

CHAPTER 324

GOVERNMENT - STATE

HOUSE BILL 99-1337

BY REPRESENTATIVES Hagedorn, May, Lee, Coleman, Gagliardi, McKay, Scott, Stengel, Tapia, and Young;
also SENATORS Teck, Phillips, and Weddig.

AN ACT

CONCERNING ELECTRONIC TRANSACTIONS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 71.1
Government Electronic Transactions

24-71.1-101. Short title. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "GOVERNMENT ELECTRONIC TRANSACTIONS ACT".

24-71.1-102. Legislative declaration - purposes - rules of construction.
(1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT THE USE OF ELECTRONIC RECORDS BY PUBLIC ENTITIES IN COLORADO IS A MATTER OF STATEWIDE CONCERN.

(2) THIS ARTICLE SHALL BE CONSTRUED TO PROMOTE THE FOLLOWING PURPOSES AND POLICIES:

(a) TO FACILITATE AND PROMOTE ELECTRONIC TRANSACTIONS AND ON-LINE GOVERNMENT BY CLARIFYING THE LEGAL STATUS OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES IN THE CONTEXT OF WRITING AND SIGNING REQUIREMENTS IMPOSED BY LAW UPON PUBLIC ENTITIES;

(b) TO PERMIT AND ENCOURAGE THE CONTINUED EXPANSION OF ELECTRONIC TRANSACTIONS AND ON-LINE GOVERNMENT BY PUBLIC ENTITIES;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(c) TO PROMOTE PUBLIC CONFIDENCE IN THE VALIDITY, INTEGRITY, AND RELIABILITY OF ELECTRONIC TRANSACTIONS AND ON-LINE GOVERNMENT BY PUBLIC ENTITIES; AND

(d) TO PROMOTE THE DEVELOPMENT OF THE LEGAL AND BUSINESS INFRASTRUCTURE NECESSARY TO SUPPORT AND ENCOURAGE ELECTRONIC TRANSACTIONS AND ON-LINE GOVERNMENT BY PUBLIC ENTITIES.

24-71.1-103. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL.

(2) "ELECTRONIC" MEANS ELECTRICAL, DIGITAL, MAGNETIC, OPTICAL, ELECTROMAGNETIC, OR ANY OTHER SIMILAR TECHNOLOGY.

(3) "ELECTRONIC RECORD" MEANS A RECORD GENERATED, COMMUNICATED, RECEIVED, OR STORED BY ELECTRONIC MEANS.

(4) "ELECTRONIC SIGNATURE" MEANS ANY IDENTIFIER OR AUTHENTICATION TECHNIQUE ATTACHED TO OR LOGICALLY ASSOCIATED WITH AN ELECTRONIC RECORD THAT IS INTENDED BY THE PERSON USING IT TO HAVE THE SAME FORCE AND EFFECT AS A MANUAL SIGNATURE. "ELECTRONIC SIGNATURE" INCLUDES DIGITAL SIGNATURES.

(5) "GOVERNING BODY" MEANS A BOARD, COUNCIL, OR OTHER ELECTED OR APPOINTED BODY IN WHICH THE LEGISLATIVE POWERS OF A PUBLIC ENTITY ARE VESTED.

(6) "GOVERNMENTAL TRANSACTION" INCLUDES ANY ACTIVITY BY A PUBLIC ENTITY PURSUANT TO WHICH A RECORD IS CREATED, AMENDED, OR RETAINED, INCLUDING A COURT ORDER.

(7) "LOCAL PUBLIC ENTITY" MEANS A PUBLIC ENTITY OTHER THAN A STATE AGENCY.

(8) "PUBLIC ENTITY" MEANS STATE AGENCIES AND EVERY COUNTY, CITY AND COUNTY, CITY, TOWN, SCHOOL DISTRICT, SPECIAL DISTRICT, SPECIAL IMPROVEMENT DISTRICT, AND EVERY OTHER KIND OF DISTRICT, AGENCY, INSTRUMENTALITY, POLITICAL SUBDIVISION, OR AUTHORITY OF THE STATE ORGANIZED PURSUANT TO STATE LAW, WHETHER OR NOT IT IS SUBJECT TO HOME RULE.

(9) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

(10) "SIGNATURE" INCLUDES ANY SYMBOL OR PROCESS EXECUTED OR ADOPTED BY A PARTY WITH A PRESENT INTENTION TO:

(a) IDENTIFY THE PARTY;

- (b) AUTHENTICATE A RECORD;
- (c) BE BOUND BY, ADOPT, OR ACCEPT A TERM OR RECORD; OR
- (d) ASSOCIATE A PERSON WITH A RECORD BY ANY OTHER MEANS.

(11) "STATE AGENCY" MEANS THIS STATE OR ANY DEPARTMENT, INSTITUTION, OR OTHER AGENCY OF THIS STATE, INCLUDING INSTITUTIONS OF HIGHER EDUCATION.

24-71.1-104. Applicability. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, AND EXCEPT WHERE ELECTRONIC TRANSACTIONS ARE EXPRESSLY PROHIBITED BY STATE OR FEDERAL LAW, THIS ARTICLE APPLIES TO ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES GENERATED, STORED, PROCESSED, COMMUNICATED, OR USED FOR ANY GOVERNMENTAL TRANSACTION.

(2) THIS ARTICLE SHALL NOT APPLY TO ANY RECORD THAT SERVES AS A UNIQUE AND TRANSFERABLE PHYSICAL TOKEN OF RIGHTS AND OBLIGATIONS INCLUDING, WITHOUT LIMITATION, NEGOTIABLE INSTRUMENTS AND OTHER INSTRUMENTS OF TITLE WHEREIN POSSESSION OF THE INSTRUMENT IS DEEMED TO CONFER TITLE.

(3) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO REQUIRE A PUBLIC ENTITY TO USE OR PERMIT THE USE OF ELECTRONIC RECORDS OR ELECTRONIC SIGNATURES.

(4) THE PROVISIONS OF THIS ARTICLE SHALL BE SUPPLEMENTAL TO ANY STATE LAW AUTHORIZING THE USE OF ELECTRONIC RECORDS BY PUBLIC ENTITIES.

(5) NOTWITHSTANDING ANY PROVISION OF STATE LAW TO THE CONTRARY, STATE AGENCIES UTILIZING ELECTRONIC RECORDS OR ELECTRONIC SIGNATURES SHALL COMPLY WITH THE PROVISIONS OF THIS ARTICLE AND THE RULES OF THE DIRECTOR OR THE COLORADO SUPREME COURT.

(6) A LOCAL PUBLIC ENTITY MAY UTILIZE THE PROVISIONS OF THIS ARTICLE UPON APPROVAL OF THE LOCAL PUBLIC ENTITY'S GOVERNING BODY. NOTHING IN THIS ARTICLE SHALL ALTER ANY STATEWIDE AUTHORITY TO WHICH LOCAL PUBLIC ENTITIES ARE OTHERWISE SUBJECT BY LAW.

(7) NOTHING IN THIS ARTICLE SHALL BE DEEMED TO ALTER ANY LEGAL REQUIREMENT THAT A CONTRACT OR AGREEMENT BE IN WRITING.

24-71.1-105. Electronic records. A RECORD COVERED BY THIS ARTICLE MAY NOT BE DENIED LEGAL EFFECT, VALIDITY, OR ENFORCEABILITY SOLELY BECAUSE IT IS IN THE FORM OF AN ELECTRONIC RECORD. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, IF A RULE OF LAW REQUIRES A RECORD TO BE IN WRITING OR PROVIDES CONSEQUENCES IF IT IS NOT, AN ELECTRONIC RECORD SATISFIES THAT RULE OF LAW.

24-71.1-106. Electronic signatures. (1) A SIGNATURE EXECUTED IN A GOVERNMENTAL TRANSACTION MAY NOT BE DENIED LEGAL EFFECT, VALIDITY, OR ENFORCEABILITY SOLELY BECAUSE IT IS IN THE FORM OF AN ELECTRONIC SIGNATURE. IF A RULE OF LAW REQUIRES A SIGNATURE OR PROVIDES CONSEQUENCES IN THE ABSENCE OF A SIGNATURE, AN ELECTRONIC SIGNATURE SATISFIES THAT RULE OF LAW.

(2) IN ANY GOVERNMENTAL TRANSACTION IN WHICH A SIGNATURE IS REQUIRED OR USED, ANY PARTY TO THE TRANSACTION MAY AFFIX A SIGNATURE BY USE OF AN ELECTRONIC SIGNATURE THAT COMPLIES WITH RULES PRESCRIBED BY THE DIRECTOR, FOR GOVERNMENTAL TRANSACTIONS WITH STATE AGENCIES; BY THE APPLICABLE GOVERNING BODY, FOR GOVERNMENTAL TRANSACTIONS WITH LOCAL PUBLIC ENTITIES; OR BY THE SUPREME COURT, FOR GOVERNMENTAL TRANSACTIONS WITH THE STATE JUDICIAL SYSTEM. IN PROMULGATING RULES ON THE VALIDITY OF ELECTRONIC SIGNATURES AS AN ALTERNATIVE TO MANUAL SIGNATURES FOR GOVERNMENTAL TRANSACTIONS, THE DIRECTOR OR GOVERNING BODY SHALL CONSIDER, AMONG OTHER APPROPRIATE FACTORS, WHETHER OR NOT THE ELECTRONIC SIGNATURE MUST BE:

- (a) UNIQUE TO THE PERSON USING IT;
- (b) CAPABLE OF VERIFICATION;
- (c) UNDER THE SOLE CONTROL OF THE PERSON USING IT; AND
- (d) LINKED TO DATA IN SUCH A MANNER THAT THE ELECTRONIC SIGNATURE IS INVALIDATED IF ANY DATA IS CHANGED.

(3) (a) NOTHING IN THIS ARTICLE SHALL REQUIRE ANY PERSON TO USE OR PERMIT THE USE OF AN ELECTRONIC SIGNATURE. PUBLIC ENTITIES MAY REQUIRE THE USE OF ELECTRONIC SIGNATURES FOR PARTICULAR APPLICATIONS WITHIN THEIR AUTHORITY WHERE MANDATORY USE OF ELECTRONIC SIGNATURES IS NOT IN CONFLICT WITH, OR PROHIBITED BY, STATE OR FEDERAL LAW.

(b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (3), THE DEPARTMENT OF REVENUE SHALL NOT SELL, PERMIT THE SALE OF, OR OTHERWISE RELEASE TO ANYONE OTHER THAN THE PERSON IN INTEREST ANY ELECTRONIC SIGNATURE FILED WITH, MAINTAINED BY, OR PREPARED BY THE DEPARTMENT OF REVENUE PURSUANT TO SECTION 42-2-114 (1), C.R.S.; HOWEVER, NOTHING IN THIS SECTION SHALL PREVENT THE DEPARTMENT OF REVENUE FROM SHARING ANY INFORMATION WITH A CRIMINAL JUSTICE AGENCY AS DEFINED IN SECTION 24-72-302 (3).

24-71.1-107. Admissibility into evidence. SUBJECT TO THE PROVISIONS OF SECTION 13-25-134, C.R.S., ELECTRONIC RECORDS OR ELECTRONIC SIGNATURES SHALL NOT BE INADMISSIBLE IN EVIDENCE SOLELY ON THE GROUND THAT THEY ARE IN ELECTRONIC FORM, ARE NOT IN ORIGINAL FORM, OR ARE NOT ORIGINALS.

24-71.1-108. Originals. IF A RULE OF LAW REQUIRES A RECORD TO BE PRESENTED OR RETAINED IN ITS ORIGINAL FORM, OR PROVIDES CONSEQUENCES FOR THE RECORD NOT BEING PRESENTED OR RETAINED IN ITS ORIGINAL FORM, THAT REQUIREMENT IS MET BY AN ELECTRONIC RECORD IF IT ACCURATELY REPRODUCES THE ORIGINAL RECORD AS IT EXISTED AT THE TIME IN QUESTION.

24-71.1-109. Retention of electronic records. IF A RULE OF LAW REQUIRES THAT A RECORD BE RETAINED, THAT REQUIREMENT IS MET BY RETAINING AN ELECTRONIC RECORD IF IT ACCURATELY REPRODUCES THE ORIGINAL RECORD AS IT EXISTED AT THE TIME IN QUESTION AND FOR SO LONG AS MAY BE REQUIRED BY LAW. NOTHING IN THIS SECTION SHALL PRECLUDE ANY PUBLIC ENTITY FROM SPECIFYING ADDITIONAL REQUIREMENTS FOR THE RETENTION OF RECORDS, EITHER WRITTEN OR ELECTRONIC,

THAT ARE SUBJECT TO THE JURISDICTION OF SUCH PUBLIC ENTITY.

24-71.1-110. Technical standards - rules. (1) (a) THE DIRECTOR SHALL ADOPT RULES, STANDARDS, PROCEDURES, AND POLICIES FOR THE USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES BY PUBLIC ENTITIES. IF APPROPRIATE, THOSE STANDARDS, POLICIES, AND PROCEDURES MUST SPECIFY DIFFERING LEVELS OF SECURITY FROM WHICH PUBLIC ENTITIES MAY CHOOSE IN IMPLEMENTING THE MOST APPROPRIATE STANDARD FOR A PARTICULAR APPLICATION.

(b) EACH STATE AGENCY SHALL ENSURE COMPLIANCE WITH THE RULES ADOPTED BY THE DIRECTOR. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO GIVE THE DIRECTOR ANY POWER TO APPROVE OR DISAPPROVE ANY PROPOSED USE OF ELECTRONIC RECORDS BY ANOTHER AGENCY OR INSTITUTION.

(2) THE SUPREME COURT MAY ADOPT SUCH RULES AS ARE NECESSARY TO IMPLEMENT THIS ARTICLE.

(3) THE GOVERNING BODY OF ANY LOCAL PUBLIC ENTITY AUTHORIZING THE USE OF ELECTRONIC RECORDS OR SIGNATURES SHALL ADOPT RULES, STANDARDS, POLICIES, AND PROCEDURES FOR ITS OWN USE OF ELECTRONIC RECORDS OR SIGNATURES OR MAY FOLLOW THE RULES ADOPTED BY THE DIRECTOR.

SECTION 2. 24-71-101, Colorado Revised Statutes, as enacted by House Bill 99-1079, enacted at the First Regular Session of the Sixty-second General Assembly, is amended to read:

24-71-101. Electronic signatures. (1) As used in this article, "~~digital signature~~" or "electronic signature" means ~~an electronic identifier, created by computer, intended by the party~~ ANY IDENTIFIER OR AUTHENTICATION TECHNIQUE ATTACHED TO OR LOGICALLY ASSOCIATED WITH AN ELECTRONIC RECORD THAT IS INTENDED BY THE PERSON USING IT TO HAVE THE SAME FORCE AND EFFECT AS THE USE OF A MANUAL SIGNATURE. "ELECTRONIC SIGNATURE" INCLUDES DIGITAL SIGNATURES.

(2) In any written communication in which a signature is required or used, OTHER THAN GOVERNMENTAL TRANSACTIONS AS SPECIFIED IN SECTION 24-71.1-106, any party to the communication may affix a signature by use of an electronic ~~or digital~~ signature that complies with ~~the requirements of this section. The use of an electronic or digital signature shall have the same force and effect as the use of a manual signature if:~~ RULES PRESCRIBED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL. IN PROMULGATING RULES ON THE VALIDITY OF ELECTRONIC SIGNATURES AS AN ALTERNATIVE TO MANUAL SIGNATURES FOR NONGOVERNMENTAL TRANSACTIONS, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL SHALL CONSIDER, AMONG OTHER APPROPRIATE FACTORS, WHETHER OR NOT THE ELECTRONIC SIGNATURE MUST BE:

- (a) ~~It is~~ Unique to the person using it;
- (b) ~~It is~~ Capable of verification;
- (c) ~~It is~~ Under the sole control of the person using it;

(d) ~~It is~~ Linked to data in such a manner that the electronic ~~or digital~~ signature is invalidated if any data is changed.

(e) ~~It conforms to rules promulgated by the executive director of the department of personnel pursuant to section 24-30-1604 (1).~~

(3) The use or acceptance of an electronic ~~or digital~~ signature shall be at the option of the parties. Nothing in this section shall require any person to use or permit the use of an electronic ~~or digital~~ signature.

SECTION 3. The introductory portion to 24-30-1604 (1) and 24-30-1604 (1) (b), Colorado Revised Statutes, are amended to read:

24-30-1604. Powers of the executive director - penalty for breach of confidentiality. (1) In order to perform the functions and duties of the GGCC as set forth in this part 16 AND IN ARTICLE 71.1 OF THIS TITLE, the executive director of the department of personnel shall exercise the following powers:

(b) To adopt such rules and regulations as may be necessary to carry out the purposes and provisions of this part 16 AND ARTICLE 71.1 OF THIS TITLE REGARDING GOVERNMENT ELECTRONIC TRANSACTIONS;

SECTION 4. Article 25 of title 13, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

13-25-134. Electronic records and signatures - admissibility in evidence - originals. PURSUANT TO THE PROVISIONS OF ARTICLE 71.1 OF TITLE 24, C.R.S., IN ANY LEGAL PROCEEDING, NOTHING IN THE APPLICATION OF THE RULES OF EVIDENCE SHALL APPLY SO AS TO DENY THE ADMISSIBILITY OF AN ELECTRONIC RECORD OR ELECTRONIC SIGNATURE INTO EVIDENCE ON THE SOLE GROUND THAT IT IS AN ELECTRONIC RECORD OR ELECTRONIC SIGNATURE OR ON THE GROUNDS THAT IT IS NOT IN ITS ORIGINAL FORM OR IS NOT AN ORIGINAL.

SECTION 5. 22-32-110 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

22-32-110. Board of education - specific powers. (1) In addition to any other power granted to a board of education of a school district by law, each board of education of a school district shall have the following specific powers, to be exercised in its judgment:

(kk) TO AUTHORIZE THE USE OF ELECTRONIC RECORDS OR SIGNATURES AND ADOPT RULES, STANDARDS, POLICIES, AND PROCEDURES FOR USE OF ELECTRONIC RECORDS OR SIGNATURES PURSUANT TO ARTICLE 71.1 OF TITLE 24, C.R.S.

SECTION 6. 30-11-107 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

30-11-107. Powers of the board. (1) The board of county commissioners of each county has power at any meeting:

(gg) TO AUTHORIZE THE USE OF ELECTRONIC RECORDS OR SIGNATURES AND ADOPT RULES, STANDARDS, POLICIES, AND PROCEDURES FOR USE OF ELECTRONIC RECORDS OR SIGNATURES PURSUANT TO ARTICLE 71.1 OF TITLE 24, C.R.S.

SECTION 7. 31-15-201 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

31-15-201. Administrative powers. (1) The governing bodies in municipalities shall have the following general powers in relation to the administration of the municipality's affairs:

(h) TO AUTHORIZE THE USE OF ELECTRONIC RECORDS OR SIGNATURES AND ADOPT RULES, STANDARDS, POLICIES, AND PROCEDURES FOR USE OF ELECTRONIC RECORDS OR SIGNATURES PURSUANT TO ARTICLE 71.1 OF TITLE 24, C.R.S.

SECTION 8. 32-1-1001 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

32-1-1001. Common powers. (1) For and on behalf of the special district the board has the following powers:

(o) TO AUTHORIZE THE USE OF ELECTRONIC RECORDS OR SIGNATURES AND ADOPT RULES, STANDARDS, POLICIES, AND PROCEDURES FOR USE OF ELECTRONIC RECORDS OR SIGNATURES PURSUANT TO ARTICLE 71.1 OF TITLE 24, C.R.S.

SECTION 9. Effective date - applicability. This act shall take effect July 1, 1999, and shall apply to acts occurring on or after said date; except that section 2 of this act shall only take effect if House Bill 99-1079 is enacted at the First Regular Session of the Sixty-second General Assembly and becomes law.

SECTION 10. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 3, 1999

Editor's note: House Bill 99-1079 was signed by the Governor on June 2, 1999.