

HOUSE BILL REPORT

ESSB 6028

As Passed House:
March 3, 2020

Title: An act relating to adoption of the uniform electronic transactions act and aligning statutory provisions relating to signatures, declarations, and documents.

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).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/21/20, 2/26/20 [DP].

Floor Activity:

Passed House: 3/3/20, 96-0.

Brief Summary of Engrossed Substitute Bill

- Adopts the Uniform Electronic Transactions Act (UETA), which establishes a general rule that a signature, record, or contract related to a transaction may not be denied legal effect or enforceability solely because it is in electronic form.
- Updates provisions throughout the Revised Code of Washington for consistency with the UETA, and repeals statutes governing the use of electronic signatures and records by governmental agencies and the legal status of records created using distributed ledger technology.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 12 members: Representatives Kilduff, Chair; Thai, Vice Chair; Dufault, Assistant Ranking Minority Member; Goodman, Graham, Hansen, Kirby, Klippert, Peterson, Valdez, Walen and Ybarra.

Staff: Edie Adams (786-7180).

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.

Background:

In 1999 the Uniform Law Commission adopted the Uniform Electronic Transactions Act (UETA) with a stated goal of removing barriers to electronic commerce by validating and effectuating electronic records and electronic signatures. The UETA establishes the general rule that a signature, contract, or other record related to a transaction may not be denied legal effect or enforceability solely because it is in electronic form. The UETA has been adopted by 47 states, the United States Virgin Islands, and the District of Columbia; it has not been adopted in Washington, New York, and Illinois, although the latter two states have adopted alternative laws governing electronic records and signatures.

The federal Electronic Signatures in Global and National Commerce Act (ESIGN) became law in 2000, and like the UETA, provides a general rule of validity for electronic records and electronic signatures for transactions affecting interstate or foreign commerce. The ESIGN is substantially similar to the UETA, although there are differences in the scope of the acts and the manner in which they address some issues. The ESIGN provides that uniform enactments of the UETA trump the provisions of the ESIGN. State laws addressing electronic records that are not enactments of the UETA may avoid federal preemption if they are consistent with the ESIGN and do not provide greater legal effect to any specific technology or technical specification.

Prior to adoption of the ESIGN and the UETA, Washington adopted the Electronic Authentication Act in 1998 to address the use and authentication of digital signatures, but this act became outdated and was repealed in 2019. The Legislature has adopted many other provisions over the years to address the use of electronic records and electronic signatures, such as the Uniform Real Property Electronic Recording Act and the Uniform Law on Notarial Acts, which addresses standards for notarizing electronic records. Legislation was enacted in 2015 to provide that state and local agencies may use and accept electronic signatures with the same force and effect as that of a signature affixed by hand, and where a "writing" is required by statute, an electronic record may be used. In 2019 legislation was enacted providing that an electronic record may not be denied legal effect, validity, or enforceability solely because it is generated, communicated, received, or stored using distributed ledger technology, including blockchain.

Summary of Bill:

The Uniform Electronic Transactions Act (UETA) is adopted. The UETA applies to transactions relating to business, commercial, or governmental affairs between parties who have agreed to conduct transactions by electronic means. The determination of whether parties agree to conducting a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct. The UETA does not apply to a transaction governed by: laws addressing the creation and execution of wills, codicils, or testamentary trusts; or the Uniform Commercial Code (UCC), except the UCC provisions governing sales and leases.

A record or signature may not be denied legal effect or enforceability solely because it is in electronic form, and a contract may not be denied legal effect or enforceability solely because

an electronic record was used in its formation. If a law requires a signature or a record to be in writing, an electronic signature or an electronic record satisfies the law.

A requirement that a person provide, send, or deliver information in writing to another person is satisfied if the information is provided, sent, or delivered in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record. If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information that accurately reflects the information in the record and remains accessible for later reference.

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included, is attached to or logically associated with the signature or record. Evidence of a record or signature may not be excluded in a proceeding solely because it is in electronic form.

An electronic record or electronic signature is attributable to a person if it was the act of the person, which may be shown in any manner. The effect of an electronic record or electronic signature is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption.

Rules are provided for changes or errors in the transmission of an electronic record and when a party may avoid the effect of the changed or erroneous electronic record. Default rules are established regarding when and from where an electronic record is sent and when and where an electronic record is received.

Standards are provided for the creation, transferability, and enforcement of a "transferable record." "Transferable record" means an electronic record that would be a promissory note or document of title if it were in writing and the issuer of the electronic record expressly has agreed is a transferable record. A person is deemed to have control of a transferable record if it is created, stored, and assigned according to specified standards. A person having control of a transferable record is the holder with the same rights and defenses as a holder of an equivalent record or writing under the UCC.

Government agencies may determine the extent to which they will create and retain electronic records and send and accept electronic records and electronic signatures. An agency may adopt standards governing electronic records and electronic signatures, and may consider consistency and interoperability with similar requirements adopted by other governmental agencies of this or other states, the federal government, and nongovernmental persons interacting with governmental agencies of the state.

Current statutes governing the acceptance and use of electronic signatures and electronic records by governmental agencies are repealed. Also repealed are statutes governing the legal status of records created using distributed ledger technology. Provisions of the Washington Business Corporations Act are revised to incorporate the language and standards of the UETA, and other provisions of the Revised Code of Washington are amended for consistency with the UETA.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Washington enacted a law governing electronic signatures the year before the Uniform Law Commission (ULC) adopted the Uniform Electronic Transactions Act (UETA). Over the years, new standards were established in the law to deal with electronic records and signatures that were inconsistent with the UETA, so it became harder to take the step to adopt the UETA. Washington's original electronic signatures act became outdated and was repealed last year, so it was time to look at adopting the UETA and revising those other laws.

This is the last piece of the puzzle to bring Washington into the twentieth century regarding electronic transactions. The reason electronic signatures are not used in Washington real estate transactions is because the state has not adopted the UETA. Federal law allows electronic records in interstate transactions. This bill provides the ability to use electronic records and signatures for noninterstate transactions within Washington.

(Opposed) None.

Persons Testifying: Senator Pedersen, prime sponsor; and Stuart Halsan, Washington Land Title Association.

Persons Signed In To Testify But Not Testifying: None.