

1 **AMENDMENTS TO DIGITAL SIGNATURE ACT**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: David H. Steele**

5 AN ACT RELATING TO DIGITAL SIGNATURES; AMENDING PROVISIONS MANDATING
6 THAT THE DIVISION OF CORPORATIONS AND COMMERCIAL CODE BE A
7 CERTIFICATION AUTHORITY AND RELATED PROVISIONS; AMENDING THE
8 EXEMPTION OF A CERTIFICATION AUTHORITY FROM THE AUDIT REQUIREMENT;
9 AND MAKING CONFORMING AMENDMENTS.

10 This act affects sections of Utah Code Annotated 1953 as follows:

11 AMENDS:

12 **46-3-104**, as repealed and reenacted by Chapter 205, Laws of Utah 1996

13 **46-3-202**, as last amended by Chapter 205, Laws of Utah 1996

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

15 Section 1. Section **46-3-104** is amended to read:

16 **46-3-104. Role of the division.**

17 (1) The division [shall] may be a certification authority, and may issue, suspend, and
18 revoke certificates in the manner prescribed for licensed certification authorities in Part 3 of this
19 chapter.

20 (2) The division shall maintain a publicly accessible database containing a certification
21 authority disclosure record for each licensed certification authority. [~~The~~] If the division operates
22 as a certification authority, the division shall publish the contents of the database in at least one
23 recognized repository.

24 (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
25 division shall make rules as required by this chapter and in furtherance of its purposes, including
26 rules:

27 (a) governing licensed certification authorities, their practice, and the termination of a

28 certification authority's practice;

29 (b) determining an amount appropriate for a suitable guaranty, in light of:

30 (i) the burden a suitable guaranty places upon licensed certification authorities; and

31 (ii) the assurance of financial responsibility it provides to persons who rely on certificates
32 issued by licensed certification authorities;

33 (c) for reviewing software for use in creating digital signatures and publish reports
34 concerning software;

35 (d) specifying reasonable requirements for the form of certificates issued by licensed
36 certification authorities, in accordance with generally accepted standards for digital signature
37 certificates;

38 (e) specifying reasonable requirements for recordkeeping by licensed certification
39 authorities;

40 (f) specifying reasonable requirements for the content, form, and sources of information
41 in certification authority disclosure records, the updating and timeliness of such information, and
42 other practices and policies relating to certification authority disclosure records; and

43 (g) specifying the form of certification practice statements.

44 Section 2. Section **46-3-202** is amended to read:

45 **46-3-202. Performance audits and investigations.**

46 (1) A certified public accountant having expertise in computer security, or an accredited
47 computer security professional, shall audit the operations of each licensed certification authority
48 at least once each year to evaluate compliance with this chapter. The division may specify
49 qualifications for auditors in greater detail by rule.

50 (2) (a) Based on information gathered in the audit, the auditor shall categorize the licensed
51 certification authority's compliance as one of the following:

52 (i) full compliance, which means the certification authority appears to conform to all
53 applicable statutory and regulatory requirements;

54 (ii) substantial compliance, which means the certification authority generally appears to
55 conform to all applicable statutory and regulatory requirements; however, one or more instances
56 of noncompliance or inability to demonstrate compliance were found in the audited sample, but
57 were likely to be inconsequential;

58 (iii) partial compliance, which means the certification authority appears to comply with

59 some statutory and regulatory requirements, but was found not to have complied or not to be able
60 to demonstrate compliance with one or more important safeguards; or

61 (iv) noncompliance, which means the certification authority complies with few or none
62 of the statutory and regulatory requirements, fails to keep adequate records to demonstrate
63 compliance with more than a few requirements, or refused to submit to an audit.

64 (b) The auditor shall report the date of the audit of the licensed certification authority and
65 resulting categorization to the division.

66 (c) The division shall publish in the certification authority disclosure record it maintains
67 for the certification authority, the date of the audit, and the resulting categorization of the
68 certification authority.

69 ~~[(3) (a) The division may exempt a licensed certification authority from the requirements
70 of Subsection (1) if:]~~

71 ~~[(i) the certification authority to be exempted requests exemption in writing;]~~

72 ~~[(ii) the most recent performance audit, if any, of the certification authority resulted in a
73 finding of full or substantial compliance; and]~~

74 ~~[(iii) the certification authority declares under oath or affirmation that one or more of the
75 following is true with respect to the certification authority:]~~

76 ~~[(A) the certification authority has issued fewer than six certificates during the past year
77 and the total of the recommended reliance limits of all such certificates does not exceed \$10,000;]~~

78 ~~[(B) the aggregate lifetime of all certificates issued by the certification authority during the
79 past year is less than 30 days and the total of the recommended reliance limits of all such
80 certificates does not exceed \$10,000; or]~~

81 ~~[(C) the recommended reliance limits of all certificates outstanding and issued by the
82 certification authority total less than \$1,000.]~~

83 ~~[(b) If the certification authority's declaration pursuant to Subsection (3)(a) falsely states
84 a material fact, the certification authority shall have failed to comply with the performance audit
85 requirement of this subsection.]~~

86 ~~[(c) If a licensed certification authority is exempt under this subsection, the division shall
87 publish in the certification authority disclosure record it maintains for the certification authority
88 a statement that the certification authority is exempt from the performance audit requirement.]~~

Legislative Review Note
as of 11-17-99 12:51 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Committee Note

The Public Utilities and Technology Interim Committee recommended this bill.