

2001 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-SB55)

Received: **06/22/2001**

Received By: **rmarchan**

Wanted: **Soon**

Identical to LRB:

For: **Assembly Republican Caucus**

By/Representing: **Hartsough**

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

Drafter: **rmarchan**

May Contact:

Addl. Drafters: **kuesejt
nelsorp1
rkite**

Subject: **Fin. Inst. - miscellaneous
State Government - miscellaneous
Trade Regulation - other**

Extra Copies:

Submit via email: **NO**

Requester's email:

Pre Topic:

ARC:.....Hartsough - AM48,

Topic:

Uniform Electronic Transactions Act

Instructions:

Restore provisions from governonr's budget bill.

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>
/?	rmarchan 06/23/2001	csicilia 06/26/2001		_____			
	kuesejt 06/24/2001			_____			
	rkite			_____			

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

06/26/2001

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jfrantze _____
06/26/2001 _____

lrb_docadmin
06/26/2001

FE Sent For:

<END>

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1?	rmarchan	1 ijs 6/26/01	do/oc	6/26			

FE Sent For:

<END>

Marchant, Robert

From: Hanaman, Cathlene
Sent: Thursday, June 28, 2001 8:40 AM
To: Marchant, Robert
Subject: FW: LRB Draft: 01b1569/1 Uniform Electronic Transactions Act

Importance: High

-----Original Message-----

From: Hartsough, Melanie
Sent: Thursday, June 28, 2001 8:38 AM
To: Hanaman, Cathlene
Subject: LRB Draft: 01b1569/1 Uniform Electronic Transactions Act
Importance: High

This should be substituted in place of 1569.



01-29981.pdf

Marchant, Robert

From: Marchant, Robert
Sent: Thursday, June 28, 2001 9:45 AM
To: Hartsough, Melanie
Cc: Pirlot, R.J.; Kuesel, Jeffery
Subject: Per our phone conversation . . .

Melanie--

As we discussed on the phone, if LRB-2998 is used as the base draft for inserting the UETA provisions into the budget, the treatment of proposed ss. 137.01 (4) (a), 137.12 (2m) (a), and 137.20 (6) (b) may trigger preemption under the federal E-sign legislation. E-sign contains two methods of avoiding preemption. One method, which is established under 15 USC 7002 (a) (1), is to enact a law that constitutes UETA. The proposed treatment of ss. 137.01 (4) (a), 137.12 (2m) (a), and 137.20 (6) (b) was not included in the recommended version of UETA. This treatment may make this draft something other than "an enactment of [UETA] as approved and recommended for enactment in all the [states]" and, thus may take the bill out from under the first exemption from preemption under 15 USC 7002 (a) (1).

If the draft does not qualify for the first exemption from preemption, it may still qualify for the second exemption from preemption, which is established under 15 USC 7002 (a) (2). However, this second exemption is much more difficult to apply. The second exemption permits the state to enact laws that modify, limit, or supersede certain provisions of E-sign, as long as the laws specify alternative procedures or requirements for the use or acceptance of electronic records or signatures to establish the legal effect of contracts or other records. Among other things, the alternative procedures or requirements must be consistent with Titles I and II of E-sign. As outlined below, it is difficult to predict how a court would apply this exemption and, as a result, it is difficult to predict whether and to what extent this proposed version of the draft would qualify for this exemption from preemption.

There are three primary interpretations of the manner in which the second exemption from preemption is intended to apply when a state enacts substantive provisions that are not uniform with the recommended version of UETA. Until a court rules on the issue, there is no way of knowing which interpretation will apply. Under the most literal interpretation, a court would be required to treat the state enactment as a coherent whole, rather than separately analyze individual statutes created in the enactment. As noted above, it is possible that this proposed version of the draft would not qualify as an enactment of UETA as approved and recommended for enactment in all the states. Under this interpretation, as a result, the entire enactment would be preempted under 15 USC 7002 (a) (2) as inconsistent with Titles I and II of E-sign.

Under a second interpretation, a court would be required to analyze the individual statutes created in the draft, rather than treat the enactment as a coherent whole. Under this interpretation, all specific provisions that are uniform with UETA would be exempt from preemption under 15 USC 7002 (a) (1). The non-uniform provisions in proposed ss. 137.01 (4) (a), 137.12 (2m) (a) and 137.20 (6) (b) would be analyzed separately under 15 USC 7002 (a) (2) to determine if the provisions are exempt from preemption under that section. Under this interpretation, the three proposed provisions would likely be preempted under 15 USC 7002 (a) (2) as inconsistent with Titles I and II of E-sign.

Under a third interpretation, a court would treat the state enactment in different ways for different purposes. The court would first be required to treat the draft as a coherent whole in determining if, under 15 USC 7002 (a) (1), the law qualifies as an enactment of UETA. If the law is not an enactment of UETA, then the court would be required to analyze each individual statute, including a statute that is uniform with a UETA provision, under 15 USC 7002 (a) (2) to determine if the statute is exempt from preemption under that section. Under this interpretation proposed ss. 137.01 (4) (a), 137.12 (2m) (a), and 137.20 (6) (b) would likely be preempted as inconsistent with E-sign Titles I and II. In addition, any other provision that is inconsistent with E-sign Titles I and II would likely be preempted, even if the provision is uniform with a UETA provision.

Because it is so difficult to predict how a court would apply the second exemption from preemption, you may want to avoid any treatment of ss. 137.01 (4) (a), 137.12 (2m) (a), and 137.20 (6) (b) that may trigger the preemption analysis under the second exemption.

Although there are other differences between the original version of the amendment and the proposed revised version, the differences above are those that may trigger preemption. However, please note that the other differences may raise other concerns. For example, the exemptions created under proposed s. 137.12 (2m) of LRB-2998, as a general matter, are ambiguous and it is unclear what legal effect they may have (which is a result of their being based upon the language of E-sign). In the interest of time, I won't go into all of the details. However, if you'd like to discuss any of these issues please let me know.

I will wait to redraft the amendment until I hear further from you. Please let me know as soon as possible, however, if you do plan to proceed with the redraft.

Robert J. Marchant

Legislative Attorney

State of Wisconsin Legislative Reference Bureau

robert.marchant@legis.state.wi.us

Marchant, Robert

From: Marchant, Robert
Sent: Thursday, June 28, 2001 11:42 AM
To: Pleva, Brian; Smyrski, Rose
Cc: Kuesel, Jeffery; Pirlot, R.J.
Subject: RE: LRB Draft: 01b1569/1 Uniform Electronic Transactions Act

Brian--

I think Amy Moran is likely aware of the preemption issues that are raised by the proposed revision to LRBb1569. Although I'd be happy to speak with her, I am not sure what our discussion would accomplish. I have tried to make the caucus aware of the preemption issues that the proposed revision raises. DFI's comments below must be to original version of LRBb1569 and not to the proposed revision. I don't think it is possible to say with any kind of legal certainty that the proposed revision enacts UETA in a way that takes Wisconsin outside of E-sign preemption. I would be comfortable saying that the original version of the amendment likely takes Wisconsin outside of E-sign.

Perhaps there is a middle ground between the proposed revision and the original version of the draft that accomplishes some of the intent of the proposed revision and that avoids the preemption issue, but I am not aware of what that draft would be. This is a complicated area of the law that is best suited for a meeting and discussion (neither of which is there time for at this point) so that we can come up with a draft that accomplishes the policies you intend.

Obviously, I will draft whatever version of UETA the caucus intends to put forward. I just want to make sure you understand the legal issues involved. Melanie has been my contact person at the caucus. I will wait to hear from her before I do any redrafting of the amendment.

Robert J. Marchant
Legislative Attorney
State of Wisconsin Legislative Reference Bureau
robert.marchant@legis.state.wi.us

-----Original Message-----

From: Pleva, Brian
Sent: Thursday, June 28, 2001 11:15 AM
To: Smyrski, Rose
Cc: Marchant, Robert
Subject: FW: LRB Draft: 01b1569/1 Uniform Electronic Transactions Act

Rose, apparently DFI is okay with the DOA draft. It seems to me that we need to get Amy (or assistant) on the phone to talk with Robert Marchant (1-4454). I left a msg. w/R.J. letting him know about our friends' problem with the original language and asked if we should nix the whole thing if a solution cannot be found. I'll let you know what he says.

Thanks for your help with all of this. I have other drafts that have some problems too, so your assistance is very helpful!

We're all gonna have to call to the Terrace sometime.

-----Original Message-----

From: **Anderson, David**
Sent: Thursday, June 28, 2001 10:27 AM
To: Pleva, Brian
Cc: Grosenheider, Terry; Roys, Lisa; Morrissey, William - DFI; Dietzel, Susan
Subject: FW: LRB Draft: 01b1569/1 Uniform Electronic Transactions Act

The UETA language looks great! Thanks for the opportunity to review it, Brian!!

-----Original Message-----

From: Schlei, Mark
Sent: Thursday, June 28, 2001 10:11 AM
To: Anderson, David; Green, Chris
Cc: Grosenheider, Terry; Roys, Lisa; Morrissey, William - DFI; Dietzel, Susan

Subject: RE: LRB Draft: 01b1569/1 Uniform Electronic Transactions Act

I have reviewed the language and it is okay. The attached does two things: 1) properly adopts UETA so Wisconsin is no longer preempted by the E-Sign act (which allows WI greater flexibility), and 2) cleans up the Wisconsin electronic signatures statutes, giving rule making to DOA and removes the digital signature mandate which E-Sign preempted. If you have any further questions, let me know.

-----Original Message-----

From: Anderson, David
Sent: Thursday, June 28, 2001 9:48 AM
To: Schlei, Mark; Green, Chris
Cc: Grosenheider, Terry; Roys, Lisa; Morrissey, William - DFI; Dietzel, Susan
Subject: FW: LRB Draft: 01b1569/1 Uniform Electronic Transactions Act
Importance: High

As we discussed this morning, I referred the Assembly Republicans to DOA for a review of the budget language relating to UETA. Representative Vrakas would like us to take a look at the language and provide some reaction from DFI's perspective, however, so I'm hoping you can review this today and let me know if you have any suggestions or reactions.

-----Original Message-----

From: Pleva, Brian
Sent: Thursday, June 28, 2001 9:26 AM
To: Anderson, David
Subject: FW: LRB Draft: 01b1569/1 Uniform Electronic Transactions Act
Importance: High

David, not to pile on too much, but this is DOA's suggested language on the UETA. Let me know if DFI is okay with this (maybe you've been involved with discussions with them and are already aware of this).

-----Original Message-----

From: Moran, Amy
Sent: Wednesday, June 27, 2001 4:53 PM
To: 'daniel.vrakas@legis.state.wi.us'
Cc: Bilot, Erin; Pleva, Brian; Smyrski, Rose; Montgomery, Phil; Jeskewitz, Suzanne; Reines, Bruce; Seemeyer, Linda; Hayes, Brian
Subject: LRB Draft: 01b1569/1 Uniform Electronic Transactions Act
Importance: High

Dear Representative Vrakas,

There have been significant discussions since the budget language was developed. Attached here is the latest refinement on Wisconsin UETA language (LRB 29981/1). It reflects the outcome of discussions between DOA and the LRB addressing some challenges found in the original bill as carried in Governor McCallum's budget.

We understand the bill has been moved over to you for re-introduction into the budget (Caucus Assembly Amendment to Assembly Substitute Amendment 1 to 2001 SB 55). Substitution of this 29981/1 draft will provide us a stronger UETA enactment for the State. We appreciate your help.

I will be in Ripon in the morning, but returning tomorrow afternoon and can be reached then at 261-6616. In my absence, please feel free to contact Bruce Reines with any questions.

Regards.

Amy << File: 01-29981.pdf >>

-----Original Message-----

From: Bilot, Erin
Sent: Wednesday, June 27, 2001 3:54 PM
To: Moran, Amy
Subject: FW: LRB Draft: 01b1569/1 Uniform Electronic Transactions Act

Erin Bilot
Office of Suzanne Jeskewitz
State Representative
24th Assembly District

-----Original Message-----

From: Hartsough, Melanie
Sent: Tuesday, June 26, 2001 6:52 PM
To: Bilot, Erin
Subject: LRB Draft: 01b1569/1 Uniform Electronic Transactions Act

Please look this over to make sure this amendment is drafted so that it fully reflects your intent. If changes need to be made please send over the changes or indicate so in an email. If the amendment is drafted to your satisfaction, please indicate so in a reply email.

Thank you!
Melanie

Melanie Hartsough
Wisconsin's Assembly Republican Caucus
Melanie.Hartsough@legis.state.wi.us
Toll-free: (888) 394-1452
Direct: (608) 267-0898

-----Original Message-----

From: Frantzen, Jean
Sent: Tuesday, June 26, 2001 3:20 PM
To: Hartsough, Melanie
Cc: Legislative Fiscal Bureau; Hanaman, Cathlene; Haugen, Caroline
Subject: LRB Draft: 01b1569/1 Uniform Electronic Transactions Act

Following is the PDF version of draft 01b1569/1.

<< File: 01b1569/1 >> << File: 01b1569/1dn >>

Marchant, Robert

From: Hanaman, Cathlene
Sent: Thursday, June 28, 2001 1:07 PM
To: Marchant, Robert
Subject: FW: 01b1569/1 Uniform Electronic Transactions Act

Importance: High

-----Original Message-----

From: Hartsough, Melanie
Sent: Thursday, June 28, 2001 1:03 PM
To: Hanaman, Cathlene
Subject: 01b1569/1 Uniform Electronic Transactions Act
Importance: High

We will go with the original lanugage. so, this one is set.

Melanie Hartsough
Wisconsin's Assembly Republican Caucus
Melanie.Hartsough@legis.state.wi.us
Toll-free: (888) 394-1452
Direct: (608) 267-0898

stays

RMNR

DNOR

~~DOA:.....Caucutt - Uniform Electronic Transactions Act~~

~~FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION~~

ARC

AA-ASA1-SB55

m 6-25-01

1 AN ACT ...; relating to: electronic transactions and records and granting
2 rule-making authority.

Analysis by the Legislative Reference Bureau
COMMERCE AND ECONOMIC DEVELOPMENT
COMMERCE

In 1999, the National Conference of Commissioners on Uniform State Laws approved the Uniform Electronic Transactions Act (UETA) and recommended it for enactment in all the states. Generally, UETA establishes a legal framework that facilitates and validates certain electronic transactions. This bill enacts UETA in Wisconsin, with minor, nonsubstantive changes necessary to incorporate the act into the existing statutes.

Current law regarding electronic documents, transactions, and signatures

Currently, a combination of state and federal laws govern the use of electronic records, transactions, and signatures in this state. The most significant federal law in this regard is the Electronic Signatures in Global and National Commerce Act, commonly known as "E-sign," which was enacted after UETA was recommended for enactment in all of the states. With certain exceptions relating to existing or pending document retention requirements, E-sign took effect on October 1, 2000. Although much of E-sign represents new law in this state, some of the issues addressed in E-sign were addressed under state law previous to E-sign. With certain exceptions,

E-sign preempts the state law to the extent that the treatment is inconsistent with the treatment under E-sign.

1. PUBLIC RECORDS

Under E-sign, any law that requires retention of a contract or document relating to a transaction in or affecting interstate or foreign commerce may be satisfied by retaining an electronic document, as long as the retained information satisfies certain requirements relating to accuracy and accessibility. Thus, under E-sign, a custodian of a public record relating to a covered transaction is likely permitted to destroy the original record if a proper electronic copy is retained. This authority is consistent with current provisions in state law that, in most cases, permit electronic retention of public records; however, the state law in certain cases imposes additional quality control and evidentiary preservation requirements that must be followed if a public record is to be retained electronically. It is unclear whether these additional requirements continue to apply or would be preempted as inconsistent with these provisions of E-sign.

2. ACCEPTANCE OF ELECTRONIC DOCUMENTS BY GOVERNMENTAL UNITS

Current law relating to the acceptance of electronic documents by governmental units in this state is ambiguous. Under current state law, any document that is required by law to be submitted in writing to a governmental unit and that requires a written signature may be submitted in an electronic format, as long as the governmental unit consents. Current state law does not require any governmental unit to accept documents in an electronic format, but provides that an electronic signature may be substituted for a manual signature if certain requirements are met.

E-sign, however, may require any governmental unit that is a "governmental agency" under E-sign (an undefined term) to accept certain electronic documents that relate to transactions in or affecting interstate or foreign commerce. E-sign states that it does not require any person to agree to use or accept electronic documents or electronic signatures, other than a governmental agency with respect to any document that is not a contract to which it is a party. Although no provision of E-sign specifically requires a governmental agency to use or accept electronic documents or signatures, under E-sign, a document relating to a covered transaction may not be denied legal effect solely because it is in electronic form. Thus, E-sign implies that a governmental agency may be required under E-sign to accept an electronic document relating to a covered transaction, as long as the document is not a contract to which the governmental agency is a party. This implication conflicts with another provision of E-sign, which states that E-sign generally does not limit or supersede any requirement imposed by a state regulatory agency (an undefined term) that documents be filed in accordance with specified standards or formats.

3. ELECTRONIC DOCUMENTS AND SIGNATURES IN COMMERCE

Promissory notes

Currently, this state's version of the Uniform Commercial Code contains the primary legal framework allowing for transactions in this state involving promissory notes (commonly, loan documents). Title II of E-sign contains the primary legal

framework relating to a new type of promissory note, termed a “transferrable record,” which allows for the marketing of electronic versions of promissory notes in transactions secured by real property.

Other documents and records

The primary electronic commerce provisions of E-sign are contained in Title I, which establishes a legal framework relating to electronic transactions in or affecting interstate or foreign commerce. Generally, Title I contains provisions that relate to the use of “electronic records” and signatures in covered transactions, the retention of “electronic records” of covered transactions, and the notarization and acknowledgement of covered electronic transactions. Title I broadly defines the term “electronic record” to include, among other things, any information that is stored by means of electrical or digital technology and that is retrievable in perceivable form. This definition likely covers such things as information stored on a computer disk or a voice mail recording. Because of this broad definition, in this analysis of E-sign, the term “document” is generally used in place of the term record. Title I also defines “transaction” broadly to mean any action or set of actions relating to the conduct of business, consumer, or commercial affairs between two or more persons, including governmental agencies.

Currently, under Title I, a signature, contract, or other document relating to a covered transaction may not be denied legal effect, validity, or enforceability solely because it is in an electronic form, as long as the electronic contract or record, if it is otherwise required to be in writing, is capable of being retained and accurately reproduced by the relevant parties. Similarly, a contract relating to a covered transaction may not be denied legal effect solely because an electronic signature or electronic document was used in its formation.

Title I also permits electronic notarization, acknowledgement, or verification of a signature or document relating to a covered transaction, as long as the electronic signature of the person performing the notarization, acknowledgement, or verification is accompanied by all other information required by law. In addition, Title I provides that no person is required under Title I to agree to use or accept electronic records or signatures.

However, under Title I, any law that requires retention of a contract or document relating to a covered transaction may be satisfied by retaining an electronic document, as long as the retained information satisfies certain requirements relating to accuracy and accessibility. Title I contains similar provisions with regard to laws requiring retention of a check. An electronic contract or document retained in compliance with these provisions generally has the same legal status as an original document. As discussed above with regard to public records custodians, this provision of Title I also likely permits any *private* custodian of records relating to covered transactions to destroy original records if a proper electronic copy is retained.

Consumer protections

Under Title I, with regard to consumer transactions in or affecting interstate or foreign commerce, existing laws requiring written disclosure currently may be satisfied electronically only if the consumer consents after being informed of certain

rights and of the technical requirements necessary to access and retain the electronic document. In addition, the consumer must consent or confirm his or her consent electronically in a manner that reasonably demonstrates that the consumer can access the information that is required to be provided to the consumer. The legal effect of a contract, though, may not be denied solely because of a failure to obtain the consumer's electronic consent consistent with this requirement. Title I also specifies that the use of electronic documents permitted under these consumer provisions does not include the use of an oral communication, such as a voice mail recording, unless that use is permitted under other applicable law.

Any federal regulatory agency, with respect to a matter within the agency's jurisdiction, may exempt a specified category or type of document from the general consumer consent requirement, if the exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers.

Exemptions

All of the following are exempt from coverage under the primary electronic commerce provisions of E-sign and, as a result, currently may not be provided in electronic format unless otherwise authorized by law:

1. A document to the extent that it is governed by a law covering the creation and execution of wills, codicils, or testamentary trusts.
2. A document to the extent that it is governed by a law covering adoption, divorce, or other matters of family law.
3. A document to the extent that it is governed by certain sections of the Uniform Commercial code.
4. Court orders or notices and official court documents, including briefs, pleadings, and other writings.
5. Notices of cancellation or termination of utility services, including water, heat, and power.
6. Notices of default, acceleration, repossession, foreclosure, or eviction or the right to cure under a credit agreement secured by, or a rental agreement for, a primary residence of an individual.
7. Notices of the cancellation or termination of health insurance or life insurance, other than annuities.
8. Product recall notices.
9. Documents required to accompany the transportation of hazardous materials.

A federal regulatory agency may remove any of these exemptions, as the particular exemption applies to a matter within the agency's jurisdiction, if the agency finds that the exemption is no longer necessary for the protection of consumers and that the elimination of the exemption will not increase the material risk of harm to consumers.

Limits on the scope of Title I

In addition to these specific exemptions, Title I has a limited effect upon certain specified laws. For example, Title I states that it does not affect any requirement imposed by state law relating to a person's rights or obligations other than the

requirement that contracts or other documents be in nonelectronic form. However, this provision may conflict with other provisions of Title I which appear to specifically affect obligations other than writing or signature requirements. Title I also has a limited effect on any state law enacted before E-sign that expressly requires verification or acknowledgement of receipt of a document. Under Title I, this type of document may be provided electronically only if the method used also provides verification or acknowledgement of receipt. In addition, Title I does not affect any law that requires a warning, notice, disclosure, or other document to be posted, displayed, or publicly affixed within a specified proximity.

State authority under Title I

Title I provides that a state regulatory agency that is responsible for rule making under any statute may interpret the primary electronic commerce provisions of Title I with respect to that statute, if the agency is authorized by law to do so. Rules, orders, or guidance produced by an agency under this authority must meet specific requirements relating to consistency with existing provisions of Title I; to regulatory burden; to justification for the rule, order, or guidance; and to neutrality with regard to the type of technology needed to satisfy the rule, order, or guidance. A state agency may also mandate specific performance standards with regard to document retention, in order to assure accuracy, integrity, and accessibility of retained electronic documents. However, under state law, the rule-making authority of a state agency is limited to interpretation and application of state law and no state agency may promulgate a rule that conflicts with state law.

Relationship between E-sign and UETA

With certain exceptions, E-sign preempts state laws that are inconsistent with its provisions. One of the exceptions permits a state to supersede the effect of the primary electronic commerce provisions of Title I by enacting a law that constitutes an enactment of UETA. However, a state may not use the optional provision in UETA that permits a state to insert exemptions relating to specific areas of state law from the application of UETA as a loophole to avoid the requirements of E-sign. If a state enacts UETA without significant change and containing no new exemptions under this provision of UETA, the state enactment of UETA will likely not be preempted by E-sign.

Because this bill makes no significant changes to the substance of UETA and the text is consistent with the intent of the version of UETA recommended for enactment in all of the states, the bill likely qualifies for this exception from preemption and, if enacted, would likely supplant the primary electronic commerce provisions of E-sign in this state. However, certain provisions of UETA and, as a result, this bill, are susceptible to varying interpretations. Many of these provisions are similar to current law under E-sign. This bill generally does not clarify these provisions. Rather, in order to avoid preemption, the text of this bill generally remains consistent with the recommended version of UETA.

UETA

The following analysis of the version of UETA contained in this bill generally reflects an interpretation that is consistent with the prefatory note and official comments accompanying UETA, which generally discuss the intent of each

recommended provision of UETA. For the provisions that are subject to varying interpretations, this analysis discusses each primary interpretation and indicates which interpretation, if any, is supported by the prefatory note or comments. Although the prefatory note and comments have no legal effect, in the past courts have often relied on the prefatory notes and comments to other uniform laws when interpreting ambiguous provisions of those laws. In some instances, the interpretation supported by the prefatory note or comments is difficult to derive from the text of the bill.

1. PUBLIC RECORDS

This bill includes a provision potentially affecting the maintenance of public records that is similar to the provision currently in effect under E-sign. With certain exceptions, the bill permits a person to satisfy any law that requires retention of a document by retaining an electronic document, as long as the retained information satisfies certain requirements relating to accuracy and accessibility. Like current law under E-sign, this provision may be interpreted to permit a custodian of a public record relating to a transaction to destroy the original record and retain an electronic copy, notwithstanding other current statutes regarding the conversion of public records into electronic format and retention requirements.

However, this interpretation is less likely to occur under this bill than it is in current law under E-sign. Unlike E-sign, this bill specifically states that it applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. (See discussion under "Electronic Documents and Signatures in Commerce" (subheading "Applicability and definitions") below.) Although the definition of "transaction" may be interpreted broadly to include a typical governmental action like the filing of a document, the prefatory note and comments to UETA imply that a narrower interpretation is intended which covers only the actions of the government as a market participant. Thus, if interpreted consistently with the prefatory note and comments, the electronic document retention provisions will likely apply to the parties to a transaction, rather than to a governmental unit that stores public records relating to the filings and transactions of others.

This bill also provides that a person may comply with these electronic document retention provisions using the services of another person. If the term "transaction" is interpreted broadly, this provision may permit a public records custodian to transfer public records to other governmental or private parties for retention. However, if the term "transaction" is interpreted consistently with the prefatory note and comments to UETA, this provision generally would not apply to a public records custodian's retention of most public records.

2. ACCEPTANCE OF ELECTRONIC DOCUMENTS BY GOVERNMENTAL UNITS

The same ambiguities regarding the acceptance of electronic documents by governmental units exist under this bill as exist currently under E-sign, although under this bill it is more likely that a governmental unit is not required to accept electronic documents. This bill attempts, in a manner consistent with UETA, to restore the law as it existed in this state before E-sign regarding the acceptance of electronic documents by governmental units. Thus, under this bill, any document

that is required by law to be submitted in writing to a governmental unit and that requires a written signature may be submitted in an electronic format if the governmental unit consents. Although this bill, like current law under E-sign, also states that a document relating to a transaction may not be denied legal effect solely because it is in electronic form, it is more likely under this bill that this provision has no effect on the authority of a governmental unit to refuse to accept an electronic document. Unlike current law under E-sign, this bill does not contain any statement that a governmental unit is required to accept an electronic document.

With certain exceptions, this bill grants DOA primary rule-making authority with regard to the use of electronic documents and signatures by governmental units and grants DOA and the secretary of state joint rule-making authority with regard to certain electronic notarizations. In addition, this bill requires any governmental unit that adopts standards regarding the governmental unit's receipt of electronic records or electronic signatures to promote consistency and interoperability with similar standards adopted by other governmental units, the federal government, and other persons interacting with governmental units of this state.

1. ELECTRONIC DOCUMENTS AND SIGNATURES IN COMMERCE

Rule of construction

This bill specifies that it must be construed and applied to facilitate electronic transactions consistent with other applicable law, to be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices, and to bring about uniformity in the law of electronic transactions.

Applicability and definitions

Generally, the bill applies to the use of electronic records and electronic signatures relating to transactions. Like current law under E-sign, this bill broadly defines the term "electronic record" to include, among other things, any information that is stored by means of electrical or digital technology and that is retrievable in a perceivable form. This definition would likely cover such things as information stored on a computer disk or a voice mail recording. Because of this broad definition, in this analysis of the version of UETA contained in this bill, the term "document" is generally used in place of the term "record." Under the bill, an "electronic signature" includes, among other things, a sound, symbol, or process that relates to electrical technology, that is attached to or logically associated with a document, and that is executed or adopted by a person with intent to sign the document.

The bill defines "transaction" to mean an action or set of actions between two or more persons relating to the conduct of business, commercial, or governmental affairs. Although this definition may be interpreted broadly to include a typical interaction with the government like the filing of a document, the prefatory note and comments to UETA imply that a narrower interpretation is intended which covers the actions of the government as a market participant. In addition, although the definition does not expressly cover consumer-to-consumer or consumer-to-business transactions, it is possible to interpret this definition, consistent with the official comments, to cover these transactions.

This bill, like current law under E-sign, does not apply to a transaction governed by a law relating to the execution of wills or the creation of testamentary

trusts or to a transaction governed by any chapter of this state's version of the Uniform Commercial Code other than the chapter dealing with sales of goods. However, because this bill does not contain all of the exemptions currently in effect under E-sign, this bill may permit a broader use of electronic documents relating to transactions than is currently permitted under E-sign. Unlike current law, this bill may permit the use of electronic documents for matters relating to family law; electronic court documents; electronic notices of the cancellation of utility services; electronic notices of default, acceleration, repossession, foreclosure, or eviction or the right to cure under a credit agreement secured by, or a rental agreement for, an individual's primary residence; electronic notices of the cancellation or termination of health insurance or life insurance; and electronic notices of product recalls.

Agreements to use electronic documents and electronic signatures

This bill does not require the use of electronic documents or electronic signatures. Rather, the bill applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Under the bill, this agreement is determined from the context, the surrounding circumstances, and the parties' conduct. A party that agrees to conduct one transaction by electronic means may refuse to conduct other transactions by electronic means. Although the bill also states that a document relating to a transaction may not be denied legal effect solely because it is in electronic form, it is likely that, consistent with the comments, these provisions permit a person to deny the legal effect of an electronic document relating to a transaction if a party to the transaction never agreed to conduct the transaction electronically. With certain exceptions, the parties to any transaction may agree to vary the effect of this bill as it relates to that transaction.

Consumer protections

Unlike current law under E-sign, this bill does not contain any protections that specifically apply only to consumers. The consumer protections currently in effect under E-sign would likely have no effect in this state upon the enactment of this bill.

Legal effect of electronic documents and electronic signatures

As noted earlier, this bill specifies that a document or signature may not be denied legal effect or enforceability solely because it is in electronic form. The bill also specifies that a contract may not be denied legal effect or enforceability solely because an electronic document was used in its formation. These provisions are similar to provisions in current law under E-sign. Unlike E-sign, this bill further states that an electronic document satisfies any law requiring a record to be in writing and that an electronic signature satisfies any law requiring a signature.

Effect of laws relating to the provision of information

Under this bill, if the parties to a transaction have agreed to conduct the transaction electronically and if a law requires a person to provide, send, or deliver information in writing to another person, a party may, with certain exceptions, satisfy the requirement with respect to that transaction by providing, sending, or delivering the information in an electronic document that is capable of retention by the recipient at the time of receipt. Although the bill also states that a document relating to a transaction may not be denied legal effect solely because it is in

electronic form, it is likely that, consistent with the comments, the bill permits a person to deny the legal effect of an electronic document relating to a transaction if the electronic document is provided, sent, or delivered in violation of this provision. The bill further provides that an electronic document is not enforceable against the recipient of the document if the sender inhibits the ability of the recipient to store or print the document.

The bill also specifies that, with certain exceptions, a document must satisfy any law requiring the document to be posted or displayed in a certain manner; to be sent, communicated, or transmitted by a specified method; or to contain information that is formatted in a certain manner. There are three possible interpretations of this provision. First, the provision may prohibit the use of an electronic document if a law requires the document to be posted, displayed, sent, communicated, transmitted, or formatted on paper. Second, the provision may instead require a paper document to be used in addition to an electronic document in these circumstances. Third, consistent with the comments, the provision may require the parties to a transaction to comply with any legal requirement relating to the provision of information *other than a requirement that the information be provided on paper*.

Attribution of electronic documents

Under this bill, an electronic document or electronic signature is attributable to a person whose act created the document or signature. The act of a person may be shown in any manner, including through the use of a security procedure that determines the person to whom an electronic document or electronic signature is attributable.

Effect of change or error

This bill contains three provisions that determine the effect of a change or error in an electronic document that occurs in a transmission between the parties to a transaction. First, if the parties have agreed to use a security procedure to detect changes or errors and if one of the parties fails to use a security procedure and an error or change occurs that the nonconforming party would have detected had the party used the security procedure, the other party may avoid the effect of the changed or erroneous electronic document. Second, in an automated transaction involving an individual, the individual may avoid the effect of an electronic document that results from an error made by the individual in dealing with the automated agent of another person, if the automated agent did not provide an opportunity for prevention or correction of the error. However, an individual may avoid the effect of the electronic document only if the individual, at the time he or she learns of the error, has received no benefit from the thing of value received from the other party under the transaction and only if the individual satisfies certain requirements relating to notification of the other party and return or destruction of the thing of value received. Third, if neither of these provisions applies to the transaction, the change or error has the effect provided by other law, including the law of mistake, and by any applicable contract between the parties.

Electronic notarization and acknowledgement

Like current law under E-sign, this bill permits electronic notarization, acknowledgement, or verification of a signature or document relating to a

transaction, as long as the electronic signature of the person performing the notarization, acknowledgement, or verification is accompanied by all other information required by law.

Retention of electronic documents

Under this bill, any law that requires retention of a document may, with certain exceptions, be satisfied by retaining an electronic document, as long as the retained information satisfies certain requirements relating to accuracy and accessibility. The bill contains similar provisions with regard to laws requiring retention of a check, although the term “check” is not defined under the bill and, as a result, may not include a share draft or money order. These provisions are similar to current law under E-sign. However, unlike E-sign, this bill specifies that an electronic document that is required to be retained must accurately reflect the information set forth in the document *after it was first generated in its final form as an electronic document or otherwise*. The comments indicate that this provision is intended to ensure that the content of a document is retained when documents are converted or reformatted to allow for ongoing electronic retention. However, this provision may be interpreted to permit a retention requirement to be satisfied by retaining only the final version of a document that has earlier versions.

The bill provides that an electronic document retained in compliance with these provisions need not contain any information the sole purpose of which is to enable the document to be sent, communicated, or received. Under current law, this ancillary information is normally required to be retained along with the document to which it is attached. In addition, as under E-sign, an electronic contract or document retained in compliance with these provisions generally has the same legal status as an original document. Like E-sign, this bill also provides that a person may comply with these electronic document retention provisions using the services of another person.

The bill provides that the state may enact laws, after enactment of this bill, that prohibit a person from using an electronic document to satisfy any requirement that the person retain a document for evidentiary, audit, or like purposes. It is unclear, though, what types of retention requirements are enacted for “evidentiary, audit, or like purposes.” It is also unclear how this provision relates to other provisions of the bill which provide that an electronic document satisfies any retention requirement as long as specified requirements relating to accuracy and accessibility are also satisfied.

In addition, the bill specifies that it does not preclude a governmental unit of this state from specifying additional requirements for the retention of any document subject to its jurisdiction. It is unclear how this provision relates to other provisions of the bill which provide that an electronic document satisfies any retention requirement as long as specified requirements relating to accuracy and accessibility are also satisfied. It is also unclear whether this provision grants rule-making authority or merely references any authority that may exist currently. Also, although it is unclear from the text whether this provision applies to nongovernmental documents or only to documents in the possession of a governmental unit, the official comments imply that the provision is intended to

apply to nongovernmental documents that are subject to a governmental unit's jurisdiction.

Evidence

Under this bill, a document or signature may not be excluded as evidence solely because it is in electronic form. This provision confirms the treatment of electronic documents and signatures under current law.

Automated transactions

This bill validates contracts formed in automated transactions by the interaction of automated agents of the parties or by the interaction of one party's automated agent and an individual. Under current law, it is possible to argue that an automated transaction may not result in an enforceable contract because, at the time of the transaction, either or both of the parties lack an expression of human intent to form the contract.

Time and location of electronic sending and receipt

Under this bill, an electronic document is sent when the electronic document a) is addressed or otherwise properly directed to an information processing system that the intended recipient has designated or uses for the purpose of receiving electronic documents or information of the type sent and from which the recipient is able to retrieve the electronic document; b) is in a form capable of being processed by that information processing system; and c) enters an information processing system outside of the control of the sender or enters a region of the information processing system used or designated by the recipient that is under the recipient's control. An electronic document is received when the electronic document enters and is in a form capable of being processed by an information processing system that the recipient has designated or uses for the purpose of receiving electronic documents or information of the type sent and from which the recipient is able to retrieve the electronic document. The bill permits the parties to a transaction to agree to alter the effect of these provisions with respect to the transaction. Under the bill, an electronic document may be received even if no individual is aware of its receipt. Furthermore, under the bill, an electronic acknowledgment of receipt from the information processing system used or designated by the recipient establishes that the electronic document was received but does not establish that the information sent is the same as the information received.

These provisions may be interpreted to alter laws under which the date of receipt of a public record submitted for filing is the date on which a paper copy is received or postmarked, so that the date of electronic filing constitutes the date of receipt instead. However, as noted earlier, this bill specifically states that it applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Although the definition of "transaction" may be interpreted broadly to include a typical governmental action like the filing of a document, the prefatory note and comments to UETA imply that a narrower interpretation is intended which covers only the actions of the government as a market participant. If the narrower interpretation applies, then these provisions will likely have no effect upon the filing of most public records.

Under this bill, an electronic document is deemed to be sent from the sender's place of business that has the closest relationship to the underlying transaction and to be received at the recipient's place of business that has the closest relationship to the underlying transaction. If the sender or recipient does not have a place of business, the electronic document is deemed to be sent or received from the sender's or recipient's residence. The bill also permits a sender to expressly provide in an electronic document that the document is deemed to be sent from a different location. The bill also permits the parties to a transaction to agree to alter the effect of these provisions on the transaction. To the extent that an electronic document may constitute a sale, with the seller receiving payment electronically, these provisions may be interpreted to permit a seller to argue that a sale occurred in a jurisdiction where the seller is not subject to a tax that would otherwise be imposed under Wisconsin law. However, the official comments imply that this interpretation is not intended.

In addition, under the bill, if a person is aware that an electronic document purportedly sent or purportedly received in compliance with these provisions was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Although the official comments are silent on the meaning of this provision, it is likely intended to give a court direction as to what law to apply to determine the legal effect when there is a *failure* to send or receive an electronic document in the manner provided under the bill.

Transferable records

This bill expands current law with regard to transactions involving the use of transferable records (electronic versions of certain documents under the Uniform Commercial Code). Although current law under E-sign only permits the use of transferrable records in transactions secured by real property, this bill permits the use of transferable records in any transaction in which a promissory note or document of title under the Uniform Commercial Code may be used. Under this bill, an electronic document qualifies as a transferable record only if the issuer of the electronic document expressly agrees that the electronic document is a transferable record.

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

→ Item #. Page 53, line 10: after that line insert:

- 1 "SECTION ²⁶¹ 16.61 (7) (d) of the statutes is created to read:
- 2 16.61 (7) (d) This subsection does not apply to public records governed by s.
- 3 137.20.
- 4 SECTION ²⁶² 16.611 (2) (e) of the statutes is created to read:

At the locations indicated, amend the substitute amendment as follows:

1 16.611 (2) (e) This subsection does not apply to public records governed by s.
2 137.20.

3 SECTION ²⁶³ 16.612 (2) (c) of the statutes is created to read:

4 16.612 (2) (c) This subsection does not apply to documents or public records

5 governed by s. 137.20.

Item # Page 940, line 10: after that line insert:

6 SECTION 1. Chapter 137 (title) of the statutes is amended to read:

7 **CHAPTER 137**

8 **AUTHENTICATIONS AND ELECTRONIC**

9 **TRANSACTIONS AND RECORDS**

10 SECTION ²⁸³⁰ 1. Subchapter I (title) of chapter 137 [precedes 137.01] of the statutes
11 is amended to read:

12 **CHAPTER 137**

13 **SUBCHAPTER I**

14 **NOTARIES AND COMMISSIONERS**

15 **OF DEEDS; NONELECTRONIC**

16 **NOTARIZATION AND ACKNOWLEDGEMENT**) ←

17 "SECTION ²⁸³¹ 1. 137.01 (3) (a) of the statutes is amended to read:

18 137.01 (3) (a) Every Except as authorized in s. 137.19, every notary public shall
19 provide an engraved official seal which makes a distinct and legible impression or
20 official rubber stamp which makes a distinct and legible imprint on paper. The
21 impression of the seal or the imprint of the rubber stamp shall state only the
22 following: "Notary Public," "State of Wisconsin" and the name of the notary. But any
23 notarial seal in use on August 1, 1959, shall be considered in compliance.

24 SECTION ²⁸³² 1. 137.01 (4) (a) of the statutes is amended to read:

Item # Page 941, line 15: after that line insert:

1 137.01 (4) (a) Every official act of a notary public shall be attested by the notary
2 public's written signature or electronic signature, as defined in s. ~~137.04(2)~~ 137.11
3 (8).

2833

4 SECTION ~~8~~ 137.01 (4) (b) of the statutes is amended to read:

5 137.01 (4) (b) ~~All Except as authorized in s. 137.19, all~~ certificates of
6 acknowledgments of deeds and other conveyances, or any written instrument
7 required or authorized by law to be acknowledged or sworn to before any notary
8 public, within this state, shall be attested by a clear impression of the official seal or
9 imprint of the rubber stamp of said officer, and in addition thereto shall be written
10 or stamped either the day, month and year when the commission of said notary public
11 will expire, or that such commission is permanent. ” ←

2834

12 SECTION ~~9~~ Subchapter II (title) of chapter 137 [precedes 137.04] of the statutes
13 is amended to read:

CHAPTER 137

SUBCHAPTER II

ELECTRONIC SIGNATURES

TRANSACTIONS AND RECORDS;

ELECTRONIC NOTARIZATION

AND ACKNOWLEDGEMENT

2835

20 SECTION ~~10~~ 137.04 of the statutes is repealed.

2836

21 SECTION ~~11~~ 137.05 (title) of the statutes is renumbered 137.25 (title) and
22 amended to read:

23 137.25 (title) **Submission of written documents records to**
24 **governmental units.**

Item # Page 942, line 9: after that line insert:

1

²⁸³⁷
SECTION ~~B~~. 137.05 of the statutes is renumbered 137.25 (1) and amended to read:

2
3 137.25 (1) Unless otherwise ~~prohibited~~ provided by law, with the consent of a
4 governmental unit of this state that is to receive a record, any ~~document~~ record that
5 is required by law to be submitted in writing to a ~~that~~ governmental unit and that
6 requires a written signature may be submitted ~~by transforming the document into~~
7 as an electronic format, but only with the consent of the governmental unit that is
8 to receive the document record, and if submitted as an electronic record may
9 incorporate an electronic signature.

10

²⁸³⁸
SECTION ~~B~~. 137.06 of the statutes is repealed.

11

²⁸³⁹
SECTION ~~A~~. 137.11 to 137.24 of the statutes are created to read.

12 **137.11 Definitions.** In this subchapter:

13 (1) "Agreement" means the bargain of the parties in fact, as found in their
14 language or inferred from other circumstances and from rules, regulations, and
15 procedures given the effect of agreements under laws otherwise applicable to a
16 particular transaction.

17 (2) "Automated transaction" means a transaction conducted or performed, in
18 whole or in part, by electronic means or by the use of electronic records, in which the
19 acts or records of one or both parties are not reviewed by an individual in the ordinary
20 course in forming a contract, performing under an existing contract, or fulfilling an
21 obligation required by the transaction.

22 (3) "Computer program" means a set of statements or instructions to be used
23 directly or indirectly in an information processing system in order to bring about a
24 certain result.

1 (4) “Contract” means the total legal obligation resulting from the parties’
2 agreement as affected by this subchapter and other applicable law.

3 (5) “Electronic” means relating to technology having electrical, digital,
4 magnetic, wireless, optical, electromagnetic, or similar capabilities.

5 (6) “Electronic agent” means a computer program or an electronic or other
6 automated means used independently to initiate an action or respond to electronic
7 records or performances in whole or in part, without review or action by an
8 individual.

9 (7) “Electronic record” means a record that is created, generated, sent,
10 communicated, received, or stored by electronic means.

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

14 (9) “Governmental unit” means:

15 (a) An agency, department, board, commission, office, authority, institution, or
16 instrumentality of the federal government or of a state or of a political subdivision
17 of a state or special purpose district within a state, regardless of the branch or
18 branches of government in which it is located.

19 (b) A political subdivision of a state or special purpose district within a state.

20 (c) An association or society to which appropriations are made by law.

21 (d) Any body within one or more of the entities specified in pars. (a) to (c) that
22 is created or authorized to be created by the constitution, by law, or by action of one
23 or more of the entities specified in pars. (a) to (c).

24 (e) Any combination of any of the entities specified in pars. (a) to (d).

1 (10) “Information” means data, text, images, sounds, codes, computer
2 programs, software, databases, or the like.

3 (11) “Information processing system” means an electronic system for creating,
4 generating, sending, receiving, storing, displaying, or processing information.

5 (12) “Record” means information that is inscribed on a tangible medium or that
6 is stored in an electronic or other medium and is retrievable in perceivable form.

7 (13) “Security procedure” means a procedure employed for the purpose of
8 verifying that an electronic signature, record, or performance is that of a specific
9 person or for detecting changes or errors in the information in an electronic record.
10 The term includes a procedure that requires the use of algorithms or other codes,
11 identifying words or numbers, encryption, callback, or other acknowledgment
12 procedures.

13 (14) “State” means a state of the United States, the District of Columbia,
14 Puerto Rico, the U.S. Virgin Islands, or any territory or insular possession subject
15 to the jurisdiction of the United States. The term includes an Indian tribe or band,
16 or Alaskan native village, which is recognized by federal law or formally
17 acknowledged by a state.

18 (15) “Transaction” means an action or set of actions occurring between 2 or
19 more persons relating to the conduct of business, commercial, or governmental
20 affairs.

21 **137.12 Application.** (1) Except as otherwise provided in sub. (2) and except
22 in ss. 137.25 and 137.26, this subchapter applies to electronic records and electronic
23 signatures relating to a transaction.

24 (2) Except as otherwise provided in sub. (3), this subchapter does not apply to
25 a transaction to the extent it is governed by:

1 (a) Any law governing the execution of wills or the creation of testamentary
2 trusts; or

3 (b) Chapters 401 and 403 to 410, other than ss. 401.107 and 401.206.

4 (3) This subchapter applies to an electronic record or electronic signature
5 otherwise excluded from the application of this subchapter under sub. (2) to the
6 extent it is governed by a law other than those specified in sub. (2).

7 (4) A transaction subject to this subchapter is also subject to other applicable
8 substantive law.

9 (5) This subchapter applies to the state of Wisconsin, unless otherwise
10 expressly provided.

11 **137.13 Use of electronic records and electronic signatures; variation**
12 **by agreement.** (1) This subchapter does not require a record or signature to be
13 created, generated, sent, communicated, received, stored, or otherwise processed or
14 used by electronic means or in electronic form.

15 (2) This subchapter applies only to transactions between parties each of which
16 has agreed to conduct transactions by electronic means. Whether the parties agree
17 to conduct a transaction by electronic means is determined from the context and
18 surrounding circumstances, including the parties' conduct.

19 (3) A party that agrees to conduct a transaction by electronic means may refuse
20 to conduct other transactions by electronic means. The right granted by this
21 subsection may not be waived by agreement.

22 (4) Except as otherwise provided in this subchapter, the effect of any provision
23 of this subchapter may be varied by agreement. Use of the words "unless otherwise
24 agreed," or words of similar import, in this subchapter shall not be interpreted to
25 preclude other provisions of this subchapter from being varied by agreement.

1 (5) Whether an electronic record or electronic signature has legal consequences
2 is determined by this subchapter and other applicable law.

3 **137.14 Construction.** This subchapter shall be construed and applied:

4 (1) To facilitate electronic transactions consistent with other applicable law;

5 (2) To be consistent with reasonable practices concerning electronic
6 transactions and with the continued expansion of those practices; and

7 (3) To effectuate its general purpose to make uniform the law with respect to
8 the subject of this subchapter among states enacting laws substantially similar to
9 the Uniform Electronic Transactions Act as approved and recommended by the
10 National Conference of Commissioners on Uniform State Laws in 1999.

11 **137.15 Legal recognition of electronic records, electronic signatures,
12 and electronic contracts.** (1) A record or signature may not be denied legal effect
13 or enforceability solely because it is in electronic form.

14 (2) A contract may not be denied legal effect or enforceability solely because an
15 electronic record was used in its formation.

16 (3) If a law requires a record to be in writing, an electronic record satisfies that
17 requirement in that law.

18 (4) If a law requires a signature, an electronic signature satisfies that
19 requirement in that law.

20 **137.16 Provision of information in writing; presentation of records.**

21 (1) If parties have agreed to conduct a transaction by electronic means and a law
22 requires a person to provide, send, or deliver information in writing to another
23 person, a party may satisfy the requirement with respect to that transaction if the
24 information is provided, sent, or delivered, as the case may be, in an electronic record
25 capable of retention by the recipient at the time of receipt. An electronic record is not

1 capable of retention by the recipient if the sender or its information processing
2 system inhibits the ability of the recipient to print or store the electronic record.

3 (2) If a law other than this subchapter requires a record to be posted or
4 displayed in a certain manner, to be sent, communicated, or transmitted by a
5 specified method, or to contain information that is formatted in a certain manner,
6 then:

7 (a) The record shall be posted or displayed in the manner specified in the other
8 law.

9 (b) Except as otherwise provided in sub. (4) (b), the record shall be sent,
10 communicated, or transmitted by the method specified in the other law.

11 (c) The record shall contain the information formatted in the manner specified
12 in the other law.

13 (3) If a sender inhibits the ability of a recipient to store or print an electronic
14 record, the electronic record is not enforceable against the recipient.

15 (4) The requirements of this section may not be varied by agreement, but:

16 (a) To the extent a law other than this subchapter requires information to be
17 provided, sent, or delivered in writing but permits that requirement to be varied by
18 agreement, the requirement under sub. (1) that the information be in the form of an
19 electronic record capable of retention may also be varied by agreement; and

20 (b) A requirement under a law other than this subchapter to send,
21 communicate, or transmit a record by 1st-class or regular mail or with postage
22 prepaid may be varied by agreement to the extent permitted by the other law.

23 **137.17 Attribution and effect of electronic records and electronic**
24 **signatures.** (1) An electronic record or electronic signature is attributable to a
25 person if the electronic record or electronic signature was created by the act of the

1 person. The act of the person may be shown in any manner, including a showing of
2 the efficacy of any security procedure applied to determine the person to which the
3 electronic record or electronic signature was attributable.

4 (2) The effect of an electronic record or electronic signature that is attributed
5 to a person under sub. (1) is determined from the context and surrounding
6 circumstances at the time of its creation, execution, or adoption, including the
7 parties' agreement, if any, and otherwise as provided by law.

8 **137.18 Effect of change or error.** (1) If a change or error in an electronic
9 record occurs in a transmission between parties to a transaction, then:

10 (a) If the parties have agreed to use a security procedure to detect changes or
11 errors and one party has conformed to the procedure, but the other party has not, and
12 the nonconforming party would have detected the change or error had that party also
13 conformed, the conforming party may avoid the effect of the changed or erroneous
14 electronic record.

15 (b) In an automated transaction involving an individual, the individual may
16 avoid the effect of an electronic record that resulted from an error made by the
17 individual in dealing with the electronic agent of another person if the electronic
18 agent did not provide an opportunity for the prevention or correction of the error and,
19 at the time the individual learns of the error, the individual:

20 1. Promptly notifies the other person of the error and that the individual did
21 not intend to be bound by the electronic record received by the other person;

22 2. Takes reasonable steps, including steps that conform to the other person's
23 reasonable instructions, to return to the other person or, if instructed by the other
24 person, to destroy the consideration received, if any, as a result of the erroneous
25 electronic record; and

1 3. Has not used or received any benefit or value from the consideration, if any,
2 received from the other person.

3 (2) If neither sub. (1) (a) nor (b) applies, the change or error has the effect
4 provided by other law, including the law of mistake, and the parties' contract, if any.

5 (3) Subsections (1) (b) and (2) may not be varied by agreement.

6 **137.19 Notarization and acknowledgement.** If a law requires a signature
7 or record to be notarized, acknowledged, verified, or made under oath, the
8 requirement is satisfied if the electronic signature of the person authorized to
9 administer the oath or to make the notarization, acknowledgment, or verification,
10 together with all other information required to be included by other applicable law,
11 is attached to or logically associated with the signature or record.

12 **137.20 Retention of electronic records; originals.** (1) If a law requires
13 that a record be retained, the requirement is satisfied by retaining the information
14 set forth in the record as an electronic record which:

15 (a) Accurately reflects the information set forth in the record after it was first
16 generated in its final form as an electronic record or otherwise; and

17 (b) Remains accessible for later reference.

18 (2) A requirement to retain a record in accordance with sub. (1) does not apply
19 to any information the sole purpose of which is to enable the record to be sent,
20 communicated, or received.

21 (3) A person may comply with sub. (1) by using the services of another person
22 if the requirements of that subsection are satisfied.

23 (4) Except as provided in sub. (6), if a law requires a record to be presented or
24 retained in its original form, or provides consequences if the record is not presented

1 or retained in its original form, a person may comply with that law by using an
2 electronic record that is retained in accordance with sub. (1).

3 (5) If a law requires retention of a check, that requirement is satisfied by
4 retention of an electronic record containing the information on the front and back of
5 the check in accordance with sub. (1).

6 (6) A record retained as an electronic record in accordance with sub. (1)
7 satisfies a law requiring a person to retain a record for evidentiary, audit, or like
8 purposes, unless a law enacted after the effective date of this subsection ... [revisor
9 inserts date], specifically prohibits the use of an electronic record for the specified
10 purpose.

11 (7) This section does not preclude a governmental unit of this state from
12 specifying additional requirements for the retention of any record subject to the
13 jurisdiction of that governmental unit.

14 **137.21 Admissibility in evidence.** In a proceeding, a record or signature
15 may not be excluded as evidence solely because it is in electronic form.

16 **137.22 Automated transactions.** In an automated transaction:

17 (1) A contract may be formed by the interaction of electronic agents of the
18 parties, even if no individual was aware of or reviewed the electronic agent's actions
19 or the resulting terms and agreements.

20 (2) A contract may be formed by the interaction of an electronic agent and an
21 individual, acting on the individual's own behalf or for another person, including by
22 an interaction in which the individual performs actions that the individual is free to
23 refuse to perform and which the individual knows or has reason to know will cause
24 the electronic agent to complete the transaction or performance.

1 (3) The terms of a contract under sub. (1) or (2) are governed by the substantive
2 law applicable to the contract.

3 **137.23 Time and place of sending and receipt.** (1) Unless otherwise
4 agreed between the sender and the recipient, an electronic record is sent when it:

5 (a) Is addressed properly or otherwise directed properly to an information
6 processing system that the recipient has designated or uses for the purpose of
7 receiving electronic records or information of the type sent and from which the
8 recipient is able to retrieve the electronic record;

9 (b) Is in a form capable of being processed by that system; and

10 (c) Enters an information processing system outside the control of the sender
11 or of a person that sent the electronic record on behalf of the sender or enters a region
12 of the information processing system designated or used by the recipient which is
13 under the control of the recipient.

14 (2) Unless otherwise agreed between a sender and the recipient, an electronic
15 record is received when:

16 (a) It enters an information processing system that the recipient has
17 designated or uses for the purpose of receiving electronic records or information of
18 the type sent and from which the recipient is able to retrieve the electronic record;
19 and

20 (b) It is in a form capable of being processed by that system.

21 (3) Subsection (2) applies even if the place where the information processing
22 system is located is different from the place where the electronic record is deemed
23 to be received under sub. (4).

24 (4) Unless otherwise expressly provided in the electronic record or agreed
25 between the sender and the recipient, an electronic record is deemed to be sent from

1 the sender's place of business and to be received at the recipient's place of business.

2 For purposes of this subsection:

3 (a) If the sender or recipient has more than one place of business, the place of
4 business of that person is the place having the closest relationship to the underlying
5 transaction.

6 (b) If the sender or the recipient does not have a place of business, the place of
7 business is the sender's or recipient's residence, as the case may be.

8 (5) An electronic record is received under sub. (2) even if no individual is aware
9 of its receipt.

10 (6) Receipt of an electronic acknowledgment from an information processing
11 system described in sub. (2) establishes that a record was received but, by itself, does
12 not establish that the content sent corresponds to the content received.

13 (7) If a person is aware that an electronic record purportedly sent under sub.
14 (1), or purportedly received under sub. (2), was not actually sent or received, the legal
15 effect of the sending or receipt is determined by other applicable law. Except to the
16 extent permitted by the other law, the requirements of this subsection may not be
17 varied by agreement.

18 **137.24 Transferable records.** (1) In this section, "transferable record"
19 means an electronic record that would be a note under ch. 403 or a record under ch.
20 407 if the electronic record were in writing.

21 (1m) An electronic record qualifies as a transferable record under this section
22 only if the issuer of the electronic record expressly has agreed that the electronic
23 record is a transferable record.

1 (2) A person has control of a transferable record if a system employed for
2 evidencing the transfer of interests in the transferable record reliably establishes
3 that person as the person to which the transferable record was issued or transferred.

4 (3) A system satisfies the requirements of sub. (2), and a person is deemed to
5 have control of a transferable record, if the transferable record is created, stored, and
6 assigned in such a manner that:

7 (a) A single authoritative copy of the transferable record exists which is unique,
8 identifiable, and, except as otherwise provided in pars. (d) to (f), unalterable;

9 (b) The authoritative copy identifies the person asserting control as the person
10 to which the transferable record was issued or, if the authoritative copy indicates
11 that the transferable record has been transferred, the person to which the
12 transferable record was most recently transferred;

13 (c) The authoritative copy is communicated to and maintained by the person
14 asserting control or its designated custodian;

15 (d) Copies or revisions that add or change an identified assignee of the
16 authoritative copy can be made only with the consent of the person asserting control;

17 (e) Each copy of the authoritative copy and any copy of a copy is readily
18 identifiable as a copy that is not the authoritative copy; and

19 (f) Any revision of the authoritative copy is readily identifiable as authorized
20 or unauthorized.

21 (4) Except as otherwise agreed, a person having control of a transferable record
22 is the holder, as defined in s. 401.201 (20), of the transferable record and has the same
23 rights and defenses as a holder of an equivalent record or writing under chs. 401 to
24 411, including, if the applicable statutory requirements under s. 403.302 (1),
25 407.501, or 409.308 are satisfied, the rights and defenses of a holder in due course,

1 a holder to which a negotiable record of title has been duly negotiated, or a purchaser,
2 respectively. Delivery, possession, and endorsement are not required to obtain or
3 exercise any of the rights under this subsection.

4 (5) Except as otherwise agreed, an obligor under a transferable record has the
5 same rights and defenses as an equivalent obligor under equivalent records or
6 writings under chs. 401 to 411.

7 (6) If requested by a person against which enforcement is sought, the person
8 seeking to enforce the transferable record shall provide reasonable proof that the
9 person is in control of the transferable record. Proof may include access to the
10 authoritative copy of the transferable record and related business records sufficient
11 to review the terms of the transferable record and to establish the identity of the
12 person having control of the transferable record.

13 SECTION ²⁸⁴⁰~~13~~. 137.25 (2) of the statutes is created to read:

14 137.25 (2) (a) The department of administration shall promulgate rules
15 concerning the use of electronic records and electronic signatures by governmental
16 units, which shall govern the use of electronic records or signatures by governmental
17 units, unless otherwise provided by law.

18 (b) The department of administration and the secretary of state shall jointly
19 promulgate rules establishing requirements that, unless otherwise provided by law,
20 a notary public must satisfy in order to use an electronic signature for any
21 attestation. The joint rules shall be numbered as rules of each agency in the
22 Wisconsin Administrative Code.

23 SECTION ²⁸⁴¹~~14~~. 137.26 of the statutes is created to read:

24 137.26 **Interoperability.** If a governmental unit of this state adopts
25 standards regarding its receipt of electronic records or electronic signatures under

Item #, Page 1003, line 12: after that line insert:

1 s. 137.25, the governmental unit shall promote consistency and interoperability with
2 similar standards adopted by other governmental units of this state and other states
3 and the federal government and nongovernmental persons interacting with
4 governmental units of this state. Any standards so adopted may include alternative
5 provisions if warranted to meet particular applications.

Item #, Page 1003, line 9: after that line insert:

6 → ~~SECTION 119.~~ 224.30 (2) of the statutes is repealed.
7 → ~~SECTION 118.~~ 228.01 of the statutes is amended to read:
3028
3036

8 **228.01 Recording of documents and public records by mechanical**
9 **process authorized.** Whenever any officer of any county having a population of
10 500,000 or more is required or authorized by law to file, record, copy, recopy or replace
11 any document, court order, plat, paper, written instrument, writings, record or book
12 of record, on file or of record in his or her office, notwithstanding any other provisions
13 in the statutes, the officer may do so by photostatic, photographic,
14 microphotographic, microfilm, optical imaging, electronic formatting or other
15 mechanical process which produces a clear, accurate and permanent copy or
16 reproduction of the original document, court order, plat, paper, written instrument,
17 writings, record or book of record in accordance with the applicable standards
18 specified under ss. 16.61 (7) and 16.612. Any such officer may also reproduce by such
19 processes or transfer from optical disk or electronic storage any document, court
20 order, plat, paper, written instrument, writings, record or book of record which has
21 previously been filed, recorded, copied or recopied. Optical imaging or electronic
22 formatting of any document is subject to authorization under s. 59.52 (14) (a).

23 ~~SECTION 119.~~ ³⁰³¹ 228.03 (2) of the statutes is amended to read:

24 228.03 (2) Any photographic reproduction of an original record meeting the
25 applicable standards prescribed in s. 16.61 (7) or copy of a record generated from an

1 original record stored in optical disk or electronic format in compliance with the
 2 applicable standards under ss. 16.61 and 16.612 shall be taken as and stand in lieu
 3 of and have all of the effect of the original record and shall be admissible in evidence
 4 in all courts and all other tribunals or agencies, administrative or otherwise, in all
 5 cases where the original document is admissible. A transcript, exemplification or
 6 certified copy of such a reproduction of an original record, or certified copy of a record
 7 generated from an original record stored in optical disk or electronic format, for the
 8 purposes specified in this subsection, is deemed to be a transcript, exemplification
 9 or certified copy of the original. The custodian of a photographic reproduction shall
 10 place the reproduction or optical disk in conveniently accessible storage and shall
 11 make provision for preserving, examining and using the reproduction of the record
 12 or generating a copy of the record from optical disk or electronic storage. An enlarged
 13 copy of a photographic reproduction of a record made in accordance with the
 14 applicable standards specified in s. 16.61 (7) or an enlarged copy of a record
 15 generated from an original record stored in optical disk or electronic format in
 16 compliance with the applicable standards under ss. 16.61 and 16.612 that is certified
 17 by the custodian as provided in s. 889.18 (2) has the same effect as an actual-size
 18 copy.

copy. 

~~SECTION 19~~. 889.29 (1) of the statutes is amended to read:

3862

19 889.29 (1) If any business, institution or member of a profession or calling in
 20 the regular course of business or activity has kept or recorded any memorandum,
 21 writing, entry, print, representation or combination thereof, of any act, transaction,
 22 occurrence or event, and in the regular course of business has caused any or all of the
 23 same to be recorded, copied or reproduced by any photographic, photostatic,
 24 microfilm, microcard, miniature photographic, or other process which accurately
 25

Item #. Page 124, line 15, after that line insert:

1 reproduces or forms a durable medium for so reproducing the original, or to be
 2 recorded on an optical disk or in electronic format, the original may be destroyed in
 3 the regular course of business, unless its preservation is required by law. Such
 4 reproduction or optical disk record, when reduced to comprehensible format and
 5 when satisfactorily identified, is as admissible in evidence as the original itself in any
 6 judicial or administrative proceeding whether the original is in existence or not and
 7 an enlargement or facsimile of such reproduction of a record or an enlarged copy of
 8 a record generated from an original record stored in optical disk or electronic format
 9 is likewise admissible in evidence if the original reproduction is in existence and
 10 available for inspection under direction of court. The introduction of a reproduced
 11 record, enlargement or facsimile, does not preclude admission of the original. This
 12 subsection does not apply to records governed by s. 137.20.” ←

13 “SECTION ~~19~~³⁸⁷⁴. 910.01 (1) of the statutes is amended to read:

14 910.01 (1) WRITINGS AND RECORDINGS. “Writings” and “recordings” consist of
 15 letters, words or numbers, or their equivalent, set down by handwriting, typewriting,
 16 printing, photostating, photographing, magnetic impulse, mechanical or electronic
 17 recording, or other form of data compilation or recording.

18 SECTION ~~20~~³⁸⁷⁵. 910.02 of the statutes is amended to read:

19 910.02 Requirement of original. To prove the content of a writing, recording
 20 or photograph, the original writing, recording or photograph is required, except as
 21 otherwise provided in chs. 901 to 911, s. 137.21, or by other statute.

22 SECTION ~~21~~³⁸⁷⁶. 910.03 of the statutes is amended to read:

23 910.03 Admissibility of duplicates. A duplicate is admissible to the same
 24 extent as an original unless (1) a genuine question is raised as to the authenticity of
 25 the original or (2) in the circumstances it would be unfair to admit the duplicate in

Item # Page 1219, line 21: after that line insert:

Item #. Page 1288, line 11: after that line insert:

1 lieu of the original. This section does not apply to records of transactions governed
2 by s. 137.21. " ←

3 ~~SECTION 9101. Nonstatutory provisions; administration.~~

4 " ⁵ (5) USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES BY GOVERNMENTAL
5 UNITS. Using the procedure under section 227.24 of the statutes, the department of
6 administration may promulgate emergency rules under section 137.25 (2) of the
7 statutes, as created by this act, for the period before the effective date of permanent
8 rules initially promulgated under section 137.25 (2) of the statutes, as created by this
9 act, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the
10 statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the
11 department is not required to provide evidence that promulgating a rule under this
12 subsection as an emergency rule is necessary for the preservation of the public peace,
13 health, safety, or welfare and is not required to provide a finding of emergency for a
14 rule promulgated under this subsection.

15 ^{le} (2) USE OF ELECTRONIC SIGNATURES BY NOTARIES PUBLIC. The secretary of state
16 and department of administration shall promulgate initial rules under section
17 137.25 (2) (b) of the statutes, as created by this act, to become effective no later than
18 January 1, 2004. "

19 ~~SECTION 9301. Initial applicability; administration.~~

20 " ² (5) ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES. The treatment of sections
21 16.61 (7) (d), 16.611 (2) (e), 16.612 (2) (c), 137.01 (3) (a) and (4) (a) and (b), 137.04,
22 137.05 (title), 137.06, 137.11 to 137.24, 137.26, 224.30 (2), 228.01, 228.03 (2), 889.29
23 (1), 910.01 (1), 910.02, and 910.03, subchapters I (title) and II (title) of chapter 137,
24 and chapter 137 (title) of the statutes, the renumbering and amendment of section
25 137.05 of the statutes, and the creation of section 137.25 (2) of the statutes first apply

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Item #. Page 1393, line 23: after that line insert:

1 to electronic records or electronic signatures that are created, generated, sent,
2 communicated, received, or initially stored on the effective date of this subsection. ¹²³ ←

3

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

b1569/12n
LRB-1536/Tdn

.JTK/RM/RK/RC/RN/JK:ejs:js

January 10, 2001

stays

which restores the provisions of the governor's budget with regard to the Uniform Electronic Transactions Act (UETA),

~~This draft represents the combined efforts of the LRB legal staff to engraft the Uniform Electronic Transactions Act (UETA) into Wisconsin law. This draft attempts to meet Wisconsin's drafting standards while also attempting to achieve the intent of UETA, which is to encourage uniformity in the law of electronic commerce. The draft also attempts to avoid preemption under the primary electronic commerce provisions of the federal Electronic Signatures in Global and National Commerce Act, commonly known as "E-sign." One of the ways of avoiding preemption under those provisions of E-sign is to enact a law that constitutes UETA. (See p. 5 of the analysis for a discussion of the primary electronic commerce provisions of E-sign and p. 5 of the analysis for a discussion of preemption issues. We have limited our changes to the recommended version of UETA to minor and nonsubstantive changes, made for the purposes of effecting routine Wisconsin drafting protocol and better reflecting the obvious intent of UETA.~~ The remainder of this drafter's note is taken from the drafter's note to the provisions of the governor's budget with regard to UETA.

Incorporating UETA into Wisconsin law has been an extremely difficult task. Joint Rule 52 (6) requires the LRB, in drafting, to specifically refer to, and amend or repeal as necessary, all parts of the statutes that are intended to be superceded or repealed by a proposal, insofar as practicable. We have carried out this responsibility to the maximum extent possible. However, because certain provisions of UETA are susceptible to varying interpretations, the effect of these provisions on current statutes will, in some cases, depend upon which interpretation the courts eventually adopt. Sometimes, we were able to consult the prefatory note and official comments accompanying UETA, in order to ascertain the intent of these provisions and their potential effect on other statutes if the interpretation suggested by the prefatory note and comments is adopted. Although the prefatory note and comments have no legal effect, in the past, courts have often relied on the prefatory notes and comments to other uniform laws when interpreting ambiguous provisions of those laws. In many cases, though, it was not possible to ascertain the intent, even with reference to the prefatory note and comments. In these cases, in order to encourage uniformity in the law of electronic commerce and avoid federal preemption under E-sign, we have not clarified the provisions.

2. You requested a separate budget draft to make the definition of "electronic signature" in s. 137.04 (2), stats., consistent with that used in UETA and to provide

DOA with rule-making authority relating to the use of electronic signatures by governmental units. In the instructions to that request, you referred to 1999 AB-267. This draft incorporates that request, using SSA-1 to 1999 AB-267 as a general guide to your intent. This draft also attempts to reconcile that request with the request to draft UETA. Under this draft, s. 137.05, stats., is renumbered to be part of UETA and amended consistent with the intent of UETA and s. 137.25 (2) is created consistent with your request concerning rule-making authority. Section 137.06, stats., is repealed because it is covered by UETA, s. 137.04, stats., is repealed because the definitions established in that section are no longer needed under UETA, and s. 224.30 (2), stats., is repealed because the draft gives DOA primary rule-making authority.

Please note that UETA likely impacts the scope of DOA's and the secretary of state's potential rule-making authority. Although the vast majority of governmental activities and a significant number of notarizations may be subject to rules promulgated under your request, the rules would likely not regulate the transactional, market activities of governmental units and notaries public. Rather, these transactional, market activities would be governed by the core provisions of UETA that authorize electronic transactions and notarizations relating to transactions. See, for example, proposed ss. 137.12 (1), 137.16 (1), and 137.19. However, if you add rule-making authority into UETA's core provisions, you may risk triggering preemption under the federal E-sign law. Therefore, this draft does not take that approach.

Also, please note that, unlike 1999 AB-267, this draft does not contain a delayed effective date. Please let us know if you desire a delayed effective date in order to avoid any potential problems that may otherwise arise after the bill is enacted but before emergency rules are in place.

#. Current state law uses the term "record" as a noun about 4,000 times. Almost uniformly, the term "record" is currently used more narrowly than the word "record" in proposed s. 137.11 (12), the distinction being that "record" under current state law is generally used to describe something that is kept or required to be kept while "record" in UETA is apparently intended to cover anything other than an oral communication. In other words, the drafters of UETA apparently intended "record" to mean "document." The use of different meanings for the same term is contrary to normal drafting procedure and it may cause some confusion. This draft, however, maintains the usage of the word "record" in UETA (proposed subch. II of ch. 137), but generally retains other terminology outside UETA to avoid confusion in other statutes.

*. The draft defines "electronic" in proposed s. 137.11 (5) and "record" (document) in proposed s. 137.11 (12). The draft then defines "electronic record" in proposed s. 137.11 (7) in a way that is inconsistent with the definition of "electronic" and "record." Under the draft, a "record" must be *inscribed* on a tangible medium or *stored* in an electronic or other medium and be *retrievable* in a perceivable form. An "electronic" record is a record having *electrical, digital, magnetic, wireless, optical, electromagnetic, OR* similar capabilities. However, an "electronic record" is a record that is *created, generated, sent communicated, received, or stored* by electronic means. The resulting

confusion could be mitigated by deleting the definition of "electronic" and building all of the operative characteristics into the definition of "electronic record."

✘ This draft uses the term "governmental unit" rather than "governmental agency" because state authorities are included within the definition and, in Wisconsin, state authorities are not agencies. The draft also broadens the definition of "governmental unit" in proposed s. 137.11 (9) to include certain Wisconsin entities that might not otherwise be included in the definition, which appears to be consistent with the intent of the drafters of UETA. The only effect is on the optional provisions (in the draft, the proposed treatment of s. 137.05, stats., and proposed s. 137.26). We think this does not interfere with uniformity because the draft retains the substance of the UETA definition in full.

✘ Under proposed s. 137.11 (7) and (12), the definition of "electronic record" and "record" include voice mail communications. Currently, certain documents such as contracts, applications, deeds, licenses, or tax returns must be evidenced in paper form. Under these definitions, these documents may potentially be evidenced by voice mail communications instead. To address this issue, you may wish to consider at least limiting the application of the optional sections of UETA (the treatment of s. 137.05, stats., and proposed s. 137.26) to exclude voice mail documents.

✘ Under proposed s. 137.12 (1), UETA applies to electronic records (documents) and electronic signatures relating to a "transaction." A "transaction" is defined in proposed s. 137.11 (15) to mean action between persons relating to the conduct of business, commercial, or governmental affairs. The prefatory note and comments suggest that the application of UETA to governmental affairs may be limited to activities where the government is a market participant (for example, governmental procurement). The text does not seem to explicitly reflect that interpretation. However, because the optional sections of UETA (the treatment of s. 137.05, stats., and proposed s. 137.26) clearly contemplate application beyond "transactions," this draft clarifies in proposed s. 137.12 (1) that the optional sections affect matters other than "transactions." Another issue that has been raised with respect to the definition of "transaction" is that the text does not clearly indicate that UETA applies to consumer-to-consumer transactions, even though the comments suggest that it does.

✘ Because some Wisconsin case law suggests that regulatory statutes will not be applied to the state absent an express indication by the legislature that they should so apply (see, for example, *State ex-rel. Dept. of Public Instruction v. ILHR Dept.* 68 Wis.2d 677, 681 (1975)), and because UETA is clearly intended to regulate state conduct, at least in part, this draft provides in proposed s. 137.12 (5) that UETA applies to this state, unless otherwise expressly provided. We think this does not interfere with uniformity because the text retains all of the substance of UETA and this clarification carries out the intent of UETA.

✘ You may want to clarify the interaction of proposed ss. 137.13 (2) and 137.15 (1), in order to make the intended result of these statutes more apparent. Proposed s. 137.13 (2) states that the subchapter of the statutes that constitutes UETA only applies to transactions between parties who have agreed to conduct transactions electronically. Proposed s. 137.15 (1) states that a document or signature may not be denied legal

effect solely because it is in electronic form. The manner in which these two statutes relate could be more clearly stated.

For example, a problem may arise if a person (A) makes a written offer to contract with another person (B), and if B then communicates its acceptance in electronic form. If A refuses to deal electronically, B may argue that the acceptance is enforceable under proposed s. 137.15 (1). According to B, the only reason the acceptance would not be enforceable is because it is in electronic form and, under proposed s. 137.15 (1), this reason is insufficient to deny the enforceability of the document. According to A, however, proposed s. 137.15 (1) does not apply to the transaction because A did not consent to deal electronically. This result is dictated by proposed s. 137.13 (2), which applies a consent requirement to the entire subchapter that constitutes UETA.

To make this result more straightforward, you may want to clarify that proposed s. 137.15 applies only to transactions between consenting parties. This type of clarification is currently used in proposed s. 137.16.

~~X~~ Proposed s. 137.13 (3) provides that a party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. In practice, this provision may be difficult to apply because it may be unclear when one transaction ends and another begins.

~~X~~ Proposed s. 137.14 (3) provides that UETA shall be construed and applied to effectuate its general purpose to make uniform the law with respect to the subject of UETA among states enacting it. This draft provides that UETA shall be construed and applied to effectuate its general purpose among states enacting laws *substantially similar* to UETA. The reason that we loosened this a little is that this draft is not identical to UETA (although we believe it preserves the substance of it) and most states enacting UETA have not enacted verbatim versions. We think this is consistent with the intent of the drafters.

~~X~~ Proposed s. 137.15 (4) provides that if a law requires a signature, an electronic signature satisfies that requirement in that law. Although the comments indicate this was not intended, under the text of proposed s. 137.11 (8), an "electronic signature" may be associated with a nonelectronic document. Therefore, the effect of proposed s. 137.15 (4) is to permit an electronic signature to be used to sign a nonelectronic document. In UETA **SECTION 18**, which is optional (see the treatment of s. 137.05, stats., by this draft), we have limited the use of electronic signatures to sign electronic documents, since this is consistent with the intent of UETA and no preemption issue arises under this optional provision.

~~X~~ You may also want to clarify the interaction of proposed s. 137.16 (1) and (2). Proposed s. 137.16 (1) generally permits the parties to a transaction to satisfy any writing requirement through the use of an electronic record. However, proposed s. 137.16 (2) (b), among other things, preserves the effect of any law that requires a record to be communicated by a specified method. To the extent that "in writing" is a specified method of communicating a record, this provision may be read to override proposed s. 137.16 (1). You may avoid this result by clarifying that proposed s. 137.16 (2) (b) does not apply to writing requirements covered by proposed s. 137.16 (1).

~~14.~~ Proposed s. 137.20 (1) provides that if a law requires that a document be retained, the requirement is satisfied by retaining the information set forth in the document as an electronic document which accurately reflects the information set forth in the document *after it was first generated in its final form* as an electronic document or otherwise. The comments indicate that this text is intended to ensure that content is retained when documents are reformatted. The text, however, may be interpreted to permit earlier versions of documents to be destroyed, notwithstanding retention requirements. Because it is not unusual to retain earlier versions of some documents for reference, you may want to clarify that this subsection is not intended to permit the disposal of these versions.

~~15.~~ Proposed s. 137.20 (2) provides that document retention requirements in proposed s. 137.20 (1) do not apply to any information the sole purpose of which is to enable a document to be sent, communicated, or received. The comments suggest that if ancillary information is not retained, an electronic document may still be used to satisfy a retention requirement. Ancillary information, such as a date, time, or address, may be significant in some cases, and you may not want to permit destruction of this information.

~~16.~~ Proposed s. 137.20 (3) provides that a custodian of a document may utilize the services of another person to comply with electronic retention procedures. If the application of UETA extends beyond transactions, that is, beyond situations where a governmental unit is acting only as a market participant, this infers that a custodian of public records may transfer those records to private persons. However, if the application of UETA is interpreted consistently with the prefatory note and comments to UETA, this provision generally would not apply to a public records custodian's retention of most public records.

~~17.~~ Proposed s. 137.20 (1), (4), and (6) provide essentially that unless a law enacted after UETA provides otherwise, electronic retention is sufficient to satisfy an existing retention requirement. This may be interpreted to authorize any public or private custodian to destroy original records if an electronic copy is retained. Although the application of these subsections is limited if UETA applies only to transactions, this authority overlaps existing state law that already provides for electronic retention, but requires that it be done in certain ways to preserve the evidentiary value of records and to ensure quality control. See ss. 16.61 (7) and (8), 16.611, 16.612, and 19.21 (4) (c), stats.

~~18.~~ Proposed s. 137.20 (5) provides that if a law requires retention of a check, the requirement is satisfied by retention of an electronic document containing the information on the front and back of the check in the manner provided in the draft. The term "check" is not defined in the draft. It is unclear whether this provision applies to other kinds of negotiable instruments, such as share drafts and money orders. However, since proposed s. 137.20 (1) and (4) suggest the same thing as proposed s. 137.20 (5) in more general terms, it is possible that proposed s. 137.20 (5) may be interpreted to be redundant.

~~19.~~ Proposed s. 137.20 (6) provides that an electronic document satisfies a law requiring retention of a document for evidentiary, audit, or like purposes, unless a law

enacted after UETA specifically prohibits the use of an electronic document for retention purposes. Insofar as this provision attempts to force future legislatures to express their intent in a particular way in order for their laws to have legal effect, this provision is unenforceable. *State ex rel. La Follette v. Stitt*, 114 Wis.2d 358, 363-369 (1983). In addition, the qualifying language "for evidentiary, audit, or like purposes" appears to put this subsection in tension with proposed ss. 137.15 (3) and 137.20 (1) and (4), which contain similar statements but do not include the qualifying language.

~~20.~~ Proposed s. 137.20 (7) provides that the retention provisions of UETA do not preclude a governmental unit of this state from specifying additional requirements for any document subject to the jurisdiction of the governmental unit. This subsection seems to contravene proposed s. 137.20 (1), (4), and (6), which provide that compliance with the retention requirements in those subsections is sufficient in some cases. In addition, it is unclear from the text whether this provision applies to governmental documents or to nongovernmental documents subject to a governmental unit's jurisdiction. The comments suggest that the latter interpretation was intended, but the authority of a particular governmental unit to exercise control over specific private documents may be unclear in some cases. Finally, it is unclear whether this subsection is intended to grant rule-making authority or merely to reference existing rule-making authority, if any.

~~21.~~ Proposed s. 137.23 (2) provides that an electronic document is received when it enters a recipient's designated information processing system and is in a form capable of being processed by that system, and proposed s. 137.15 (1) and (3) permit electronic documents to be substituted for nonelectronic documents and require that they be given the same legal effect. These provisions may have the result of altering laws under which the date of receipt of a document filed with a governmental unit is the date on which a hard copy is received or postmarked, so that electronic filing constitutes receipt instead. The application of this subsection depends upon whether UETA's application to governmental units is limited to transactions and whether the requirement for mutual consent in proposed s. 137.13 (2) overrides proposed s. 137.15 (1) and (3), which do not mention mutual consent.

~~22.~~ Proposed s. 137.23 (4) (a) provides that, generally, an electronic document is deemed to be sent from the sender's place of business and, if the sender does business at more than one location, an electronic document is deemed to be sent from the location that has "the closest relationship to the underlying transaction." To the extent that an electronic document may evidence a sale, with the seller receiving payment electronically, a business could use proposed s. 137.23 (4) (a) to argue that a sale occurred at a location where the business is not subject to an income tax or franchise tax rather than at a location, such as this state, where the business is subject to such taxes. If a court accepted that argument, the business would receive income from such a sale but avoid paying any tax on that income. Although the comments to UETA seem to indicate that the above scenario is not an intended consequence of proposed s. 137.23 (4) (a), you should be aware that, under the proposed language of that paragraph, that scenario is possible.

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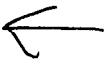
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~~28.~~ **SECTION 22** of the original draft provides for the state to insert its desired effective date. ~~Since we have no instruction on this point, we have not inserted any effective date.~~ Under this draft, the act takes effect on the day after publication.

~~29.~~ **SECTION 3** (b) (4) of UETA allows states to insert exemptions for certain transactions from the application of UETA. This draft does not insert any exemptions under this **SECTION** of UETA. Under sec. 102 (a) (1) of E-sign, any exemption enacted under this **SECTION** of UETA is preempted to the extent that the exemption is inconsistent with E-sign. If you desire to insert any additional exemptions, please let us know. However, you should be aware that, in most cases, it will likely be difficult to predict whether an exemption is preempted by E-sign.



~~30.~~ There are numerous provisions in current law that require that a notice, request, statement, application, document, or other information (notice) be provided to a governmental unit in writing or that the notice be sent or mailed, suggesting that it be provided in written form. Under current law in s. 137.05, stats., and under this draft in proposed s. 137.25, most of those notices may be provided in electronic form if the governmental unit consents to receiving the notice in electronic form. Without an examination of each of those notice provisions, it is not possible to determine whether any particular provision should be amended to specify that the notice may only be furnished in written form and not in electronic form because, for example, electronic notice was not intended or contemplated by the provision when it was enacted. Because this issue arises under current law, because the application of UETA to each of these provisions is not completely clear, and because it is impractical to examine each of these provisions, the draft does not treat any of these provisions. Consequently, under this draft, as under current law, most of the provisions in current law requiring a notice to be given to a governmental unit in writing or to be sent or mailed to a governmental unit, may be satisfied by furnishing the notice in electronic form if the governmental unit consents to receive it in that form.

~~31.~~ This bill raises two issues relating to ch. 180, stats., regarding corporations. Chapter 180, stats., currently permits the use of electronic transmissions and electronic notices. However, the definition of "electronic transmission" in s. 180.0103 (7m), stats., relies upon an understanding of the term "electronic" that may be different from the meaning of "electronic" under UETA (proposed s. 137.11 (5)). You may want to harmonize s. 180.0103 (7m), stats., with the definition of "electronic" under UETA.

Second, s. 180.0141, stats., permits the use of an electronic notice under ch. 180, stats., but, unlike UETA, does not require the receiving party to consent to receive the notice in an electronic format. It is unclear how this provision would work in conjunction with UETA. The application of UETA may depend upon whether the receiving party consents to receive the electronic notice. Under this interpretation, UETA would apply if the electronic notice is sent with the consent of the receiving party but would not apply if the electronic notice, consistent with s. 180.0141, stats., is sent notwithstanding the receiving party's failure to consent. It may be difficult to determine in a specific case whether a party has consented to receive the electronic notice or has received the electronic notice as a result of the unilateral action of the

sender. If you would like to clarify the interaction of UETA and s. 180.0141, stats., please let us know.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
E-mail: robert.marchant@legis.state.wi.us

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.state.wi.us

Rick A. Champagne
Senior Legislative Attorney
Phone: (608) 266-9930
E-mail: rick.champagne@legis.state.wi.us

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

Joseph T. Kreye
Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb1569/1dn
JTK/RM/RK/RC/RN/JK:cjs:jf

June 26, 2001

1. This draft, which restores the provisions of the governor's budget with regard to the Uniform Electronic Transactions Act (UETA), represents the combined efforts of the LRB legal staff to engraft the UETA into Wisconsin law. This draft attempts to meet Wisconsin's drafting standards while also attempting to achieve the intent of UETA, which is to encourage uniformity in the law of electronic commerce. The draft also attempts to avoid preemption under the primary electronic commerce provisions of the federal Electronic Signatures in Global and National Commerce Act, commonly known as "E-sign." One of the ways of avoiding preemption under those provisions of E-sign is to enact a law that constitutes UETA. We have limited our changes to the recommended version of UETA to minor and nonsubstantive changes, made for the purposes of effecting routine Wisconsin drafting protocol and better reflecting the obvious intent of UETA. The remainder of the drafter's note is taken from the drafter's note to the provisions of the governor's budget with regard to UETA.

Incorporating UETA into Wisconsin law has been an extremely difficult task. Joint Rule 52 (6) requires the LRB, in drafting, to specifically refer to, and amend or repeal as necessary, all parts of the statutes that are intended to be superceded or repealed by a proposal, insofar as practicable. We have carried out this responsibility to the maximum extent possible. However, because certain provisions of UETA are susceptible to varying interpretations, the effect of these provisions on current statutes will, in some cases, depend upon which interpretation the courts eventually adopt. Sometimes, we were able to consult the prefatory note and official comments accompanying UETA, in order to ascertain the intent of these provisions and their potential effect on other statutes if the interpretation suggested by the prefatory note and comments is adopted. Although the prefatory note and comments have no legal effect, in the past, courts have often relied on the prefatory notes and comments to other uniform laws when interpreting ambiguous provisions of those laws. In many cases, though, it was not possible to ascertain the intent, even with reference to the prefatory note and comments. In these cases, in order to encourage uniformity in the law of electronic commerce and avoid federal preemption under E-sign, we have not clarified the provisions.

2. Current state law uses the term "record" as a noun about 4,000 times. Almost uniformly, the term "record" is currently used more narrowly than the word "record" in proposed s. 137.11 (12), the distinction being that "record" under current state law is generally used to describe something that is kept or required to be kept while

“record” in UETA is apparently intended to cover anything other than an oral communication. In other words, the drafters of UETA apparently intended “record” to mean “document.” The use of different meanings for the same term is contrary to normal drafting procedure and it may cause some confusion. This draft, however, maintains the usage of the word “record” in UETA (proposed subch. II of ch. 137), but generally retains other terminology outside UETA to avoid confusion in other statutes.

3. The draft defines “electronic” in proposed s. 137.11 (5) and “record” (document) in proposed s. 137.11 (12). The draft then defines “electronic record” in proposed s. 137.11 (7) in a way that is inconsistent with the definition of “electronic” and “record.” Under the draft, a “record” must be *inscribed* on a tangible medium or *stored* in an electronic or other medium and be *retrievable* in a perceivable form. An “electronic” record is a record having *electrical, digital, magnetic, wireless, optical, electromagnetic, OR* similar capabilities. However, an “electronic record” is a record that is *created, generated, sent communicated, received, or stored* by electronic means. The resulting confusion could be mitigated by deleting the definition of “electronic” and building all of the operative characteristics into the definition of “electronic record.”

4. This draft uses the term “governmental unit” rather than “governmental agency” because state authorities are included within the definition and, in Wisconsin, state authorities are not agencies. The draft also broadens the definition of “governmental unit” in proposed s. 137.11 (9) to include certain Wisconsin entities that might not otherwise be included in the definition, which appears to be consistent with the intent of the drafters of UETA. The only effect is on the optional provisions (in the draft, the proposed treatment of s. 137.05, stats., and proposed s. 137.26). We think this does not interfere with uniformity because the draft retains the substance of the UETA definition in full.

5. Under proposed s. 137.11 (7) and (12), the definition of “electronic record” and “record” include voice mail communications. Currently, certain documents such as contracts, applications, deeds, licenses, or tax returns must be evidenced in paper form. Under these definitions, these documents may potentially be evidenced by voice mail communications instead. To address this issue, you may wish to consider at least limiting the application of the optional sections of UETA (the treatment of s. 137.05, stats., and proposed s. 137.26) to exclude voice mail documents.

6. Under proposed s. 137.12 (1), UETA applies to electronic records (documents) and electronic signatures relating to a “transaction.” A “transaction” is defined in proposed s. 137.11 (15) to mean action between persons relating to the conduct of business, commercial, or governmental affairs. The prefatory note and comments suggest that the application of UETA to governmental affairs may be limited to activities where the government is a market participant (for example, governmental procurement). The text does not seem to explicitly reflect that interpretation. However, because the optional sections of UETA (the treatment of s. 137.05, stats., and proposed s. 137.26) clearly contemplate application beyond “transactions,” this draft clarifies in proposed s. 137.12 (1) that the optional sections affect matters other than “transactions.” Another issue that has been raised with respect to the definition of “transaction” is that

the text does not clearly indicate that UETA applies to consumer-to-consumer transactions, even though the comments suggest that it does.

7. Because some Wisconsin case law suggests that regulatory statutes will not be applied to the state absent an express indication by the legislature that they should so apply (see, for example, *State ex rel. Dept. of Public Instruction v. ILHR Dept.* 68 Wis.2d 677, 681 (1975)), and because UETA is clearly intended to regulate state conduct, at least in part, this draft provides in proposed s. 137.12 (5) that UETA applies to this state, unless otherwise expressly provided. We think this does not interfere with uniformity because the text retains all of the substance of UETA and this clarification carries out the intent of UETA.

8. You may want to clarify the interaction of proposed ss. 137.13 (2) and 137.15 (1), in order to make the intended result of these statutes more apparent. Proposed s. 137.13 (2) states that the subchapter of the statutes that constitutes UETA only applies to transactions between parties who have agreed to conduct transactions electronically. Proposed s. 137.15 (1) states that a document or signature may not be denied legal effect solely because it is in electronic form. The manner in which these two statutes relate could be more clearly stated.

For example, a problem may arise if a person (A) makes a written offer to contract with another person (B), and if B then communicates its acceptance in electronic form. If A refuses to deal electronically, B may argue that the acceptance is enforceable under proposed s. 137.15 (1). According to B, the only reason the acceptance would not be enforceable is because it is in electronic form and, under proposed s. 137.15 (1), this reason is insufficient to deny the enforceability of the document. According to A, however, proposed s. 137.15 (1) does not apply to the transaction because A did not consent to deal electronically. This result is dictated by proposed s. 137.13 (2), which applies a consent requirement to the entire subchapter that constitutes UETA.

To make this result more straightforward, you may want to clarify that proposed s. 137.15 applies only to transactions between consenting parties. This type of clarification is currently used in proposed s. 137.16.

9. Proposed s. 137.13 (3) provides that a party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. In practice, this provision may be difficult to apply because it may be unclear when one transaction ends and another begins.

10. Proposed s. 137.14 (3) provides that UETA shall be construed and applied to effectuate its general purpose to make uniform the law with respect to the subject of UETA among states enacting it. This draft provides that UETA shall be construed and applied to effectuate its general purpose among states enacting laws *substantially similar* to UETA. The reason that we loosened this a little is that this draft is not identical to UETA (although we believe it preserves the substance of it) and most states enacting UETA have not enacted verbatim versions. We think this is consistent with the intent of the drafters.

11. Proposed s. 137.15 (4) provides that if a law requires a signature, an electronic signature satisfies that requirement in that law. Although the comments indicate this

was not intended, under the text of proposed s. 137.11 (8), an "electronic signature" may be associated with a nonelectronic document. Therefore, the effect of proposed s. 137.15 (4) is to permit an electronic signature to be used to sign a nonelectronic document. In UETA **SECTION 18**, which is optional (see the treatment of s. 137.05, stats., by this draft), we have limited the use of electronic signatures to sign electronic documents, since this is consistent with the intent of UETA and no preemption issue arises under this optional provision.

12. You may also want to clarify the interaction of proposed s. 137.16 (1) and (2). Proposed s. 137.16 (1) generally permits the parties to a transaction to satisfy any writing requirement through the use of an electronic record. However, proposed s. 137.16 (2) (b), among other things, preserves the effect of any law that requires a record to be communicated by a specified method. To the extent that "in writing" is a specified method of communicating a record, this provision may be read to override proposed s. 137.16 (1). You may avoid this result by clarifying that proposed s. 137.16 (2) (b) does not apply to writing requirements covered by proposed s. 137.16 (1).

13. Proposed s. 137.20 (1) provides that if a law requires that a document be retained, the requirement is satisfied by retaining the information set forth in the document as an electronic document which accurately reflects the information set forth in the document *after it was first generated in its final form* as an electronic document or otherwise. The comments indicate that this text is intended to ensure that content is retained when documents are reformatted. The text, however, may be interpreted to permit earlier versions of documents to be destroyed, notwithstanding retention requirements. Because it is not unusual to retain earlier versions of some documents for reference, you may want to clarify that this subsection is not intended to permit the disposal of these versions.

14. Proposed s. 137.20 (2) provides that document retention requirements in proposed s. 137.20 (1) do not apply to any information the sole purpose of which is to enable a document to be sent, communicated, or received. The comments suggest that if ancillary information is not retained, an electronic document may still be used to satisfy a retention requirement. Ancillary information, such as a date, time, or address, may be significant in some cases, and you may not want to permit destruction of this information.

15. Proposed s. 137.20 (3) provides that a custodian of a document may utilize the services of another person to comply with electronic retention procedures. If the application of UETA extends beyond transactions, that is, beyond situations where a governmental unit is acting only as a market participant, this infers that a custodian of public records may transfer those records to private persons. However, if the application of UETA is interpreted consistently with the prefatory note and comments to UETA, this provision generally would not apply to a public records custodian's retention of most public records.

16. Proposed s. 137.20 (1), (4), and (6) provide essentially that unless a law enacted after UETA provides otherwise, electronic retention is sufficient to satisfy an existing retention requirement. This may be interpreted to authorize any public or private custodian to destroy original records if an electronic copy is retained. Although the

application of these subsections is limited if UETA applies only to transactions, this authority overlaps existing state law that already provides for electronic retention, but requires that it be done in certain ways to preserve the evidentiary value of records and to ensure quality control. See ss. 16.61 (7) and (8), 16.611, 16.612, and 19.21 (4) (c), stats.

17. Proposed s. 137.20 (5) provides that if a law requires retention of a check, the requirement is satisfied by retention of an electronic document containing the information on the front and back of the check in the manner provided in the draft. The term "check" is not defined in the draft. It is unclear whether this provision applies to other kinds of negotiable instruments, such as share drafts and money orders. However, since proposed s. 137.20 (1) and (4) suggest the same thing as proposed s. 137.20 (5) in more general terms, it is possible that proposed s. 137.20 (5) may be interpreted to be redundant.

18. Proposed s. 137.20 (6) provides that an electronic document satisfies a law requiring retention of a document for evidentiary, audit, or like purposes, unless a law enacted after UETA specifically prohibits the use of an electronic document for retention purposes. Insofar as this provision attempts to force future legislatures to express their intent in a particular way in order for their laws to have legal effect, this provision is unenforceable. *State ex rel. La Follette v. Stitt*, 114 Wis.2d 358, 363-369 (1983). In addition, the qualifying language "for evidentiary, audit, or like purposes" appears to put this subsection in tension with proposed ss. 137.15 (3) and 137.20 (1) and (4), which contain similar statements but do not include the qualifying language.

19. Proposed s. 137.20 (7) provides that the retention provisions of UETA do not preclude a governmental unit of this state from specifying additional requirements for any document subject to the jurisdiction of the governmental unit. This subsection seems to contravene proposed s. 137.20 (1), (4), and (6), which provide that compliance with the retention requirements in those subsections is sufficient in some cases. In addition, it is unclear from the text whether this provision applies to governmental documents or to nongovernmental documents subject to a governmental unit's jurisdiction. The comments suggest that the latter interpretation was intended, but the authority of a particular governmental unit to exercise control over specific private documents may be unclear in some cases. Finally, it is unclear whether this subsection is intended to grant rule-making authority or merely to reference existing rule-making authority, if any.

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notwithstanding the receiving party's failure to consent. It may be difficult to determine in a specific case whether a party has consented to receive the electronic notice or has received the electronic notice as a result of the unilateral action of the sender. If you would like to clarify the interaction of UETA and s. 180.0141, stats., please let us know.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
E-mail: robert.marchant@legis.state.wi.us

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.state.wi.us

Rick A. Champagne
Senior Legislative Attorney
Phone: (608) 266-9930
E-mail: rick.champagne@legis.state.wi.us

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

Joseph T. Kreye
Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.state.wi.us



ARC:.....Hartsough – AM48, Uniform Electronic Transactions Act

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS ASSEMBLY AMENDMENT
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2001 SENATE BILL 55

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 53, line 10: after that line insert:

3 **“SECTION 261.** 16.61 (7) (d) of the statutes is created to read:

4 16.61 (7) (d) This subsection does not apply to public records governed by s.
5 137.20.

6 **SECTION 262.** 16.611 (2) (c) of the statutes is created to read:

7 16.611 (2) (e) This subsection does not apply to public records governed by s.
8 137.20.

9 **SECTION 263.** 16.612 (2) (c) of the statutes is created to read:

1 16.612 (2) (c) This subsection does not apply to documents or public records
2 governed by s. 137.20.”.

3 **2.** Page 940, line 10: after that line insert:

4 “SECTION 2829. Chapter 137 (title) of the statutes is amended to read:

5 **CHAPTER 137**

6 **AUTHENTICATIONS AND ELECTRONIC**

7 **TRANSACTIONS AND RECORDS**

8 **SECTION 2830.** Subchapter I (title) of chapter 137 [precedes 137.01] of the
9 statutes is amended to read:

10 **CHAPTER 137**

11 **SUBCHAPTER I**

12 **NOTARIES AND COMMISSIONERS**

13 **OF DEEDS; NONELECTRONIC**

14 **NOTARIZATION AND ACKNOWLEDGEMENT**”.

15 **3.** Page 941, line 15: after that line insert:

16 “SECTION 2831. 137.01 (3) (a) of the statutes is amended to read:

17 137.01 (3) (a) ~~Every~~ Except as authorized in s. 137.19, every notary public shall
18 provide an engraved official seal which makes a distinct and legible impression or
19 official rubber stamp which makes a distinct and legible imprint on paper. The
20 impression of the seal or the imprint of the rubber stamp shall state only the
21 following: “Notary Public,” “State of Wisconsin” and the name of the notary. But any
22 notarial seal in use on August 1, 1959, shall be considered in compliance.

23 **SECTION 2832.** 137.01 (4) (a) of the statutes is amended to read:

1 **137.25** (title) **Submission of written documents records to**
2 **governmental units.**

3 **SECTION 2837.** 137.05 of the statutes is renumbered 137.25 (1) and amended
4 to read:

5 137.25 (1) Unless otherwise ~~prohibited~~ provided by law, with the consent of a
6 governmental unit of this state that is to receive a record, any ~~document~~ record that
7 is required by law to be submitted in writing to a that governmental unit and that
8 requires a written signature may be submitted by ~~transforming the document into~~
9 as an electronic format, but only with the consent of the governmental unit that is
10 to receive the document record, and if submitted as an electronic record may
11 incorporate an electronic signature.

12 **SECTION 2838.** 137.06 of the statutes is repealed.

13 **SECTION 2839.** 137.11 to 137.24 of the statutes are created to read:

14 **137.11 Definitions.** In this subchapter:

15 (1) "Agreement" means the bargain of the parties in fact, as found in their
16 language or inferred from other circumstances and from rules, regulations, and
17 procedures given the effect of agreements under laws otherwise applicable to a
18 particular transaction.

19 (2) "Automated transaction" means a transaction conducted or performed, in
20 whole or in part, by electronic means or by the use of electronic records, in which the
21 acts or records of one or both parties are not reviewed by an individual in the ordinary
22 course in forming a contract, performing under an existing contract, or fulfilling an
23 obligation required by the transaction.

1 (3) “Computer program” means a set of statements or instructions to be used
2 directly or indirectly in an information processing system in order to bring about a
3 certain result.

4 (4) “Contract” means the total legal obligation resulting from the parties’
5 agreement as affected by this subchapter and other applicable law.

6 (5) “Electronic” means relating to technology having electrical, digital,
7 magnetic, wireless, optical, electromagnetic, or similar capabilities.

8 (6) “Electronic agent” means a computer program or an electronic or other
9 automated means used independently to initiate an action or respond to electronic
10 records or performances in whole or in part, without review or action by an
11 individual.

12 (7) “Electronic record” means a record that is created, generated, sent,
13 communicated, received, or stored by electronic means.

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

17 (9) “Governmental unit” means:

18 (a) An agency, department, board, commission, office, authority, institution, or
19 instrumentality of the federal government or of a state or of a political subdivision
20 of a state or special purpose district within a state, regardless of the branch or
21 branches of government in which it is located.

22 (b) A political subdivision of a state or special purpose district within a state.

23 (c) An association or society to which appropriations are made by law.

1 (d) Any body within one or more of the entities specified in pars. (a) to (c) that
2 is created or authorized to be created by the constitution, by law, or by action of one
3 or more of the entities specified in pars. (a) to (c).

4 (e) Any combination of any of the entities specified in pars. (a) to (d).

5 (10) "Information" means data, text, images, sounds, codes, computer
6 programs, software, databases, or the like.

7 (11) "Information processing system" means an electronic system for creating,
8 generating, sending, receiving, storing, displaying, or processing information.

9 (12) "Record" means information that is inscribed on a tangible medium or that
10 is stored in an electronic or other medium and is retrievable in perceivable form.

11 (13) "Security procedure" means a procedure employed for the purpose of
12 verifying that an electronic signature, record, or performance is that of a specific
13 person or for detecting changes or errors in the information in an electronic record.
14 The term includes a procedure that requires the use of algorithms or other codes,
15 identifying words or numbers, encryption, callback, or other acknowledgment
16 procedures.

17 (14) "State" means a state of the United States, the District of Columbia,
18 Puerto Rico, the U.S. Virgin Islands, or any territory or insular possession subject
19 to the jurisdiction of the United States. The term includes an Indian tribe or band,
20 or Alaskan native village, which is recognized by federal law or formally
21 acknowledged by a state.

22 (15) "Transaction" means an action or set of actions occurring between 2 or
23 more persons relating to the conduct of business, commercial, or governmental
24 affairs.

1 **137.12 Application.** (1) Except as otherwise provided in sub. (2) and except
2 in ss. 137.25 and 137.26, this subchapter applies to electronic records and electronic
3 signatures relating to a transaction.

4 (2) Except as otherwise provided in sub. (3), this subchapter does not apply to
5 a transaction to the extent it is governed by:

6 (a) Any law governing the execution of wills or the creation of testamentary
7 trusts; or

8 (b) Chapters 401 and 403 to 410, other than ss. 401.107 and 401.206.

9 (3) This subchapter applies to an electronic record or electronic signature
10 otherwise excluded from the application of this subchapter under sub. (2) to the
11 extent it is governed by a law other than those specified in sub. (2).

12 (4) A transaction subject to this subchapter is also subject to other applicable
13 substantive law.

14 (5) This subchapter applies to the state of Wisconsin, unless otherwise
15 expressly provided.

16 **137.13 Use of electronic records and electronic signatures; variation**
17 **by agreement.** (1) This subchapter does not require a record or signature to be
18 created, generated, sent, communicated, received, stored, or otherwise processed or
19 used by electronic means or in electronic form.

20 (2) This subchapter applies only to transactions between parties each of which
21 has agreed to conduct transactions by electronic means. Whether the parties agree
22 to conduct a transaction by electronic means is determined from the context and
23 surrounding circumstances, including the parties' conduct.

1 (3) A party that agrees to conduct a transaction by electronic means may refuse
2 to conduct other transactions by electronic means. The right granted by this
3 subsection may not be waived by agreement.

4 (4) Except as otherwise provided in this subchapter, the effect of any provision
5 of this subchapter may be varied by agreement. Use of the words “unless otherwise
6 agreed,” or words of similar import, in this subchapter shall not be interpreted to
7 preclude other provisions of this subchapter from being varied by agreement.

8 (5) Whether an electronic record or electronic signature has legal consequences
9 is determined by this subchapter and other applicable law.

10 **137.14 Construction.** This subchapter shall be construed and applied:

11 (1) To facilitate electronic transactions consistent with other applicable law;

12 (2) To be consistent with reasonable practices concerning electronic
13 transactions and with the continued expansion of those practices; and

14 (3) To effectuate its general purpose to make uniform the law with respect to
15 the subject of this subchapter among states enacting laws substantially similar to
16 the Uniform Electronic Transactions Act as approved and recommended by the
17 National Conference of Commissioners on Uniform State Laws in 1999.

18 **137.15 Legal recognition of electronic records, electronic signatures,
19 and electronic contracts.** (1) A record or signature may not be denied legal effect
20 or enforceability solely because it is in electronic form.

21 (2) A contract may not be denied legal effect or enforceability solely because an
22 electronic record was used in its formation.

23 (3) If a law requires a record to be in writing, an electronic record satisfies that
24 requirement in that law.

1 (4) If a law requires a signature, an electronic signature satisfies that
2 requirement in that law.

3 **137.16 Provision of information in writing; presentation of records.**

4 (1) If parties have agreed to conduct a transaction by electronic means and a law
5 requires a person to provide, send, or deliver information in writing to another
6 person, a party may satisfy the requirement with respect to that transaction if the
7 information is provided, sent, or delivered, as the case may be, in an electronic record
8 capable of retention by the recipient at the time of receipt. An electronic record is not
9 capable of retention by the recipient if the sender or its information processing
10 system inhibits the ability of the recipient to print or store the electronic record.

11 (2) If a law other than this subchapter requires a record to be posted or
12 displayed in a certain manner, to be sent, communicated, or transmitted by a
13 specified method, or to contain information that is formatted in a certain manner,
14 then:

15 (a) The record shall be posted or displayed in the manner specified in the other
16 law.

17 (b) Except as otherwise provided in sub. (4) (b), the record shall be sent,
18 communicated, or transmitted by the method specified in the other law.

19 (c) The record shall contain the information formatted in the manner specified
20 in the other law.

21 (3) If a sender inhibits the ability of a recipient to store or print an electronic
22 record, the electronic record is not enforceable against the recipient.

23 (4) The requirements of this section may not be varied by agreement, but:

24 (a) To the extent a law other than this subchapter requires information to be
25 provided, sent, or delivered in writing but permits that requirement to be varied by

1 agreement, the requirement under sub. (1) that the information be in the form of an
2 electronic record capable of retention may also be varied by agreement; and

3 (b) A requirement under a law other than this subchapter to send,
4 communicate, or transmit a record by 1st-class or regular mail or with postage
5 prepaid may be varied by agreement to the extent permitted by the other law.

6 **137.17 Attribution and effect of electronic records and electronic**
7 **signatures.** (1) An electronic record or electronic signature is attributable to a
8 person if the electronic record or electronic signature was created by the act of the
9 person. The act of the person may be shown in any manner, including a showing of
10 the efficacy of any security procedure applied to determine the person to which the
11 electronic record or electronic signature was attributable.

12 (2) The effect of an electronic record or electronic signature that is attributed
13 to a person under sub. (1) is determined from the context and surrounding
14 circumstances at the time of its creation, execution, or adoption, including the
15 parties' agreement, if any, and otherwise as provided by law.

16 **137.18 Effect of change or error.** (1) If a change or error in an electronic
17 record occurs in a transmission between parties to a transaction, then:

18 (a) If the parties have agreed to use a security procedure to detect changes or
19 errors and one party has conformed to the procedure, but the other party has not, and
20 the nonconforming party would have detected the change or error had that party also
21 conformed, the conforming party may avoid the effect of the changed or erroneous
22 electronic record.

23 (b) In an automated transaction involving an individual, the individual may
24 avoid the effect of an electronic record that resulted from an error made by the
25 individual in dealing with the electronic agent of another person if the electronic

1 agent did not provide an opportunity for the prevention or correction of the error and,
2 at the time the individual learns of the error, the individual:

3 1. Promptly notifies the other person of the error and that the individual did
4 not intend to be bound by the electronic record received by the other person;

5 2. Takes reasonable steps, including steps that conform to the other person's
6 reasonable instructions, to return to the other person or, if instructed by the other
7 person, to destroy the consideration received, if any, as a result of the erroneous
8 electronic record; and

9 3. Has not used or received any benefit or value from the consideration, if any,
10 received from the other person.

11 (2) If neither sub. (1) (a) nor (b) applies, the change or error has the effect
12 provided by other law, including the law of mistake, and the parties' contract, if any.

13 (3) Subsections (1) (b) and (2) may not be varied by agreement.

14 **137.19 Notarization and acknowledgement.** If a law requires a signature
15 or record to be notarized, acknowledged, verified, or made under oath, the
16 requirement is satisfied if the electronic signature of the person authorized to
17 administer the oath or to make the notarization, acknowledgment, or verification,
18 together with all other information required to be included by other applicable law,
19 is attached to or logically associated with the signature or record.

20 **137.20 Retention of electronic records; originals.** (1) If a law requires
21 that a record be retained, the requirement is satisfied by retaining the information
22 set forth in the record as an electronic record which:

23 (a) Accurately reflects the information set forth in the record after it was first
24 generated in its final form as an electronic record or otherwise; and

25 (b) Remains accessible for later reference.

1 (2) A requirement to retain a record in accordance with sub. (1) does not apply
2 to any information the sole purpose of which is to enable the record to be sent,
3 communicated, or received.

4 (3) A person may comply with sub. (1) by using the services of another person
5 if the requirements of that subsection are satisfied.

6 (4) Except as provided in sub. (6), if a law requires a record to be presented or
7 retained in its original form, or provides consequences if the record is not presented
8 or retained in its original form, a person may comply with that law by using an
9 electronic record that is retained in accordance with sub. (1).

10 (5) If a law requires retention of a check, that requirement is satisfied by
11 retention of an electronic record containing the information on the front and back of
12 the check in accordance with sub. (1).

13 (6) A record retained as an electronic record in accordance with sub. (1)
14 satisfies a law requiring a person to retain a record for evidentiary, audit, or like
15 purposes, unless a law enacted after the effective date of this subsection [revisor
16 inserts date], specifically prohibits the use of an electronic record for the specified
17 purpose.

18 (7) This section does not preclude a governmental unit of this state from
19 specifying additional requirements for the retention of any record subject to the
20 jurisdiction of that governmental unit.

21 **137.21 Admissibility in evidence.** In a proceeding, a record or signature
22 may not be excluded as evidence solely because it is in electronic form.

23 **137.22 Automated transactions.** In an automated transaction:

1 (1) A contract may be formed by the interaction of electronic agents of the
2 parties, even if no individual was aware of or reviewed the electronic agent's actions
3 or the resulting terms and agreements.

4 (2) A contract may be formed by the interaction of an electronic agent and an
5 individual, acting on the individual's own behalf or for another person, including by
6 an interaction in which the individual performs actions that the individual is free to
7 refuse to perform and which the individual knows or has reason to know will cause
8 the electronic agent to complete the transaction or performance.

9 (3) The terms of a contract under sub. (1) or (2) are governed by the substantive
10 law applicable to the contract.

11 **137.23 Time and place of sending and receipt.** (1) Unless otherwise
12 agreed between the sender and the recipient, an electronic record is sent when it:

13 (a) Is addressed properly or otherwise directed properly to an information
14 processing system that the recipient has designated or uses for the purpose of
15 receiving electronic records or information of the type sent and from which the
16 recipient is able to retrieve the electronic record;

17 (b) Is in a form capable of being processed by that system; and

18 (c) Enters an information processing system outside the control of the sender
19 or of a person that sent the electronic record on behalf of the sender or enters a region
20 of the information processing system designated or used by the recipient which is
21 under the control of the recipient.

22 (2) Unless otherwise agreed between a sender and the recipient, an electronic
23 record is received when:

24 (a) It enters an information processing system that the recipient has
25 designated or uses for the purpose of receiving electronic records or information of

1 the type sent and from which the recipient is able to retrieve the electronic record;
2 and

3 (b) It is in a form capable of being processed by that system.

4 (3) Subsection (2) applies even if the place where the information processing
5 system is located is different from the place where the electronic record is deemed
6 to be received under sub. (4).

7 (4) Unless otherwise expressly provided in the electronic record or agreed
8 between the sender and the recipient, an electronic record is deemed to be sent from
9 the sender's place of business and to be received at the recipient's place of business.

10 For purposes of this subsection:

11 (a) If the sender or recipient has more than one place of business, the place of
12 business of that person is the place having the closest relationship to the underlying
13 transaction.

14 (b) If the sender or the recipient does not have a place of business, the place of
15 business is the sender's or recipient's residence, as the case may be.

16 (5) An electronic record is received under sub. (2) even if no individual is aware
17 of its receipt.

18 (6) Receipt of an electronic acknowledgment from an information processing
19 system described in sub. (2) establishes that a record was received but, by itself, does
20 not establish that the content sent corresponds to the content received.

21 (7) If a person is aware that an electronic record purportedly sent under sub.
22 (1), or purportedly received under sub. (2), was not actually sent or received, the legal
23 effect of the sending or receipt is determined by other applicable law. Except to the
24 extent permitted by the other law, the requirements of this subsection may not be
25 varied by agreement.

1 **137.24 Transferable records.** (1) In this section, “transferable record”
2 means an electronic record that would be a note under ch. 403 or a record under ch.
3 407 if the electronic record were in writing.

4 (1m) An electronic record qualifies as a transferable record under this section
5 only if the issuer of the electronic record expressly has agreed that the electronic
6 record is a transferable record.

7 (2) A person has control of a transferable record if a system employed for
8 evidencing the transfer of interests in the transferable record reliably establishes
9 that person as the person to which the transferable record was issued or transferred.

10 (3) A system satisfies the requirements of sub. (2), and a person is deemed to
11 have control of a transferable record, if the transferable record is created, stored, and
12 assigned in such a manner that:

13 (a) A single authoritative copy of the transferable record exists which is unique,
14 identifiable, and, except as otherwise provided in pars. (d) to (f), unalterable;

15 (b) The authoritative copy identifies the person asserting control as the person
16 to which the transferable record was issued or, if the authoritative copy indicates
17 that the transferable record has been transferred, the person to which the
18 transferable record was most recently transferred;

19 (c) The authoritative copy is communicated to and maintained by the person
20 asserting control or its designated custodian;

21 (d) Copies or revisions that add or change an identified assignee of the
22 authoritative copy can be made only with the consent of the person asserting control;

23 (e) Each copy of the authoritative copy and any copy of a copy is readily
24 identifiable as a copy that is not the authoritative copy; and

1 (f) Any revision of the authoritative copy is readily identifiable as authorized
2 or unauthorized.

3 (4) Except as otherwise agreed, a person having control of a transferable record
4 is the holder, as defined in s. 401.201 (20), of the transferable record and has the same
5 rights and defenses as a holder of an equivalent record or writing under chs. 401 to
6 411, including, if the applicable statutory requirements under s. 403.302 (1),
7 407.501, or 409.308 are satisfied, the rights and defenses of a holder in due course,
8 a holder to which a negotiable record of title has been duly negotiated, or a purchaser,
9 respectively. Delivery, possession, and endorsement are not required to obtain or
10 exercise any of the rights under this subsection.

11 (5) Except as otherwise agreed, an obligor under a transferable record has the
12 same rights and defenses as an equivalent obligor under equivalent records or
13 writings under chs. 401 to 411.

14 (6) If requested by a person against which enforcement is sought, the person
15 seeking to enforce the transferable record shall provide reasonable proof that the
16 person is in control of the transferable record. Proof may include access to the
17 authoritative copy of the transferable record and related business records sufficient
18 to review the terms of the transferable record and to establish the identity of the
19 person having control of the transferable record.

20 **SECTION 2840.** 137.25 (2) of the statutes is created to read:

21 137.25 (2) (a) The department of administration shall promulgate rules
22 concerning the use of electronic records and electronic signatures by governmental
23 units, which shall govern the use of electronic records or signatures by governmental
24 units, unless otherwise provided by law.

1 (b) The department of administration and the secretary of state shall jointly
2 promulgate rules establishing requirements that, unless otherwise provided by law,
3 a notary public must satisfy in order to use an electronic signature for any
4 attestation. The joint rules shall be numbered as rules of each agency in the
5 Wisconsin Administrative Code.

6 **SECTION 2841.** 137.26 of the statutes is created to read:

7 **137.26 Interoperability.** If a governmental unit of this state adopts
8 standards regarding its receipt of electronic records or electronic signatures under
9 s. 137.25, the governmental unit shall promote consistency and interoperability with
10 similar standards adopted by other governmental units of this state and other states
11 and the federal government and nongovernmental persons interacting with
12 governmental units of this state. Any standards so adopted may include alternative
13 provisions if warranted to meet particular applications.”.

14 **5.** Page 1003, line 9: after that line insert:

15 “**SECTION 3028.** 224.30 (2) of the statutes is repealed.”.

16 **6.** Page 1003, line 12: after that line insert:

17 “**SECTION 3036.** 228.01 of the statutes is amended to read:

18 **228.01 Recording of documents and public records by mechanical**
19 **process authorized.** Whenever any officer of any county having a population of
20 500,000 or more is required or authorized by law to file, record, copy, recopy or replace
21 any document, court order, plat, paper, written instrument, writings, record or book
22 of record, on file or of record in his or her office, notwithstanding any other provisions
23 in the statutes, the officer may do so by photostatic, photographic,
24 microphotographic, microfilm, optical imaging, electronic formatting or other

1 mechanical process which produces a clear, accurate and permanent copy or
2 reproduction of the original document, court order, plat, paper, written instrument,
3 writings, record or book of record in accordance with the applicable standards
4 specified under ss. 16.61 (7) and 16.612. Any such officer may also reproduce by such
5 processes or transfer from optical disk or electronic storage any document, court
6 order, plat, paper, written instrument, writings, record or book of record which has
7 previously been filed, recorded, copied or recopied. Optical imaging or electronic
8 formatting of any document is subject to authorization under s. 59.52 (14) (a).

9 **SECTION 3037.** 228.03 (2) of the statutes is amended to read:

10 228.03 (2) Any photographic reproduction of an original record meeting the
11 applicable standards prescribed in s. 16.61 (7) or copy of a record generated from an
12 original record stored in optical disk or electronic format in compliance with the
13 applicable standards under ss. 16.61 and 16.612 shall be taken as and stand in lieu
14 of and have all of the effect of the original record and shall be admissible in evidence
15 in all courts and all other tribunals or agencies, administrative or otherwise, in all
16 cases where the original document is admissible. A transcript, exemplification or
17 certified copy of such a reproduction of an original record, or certified copy of a record
18 generated from an original record stored in optical disk or electronic format, for the
19 purposes specified in this subsection, is deemed to be a transcript, exemplification
20 or certified copy of the original. The custodian of a photographic reproduction shall
21 place the reproduction or optical disk in conveniently accessible storage and shall
22 make provision for preserving, examining and using the reproduction of the record
23 or generating a copy of the record from optical disk or electronic storage. An enlarged
24 copy of a photographic reproduction of a record made in accordance with the
25 applicable standards specified in s. 16.61 (7) or an enlarged copy of a record

1 generated from an original record stored in optical disk or electronic format in
2 compliance with the applicable standards under ss. 16.61 and 16.612 that is certified
3 by the custodian as provided in s. 889.18 (2) has the same effect as an actual-size
4 copy.”.

5 **7.** Page 1214, line 15: after that line insert:

6 **“SECTION 3862.** 889.29 (1) of the statutes is amended to read:

7 889.29 (1) If any business, institution or member of a profession or calling in
8 the regular course of business or activity has kept or recorded any memorandum,
9 writing, entry, print, representation or combination thereof, of any act, transaction,
10 occurrence or event, and in the regular course of business has caused any or all of the
11 same to be recorded, copied or reproduced by any photographic, photostatic,
12 microfilm, microcard, miniature photographic, or other process which accurately
13 reproduces or forms a durable medium for so reproducing the original, or to be
14 recorded on an optical disk or in electronic format, the original may be destroyed in
15 the regular course of business, unless its preservation is required by law. Such
16 reproduction or optical disk record, when reduced to comprehensible format and
17 when satisfactorily identified, is as admissible in evidence as the original itself in any
18 judicial or administrative proceeding whether the original is in existence or not and
19 an enlargement or facsimile of such reproduction of a record or an enlarged copy of
20 a record generated from an original record stored in optical disk or electronic format
21 is likewise admissible in evidence if the original reproduction is in existence and
22 available for inspection under direction of court. The introduction of a reproduced
23 record, enlargement or facsimile, does not preclude admission of the original. This
24 subsection does not apply to records governed by s. 137.20.”.

1 **8.** Page 1219 line 21: after that line insert:

2 “**SECTION 3874.** 910.01 (1) of the statutes is amended to read:

3 910.01 (1) WRITINGS AND RECORDINGS. “Writings” and “recordings” consist of
4 letters, words or numbers, or their equivalent, set down by handwriting, typewriting,
5 printing, photostating, photographing, magnetic impulse, mechanical or electronic
6 recording, or other form of data compilation or recording.

7 **SECTION 3875.** 910.02 of the statutes is amended to read:

8 **910.02 Requirement of original.** To prove the content of a writing, recording
9 or photograph, the original writing, recording or photograph is required, except as
10 otherwise provided in chs. 901 to 911, s. 137.21, or by other statute.

11 **SECTION 3876.** 910.03 of the statutes is amended to read:

12 **910.03 Admissibility of duplicates.** A duplicate is admissible to the same
13 extent as an original unless (1) a genuine question is raised as to the authenticity of
14 the original or (2) in the circumstances it would be unfair to admit the duplicate in
15 lieu of the original. This section does not apply to records of transactions governed
16 by s. 137.21.”

17 **9.** Page 1288, line 11: after that line insert:

18 “(5) **USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES BY GOVERNMENTAL**
19 **UNITS.** Using the procedure under section 227.24 of the statutes, the department of
20 administration may promulgate emergency rules under section 137.25 (2) of the
21 statutes, as created by this act, for the period before the effective date of permanent
22 rules initially promulgated under section 137.25 (2) of the statutes, as created by this
23 act, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the
24 statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the

1 department is not required to provide evidence that promulgating a rule under this
2 subsection as an emergency rule is necessary for the preservation of the public peace,
3 health, safety, or welfare and is not required to provide a finding of emergency for a
4 rule promulgated under this subsection.

5 (6) USE OF ELECTRONIC SIGNATURES BY NOTARIES PUBLIC. The secretary of state
6 and department of administration shall promulgate initial rules under section
7 137.25 (2) (b) of the statutes, as created by this act, to become effective no later than
8 January 1, 2004.”.

9 **10.** Page 1393, line 23: after that line insert:

10 “(2) ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES. The treatment of sections
11 16.61 (7) (d), 16.611 (2) (e), 16.612 (2) (c), 137.01 (3) (a) and (4) (a) and (b), 137.04,
12 137.05 (title), 137.06, 137.11 to 137.24, 137.26, 224.30 (2), 228.01, 228.03 (2), 889.29
13 (1), 910.01 (1), 910.02, and 910.03, subchapters I (title) and II (title) of chapter 137,
14 and chapter 137 (title) of the statutes, the renumbering and amendment of section
15 137.05 of the statutes, and the creation of section 137.25 (2) of the statutes first apply
16 to electronic records or electronic signatures that are created, generated, sent,
17 communicated, received, or initially stored on the effective date of this subsection.”.

18 (END)