



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3380/13

3/M/MS/GM/RM:kjf&kg:pg

Sees

stays

PMML

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Today

DNR

Gen. Cat.

1 AN ACT *to repeal* 137.04, 137.06, 196.491 (3) (g) 1m. and 224.30 (2); *to renumber*
2 196.491 (3) (g) ~~1.~~; *to renumber and amend* 137.05 (title) and 137.05; *to*
3 *amend* 16.957 (2) (b) 1. (intro.), 16.957 (2) (c) 2., 16.957 (3) (b), 25.96, 66.1001
4 (2) (e), 66.1001 (4) (a), 106.01 (9), 106.025 (4), chapter 137 (title), subchapter I
5 (title) of chapter 137 [precedes 137.01], 137.01 (3) (a), 137.01 (4) (a), 137.01 (4)
6 (b), subchapter II (title) of chapter 137 [precedes 137.04], 146.82 (2) (a) (intro.),
7 196.195 (10), 196.374 (3), 196.491 (1) (d), 196.491 (2) (a) 3., 196.491 (2) (a) 3m.,
8 196.491 (2) (g), 196.491 (3) (a) 3. a., 196.491 (3) (e), 221.0901 (3) (a) 1., 221.0901
9 (8) (a) and (b), 452.09 (2) (a), 452.09 (2) (c) (intro.), 452.09 (3) (d), 889.29 (1),
10 910.01 (1), 910.02 and 910.03; and *to create* 16.957 (2m), 66.1001 (4) (e), 77.52
11 (2r), 106.04, 137.11 to 137.24, 137.25 (2), 146.82 (2) (a) 22., 196.03 (7), 196.195
12 (5m), 196.374 (3m), 241.023, 295.13 (4) and 452.05 (3) of the statutes; **relating**
13 **to:** administrative rule-making procedures, the control of air pollution, the
14 protection of navigable waters, nonmetallic mining reclamation financial
15 assurances, the regulation of electric generating facilities and high-voltage

fees imposed by political subdivisions,

1 transmission lines, partial deregulation of telecommunications services,
2 contributions by electric and gas utilities to the utility public benefits fund,
3 grants for energy conservation and other programs, reciprocal agreements for
4 real estate licenses, comprehensive planning by local governmental units, the
5 confidentiality of patient health care records, apprentice-to-journeyman
6 job-site ratios, the acquisition of in-state banks and in-state bank holding
7 companies, credits agreements, electronic notarization and acknowledgement,
8 electronic transactions and records, a sales tax exemption for temporary help
9 services, extending the time limit for emergency rule procedures, and granting
10 rule-making authority.

Analysis by the Legislative Reference Bureau

INTRODUCTION

This bill makes various changes relating to administrative rule-making procedures, the control of air pollution, the protection of navigable waters, nonmetallic mining reclamation financial assurances, the regulation of electric generating facilities and transmission lines, the deregulation of telecommunications services, contributions to and grants from the utility public benefits fund, recovery of economic development costs by electric and gas utilities, reciprocal agreements for real estate licenses, comprehensive planning by local governmental units, the confidentiality of patient health care records, apprentice-to-journeyman job-site ratios, the acquisition of in-state banks and in-state bank holding companies, electronic notarizations and acknowledgements, electronic transactions and records, a sales tax exemption for temporary help services, and credit agreements and related documents.

LARGE ELECTRIC GENERATING FACILITIES AND HIGH-VOLTAGE TRANSMISSION LINES

Under current law, a person may not begin to construct certain large electric generating facilities or high-voltage transmission lines unless the Public Service Commission (PSC) has issued a certificate of public convenience and necessity (CPCN) for the facility or line. The process for the PSC to consider an application for a CPCN is subject to various deadlines. One deadline requires the PSC to take final action on an application within 180 days after the application is completed. Under certain circumstances, a court may extend the deadline by an additional 180 days. If the PSC fails to take final action within the deadline, current law provides that the PSC is considered to have issued the CPCN, unless another state is also taking action on the same or a related application. Under this bill, the PSC is considered to have

issued the CPCN even if another state is also taking action on the same or a related application.

Also under current law, at least 60 days before a person applies for a CPCN for a large electric transmission facility or high-voltage transmission line, the person must provide an engineering plan regarding the facility or line to the Department of Natural Resources (DNR). Under the bill, this requirement applies only to applications for large electric generating facilities, and not to applications for high-voltage transmission lines.

In addition, current law requires the PSC to prepare a strategic energy assessment every two years that evaluates the adequacy and reliability of the state's electricity supplies. An assessment must describe, among other things, large electric generating facilities and high-voltage transmission lines on which utilities plan to begin construction within three years. The bill requires an assessment to describe large electric generating facilities and high-voltage transmission lines on which utilities plan to begin construction within seven years, rather than three years.

sub

Partial deregulation of telecommunications services

Under current law, a person may petition the PSC to begin proceedings for determining whether to partially deregulate certain telecommunications services. The PSC may also begin such proceedings on its own motion. If the PSC makes certain findings regarding competition for such telecommunications services, the PSC may issue an order suspending specified provisions of law. Current law does not impose any deadlines on such proceedings.

The bill requires the PSC to complete the proceedings no later than 120 days after a person files a petition. In addition, if the PSC begins proceedings based on its own motion, the proceedings must be completed no later than 120 days after the PSC provides notice of its motion. If the PSC fails to complete the proceedings and, if appropriate, issue an order within the deadline, the bill provides for the suspension of any provisions of law that are specified in the petition or in the PSC's motion.

UTILITY PUBLIC BENEFITS FUND

Under current law, certain electric and gas utilities are required to make contributions to the PSC in each fiscal year. The PSC deposits the contributions in the utility public benefits fund (fund), which also consists of monthly fees paid by utility customers. The fund is used by the Department of Administration (DOA) to make grants for low-income assistance, energy conservation and efficiency, environmental research and development, and renewable resource programs. The amount that each utility must contribute to the PSC is the amount that the PSC determines that the utility spent in 1998 on its own programs that are similar to the programs awarded grants by DOA.

Under this bill, the PSC may allow a utility to retain a portion of the amount that it is required to contribute in each fiscal year under current law. However, the PSC may allow a utility to do so only if the PSC determines that the portion is used by the utility for energy conservation programs for industrial, commercial, and agricultural customers in the utility's service area. Also, the programs must comply with rules promulgated by the PSC. The rules must specify annual energy savings targets that the programs must be designed to achieve. The rules must also require

a utility to demonstrate that, within a reasonable period of time determined by the PSC, the economic benefits of such a program will be equal to the portion of the contribution that the PSC allows the utility to retain. If the PSC allows a utility to retain such a portion, the utility must contribute 1.75 percent of the portion to the PSC, which the PSC must deposit in the fund for DOA to use for programs for research and development for energy conservation and efficiency. In addition, the utility must contribute 4.5 percent of the portion to the PSC for deposit in the fund for DOA to use for renewable resource programs. The bill also requires the PSC to allow a utility to recover in rates any expenses related to administration, marketing, or delivery of services for the utility's energy conservation programs, and prohibits a utility from paying for such expenses from the portion of a contribution the utility is allowed to retain.

The bill also requires the PSC to promulgate rules for the grants made by DOA from the fund for energy conservation and other programs. Under the bill, an applicant is not eligible for such a grant unless the applicant's proposal for the grant complies with rules promulgated by the PSC. The rules must require an applicant to demonstrate that, within a reasonable period of time determined by the PSC, the economic benefits resulting from the proposal will be equal to the amount of the grant. The rules must also specify annual energy savings targets that a such proposal must be designed to achieve.

RECOVERY OF ECONOMIC DEVELOPMENT COSTS BY ELECTRIC AND GAS UTILITIES

Under current law, the PSC regulates rates charged to consumers by gas and electric utilities. This bill authorizes the PSC to allow such utilities to recover in rates the costs of promoting economic development, including infrastructure deployment that is necessary for providing gas or electricity.

RECIPROCAL AGREEMENTS FOR REAL ESTATE LICENSES

Under current law, the Department of Regulation and Licensing (DRL) grants licenses that allow persons to practice as real estate brokers or salespersons. Current law specifies the requirements a person must satisfy to obtain such a license. The Real Estate Board (board) advises DRL on rules regarding licensing and other matters.

This bill allows DRL to grant licenses to persons licensed as real estate brokers or salespersons in other states and territories, in addition to persons who satisfy the requirements specified under current law. Under the bill, DRL may, after consulting with the board, enter into reciprocal agreements with officials of other states or territories for granting licenses to persons licensed in those states or territories.

COMPREHENSIVE PLANNING BY LOCAL GOVERNMENTAL UNITS

Under the current law popularly known as the "Smart Growth" statute, if a local governmental unit (city, village, town, county, or regional planning commission) creates a comprehensive plan (a zoning development plan or a zoning master plan) or amends an existing comprehensive plan, the plan must contain certain planning elements. The required planning elements include the following: housing; transportation; utilities and community facilities; agricultural, natural, and cultural resources; economic development; and land use.

when a political subdivision first imposes or raises a fee, the
and that the political subdivision issue written findings
that demonstrate that the fee bears a reasonable relationship to the
service for which the fee is imposed.

Beginning on January 1, 2010, under Smart Growth, any program or action of a local governmental unit that affects land use must be consistent with that local governmental unit's comprehensive plan. The actions to which this requirement applies include zoning ordinances, municipal incorporation procedures, annexation procedures, agricultural preservation plans, and impact fee ordinances. Also beginning on January 1, 2010, under Smart Growth, if a local governmental unit engages in any program or action that affects land use, the comprehensive plan must contain at least all of the required planning elements.

Before the plan may take effect, however, a local governmental unit must comply with a number of requirements, such as adopting written procedures that are designed to foster public participation in the preparation of the plan.

Under this bill, before the plan may take effect, a local governmental unit must provide written notice to all owners of property, and leaseholders who have an interest in property pursuant to which the persons may extract nonmetallic mineral resources, in which the allowable use or intensity of use, of the property, is changed by the comprehensive plan, and must create written procedures that describe the methods the local governmental unit will use to distribute elements of a comprehensive plan to owners of, and other persons who have such interests in, such property.

PATIENT HEALTH CARE RECORDS

Under current state law, patient health care records must remain confidential and may be released by a health care provider only with the informed consent of the patient or of a person authorized by the patient. However, patient health care records are required to be released without informed consent by the health care provider in specified circumstances, including for patient treatment, health care provider payment and medical records management, and certain audits, program monitoring, accreditation, and health care services review activities by health care facility staff committees or accreditation or review organizations.

Under current federal law, patient health care information may be released without patient authorization by health care providers for, among other purposes, treatment, payment, and health care operations. "Health care operations" is defined in federal law to include quality assessment and improvement activities; credentialing or evaluating of health care practitioners and training; underwriting; medical review, legal services, and auditing; business planning and development; and business management and general administrative activities.

This bill modifies the requirement for release of patient health care records without patient consent to authorize, rather than require, release under specified circumstances, and to eliminate the requirement that a request for the records be received before release. The bill also increases the circumstances under which patient health care records are authorized to be released without patient informed consent, to include purposes of health care ~~information~~ operations, as defined and authorized in federal law.

APPRENTICESHIP-TO-JOURNEYMAN JOB-SITE RATIOS

Under current law, the Department of Workforce Development (DWD) may determine reasonable classifications, promulgate rules, issue general or special

sub → FEES IMPOSED BY POLITICAL SUBDIVISIONS
Under current law, cities, villages, towns, and counties (political subdivisions) provide various services for which those political subdivisions may impose a fee. This bill requires that any fee imposed by a political subdivision bear a reasonable relationship to the service for which the fee is imposed.

orders, hold hearing, make findings, and render orders as necessary to oversee the apprenticeship programs provided in this state.

This bill prohibits DWD from prescribing, whether by promulgating a rule, issuing a general or special order, or otherwise, the ratio of apprentices to journeymen that an employer may have at a job site.

ACQUISITIONS OF IN-STATE BANKS AND BANK HOLDING COMPANIES

Current law specifies certain requirements applicable to the acquisition of an in-state bank or in-state bank holding company by an out-of-state bank holding company. This bill applies those requirements to similar acquisitions by out-of-state banks.

LAWSUITS CONCERNING ^{FINANCIAL INSTITUTIONS} CREDIT AGREEMENTS AND OTHER CREDIT-RELATED DOCUMENTS ^(any person) ^(promise or commitment)

With certain exceptions, this bill prohibits ~~a debtor under debt forbearance agreement or credit agreement~~ from bringing a lawsuit against a bank, savings bank, savings and loan association, or any affiliate of such an institution (financial institution) based upon ~~the agreement~~ unless the ~~agreement~~ is in writing, sets forth relevant terms and conditions, and is signed by the financial institution ~~and the~~ debtor.

With certain exceptions, this bill also prohibits an individual who seeks to enter into a debt forbearance agreement or credit agreement from bringing a lawsuit against a financial institution based upon a loan commitment or forbearance commitment issued by the financial institution unless the commitment is in writing, sets forth relevant terms and conditions, and is signed by the financial institution.

These prohibitions do not apply if the agreement or commitment is subject to the Wisconsin Consumer Act (which generally regulates credit transactions of \$25,000 or less that are entered into for personal, family, or household purposes).

~~Under current law, when two parties enter into a written credit agreement or debt forbearance agreement and intend the writing to be the final expression of their agreement, the terms of the writing generally may not be varied or contradicted by evidence of any prior written or oral agreement, except in cases of fraud, duress, or mutual mistake. Under this bill, in any lawsuit arising out of a written credit agreement or loan forbearance agreement, the terms of the writing may not be contradicted by evidence of any prior agreement or of any contemporaneous oral agreement. In addition, in any lawsuit arising out of a written loan commitment or forbearance commitment, the terms of the writing may not be contradicted by evidence of any prior commitment or of any contemporaneous oral commitment. The bill is silent with regard to fraud, duress, and mutual mistake.~~

Currently, under the doctrine of promissory estoppel, the existence of an enforceable contract may be implied if a person makes a promise, the promise is one which the person should reasonably expect to induce action or forbearance of a definite and substantial character, the promise induces such action or forbearance, and injustice can be avoided only by enforcement of the promise. This bill provides that ~~the existence of an enforceable credit agreement~~ may not be implied based upon the doctrine of promissory estoppel.

any of the following promises or commitments of the financial institution

This prohibition does

DUSSA A

to transactions that are

promise or commitment described above

This prohibition does not apply to transactions that are subject to the Wisconsin Consumer Act.

any promise or commitment described above

enforced under (n)

FINANCIAL ASSURANCE FOR NONMETALLIC MINING RECLAMATION

Current law requires counties to administer ordinances to ensure that nonmetallic mining sites are reclaimed. “Nonmetallic” mining means extracting substances like gravel and stone. Among other things, nonmetallic mining reclamation ordinances must require operators to provide financial assurance to ensure that the nonmetallic mine will be reclaimed. This bill provides that if a city, village, or town requires an operator to provide financial assurance for nonmetallic mining reclamation, the county must credit the value of that financial assurance toward the amount that the operator is required to provide under the county ordinance.

ELECTRONIC NOTARIZATIONS, ACKNOWLEDGEMENTS, TRANSACTIONS, AND RECORDS

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 of the states. Generally, UETA establishes a legal framework that facilitates and validates certain electronic transactions. This bill enacts a version of UETA in Wisconsin, with certain changes.

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

E-sign generally preempts state law unless the state law qualifies for one of two exceptions to preemption. The first exception to preemption 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 as approved and recommended for enactment in all of the states. The second exception to preemption permits a state to supersede the effect of the primary electronic commerce provisions of Title I by enacting a law that specifies 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 generally must be consistent with E-sign. It is difficult to predict how a court would apply this second exception to preemption. As a result, it is difficult to predict whether and to what extent any state law that does not constitute an enactment of UETA would qualify for this second exception from preemption.

Because this bill makes certain substantive changes to UETA and in some cases it is not clear whether the text is consistent with the intent of the version of UETA recommended for enactment in all of the states, it is difficult to determine whether the bill qualifies for an exception from preemption and, if enacted, the extent to which the bill would likely supplant the primary electronic commerce provisions of E-sign in this state.

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

Although the version of UETA recommended for enactment in all of the states contains a provision potentially affecting the maintenance of public records that is similar to the provision currently in effect under E-sign, this bill provides that public records retention requirements currently in effect in this state continue to apply. The bill also permits the public records board to promulgate rules prescribing additional records retention standards consistent with the bill's provisions. Thus, under this bill, the maintenance of public records is likely governed by current law, as affected by E-sign.

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 the Department of Electronic Government (DEG) primary rule-making authority with regard to the use of electronic documents and signatures by governmental units and grants DEG and the secretary of state joint rule-making authority with regard to electronic notarizations. In addition, this bill requires DEG's rules to include standards regarding the receipt of electronic documents and the acceptance or electronic signatures by governmental units, in order 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.

3. 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 contains all of the exemptions currently in effect under E-sign, with certain modifications. Thus, among other things, this bill does not apply to a transaction governed by a law relating to the execution of wills or the creation of testamentary trusts, to a transaction governed by any chapter of this state’s version of the Uniform Commercial Code (UCC) other than the chapter dealing with sales of goods, to a certain utility cancellation notices, to certain court documents, or to product recall notices. Unlike current law under E-sign, the bill also specifically exempts cancellation notices for local telecommunications services. With the exception of the provisions relating to wills, trusts, and the UCC, these exceptions are not included in the version of UETA recommended for enactment in all of the states.

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 arguably 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. Unlike current law under E-sign and the version of UETA recommended for enactment in all of the states, an electronic notarization under this bill must also comply with rules promulgated by DEG and the secretary of state.

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 and the version of UETA recommended for enactment in all of the states, this bill preserves the treatment of public records under current law, as affected by E-sign (see page 2. of this analysis for a discussion of E-sign’s effect upon public records). In addition, 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.

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 it does not apply to any new laws enacted by this state, 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 of another governmental unit 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. This provision is narrower than a corresponding provision included in the version of UETA recommended for enactment in all of the states in that the corresponding provision is not specifically limited in its application to documents of governmental units.

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.

SALES TAX EXEMPTION FOR TEMPORARY HELP SERVICES

Under this bill, no part of the charge for services provided by a temporary help company is subject to the sales tax, if the client for whom the services are provided controls the means of performing the services and is responsible for the satisfactory completion of the services. Under current law, a temporary help company is, generally, any entity that contracts with a client to supply individuals to perform services for the client on a temporary basis.

This bill will be referred to the Joint Survey Committee on Tax Exemptions for a detailed analysis, which will be printed as an appendix to this bill.

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

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

1 **SECTION 1.** 16.957 (2) (b) 1. (intro.) of the statutes is amended to read:

2 16.957 (2) (b) 1. (intro.) Subject to subd. 2. and the rules promulgated under
3 sub. (2m), after holding a hearing, establish programs for awarding grants from the
4 appropriation under s. 20.505 (3) (s) for each of the following:

5 **SECTION 2.** 16.957 (2) (c) 2. of the statutes is amended to read:

6 16.957 (2) (c) 2. Requirements and procedures for applications for grants
7 awarded under programs established under par. (a) or (b) 1. The rules for grants
8 awarded under programs established under par. (b) 1. may not be inconsistent with
9 the rules promulgated by the commission under sub. (2m).

10 **SECTION 3.** 16.957 (2m) of the statutes is created to read:

11 16.957 (2m) **ENERGY CONSERVATION AND EFFICIENCY GRANTS.** The commission
12 shall promulgate rules that provide that a proposal for providing energy
13 conservation or efficiency services is not eligible for a grant under sub. (2) (b) unless
14 the applicant demonstrates that, no later than a reasonable period of time, as
15 determined by the commission, after the applicant begins to implement the proposal,
16 the economic value of the benefits resulting from the proposal will be equal to the

1 amount of the grant. The rules shall also specify annual energy savings targets that
2 a such proposal must be designed to achieve in order for the proposal to be eligible
3 for a grant under sub. (2) (b).

4 **SECTION 4.** 16.957 (3) (b) of the statutes is amended to read:

5 16.957 (3) (b) The department shall, on the basis of competitive bids, contract
6 with one or more nonstock, nonprofit corporations organized under ch. 181 to
7 administer the programs established under sub. (2) (b) 1., including soliciting
8 proposals, processing grant applications, selecting, based on criteria specified in
9 rules promulgated under sub. (2) (c) 2m. and the standards established in the rules
10 promulgated under sub. (2m), proposals for the department to make awards and
11 distributing grants to recipients.

12 **SECTION 5.** 25.96 of the statutes is amended to read:

13 **25.96 Utility public benefits fund.** There is established a separate
14 nonlapsible trust fund designated as the utility public benefits fund, consisting of
15 deposits by the public service commission under s. 196.374 (3) and (3m), public
16 benefits fees received under s. 16.957 (4) (a) and (5) (c) and (d) and contributions
17 received under s. 16.957 (2) (c) 4. and (d) 2.

18 **SECTION 6.** 66.1001 (2) (e) of the statutes is amended to read:

19 66.1001 (2) (e) *Agricultural, natural and cultural resources element.* A
20 compilation of objectives, policies, goals, maps and programs for the conservation,
21 and promotion of the effective management, of natural resources such as
22 groundwater, forests, productive agricultural areas, environmentally sensitive
23 areas, threatened and endangered species, stream corridors, surface water,
24 floodplains, wetlands, wildlife habitat, metallic and nonmetallic mineral resources
25 consistent with zoning limitations under s. 295.20 (2), parks, open spaces, historical

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1 and cultural resources, community design, recreational resources and other natural
2 resources.

3 SECTION 7. 66.1001 (4) (a) of the statutes is amended to read:

4 66.1001 (4) (a) The governing body of a local governmental unit shall adopt
5 written procedures that are designed to foster public participation, including open
6 discussion, communication programs, information services, and public meetings for
7 which advance notice has been provided, in every stage of the preparation of a
8 comprehensive plan. The written procedures shall provide for wide distribution of
9 proposed, alternative, or amended elements of a comprehensive plan and shall
10 provide an opportunity for written comments on the plan to be submitted by
11 members of the public to the governing body and for the governing body to respond
12 to such written comments. The written procedures shall describe the methods the
13 governing body of a local governmental unit will use to distribute proposed,
14 alternative, or amended elements of a comprehensive plan to owners of property, or
15 to persons who have a leasehold interest in property pursuant to which the persons
16 may extract nonmetallic mineral resources in or on property, in which the allowable
17 use or intensity of use, of the property, is changed by the comprehensive plan.

18 SECTION 8. 66.1001 (4) (e) of the statutes is created to read:

19 66.1001 (4) (e) At least 30 days before the hearing described in par. (d) is held,
20 a local governmental unit shall provide written notice to all owners of property, and
21 all leaseholders who have an interest in property pursuant to which the persons may
22 extract nonmetallic mineral resources, in which the allowable use or intensity of use,
23 of the property, is changed by the comprehensive plan, including all of the following:

24 1. An operator who has obtained, or made application for, a permit that is
25 described under s. 295.12 (3) (d).

1 2. A person who has registered a marketable nonmetallic mineral deposit
2 under s. 295.20.

3 3. Any other person who the local governmental unit knows has a property
4 interest in nonmetallic mineral resources in the jurisdiction.

5 **SECTION 9.** 77.52 (2r) of the statutes is created to read:

6 77.52 (2r) No part of the charge for services provided by a temporary help
7 company, as defined in s. 108.02 (24m), is subject to tax under sub. (2), if the client
8 for whom the services are provided controls the means of performing the services and
9 is responsible for the satisfactory completion of the services.

10 **SECTION 10.** 106.01 (9) of the statutes is amended to read:

11 106.01 (9) ~~The~~ Subject to s. 106.04, the department may investigate, fix
12 reasonable classifications, ~~issue~~ promulgate rules and, ~~issue~~ general or special
13 orders, and, hold hearings, make findings, and render orders upon its findings as
14 ~~shall be~~ necessary to carry out the intent and purposes of this section. The
15 investigations, classifications, hearings, findings, and orders shall be made as
16 provided in s. 103.005. Except as provided in sub. (8), the penalties specified in s.
17 103.005 (12) apply to violations of this section. Orders issued under this subsection
18 are subject to review under ch. 227.

19 **SECTION 11.** 106.025 (4) of the statutes is amended to read:

20 106.025 (4) In order that the apprentice may qualify at the end of
21 apprenticeship as a skilled mechanic in the art of installing plumbing work, the
22 department, subject to s. 106.04, may prescribe the level of supervision of an
23 apprentice and the character of plumbing work that the apprentice may do during
24 the 3rd year of the apprenticeship term. An apprentice in the 4th or 5th year of the
25 apprenticeship term may install plumbing under the direction or supervision of a

1 master or journeyman plumber without either the master or journeyman being
2 physically present, provided that the master plumber in charge shall be responsible
3 for the work.

4 SECTION 12. 106.04 of the statutes is created to read:

5 **106.04 Apprentice-to-journeyman job-site ratio regulation**
6 **prohibited.** The department may not prescribe, whether by promulgating a rule,
7 issuing a general or special order, or otherwise, the ratio of apprentices to
8 journeymen that an employer may have at a job site.

9 SECTION 13. Chapter 137 (title) of the statutes is amended to read:

10 **CHAPTER 137**

11 **AUTHENTICATIONS AND ELECTRONIC**

12 **TRANSACTIONS AND RECORDS**

13 SECTION 14. Subchapter I (title) of chapter 137 [precedes 137.01] of the statutes
14 is amended to read:

15 **CHAPTER 137**

16 **SUBCHAPTER I**

17 **NOTARIES AND COMMISSIONERS**

18 **OF DEEDS; ELECTRONIC AND**

19 **NONELECTRONIC NOTARIZATION AND**

20 **ACKNOWLEDGEMENT**

21 SECTION 15. 137.01 (3) (a) of the statutes is amended to read:

22 137.01 (3) (a) Every Except as authorized in sub. (4) (a) and s. 137.19, every
23 notary public shall provide an engraved official seal which makes a distinct and
24 legible impression or official rubber stamp which makes a distinct and legible
25 imprint on paper. The impression of the seal or the imprint of the rubber stamp shall

1 state only the following: “Notary Public,” “State of Wisconsin” and the name of the
2 notary. But any notarial seal in use on August 1, 1959, shall be considered in
3 compliance.

4 **SECTION 16.** 137.01 (4) (a) of the statutes is amended to read:

5 137.01 (4) (a) Every official act of a notary public shall be attested by the notary
6 public’s written signature or electronic signature, as defined in s. 137.04 (2) 137.11
7 (8). The department of electronic government and the secretary of state shall jointly
8 promulgate rules prescribing a method for attaching or associating an electronic
9 signature and other required information with a signature or record under s. 137.19.
10 The department of electronic government and the secretary of state shall jointly
11 promulgate rules establishing requirements that a notary public must satisfy in
12 order to use an electronic signature for any attestation other than an attestation
13 under s. 137.19. All joint rules promulgated under this paragraph shall be numbered
14 as rules of each agency in the Wisconsin Administrative Code.

15 **SECTION 17.** 137.01 (4) (b) of the statutes is amended to read:

16 137.01 (4) (b) All Except as authorized in par. (a) and s. 137.19, all certificates
17 of acknowledgments of deeds and other conveyances, or any written instrument
18 required or authorized by law to be acknowledged or sworn to before any notary
19 public, within this state, shall be attested by a clear impression of the official seal or
20 imprint of the rubber stamp of said officer, and in addition thereto shall be written
21 or stamped either the day, month and year when the commission of said notary public
22 will expire, or that such commission is permanent.

23 **SECTION 18.** Subchapter II (title) of chapter 137 [precedes 137.04] of the
24 statutes is amended to read:

25 **CHAPTER 137**

1 SUBCHAPTER II

2 ELECTRONIC SIGNATURES

3 TRANSACTIONS AND RECORDS;4 ELECTRONIC NOTARIZATION5 AND ACKNOWLEDGEMENT

6 SECTION 19. 137.04 of the statutes is repealed.

7 SECTION 20. 137.05 (title) of the statutes is renumbered 137.25 (title) and
8 amended to read:9 137.25 (title) **Submission of ~~written documents~~ records to**
10 **governmental units; interoperability.**11 SECTION 21. 137.05 of the statutes is renumbered 137.25 (1) and amended to
12 read:13 137.25 (1) Unless otherwise ~~prohibited~~ provided by law, with the consent of a
14 governmental unit of this state that is to receive a record, any document record that
15 is required by law to be submitted in writing to ~~a~~ that governmental unit and that
16 requires a written signature may be submitted by ~~transforming the document into~~
17 as an electronic format, but only with the consent of the governmental unit that is
18 to receive the document record, and if submitted as an electronic record may
19 incorporate an electronic signature.

20 SECTION 22. 137.06 of the statutes is repealed.

21 SECTION 23. 137.11 to 137.24 of the statutes are created to read:

22 137.11 **Definitions.** In this subchapter:23 (1) "Agreement" means the bargain of the parties in fact, as found in their
24 language or inferred from other circumstances and from rules, regulations, and

1 procedures given the effect of agreements under laws otherwise applicable to a
2 particular transaction.

3 (2) “Automated transaction” means a transaction conducted or performed, in
4 whole or in part, by electronic means or by the use of electronic records, in which the
5 acts or records of one or both parties are not reviewed by an individual in the ordinary
6 course in forming a contract, performing under an existing contract, or fulfilling an
7 obligation required by the transaction.

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

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

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

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

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

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

24 (9) “Governmental unit” means:

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

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

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

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

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

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

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

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

17 (13) “Security procedure” means a procedure employed for the purpose of
18 verifying that an electronic signature, record, or performance is that of a specific
19 person or for detecting changes or errors in the information in an electronic record.
20 The term includes a procedure that requires the use of algorithms or other codes,
21 identifying words or numbers, encryption, callback, or other acknowledgment
22 procedures.

23 (14) “State” means a state of the United States, the District of Columbia,
24 Puerto Rico, the U.S. Virgin Islands, or any territory or insular possession subject
25 to the jurisdiction of the United States. The term includes an Indian tribe or band,

1 or Alaskan native village, which is recognized by federal law or formally
2 acknowledged by a state.

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

6 **137.115 Relation to federal law.** For the purpose of satisfying 15 USC 7002
7 (a) (2) (B) as that statute relates to this subchapter, this state acknowledges the
8 existence of the Electronic Signatures in Global and National Commerce Act, 15 USC
9 7001 to 7031.

10 **137.12 Application.** (1) Except as otherwise provided in subs. (2) and (2m)
11 and except in s. 137.25, this subchapter applies to electronic records and electronic
12 signatures relating to a transaction.

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

15 (a) Any law governing the execution of wills or the creation of testamentary
16 trusts; or

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

18 (2m) This subchapter does not apply to any of the following records or any
19 transaction evidenced by any of the following records:

20 (a) Records governed by any law relating to adoption, divorce, or other matters
21 of family law.

22 (b) Notices provided by a court.

23 (c) Court orders or judgements.

1 (d) Official court documents, including, but not limited to, briefs, pleadings,
2 affidavits, memorandum decisions, and other writings, required to be executed in
3 connection with court proceedings.

4 (e) Records required by law to accompany any transportation or handling of
5 hazardous materials, pesticides, or other toxic or dangerous materials.

6 (f) Notices of cancelation or termination of utility services, including heat,
7 water, basic local telecommunications services, and power.

8 (g) Notices of default, acceleration, repossession, foreclosure, or eviction, or the
9 right to cure, under a credit agreement secured by, or a rental agreement for, a
10 primary residence of an individual.

11 (h) Notices of the cancellation or termination of health insurance or benefits
12 or life insurance benefits other than annuities.

13 (i) Notices of the recall of a product, or the material failure of a product, that
14 risks endangering health or safety.

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

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

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

22 **137.13 Use of electronic records and electronic signatures; variation**
23 **by agreement.** (1) This subchapter does not require a record or signature to be
24 created, generated, sent, communicated, received, stored, or otherwise processed or
25 used by electronic means or in electronic form.

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

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

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

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

14 **137.14 Construction.** This subchapter shall be construed and applied:

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

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

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

22 **137.15 Legal recognition of electronic records, electronic signatures,
23 and electronic contracts.** (1) A record or signature may not be denied legal effect
24 or enforceability solely because it is in electronic form.

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

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

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

7 **137.16 Provision of information in writing; presentation of records.**

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

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

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

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

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

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

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

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

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

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

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

21 **137.18 Effect of change or error.** (1) If a change or error in an electronic
22 record occurs in a transmission between parties to a transaction, then:

23 (a) If the parties have agreed to use a security procedure to detect changes or
24 errors and one party has conformed to the procedure, but the other party has not, and
25 the nonconforming party would have detected the change or error had that party also

1 conformed, the conforming party may avoid the effect of the changed or erroneous
2 electronic record.

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

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

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

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

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

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

19 **137.19 Notarization and acknowledgement.** If a law requires a signature
20 or record to be notarized, acknowledged, verified, or made under oath, the
21 requirement is satisfied if, consistent with any applicable rules promulgated under
22 s. 137.01 (4) (a), the electronic signature of the person authorized to administer the
23 oath or to make the notarization, acknowledgment, or verification, together with all
24 other information required to be included by other applicable law, is attached to or
25 logically associated with the signature or record.

1 **137.20 Retention of electronic records; originals.** (1) Except as provided
2 in sub. (6), if a law requires that a record be retained, the requirement is satisfied
3 by retaining the information set forth in the record as an electronic record which:

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

6 (b) Remains accessible for later reference.

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

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

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

16 (5) Except as provided in sub. (6), if a law requires retention of a check, that
17 requirement is satisfied by retention of an electronic record containing the
18 information on the front and back of the check in accordance with sub. (1).

19 (6) (a) Except as provided in par. (b), a record retained as an electronic record
20 in accordance with sub. (1) satisfies a law requiring a person to retain a record for
21 evidentiary, audit, or like purposes, unless a law enacted after the effective date of
22 this paragraph [revisor inserts date], specifically prohibits the use of an electronic
23 record for the specified purpose.

24 (b) A governmental unit that has custody of a record is also further subject to
25 the retention requirements for public records of state agencies and the records of the

1 University of Wisconsin Hospitals and Clinics Authority established under ss. 16.61
2 and 16.611 and the retention requirements for documents of local governmental
3 units established under s. 16.612.

4 (7) The public records board may promulgate rules prescribing standards
5 consistent with this subchapter for retention of records by state agencies, the
6 University of Wisconsin Hospitals and Clinics Authority and local governmental
7 units.

8 (8) This section does not preclude the public records board, the department of
9 electronic government, or any other governmental unit of this state from specifying
10 additional requirements for the retention of any record of another governmental unit
11 subject to its jurisdiction.

12 **137.21 Admissibility in evidence.** In a proceeding, a record or signature
13 may not be excluded as evidence solely because it is in electronic form.

14 **137.22 Automated transactions.** In an automated transaction:

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

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

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

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

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

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

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

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

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

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

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

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

25 For purposes of this subsection:

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

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

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

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

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

16 **137.24 Transferable records.** (1) In this section, "transferable record"
17 means an electronic record that would be a note under ch. 403 or a document under
18 ch. 407 if the electronic record were in writing.

19 (1m) An electronic record qualifies as a transferable record under this section
20 only if the issuer of the electronic record expressly has agreed that the electronic
21 record is a transferable record.

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

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

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

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

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

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

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

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

18 (4) Except as otherwise agreed, a person having control of a transferable record
19 is the holder, as defined in s. 401.201 (20), of the transferable record and has the same
20 rights and defenses as a holder of an equivalent record or writing under chs. 401 to
21 411, including, if the applicable statutory requirements under s. 403.302 (1),
22 407.501, or 409.308 are satisfied, the rights and defenses of a holder in due course,
23 a holder to which a negotiable record of title has been duly negotiated, or a purchaser,
24 respectively. Delivery, possession, and endorsement are not required to obtain or
25 exercise any of the rights under this subsection.

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

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

10 **SECTION 24.** 137.25 (2) of the statutes is created to read:

11 137.25 (2) The department of electronic government shall promulgate rules
12 concerning the use of electronic records and electronic signatures by governmental
13 units, which shall govern the use of electronic records or signatures by governmental
14 units, unless otherwise provided by law. The rules shall include standards regarding
15 the receipt of electronic records or electronic signatures that promote consistency
16 and interoperability with other standards adopted by other governmental units of
17 this state and other states and the federal government and nongovernmental
18 persons interacting with governmental units of this state. The standards may
19 include alternative provisions if warranted to meet particular applications.

20 **SECTION 25.** 146.82 (2) (a) (intro.) of the statutes is amended to read:

21 146.82 (2) (a) (intro.) ~~Notwithstanding~~ It is not a violation of sub. (1), to release
22 patient health care records ~~shall be released upon request without informed consent~~
23 in the following circumstances:

24 **SECTION 26.** 146.82 (2) (a) 22. of the statutes is created to read:

1 146.82 (2) (a) 22. For purposes of health care operations, as defined in 45 CFR
2 164.501, and as authorized under 45 CFR 164, subpart E.

3 **SECTION 27.** 196.03 (7) of the statutes is created to read:

4 196.03 (7) The commission may allow a public utility that provides gas or
5 electricity to the public to recover in rates charged to consumers the costs of
6 promoting economic development, including infrastructure deployment necessary
7 for providing gas or electricity to the public.

8 **SECTION 28.** 196.195 (5m) of the statutes is created to read:

9 196.195 (5m) **TIME LIMITATION ON COMMISSION ACTION.** (a) No later than 120 days
10 after the filing of a petition under sub. (2) (a), the commission shall complete the
11 proceedings under subs. (2), (3), and (4), and, if appropriate, enter an order under
12 sub. (5). If the commission fails to complete the proceedings and, if appropriate, enter
13 an order before that deadline, the petition is considered to be granted without
14 condition by the commission and any provisions of law under sub. (5) that are
15 specified in the petition are considered to be suspended by the commission.

16 (b) No later than 120 days after the commission provides notice of its own
17 motion under sub. (2) (a), the commission shall complete the proceedings under subs.
18 (2), (3), and (4), and, if appropriate, enter an order under sub. (5). If the commission
19 fails to complete the proceedings and, if appropriate, enter an order before that
20 deadline, the motion is considered to be granted without condition by the commission
21 and any provisions of law under sub. (5) that are specified in the motion are
22 considered to be suspended by the commission.

23 **SECTION 29.** 196.195 (10) of the statutes is amended to read:

24 196.195 (10) **REVOCATION OF DEREGULATION.** If necessary to protect the public
25 interest, the commission, at any time by order, may revoke its order to suspend the

1 applicability of any provision of law suspended under sub. (5). This subsection does
2 not apply to any provision of law that is considered to be suspended under sub. (5m).

3 **SECTION 30.** 196.374 (3) of the statutes is amended to read:

4 196.374 (3) In 2000, 2001 and 2002, the commission shall require each utility
5 to spend a decreasing portion of the amount determined under sub. (2) on programs
6 specified in sub. (2) and contribute the remaining portion of the amount to the
7 commission for deposit in the fund. ~~In~~ Except as provided in sub. (3m), in each year
8 after 2002, each utility shall contribute the entire amount determined under sub. (2)
9 to the commission for deposit in the fund. The commission shall ensure in
10 rate-making orders that a utility recovers from its ratepayers the amounts spent on
11 programs or contributed to the fund under this subsection or retained under sub.
12 (3m). The commission shall allow each utility the option of continuing to use, until
13 January 1, 2002, the moneys that it has recovered under s. 196.374 (3), 1997 stats.,
14 to administer the programs that it has funded under s. 196.374 (1), 1997 stats. The
15 commission may allow each utility to spend additional moneys on the programs
16 specified in sub. (2) if the utility otherwise complies with the requirements of this
17 section and s. 16.957 (4).

18 **SECTION 31.** 196.374 (3m) of the statutes is created to read:

19 196.374 (3m) (a) In each fiscal year, the commission may allow a utility to
20 retain a portion of the amount determined under sub. (2) instead of contributing the
21 entire amount to the commission, if the commission determines that the portion is
22 used by the utility for energy conservation programs for industrial, commercial, and
23 agricultural customers in the utility's service area and that the programs comply
24 with rules promulgated by the commission. The rules shall specify annual energy
25 savings targets that the programs must be designed to achieve. The rules shall also