

**2005 DRAFTING REQUEST**

**Bill**

Received: **11/08/2004**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB:

For: **Marlin Schneider (608) 266-0215**

By/Representing: **Rick C**

This file may be shown to any legislator: **NO**

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Courts - evidence**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Schneider@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Admissibility of digitally produced material

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**Instructions:**

See Attached 03 ASA 1 to AB584 (s0241)

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rnelson2 11/08/2004	lkunkel 11/18/2004		_____			S&L Crime
/1			rschluet 11/19/2004	_____	lemery 11/19/2004	mbarman 11/22/2004	S&L Crime
/2	rnelson2	lkunkel	rschluet	_____	sbasford	sbasford	

**LRB-0688**

12/03/2004 10:33:33 AM

Page 2

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	11/23/2004	12/02/2004	12/03/2004	_____	12/03/2004	12/03/2004	

FE Sent For: *atintis*  
*6/10*

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/1			rschluet 11/19/2004	_____	lemery 11/19/2004	mbarman 11/22/2004	

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**LRB-0688**

11/22/2004 09:43:14 AM

Page 2

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A large circle around the 'Proofed' column header.  
A diagonal line with an arrow pointing to the right, crossing through the 'Typed' and 'Proofed' columns.  
Handwritten numbers '19' and '4' near the bottom of the 'Typed' and 'Proofed' columns respectively.

FE Sent For:

<END>

**ASSEMBLY BILL 584 (LRB -0945)**

An Act to renumber 910.01 (1); to amend 910.01 (2); and to create 910.01 (1g) and 910.025 of the statutes; relating to: admissibility of a digitally produced photograph, film, audio, or video. (FE)

**2003**

- 10-15. A. Introduced by Representatives **Schneider** and **Hahn**.
- 10-15. A. Read first time and referred to committee on Judiciary ..... 428
- 10-16. A. Fiscal estimate received.
- 11-20. A. Assembly substitute amendment 1 offered by Representative Schneider (**LRB s0241**) ..... 550

**2004**

- 03-31. A. Failed to pass pursuant to Senate Joint Resolution 1 ..... 912

**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 2003 ASSEMBLY BILL 584**

November 20, 2003 - Offered by Representative SCHNEIDER.

LPS: PLS PWF

ReGen

1 AN ACT *to renumber* 910.01 (1) and 910.01 (4); *to renumber and amend* 910.01  
2 (2); *to amend* 802.05 (1) (c) and subchapter III, (title) of chapter 946 [precedes  
3 946.31]; and *to create* 910.01 (1g), 910.025 and 946.33 of the statutes; **relating**  
4 **to:** admissibility of digitally produced photograph, film, motion picture, audio,  
5 or video.

*ins. and* → **The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

6 **SECTION 1.** 802.05 (1) (c) of the statutes is amended to read:

7 802.05 (1) (c) The requirement of a handwritten signature subscribing  
8 pleadings, motions or other papers filed in court may be satisfied by a duplicate, as  
9 defined in s. 910.01 (4) (2m), if a handwritten signature appears on the original  
10 document and the signing party or his or her attorney retains the original document.

11 **SECTION 2.** 910.01 (1) of the statutes is renumbered 910.01 (5m).

12 **SECTION 3.** 910.01 (1g) of the statutes is created to read:





Insert  
and

### 2003 ASSEMBLY BILL 584

The bill creates a <sup>misdeemeanor</sup> ~~crime~~ for requesting admission into evidence of a digital representation to prove the contents of ~~the~~ <sup>those</sup> contents had been altered. <sup>for requesting</sup>

October 15, 2003 - Introduced by Representatives SCHNEIDER and HAHN. Referred to Committee on Judiciary.

or to digital representations that include information that cannot be manipulated and that shows that the representation has not been altered

1 **AN ACT to renumber 910.01 (1); to amend 910.01 (2); and to create 910.01 (1g)**  
2 **and 910.025 of the statutes; relating to: admissibility of a digitally produced**  
3 **photograph, film, audio, or video.**

#### Analysis by the Legislative Reference Bureau

Under current law, if properly authenticated as being a true representation of the image in the photograph or motion picture, an original of a photograph or motion picture may be admitted in evidence to prove the content of the photograph or motion picture. This bill prohibits the introduction of a photograph, film, motion picture, audio, or video of a person, place, document, sound, or event to prove the content of the photograph, film, motion picture, audio, or video if that photograph, film, motion picture, audio, or video is created or stored by data in the form of numerical digits. The prohibition under this bill does not apply to the use of such digital representations in actions to enforce a crime related to child pornography.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

CRIME

— end of an insert —

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

put before FE  
4  
5

**SECTION 1.** 910.01 (1) of the statutes is renumbered 910.01 (1m).

**SECTION 2.** 910.01 (1g) of the statutes is created to read:

**Barman, Mike**

---

**From:** Schneider, Marlin  
**Sent:** Monday, November 22, 2004 9:02 AM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 05-0688/1 Topic: Admissibility of digitally produced material

It has been requested by <Schneider, Marlin> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-0688/1 Topic: Admissibility of digitally produced material

**Nelson, Robert P.**

---

**From:** Schneider, Marlin**Sent:** Saturday, November 20, 2004 6:53 AM**To:** Nelson, Robert P.**Subject:** Submitted: LRB 05-0688/1 Topic: Admissibility of digitally produced material?body=

Bob – I would like this bill changed so that it does not prohibit the use of digital technology but requires a standard which does not allow for the alteration of data by digital means. An example is your email to me with a PDF file. I know that this technology exists because I discussed it with both Kodak and Canon at the Consumer Electronics Show a few years ago. So instead of a blanket prohibition the bill should state that audio or video representations of evidence must be in an unalterable format. This standard would not apply to photos or sound recordings made by individuals in civil cases but would have to sworn by oath or affirmation as true and correct as is done now. The standard would apply to government representations made by Police, DA.s, Justice Department officials, etc. but would allow for admission of their private recordings if, for example, a police officer off duty came on a crime scene and took pictures with a personal camera but in such a case would require oath or affirmation that they were not altered. I hope I have made this clear. - Marlin



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-0688/1

RPN:lmk&cmh:rs

Keep

2

2005 BILL

D-Note:  
Is this what you want?  
RPN  
ReGen

lmk

1 AN ACT to renumber 910.01 (1) and 910.01 (4); to renumber and amend 910.01  
2 (2); to amend 802.05 (1) (c) and subchapter III (title) of chapter 946 [precedes  
3 946.31]; and to create 910.01 (1g), 910.025 and 946.33 of the statutes; relating  
4 to: admissibility of digitally produced photograph, film, motion picture, audio,  
5 or video.

Analysis by the Legislative Reference Bureau

Under current law, if properly authenticated as being a true representation of the image in the photograph or motion picture, an original of a photograph or motion picture may be admitted in evidence to prove the content of the photograph or motion picture. This bill prohibits the introduction of a photograph, film, motion picture, audio, or video of a person, place, document, sound, or event to prove the content of the photograph, film, motion picture, audio, or video if that photograph, film, motion picture, audio, or video is created or stored by data in the form of numerical digits. The prohibition under this bill does not apply to the use of such digital representations in actions to enforce a crime related to child pornography or to digital representations that include information that cannot be manipulated and that shows that the representation has not been altered.

The bill creates a misdemeanor for requesting the admission into evidence of a digital representation to prove the contents of that representation if the person knew those contents had been altered.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a

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**BILL**

report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 802.05 (1) (c) of the statutes is amended to read:

2           802.05 (1) (c) The requirement of a handwritten signature subscribing  
3 pleadings, motions or other papers filed in court may be satisfied by a duplicate, as  
4 defined in s. 910.01 (4) (2m), if a handwritten signature appears on the original  
5 document and the signing party or his or her attorney retains the original document.

6           **SECTION 2.** 910.01 (1) of the statutes is renumbered 910.01 (5m).

7           **SECTION 3.** 910.01 (1g) of the statutes is created to read:

8           910.01 (1g) **DIGITAL REPRESENTATION.** "Digital representation" means any  
9 recording or image of a person, place, document, sound, or event that is created or  
10 stored by data in the form of numerical digits.

11           **SECTION 4.** 910.01 (2) of the statutes is renumbered 910.01 (4m) and amended  
12 to read:

13           910.01 (4m) **PHOTOGRAPHS.** "Photographs" include still photographs, X-ray  
14 films, and motion pictures, and digital representations.

15           **SECTION 5.** 910.01 (4) of the statutes is renumbered 910.01 (2m).

16           **SECTION 6.** 910.025 of the statutes is created to read:

17           **910.025 Inadmissibility of a digital representation.** In any action or  
18 proceeding, ~~except an action under s. 948.05 or 948.12,~~ a digital representation in the  
19 form of a photograph, film, motion picture, audio, or video is ~~not~~ <sup>only if</sup> admissible for  
20 purposes of proving the content of that digital representation ~~unless~~ <sup>that digital</sup>

**BILL**

1 representation is in a format that includes information that cannot be identified or  
2 manipulated and that shows that the digital representation has not been altered  
3 from its original representation.

4 **SECTION 7.** Subchapter III (title) of chapter 946 [precedes 946.31] of the  
5 statutes is amended to read:

**CHAPTER 946****SUBCHAPTER III****PERJURY, DIGITAL ALTERATION,****AND FALSE SWEARING**

10 **SECTION 8.** 946.33 of the statutes is created to read:

11 **946.33 Alteration of a digital representation.** (1) In this section, "digital  
12 representation" means any recording or image of a person, place, document, sound,  
13 or event that is created or stored by data in the form of numerical digits.

14 (2) Whoever offers into evidence a digital representation for the purpose of  
15 proving the content of that digital representation knowing that the digital  
16 representation has been altered from its original representation is guilty of a Class  
17 A misdemeanor.

**SECTION 9. Initial applicability.**

18 (1) This act first applies to actions commenced on the effective date of this  
19 subsection.  
20

21 (END)

d-n

INSERTA

This bill allows the introduction of a digital representation in the form of a photograph, film, motion picture, audio, or video ~~(the)~~ for purposes of proving the content of that digital representation only if that digital representation is in a format that includes information that cannot be identified or manipulated and that shows that the <sup>digital</sup> digital representation has not been altered from its original representation.

Digital representation, as defined in the bill, means any recording or image of a person, place, document, sound, or event that is created or stored by data in the form of numerical digits.

~~Change~~  
END OF INSERTA  
make the words the

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0688/2dn  
RPN:lmk&cmh:rs

December 3, 2004

Is this what you want?

Robert P. Nelson  
Senior Legislative Attorney  
Phone: (608) 267-7511  
E-mail: [robert.nelson@legis.state.wi.us](mailto:robert.nelson@legis.state.wi.us)