

## Digital Signatures

### Model Digital Signature Act

#### Section 1

In this Act,

(1) "digital signature" means a signature that consists of one or more letters, characters, numbers or other symbols incorporated in, attached to or associated in an electronic document and intended by the party using it to have the same force and effect as the use of a manual signature.

#### Section 2

(1) In any written communication with an agency, board or department in which a signature is required or used any party to the communication may affix signature by the use of a digital signature that complies with requirements of this section and any rules or regulations made under it.

(2) The use of a digital signature shall have the force and affect as the use of a manual signature if and only if it contains all of the following attributes

- i. it is unique to the person using it
- ii. it is capable of verification
- iii. it is under the sole control of the person using it
- iv. it is linked to data in such a manner that if the data are changed, the digital signature is invalidated.

#### Section 3

**(1) The Secretary of State\* may make regulations including rules respecting any of the following:**

- a. the technology or process that must be used to make or send an electronic document
- b. the format of an electronic document
- c. the place where an electronic document is to be made or sent
- d. the time and circumstances where an electronic document is to be considered to be sent or received and the place where it is considered to have been sent or received
- e. the technology or process to be used to make or verify electronic signature and the manner in which it is to be used and
- f. any manner necessary for the purposes of this act

(2) Regulations made by the Secretary of State may incorporate by reference the standards or specifications of any government, person or organization either as they read at a fixed time or as they are amended from time to time

#### **Section 4**

(1) The use or acceptance of a digital signature shall be at the option of the parties and nothing in this Act shall require an agency, board or department of the state to use or permit the use of a digital signature

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August 2000

\* Regulations and rules can be made by Secretary of State or other appropriate authority according to your jurisdiction's law.

#### **Comments on Draft Digital Signature Act/Electronic Signature Act**

The draft legislation provides that digital signatures may be used where they comply with regulations and rules made by the Secretary of State. The legislation, as drafted, would not compel the use of digital signatures by the state and they can only be used by the agreement of both parties.

Regulations would also include definitions rather than incorporating them in the text of the legislation. Digital signatures are regulated by appropriate and acceptable technology and would include criteria or conditions to determine if the technology is acceptable.

If certified authorities are to be regulated and managed by the state authority rather than by the private sector, there may be requirements to allow for certification authorities to be recognized and specified in the regulation.

In the case of the California regulations, it also includes criteria that public entities must use in accepting digital signatures.

An alternative draft law is also included entitled the Electronic Signature Act. This legislation authorizes a government entity to use electronic means to create, collect, receive, store, transfer, distribute, publish or otherwise deal with documents or information that provides for the use of electronic signature and secure electronic signatures as are prescribed by regulation. It also would authorize the use of electronic payments and development of electronic forms to replace existing written prescribed forms.

Subsection 8 of the draft provides that it is optional to utilize electronic creation and signature of documents as is the case in the digital signature draft.

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