

# SENATE BILL REPORT

## SB 6069

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As of February 6, 2012

**Title:** An act relating to electronic transactions.

**Brief Description:** Concerning electronic transactions.

**Sponsors:** Senators Litzow, Kline, Harper and Frockt.

**Brief History:**

**Committee Activity:** Judiciary: 1/18/12.

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### SENATE COMMITTEE ON JUDICIARY

**Staff:** Juliana Roe (786-7438)

**Background:** The Washington Electronic Authentication Act (WEAA) was adopted on May 13, 1999, to facilitate electronic commerce; ensure that digital signatures are not denied legal recognition solely because they are in electronic form; and to provide licensing mechanisms, procedures, and security measures for the use of digital signatures using public key encryption. Washington was one of the first states to pass digital signature legislation. From 1999 until the WEAA was recently amended, state agencies signing electronically were required by WEAA to use digital signatures in reliance on WEAA.

At its July 1999 annual conference, the National Conference of Commissioners on Uniform State Laws (NCCUSL) adopted the Uniform Electronic Transactions Act (UETA), which has since been adopted in some form by 47 states. UETA affirmatively established the general rule of validity of electronic signatures and records: that is, a signature, contract, or other record related to any transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form.

The Electronic Signatures in Global and National Commerce Act (ESIGN) was signed into federal law on June 30, 2000. Both ESIGN and UETA validate the use of electronic records and signatures and they overlap significantly. Each statute provides that electronic contracts and signatures shall not be denied legal effect or enforceability simply because they are electronic. In some cases the ESIGN uses the language of UETA without change; in other cases ESIGN makes significant changes.

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ESIGN applies to all transactions governed by federal law even if a state adopts UETA. With respect to state laws, ESIGN asserts broad preemption rights over inconsistent state laws, except for the 1999 version of UETA in the form adopted by NCCUSL. Therefore, a modification to the 1999 version of UETA could be preempted by ESIGN.

ESIGN holds that a state statute, regulation, or rule of law may not modify, limit, or supersede the provisions of Section 101 of ESIGN unless: (1) the law or regulation constitutes a conforming enactment of the 1999 NCCUSL version of UETA; or (2) the law or regulation provides alternative procedures or requirements for the use of electronic signatures that are consistent with ESIGN and do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures. In other words, for state law transactions, ESIGN disallows any state law that modifies limits or supersedes Section 101 by a law that does not maintain technology neutrality, that is, by a law that requires or gives greater legal status or effect to a specific technology.

Because of this technology neutrality rule and to avoid preemption by ESIGN, WEAA was amended and broadened to enable electronic signatures in addition to the digital signatures it already allowed.

WEAA prescribes rules for various electronic transactions: (1) issuing certificates, which are computer-based records that identify the certification authority issuing it, names or identifies the subscriber, contains the subscriber's public key, and is digitally signed by the certification authority issuing it; (2) issuing, enforcing, suspending, and revoking licenses to certification authorities, persons who are issued certificates; (3) issuing certificates to subscribers and the representations and duties that correspond with the acceptance of the certificate; and (4) satisfying signature requirements.

**Summary of Bill:** UETA is created which applies to electronic records and electronic signatures relating to a state law transaction but not a federal law transaction. An electronic record is a record created, generated, sent, communicated, received, or stored by electronic means. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. A record or signature cannot be denied legal effect or enforceability solely because it is in electronic form; other defenses continue to exist. For covered transactions, electronic signatures satisfy a requirement that a record be signed.

If parties have agreed to conduct transactions electronically, all information required by law to be delivered to another person is satisfied, if the information is provided; sent; or delivered in an electronic manner that conforms to UETA, as to the state law aspects of a transaction and to ESIGN (as applicable to federal aspects of a transaction and to selected state law aspects where UETA bows to ESIGN.)

Rules are set forth that apply when there is a change or error in the transmission of an electronic record, when a defense of mistake may be raised, when a record will be deemed sent, when an email address field must be designated, when parties may vary rights under the

act by contract and when they may not, when a signature will be attributed to the signer, when other laws will or will not be supplanted, and other rules.

If, by law, a record must be retained, the state law requirement is satisfied by retaining an electronic record of the information which accurately reflects the information from the final electronic form of that record, and remains accessible for later reference.

Situations are set forth in which an electronic record is properly sent and received.

Rules are provided for automated transactions.

The term transferable record is defined for state law aspects of transactions.

State agencies must determine whether, and the extent to which, a governmental agency will create and retain electronic records and convert written records to electronic records. They must also determine whether, and the extent to which, they will send and accept electronic records and signatures, and the required attributes for these records and signatures. However, neither governmental agencies nor their constituents are required to use or permit the use of electronic records or signatures.

The term digital signature is changed to electronic signature throughout the existing statutes.

WEAA is repealed.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill takes effect on January 1, 2013.

**Staff Summary of Public Testimony:** PRO: WEAA is a deadlock, relic of a bygone era. It is a technology specific model. This bill provides Washington with the opportunity to catch up with the rest of the country. In combination with UETA, the state and federal laws are straightforward and nonintrusive. Washington is currently an outlier, with 47 other states having already adopted the UETA. The UETA is a proven act after having been in use for more than ten years. And, simply amending the current state law will not work as it is like trying to put a square peg in a circular hole.

CON: The UETA is already outdated. Adopting a law that cannot be amended to keep pace with the explosion in electronic transactions is inadvisable. No harm has come to Washington State by not adopting the UETA. There are many ways in which states are not uniform. There is no reason Washington needs to be a uniform state for electronic transactions. The lack of UETA simplifies Washington law because only ESIGN applies rather than someone interpreting the details of both ESIGN and UETA.

**Persons Testifying:** PRO: Senator Litzow, prime sponsor; Anita Ramasastry, WA Uniform Legislation Commission; Ken Moyle, Electronic Signatures and Records Assn.

CON: Holly Towle, WA State Bar Assn.