

Julie

HEARING PROCEDURE 2-16-2000

1. Call to Order "The Senate Committee on Privacy, Electronic Commerce and Financial Institutions will come to order,. Will members please take your seats."

2. Call the roll: " We will dispense with the calling of the roll and the clerk will note presence of Senators as they arrive." Julie will fill in roll sheet as Senators arrive.

3. Welcome and Announce Purpose of Hearing

"Welcome members of the public, legislators, and staff."

"The purpose of this hearing is to hold a public hearing and executive session. We will hear testimony on AB267, AB 431 and LRB3675. Then we may hold an executive session."

4. Operation of the Hearing "If you wish to testify to the Committee, please fill out a hearing slip and return it to the Senate messenger." Point out messenger "If you wish to simply to register fill out the slip and give it to the messenger as well."

5. Order of speakers "To the extent possible I will alternate between speakers with different points of view on the subjects before us."

6. Begin the hearing:

- a. Julie will sort slips by topic,
- b. Jon calls the first speaker, call Legislators first
- c. When speaker is through ask if committee members have questions
- d. When last slip is given, let everyone know this is the last slip, anyone who wishes to speak on the bill should fill out a slip right now.

**1999 Assembly Bill 267 –
Relating to the Use and Regulation of Electronic Signatures**

Assembly Bill 267:

1. Broadens the definition of what may be considered an electronic signature.
2. Removes specific statutory requirements as to the form and validity of electronic signatures.
3. Directs the Department of Administration (DOA), rather than the Department of Financial Institutions, to promulgate rules concerning the use of electronic signatures between state and local governments.
4. Authorizes the DOA to create emergency rules relating to government use of electronic signatures until permanent rules can be established.

Amendments:

1. Amendment 1: Authorizes the Secretary of State and DOA to jointly promulgate rules in respect to the use of electronic signatures by notaries public.
2. Amendment (2?): Removes the requirement that documents notarized by an electronic signature be stamped with the seal of the notary public.

SENATE HEARING SLIP
(Please Print Plainly)

DATE: 2/16/00
BILL NO. AB267
OF
SUBJECT _____

Sen. Sam Ruda
(NAME)
(Street Address or Route Number)
(City and Zip Code)
(Representing)

Speaking in Favor:
Speaking Against:
Registering in Favor:
but not speaking:
Registering Against:
but not speaking:
Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.
Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP
(Please Print Plainly)

DATE: 2/16/00
BILL NO. AB267
OF
SUBJECT Electronic Sig.

Tara Krzyzewska
(NAME)
Office Secretary at State
(Street Address or Route Number)
(City and Zip Code)
(Representing)

Speaking in Favor:
Speaking Against:
Registering in Favor:
but not speaking:
Registering Against:
but not speaking:
Speaking for information only; Neither for nor against:

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State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP
(Please Print Plainly)

DATE: 2-16-00
BILL NO. AS 267
OF
SUBJECT _____

Pete Christianson
(NAME)
15. Pincney Suite 600
(Street Address or Route Number)
MSN WI 53701-2112
(City and Zip Code)
Wis. Land Title Assoc.
(Representing)

Speaking in Favor:
Speaking Against:
Registering in Favor:
but not speaking:
Registering Against:
but not speaking:

Speaking for information only; Neither for nor against:
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State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 2/16/200
BILL NO. AB 267
OR
SUBJECT _____

Ann H Moran
(NAME)
(Street Address or Route Number)
(City and Zip Code)

Dept. of Adm. Management
(Representing)

Speaking in Favor:
Speaking Against:
Registering in Favor:
but not speaking:
Registering Against:
but not speaking:
Speaking for information only; Neither for nor against:

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P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 2/16/2000
BILL NO. AB 267
OR
SUBJECT _____

Mark Ladd
(NAME)
730 Wisconsin Ave
(Street Address or Route Number)
Racine WI 53403
(City and Zip Code)

COMMISSION ON USE OF ELECTRONIC
(Representing) COMMUNES

Speaking in Favor:
Speaking Against:
Registering in Favor:
but not speaking:
Registering Against:
but not speaking:
Speaking for information only; Neither for nor against:

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Room 109-LL One East Main
P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 2/16/00
BILL NO. AB 267
OR
SUBJECT Elle Signatures

David Hutchison
(NAME)
78915 State Rd. 57
(Street Address or Route Number)
Luxemburg, WI
(City and Zip Code)

(Representing)
Speaking in Favor:
Speaking Against:
Registering in Favor:
but not speaking:
Registering Against:
but not speaking:
Speaking for information only; Neither for nor against:

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State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 2/16/2000

BILL NO. AB 267

OR
SUBJECT Electronic

Signatures

(NAME) Laurie Guiper

(Street Address or Route Number) 200 E. Wells St.

(City and Zip Code) Milwaukee, WI 53202

(Representing) City of Milwaukee

Speaking in Favor:

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information
only; Neither for nor against:

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State Capitol - B35 South
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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: Feb. 16, 2000

BILL NO. AB 267

OR
SUBJECT _____

(NAME) Linda Borth

(Street Address or Route Number) St. B. Box of WI

(City and Zip Code) MADISON, WI 53707

(Representing) BUSINESS LAW SECTION

Speaking in Favor:

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information
only; Neither for nor against:

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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 2/16/00

BILL NO. AB 267

OR
SUBJECT _____

(NAME) Dave Anderson

(Street Address or Route Number) 345 West Washington

(City and Zip Code) Madison

(Representing) Dept. of Financial Institutions

Speaking in Favor:

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information
only; Neither for nor against:

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Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

My name is Mark Ladd. I am wearing several hats today. I am the Racine County Register of Deeds, I am the President of the Wisconsin Register of Deeds Association, and I am a member of the Commission on the Use of Electronic Signatures.

I appreciate the opportunity to offer testimony regarding the role of the Governor's Commission on the Use of Electronic Signatures and the legislation that you now have before you.

I would like to offer testimony, first as a member of the commission and then as a Register of Deeds.

The Governor's Commission on the Use of Electronic signatures was the result of Wisconsin Act 306, which also created the first law specifically authorizing the use of electronic signatures. That act created a committee to study the use of electronic signatures by both private citizens and governmental units. The committee was also charged with making recommendations on the regulation of electronic signatures as well as recommendations on legislation necessary to implement the commission's conclusions. The legislation you have before you today is the result of the commission's recommendations.

The commission was comprised of individuals representing a broad spectrum of public and private interests. Representatives on the commission included members of financial institutions, manufacturing, insurance, local county government, the legal profession, the medical profession, as well as several state agencies.

The commission met for approximately nine months. After extensive study and debate about the various forms of electronic signatures and the technologies capable of producing electronic signatures the commission arrived at several conclusions. It first concluded that there are a number of ways a document can be authenticated with an electronic signature. Each method provides a different level of trustworthiness and security. Each method also has a different ease of use. In general it appears that electronic signatures that provide the highest level of trustworthiness and security are not ~~yet~~ commonly used by the general public at this time.

Given the fact that electronic signatures can be created by a number of methods and that not all methods are in common usage the commission concluded that the parties using an electronic signature ought to be free to select a mutually acceptable type of electronic signature based on the circumstances surrounding the transaction. The commission did not want to appear to be favoring one type of technology over another nor did we want to establish a one-size-fits-all policy for Wisconsin.

The current law does not allow parties this flexibility. Act 306 prescribes certain standards for electronic signatures that require high levels of security. While these

standards give greater certainty about a transaction authenticated with an electronic signature, they also may make relatively simple transactions unnecessarily complicated.

The commission concluded that existing contract law, criminal fraud penalties and liability theories adequately address any legal issues that might arise in the use of electronic signatures. Furthermore, the equity powers of the courts and the flexibility of our common law system should be able to effectively address conflicts involving the use of electronic signatures.

Finally, it is clear that electronic signature technology is rapidly evolving. This evolution is likely to continue. It is impossible to anticipate through legislation the results of this evolution. To attempt to do so may prevent further innovation and development of electronic commerce in Wisconsin. Given these concerns the commission recommended taking a technology neutral and minimalist approach to the legislation addressing electronic signatures. For these reasons the commission recommended deleting all language from Act 306 that specifies requirements and standards for electronic signatures. This technology neutral approach leaves the parties free to specify electronic signature standards for themselves.

Although the commission concluded that the individual parties to a transaction should be free to specify the type of electronic signature that may be used in a particular transaction, the commission also noted that some measure of uniformity must be implemented in the case of government use of electronic signatures. Although each governmental unit must be somewhat free to select an electronic signature technology appropriate to its individual needs, governmental units with similar security needs must be required to use the same or similar technologies. Standardization of this technology will facilitate transmission of data within government and between government and its private citizens.

Because the department of administration is the agency responsible for the state's technology infrastructure the commission concluded that that agency should be the rule making authority for electronic data submission to state agencies. This results in reassigning rule-making authority for electronic signatures from the Department of Financial Institutions. In recommending this reassignment of rule-making authority, the commission advised the department of administration to be mindful that although standardized technology is the goal, the technology selected must be capable of addressing the differing levels of security required by various governmental units. The commission also recommended that the technology the department of administration selects be compatible with existing and planned information technology infrastructure. The commission emphasized the need for governmental units to deploy technology that is uniform and compatible not only within government but also with the IT infrastructure of private business and citizens. Additionally, the commission recommended that electronic signature technology be implemented within government in a way that is operationally practical and enforceable by law.

Finally the commission considered the degree that private business profiting from electronic signature technology should be regulated. After interviewing a number of persons involved with electronic commerce the commission concluded that regulation of this industry may not be practical or possible at this time. The commission did however, suggest that the Department of Administration may choose to become a participant in the industry by becoming its own Certificate Authority for digital signatures. The commission noted that there is the potential for abuse in electronic commerce, in particular identity fraud and consumer privacy. However such abuse is not the result of the use of electronic signatures, but rather abuse that is possible as a result of the electronic medium itself. The commission advises the legislature to keep a vigilant eye on these concerns and act appropriately as the need arises.

Now, speaking from the Register of Deeds viewpoint. Our membership leads the state in technology with computerized indices, optical imaging systems and remote access to our records. We are currently investigating the possibility of utilizing some of the most sophisticated Internet technologies to create a web site that would serve as an Internet based clearinghouse for all of our land records. We see electronic signature technology as the next step in technology development that will impact our offices in a positive manner.

To describe that impact, I would like to describe a program that I am piloting in Racine County. On September 27, 1999 the Racine County Board of Supervisors authorized me to convene an Electronic Recording Advisory Committee. The goal of this committee was to develop a completely paperless recording system for real estate transactions. Clearly, electronic signature technology and related enabling legislation of Act 306 and AB267 will be key components of this system.

Without delving into all the specifics, let me summarize the benefits of an electronic recording system. As in any business, it all revolves around the length of the business cycle. The shorter the cycle, the more cost effective it is. For financial institutions, it will reduce the recording turn around from days to minutes. If you don't think that is significant, just ask a bank president how much money a day or two is worth, especially when interest rates or the markets are in a volatile mood. For ROD's our records will be updated faster, more accurately, at lower cost. In my office, I have three and half positions that process real estate documents. Once an electronic recording system is fully mature, I will most likely only require one position to handle real estate recording. This is a win-win situation for citizens as well. The cost of operating the ROD office will be reduced and competitive market pressures in the financial industry should result in a portion of the banks' cost savings being passed on in lower mortgage costs. This is just in the ROD office, expand this impact throughout state and local government and the private sector.

Last evening, the Racine County Board authorized the release of the Request for Proposal that has been developed as a result of the work of the Advisory Committee. It is highly

likely that my office will be processing electronic real estate documents by late summer or early fall of this year.

AB267 broadens the scope of various signature technologies that are acceptable for use in Wisconsin. This is very important as we seek to implement an electronic recording system for real estate records.

In conclusion let me state as both, a member of the Commission on the Use of Electronic Signatures and as a Register of Deeds, that this is a technology that is rapidly developing. Government should as much as possible allow this technology to develop free of unnecessarily restrictive regulation. Private citizens should be free to choose the technology that best serves their individual needs and governmental users should have similar freedoms except to the extent uniform standards are necessary to promote the flow of information between governmental agencies and private citizens.

Thank you for allowing me this opportunity to present this testimony to you today. I would be glad to answer any questions the committee may have at this time.

SEN RUDE
- JOINT RULE MAKING

- MR CHRISTIANSEN'S CONCERNS
IN REAL ESTATE LAW ARE DISINGENUOUS

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION



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DEPARTMENT OF ADMINISTRATION
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Testimony by Department of Administration on AB267 February 16, 2000

Mr. Chair, members of the Committee, thank you for taking the time to hear testimony from the Department of Administration on the bill before you today, 1999 AB267. I am Amy K. Moran, from the Division of Technology Management of the Department of Administration.

Governor Tommy Thompson in this year's State of the State address announced his intention to encourage the development of electronic commerce in the state. One of the ways he mentioned was his endorsement of early adoption of the Uniform Electronic Transactions Act (UETA) by Wisconsin. We are here today to discuss an opportunity to move electronic commerce forward by harmonizing the language of AB267 with directly related language of the UETA. If I may, I'd like to present to the committee a short history of the electronic signature efforts in Wisconsin to explain why we are here today.

Wisconsin enabled electronic signatures under 1997 Act 306, effective July 1999. Act 306 also provided, for the creation of a Commission to study the use and regulation of electronic signatures in the state. The Commission, appointed by the Governor, was to report to the legislature and to include any proposed legislation the Commission considered necessary to implement its recommendations. These proposed legislative changes were submitted by the Commission to the Legislature in December 1998. They were introduced as AB267, the bill before you today.

While the Wisconsin Commission was doing its work, parallel efforts were underway by the National Conference of Commissioners on Uniform State Laws (NCCUSL) to develop a model act that would allow consistency across states. Consistency is critical to enabling e-commerce. It allows economies of scale and avoids the impossible business situation of requiring business partners to develop 50 different protocols to transact business across the United States.

Consistency can be reached in either of two ways. The first is through federal preemption where the federal government dictates one way for all states. The second is through agreement among the states to adopt Model Acts drafted to assure consistency on key points. These model acts may then be voluntarily adopted by each state.

NCCUSL did not complete its efforts to draft a Model Act dealing with electronic signatures until the end of July 1999; seven months after the Wisconsin Commission submitted its recommendations to the legislature. The model act dealing with electronic signatures is known UETA, the act that Governor Thompson referred to in his state of the state, and that is currently in drafting in the Legislative Reference.

And so, the bill you have before you today, AB267 represents the December 1998 recommendations of the Commission on the Use of Electronic Signatures. There are two key sections of AB267 that are very closely related to sections of the NCCUSL recommended UETA. We are recommending that since the NCCUSL Model Act has now been completed, that we harmonize the language of AB267 with the directly related sections on UETA. There are two of these sections. The first has to do with the definition of an electronic signature and the second has to do with the use of electronic signatures.

Attached is a discussion of these sections.

Definitions:

- (1) AB267 defines an electronic signature under section 137.04(2) (page 2, lines 3-8). We would recommend that this definition be replaced by the definition of an electronic signature found in the UETA in section 2 (8). The new definition would then read:

137.04(2)“Electronic signature’ means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.”

This definition embeds all the key characteristics recommended by the Commission. It is broadly accepting of technologies, it requires logical association with a record and it focuses on the intent of the signer. Substituting this definition will enhance electronic commerce. To pass a definition of electronic signatures at this time that differs from UETA will put Wisconsin out of synch with the efforts the Model Act and is likely to require rework for the legislature and the Reviser if and when the UETA is adopted by Wisconsin.

- (2) The UETA definition of a record might also be added to this definition section as a new section numbered 137.04 (4) to state that:

137.04(4)“for the purpose of electronic transactions a “record” means information that is inscribed on tangible medium, or that is stored in an electronic or other medium and is retrievable in perceivable form.”

Adding a definition of “record” in the context of electronic transactions here will reduce confusion with our other Wisconsin records laws.

Use of Electronic Signatures

- (1) The second change we would recommend is to AB267 section 137.06 (1) found at lines 6-9 on page 3. We would recommend that these lines be deleted and replaced with language taken from Section 5(b) of the UETA. The new section 137.06(1) would then read:

137.06(1) “This act applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties’ conduct.”

In addition to efficiencies gained by making our legislation consistent with states adopting UETA, this language has the advantage of providing some greater consumer protection than may be experienced under the current draft of AB267. You will note that AB267 requires consent of a governmental unit that is to receive an electronic signature (see section 137.05(1) of AB267. As currently drafted, AB267 does not provide the same consent requirement for non-governmental units. As currently drafted, a small business or a consumer may have no choice but to receive an electronic rather than a manual signature. The suggested UETA language seeks to close this loophole.

MEMORANDUM

TO: Members of the Senate Committee on Privacy, Electronic Commerce
and Financial Institutions

FROM: Pete Christianson, for the Wisconsin Land Title Association

RE: Assembly Bill 267

DATE: February 16, 2000

Current law prescribes the precise circumstances under which an electronic signature is valid. Assembly Bill 267 would delete all of the current requirements concerning the form and validity of electronic signatures. At the same time, the bill (as amended in the Assembly) would require the Department of Administration and the Secretary of State to promulgate administrative rules concerning the use of electronic signatures by governmental units, and the use of electronic signatures by notaries public for attestations, with such rules to be effective no later than January 1, 2002.

What does this mean?

*The statutory standards now set forth in Wis. Stats. s. 137.06 (1) are out the window. In Wis. Stats. s. 137.06 (1) (a) through (e), 5 specific criteria are set forth. All would be repealed by AB 267. As amended, Wis. Stats. s. 137.06 (2) will now provide that "an electronic signature has the same force and effect as a manual, facsimile or other form of signature"!

*The only rulemaking which is provided in the bill is designed to dictate the terms and conditions whereby governmental units may use electronic signatures to conduct the business of government, or when a notary public may use an electronic signature for attestation purposes.

What's the problem?

*If every electronic signature is valid and there are no standards set forth to protect the public against fraudulent use, what would prevent someone from purporting to convey the title to your home with the fraudulent electronic signatures of you and your spouse?

The members of the Wisconsin Land Title Association believe that Assembly Bill 267 should be amended to exempt documents related to any transaction by which any interest in land is created, alienated, mortgaged, assigned or be otherwise affected in law or in equity. In short, exempt Chapter 706 ("Conveyances of Real Property; Recording; Titles") from the use of electronic signatures.

**1999 Assembly Bill 267 –
Relating to the Use and Regulation of Electronic Signatures**

Assembly Bill 267:

1. Broadens the definition of what may be considered an electronic signature.
2. Removes specific statutory requirements as to the form and validity of electronic signatures.
3. Directs the Department of Administration (DOA), rather than the Department of Financial Institutions, to promulgate rules concerning the use of electronic signatures between state and local governments.
4. Authorizes the DOA to create emergency rules relating to government use of electronic signatures until permanent rules can be established.

Amendments:

1. Amendment 1: Authorizes the Secretary of State and DOA to jointly promulgate rules in respect to the use of electronic signatures by notaries public.
2. Amendment (2?): Removes the requirement that documents notarized by an electronic signature be stamped with the seal of the notary public.

DOUGLAS LA FOLLETTE



SECRETARY OF STATE
WISCONSIN

**Testimony Presented to the Senate Committee on
Privacy, Electronic Commerce, and Financial Institutions**

Wednesday, February 16, 2000

AB 267: relating to the use and regulation of electronic signatures

Chairman Erpenbach, Honorable Committee Members, Staff, and Guests:

The Office of Secretary of State worked closely with the Assembly Committee, representatives from DOA, other interested parties, and our own legal counsel at the Department of Justice. The result was Assembly Amendment 1 to A.B. 267.

Assembly Amendment 1 is our effort to ensure that the Office of Secretary of State will be able to verify electronic notary public signatures as we currently do written signatures. It is our hope that, by the time the joint rule making process must be completed, the appropriate mechanisms and certifying agents will have been worked out.

Apparently there are more questions than answers regarding electronic signatures. This is especially true in regards to electronic notarizations (please see attached article), which involve the ability to verify actions by notaries who are in turn verifying statements and signatures by others on a variety of documents -- many with legal ramifications.

Although the Office of Secretary of State supports A.B. 267 as amended in the Assembly, we continue to study the matter overall and encourage a go-slow approach, especially as this bill affects notaries public and section 137.01 of the Wisconsin Statutes.

JAN 10

AB 267

Hutchinson / Rude Bill

Regulation of Electronic Signatures and an emergency rule exemption.

The issues with the bill.

UETA is an coalition that has met over the past year to draft a sort of standard/universal law for how states deal with the issue of electronic signatures. Gary George sits on the commission. They have made recommendation, which are currently being drafted. The Governor mentioned the bill in his State of the State. The bill has a target introduction date of January 2001.

AB 267 has some conflicts with the recommended draft language of UETA (DOA will testify on)

OPTION 1 – we adapt AB 267 so it is more in compliance with UETA

OPTION 2 – we wait for the UETA bill next session

Those who would like option 1 to the best of my knowledge are – Mark Ladd (remember him?) the Register of Deeds for Racine County – he has apparently taken it upon himself to implement a pilot program that is really screwed up if we don't pass this legislation ASAP.

Those who would like option 2 to the best of my knowledge are – Merchants

My recommendation – this is not our bill – there isn't one Dem on it in the Senate – let's follow Rude's lead. **We are not going to be ready for an executive session tomorrow.**

THE BILL

Electronic Signatures

Currently, any document prepared by a person that requires a signature may be signed and given an electronic signature if certain requirements are met. Currently, the electronic signature must be verified by a third party and the original sender (capable of verification) and must contain a combinations of words, letters, symbols or characters. In addition, an electronic signature must be attached to a document that that can be validated (third party verification) that it has not been altered.

This bill deletes all of the current requirements concerning the form and validity of electronic signatures. Under the bill an electronic signature may employ any identifier or authentication technique. This bill also takes rule making away from DFI (who have screwed it up) and gives it to DOA.

Reality

Something will happen with electronic signatures.