

WaTech
Washington Technology Solutions

Electronic Signatures

Financial Management Advisory Council

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- Passed by legislature last session and signed into law by Governor Inslee
- Provides clarification to promote the use of e-signatures and removes barriers
- Establishes responsibilities for agencies and the CIO
- Adopts E-Sign as state law
- Provides definition for e-signature

Force and effect:

“...an electronic signature may be used with the same force and effect as the use of a signature affixed by hand, as long as the electronic signature conforms to the definition in section 3 of this act and the writing conforms to section 4 of this act.”

*or, may not be used with the same force and effect...
 (“may” does not necessarily mean “shall”)*

Strictly optional:

“...each state agency may determine whether, and to what extent, the agency will send and accept electronic records and electronic signatures...Nothing in this act requires a state agency to send or accept electronic records or electronic signatures when a writing or signature is required by statute.”

Updates to traditional definitions:

Writing:

“...whenever the term "**writing**" is used in this code for governmental affairs and is authorized by agency rule or policy pursuant to section 2 of this act, the term means a **record**.”

Record:

“...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, except as otherwise defined for the purpose of state agency record retention, preservation, or disclosure.”

Updates to traditional definitions:

Mail:

“...whenever the term "mail" is used...the term includes the use of mail delivered through an electronic system such as **email or secure mail transfer** if authorized by the state agency in rule.”

Eliminates legislatively mandated use of hand-written signatures for specific transaction types

- Application for chiropractic license
- Application for dentistry license

Establishes responsibilities for agencies and CIO

For Agencies:

“...each state agency electing to send and accept shall establish the method that must be used for electronic submissions and electronic signatures. The method and process for electronic submissions and the use of electronic signatures must be established by (agency) policy or rule and be consistent with the policies, standards, or guidance established by the chief information officer...”

Establishes responsibilities for agencies and CIO

For the CIO:

“The chief information officer, in coordination with state agencies, must establish standards, guidelines, or policies for the electronic submittal and receipt of electronic records and electronic signatures for governmental affairs and governmental transactions.”

“In order to provide a single point of access, the chief information officer must establish a web site that maintains or links to the agency rules and policies established...”

Adopts E-SIGN as state law

“The legislature recognizes that the **electronic signatures in global and national (E-SIGN)** commerce act, 15 U.S.C. Sec. 7001 et seq., applies to federal and state transactions, including certain governmental transactions, in or affecting interstate or foreign commerce relating to this state.”

- E-SIGN is a federal law enacted in 2000 with strong preemption provisions

What E-SIGN says:

- a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and
- a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

What E-SIGN *doesn't* say:

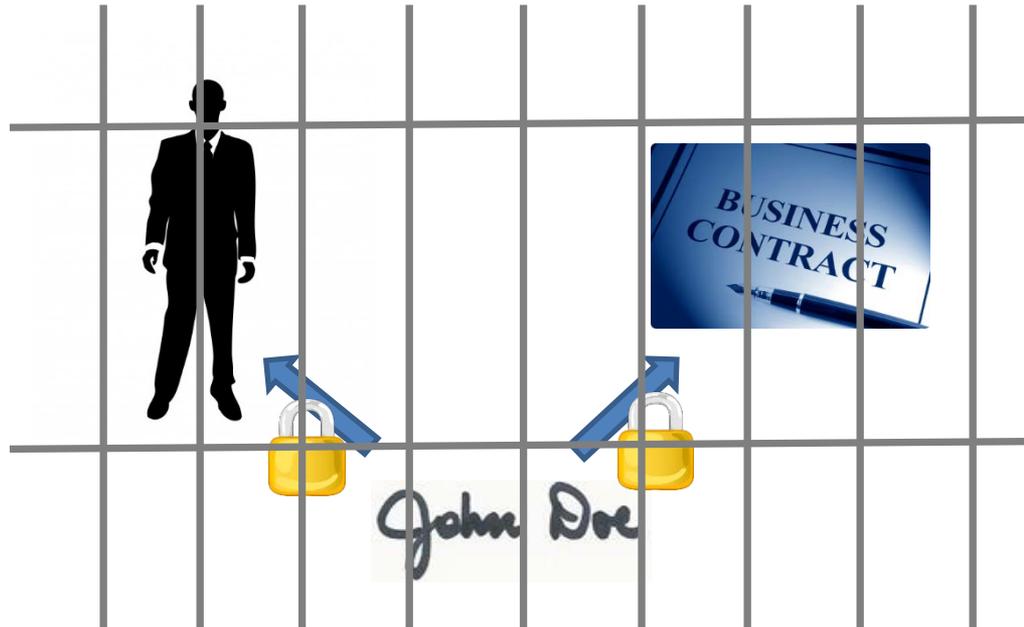
- An electronic signature, contract or other record is automatically bestowed legal effect, validity or enforceability because it *is* in electronic form

Provides a definition for electronic signature

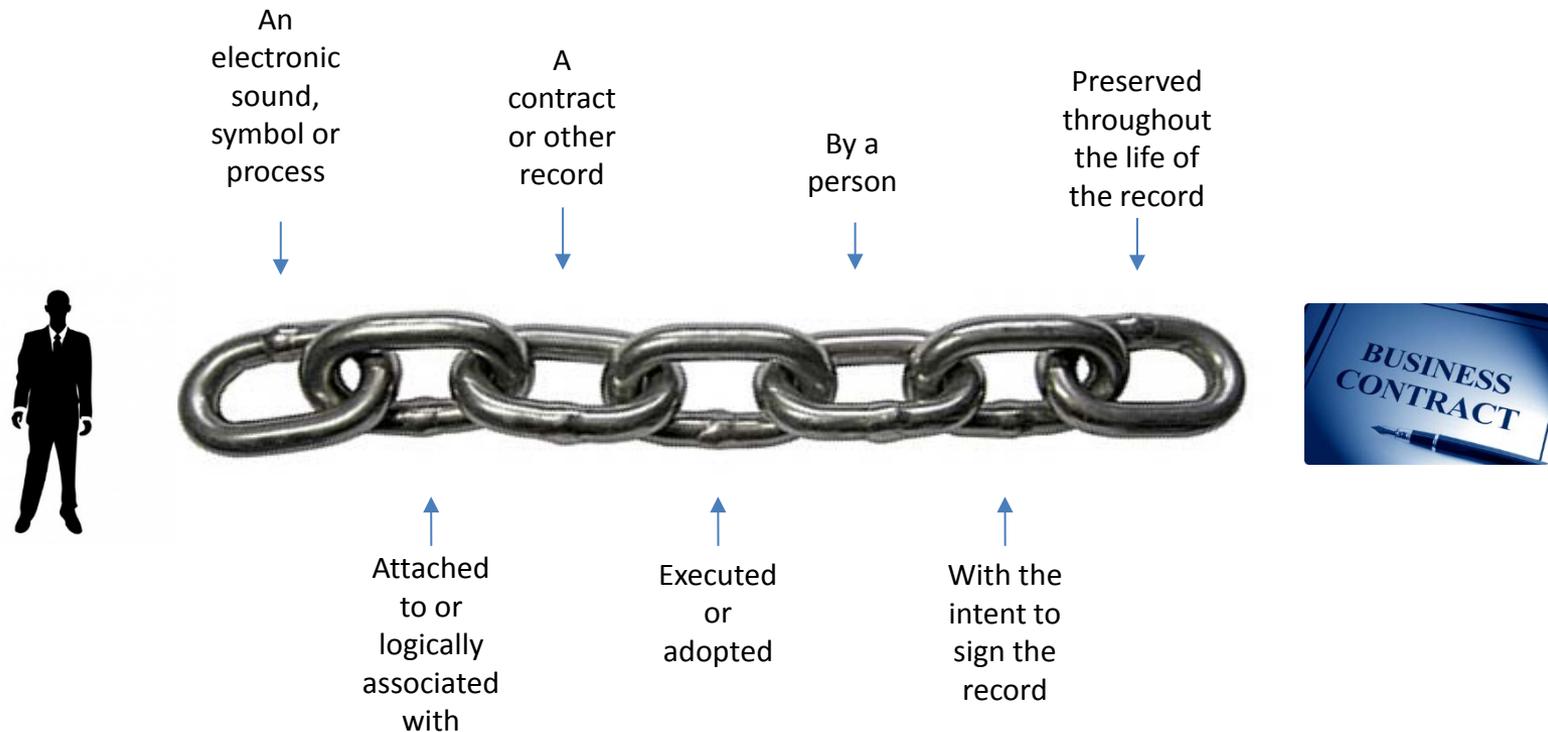
"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.

- The definitions for electronic signature found in ESSB 5810 and E-SIGN are identical

Purpose of a Signature



“Chain of Custody”



Forms of E-Signature

Sound: Wave file, even a phone voice message

Symbol: Pretty much anything

John Doe



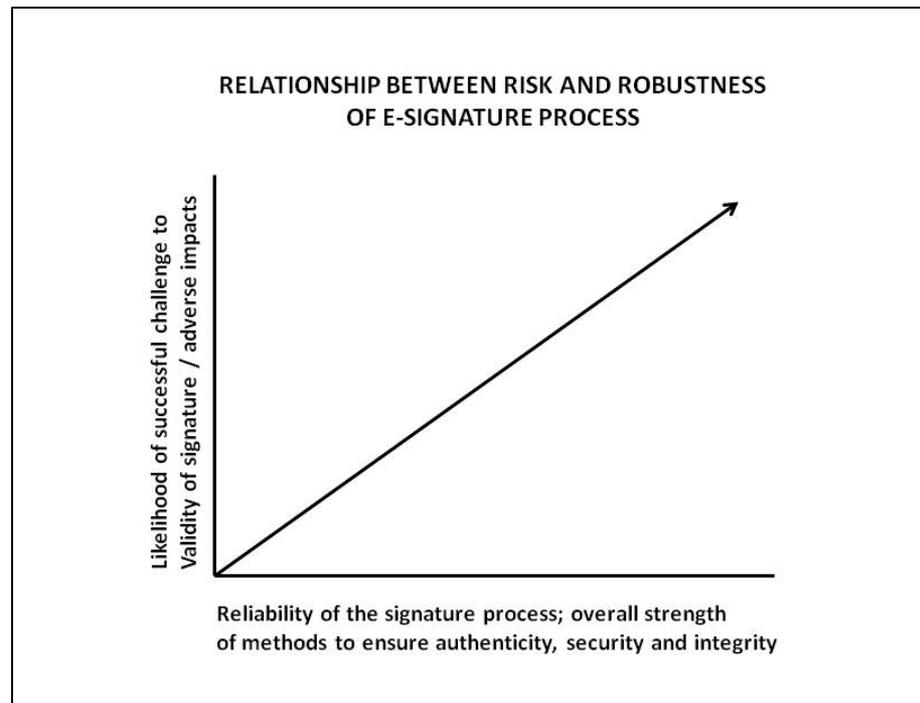
Process: Any series of events that can be tied to a person and a record (e.g. login to access a document)

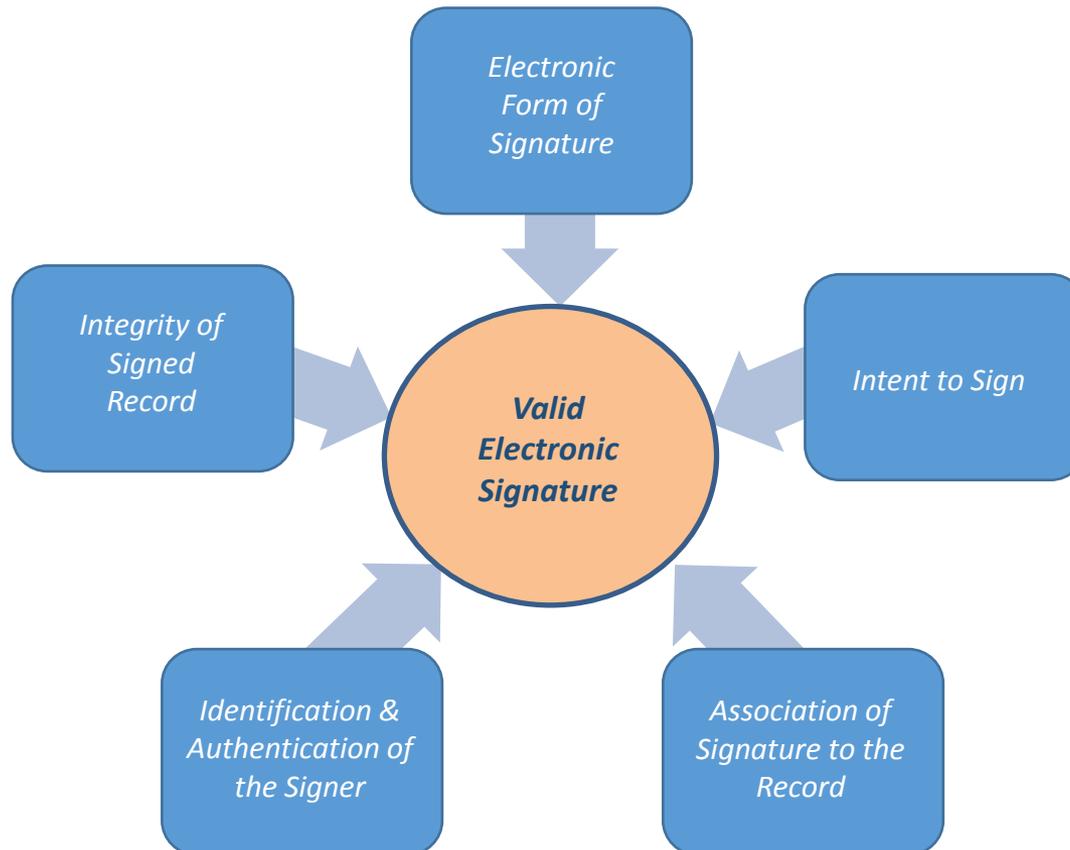
The important thing is that you must be able bind a person to a record or transaction through the use of some deliberate action taken by that person

and

Preserve that binding, and the integrity of the “signed” record, throughout the life of the record...

Business and legal risk need to be considered when determining which kind of electronic signature method to use





Determinants of Risk

Level of Risk	Relationship Between Parties	Transaction Value	Future Need to Access or Substantiate
Very Low	Intra-Agency	No funds are transferred, no legal or financial liability is involved and no confidentiality or privacy issues are involved	Information will need to be accessed again
Low	Inter -Agency	Transaction fulfills a legal duty enforced by civil or criminal liability	Information generated may be subject to an audit
Moderate	With an agency in another level of government, i.e. local, Federal or other state	Involves sensitive information	Information generated may be subject to a dispute by one of the parties to the transaction
High	With a private organization or individual with whom the agency has established a relationship	Involves contracts or other commitments involving legal or financial liability	Information generated may later be subject to a dispute by a non-party to the transaction
Very High	One-time transaction with a private organization or individual	Involves the transfer of funds	Information generated may later be needed as proof in court

Things to Consider

Repudiation is the greatest risk in an electronically signed transaction.

Be sure you try to anticipate the ways an electronic signature can be upheld if it is later contested

The process you choose should be sufficiently strong to prevent a motivated party from “wriggling off the hook”.

Where to start? At the back!

- It is always good to consult legal at the outset, as these are the folks who will be defending you in to event of a dispute

Not all e-signature methods need to be the same

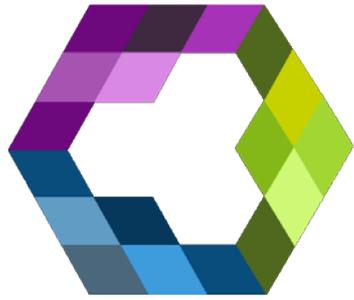
Status on Guidelines

An e-signature workgroup has been established, comprised of subject matter experts (e.g. legal, contractual, technical, etc.)

A Guidelines drafting team was created to address various aspects of e-signature use.

Submitted topical area drafts are in the process of being compiled into a single document

Draft will go out to the e-signature workgroup for review and comment before being released



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Questions/Comments?