

Vote Record

**Committee on Transportation and Information  
Infrastructure**

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**Date:** February 23, 2004  
**Bill Number:** Senate Amendment 1 (LRBa2190/1)  
**Moved by:** Senate Committee on Transportation and Information Infrastructure  
**Motion:** *Introduction and Adoption of Senate Amendment 1  
(LRBa2190/1) to Senate Bill 404.*

**Committee Member**  
Senator Ted Kanavas

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
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Signature:



Vote Record

**Committee on Transportation and Information  
Infrastructure**

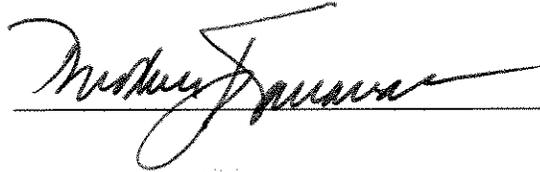
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**Date:** February 23, 2004  
**Bill Number:** Senate Amendment 2 (LRBa2191/1)  
**Moved by:** Senate Committee on Transportation and Information Infrastructure  
**Motion:** *Introduction and Adoption of Senate Amendment 2  
(LRBa2191/1) to Senate Bill 404.*

**Committee Member**  
Senator Ted Kanavas

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
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Signature:



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**Date:** February 23, 2004  
**Bill Number:** Senate Amendment 3 (LRBa2192/2)  
**Moved by:** Senate Committee on Transportation and Information Infrastructure  
**Motion:** *Introduction and Adoption of Senate Amendment 3  
(LRBa2192/2) to Senate Bill 404.*

**Committee Member**  
Senator Ted Kanavas

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature: \_\_\_\_\_



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Infrastructure**

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**Date:** February 23, 2004  
**Bill Number:** Senate Bill 404  
**Moved by:** Senate Committee on Transportation and Information Infrastructure  
**Motion:** *Passage of Senate Bill 404 as amended.*

**Committee Member**  
Senator Ted Kanavas

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
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Signature:



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Vote Record

**Committee on Transportation and Information  
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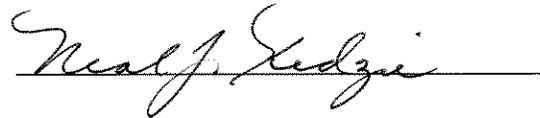
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**Committee Member**  
Senator Neal Kedzie

**Aye**  **No**  **Not Voting**

Signature:



Vote Record

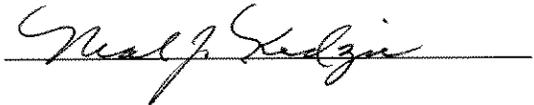
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**Committee Member**  
Senator Neal Kedzie

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
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Signature: 

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**Committee Member**  
Senator Neal Kedzie

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature:

  
\_\_\_\_\_

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Infrastructure

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**Bill Number:** Senate Bill 404  
**Moved by:** Senate Committee on Transportation and Information Infrastructure  
**Motion:** *Passage of Senate Bill 404 as amended.*

**Committee Member**  
Senator Neal Kedzie

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature: \_\_\_\_\_

*Neal J. Kedzie*

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**Committee Member**  
Senator Roger Breske

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature: \_\_\_\_\_

*Roger Breske*

Vote Record

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Infrastructure**

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**Committee Member**  
Senator Roger Breske

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
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**Committee Member**  
Senator Roger Breske

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature: \_\_\_\_\_

*Roger Breske*

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**Motion:** *Passage of Senate Bill 404 as amended.*

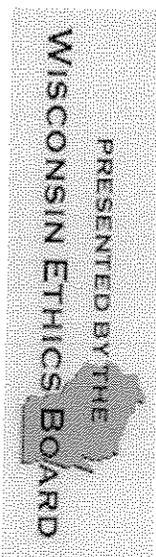
**Committee Member**  
Senator Roger Breske

<u>Aye</u>	<u>No</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature: \_\_\_\_\_

*Roger Breske*

- ▶ Home
- ▶ Lobbying in Wisconsin
- ▶ Organizations employing lobbyists
- ▶ Lobbyists



as of Tuesday, February 17, 2004

## 2003-2004 legislative session Legislative bills and resolutions

(search for another legislative bill or resolution at the bottom of this page)

Text, Sponsors and Analysis  
 Status and Fiscal Estimate  
 Lobbying Effort on this item  
**Senate Bill 404**  
 electronic transactions and records.

**These organizations have reported lobbying on this proposal:**

Organization	Interests	Date Notified	Position	Comments
State Bar of Wisconsin		1/30/2004	?	
Wisconsin Manufacturers & Commerce		2/16/2004	?	
Wisconsin Merchants Federation		2/6/2004	?	
Wisconsin Society of Architects		2/3/2004	?	

Select a legislative proposal and click "go"

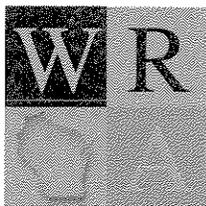
House

Proposal Type

Assembly  
 Senate  
 Bill  
 Joint Resolution  
 Resolution

Proposal Number

404 (enter proposal number)



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Web site: <http://www.wra.org>

Walter Hellyer, CRB, CRS, GRI, Chairman  
E-mail: [corky@propertydoor.com](mailto:corky@propertydoor.com)

William Malkasian, CAE, President  
E-mail: [wem@wra.org](mailto:wem@wra.org)

TO: All Legislators

FROM: Michael Theo and Rick Staff  
Vice Presidents - Wisconsin REALTORS® Association

DATE: February 18, 2004

RE: AB 755 and SB 404 – Uniform Electronic Commerce

The Wisconsin REALTORS® Association supports passage of AB 755 and SB 404, (the Uniform Electronic Transactions Act ("UETA")). Wisconsin businesses and consumers are at risk of becoming increasingly less competitive in the national and global marketplace because of the lack of an effective legal framework governing electronic commerce. Although the use of electronic commerce tools in our transactions may not be commonplace today, Wisconsin businesses and consumers are unlikely to begin the development of the tools and systems necessary for electronic commerce until the legal framework found in AB 755 and SB 404 is in place. Wisconsin REALTORS®, for example conduct transactions with parties located throughout the country and the world. Based upon the analysis of current state and federal law Wisconsin real estate transactions are not being conducted electronically despite the significant efficiencies that would benefit the parties, lowering costs and reducing the time required to purchase real estate. AB 755 and SB 404 should be adopted for the following reasons:

- Unlike current state and federal law, AB 755 and SB 404 provide a meaningful framework under which businesses and consumers can conduct transactions electronically.
- Wisconsin businesses and consumers will not begin the process of developing and using electronic commerce tools without the establishment of this framework.
- Wisconsin economic development will be hindered if Wisconsin falls further behind other states that have already adopted UETA-based e-commerce laws.
- Although some observers have noted that UETA does not include specific "consumer" protection provisions this observation can be misleading because UETA provides meaningful protections for all the parties to an electronic transaction - both business and consumer. Most importantly, these provisions protect the parties automatically throughout the entirety of the transaction.
- Congress and President Clinton saw the importance of state adoption of UETA to promote electronic commerce in this country. Although national regulation of electronic transactions was necessary to prevent inappropriate state regulations, federal law specifically provides for preemption of federal law by state legislation consistent with UETA, i.e. AB 755 and SB 404.

We urge your support for AB 755 and SB 404. As always, please do not hesitate to contact us for further information.



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## MEMORANDUM

**To:** Senate Committee on Transportation & Information Infrastructure  
**From:** **Business Law Section**  
**Public Interest Law Section**  
*State Bar of Wisconsin*  
**Date:** February 18, 2004  
**Re:** Senate Bill 404

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The State Bar's **Business Law Section** supports adoption of the Uniform Electronic Transactions Act (UETA) in Wisconsin in order to provide for uniformity in electronic transactions across the states, to allow Wisconsin to enact its own electronic transactions law rather than be preempted by the federal E-signatures law (E-Sign) and to ensure Wisconsin is placed squarely in the mainstream in the development of a legal infrastructure for e-commerce.

At its annual meeting in July 1999, the National Conference of Commissioners on Uniform State Laws (NCCUSL) approved UETA as a body of legislation validating the use of electronic records and electronic signatures. To date, 42 states and the District of Columbia have enacted UETA, while an additional three states (including Wisconsin) are currently considering the legislation.

Although E-Sign may import many of the provisions of UETA into the federal legislation, the two statutes are not identical. UETA is more comprehensive than the federal legislation - dealing with some subjects not addressed by E-Sign, while other issues are addressed in a different fashion.

For example, both statutes, exclude Articles 3-9 of the Uniform Commercial Code. Thus, neither UETA nor E-Sign affects the checking system, paper-based negotiable instruments or rules governing letters of credit or investment securities. Both statutes exclude statutes governing the creation and execution of wills and other testamentary instruments. UETA also excludes the Uniform Computer Information Transactions Act (UCITA), which is not excluded from the federal legislation.

Perhaps the most significant difference is the manner in which the two statutes deal with consumer protection issues. The federal legislation focuses on regulating the manner of consumer assent to deal electronically, while UETA emphasizes how parties are to comply with state consumer protection rules.

However, when passing UETA, the **Public Interest Law Section** believes it is important to preserve the consumer protections under E-sign.

The federal law contains important protections regarding consumer consent. It ensures that the consumer has reasonable access to a computer and the Internet to access information provided electronically, including having the software to read the electronic records provided. The federal law also requires that the consumer know that consent may constitute an agreement to receive information electronically in the future. Without these protections, a consumer who does not own a computer could sign a form contract allowing electronic notices for all vital information leaving them without the ability to receive or access the information.

E-sign also exempts out important notices such as termination of utility service, default, foreclosure and eviction notices, cancellation of health insurance, and product recalls. Congress determined these exemptions were needed because certain important documents need to retain their paper form. This is especially important to those who do not have the financial ability, capacity, or desire to access records electronically.

The Public Interest Law Section understands that an amendment is being drafted that would mirror the provisions of Assembly Amendment 2, which would preserve the above-described consumer protections contained in E-sign. The Section urges committee members to support this amendment.

In closing, we believe that UETA will not only improve the business climate for existing technology companies, but it will encourage similar firms to consider locating here. This legislation promotes public confidence in validity, integrity and reliability of electronic transactions, and it carefully balances the need to protect consumers against the burdens imposed by regulations that would impede electronic transaction with consumers.

**THEREFORE, THE BUSINESS LAW & THE PUBLIC INTEREST LAW SECTIONS  
URGE THE COMMITTEE TO PASS SB 404 AS AMENDED.**

*For more information contact Jason Westphal, Government Relations Coordinator, at (608) 250-6077 or [jwestphal@wisbar.org](mailto:jwestphal@wisbar.org).*



CONSUMER LAW LITIGATION CLINIC

**TESTIMONY BEFORE THE SENATE COMMITTEE ON  
TRANSPORTATION AND INFORMATION INFRASTRUCTURE  
REGARDING THE UNIFORM ELECTRONIC TRANSACTION ACT**

By Jessica Levie

February 18, 2004

Members of the Transportation and Information Infrastructure Committee:

My name is Jessica Levie. I am a law student participating in the Consumer Law Litigation Clinic at the University of Wisconsin Law School. The Consumer Law Litigation Clinic advocates for consumers on a variety of important public policy issues, including electronic commerce. Thank you for the opportunity to testify on an issue of grave importance to Wisconsin Consumers: S.B. 404, the Uniform Electronic Transactions Act. We support S.B. 404 as amended. Amendment 2 will ensure that Wisconsin consumers are willing participants in e-transactions and that certain important notices, such as evictions and utility shut-offs, are categorically exempt from e-transactions.

These consumer protections are already included in the Electronic Signatures in Global and National Commerce Act (E-Sign), federal e-commerce legislation. Because E-Sign was passed with a provision that a state's legislation on electronic transactions will preempt its authority, Amendment 2 merely ensures that the status quo of consumer protection in e-commerce will remain in Wisconsin.

There has been significant debate about whether the consumer consent provisions will frustrate the purpose of both UETA and E-Sign. However, in a report released in June 2001, the Federal Trade Commission and the U.S. Department of Commerce concluded, "the benefits of the consumer consent provision of E-Sign outweigh the burdens of its implementation on electronic commerce."

We urge you to support S.B. 404 as amended. Thank you.

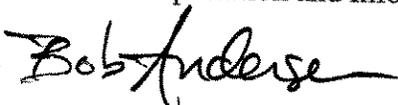
# LEGAL ACTION OF WISCONSIN, INC.

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TO: Senate Committee on Transportation and Information Infrastructure  
FROM: Bob Andersen   
RE: AB 755/SB 404 Uniform Electronic Transactions Act (UETA)  
DATE: February 18, 2004

**We are in favor of this proposal with the adoption of one amendment, which updates this proposal to include the recent recommendations of the National Conference of Commissioners on Uniform State Laws (NCCUSL), who created this legislation. The amendment was agreed to by NCCUSL and by the National Consumers Union. The agreement was that NCCUSL would advocate the adoption of this amendment in all the states that are considering adopting UETA. The one amendment needs to be adopted so that the provisions of this act will not displace the consumer protections of the federal "E-Sign" law. The federal "E-Sign" law recently enacted by Congress contains critically important consumer protections that UETA does not contain.**

**Attached is a copy of a memo from the National Consumers Union that includes the agreement that was made.** The language in that memo represents the one amendment that should be adopted to this bill, in order to preserve the consumer protections of federal E-Sign law.

This is a highly complex proposal that has a profound effect on contract law in this state, governing the making of agreements, the provisions of those agreements, and the enforcement of those agreements. It applies to all electronic communications and to paper communications that refer to electronic communications.

**Attached is a copy of relevant parts of a memo written by consumer advocates at the national level about the effect UETA would have without the adoption of the one amendment referred to above. As the memo indicates, as an illustration of the harm that could be done to consumers, without the amendment, this legislation allows for the possibility that a contract could be made between a merchant and a consumer that are subject to provisions that will be contained in e-mail, even though the consumer may not even have a computer.**



DODGEVILLE - Crawford, Grant, Iowa, Lafayette, Richland and Sauk Counties Phone (608) 935-2741 Toll-free (800) 873-0928 Fax (608) 935-2803

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LA CROSSE - Buffalo, Jackson, Juneau, La Crosse, Monroe, Trempealeau and Vernon Counties Phone (608) 785-2809 Toll-free (800) 873-0927 Fax (608) 782-0800

MIGRANT PROJECT - Statewide Phone (608) 256-3304 Toll-free (800) 362-3904 Fax (608) 256-0510

MILWAUKEE - Milwaukee and Waukesha Counties Phone (414) 278-7722 Toll-free (888) 278-0633 Fax (414) 278-7126

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RACINE - Kenosha, Racine and Walworth Counties Phone (262) 635-8836 Toll-free (800) 242-5840 Fax (262) 635-8838

By email

December 13, 2001

Ms. Julie Brill  
Office of the Vermont Attorney General

Re: Agreement between Consumers Union and NCCUSL for Standard Additions to UETA in State Legislatures to Preserve Application of E-Sign and its Exemptions

Dear Ms. Brill:

As you know, Consumers Union, the National Consumer Law Center, legal aid lawyers, and Attorneys General offices around the country have sought nonuniform changes in the Uniform Electronic Transactions Act (UETA) in order to clarify the federal E-Sign Act's consumer protections continue to apply in states which adopt UETA. These groups also have worked to ensure that the federal exemptions are repeated in a state's UETA.

Consumers Union and the National Conference of Commissioners on Uniform State Laws have agreed to amendments which the Conference will offer in each state where UETA is introduced in the future. In each such state, the Conference has agreed to add to UETA section 3(b)(4) the following language:

(A) This [Act] does apply to a transaction governed by the Electronic Signatures in Global and National Commerce Act, 114 Stat. 464, codified at 15 U.S.C. 7001, et seq., but it is not intended to limit, modify or supersede Section 101(c) of that Act, and

(B) To the extent that they are excluded from the scope of the Electronic Signatures in Global and National Commerce Act, 114 Stat. 464, 15 U.S.C. at 7003, this [Act] does not apply to a notice to the extent that it is governed by a law requiring the furnishing of any notice of—

(i) the cancellation or termination of utility services (including water, heat and power);

(ii) 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;

(iii) the cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities); or

(iv) recall of a product, or material failure of a product, that risks endangering health or safety; or

(v) a law requiring a document to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.

Note that the language refers only to an intent to preserve subsection 101(c), and not subsections 101(d) and (e). We could not get the Conference to agree to address all three provisions. Subsection 101(c) is the essential consumer consent provision.

The Chair of the UETA Drafting Committee also has agreed to a short addition to UETA's prefatory note which will state that UETA was drafted prior to E-Sign and was not intended to interfere with E-Sign. The Committee Chair and I are still working on the precise language of the addition to the prefatory note.

As part of this compromise process, Consumers Union has agreed to not seek additional nonuniform changes in states outside of California. Our agreement is conditioned on the Conference fulfilling its promise—to offer the two provisions dealing with the noninterference with section 101(c) of E-Sign and the exemptions in every state legislature in which it becomes aware that UETA is pending.

Our agreement does not bind other organizations. However, Consumers Union will not encourage others to seek additional nonuniform amendments.

Please inform those NAAG members who are anticipating future introductions of UETA that the Uniform Law Commissioners who act as liaison to their state legislatures should offer the two agreed-upon amendments. If these amendments do not appear in the version of a state UETA bill as first introduced, and are not offered promptly by the Conference, please call me at (415) 431-6747. I will remind the Conference of its agreement and ask it to see that the amendments are added. A copy of the Final Report of the Standby Committee for UETA is attached. You may wish to provide the report to those NAAG members who are anticipating introduction of UETA in their state legislatures.

The hard work and good results of many Attorneys General offices in winning nonuniform UETA amendments set the stage for these new amendments. Thanks to you and all the NAAG Task Force members for this work.

Very truly yours,

Gail Hillebrand  
Senior Attorney  
Consumers Union  
1535 Mission St.  
San Francisco, CA 94103  
415-431-6747 (phone)  
415-431-0906 (fax)  
[hillga@consumer.org](mailto:hillga@consumer.org)

# Uniform Electronic Transactions Act. Consumer Protections Needed.

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**(1) Consumer Consent to Electronic Agreement. 4/5ths Identical to Federal E-Sign Act**

Remember that above federal E-sign and UETA both say that any state law that requires something to be in writing now means that it can be in electronic form.

Suppose a consumer is buying a used car. The consumer walks into the office to finish and sign "paperwork":

(1) What if the contract the consumer signs is on paper, but it says that all future notices and communications from the dealer/lender to the buyer of the car that the law requires to be in writing can be done by e-mail? Or,

(2) What if the consumer at the car lot walks into the finance person's office and is told to sit down at a computer screen and a keyboard. The whole transaction is then done electrically. And language hidden at the bottom of a screen says that all future notices and communications from the dealer/lender to the buyer of the car that the law requires to be in writing can be done by e-mail? And the consumer does not even own a computer.

Under UETA both of these are OK!

Federal E-Sign gives some consumer protections that need to be specifically incorporated into this state's law. And by incorporating them into state law, these protections will be applied to writings other than just the notices that the Federal E-Sign applies to.

- (1) The consumer must specifically agree to have the contract and all future notices and communications to be in electronic form.
- (2) If the agreement to do any of the transaction electronically is in writing:
  - (a) The consumer must be advised of the hardware and software necessary to copy the contract and receive all future notices, and
  - (b) The consumer must confirm that the consumer has the hardware and software to do so.
- (3) If this is an electronic transaction with the consumer sitting at home and with the dealer at the shop then it is apparent that the hardware and software are working together right so, the consumer must be advised.
  - (i) Whether this applies to just this one transaction or additional future transactions.
  - (ii) What to do to get a paper copy of the information.
  - (ii) The way to withdraw from electronic communications and the consequences (including an end to the transaction between the parties).

- (4) If the non-consumer party later changes hardware or software requirements so that there will be a material risk of the consumer's ability to access or retain the information then the consumer has to re-consent by the same process again.

So far everything is as exactly as in the Federal /E-Sign Act. One additional provision is requested for this state's statute. So far this has only been about things that are required to be in writing by a statute. However, there are things in the car sales contract that are in writing even though the statute does not require them to be in writing.

- (5) Consumers in this state would also like a provision in this state's statutes which says that even for information that is not required by statute to be in writing, the consumer has to consent to that information being provided electronically. They would also like the requirement that the protections of the hardware and software will work for future electronic notices.

**(2) Document Retention and Integrity.**

**Identical to Federal E-Sign Act**

Both Federal E-Sign and UETA say that what used to have to be in writing can now be an electronic record. This includes the creditor's copy of a contract etc. But what if the electronic record is in a format only the creditor's computer can read, and the consumer's computer cannot read it? None of the reasons to have something writing are satisfied by that!

That is the reason the Federal E-Sign Bill says, and why this state's statute should say, that an electronic record must be "capable of being retained and accurately reproduced for later reference all the parties.

UETA appears to have the same intent, but does not clearly state that *each* party has to be able to retain the record.

**(3) Recorded phone call.**

**Similar to Federal E-Sign Act**

Again, the e-sign statute and UETA say that any existing statutory requirements for something to be in writing can be satisfied by an electronic record. A tape recording of a telephone call is an electronic record! However, a tape recording of a phone call does not satisfy any of the reasons that our statutes would have required something to be in writing. This previous prohibits recordings from replacing writings.

**(4) Special exceptions.**

**Identical to Federal E-Sign Act**

There are just some things that the state statute requires to be in writing which should always have to be in writing. The notice can be sent electronically too, but there still just should have to still be a written copy.

These are the writing requirements that the Legislature put in the statutes because the Legislature thought the information required to be in writing because it was too important to have misunderstandings, because it should not be changeable, and because people should be on notice it is important. In short, these are not the writing requirements that were put in the statute just because no one knew about electronic transactions at the time. These are writing requirements because the writings are so important that they should be in writing every time, and not received orally, or by some e-mail.

Also some of these are notices that are likely to be sent to the consumer when the consumer is so broke that he probably is no longer paying for his e-mail service or web access so it is likely not to be working.

One reason that a lot of these kinds notices get sent to consumers is because they are in financial straights. If that is the case, they probably have quit paying for their Internet service.

The kinds of notices that have to be in writing under Federal E-Sign are:

- (1) Notice of cancellation of utilities.
- (2) Notice of default and right to cure default.
- (3) Notice of termination of an insurance policy.
- (4) Recall notices.
- (5) Written information that a company has hazardous materials.

The State must add these same exceptions to UETA. If it does not, the state writing requirement disappears, so there is no requirement left for E-Sign to preserve!

We may wish to add some additional statutes of this state here.

**(5) Definition of Consumer.**

**For this article -- adapted to WV**

The new sections in this state's consumer protection statutes need to have a definition of "consumer", or refer to an appropriate definition of a consumer.

**(6) Non-Waiver.**

**New**

The law should not allow fine print language in written agreements or fine print at the bottom of a web site window, to waive the requirements of this new article.

**(7) Respond in Kind.**

**New**

Many state statutes require consumers to receive a written notice of the right to cancel a contract. This is often called a "cooling off" period.

Again, UETA and E-Sign will allow the contract in question, with the consumer's consent, to be an electronic record. In addition, with the consumer's consent, the contract can provide that all future notices the consumer receives (including the right to cancel) can be electronic.

If the seller wants to do that, if the seller wants to send an e-mail notice of the right to cancel (usually because it is the easiest, quickest thing for the creditor to do), then the consumer ought to be able to cancel the same way. E-mail notice of right to cancel from the seller -- E-mail cancellation by the consumer. A seller who insists on having the ability to send a consumer a notice by e-mail should not be able to require the consumer to respond to the notice in writing in the U.S. Mail.

**(8) "Receipt."**

**New -- Left to state law**

If a room full of people was asked "How many of you have had some trouble with the United States Mail mailbox on the outside of your house?" how many would raise their hands? No one -- or almost no one.

Ask the same room full of people, "How many of you would raise your hands if I asked if any of you had trouble with the mailbox for your e-mail or your Internet service provider?" A lot of your hands would go up.

E-mail and electronic transactions are great but they are just simply not as reliable as U. S. Mail. Here is one common example. If you move from one house to another, you notify the post office and reliably, for at least a year, the U.S. Post Office will forward your mail to you. If you change your e-mail box from one Internet Service Provider to another, none of them offer mail forwarding after you quit paying them money.

According to the congressional record, the E-Sign Bill leaves up to other state law to decide what "receipt" is good enough for electronic receipt. Some state statutes and some court decisions use the "mail box rule." Under the mailbox rule, when the sender puts the message in the U. S. Mail, it is presumed to be received by the addressee. But, when the mail box rule was used, no one was thinking about e-mail! We cannot make those presumptions about e-mail the way we can about U. S. Mail.

Fortunately, e-mail does have a partial answer. Electronic mail can require the recipient to acknowledge its receipt at the time of the opening of the mail. In addition the recipient can acknowledge voluntarily that the mail was received.

This provision makes sure that for something to be legally received, it really was received.

**(9) Time Periods.**

New

Lots of state laws say that the consumer has, for example, "ten days after receipt" "or ten days after sent" to take some action. When is electronic information sent or received? Maybe the "mailbox rule" is reasonable when the US Mail is being used. But not e-mail, which is much less reliable and has other problems. What if the written contract had a space for e-mail and the consumer wrote down the e-mail address and did not notice fine print that said important notices could go to that address? What if the consumer changes e-mail addresses -- unlike the US Mail there is no forwarding address service.

I have a friend who is not allowed to use his work e-mail for personal matters. I can send him a personal e-mail and not get it back for days and days. If he is required to do something ten days from a notice, how does anyone know when he received that notice?

The receipt acknowledgment function of e-mail programs can help out here. The time period should begin to run from when the consumer actually opens the notice, the date the consumer acknowledges receipt of the electronic notice, or, if earlier, the date on which the e-mail software sends an acknowledgment back to the sender confirming that the message was received and opened by the consumer.

**(10) Effect of Gibberish.**

New -- UETA leaves to other state law

Ever open an e-mail or a document and just get a gibberish of squares and ones and zeros?

UETA says that the effect of sending or receipt of information is a separate question from whether it is intelligible. It says the effect of unintelligible messages is left to other law. This provision would supply the other law.

The provision would say that the information is not sent to or received by the consumer until it is received in a manner in which it can be opened, read, stored and printed by the recipient.

**(11) Face to Face Sale Protections.**

New

A door to door salesperson comes by and shows the lady of the house a bunch of flashy materials and examples and brochures about what is being sold. The lady of the house agrees. The man opens up a laptop (so the consumer can look at the screen) tells the consumer she is welcome to scroll down to see all the stuff in the agreement and when she is done to click "agree". If she had scrolled all the way to the bottom, she would have seen a notice of right to cancel, a cooling off period. That is not enough notice. Because was a face to face transaction, and because a presentation was made with written materials, any notice of right to cancel should be in writing to match the presentation.

This provision would not apply to an Internet sale where there was not a face to face meeting and sales pitch based on written materials.

**(12) Jurisdiction/Venue/Choice of Law Protection.**

**New**

Suppose a consumer buys something over the Internet in an electronic transaction. Things go bad and the consumer wants to sue. Where can the consumer sue? Which state's laws apply?

When answering these questions, at some point the courts may ask "In which state did the transaction take place?" Did the transaction take place inside of the homeowner's computer? Or would a court (not necessarily a court of this state) rule that since the transaction took place on a web site owned by an Oregon company located on a server in California, the transaction did not occur in this state? This provision will try to bolster the argument that the transaction will be determined to have taken place in this state.

**(13) Dual Payment Protection.**

**New**

This is a relatively technical amendment relating to consumer security agreements in a form called "Chattel Paper". This provision is advisable to make sure that the consumer is not somehow stuck in paying two different people to satisfy the provisions of duplicate electronic security agreements in the event that the encryption system or other feature of the electronic chattel paper is "hacked" or fails.

**(14) E-Signed Preemption For This Article.**

**New**

In order to qualify for the preemption provision of the Federal E-Sign Act, this new Article needs to refer to the Act. IN the event of a successful court decision saying that this Act does not meet the federal E-sign preemption qualifications, then in order to preserve the federal consumer protections, the second sentence provides that this state's enactment of UETA does not apply to consumer transactions.



# TED KANAVAS

## STATE SENATOR

**Date:** Wednesday, February 18, 2004

**To:** Members of the Senate Committee on Transportation and Information Infrastructure

**From:** Senator Kanavas

**Re:** Testimony in support of SB 404 - relating to: electronic transactions and records

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Chairman Leibham and members of the Senate Transportation and Information Infrastructure Committee, I greatly appreciate the opportunity to submit my testimony on Senate Bill 404.

Representative Nischke, Senator Cowles and I offered this legislation to enact a version of the Uniform Electronic Transactions Act (UETA), which was approved and recommended for enactment by the National Conference of Commissioners on Uniform State Laws in 1999. Generally, UETA establishes a legal framework that facilitates and validates certain electronic transactions. This bill enacts UETA in Wisconsin with minor changes necessary to incorporate the Act into the existing statutes.

Currently, a combination of state and federal laws govern the use of electronic documents 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. We were careful to draft this bill, so UETA would not be pre-empted by E-sign.

After hearing valuable input from a number of our colleagues in the Legislature, consumer advocacy groups, business groups, state agencies and attorneys that deal with contract law, we have introduced three agreed-upon amendments to SB 404:

**Senate Amendment 1** - This is the same amendment that was adopted by the full Assembly to AB 755, which is a companion to SB 404. Specifically, the

-more-

amendment provides that in addition to the requirements of UETA, a governmental unit that has custody of a record is also further subject to the retention requirements for public records of state agencies, and the records of the University of Wisconsin Hospitals and Clinics Authority and the retention requirements for documents of local governmental units. In addition, the amendment grants the request of DFI to give the rule making authority to DOA.

**Senate Amendment 2** – This amendment to AB 755 was introduced by Representative Richards in the Assembly but was tabled on the floor of the Assembly. After further research, it has been agreed to by all parties. The affect of this amendment is to protect certain consumer protections contained in the federal E-Sign legislation. In particular, the amendment specifically brings into the legislation the current consumer disclosures that are required under the E-Sign law. It also says UETA will not apply to notices relating to the cancellation or termination of utility services, including water, heat, and power service; 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; the cancellation or termination of health insurance or benefits or life insurance benefits, excluding annuities; or the recall of a product, or material failure, that risks endangering health or safety.

**Senate Amendment 3** – This is an amendment that was not introduced in the Assembly. It was requested by the Wisconsin Courts to exempt certain records kept by the courts. Documents relating to adoption, divorce and other matters of family law would be exempt. Also, notices provided by a court, court orders, or official documents, including briefs, pleadings and other writings, required to be executed in connection with court proceedings, would be exempt from UETA.

For further explanation of these amendments, please see the Legislative Council Memo, ***Senate Bill 404, Relating to Uniform Electronic Transaction Act***, which is attached to my testimony.

Again, these amendments represent a compromise by all of the parties involved and I would greatly appreciate your support for SB 404 as amended.



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## WISCONSIN LEGISLATIVE COUNCIL

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*Terry C. Anderson, Director  
Laura D. Rose, Deputy Director*

TO: SENATOR TED KANAVAS

FROM: Russ Whitesel, Senior Staff Attorney

RE: Senate Amendments 1, 2, and 3 to Senate Bill 404, Relating to the Uniform Electronic Transaction Act

DATE: February 17, 2004

### **BACKGROUND**

In 1999, the National Conference of Commissioners on Uniform State Laws approved the Uniform Electronic Transactions Act (UETA) and recommended for enactment in all the states. Generally, UETA establishes a legal framework that facilitates and validates certain electronic transactions. According to the analysis prepared by the Legislative Reference Bureau, Senate Bill 404 enacts UETA in Wisconsin, with minor nonsubstantive changes necessary to incorporate the act into the existing statutes. Senate Amendments 1, 2, and 3 were introduced by Senator Kanavas on February 17, 2004.

### **PROVISIONS OF AMENDMENTS**

#### **Senate Amendment 1**

Senate Amendment 1 makes a series of changes in the original legislation. Included in those changes are the following:

1. The original bill included exemptions from certain provisions of the public records law in ch. 16. Specifically, language was added to three sections to provide that the current law relating to microfilm reproduction (s. 16.61 (7), Stats.), transfer of records to optical discs and electronic storage of documents (s. 16.611 (2) (e), Stats.), and regulation of local government records (s. 16.612 (2), Stats.) did not apply to documents or public records governed by s. 137.20 which relates to the retention of electronic records and originals.

Assembly Amendment 1 **removes** these exemptions from the public records law from the bill, retaining current law with respect to those public records and retention by governmental units.

Specifically, the amendment provides that in addition to the requirements of UETA, a governmental unit that has custody of a record is also further subject to the retention requirements for public records of state agencies, and the records of the University of Wisconsin Hospitals and Clinics Authority and the retention requirements for documents of local governmental units.

In addition, the draft provides the State Public Records Board the authority to promulgate rules prescribing standards consistent with the UETA law for retention of records by state agencies, the University of Wisconsin Hospitals and Clinics Authority, and local governmental units.

2. Under the original legislation, the rule-making authority currently in existence for the Department of Financial Institutions relating to electronic signatures was amended to authorize the rule-making authority relation to electronic records. The amendment *deletes* this rule-making authority and provides the Department of Administration (DOA) with authority to promulgate rules concerning the use of electronic records and electronic signatures by governmental units, which will govern the use of electronic records or signatures by governmental units unless otherwise provided by law. This provision also provides that the rules shall include standards regarding the receipt of electronic records or electronic signatures that promote consistency and interoperability with other standards adopted by other governmental units of this state and with other states and the federal government and with nongovernmental persons interacting with governmental units of this state. Further, Assembly Amendment 1 provides that the standards may include alternative provisions if warranted to meet particular applications.

The amendment also authorizes DOA to promulgate emergency rules to implement its rule-making authority and permits DOA to adopt such emergency rules as are necessary without being required to provide a finding of emergency for the proposed rules.

3. The amendment makes a series of nonsubstantive numbering and revisions to the bill to accommodate the changes made by Assembly Amendment 1.

### Senate Amendment 2

Senate Amendment 2 to 2003 Assembly Bill 755, makes a series of changes to the original legislation.

Specifically, the amendment provides:

1. That the bill would apply to a transaction that is governed by the federal Electronic Signatures in Global and National Commerce Act ("E-Sign"), but the statutes are not intended to limit, modify, or supersede 15 U.S.C. s. 7001 (c). Section 7001 (c) relates to consumer protection provisions in E-Sign.

2. That, to the extent that it is excluded from the scope of 15 U.S.C. s. 7003, the bill does not apply to a notice to the extent that is governed by a law requiring the furnishing of any notice of:

- a. The cancellation or termination of utility services, including water, heat, and power service.
- b. 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.

- c. The cancellation or termination of health insurance or benefits or life insurance benefits, excluding annuities.
  - d. Recall of a product, or material failure, that risks endangering health or safety.
  - e. A law requiring a document to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.
3. The amendment also makes two numbering changes to accommodate the additional language inserted by the amendment.

The affect of the first portion of the amendment (see item 1., above) is to protect certain consumer protections contained in the federal E-Sign legislation. In particular, the amendment specifically brings into the legislation the current consumer disclosures that are required under the E-Sign law. Those provisions relate to providing consent to electronic records, preserving certain consumer protections with regard to electronic transactions, regulating verification or acknowledgement and providing regulations related to the failure to obtain electronic consent, or confirmation consent. In addition, language is included to deal with the prospective effective in any consent as well as the legal basis for prior consent. Finally, the provisions provide that an oral communication or recording of an oral communication cannot qualify as an electronic record for purposes of the consumer protection section except as otherwise provided under applicable law.

The second set of changes relating to the specification of particular notices (see item 2., above) is focused on providing that the proposed state UETA legislation does not override the current exclusions under the current federal E-Sign legislation. These provisions are currently part of E-Sign.

It should be noted that language of the proposed amendment has been reviewed by the staff of the National Conference of Commissioners on Uniform State Laws (NCCUSL) and in their opinion adoption of this language would not adversely affect the preemption of state laws that can occur when nonstandard substantive provisions to UETA are adopted by a state legislature. It is also language that has been negotiated by NCCUSL and the Consumer's Union. Thus, the intent of the amendment is to provide the same basic consumer protections that are contained in the federal E-Sign law that, without enumeration in the state legislation, may be subject to an argument that they have been preempted by the adoption of the UETA language at the state level.

### **Senate Amendment 3**

Senate Amendment 3 makes the following changes in the bill:

1. The amendment provides that the legislation does not apply to any of the following records or any transaction evidenced by any of the following records:
  - a. Records governed by any law relating to adoption, divorce, or other matters of family law.
  - b. Notices provided by a court.
  - c. Court orders.

- d. Official court documents, including briefs, pleadings, and other writings, required to be executed in connection with court proceedings.

These exemptions are parallel to the exemptions currently contained in the federal E-SIGN legislation.

2. The amendment also amends language in the bill relating to documentation and evidentiary determinations. The original legislation provided that s. 889.29 (1), Stats., did not apply to records governed by s. 137.20, as created by the proposed legislation. The amendment provides instead that under this section, no such record is inadmissible solely because it is in electronic format.

3. The original legislation also amended s. 910.03, Stats., relating to admissibility of duplicates. The bill stated that the section did not apply to records of transactions governed by s. 137.21. That language is deleted and the amendment provides that no duplicate under this section is inadmissible solely because it is in electronic format.

4. The amendment also makes two numbering changes to accommodate the proposals contained in the amendment.

If you have any questions regarding these amendments, please feel free to contact me directly at the Legislative Council staff offices.

RW:tlu