

SENATE BILL REPORT

SB 5810

As Reported by Senate Committee On:
Government Operations & Security, February 16, 2015

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: Senators Roach, Liias and Chase; by request of Office of Financial Management.

Brief History:

Committee Activity: Government Operations & Security: 2/16/15 [DPS].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & SECURITY

Majority Report: That Substitute Senate Bill No. 5810 be substituted therefor, and the substitute bill do pass.

Signed by Senators Roach, Chair; Pearson, Vice Chair; Liias, Ranking Minority Member; Habib and McCoy.

Staff: Samuel Brown (786-7470)

Background: Digital Signatures. 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.

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.

Electronic Signatures in Global and National Commerce Act (E-SIGN Act). The federal E-SIGN 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of law requiring that such information be provided in writing, if the consumer has consented to its use, and has not withdrawn consent.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 E-SIGN Act does not apply to the following:

- 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 E-SIGN 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.

Washington Electronic Authentication Act. On January 1, 1998, the Washington Electronic Authentication Act became effective, allowing the use of digital signature technology in electronic transactions and creating a process for licensing certification authorities.

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

Summary of Bill (Recommended Substitute): 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 state Chief Information Officer (CIO) must establish standards, policies, or guidance for electronic submissions and signatures. The CIO's standards, policies, or guidance must take into account reasonable access and reliability for persons participating in governmental affairs and transactions. A state agency's policy or rule on electronic submissions and signatures must be consistent with policies established by the CIO. The CIO must establish a

website that maintains, or links to, an agency's rules and policies for electronic records and signatures.

E-SIGN Act. The general rule of validity, specific exceptions, and transferable records of the federal E-SIGN Act apply to transactions in Washington, including intrastate transactions and state law aspects of interstate transactions. The law is intended to be consistent with the federal E-SIGN Act and compliance with the E-SIGN Act is compliance with Washington law.

Miscellaneous Provisions. The requirement to sign an application for a chiropractic or dentistry license by hand is removed. A ballot measure sponsor may submit an affidavit to the Secretary of State by electronic means indicating that the sponsor is a registered voter. This measure supersedes any conflicting provisions in the Washington Electronic Authentication Act. The statute allowing agencies to accept public works bids electronically is repealed.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: Electronic transactions in state government have only been addressed on a bill-by-bill basis. This has created lots of confusion about when electronic signatures may be used, and this bill is intended to open up new types of transactions and harmonize state and federal law. We believe this is durable and meets the needs of state government and private sector. The proposed substitute reflects agreement with the Bar Association and Attorney General's Office that this bill will accomplish its intended purposes.

Persons Testifying: PRO: Scott Bream, Office of the CIO; Roselyn Marcus, Office of Financial Management.