

SENATE BILL REPORT

SB 6028

As Reported by Senate Committee On:
Law & Justice, January 16, 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: Senators Pedersen, Padden, Dhingra, Holy, Kuderer and Wilson, C.; by request of Uniform Law Commission.

Brief History:

Committee Activity: Law & Justice: 1/14/20, 1/16/20 [DPS].

Brief Summary of First Substitute Bill

- Adopts the Uniform Electronic Transactions Act (UETA).
- Requires electronic records and signatures be given the same legal effect as ink signatures and paper records.
- Updates provisions throughout the code to be consistent with UETA.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 6028 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Holy, Kuderer, Salomon and Wilson, L..

Staff: Shani Bauer (786-7468)

Background: In 1999, the Uniform Law Commission (ULC) approved 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. The 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.

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.

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 the verification of 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.

The state has adopted various provisions throughout the years to address the use of electronic signatures. Many statutes allow the use of 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 utilizing distributed ledger technology. That guidance explains that UETA already adequately encompasses blockchain and smart contracts, and for state legislation to specifically address these technologies is redundant and potentially detrimental to the technology neutral goals of the act.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (First Substitute): 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 utilize 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.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute): Definitions are added to UETA for blockchain and distributed ledger technology. Changes are made to the Washington Business Corporation Act to assimilate the terminology of UETA with the act, and address interaction with the administration and processing of business documents.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute: *The committee recommended a different version of the bill than what was heard.* PRO: The purpose behind UETA is to remove barriers to electronic commerce. It is not a general contracting statute and provisions governing contracts remain unchanged under this new law. Whether a record is attributable to a person is left to circumstances outside of the law. It simply ensures that electronic records and signatures will be given the same legal effect as those in writing. UETA is meant to be technology neutral. We are amenable to working with some tweaks to address blockchain technology.

The adoption of UETA would bring benefits to Washington across several sectors. In particular, it would assist the land title industry and every business that needs to record a land title. In years prior, the Legislature has adopted other acts such as the uniform real property recording act and the uniform law on notarial acts. To be useful, these acts need a general law authorizing electronic records. E-sign does not adequately cover transactions that do not intersect interstate commerce. For example, the transfer on death act does not have any connection to interstate law. With the repeal of the Washington Authentication Act, Washington has no sort of electronic signature law. Washington residents should stand on the same footing as other states to utilize electronic documents and signatures. It is particularly useful to those that may be in the military and need to sign or transfer documents while out of state.

The Corporation Act is unique in that the law requires the signature of many documents. Whether electronic signatures are authorized in these scenarios is a substantially gray area of the law. Other states have made a variety of changes to address this ambiguity, which we also seek to make here. These changes would make sure that UETA, E-sign, and the corporation act work nicely together.

OTHER: The ULC believes that UETA adequately covers distributed ledger technology and smart contracts. This bill therefore repeals those provisions related to DLT that were passed last session. We are confident that repeal of that law is not intended to effect the validity of DLT or smart contracts. However, we would like to incorporate those concepts in the new law to ensure that is clear. We have suggestions for definitions and terminology that we would propose be included in UETA to accomplish this goal.

Persons Testifying: PRO: Senator Jamie Pedersen, Prime Sponsor; Anita Ramasastry, University of Washington; Sean Holland, Washington Land Title Association; Michael Hutchings, citizen.

OTHER: Ian Griswold, WTIA.

Persons Signed In To Testify But Not Testifying: No one.