

# FINAL BILL REPORT

## ESSB 6028

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Synopsis as Enacted

**Brief Description:** Adopting the uniform electronic transactions act and aligning statutory provisions relating to signatures, declarations, and documents.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Pedersen, Padden, Dhingra, Holy, Kuderer and Wilson, C.; by request of Uniform Law Commission).

**Senate Committee on Law & Justice**  
**House Committee on Civil Rights & Judiciary**

**Background:** In 1999, the Uniform Law Commission (ULC) approved the Uniform Electronic Transactions Act (UETA) to ensure electronic signatures, electronic records, and contracts based or memorialized in electronic formats would not be rejected merely because of their electronic nature. UETA has since been adopted by 47 states, the U.S. Virgin Islands and the District of Columbia, while New York, Illinois, and Washington have not.

In 2000, the Electronic Signatures in Global and National Commerce Act (ESIGN) was enacted at the federal level. ESIGN is substantially similar to UETA, however, there are some differences. ESIGN adds consumer consent provisions while UETA contains provisions elaborating on how electronic signatures, records, and contracts are treated in the courts and elsewhere. ESIGN specifies the interaction of the federal ESIGN act with state laws, providing that uniform enactments of UETA trump the provisions of ESIGN. Non UETA state enactments may avoid federal preemption to the extent they are consistent with ESIGN and do not require or provide greater legal effect to any specific technology or technical specification.

Both laws generally provide that electronic signatures and records must be accorded the same legal status as ink signature and paper records.

Prior to the approval or enactment of ESIGN and UETA, Washington State enacted one of the first comprehensive laws to address the authentication of digital signatures. Washington's law authorized the secretary of state to regulate and maintain a list of licensed certification authorities for verifying digital signatures, and recognized repositories for storing that information. With the adoption of ESIGN, the regulatory approach contemplated by this law became obsolete and was repealed by the Legislature in 2019.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

The state has adopted various provisions throughout the years to address the use of electronic signatures. Many statutes allow electronic or digital signatures in addition to a pen and ink signature in various scenarios. Recent legislation includes the adoption of the Revised Uniform Law on Notarial Act, which addresses protocols for notarizing electronic records and legislation addressing electronic records generated or stored using distributed ledger technology, known as blockchain.

The ULC released guidance in January 2019, addressing the interaction of UETA and ESIGN with state legislation specifically authorizing electronic records using distributed ledger technology. That guidance explains that UETA already adequately encompasses blockchain and smart contracts, and state legislation to specifically address these technologies is redundant and potentially detrimental to the technology neutral goals of the act.

**Summary:** The provisions of UETA are adopted, including key definitions of electronic, electronic signature, and record. The UETA does not require records or signatures be generated or stored electronically, but rather addresses the legal effect when parties have agreed to conduct transactions by electronic means. Specifically:

- 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 or enforceability solely because an electronic record was used in its formation;
- if a law required 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.

Whether an electronic record or signature is attributable to a person is determined from the context and surrounding circumstances at the time of the record or signature's creation, execution, or adoption. The act further addresses when an electronic document has been sent and received, the admissibility of an electronic record or signature in evidence, and the power of state government agencies to migrate to electronic records. The UETA does not require a government agency to use or permit electronic records or signatures. Rather, each government agency is given the authority to determine the extent to which it will use and accept electronic records.

Current statutes defining electronic, electronic signature, and record are repealed, as are provisions addressing the legal status of records created using distributed ledger technology. Other provisions throughout the code are amended to be consistent with UETA.

**Votes on Final Passage:**

Senate	46	1
House	96	0

**Effective:** June 11, 2020