

ELECTRONIC SIGNATURES

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

House Sponsor: Bradley M. Daw

LONG TITLE

General Description:

This bill addresses the acceptance of electronic signatures by a governmental agency.

Highlighted Provisions:

This bill:

- ▶ requires a governmental agency to adopt a policy concerning electronic signatures before the governmental agency may accept an electronic signature; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

46-4-201, as enacted by Laws of Utah 2000, Chapter 74

46-4-501, as last amended by Laws of Utah 2008, Chapter 382

46-4-502, as last amended by Laws of Utah 2003, Chapter 20

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **46-4-201** is amended to read:

46-4-201. Legal recognition of electronic records, electronic signatures, and



28 **electronic contracts.**

29 (1) A record, or signature subject to Section 46-4-501, may not be denied legal effect
30 or enforceability solely because it is in electronic form.

31 (2) A contract may not be denied legal effect or enforceability solely because an
32 electronic record was used in its formation.

33 (3) If a law requires a record to be in writing, an electronic record satisfies the law.

34 (4) ~~[H]~~ Subject to Section 46-4-501, if a law requires a signature, an electronic
35 signature satisfies the law.

36 Section 2. Section **46-4-501** is amended to read:

37 **46-4-501. Creation and retention of electronic records and conversion of written**
38 **records by governmental agencies.**

39 (1) (a) Notwithstanding any other provision of law, a non-federal governmental agency
40 located in the state may not accept an electronic signature unless the governmental agency
41 makes a rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
42 identifying:

43 (i) the types of documents, transactions, or other filings that will be accepted with an
44 electronic signature affixed; and

45 (ii) the manner and format in which the electronic signature must be affixed to the
46 document, transaction, or other filing.

47 (b) Subsection (1)(a) applies to an electronic signature without regard to whether the
48 governmental agency is a party to the document, transaction, or other filing.

49 ~~[(+)]~~ (2) A state governmental agency may, ~~[by following the procedures and~~
50 requirements of] in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
51 Act, make rules that:

52 (a) identify specific transactions that the agency is willing to conduct by electronic
53 means;

54 (b) identify specific transactions that the agency will never conduct by electronic
55 means;

56 (c) specify the manner and format in which electronic records must be created,
57 generated, sent, communicated, received, and stored, and the systems established for those
58 purposes;

59 (d) if law or rule requires that the electronic records must be signed by electronic
60 means, specify the type of electronic signature required, the manner and format in which the
61 electronic signature must be affixed to the electronic record, and the identity of, or criteria that
62 must be met, by any third party used by a person filing a document to facilitate the process;

63 (e) specify control processes and procedures as appropriate to ensure adequate
64 preservation, disposition, integrity, security, confidentiality, and auditability of electronic
65 records; and

66 (f) identify any other required attributes for electronic records that are specified for
67 corresponding nonelectronic records or that are reasonably necessary under the circumstances.

68 ~~[(2)]~~ (3) A state governmental agency that makes rules under this section shall submit
69 copies of those rules, and any amendments to those rules, to~~[(a)]~~ the chief information officer
70 established by Section 63F-1-201~~[-and]~~.

71 ~~[(b) the Utah Technology Commission established by Section 63D-1a-201.]~~

72 ~~[(3)]~~ (4) (a) The chief information officer may prepare model rules and standards
73 relating to electronic transactions that encourage and promote consistency and interoperability
74 with similar requirements adopted by other Utah government agencies, other states, the federal
75 government, and nongovernmental persons interacting with Utah governmental agencies.

76 (b) In preparing those model rules and standards, the chief information officer may
77 specify different levels of standards from which governmental agencies may choose in order to
78 implement the most appropriate standard for a particular application.

79 ~~[(c) Before submitting any model rules or standards to state governmental agencies for
80 their adoption as permanent rules, the chief information officer shall submit the model rules
81 and standards to the Utah Technology Commission for its review and suggestions.]~~

82 ~~[(d)]~~ (c) Nothing in this Subsection ~~[(3)]~~ (4) requires a state agency to use the model
83 rules and standards prepared by the chief information officer when making rules under this
84 section.

85 ~~[(4)]~~ (5) Except as provided in Subsection 46-4-301(6), nothing in this chapter requires
86 any ~~[state]~~ governmental agency to:

87 (a) conduct transactions by electronic means; or

88 (b) use or permit the use of electronic records or electronic signatures.

89 ~~[(5)]~~ (6) Each state governmental agency shall:

90 (a) establish record retention schedules for any electronic records created or received in
91 an electronic transaction according to the standards developed by the Division of Archives
92 under Subsection 63A-12-101(2)(e); and

93 (b) obtain approval of those schedules from the State Records Committee as required
94 by Subsection 63G-2-502(1)(b).

95 Section 3. Section **46-4-502** is amended to read:

96 **46-4-502. Providing services or information electronically -- Interpretation of**
97 **terms in Utah Code.**

98 (1) To provide services or information electronically, a state governmental entity may
99 implement the terms listed in Subsection (2) in accordance with this section:

100 (a) when the term is used in the Utah Code; and

101 (b) if the implementation is not:

102 (i) inconsistent with the manifest intent of the Legislature; or

103 (ii) repugnant to the context of the statute.

104 (2) Subsection (1) applies to the terms listed in this Subsection (2).

105 (a) "Copy" may include an electronic version of a document.

106 (b) "Mail" may include sending a document electronically if the recipient can accept
107 and process the electronic writing.

108 (c) "Mailing address" may include an electronic mailing address capable of receiving
109 and processing an electronic writing.

110 (d) "Sign" or "signature" may include any form of electronic signature authorized by
111 the governmental agency in accordance with Section 46-4-501.

112 (e) "Written" or "writing" may include information that is:

113 (i) inscribed on a tangible medium; or

114 (ii) (A) stored in an electronic or other medium; and

115 (B) is retrievable in a perceivable form.

Legislative Review Note
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Office of Legislative Research and General Counsel