

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2337 (Dixon)
Version: February 12, 2024
Hearing Date: June 18, 2024
Fiscal: Yes
Urgency: No
ID

SUBJECT

Workers' compensation: electronic signatures

DIGEST

This bill provides that, for the purposes of a proceeding before the Workers' Compensation Appeals Board, an electronic signature is sufficient for any required signature, as specified, and provides that a signature on a compromise and release form may be satisfied by electronic signature.

EXECUTIVE SUMMARY

As technology has advanced, many business and government processes have transitioned online to save time and increase efficiency and convenience. The COVID-19 pandemic pushed many more businesses, schools, and state agencies to transition to remote and electronic transactions and business in order to prevent spreading the virus. In March of 2020, the Workers' Compensation Appeals Board (WCAB) issued temporary rules allowing for electronic signatures on compromise and release forms, and allowing for electronic filing and service. In 2022, WCAB made permanent rules to regularize the process for electronic filing and service in cases. However, when the COVID-19 state of emergency was rescinded in 2023, the WCAB rescinded its temporary COVID-19 orders, thereby reverting back to requiring "wet," ink signatures on compromise and release forms. AB 2337 would make permanent the temporary WCAB rule that compromise and release forms may be signed electronically, and it expands electronic signatures to be sufficient for all signatures required in proceedings before the WCAB. AB 2337 is sponsored by the California Lawyers' Association, Workers' Compensation Section, and is supported by a large number of business, insurance, local government, and healthcare associations. The Committee has received no timely opposition. This bill passed out of the Senate Labor, Public Employment and Retirement Committee on a vote of five to zero.

PROPOSED CHANGES TO THE LAW

Existing federal law:

Establishes the Electronic Signatures in Global and National Commerce Act and provides that, for transactions in or affecting interstate commerce or foreign commerce, an electronic signature, contract, or other record may not be denied legal effect, validity, or enforceability solely because it is in electronic form. are generally valid and legally enforceable. (15 U.S.C., § 7001.)

Existing state law:

- 1) Establishes a workers' compensation system that provides benefits to an employee who suffers from an injury or illness that arises out of, and in the course of, employment, irrespective of fault. Requires all employers to secure payment of benefits by either securing the consent of the Department of Industrial Relations (DIR) to self-insure or by securing insurance against liability from an insurance company duly authorized by the state. (Cal. Const Art. XIV, Sec. 4.)
- 2) Establishes the Workers' Compensation Appeals Board (WCAB) within the Division of Workers' Compensation (DWC), and grants the WCAB all judicial power functions, and regulatory authority over the adjudication process. (Lab. Code §§ 133, 3200.)
- 3) Requires every compromise and release filed with the WCAB to include the signature of the employee or other beneficiary, and be attested by two witnesses or acknowledged before a notary public. (Lab. Code § 5003.)
- 4) Defines "electronic signature" for purposes of various sections of California law, and the Uniform Electronic Transfer Act, to mean an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record. (Civ. Code §§ 1633(f), 1633.2 (h); Civ. Proc. Code §§ 17 (b)(3), 263.1 (c); Corp. Code §§ 31158(b)(1)(H)(2), 25620 (b)(1)(H)(2); Fin. Code §§ 12201(c)(1)(H)(2), 17201(c)(1)(H)(2), 22101(h)(1)(H)(2).)
- 5) Allows for the electronic filing of documents in civil actions, including the use of electronic signatures. (Civ. Proc. Code § 1010.6.)
- 6) States that a record or signature may not be denied legal effect or enforceability solely because it is in electronic form. States that a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation, and specifies that, if a law requires a record to be in writing, an electronic record

satisfies the law. States that an electronic signature satisfies any law's requirement for a signature. (Civ. Code § 1633.7.)

- 7) Specifies that the law does not require any record or signature be created or otherwise used in electronic form, and that parties to a transaction generally must agree to conduct the transaction by electronic means. (Civ. Code § 1633.5.)
- 8) Defines an electronic record as: a record created, generated, sent, communicated, received, or stored by electronic means. (Civ. Code § 1633.2.)
- 9) Defines an electronic signature as an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record. (*Id.*)
- 10) Provides that, if by law a signature is required to be notarized, the requirement is satisfied with respect to an electronic signature if an electronic record includes, in addition to the notarized electronic signature, the electronic signature of a notary public, along with all other information required to be included in a notarization by other applicable law. (Civ. Code § 1633.11.)
- 11) Specifies that, if a law requires a statement be signed under penalty of perjury, the requirement is satisfied if the electronic record includes the electronic signature, all information to which the declaration is made, and a declaration under penalty of perjury by the person who submits the electronic signature. (*Id.*)

This bill:

- 1) Specifies that, for the purposes of a proceeding before the WCAB, a signature includes an electronic record or signature, and that an electronic record or signature is attributable to a person if it was the act of the person, which may be shown in any manner, including by a showing of the efficacy of any security procedure applied to determine the identity of the person to which the electronic record or electronic signature is attributed.
- 2) Specifies that, for a compromise and release agreement, notwithstanding any language to the contrary in the agreement, the required signature may be satisfied by an electronic signature.
- 3) Specifies that the requirement that a signature on a compromise and release form be acknowledged by a notary public may be satisfied by an electronic signature, provided the electronic record includes the notarized signature, the electronic signature of the notary public, and all other information required to be included in a notarization by other applicable law.

COMMENTS

1. Author's statement

According to the author:

AB 2337 is a commonsense measure that will authorize the use of electronic signatures in proceedings before the Workers' Compensation Appeals Board (WCAB). During the COVID-19 state of emergency, WCAB authorized electronic signatures on a compromise and release. When the COVID-19 state of emergency was terminated, WCAB rescinded the authorization to use electronic signatures, reverting back to the requirement of a "wet" signature. Electronic signatures were used effectively in workers' compensation proceedings for three years during the state of emergency. California explicitly authorizes electronic signatures in civil proceedings, where they are widely used. AB 2337 will authorize the use of electronic signatures on a compromise and release as well as other documents and filings in proceedings before WCAB, modernizing those proceedings for the benefit of all participants.

2. COVID-19 and the move to electronic transactions

The COVID-19 pandemic is a public health crisis that has significantly affected all facets of life in California. On March 4, 2020, Governor Newsom declared a state of emergency, directing the government and state agencies to take a multitude of steps to help fight the coronavirus and prevent its spread.¹ Californians across the state were ordered to shelter-in-place in order to prevent the spread of the Coronavirus. Industry and educational institutions shut down. Under the state of emergency, the state, businesses, and schools worked to transition to remote operations, so that they could continue functioning without in-person contact and the risk of spreading the virus. Later in the pandemic, as vaccines were made available and more people became protected from the coronavirus or its worst symptoms, many businesses and educational institutions slowly resumed in-person operations, or transitioned to hybrid arrangements. Even more recently, the various agencies of the state government have resumed in-person operations, not without controversy. Nonetheless, many entities found through the trials of remote operations during the pandemic that it was possible to conduct some of their business remotely, or electronically, rather than in-person.

The impact of the COVID-19 pandemic was also felt by the Workers' Compensation system in California. The workers' compensation system is the system through which employers maintain insurance to cover the work-related injuries that their workers

¹ Proclamation of State of Emergency, Office of the Governor (Mar. 4, 2020), available at <https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-help-state-prepare-for-broader-spread-of-covid-19/>.

suffer while on the job, regardless of fault. The worker's compensation system is administered by the Division of Worker's Compensation (DWC), which oversees administrative judges who hear workers' claims for workers' compensation that are denied by the employer. The Worker's Compensation Appeals Board (WCAB) hears appeals of claims, as well as regulates the adjudication process through adopting rules of practice and procedure. On March 22, 2020, in light of Governor Newsom's state of emergency declaration, WCAB issued an en banc decision temporarily suspending a number of its rules.² At this time, many of DWC's offices were closed because of the pandemic. One of the rules that WCAB's decision suspended was the rule that compromise and release agreements, which operate as settlements of claims, include signatures from two witnesses. The decision allowed for compromise and release forms to be signed electronically by all parties. A subsequent WCAB decision also temporarily allowed for electronic filing of documents.³

According to the author, WCAB's electronic signature temporary rule for compromise and release agreements worked without issue for three years. However, the COVID-19 state of emergency ended on February 28, 2023. Subsequently, WCAB issued a decision rescinding its en banc COVID-19 decisions that allowed for electronic signatures and electronic filing of documents.⁴ In 2022, while the temporary electronic signature rule was still in place, WCAB finalized a rulemaking process to formalize and make permanent rules for remote hearings, electronic filing, and electronic service that developed during the pandemic.⁵ WCAB has not put into place any rule since allowing for electronic signatures.

3. The Uniform Electronic Transactions Act

Both federal and state law have attempted to regularize and promote electronic records and signatures. In 2000, the Federal government enacted the Electronic Signatures in Global and National Commerce Act (known as the E-Sign Act), which provides that electronic records and signatures for transactions in or affecting interstate commerce or foreign commerce are generally valid and legally enforceable. (15 U.S.C., § 7001 et seq.) The E-sign Act also specifies that a state statute, regulation, or other enactment may modify, limit, or supersede the E-Sign Act's provisions, provided they constitute an enactment or adoption of the Uniform Electronic Transactions Act, specify alternative procedures or requirements that are not inconsistent with the E-Sign Act and do not

² *In re: COVID-19 state of emergency*, Case MISC No. 260 (Worker's Compensation App. Bd. Mar. 18, 2020) (en banc).

³ *In re: COVID-19 state of emergency*, MISC No. 261 (Worker's Compensation App. Bd. Apr. 6, 2020) (en banc No. 2).

⁴ *In re: COVID-19 state of emergency*, MISC No. 268 (Worker's Compensation App. Bd. Mar. 22, 2023) (en banc No. 9).

⁵ Proposed Regulations: Final Statement of Reasons, Workers' Compensation Appeals Board – Rules of Practice and Procedure (Dec. 15, 2021), available at <https://www.dir.ca.gov/wcab/WCABProposedRegulations/2021/WCAB-Rulemaking/Index.htm>; 8 Cal. Code of Regs. §§ 10300-10995 (eff. Jan. 1, 2022).

require or accord greater legal status or effect to a specific technology, and make specific reference to the E-Sign Act. (15 U.S.C. § 7002.)

About the same time, California adopted the Uniform Electronic Transactions Act (UETA), establishing the legal validity of e-signatures and electronic records relating to a transaction on business, commercial, or governmental affairs. (Civ. Code § 1633.1 et seq.) The UETA states that a record or signature may not be denied legal effect or enforceability solely because it is in electronic form. (Civ. Code § 1633.7.) However, the UETA does not require any record or signature to be created or otherwise used in electronic form; generally, the parties must agree to conduct the transaction by electronic means. (Civ. Code § 1633.5.) The UETA also includes a number of definitions. It defines an electronic record as: “a record created, generated, sent, communicated, received, or stored by electronic means.” (Civ. Code § 1633.2.) An electronic signature is defined as: an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record. (*Id.*) The UETA was enacted to facilitate electronic transactions, be consistent with reasonable practices concerning electronic transactions, and to make uniform the law among the states. (Civ. Code § 1633.6.)

The UETA also includes a provision relating to notaries. That section specifies that the requirement that a document be notarized is satisfied through an electronic signature “if an electronic record includes, in addition to the electronic signature to be notarized, the electronic signature of a notary public together with all other information required to be included in a notarization by other applicable law.” (Civ. Code § 1633.11.) If a statement must be signed under penalty of perjury, such a requirement is satisfied through an electronic signature if the electronic record includes, in addition to the signature, all of the information to which the declaration pertains and a declaration under penalty of perjury. (*Id.*)

4. The Online Notarization Act

In 2023, California joined the 45 other states that have statutes relating to electronic notary services through the enactment of the Online Notarization Act. (SB 696 (Portantino), Ch. 291, Stats. 2023.) The Online Notarization Act authorizes California notaries to perform notarial transactions through the use of audio-visual communication, as specified, once the Secretary of State completes requisite technology projects to enable remote online notarization (RON). (Gov. Code § 8231 et seq.) The Secretary must complete that step by January 1, 2028. A RON under California’s new law would require the notarization take place through a video call, during which the notary would require the person obtaining the notarization to show government-issued ID and answer verification questions to verify their identity. The law also requires records be kept and stored by the notary, including a log of the notarization and a video recording of the transaction, and provides for the use of online notarization platforms.

5. AB 2337 permits electronic signatures and electronic notarization for the WCAB and compromise and release forms

AB 2337 adopts the language of the UETA in explicitly authorizing the use of electronic signatures and records for proceedings before the WCAB. It does so by amending the definition of signature in the Labor Code to include an electronic record or signature, and stating that an electronic signature is attributable to a person if it was the act of that person, which can be shown in any manner, including a showing “of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.” This language replicates provisions of the UETA.

AB 2337 also specifies that a signature on a compromise and release form may be satisfied by an electronic signature, thereby adopting permanently the interim rule that the WCAB had adopted during the COVID-19 pandemic. Because compromise and release forms must either be signed by two witnesses, or notarized, AB 2337 specifies that the requirement of acknowledgement by a notary public for the form may be satisfied by an electronic signature, as long as the electronic record includes the notarized electronic signature and the electronic signature of the notary, together with all other information required to be included in a notarization. This requirement also mirrors the language in the UETA regarding notaries, contained at Civil Code Section 1633.11.

6. Amendments

In order to ensure that AB 2337 conforms with the UETA and references the definitions provided by the UETA, the author has agreed to amendments that specifically refer to the relevant sections of the UETA. A mock-up of these amendments are attached at the end of this analysis.⁶

7. Arguments in support

According to the California Lawyers Association, which is the sponsor of AB 2337:

[AB 2337] would authorize the use of electronic signatures in proceedings before the Workers’ Compensation Appeals Board (WCAB) on a permanent basis.

The Labor Code currently requires every compromise and release of a workers’ compensation claim to contain the “signature” of the employee or other beneficiary, attested by two disinterested witnesses or acknowledged before a notary public. During the COVID-19 state of emergency, WCAB authorized electronic signatures on a compromise and release form. When the COVID-19

⁶ The amendments may be subject to minor, non-substantive changes required by Legislative Counsel.

state of emergency was terminated, WCAB rescinded the authorization to use electronic signatures, reverting back to “wet” signatures.

Electronic signatures were used effectively in workers’ compensation proceedings for three years during the state of emergency. California explicitly authorizes electronic signatures in civil proceedings, where they are widely and effectively used. AB 2337 follows a long line of legislation in California permitting electronic signatures in various areas.

By authorizing the use of electronic signatures on a compromise and release as well as other documents and filings in proceedings before WCAB, AB 2337 will modernize those proceedings for the benefit of all participants. This is a commonsense measure that will ensure efficiency and consistency in WCAB proceedings, removing unnecessary barriers in the process.

SUPPORT

California Lawyers’ Association, Workers’ Compensation Section (sponsor)
Acclamation Insurance Management Services
Allied Managed Care
American Property Casualty Insurance Association
Association of California Healthcare Districts
California Association of Joint Powers Authorities
California Chamber of Commerce
California Coalition on Workers’ Compensation
California Joint Powers Insurance Authority
California Special Districts Association
California State Association of Counties
League of California Cities
Public Risk Innovation Solutions and Management
Urban Counties of California

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation:

AB 1879 (Gipson, 2024) permits county assessors to accept the filing of State Board of Equalization forms for property taxes by electronic means, and authorizes a taxpayer to file such a form by electronic signature. AB 1879 is currently in the Senate Judiciary Committee.

AB 743 (Petrie-Norris, 2023) would have authorized a notary public to apply for registration to be authorized to perform online notarizations, and would have established various requirements on notary publics in the commission of online notarizations. AB 743 died in the Assembly Appropriations Committee.

AB 696 (Lowenthal, 2023) enacts the California State Grants and Contracts Modernization Act to require a state agency that administers a grant or enters into contracts with any eligible entity to provide for and accept electronic signatures and transmissions, and prohibits an agency from requiring, after July 1, 2025, an original or wet signature on a contract or grant document, unless otherwise required by state or federal law. AB 696 was held in the Senate Appropriations Committee.

AB 564 (Villapudua, 2023) requires the Department of Health Care Services to allow a healthcare provider to submit an electronic signature for a claim or remittance form under the Medi-Cal program. AB 564 is currently in the Senate Health Committee.

Prior Legislation:

SB 696 (Portantino, Ch. 291, Stats. 2023) gave effect to a notarial act performed in another state, and authorized a notary public to apply for registration with the Secretary of State to be authorized to perform online notarizations, as specified.

AB 40 (Rodriguez, Ch. 793, Stats. 2023) required the Emergency Medical Services Authority to develop and implement an electronic signature for use between the emergency department medical personnel at a receiving hospital and the transporting emergency medical personnel, among other changes.

SB 820 (Sher, Ch. 428, Stats. 1999) enacted the Uniform Electronic Transactions Act, providing that a record or signature may not be denied legal effect or enforceability solely because it is in electronic form. Specified that, if a law requires a signature be notarized, the requirement is satisfied with respect to an electronic signature, as specified.

PRIOR VOTES:

Senate Labor, Public Employment and Retirement Committee (Ayes 5, Noes 0)

Assembly Floor (Ayes 73, Noes 0)

Assembly Appropriations Committee (Ayes 14, Noes 0)

Assembly Judiciary Committee (Ayes 12, Noes 0)

Assembly Insurance Committee (Ayes 12, Noes 0)

PROPOSED AMENDMENTS TO AB 2337:

SECTION 1. Section 17 of the Labor Code is amended to read:

17. (a) "Signature" or "subscription" includes mark when the signer or subscriber can not write, such signer's or subscriber's name being written near the mark by a witness who writes their own name near the signer's or subscriber's name; but a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two witnesses so sign their own names thereto.

(b) For purposes of a proceeding before the Workers' Compensation Appeals Board, "signature" includes electronic record or electronic ~~signature. An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.~~ *signature, as defined in Section 1633.2 of the Civil Code.*

(PU Enacted by Stats. 1937, Ch. 90.)

SEC. 2. Section 5003 of the Labor Code is amended to read:

5003. (a) Every compromise and release agreement shall be in writing and duly executed, and the signature of the employee or other beneficiary shall be attested by two disinterested witnesses or acknowledged before a notary public. The document shall specify:

- (1) The date of the accident.
- (2) The average weekly wages of the employee, determined according to Chapter 1 of Part 2 of this division.
- (3) The nature of the disability, whether total or partial, permanent or temporary.
- (4) The amount paid, or due and unpaid, to the employee up to the date of the release or agreement or death, and the amount of the payment or benefits then or thereafter to be made.
- (5) The length of time such payment or benefit is to continue.
- (6) In the event a claim of lien under subdivision (f) or (g) of Section 4903 has been filed, the number of days and the amount of temporary disability indemnity which should be allowed to the lien claimant.

(b) Notwithstanding any language to the contrary in the agreement, the signature required by subdivision (a) may be satisfied by an electronic signature, as described in Section 17. The requirement of acknowledgment by a notary public pursuant to subdivision (a) may be satisfied ~~by an electronic signature provided an electronic record includes, in addition to the electronic signature to be notarized, the electronic signature of a notary public together with all other information required to be included in a notarization by other applicable law.~~ *as described in Section 1633.11 of the Civil Code.*