

State of Arizona
Senate
Fifty-third Legislature
First Regular Session
2017

CHAPTER 78
SENATE BILL 1078

AN ACT

PROVIDING FOR TRANSFERRING AND RENUMBERING; AMENDING SECTION 18-106, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED; AMENDING SECTIONS 28-2065, 41-121, 41-352, 44-7011, 44-7041 AND 44-7042, ARIZONA REVISED STATUTES; RELATING TO ELECTRONIC AND DIGITAL SIGNATURES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 18-442, Arizona Revised Statutes, is transferred
3 and renumbered for placement in title 18, chapter 1, article 1, Arizona
4 Revised Statutes, as section 18-106 and, as so renumbered, is amended to
5 read:

6 18-106. Electronic and digital signatures; exemptions;
7 definitions

8 A. THE DEPARTMENT, IN CONSULTATION WITH THE STATE TREASURER, SHALL
9 ADOPT POLICIES OR RULES PURSUANT TO TITLE 41, CHAPTER 6 ESTABLISHING
10 POLICIES AND PROCEDURES FOR THE USE OF ELECTRONIC AND DIGITAL SIGNATURES
11 BY ALL STATE AGENCIES, BOARDS AND COMMISSIONS FOR DOCUMENTS FILED WITH AND
12 BY ALL STATE AGENCIES, BOARDS AND COMMISSIONS.

13 ~~A.~~ B. Unless otherwise provided by law, an electronic signature
14 that complies with this section may be used to sign a writing on a
15 document that is filed with or by a state agency, board or commission, and
16 the electronic signature has the same force and effect as a written
17 signature.

18 ~~B.~~ C. An electronic signature shall be unique to the person using
19 it, shall be capable of reliable verification and shall be linked to a
20 record in a manner so that if the record is changed the electronic
21 signature is invalidated.

22 ~~C.~~ D. Except for returns, statements or other documents filed
23 pursuant to titles 42 and 43, a document that contains an electronic
24 signature that is a digital signature shall comply with ~~all of the~~
25 ~~following:~~

26 ~~1. Contain a computer-based certificate that identifies the issuing~~
27 ~~entity and the subscriber, contain the subscriber's public key and be~~
28 ~~digitally signed by the issuing entity. A valid subscriber to a digitally~~
29 ~~signed document shall be listed in the certificate, shall accept the~~
30 ~~certificate and lawfully holds the private key that corresponds to the~~
31 ~~public key that is listed in that certificate. A person who acquires a~~
32 ~~private key through theft, fraud, deceit, eavesdropping or other unlawful~~
33 ~~means does not lawfully hold the private key.~~

34 ~~2. Contain a key pair used for verifying a digital signature that~~
35 ~~has a unique property so that the public key can verify the digital~~
36 ~~signature that the private key creates.~~

37 ~~3. Be capable of verification by the person having the initial~~
38 ~~message and the signer's public key as follows:~~

39 ~~(a) The person can accurately determine whether the transformation~~
40 ~~of the message was created by using the private key that corresponds to~~
41 ~~the signer's key.~~

42 ~~(b) The person can accurately determine whether the initial message~~
43 ~~has been altered since the transformation was made~~ THE POLICIES OR RULES
44 ADOPTED PURSUANT TO SUBSECTION A OF THIS SECTION.

~~D.~~ E. The following records are not public records and are exempt from public inspection and reproduction pursuant to title 39, chapter 1, article 2:

1. Records containing information that would disclose or may reasonably lead to the disclosure of any component in the process used to execute or adopt an electronic or digital signature if the disclosure would or may reasonably cause the loss of sole control over the electronic or digital signature from the person using it.

2. Records that if disclosed would jeopardize or may reasonably lead to jeopardizing the security of a certificate issued in conjunction with a digital signature.

~~E.~~ F. For the purposes of this section, ~~unless the context otherwise requires:~~

~~1. "Asymmetric cryptosystem" means an algorithm or series of algorithms that provide a secure key pair for a digital signature.~~

~~2.~~ 1. "Certificate" means a computer-based record that is contained in a document with a digital signature and that identifies the subscriber, contains the subscriber's public key and is digitally signed by the entity issuing the certificate.

~~3.~~ 2. "Digital signature" means a type of electronic signature ~~that transforms a message through the use of an asymmetric cryptosystem.~~

~~4.~~ 3. "Electronic signature" **EITHER:**

(a) Means an electronic or digital method of identification **THAT COMPLIES WITH THE REQUIREMENTS OF THIS SECTION AND** that is executed or adopted by a person with the intent to be bound by or to authenticate a record.

(b) **INCLUDES A DIGITAL SIGNATURE.**

~~5.~~ 4. "Entity issuing ~~a~~ **THE** certificate" means a person ~~who~~ **THAT** creates and issues a certificate and notifies the subscriber listed in the certificate of the contents of the certificate.

~~6. "Key pair" means a private key and its corresponding public key in an asymmetric cryptosystem.~~

~~7.~~ 5. "Person" means a human being or an organization capable of signing a document, either legally or as a matter of fact.

~~8.~~ 6. "Private key" means the key of a key pair that is used to create a digital signature.

~~9.~~ 7. "Public key" means the key of a key pair that is used to verify a digital signature.

~~10.~~ 8. "Record" means information that is inscribed in a tangible medium or that is stored in an electronic or other medium and that is retrievable in a physically perceivable form. Record includes electronic records and printed, typewritten and tangible records.

~~11.~~ 9. "Subscriber" means a person ~~who~~ **THAT** is the subject listed in a certificate, accepts that certificate and holds a private key that corresponds to a public key listed in that certificate.

~~12. "Transform" or "transform a message" means to subject data in a message to a mathematical change by electronic means.~~

Sec. 2. Section 28-2065, Arizona Revised Statutes, is amended to read:

28-2065. Electronic and digital signatures; documents

A. The director, in cooperation with a statewide association of franchised new motor vehicle dealers, shall establish a program to accept and use electronic or digital signatures.

B. In the process of developing the program, the director shall research and develop methods to allow the department, authorized third parties, licensed financial institutions, licensed insurers or any other business or individual as determined by the director to accept, exchange and use electronic or digital signatures for any document or for any transaction prescribed in this chapter and sections 28-370, 28-444, 28-453 and 28-5111.

C. The participants shall ensure that adequate security measures are in place to prevent any illegal use of the signatures or other information exchanged pursuant to this section.

D. The director may determine and require reimbursement from program participants for costs related to computer programming, hardware, development and personnel. The department shall deposit, pursuant to sections 35-146 and 35-147, all monies received pursuant to this section in a separate account of the state highway fund established by section 28-6991. Monies in the separate account are continuously appropriated. The director may transfer monies deposited pursuant to this subsection from the separate account to the operating budget of the department's motor vehicle division for the purpose of reimbursing the department's operating budget for expenditures made by the division pursuant to this section.

E. This section does not limit the use of electronic and digital signatures used by state agencies, boards or commissions pursuant to section ~~18-442~~ 18-106.

F. The director may adopt rules necessary to implement this section.

Sec. 3. Section 41-121, Arizona Revised Statutes, is amended to read:

41-121. Duties

A. The secretary of state shall:

1. Receive bills and resolutions from the legislature, and perform such other duties as devolve on the secretary of state by resolution of the two houses or either of them.

2. Keep a register of and attest the official acts of the governor.

3. Act as custodian of the great seal of this state.

1 4. Affix the great seal, with the secretary of state's attestation,
2 to public instruments to which the official signature of the governor is
3 attached.

4 5. File in the secretary of state's office receipts for all books
5 distributed by the secretary of state and direct the county recorder of
6 each county to do the same.

7 6. Certify to the governor the names of those persons who have
8 received at any election the highest number of votes for any office, the
9 incumbent of which is commissioned by the governor.

10 7. Publish slip laws of each act of the legislature promptly on
11 passage and approval of such act, make such acts available to interested
12 persons for a reasonable fee to compensate for the cost of printing and
13 provide each house of the legislature and the legislative council with a
14 certified copy of each bill or resolution, showing the chapter or
15 resolution number of each, as each is filed in the secretary of state's
16 office.

17 8. Keep a fee book of fees and compensation of whatever kind and
18 nature earned, collected or charged by the secretary of state, with the
19 date, the name of the payer and the nature of the service in each
20 case. The fee book shall be verified annually by the secretary of state's
21 affidavit entered in the fee book.

22 9. Perform other duties imposed on the secretary of state by law.

23 10. Report to the governor on January 2 each year, and at such
24 other times as provided by law, a detailed account of the secretary of
25 state's official actions taken since the secretary of state's previous
26 report together with a detailed statement of the manner in which all
27 appropriations for the secretary of state's office have been expended.

28 11. Transfer all noncurrent or inactive books, records, deeds and
29 other papers otherwise required to be filed with or retained by the
30 secretary of state to the custody of the Arizona state library, archives
31 and public records.

32 12. Make available to the public, without charge, title 33,
33 chapters 10 and 11 on the secretary of state's website.

34 13. Accept, ~~and approve for use,~~ electronic and digital signatures
35 that comply with section ~~18-442,~~ 18-106 for documents filed with and by
36 all state agencies, boards and commissions. ~~In consultation with the~~
37 ~~department of administration and the state treasurer, the secretary of~~
38 ~~state shall adopt rules pursuant to chapter 6 of this title establishing~~
39 ~~policies and procedures for the use of electronic and digital signatures~~
40 ~~by all state agencies, boards and commissions for documents filed with and~~
41 ~~by all state agencies, boards and commissions.~~

42 14. Meet at least annually with personnel from the federal voting
43 assistance office of the United States department of defense and with
44 county recorders and other county election officials in this state to
45 coordinate the delivery and return of registrations, ballot requests,

1 voted ballots and other election materials to and from absent uniformed
2 and overseas citizens.

3 B. The secretary of state may refuse to perform a service or refuse
4 a filing based on a reasonable belief that the service or filing is being
5 requested for an unlawful, illegitimate, false or fraudulent purpose or is
6 being requested or submitted in bad faith or for the purpose of harassing
7 or defrauding a person or entity. This subsection does not apply to
8 election filings.

9 Sec. 4. Section 41-352, Arizona Revised Statutes, is amended to
10 read:

11 41-352. Applicability of article; electronic signature laws

12 A. Any notarial act in which a person by oath or affirmation signs
13 a document may be performed electronically as prescribed by this article
14 if under applicable law that document may be signed with an electronic
15 signature.

16 B. Unless otherwise expressly prohibited by law, the following
17 notarial acts, terms and entities have the same legal effect as those
18 prescribed by article 2 of this chapter:

- 19 1. Electronic acknowledgment as acknowledgment.
- 20 2. Electronic oath as oath.
- 21 3. Electronic jurat as jurat.
- 22 4. Electronic affidavit as affidavit.
- 23 5. Electronic notarial act as notarial act.
- 24 6. Electronic notarial certificate token as notarial certificate.
- 25 7. Electronic notary as notary.

26 C. An electronic commission is a commission to perform only
27 electronic notary acts and only an electronic notary is authorized to
28 perform electronic notary acts.

29 D. Unless otherwise expressly prohibited by law, any electronic
30 notarial act may be performed by either:

- 31 1. An act in the presence of an electronic notary as prescribed by
32 this article.
- 33 2. An electronic notarial service as prescribed by this article for
34 which the person signing appears before an electronic notary and by oath
35 or affirmation acknowledges that any notary service electronic document
36 that is created by the person pursuant to this article has the same legal
37 force and effect as if the person appeared before an electronic notary and
38 by oath or affirmation executed an electronic notarial act.

39 E. Section ~~18-442~~ 18-106 applies in conjunction with this article
40 to electronic signatures used by electronic notaries.

41 F. This article applies to electronic notarial acts that are
42 performed by electronic notaries who are appointed in this state and
43 applies only to their acts performed in the United States.

1 Sec. 5. Section 44-7011, Arizona Revised Statutes, is amended to
2 read:

3 44-7011. Notarization; acknowledgment

4 Notwithstanding title 41, chapter 2, article 2, if the law requires
5 a signature or record to be notarized, acknowledged, verified or made
6 under oath, that requirement is satisfied if a notary completes a notarial
7 act on the electronic message or document. That notarial act on the
8 electronic message or document is complete without the imprint of the
9 notary's seal if all of the following apply:

10 1. The electronic message or document is signed pursuant to this
11 chapter or section ~~18-442~~ 18-106 in the presence of a notary.

12 2. The notary confirms that the electronic signature on the
13 electronic message or document is verifiably the electronic signature
14 issued to the signer pursuant to this chapter or section ~~18-442~~ 18-106.

15 3. The notary electronically signs with an electronic signature
16 that is consistent with this chapter, title 41, chapter 2, article 3 or
17 any other applicable law.

18 4. The following information appears electronically within the
19 message electronically signed by the notary:

20 (a) The notary's full name and commission number exactly as it
21 appears on the notary's commission.

22 (b) The words "electronic notary public", "state of Arizona" and
23 "my commission expires on (date)".

24 (c) The address of the notary's principal place of contact exactly
25 as it appears on the notary's commission.

26 (d) The notary's e-mail or other electronic address exactly as it
27 appears on the notary's commission.

28 Sec. 6. Section 44-7041, Arizona Revised Statutes, is amended to
29 read:

30 44-7041. Creation; retention; conversion of written records

31 A. Each governmental agency shall determine if, and the extent to
32 which, the governmental agency will create and retain electronic records
33 and convert written records to electronic records. Any governmental
34 agency that is subject to the management, preservation, determination of
35 value and disposition of records requirements prescribed in sections
36 41-151.12, 41-151.13, 41-151.14, 41-151.15, 41-151.16, 41-151.17,
37 41-151.18 and 41-151.19 and the permanent public records requirements
38 prescribed in section 39-101 shall comply with those requirements.

39 B. State agencies shall comply with the standards adopted by the
40 department of administration pursuant to title 18, chapter 1.

41 C. All governmental agencies shall comply with the policies that
42 are established ~~by the secretary of state~~ pursuant to section ~~18-442~~
43 18-106 and that apply to the use of electronic signatures.

1 Sec. 7. Section 44-7042, Arizona Revised Statutes, is amended to
2 read:

3 44-7042. Sending and accepting electronic records; exemption

4 A. Except as otherwise provided in section 44-7012, subsection E,
5 **AND THIS SUBSECTION**, each governmental agency, **EXCEPT STATE AGENCIES**,
6 shall determine if, and the extent to which, the governmental agency will
7 send and accept electronic records and electronic signatures to and from
8 other persons and otherwise create, generate, communicate, store, process,
9 use and rely on electronic records and electronic signatures. State
10 agencies shall **ACCEPT ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES AND**
11 **SHALL** comply with the appropriate standards and policies adopted or
12 established by the department of administration pursuant to title 18,
13 chapter 1 ~~and the secretary of state pursuant to section 18-442.~~

14 B. To the extent that a governmental agency uses electronic records
15 and electronic signatures pursuant to subsection A of this section, the
16 governmental agency after giving due consideration to security may
17 specify:

18 1. The manner and format in which the electronic records must be
19 created, generated, sent, communicated, received and stored and the
20 systems established for those purposes.

21 2. If electronic records must be signed by electronic means, the
22 type of electronic signature required, the manner and format in which the
23 electronic signature must be affixed to the electronic record and the
24 identity of or criteria that must be met by any third party used by a
25 person filing a document to facilitate the process.

26 3. Control processes and procedures as appropriate to ensure
27 adequate preservation, disposition, integrity, security, confidentiality
28 and ability to perform audits of electronic records.

29 4. Any other required attributes for electronic records that are
30 specified for corresponding nonelectronic records or that are reasonably
31 necessary under the circumstances.

32 ~~C. Except as otherwise provided in section 44-7012, subsection E,~~
33 ~~this chapter does not require a governmental agency to use or allow the~~
34 ~~use of electronic records or electronic signatures.~~

35 **C. THIS SECTION DOES NOT APPLY TO THE JUDICIAL BRANCH.**

36 Sec. 8. Emergency

37 This act is an emergency measure that is necessary to preserve the
38 public peace, health or safety and is operative immediately as provided by
39 law.

APPROVED BY THE GOVERNOR MARCH 27, 2017.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 27, 2017.