



**STATE OF NEW YORK  
INSURANCE DEPARTMENT**  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004

**Supplement No. 1 to  
Circular Letter No. 33 (1999)  
September 3, 2002**

**TO: All licensed life insurers, fraternal benefit societies, charitable and segregated gift annuity societies, employee welfare funds, retirement systems, viatical settlement licensees, governmental variable supplements funds, property/casualty insurers, co-operative property/casualty insurers, financial guaranty insurers, mortgage guaranty insurers, title insurers, reciprocal insurers, accident and health insurers, Article 43 corporations, municipal cooperative health benefit plans, and rate service organizations; State Insurance Fund; New York Medical Malpractice Insurance Plan; New York Property Insurance Underwriting Association; Motor Vehicle Accident Indemnification Corporation; Excess Line Association of New York; registered risk retention groups, service contract providers, and Public Health Law Article 44 health maintenance organizations and integrated delivery systems; and accredited reinsurers**

**RE: The Use of Electronic Signatures and Records in Connection with the Marketing and Sale of Insurance By Means of Electronic Commerce**

**STATUTORY REFERENCE: Section 102(3) of the State Technology Law, Chapter 314 of the Laws of 2002**

This Supplement to Circular Letter No. 33 (1999), issued on November 4, 1999, advises you that a new law has been enacted, Chapter 314 of the Laws of 2002, amending Article I of the State Technology Law, known as the Electronic Signatures and Records Act (ESRA). The new law became effective immediately upon signing by the Governor on August 6, 2002. The changes made by this new law will impact transactions in New York which include elements of electronic commerce, including those involving the marketing and sale of insurance by electronic means.

Subsequent to the adoption of ESRA in 1999, the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. §§ 7001 – 7006) (E-Sign Act) was adopted to permit and encourage the expansion of electronic commerce in interstate and foreign commercial transactions. The E-Sign Act is similar to ESRA in that both laws authorize the use and acceptance of electronic signatures and electronic records in commercial transactions. However, the E-Sign Act and ESRA contained differing definitions of "electronic signature."

The most significant change made to ESRA by the new law is the amended definition of "electronic signature." The former New York statutory definition that was quoted in Circular Letter No. 33 (1999) has been deleted from the law and replaced with the language used to define the term in the E-Sign Act. Section 102(3) of the N.Y. State Technology Law now defines an electronic signature as follows:

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.

The intent of the new law is to ensure that these two laws, state and federal, continue to complement each other in achieving their stated purposes, working in tandem to promote the use of electronic technology. This has been achieved primarily by conforming the definition of "electronic signature" previously contained in ESRA to the E-Sign

Act's definition.

There were also a number of other changes to ESRA. ESRA references to "State agency", a defined term contained in § 102(5), have been changed to "Governmental entity" and have been expanded to include a political subdivision of the state. References to the term "state agency" contained elsewhere in the law have been changed accordingly.

In addition, Subdivision 3 of Section 103 of ESRA has been repealed. It had required the Office for Technology (the Electronic Facilitator) to submit a report to the Governor and the Legislature describing new technology for electronic signatures prior to promulgating any rule or regulation that would deploy a new technology for electronic signatures. The Office for Technology has not adopted rules or regulations to deploy such technologies. Rather, it has chosen to adopt regulations containing performance and outcome-based standards. Therefore, the provision in ESRA requiring the Office for Technology to report on rules or regulations that deploy new technologies was unnecessary.

Except for the reference to the old definition of "electronic signature", the statements and interpretations of the Department contained in Circular Letter No. 33 (1999) still reflect the opinion of the Department. The Department continues to support the integration of electronic commerce, including the use of electronic signatures, into the operations of the insurance industry in New York State.

Any questions regarding the interpretation of the Insurance Law in connection with the implementation of electronic commerce are to be directed to the undersigned, at the address set forth above.

---

Audrey M. Samers  
Deputy Superintendent and General Counsel