

2003 DRAFTING REQUEST

Assembly Amendment (AA-AB755)

Received: 02/02/2004

Received By: jkuesel

Wanted: Today

Identical to LRB:

For: Ann Nischke (608) 266-8580

By/Representing: Russ Whitesel - LCS

This file may be shown to any legislator: NO

Drafter: jkuesel

May Contact:

Addl. Drafters:

Subject: **Public Records
State Govt - miscellaneous**

Extra Copies: **RPN, RAC, RNK - 1
PJH, MJL, ARG - 1**

Submit via email: YES

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

AA to AB-755

Instructions:

Delete exception to procedure for maintaining security of public records. Delete rule making by Secretary of State and Department of Financial Institutions; maintain rule making in DOA.

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|-----------------------|-----------------------|------------------------|----------------|------------------------|------------------------|-----------------|
| /? | jkuesel 02/02/2004 | kgilfoy 02/02/2004 | | _____ | | | |
| /1 | | | jfrantze 02/02/2004 | _____ | sbasford 02/02/2004 | sbasford 02/02/2004 | |

FE Sent For:

<END>

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|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
| 1?/1 | jkuesel 2/2 | 1-2/2 King | Job | FRS 2/2 | | | |

FE Sent For:

<END>

2003

Date (time) needed

Wanted Mon 2/2
1:30pm

LRBa 2069, 1

JR: King

AMENDMENT

See form AMENDMENTS — COMPONENTS & ITEMS.

S (B) AMENDMENT

~~TO S A AMENDMENT (LRBa /),~~

~~TO S A SUBSTITUTE AMENDMENT (LRBs /),~~

TO 2003 SB ~~SJR SR~~ (B) ~~AJR AR~~ 755 (LRB /)

16.61
16.61
16.61

→ after "records" insert

At the locations indicated, amend the 6.11 as follows:

(fill ONLY if "engrossed ..." or "as shown by ...")

- ✓ #. Page 1, line 7: delete "records" and substitute "records" and grant rule-making authority.
- ✓ #. Page 2, line 1: delete the material beginning with that line and ending with page 13, line 6.
- #. Page 14, line 20: after that line insert:
"SECTION 107.137.05 (title) of the statutes is renumbered 137.25 (title)."
- ✓ #. Page 14, line 21: after "137.25" insert "(1)".
- ✓ #. Page 14, line 22: delete that line and substitute:
"137.25 (1)".
- ✓ #. Page 14, line 23: delete "(B) units".
- ✓ #. Page 22, line 7: delete "If" and substitute "Except as provided in sub. (c), if".

1699

- ✓ # Page 22, line 22: delete "if" and substitute "Except as provided in sub. (6), if".
- ✓ # Page 23, line 1, delete "A" and substitute "(a) Except as provided in sub. (6), a" ^{record}
- ✓ # Page 23, line 5: after that line insert:

record

Page 23, line 3: delete "subsection" and substitute "paragraph".

BILL

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

6 (b) A governmental unit that has custody of a record is also further subject to
 7 the retention requirements for public records of state agencies and the records of the
 8 University of Wisconsin Hospitals and Clinics Authority established under ss. 16.61
 9 and 16.611, and the retention requirements for documents of local governmental
 10 units established under s. 16.612.

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

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

19 **137.21 Admissibility in evidence.** In a proceeding, a record or signature
 20 may not be excluded as evidence solely because it is in electronic form.

21 **137.22 Automated transactions.** In an automated transaction:

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

✓ # Page 27, line 6: after that line insert:

BILL

1 rights and defenses as a holder of an equivalent record or writing under chs. 401 to
 2 411, including, if the applicable statutory requirements under s. 403.302 (1),
 3 407.501, or 409.308 are satisfied, the rights and defenses of a holder in due course,
 4 a holder to which a negotiable record of title has been duly negotiated, or a purchaser,
 5 respectively. Delivery, possession, and endorsement are not required to obtain or
 6 exercise any of the rights under this subsection.

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

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

↓
LPS:
Keep
this

~~Section 137.25 (2) of the statutes is created to read:~~

17 ~~§~~ 137.25 (2) The department of ^{administration} electronic government shall promulgate rules
 18 concerning the use of electronic records and electronic signatures by governmental
 19 units, which shall govern the use of electronic records or signatures by governmental
 20 units, unless otherwise provided by law. The rules shall include standards regarding
 21 the receipt of electronic records or electronic signatures that promote consistency
 22 and interoperability with other standards adopted by other governmental units of
 23 this state and other states and the federal government and nongovernmental
 24 persons interacting with governmental units of this state. The standards may
 25 include alternative provisions if warranted to meet particular applications.

✓ H. page 27, line 15: delete the material beginning with that
 line and ending with page 29, line 6, and substitute:
 "SECTION 15am. RP; 224.30(2)".

BILL

✓ Page 30, line 16: delete lines 16 to 19 and substitute:

SECTION 16. 910.02 of the statutes is amended to read:

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

SECTION 17. 910.03 of the statutes is amended to read:

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

21m
SECTION 18. Nonstatutory provisions.

freeze
(1) ~~USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES BY GOVERNMENTAL~~

UNITS, EMERGENCY RULES. Using the procedure under section 227.24 of the statutes, the department of ~~electronic government~~ ^{administration} may promulgate emergency rules under section 137.25 (2) of the statutes, as created by this act, for the period before the effective date of permanent rules initially promulgated under section 137.25 (2) of the statutes, as created by this act, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

(2) ~~USE OF ELECTRONIC SIGNATURES BY NOTARIES PUBLIC, EMERGENCY RULES.~~ Using the procedure under section 227.24 of the statutes, the ~~secretary of state and the~~ ^{administration} department of ~~electronic government~~ may promulgate emergency rules under

BILL

1 section 137.01 (4) (a) of the statutes, as affected by this act, for the period before the
 2 effective date of permanent rules initially promulgated under section 137.01 (4) (a)
 3 of the statutes, as affected by this act. Notwithstanding section 227.24 (1) (a), (2) (b),
 4 and (3) of the statutes, ~~the secretary of state and the department~~ are not required to
 5 provide evidence that promulgating a rule under this subsection as an emergency
 6 rule is necessary for the preservation of the public peace, health, safety, or welfare
 7 and are not required to provide a finding of emergency for a rule promulgated under
 8 this subsection.

9 ~~(3) USE OF ELECTRONIC SIGNATURES BY NOTARIES PUBLIC; PERMANENT RULES. The~~
 10 ~~secretary of state and department of electronic government~~ shall initially
 11 promulgate permanent rules under section 137.01 (4) (a) of the statutes, as affected
 12 by this act, to become effective no later than January 1, ~~2004~~ 2005.

13 ^{22m} SECTION 10. Initial applicability.

14 ^{freeze} (1) ~~ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES.~~ The treatment of sections
 15 137.01 (3) (a) and (4) (a) and (b), 137.04, 137.05 (title), 137.06, 137.11 to 137.24,
 16 137.25 (2), 224.30 (2), 889.29 (1), 910.01 (1), 910.02, and 910.03, subchapters I (title)
 17 and II (title) of chapter 137, and chapter 137 (title) of the statutes and the
 18 renumbering and amendment of section 137.05 of the statutes first apply to
 19 electronic records or electronic signatures that are created, generated, sent,
 20 communicated, received, or initially stored on the effective date of this subsection. 1/

(END)