation models will be recognized and enforced.

(3) Permit parties to a transaction to have the opportunity to prove in court or other proceedings that their authentica-
tion approaches and their transactions are valid.

(4) Take a nondiscriminatory approach to electronic signatures and authentication methods from other jurisdictions.

SEC. 105. INTERSTATE CONTRACT CERTAINTY.

(a) IN GENERAL.—In any commercial transaction affecting interstate commerce, a contract may not be denied legal effect or enforceability solely because an electronic signature or electronic record was used in its formation.

(b) METHODS.—In commercial transactions affecting interstate commerce, the parties to a contract may agree on the terms and conditions on which they will use and accept electronic signatures and electronic records, except to the extent a law or regulation governing the record provides otherwise.

(c) RECORD RETENTION.—When a law requires that a contract be in writing, that requirement is satisfied by an electronic record of the information in the record provided to the parties which—
(1) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(2) remains capable of retention in a form that can be accessed for later reference and used to prove the terms of the agreement.

(d) FORMULATION OF CONTRACT.—A contract relating to a commercial transaction affecting interstate commerce may not be denied legal effect solely because its formation involved—

(1) the interaction of electronic agents of the parties; or

(2) the interaction of an electronic agent of a party and an individual who acts on that individual’s own behalf or for another person.

(e) APPLICATION IN UETA STATES.—This section does not apply in any State in which the Uniform Electronic Transactions Act is in effect.
SEC. 106. STUDY OF LEGAL AND REGULATORY BARRIERS TO ELECTRONIC COMMERCE.

(a) BARRIERS.—Each Federal agency shall, not later than 6 months after the date of enactment of this Act, provide a report to the Director of the Office of Management and Budget and the Secretary of Commerce identifying any provision of law administered by such agency, or any regulations issued by such agency and in effect on the date of enactment of this Act, that may impose a barrier to electronic transactions, or otherwise to the conduct of commerce online or by electronic means. Such barriers include, but are not limited to, barriers imposed by a law or regulation directly or indirectly requiring that signatures, or records of transactions, be accomplished or retained in other than electronic form. In its report, each agency shall identify the barriers among those identified whose removal would require legislative action, and shall indicate agency plans to undertake regulatory action to remove such barriers among those identified as are caused by regulations issued by the agency.
(b) REPORT TO CONGRESS.—The Secretary of Commerce, in consultation with the Director of the Office of Management and Budget, shall, within 18 months after the date of enactment of this Act, and after the consultation required by subsection (c) of this section, report to the Congress concerning—

(1) legislation needed to remove barriers to electronic transactions or otherwise to the conduct of commerce online or by electronic means; and

(2) actions being taken by the executive branch and individual Federal agencies to remove such barriers as are caused by agency regulations or policies.

(c) CONSULTATION.—In preparing the report required by this section, the Secretary of Commerce shall consult with the General Services Administration, the National Archives and Records Administration, and the Attorney General concerning matters involving the authenticity of records, their storage and retention, and their usability for law enforcement purposes.
(d) **INCLUDE FINDINGS IF NO RECOMMENDATIONS.**—If the report required by this section omits recommendations for actions needed to fully remove identified barriers to electronic transactions or to online or electronic commerce, it shall include a finding or findings, including substantial reasons therefor, that such removal is impracticable or would be inconsistent with the implementation or enforcement of applicable laws.

**SEC. 107. STUDY OF EFFECTS OF ELECTRONIC COMMERCE.**

(a) **IN GENERAL.**—The Federal Trade Commission and the Secretary of Commerce shall conduct a study of electronic commerce issues.

(b) **RESPONSIBILITY OF EACH AGENCY.**—

(1) FTC.—The Federal Trade Commission, in consultation with the Secretary of Commerce, shall conduct a portion of the study to determine the effectiveness of Federal and State consumer protection laws with respect to electronic transactions involving consumers.

(2) COMMERCE DEPARTMENT.—The Secretary of Commerce, in consultation with
the Federal Trade Commission, shall con-
duct a portion of the study to determine
the extent to which a uniform commer-
cial legal framework would facilitate and
enforce interstate electronic trans-
actions.

(c) REPORT.—Not later than 2 years after
the date of the enactment of this Act, the Fed-
eral Trade Commission and the Secretary of
Commerce shall transmit a report to Congress
containing —

(1) findings from the study required
under subsection (a); and

(2) such recommendations for legisla-
tion or administrative actions as the Fed-
eral Trade Commission and the Secretary
of Commerce, respectively, deem appro-
priate.

(d) BIENNIAL UPDATES.—The Federal Trade
Commission and the Secretary of Commerce
shall update the report every 2 years there-
after and transmit the updated report to the
Congress.
TITLE II—DEVELOPMENT AND
ADOPTION OF ELECTRONIC
SIGNATURE PRODUCTS AND
SERVICES

SEC. 201. TREATMENT OF ELECTRONIC SIGNATURES IN
INTERSTATE AND FOREIGN COMMERCE.

(a) INQUIRY REGARDING IMPEDIMENTS TO
COMMERCE.—

(1) INQUIRIES REQUIRED.—Within 90
days after the date of the enactment of
this Act, and annually thereafter, the Sec-
retary of Commerce, acting through the
Assistant Secretary for Communications
and Information, shall complete an in-
quiry to—

(A) identify any domestic and for-
earn impediments to commerce in
electronic signature products and
services and the manners in which
and extent to which such impedi-
ments inhibit the development of
interstate and foreign commerce;

(B) identify constraints imposed
by foreign nations or international
organizations that constitute barriers
to providers of electronic signature products or services; and

(C) identify the degree to which other nations and international organizations are complying with the principles in subsection (b)(2).

(2) SUBMISSION.—The Secretary shall submit a report to the Congress regarding the results of each such inquiry within 90 days after the conclusion of such inquiry.

(b) PROMOTION OF ELECTRONIC SIGNATURES.—

(1) REQUIRED ACTIONS.—The Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall promote the acceptance and use, on an international basis, of electronic signatures in accordance with the principles specified in paragraph (2) and in a manner consistent with section 105 of this Act. The Secretary of Commerce shall take all actions necessary in a manner consistent with such principles to eliminate or reduce, to
the maximum extent possible, the impediments to commerce in electronic signatures, including those identified in the inquiries under subsection (a) for the purpose of facilitating the development of interstate and foreign commerce.

(2) PRINCIPLES.—The principles specified in this paragraph are the following:

(A) Free markets and self-regulation, rather than government standard-setting or rules, should govern the development and use of electronic records and electronic signatures.

(B) Neutrality and nondiscrimination should be observed among providers of and technologies for electronic records and electronic signatures.

(C) Parties to a transaction should be permitted to establish requirements regarding the use of electronic records and electronic signatures acceptable to such parties.

(D) Parties to a transaction—
(i) should be permitted to de-
termine the appropriate authen-
tication technologies and imple-
mentation models for their trans-
actions, with assurance that those

technologies and implementation
models will be recognized and en-
forced; and

(ii) should have the oppor-
tunity to prove in court or other
proceedings that their authen-
tication approaches and their
transactions are valid.

(E) Electronic records and elec-
tronic signatures in a form accept-
able to the parties should not be de-
nied legal effect, validity, or enforce-
ability on the ground that they are
not in writing.

(F) De jure or de facto imposition
of standards on private industry
through foreign adoption of regula-
tions or policies with respect to elec-
tronic records and electronic signa-
tures should be avoided.
(G) Paper-based obstacles to electronic transactions should be removed.

(c) FOLLOWUP STUDY.—Within 5 years after the date of enactment of this Act, the Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall conduct an inquiry regarding any State statutes, regulations, or other rules of law enacted or adopted after such date of enactment. The Secretary shall submit a report to the Congress regarding the results of such inquiry by the conclusion of such 5-year period and such report shall identify any actions taken by the Secretary pursuant to subsection (b) of this section.

(d) CONSULTATION.—In conducting the activities required by this section, the Secretary shall consult with users and providers of electronic signature products and services and other interested persons.

(e) PRIVACY.—Nothing in this section shall be construed to require the Secretary or the Assistant Secretary to take any action that
would adversely affect the privacy of consumers.

(f) DEFINITIONS.—As used in this section, the terms “electronic record” and “electronic signature” have the meanings provided in section 103 of the Electronic Signatures in Global and National Commerce Act.

TITLE III—USE OF ELECTRONIC RECORDS AND SIGNATURES UNDER FEDERAL SECURITIES LAW

SEC. 301. GENERAL VALIDITY OF ELECTRONIC RECORDS AND SIGNATURES.

Section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) is amended by adding at the end the following new subsection:

“(h) REFERENCES TO WRITTEN RECORDS AND SIGNATURES.—

“(1) GENERAL VALIDITY OF ELECTRONIC RECORDS AND SIGNATURES.—Except as otherwise provided in this subsection—

“(A) if a contract, agreement, or record (as defined in subsection (a)(37)) is required by the securities laws or any rule or regulation there-
under (including a rule or regulation of a self-regulatory organization), and is required by other Federal or State statute, regulation, or other rule of law to be in writing, the legal effect, validity, or enforceability of such contract, agreement, or record shall not be denied on the ground that the contract, agreement, or record is an electronic record;

“(B) if a contract, agreement, or record is required by the securities laws or any rule or regulation thereunder (including a rule or regulation of a self-regulatory organization), and is required by other Federal or State statute, regulation, or other rule of law to be signed, the legal effect, validity, or enforceability of such contract, agreement, or record shall not be denied on the ground that such contract, agreement, or record is not signed or is not affirmed by a signature if the contract, agreement, or
record is signed or affirmed by an electronic signature; and

“(C) if a broker, dealer, transfer agent, investment adviser, or investment company enters into a contract or agreement with, or accepts a record from, a customer or other counterparty, such broker, dealer, transfer agent, investment adviser, or investment company may accept and rely upon an electronic signature on such contract, agreement, or record, and such electronic signature shall not be denied legal effect, validity, or enforceability because it is an electronic signature.

“(2) IMPLEMENTATION.—

“(A) REGULATIONS.—The Commission may prescribe such regulations as may be necessary to carry out this subsection consistent with the public interest and the protection of investors.

“(B) NONDISCRIMINATION.—The regulations prescribed by the Com-
mission under subparagraph (A) shall not—

“(i) discriminate in favor of or against a specific technology, method, or technique of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures; or

“(ii) discriminate in favor of or against a specific type or size of entity engaged in the business of facilitating the use of electronic records or electronic signatures.

“(3) EXCEPTIONS.—Notwithstanding any other provision of this subsection—

“(A) the Commission, an appropriate regulatory agency, or a self-regulatory organization may require that records be filed in a specified electronic format or formats if the records are required to be submitted to the Commission, an appropriate
regulatory agency, or a self-regulatory organization, respectively; and

“(B) the Commission may require that contracts, agreements, or records relating to purchases and sales, or establishing accounts for conducting purchases and sales, of penny stocks be manually signed, and may require such manual signatures with respect to transactions in similar securities if the Commission determines that such securities are susceptible to fraud and that such fraud would be deterred or prevented by requiring manual signatures.

“(4) RELATION TO OTHER LAW.—The provisions of this subsection apply in lieu of the provisions of title I of the Electronic Signatures in Global and National Commerce Act to a contract, agreement, or record (as defined in subsection (a)(37)) that is required by the securities laws.

“(5) DEFINITIONS.—As used in this subsection:
“(A) **Electronic record.**—The term ‘electronic record’ means a writing, document, or other record created, stored, generated, received, or communicated by electronic means.

“(B) **Electronic signature.**—The term ‘electronic signature’ means information or data in electronic form, attached to or logically associated with an electronic record, that is intended by a party to signify agreement to a contract or agreement.

“(C) **Electronic.**—The term ‘electronic’ means of or relating to technology having electrical, digital, magnetic, optical, electromagnetic, or similar capabilities regardless of medium.”.