

**First Regular Session
Sixty-third General Assembly
STATE OF COLORADO**

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 01-0842.01 Gregg Fraser

HOUSE BILL 01-1393

HOUSE SPONSORSHIP

Scott, Paschall, Swenson, Grossman, Fairbank, Garcia, Groff, Marshall, and Mitchell

SENATE SPONSORSHIP

Fitz-Gerald,

House Committees

Information & Technology

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE ADOPTION OF THE "UNIFORM ELECTRONIC**
102 **TRANSACTIONS ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Enacts the "Uniform Electronic Transactions Act" (Act) to govern electronic records and electronic signatures relating to specified transactions. Specifies the electronic records and electronic signatures to which the Act does and does not apply. Provides that the Act only applies to transactions between parties that have agreed to conduct transactions by electronic means. Allows specified provisions of the Act to be varied by agreement.

Requires the Act to be construed to facilitate electronic transactions

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
May 8, 2001

HOUSE
Amended 2nd Reading
May 7, 2001

consistent with other laws, to be consistent with reasonable practices concerning electronic transactions, and to make uniform the law among the states enacting it.

Specifies that:

- A record or signature may not be denied legal effect or enforceability solely because it is in electronic form;
- A contract may not be denied legal effect because an electronic record was used in its formation;
- If a law requires a record to be in writing, an electronic record satisfies the law; and
- If a law requires a signature, an electronic signature satisfies the law.

When a transaction is conducted by electronic means and the law requires information to be provided, sent, or delivered in writing, specifies the circumstances in which an electronic record may be used. Establishes requirements when the law requires a record to be posted or displayed in a certain manner, to be sent, communicated, or transmitted by a specified method, or to contain information that is formatted in a certain manner.

Specifies the following:

- The circumstances in which an electronic record or electronic signature is attributable to a person;
- The rules to apply if a change or error in an electronic record occurs during transmission;
- A means of using an electronic signature or record when the law requires either to be notarized, acknowledged, verified, or made under oath;
- The circumstances in which an electronic record satisfies a legal requirement that a record be retained;
- That evidence of a record or signature may not be excluded in a proceeding solely because it is in electronic form;
- The rules to apply with respect to automated transactions;
- The manner in which it is determined when an electronic record is considered to be sent; and
- When a person is deemed to have control of an electronic record that is a transferable record.

Repeals the existing law governing electronic signatures.

Defines terms.

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

2 **SECTION 1.** Title 24, Colorado Revised Statutes, is amended BY

3 THE ADDITION OF A NEW ARTICLE to read:

4 **ARTICLE 71.3**

1 **Uniform Electronic Transactions Act**

2 **24-71.3-101. Short title.** THIS ARTICLE MAY BE CITED AS THE
3 "UNIFORM ELECTRONIC TRANSACTIONS ACT".

4 **24-71.3-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
5 CONTEXT OTHERWISE REQUIRES:

6 (1) "AGREEMENT" MEANS THE BARGAIN OF THE PARTIES IN FACT,
7 AS FOUND IN THEIR LANGUAGE OR INFERRED FROM OTHER CIRCUMSTANCES
8 AND FROM RULES, REGULATIONS, AND PROCEDURES GIVEN THE EFFECT OF
9 AGREEMENTS UNDER LAWS OTHERWISE APPLICABLE TO A PARTICULAR
10 TRANSACTION.

11 (2) "AUTOMATED TRANSACTION" MEANS A TRANSACTION
12 CONDUCTED OR PERFORMED, IN WHOLE OR IN PART, BY ELECTRONIC MEANS
13 OR ELECTRONIC RECORDS, IN WHICH THE ACTS OR RECORDS OF ONE OR
14 BOTH PARTIES ARE NOT REVIEWED BY AN INDIVIDUAL IN THE ORDINARY
15 COURSE IN FORMING A CONTRACT, PERFORMING UNDER AN EXISTING
16 CONTRACT, OR FULFILLING AN OBLIGATION REQUIRED BY THE
17 TRANSACTION.

18 (3) "COMPUTER PROGRAM" MEANS A SET OF STATEMENTS OR
19 INSTRUCTIONS TO BE USED DIRECTLY OR INDIRECTLY IN AN INFORMATION
20 PROCESSING SYSTEM IN ORDER TO BRING ABOUT A CERTAIN RESULT.

21 (4) "CONTRACT" MEANS THE TOTAL LEGAL OBLIGATION RESULTING
22 FROM THE PARTIES' AGREEMENT AS AFFECTED BY THIS ARTICLE AND OTHER
23 APPLICABLE LAW.

24 (5) "ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING
25 ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC,
26 OR SIMILAR CAPABILITIES.

27 (6) "ELECTRONIC AGENT" MEANS A COMPUTER PROGRAM OR AN

1 ELECTRONIC OR OTHER AUTOMATED MEANS USED INDEPENDENTLY TO
2 INITIATE AN ACTION OR RESPOND TO ELECTRONIC RECORDS OR
3 PERFORMANCES, IN WHOLE OR IN PART, WITHOUT REVIEW OR ACTION BY AN
4 INDIVIDUAL.

5 (7) "ELECTRONIC RECORD" MEANS A RECORD CREATED,
6 GENERATED, SENT, COMMUNICATED, RECEIVED, OR STORED BY ELECTRONIC
7 MEANS.

8 (8) "ELECTRONIC SIGNATURE" MEANS AN ELECTRONIC SOUND,
9 SYMBOL, OR PROCESS ATTACHED TO OR LOGICALLY ASSOCIATED WITH A
10 RECORD AND EXECUTED OR ADOPTED BY A PERSON WITH THE INTENT TO
11 SIGN THE RECORD.

12 (9) "GOVERNMENTAL AGENCY" MEANS AN EXECUTIVE,
13 LEGISLATIVE, OR JUDICIAL AGENCY, DEPARTMENT, BOARD, COMMISSION,
14 AUTHORITY, INSTITUTION, OR INSTRUMENTALITY OF THE FEDERAL
15 GOVERNMENT OR OF A STATE OR OF A COUNTY, MUNICIPALITY, OR OTHER
16 POLITICAL SUBDIVISION OF A STATE.

17 (10) "INFORMATION" MEANS DATA, TEXT, IMAGES, SOUNDS, CODES,
18 COMPUTER PROGRAMS, SOFTWARE, DATABASES, OR THE LIKE.

19 (11) "INFORMATION PROCESSING SYSTEM" MEANS AN ELECTRONIC
20 SYSTEM FOR CREATING, GENERATING, SENDING, RECEIVING, STORING,
21 DISPLAYING, OR PROCESSING INFORMATION.

22 (12) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, BUSINESS
23 TRUST, ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY,
24 ASSOCIATION, JOINT VENTURE, GOVERNMENTAL AGENCY, PUBLIC
25 CORPORATION, OR ANY OTHER LEGAL OR COMMERCIAL ENTITY.

26 (13) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
27 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER

1 MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

2 (14) "SECURITY PROCEDURE" MEANS A PROCEDURE EMPLOYED FOR
3 THE PURPOSE OF VERIFYING THAT AN ELECTRONIC SIGNATURE, RECORD, OR
4 PERFORMANCE IS THAT OF A SPECIFIC PERSON OR FOR DETECTING CHANGES
5 OR ERRORS IN THE INFORMATION IN AN ELECTRONIC RECORD. THE TERM
6 INCLUDES A PROCEDURE THAT REQUIRES THE USE OF ALGORITHMS OR
7 OTHER CODES, IDENTIFYING WORDS OR NUMBERS, ENCRYPTION, OR
8 CALLBACK OR OTHER ACKNOWLEDGMENT PROCEDURES.

9 (15) "STATE" MEANS A STATE OF THE UNITED STATES, THE
10 DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN
11 ISLANDS, OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE
12 JURISDICTION OF THE UNITED STATES. THE TERM INCLUDES AN INDIAN
13 TRIBE OR BAND, OR ALASKAN NATIVE VILLAGE, WHICH IS RECOGNIZED BY
14 FEDERAL LAW OR FORMALLY ACKNOWLEDGED BY A STATE.

15 (16) "TRANSACTION" MEANS AN ACTION OR SET OF ACTIONS
16 OCCURRING BETWEEN TWO OR MORE PERSONS RELATING TO THE CONDUCT
17 OF BUSINESS, COMMERCIAL, OR GOVERNMENTAL AFFAIRS.

18 **24-71.3-103. Scope.** (1) EXCEPT AS OTHERWISE PROVIDED IN
19 SUBSECTION (2) OF THIS SECTION, THIS ARTICLE APPLIES TO ELECTRONIC
20 RECORDS AND ELECTRONIC SIGNATURES RELATING TO A TRANSACTION.

21 (2) THIS ARTICLE DOES NOT APPLY TO A TRANSACTION TO THE
22 EXTENT IT IS GOVERNED BY:

23 (a) A LAW GOVERNING THE CREATION AND EXECUTION OF WILLS,
24 CODICILS, OR TESTAMENTARY TRUSTS; AND

25 (b) THE "UNIFORM COMMERCIAL CODE", TITLE 4, C.R.S., OTHER
26 THAN SECTIONS 4-1-107 AND 4-1-206, C.R.S., AND ARTICLES 2 AND 2.5 OF
27 TITLE 4, C.R.S.

1 (3) THIS ARTICLE APPLIES TO AN ELECTRONIC RECORD OR
2 ELECTRONIC SIGNATURE OTHERWISE EXCLUDED FROM THE APPLICATION OF
3 THIS ARTICLE UNDER SUBSECTION (2) OF THIS SECTION TO THE EXTENT IT
4 IS GOVERNED BY A LAW OTHER THAN THOSE SPECIFIED IN SAID SUBSECTION
5 (2).

6 (4) A TRANSACTION SUBJECT TO THIS ARTICLE IS ALSO SUBJECT TO
7 OTHER APPLICABLE SUBSTANTIVE LAW.

8 (5) THIS ARTICLE IS NOT INTENDED TO LIMIT, MODIFY, OR
9 SUPERCEDE THE REQUIREMENTS OF SECTION 101 (c) OR SECTION 103 (a) OR
10 (b) OF THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL
11 COMMERCE ACT, 15 U.S.C. SEC. 7001 (c).

12 **24-71.3-104. Prospective application.** THIS ARTICLE APPLIES TO
13 ANY ELECTRONIC RECORD OR ELECTRONIC SIGNATURE CREATED,
14 GENERATED, SENT, COMMUNICATED, RECEIVED, OR STORED ON OR AFTER
15 THE EFFECTIVE DATE OF THIS ARTICLE.

16 **24-71.3-105. Use of electronic records and electronic signatures**
17 **- variation by agreement.** (1) THIS ARTICLE DOES NOT REQUIRE A
18 RECORD OR SIGNATURE TO BE CREATED, GENERATED, SENT,
19 COMMUNICATED, RECEIVED, STORED, OR OTHERWISE PROCESSED OR USED
20 BY ELECTRONIC MEANS OR IN ELECTRONIC FORM.

21 (2) THIS ARTICLE APPLIES ONLY TO TRANSACTIONS BETWEEN
22 PARTIES EACH OF WHICH HAS AGREED TO CONDUCT TRANSACTIONS BY
23 ELECTRONIC MEANS. WHETHER THE PARTIES AGREE TO CONDUCT A
24 TRANSACTION BY ELECTRONIC MEANS IS DETERMINED FROM THE CONTEXT
25 AND SURROUNDING CIRCUMSTANCES, INCLUDING THE PARTIES' CONDUCT.

26 (3) A PARTY THAT AGREES TO CONDUCT A TRANSACTION BY
27 ELECTRONIC MEANS MAY REFUSE TO CONDUCT OTHER TRANSACTIONS BY

1 ELECTRONIC MEANS. THE RIGHT GRANTED BY THIS SUBSECTION (3) MAY
2 NOT BE WAIVED BY AGREEMENT.

3 (4) EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, THE EFFECT
4 OF ANY OF ITS PROVISIONS MAY BE VARIED BY AGREEMENT. THE PRESENCE
5 IN CERTAIN PROVISIONS OF THIS ARTICLE OF THE WORDS "UNLESS
6 OTHERWISE AGREED", OR WORDS OF SIMILAR IMPORT, DOES NOT IMPLY
7 THAT THE EFFECT OF OTHER PROVISIONS MAY NOT BE VARIED BY
8 AGREEMENT.

9 (5) WHETHER AN ELECTRONIC RECORD OR ELECTRONIC SIGNATURE
10 HAS LEGAL CONSEQUENCES IS DETERMINED BY THIS ARTICLE AND OTHER
11 APPLICABLE LAW.

12 **24-71.3-106. Construction and application.** (1) THIS ARTICLE
13 MUST BE CONSTRUED AND APPLIED:

14 (a) TO FACILITATE ELECTRONIC TRANSACTIONS CONSISTENT WITH
15 OTHER APPLICABLE LAW;

16 (b) TO BE CONSISTENT WITH REASONABLE PRACTICES CONCERNING
17 ELECTRONIC TRANSACTIONS AND WITH THE CONTINUED EXPANSION OF
18 THOSE PRACTICES; AND

19 (c) TO EFFECTUATE ITS GENERAL PURPOSE TO MAKE UNIFORM THE
20 LAW WITH RESPECT TO THE SUBJECT OF THIS ARTICLE AMONG STATES
21 ENACTING IT.

22 **24-71.3-107. Legal recognition of electronic records, electronic**
23 **signatures, and electronic contracts.** (1) A RECORD OR SIGNATURE MAY
24 NOT BE DENIED LEGAL EFFECT OR ENFORCEABILITY SOLELY BECAUSE IT IS
25 IN ELECTRONIC FORM.

26 (2) A CONTRACT MAY NOT BE DENIED LEGAL EFFECT OR
27 ENFORCEABILITY SOLELY BECAUSE AN ELECTRONIC RECORD WAS USED IN

1 ITS FORMATION.

2 (3) IF A LAW REQUIRES A RECORD TO BE IN WRITING, AN
3 ELECTRONIC RECORD SATISFIES THE LAW.

4 (4) IF A LAW REQUIRES A SIGNATURE, AN ELECTRONIC SIGNATURE
5 SATISFIES THE LAW.

6 **24-71.3-108. Provision of information in writing - presentation**

7 **of records.** (1) IF PARTIES HAVE AGREED TO CONDUCT A TRANSACTION BY
8 ELECTRONIC MEANS AND A LAW REQUIRES A PERSON TO PROVIDE, SEND, OR
9 DELIVER INFORMATION IN WRITING TO ANOTHER PERSON, THE
10 REQUIREMENT IS SATISFIED IF THE INFORMATION IS PROVIDED, SENT, OR
11 DELIVERED, AS THE CASE MAY BE, IN AN ELECTRONIC RECORD CAPABLE OF
12 RETENTION BY THE RECIPIENT AT THE TIME OF RECEIPT. AN ELECTRONIC
13 RECORD IS NOT CAPABLE OF RETENTION BY THE RECIPIENT IF THE SENDER
14 OR ITS INFORMATION PROCESSING SYSTEM INHIBITS THE ABILITY OF THE
15 RECIPIENT TO PRINT OR STORE THE ELECTRONIC RECORD.

16 (2) IF A LAW OTHER THAN THIS ARTICLE REQUIRES A RECORD (i) TO
17 BE POSTED OR DISPLAYED IN A CERTAIN MANNER, (ii) TO BE SENT,
18 COMMUNICATED, OR TRANSMITTED BY A SPECIFIED METHOD, OR (iii) TO
19 CONTAIN INFORMATION THAT IS FORMATTED IN A CERTAIN MANNER, THE
20 FOLLOWING RULES APPLY:

21 (a) THE RECORD MUST BE POSTED OR DISPLAYED IN THE MANNER
22 SPECIFIED IN THE OTHER LAW.

23 (b) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF
24 SUBSECTION (4) OF THIS SECTION, THE RECORD MUST BE SENT,
25 COMMUNICATED, OR TRANSMITTED BY THE METHOD SPECIFIED IN THE
26 OTHER LAW.

27 (c) THE RECORD MUST CONTAIN THE INFORMATION FORMATTED IN

1 THE MANNER SPECIFIED IN THE OTHER LAW.

2 (3) IF A SENDER INHIBITS THE ABILITY OF A RECIPIENT TO STORE OR
3 PRINT AN ELECTRONIC RECORD, THE ELECTRONIC RECORD IS NOT
4 ENFORCEABLE AGAINST THE RECIPIENT.

5 (4) THE REQUIREMENTS OF THIS SECTION MAY NOT BE VARIED BY
6 AGREEMENT, BUT:

7 (a) TO THE EXTENT A LAW OTHER THAN THIS ARTICLE REQUIRES
8 INFORMATION TO BE PROVIDED, SENT, OR DELIVERED IN WRITING BUT
9 PERMITS THAT REQUIREMENT TO BE VARIED BY AGREEMENT, THE
10 REQUIREMENT UNDER SUBSECTION (1) OF THIS SECTION THAT THE
11 INFORMATION BE IN THE FORM OF AN ELECTRONIC RECORD CAPABLE OF
12 RETENTION MAY ALSO BE VARIED BY AGREEMENT; AND

13 (b) A REQUIREMENT UNDER A LAW OTHER THAN THIS ARTICLE TO
14 SEND, COMMUNICATE, OR TRANSMIT A RECORD BY FIRST-CLASS MAIL,
15 POSTAGE PREPAID OR REGULAR UNITED STATES MAIL MAY BE VARIED BY
16 AGREEMENT TO THE EXTENT PERMITTED BY THE OTHER LAW.

17 **24-71.3-109. Attribution and effect of electronic record and**
18 **electronic signature.** (1) AN ELECTRONIC RECORD OR ELECTRONIC
19 SIGNATURE IS ATTRIBUTABLE TO A PERSON IF IT WAS THE ACT OF THE
20 PERSON. THE ACT OF THE PERSON MAY BE SHOWN IN ANY MANNER,
21 INCLUDING A SHOWING OF THE EFFICACY OF ANY SECURITY PROCEDURE
22 APPLIED TO DETERMINE THE PERSON TO WHICH THE ELECTRONIC RECORD
23 OR ELECTRONIC SIGNATURE WAS ATTRIBUTABLE.

24 (2) THE EFFECT OF AN ELECTRONIC RECORD OR ELECTRONIC
25 SIGNATURE ATTRIBUTED TO A PERSON UNDER SUBSECTION (1) OF THIS
26 SECTION IS DETERMINED FROM THE CONTEXT AND SURROUNDING
27 CIRCUMSTANCES AT THE TIME OF ITS CREATION, EXECUTION, OR ADOPTION,

1 INCLUDING THE PARTIES' AGREEMENT, IF ANY, AND OTHERWISE AS
2 PROVIDED BY LAW.

3 **24-71.3-110. Effect of change or error.** (1) IF A CHANGE OR
4 ERROR IN AN ELECTRONIC RECORD OCCURS IN A TRANSMISSION BETWEEN
5 PARTIES TO A TRANSACTION, THE FOLLOWING RULES APPLY:

6 (a) IF THE PARTIES HAVE AGREED TO USE A SECURITY PROCEDURE
7 TO DETECT CHANGES OR ERRORS AND ONE PARTY HAS CONFORMED TO THE
8 PROCEDURE, BUT THE OTHER PARTY HAS NOT, AND THE NONCONFORMING
9 PARTY WOULD HAVE DETECTED THE CHANGE OR ERROR HAD THAT PARTY
10 ALSO CONFORMED, THE CONFORMING PARTY MAY AVOID THE EFFECT OF
11 THE CHANGED OR ERRONEOUS ELECTRONIC RECORD.

12 (b) IN AN AUTOMATED TRANSACTION INVOLVING AN INDIVIDUAL,
13 THE INDIVIDUAL MAY AVOID THE EFFECT OF AN ELECTRONIC RECORD THAT
14 RESULTED FROM AN ERROR MADE BY THE INDIVIDUAL IN DEALING WITH THE
15 ELECTRONIC AGENT OF ANOTHER PERSON IF THE ELECTRONIC AGENT DID
16 NOT PROVIDE AN OPPORTUNITY FOR THE PREVENTION OR CORRECTION OF
17 THE ERROR AND, AT THE TIME THE INDIVIDUAL LEARNS OF THE ERROR, THE
18 INDIVIDUAL:

19 (I) PROMPTLY NOTIFIES THE OTHER PERSON OF THE ERROR AND
20 THAT THE INDIVIDUAL DID NOT INTEND TO BE BOUND BY THE ELECTRONIC
21 RECORD RECEIVED BY THE OTHER PERSON;

22 (II) TAKES REASONABLE STEPS, INCLUDING STEPS THAT CONFORM
23 TO THE OTHER PERSON'S REASONABLE INSTRUCTIONS, TO RETURN TO THE
24 OTHER PERSON OR, IF INSTRUCTED BY THE OTHER PERSON, TO DESTROY THE
25 CONSIDERATION RECEIVED, IF ANY, AS A RESULT OF THE ERRONEOUS
26 ELECTRONIC RECORD; AND

27 (III) HAS NOT USED OR RECEIVED ANY BENEFIT OR VALUE FROM THE

1 CONSIDERATION, IF ANY, RECEIVED FROM THE OTHER PERSON.

2 (c) IF NEITHER PARAGRAPH (a) NOR PARAGRAPH (b) OF THIS
3 SUBSECTION (1) APPLIES, THE CHANGE OR ERROR HAS THE EFFECT
4 PROVIDED BY OTHER LAW, INCLUDING THE LAW OF MISTAKE, AND THE
5 PARTIES' CONTRACT, IF ANY.

6 (d) PARAGRAPHS (b) AND (c) OF THIS SUBSECTION (1) MAY NOT BE
7 VARIED BY AGREEMENT.

8 **24-71.3-111. Notarization and acknowledgment.** IF A LAW
9 REQUIRES A SIGNATURE OR RECORD TO BE NOTARIZED, ACKNOWLEDGED,
10 VERIFIED, OR MADE UNDER OATH, THE REQUIREMENT IS SATISFIED IF THE
11 ELECTRONIC SIGNATURE OF THE PERSON AUTHORIZED TO PERFORM THOSE
12 ACTS, TOGETHER WITH ALL OTHER INFORMATION REQUIRED TO BE
13 INCLUDED BY OTHER APPLICABLE LAW, IS ATTACHED TO OR LOGICALLY
14 ASSOCIATED WITH THE SIGNATURE OR RECORD.

15 **24-71.3-112. Retention of electronic records - originals.** (1) IF
16 A LAW REQUIRES THAT A RECORD BE RETAINED, THE REQUIREMENT IS
17 SATISFIED BY RETAINING AN ELECTRONIC RECORD OF THE INFORMATION IN
18 THE RECORD THAT:

19 (a) ACCURATELY REFLECTS THE INFORMATION SET FORTH IN THE
20 RECORD AFTER IT WAS FIRST GENERATED IN ITS FINAL FORM AS AN
21 ELECTRONIC RECORD OR OTHERWISE; AND

22 (b) REMAINS ACCESSIBLE FOR LATER REFERENCE.

23 (2) A REQUIREMENT TO RETAIN A RECORD IN ACCORDANCE WITH
24 SUBSECTION (1) OF THIS SECTION DOES NOT APPLY TO ANY INFORMATION
25 THE SOLE PURPOSE OF WHICH IS TO ENABLE THE RECORD TO BE SENT,
26 COMMUNICATED, OR RECEIVED.

27 (3) A PERSON MAY SATISFY SUBSECTION (1) OF THIS SECTION BY

1 USING THE SERVICES OF ANOTHER PERSON IF THE REQUIREMENTS OF SAID
2 SUBSECTION (1) ARE SATISFIED.

3 (4) IF A LAW REQUIRES A RECORD TO BE PRESENTED OR RETAINED
4 IN ITS ORIGINAL FORM OR PROVIDES CONSEQUENCES IF THE RECORD IS NOT
5 PRESENTED OR RETAINED IN ITS ORIGINAL FORM, THAT LAW IS SATISFIED BY
6 AN ELECTRONIC RECORD RETAINED IN ACCORDANCE WITH SUBSECTION (1)
7 OF THIS SECTION.

8 (5) IF A LAW REQUIRES RETENTION OF A CHECK, THAT
9 REQUIREMENT IS SATISFIED BY RETENTION OF AN ELECTRONIC RECORD OF
10 THE INFORMATION ON THE FRONT AND BACK OF THE CHECK IN
11 ACCORDANCE WITH SUBSECTION (1) OF THIS SECTION.

12 (6) A RECORD RETAINED AS AN ELECTRONIC RECORD IN
13 ACCORDANCE WITH SUBSECTION (1) OF THIS SECTION SATISFIES A LAW
14 REQUIRING A PERSON TO RETAIN A RECORD FOR EVIDENTIARY, AUDIT, OR
15 LIKE PURPOSES UNLESS A LAW ENACTED AFTER THE EFFECTIVE DATE OF
16 THIS ARTICLE SPECIFICALLY PROHIBITS THE USE OF AN ELECTRONIC RECORD
17 FOR THE SPECIFIED PURPOSE.

18 (7) THIS SECTION DOES NOT PRECLUDE A GOVERNMENTAL AGENCY
19 OF THIS STATE FROM SPECIFYING ADDITIONAL REQUIREMENTS FOR THE
20 RETENTION OF A RECORD SUBJECT TO THE AGENCY'S JURISDICTION.

21 **24-71.3-113. Admissibility in evidence.** IN A PROCEEDING,
22 EVIDENCE OF A RECORD OR SIGNATURE MAY NOT BE EXCLUDED SOLELY
23 BECAUSE IT IS IN ELECTRONIC FORM.

24 **24-71.3-114. Automated transaction.** (1) IN AN AUTOMATED
25 TRANSACTION, THE FOLLOWING RULES APPLY:

26 (a) A CONTRACT MAY BE FORMED BY THE INTERACTION OF
27 ELECTRONIC AGENTS OF THE PARTIES EVEN IF NO INDIVIDUAL WAS AWARE

1 OF OR REVIEWED THE ELECTRONIC AGENTS' ACTIONS OR THE RESULTING
2 TERMS AND AGREEMENTS.

3 (b) A CONTRACT MAY BE FORMED BY THE INTERACTION OF AN
4 ELECTRONIC AGENT AND AN INDIVIDUAL, ACTING ON THE INDIVIDUAL'S
5 OWN BEHALF OR FOR ANOTHER PERSON, INCLUDING BY AN INTERACTION IN
6 WHICH THE INDIVIDUAL PERFORMS ACTIONS THAT THE INDIVIDUAL IS FREE
7 TO REFUSE TO PERFORM AND THAT THE INDIVIDUAL KNOWS OR HAS REASON
8 TO KNOW WILL CAUSE THE ELECTRONIC AGENT TO COMPLETE THE
9 TRANSACTION OR PERFORMANCE.

10 (c) THE TERMS OF THE CONTRACT ARE DETERMINED BY THE
11 SUBSTANTIVE LAW APPLICABLE TO IT.

12 **24-71.3-115. Time and place of sending and receipt.**

13 (1) UNLESS OTHERWISE AGREED BETWEEN THE SENDER AND THE
14 RECIPIENT, AN ELECTRONIC RECORD IS SENT WHEN IT:

15 (a) IS ADDRESSED PROPERLY OR OTHERWISE DIRECTED PROPERLY
16 TO AN INFORMATION PROCESSING SYSTEM THAT THE RECIPIENT HAS
17 DESIGNATED OR USES FOR THE PURPOSE OF RECEIVING ELECTRONIC
18 RECORDS OR INFORMATION OF THE TYPE SENT AND FROM WHICH THE
19 RECIPIENT IS ABLE TO RETRIEVE THE ELECTRONIC RECORD;

20 (b) IS IN A FORM CAPABLE OF BEING PROCESSED BY THAT SYSTEM;
21 AND

22 (c) ENTERS AN INFORMATION PROCESSING SYSTEM OUTSIDE THE
23 CONTROL OF THE SENDER OR OF A PERSON THAT SENT THE ELECTRONIC
24 RECORD ON BEHALF OF THE SENDER OR ENTERS A REGION OF THE
25 INFORMATION PROCESSING SYSTEM DESIGNATED OR USED BY THE
26 RECIPIENT WHICH IS UNDER THE CONTROL OF THE RECIPIENT.

27 (2) UNLESS OTHERWISE AGREED BETWEEN A SENDER AND THE

1 RECIPIENT, AN ELECTRONIC RECORD IS RECEIVED WHEN:

2 (a) IT ENTERS AN INFORMATION PROCESSING SYSTEM THAT THE
3 RECIPIENT HAS DESIGNATED OR USES FOR THE PURPOSE OF RECEIVING
4 ELECTRONIC RECORDS OR INFORMATION OF THE TYPE SENT AND FROM
5 WHICH THE RECIPIENT IS ABLE TO RETRIEVE THE ELECTRONIC RECORD; AND

6 (b) IT IS IN A FORM CAPABLE OF BEING PROCESSED BY THAT
7 SYSTEM.

8 (3) SUBSECTION (2) OF THIS SECTION APPLIES EVEN IF THE PLACE
9 THE INFORMATION PROCESSING SYSTEM IS LOCATED IS DIFFERENT FROM
10 THE PLACE THE ELECTRONIC RECORD IS DEEMED TO BE RECEIVED UNDER
11 SUBSECTION (4) OF THIS SECTION.

12 (4) UNLESS OTHERWISE EXPRESSLY PROVIDED IN THE ELECTRONIC
13 RECORD OR AGREED BETWEEN THE SENDER AND THE RECIPIENT, AN
14 ELECTRONIC RECORD IS DEEMED TO BE SENT FROM THE SENDER'S PLACE OF
15 BUSINESS AND TO BE RECEIVED AT THE RECIPIENT'S PLACE OF BUSINESS.
16 FOR PURPOSES OF THIS SUBSECTION (4), THE FOLLOWING RULES APPLY:

17 (a) IF THE SENDER OR RECIPIENT HAS MORE THAN ONE PLACE OF
18 BUSINESS, THE PLACE OF BUSINESS OF THAT PERSON IS THE PLACE HAVING
19 THE CLOSEST RELATIONSHIP TO THE UNDERLYING TRANSACTION.

20 (b) IF THE SENDER OR THE RECIPIENT DOES NOT HAVE A PLACE OF
21 BUSINESS, THE PLACE OF BUSINESS IS THE SENDER'S OR RECIPIENT'S
22 RESIDENCE, AS THE CASE MAY BE.

23 (5) AN ELECTRONIC RECORD IS RECEIVED UNDER SUBSECTION (2)
24 OF THIS SECTION EVEN IF NO INDIVIDUAL IS AWARE OF ITS RECEIPT.

25 (6) RECEIPT OF AN ELECTRONIC ACKNOWLEDGMENT FROM AN
26 INFORMATION PROCESSING SYSTEM DESCRIBED IN SUBSECTION (2) OF THIS
27 SECTION ESTABLISHES THAT A RECORD WAS RECEIVED BUT, BY ITSELF,

1 DOES NOT ESTABLISH THAT THE CONTENT SENT CORRESPONDS TO THE
2 CONTENT RECEIVED.

3 (7) IF A PERSON IS AWARE THAT AN ELECTRONIC RECORD
4 PURPORTEDLY SENT UNDER SUBSECTION (1) OF THIS SECTION OR
5 PURPORTEDLY RECEIVED UNDER SUBSECTION (2) OF THIS SECTION WAS NOT
6 ACTUALLY SENT OR RECEIVED, THE LEGAL EFFECT OF THE SENDING OR
7 RECEIPT IS DETERMINED BY OTHER APPLICABLE LAW. EXCEPT TO THE
8 EXTENT PERMITTED BY THE OTHER LAW, THE REQUIREMENTS OF THIS
9 SUBSECTION (7) MAY NOT BE VARIED BY AGREEMENT.

10 **24-71.3-116. Transferable records.** (1) IN THIS SECTION,
11 "TRANSFERABLE RECORD" MEANS AN ELECTRONIC RECORD THAT:

12 (a) WOULD BE A NOTE UNDER ARTICLE 3 OF THE "UNIFORM
13 COMMERCIAL CODE", TITLE 4, C.R.S., OR A DOCUMENT UNDER ARTICLE 7
14 OF THE "UNIFORM COMMERCIAL CODE", IF THE ELECTRONIC RECORD WERE
15 IN WRITING; AND

16 (b) THE ISSUER OF THE ELECTRONIC RECORD EXPRESSLY HAS
17 AGREED IS A TRANSFERABLE RECORD.

18 (2) A PERSON HAS CONTROL OF A TRANSFERABLE RECORD IF A
19 SYSTEM EMPLOYED FOR EVIDENCING THE TRANSFER OF INTERESTS IN THE
20 TRANSFERABLE RECORD RELIABLY ESTABLISHES THAT PERSON AS THE
21 PERSON TO WHICH THE TRANSFERABLE RECORD WAS ISSUED OR
22 TRANSFERRED.

23 (3) A SYSTEM SATISFIES SUBSECTION (2) OF THIS SECTION, AND A
24 PERSON IS DEEMED TO HAVE CONTROL OF A TRANSFERABLE RECORD, IF THE
25 TRANSFERABLE RECORD IS CREATED, STORED, AND ASSIGNED IN SUCH A
26 MANNER THAT:

27 (a) A SINGLE AUTHORITATIVE COPY OF THE TRANSFERABLE RECORD

1 EXISTS THAT IS UNIQUE, IDENTIFIABLE, AND, EXCEPT AS OTHERWISE
2 PROVIDED IN PARAGRAPHS (d), (e), AND (f) OF THIS SUBSECTION (3),
3 UNALTERABLE;

4 (b) THE AUTHORITATIVE COPY IDENTIFIES THE PERSON ASSERTING
5 CONTROL AS:

6 (I) THE PERSON TO WHICH THE TRANSFERABLE RECORD WAS
7 ISSUED; OR

8 (II) IF THE AUTHORITATIVE COPY INDICATES THAT THE
9 TRANSFERABLE RECORD HAS BEEN TRANSFERRED, THE PERSON TO WHICH
10 THE TRANSFERABLE RECORD WAS MOST RECENTLY TRANSFERRED;

11 (c) THE AUTHORITATIVE COPY IS COMMUNICATED TO AND
12 MAINTAINED BY THE PERSON ASSERTING CONTROL OR ITS DESIGNATED
13 CUSTODIAN;

14 (d) COPIES OR REVISIONS THAT ADD OR CHANGE AN IDENTIFIED
15 ASSIGNEE OF THE AUTHORITATIVE COPY CAN BE MADE ONLY WITH THE
16 CONSENT OF THE PERSON ASSERTING CONTROL;

17 (e) EACH COPY OF THE AUTHORITATIVE COPY AND ANY COPY OF A
18 COPY IS READILY IDENTIFIABLE AS A COPY THAT IS NOT THE AUTHORITATIVE
19 COPY; AND

20 (f) ANY REVISION OF THE AUTHORITATIVE COPY IS READILY
21 IDENTIFIABLE AS AUTHORIZED OR UNAUTHORIZED.

22 (4) EXCEPT AS OTHERWISE AGREED, A PERSON HAVING CONTROL OF
23 A TRANSFERABLE RECORD IS THE HOLDER, AS DEFINED IN SECTION 4-1-201
24 (20), C.R.S., OF THE TRANSFERABLE RECORD AND HAS THE SAME RIGHTS
25 AND DEFENSES AS A HOLDER OF AN EQUIVALENT RECORD OR WRITING
26 UNDER THE "UNIFORM COMMERCIAL CODE", TITLE 4, C.R.S., INCLUDING,
27 IF THE APPLICABLE STATUTORY REQUIREMENTS UNDER SECTION 4-3-302

1 (a), 4-7-501, OR 4-9-308, C.R.S., ARE SATISFIED, THE RIGHTS AND
2 DEFENSES OF A HOLDER IN DUE COURSE, A HOLDER TO WHICH A
3 NEGOTIABLE DOCUMENT OF TITLE HAS BEEN DULY NEGOTIATED, OR A
4 PURCHASER, RESPECTIVELY. DELIVERY, POSSESSION, AND INDORSEMENT
5 ARE NOT REQUIRED TO OBTAIN OR EXERCISE ANY OF THE RIGHTS UNDER
6 THIS SUBSECTION (4).

7 (5) EXCEPT AS OTHERWISE AGREED, AN OBLIGOR UNDER A
8 TRANSFERABLE RECORD HAS THE SAME RIGHTS AND DEFENSES AS AN
9 EQUIVALENT OBLIGOR UNDER EQUIVALENT RECORDS OR WRITINGS UNDER
10 THE "UNIFORM COMMERCIAL CODE", TITLE 4, C.R.S.

11 (6) IF REQUESTED BY A PERSON AGAINST WHICH ENFORCEMENT IS
12 SOUGHT, THE PERSON SEEKING TO ENFORCE THE TRANSFERABLE RECORD
13 SHALL PROVIDE REASONABLE PROOF THAT THE PERSON IS IN CONTROL OF
14 THE TRANSFERABLE RECORD. PROOF MAY INCLUDE ACCESS TO THE
15 AUTHORITATIVE COPY OF THE TRANSFERABLE RECORD AND RELATED
16 BUSINESS RECORDS SUFFICIENT TO REVIEW THE TERMS OF THE
17 TRANSFERABLE RECORD AND TO ESTABLISH THE IDENTITY OF THE PERSON
18 HAVING CONTROL OF THE TRANSFERABLE RECORD.

19 **24-71.3-117. Creation and retention of electronic records and**
20 **conversion of written records by governmental agencies.** THE
21 DEPARTMENT OF PERSONNEL SHALL DETERMINE WHETHER, AND THE
22 EXTENT TO WHICH, IT WILL CREATE AND RETAIN ELECTRONIC RECORDS AND
23 CONVERT WRITTEN RECORDS TO ELECTRONIC RECORDS.

24 **24-71.3-118. Acceptance and distribution of electronic records**
25 **by governmental agencies.** (1) EXCEPT AS OTHERWISE PROVIDED IN
26 SECTION 24-71.3-112 (6), THE DEPARTMENT OF PERSONNEL SHALL
27 DETERMINE WHETHER, AND THE EXTENT TO WHICH, IT WILL SEND AND

1 ACCEPT ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES TO AND FROM
2 OTHER PERSONS AND OTHERWISE CREATE, GENERATE, COMMUNICATE,
3 STORE, PROCESS, USE, AND RELY UPON ELECTRONIC RECORDS AND
4 ELECTRONIC SIGNATURES. PROVIDED HOWEVER, THAT THE DEPARTMENT
5 SHALL ALLOW ANY PERSON TO TRANSACT BUSINESS WITH THE DEPARTMENT
6 BY NON-ELECTRONIC MEANS.

7 (2) TO THE EXTENT THAT A GOVERNMENTAL AGENCY USES
8 ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES UNDER SUBSECTION
9 (1) OF THIS SECTION, THE DEPARTMENT OF PERSONNEL, GIVING DUE
10 CONSIDERATION TO SECURITY, MAY SPECIFY:

11 (a) THE MANNER AND FORMAT IN WHICH THE ELECTRONIC RECORDS
12 MUST BE CREATED, GENERATED, SENT, COMMUNICATED, RECEIVED, AND
13 STORED AND THE SYSTEMS ESTABLISHED FOR THOSE PURPOSES;

14 (b) IF ELECTRONIC RECORDS MUST BE SIGNED BY ELECTRONIC
15 MEANS, THE TYPE OF ELECTRONIC SIGNATURE REQUIRED, THE MANNER AND
16 FORMAT IN WHICH THE ELECTRONIC SIGNATURE MUST BE AFFIXED TO THE
17 ELECTRONIC RECORD, AND THE IDENTITY OF, OR CRITERIA THAT MUST BE
18 MET BY, ANY THIRD PARTY USED BY A PERSON FILING A DOCUMENT TO
19 FACILITATE THE PROCESS;

20 (c) CONTROL PROCESSES AND PROCEDURES AS APPROPRIATE TO
21 ENSURE ADEQUATE PRESERVATION, DISPOSITION, INTEGRITY, SECURITY,
22 CONFIDENTIALITY, AND AUDITABILITY OF ELECTRONIC RECORDS; AND

23 (d) ANY OTHER REQUIRED ATTRIBUTES FOR ELECTRONIC RECORDS
24 WHICH ARE SPECIFIED FOR CORRESPONDING NONELECTRONIC RECORDS OR
25 REASONABLY NECESSARY UNDER THE CIRCUMSTANCES.

26 (3) EXCEPT AS OTHERWISE PROVIDED IN SECTION 24-71.3-112 (6),
27 THIS ARTICLE DOES NOT REQUIRE A GOVERNMENTAL AGENCY OF THIS STATE

1 TO USE OR PERMIT THE USE OF ELECTRONIC RECORDS OR ELECTRONIC
2 SIGNATURES.

3 **24-71.3-119. Interoperability.** THE DEPARTMENT OF PERSONNEL,
4 WHICH ADOPTS STANDARDS PURSUANT TO SECTION 24-71.3-118, MAY
5 ENCOURAGE AND PROMOTE CONSISTENCY AND INTEROPERABILITY WITH
6 SIMILAR REQUIREMENTS ADOPTED BY OTHER GOVERNMENTAL AGENCIES OF
7 THIS AND OTHER STATES AND THE FEDERAL GOVERNMENT AND
8 NONGOVERNMENTAL PERSONS INTERACTING WITH GOVERNMENTAL
9 AGENCIES OF THIS STATE. IF APPROPRIATE, THOSE STANDARDS MAY
10 SPECIFY DIFFERING LEVELS OF STANDARDS FROM WHICH GOVERNMENTAL
11 AGENCIES OF THIS STATE MAY CHOOSE IN IMPLEMENTING THE MOST
12 APPROPRIATE STANDARD FOR A PARTICULAR APPLICATION.

13 **24-71.3-120. Preemption.** IN ALL MATTERS GOVERNED BY THIS
14 ARTICLE, THIS ARTICLE SHALL PREEMPT THE PROVISIONS OF ARTICLE 71 OF
15 THIS TITLE. IN ALL OTHER RESPECTS, ARTICLE 71 OF THIS TITLE SHALL
16 REMAIN IN FULL FORCE AND EFFECT.

17 **24-71.3-121. Study and repeal.** (1) THE HOUSE INFORMATION
18 AND TECHNOLOGY COMMITTEE, THE HOUSE BUSINESS AFFAIRS AND LABOR
19 COMMITTEE, AND THE SENATE BUSINESS, LABOR, AND FINANCE COMMITTEE
20 SHALL STUDY AND CONSIDER THE IMPLEMENTATION ON THIS SECTION
21 DURING THE 2003 REGULAR SESSION.

22 (2) THIS ARTICLE IS REPEALED, EFFECTIVE JULY 1, 2004.

23
24 **SECTION 2. Effective date.** This act shall take effect at 12:01
25 a.m. on the day following the expiration of the ninety-day period after
26 final adjournment of the general assembly that is allowed for submitting
27 a referendum petition pursuant to article V, section 1 (3) of the state

1 constitution; except that, if a referendum petition is filed against this act
2 or an item, section, or part of this act within such period, then the act,
3 item, section, or part, if approved by the people, shall take effect on the
4 date of the official declaration of the vote thereon by proclamation of the
5 governor.