

# HOUSE BILL REPORT

## HB 1920

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### As Reported by House Committee On: State Government

**Title:** An act relating to the use, acceptance, and removal of barriers to the use and acceptance of electronic signatures.

**Brief Description:** Promoting the use, acceptance, and removal of barriers to the use and acceptance of electronic signatures.

**Sponsors:** Representatives S. Hunt, Appleton, Johnson and Ormsby; by request of Office of Financial Management.

#### **Brief History:**

##### **Committee Activity:**

State Government: 2/12/15, 2/19/15 [DPS].

#### **Brief Summary of Substitute Bill**

- Establishes a process for the use and acceptance of electronic signatures.
- Stipulates that certain provisions of the Electronic Signatures in Global and National Commerce Act apply to transactions in Washington.

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### HOUSE COMMITTEE ON STATE GOVERNMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives S. Hunt, Chair; Bergquist, Vice Chair; Holy, Ranking Minority Member; Van Werven, Assistant Ranking Minority Member; Appleton, Gregory and Hawkins.

**Staff:** Marsha Reilly (786-7135).

#### **Background:**

##### Washington Electronic Authentication Act.

On January 1, 1998, the Washington Electronic Authentication Act (WEA Act) became effective. This law allows the use of digital signature technology in electronic transactions and creates a process for licensing certification authorities.

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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.*

Digital signature encryption systems are used to both protect the confidentiality of an electronic document and authenticate its source. These systems operate on the basis of two digital keys, or codes, created by the person desiring to send encrypted messages. One key is the "private" key, which is known only to the signer of the electronic message, and the other is the signer's "public" key, which is given to individuals with whom the sender wishes to exchange the confidential or authenticated message. The public key is used to verify both that the message was signed by the person holding the private key and that the message itself was not altered during its transmission.

To verify the ownership of public keys, each public key is provided with a computer-based certificate of authenticity. These certificates are created by "certification authorities," which guarantee that the public keys they certify belong to the people possessing the corresponding private keys.

#### Electronic Signatures in Global and National Commerce Act.

The federal Electronic Signatures in Global and National Commerce Act (ESIGN Act) allows the use of electronic records and signatures to satisfy any statutes, regulations, or rules of law requiring that such information be provided in writing, if the consumer has consented to its use, and has not withdrawn consent. Before obtaining a consumer's consent, the entity requiring electronic records must disclose the consumer's right to use paper documents and the process for obtaining them, whether the consent applies only to the particular transaction or to an entire category of documents, and the procedures for withdrawing consent.

The ESIGN Act does not apply to:

- wills, codicils, and trusts;
- adoption paperwork;
- divorce decrees;
- certain areas of the Uniform Commercial Code;
- court orders and notices;
- official court documents, including briefs and pleadings;
- notices of the termination of utility services;
- notices of default, foreclosure, repossession, or eviction;
- the cancellation of insurance benefits;
- product recalls or notices of material failures; and
- documentation accompanying the transportation of hazardous materials

The ESIGN Act also gives legal effect to contracts or other records that are created, generated, sent, communicated, received, or stored by electronic means, and signed with an electronic signature. Certain controls are required to ensure that the system used reliably establishes that the person controlling the record is the person to which the record was transferred.

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#### **Summary of Substitute Bill:**

The act shall be known as the Washington Electronic Commerce and Governmental Affairs Act (WECGA Act) and is added as a new chapter in Title 19, Business Regulations – Miscellaneous.

#### Use of Electronic Signatures by State Agencies.

Unless otherwise provided by law or agency rule, state agencies may accept electronic signatures with the same force and effect as that of a signature affixed by hand. Each state agency may determine whether and to what extent it will create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures. A state agency is not required to send or accept electronic records or electronic signatures for an agency transaction.

The Chief Information Officer (CIO) within the Office of Financial Management (OFM) must establish policies, standards, or guidance for electronic submissions and signatures, and a state agency's policy or rule must be consistent with those established by the CIO. The CIO is required to establish a website that maintains, or links to, an agency's rules and policies for electronic records and signatures.

Unless otherwise provided by law or rule, or the context clearly indicates otherwise, when referred to in code:

- the term "signature" includes electronic signatures;
- the term "writing" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and
- the term "mail" for transactions with state agencies includes the use of mail delivered through an electronic system, such as electronic mail or secure mail transfer if authorized by the state agency in rule.

"Electronic signature" is defined as an electronic sound, symbol, or process attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.

#### ESIGN Act.

The general rule of validity, specific exceptions, and transferable records of the federal ESIGN Act apply to transactions in Washington, including intrastate transactions and state law aspects of interstate transactions. The following terms have the same meaning under the WECGA Act as in the ESIGN Act: consumer, electronic, electronic record, electronic signature, ESIGN, information, person, record, requirement, and transaction. The law is intended to be consistent with the federal ESIGN Act and compliance with the ESIGN Act satisfies compliance with the WECGA Act.

#### Miscellaneous Provisions.

The requirement to sign an application for a chiropractic or dentistry license by hand are removed. For purposes of submitting a ballot measure to the Secretary of State, the sponsor may submit an affidavit by electronic means indicating that he or she is a registered voter. Provisions in the WEA Act inconsistent with or duplicative of the requirements of the WECGA Act are repealed, such as acceptance of electronic signatures and presumptions of the validity of electronic signatures or records. The statute allowing for agencies to accept public works bids electronically is repealed.

## **Substitute Bill Compared to Original Bill:**

The substitute bill adds the following provisions:

- clarifies that "transactions" refers to governmental affairs and government transactions;
- requires that state agencies consider access by and ability of persons to participate in and rely on electronic transactions when formulating policies, standards, and guidelines;
- encourages the CIO to promote consistency and interoperability of policies, standards, and guidelines;
- adds a definition for state agency;
- clarifies that those contracts, records, transactions, documents, or matters specifically excepted from coverage under the ESIGN Act are unaffected by and excepted from this act; and
- specifies that the act supersedes any conflicts with the WEA Act.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

### **Staff Summary of Public Testimony:**

(In support) Many agencies would like to use electronic signatures, but the proper laws are not in place. The Office of the CIO worked on this issue so that agencies that choose to, may use electronic signatures and electronic records. The provisions of the bill will also cover electronic signatures and records for private sector commerce.

(Opposed) None.

**Persons Testifying:** Representative S. Hunt, prime sponsor; Michael Cockrill, Office of the Chief Information Officer; and Ro Marcus, Office of Financial Management.

**Persons Signed In To Testify But Not Testifying:** None.