

CHAPTER 282

GOVERNMENT - STATE

HOUSE BILL 99-1079

BY REPRESENTATIVES Hagedorn, May, Gagliardi, McKay, Plant, Stengel, Tapia, Tate, and Young;
also SENATORS Tebedo, Matsunaka, and Nichol.

AN ACT

CONCERNING THE USE OF DIGITAL SIGNATURES.

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
Digital Signatures

24-71-101. Digital signatures. (1) AS USED IN THIS ARTICLE, "DIGITAL SIGNATURE" OR "ELECTRONIC SIGNATURE" MEANS AN ELECTRONIC IDENTIFIER, CREATED BY COMPUTER, INTENDED BY THE PARTY USING IT TO HAVE THE SAME FORCE AND EFFECT AS THE USE OF A MANUAL SIGNATURE.

(2) IN ANY WRITTEN COMMUNICATION IN WHICH A SIGNATURE IS REQUIRED OR USED, 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:

- (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

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

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 2. 24-30-1603, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-30-1603. Functions of the GGCC. (3) (a) THE GGCC SHALL ADOPT STANDARDS, POLICIES, AND PROCEDURES FOR THE USE OF ELECTRONIC OR DIGITAL SIGNATURES BY GOVERNMENTAL AGENCIES WHERE USE OF ELECTRONIC OR DIGITAL SIGNATURES IS EXPRESSLY AUTHORIZED BY LAW.

(b) THE EXECUTIVE DIRECTOR OF EACH AGENCY OR DEPARTMENT OF STATE GOVERNMENT, INCLUDING INSTITUTIONS OF HIGHER EDUCATION, SHALL DESIGNATE A CHIEF INFORMATION OFFICER WHO SHALL ENSURE COMPLIANCE WITH THE RULES ADOPTED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL.

(c) THE LOCAL AUTHORITIES OF ANY COUNTY, CITY, TOWN, OR CITY AND COUNTY AUTHORIZING THE USE OF DIGITAL OR ELECTRONIC SIGNATURES SHALL ADOPT RULES, STANDARDS, POLICIES, AND PROCEDURES FOR THEIR OWN USE OF ELECTRONIC OR DIGITAL SIGNATURES OR SHALL ENSURE COMPLIANCE WITH THE RULES ADOPTED BY THE EXECUTIVE DIRECTOR.

(d) INITIAL RULES SHALL BE ADOPTED NO LATER THAN JANUARY 1, 2000.

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 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 OF THIS TITLE REGARDING DIGITAL OR ELECTRONIC SIGNATURES;

SECTION 4. 4-9-413, Colorado Revised Statutes, is amended to read:

4-9-413. Authorization to file financing statement - liability for unauthorized filing - electronic signatures. (1) (a) No person shall file a financing statement or amendment that adds collateral covered by a financing statement unless the debtor authorizes such filing in a signed writing. Any such statement or amendment that is filed electronically shall be signed electronically, pursuant to SECTION 24-71-101, C.R.S., AND subsection (2) of this section. Upon signing a written security agreement a debtor authorizes the secured party to file a financing statement and amendments

covering the collateral described in the security agreement and any proceeds of said collateral.

(b) Any person who files a financing statement or amendment in violation of paragraph (a) of this subsection (1) is liable to the debtor for five hundred dollars and any loss sustained by the debtor as a result of such unauthorized filing.

(2) Any amendment that deletes collateral covered by a financing statement, termination statement, separate statement of assignment, or statement of release of collateral and is filed electronically, shall include an electronic signature of the secured party that complies with SECTION 24-71-101, C.R.S., AND WITH procedures adopted by the filing officer with whom such filing is made. Such procedures shall require ~~at a minimum~~, that the name and address of the secured party appear on such filing when it is retrieved electronically or in printed form. An electronic signature SHALL SATISFY THE REQUIREMENTS OF SECTION 24-71-101, C.R.S., AND may consist of an access code or any other identifying word or number assigned by a filing officer that is unique to a particular filer.

SECTION 5. 4-9-404 (1), Colorado Revised Statutes, is amended to read:

4-9-404. Termination statement. (1) If a financing statement covering consumer goods is filed on or after January 1, 1978, within one month or within ten days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed a termination statement to the effect that the secured party no longer claims a security interest under the financing statement, which shall be identified by file number. In other cases whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that the secured party no longer claims a security interest under the financing statement, which shall be identified by file number. If the affected secured party fails to file such a termination statement as required by this subsection (1) or to send such a termination statement within ten days after proper demand therefor, the secured party shall be liable to the debtor for one hundred dollars, and in addition for any loss caused to the debtor by such failure. A termination statement shall be signed by the secured party, and if such statement is filed electronically it shall be signed electronically, pursuant to ~~section~~ SECTIONS 24-71-101, C.R.S., AND 4-9-413 (2).

SECTION 6. 4-9-405 (2), Colorado Revised Statutes, is amended to read:

4-9-405. Assignment of security interest - duties of filing officer. (2) A secured party may assign of record all or a part of the secured party's rights under a financing statement by the filing, in the place where the original financing statement was filed, of a separate statement of assignment setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. Such separate statement of assignment

shall be signed by the secured party, and if such statement is filed electronically it shall be signed electronically, pursuant to ~~section~~ SECTIONS 24-71-101, C.R.S., AND 4-9-413 (2). On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing and shall note the assignment on the index of the financing statement, or in the case of a fixture filing, or a filing covering timber to be cut, minerals or other substances of value which may be extracted from the earth, or accounts subject to subsection (5) of section 4-9-103, the filing officer shall index the assignment under the name of the assignor as grantor, and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, the filing officer shall index the assignment of the financing statement under the name of the assignee. Notwithstanding the provisions of this subsection (2), an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (subsection (6) of section 4-9-402) may be made only by an assignment of the mortgage in the manner provided by the law of this state other than this code.

SECTION 7. 4-9-406, Colorado Revised Statutes, is amended to read:

4-9-406. Release of collateral - duties of filing officer. A secured party of record may release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. The statement of release shall be signed by the secured party, and if such statement is filed electronically it shall be signed electronically, pursuant to ~~section~~ SECTIONS 24-71-101, C.R.S., AND 4-9-413 (2). Upon presentation of such a statement of release to the filing officer, the filing officer shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement.

SECTION 8. Effective date - applicability. This act shall take effect July 1, 1999, and shall apply to acts occurring on or after said date.

SECTION 9. 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 2, 1999