



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2003 Wisconsin Act 294 [2003 Assembly Bill 755]	Electronic Transactions and Records
2003 Acts: www.legis.state.wi.us/2003/data/acts/	Act Memos: www.legis.state.wi.us/lc/act_memo/act_memo.htm

In 1999, the National Conference of Commissioners on Uniform State Laws approved the Uniform Electronic Transactions Act (UETA) and recommended it for enactment in all the states. UETA establishes a legal framework that facilitates and validates certain electronic transactions.

Act 294 enacts UETA in Wisconsin, with minor, nonsubstantive changes necessary to incorporate the Act into existing statutes. Wisconsin joins 44 other states that have enacted UETA.

UETA generally provides that, upon mutual agreement of the parties, electronic records and electronic signatures will have the same legal effect and enforceability as written records.

Key Provisions of the Act

The Act includes a series of definitions to govern the use and application of the UETA provisions. The Act defines “electronic record” to mean a record that is created, generated, sent, communicated, received, or stored by electronic means. “Electronic signature” is defined to mean an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. “Record” is defined as information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in a perceivable form.

The Act also defines “government unit,” “state,” “agreement,” and “transaction” as well as other terms used throughout the Act.

The Act provides that a record or a signature may not be denied legal effect or enforceability solely because it is in electronic form. However, the Act does not require a record or signature to be created or otherwise processed or used by electronic means or in electronic form; the Act applies only to transactions between parties who have agreed to conduct transactions by electronic means. The

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents.

determination of whether the parties have agreed to conduct a transaction by electronic means is to be determined from the context and surrounding circumstances, including the parties' conduct. The Act does permit its terms to be varied by agreement.

The law requires that the Act be construed and applied to facilitate electronic transactions consistent with other applicable law and be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices. Further, the Act is to be construed to effectuate its general purpose to make uniform the law with respect to the statutes enacted by other states under the title of UETA.

The Act specifically provides that if the parties have agreed to conduct a transaction by electronic means and a law requires a person to provide additional information in writing to another person, a party may satisfy this requirement if the information is provided in an electronic record capable of retention by the recipient at the time of receipt. In cases where another law requires a record to be posted or displayed in a certain manner or to be sent or transmitted by a specific method or to contain information that is formatted in a certain manner, then that record must be posted, sent, or contain the information formatted in the manner specified in the other law.

The Act also provides for the attribution and effect of electronic records and electronic signatures, and includes a series of provisions relating to changes in a record or errors contained in a record.

The Act provides that if a law requires a signature on a record to be notarized, the requirement is satisfied if an electronic signature of the person authorized to administer the oath or make the notarization together with all other information required to be included under other applicable law, is attached to or logically associated with the signature or record.

The Act provides for certain standards that must be met for the retention of electronic records and original records. Generally, these require that the retained record must accurately reflect the information set forth in the record after it was first generated in final form and it must remain accessible for later reference. These requirements apply to all electronic transactions. However, an amendment to the legislation deleted provisions that would have exempted governmental entities from existing state standards relating to public records and records retention, so governmental entities must continue to comply with existing standards in the statutes and administrative rules.

The Act provides that in a proceeding, a record or signature may not be excluded as evidence solely because it is in electronic form.

Provisions are also included in the Act relating to automated transactions and standards to be used to determine the time and place of the sending and receipt of the electronic record.

The Act provides that a transferable record that would be a note under ch. 403 or a record under ch. 407, Stats., if the electronic record were in writing, may qualify as an electronic record under the Act.

The Act also provides that certain transactions are exempt from coverage under the Act. Specifically, the Act does not apply to any of the following records or transactions 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; or (d) official court documents, including briefs, pleadings, and other writings, required to be executed in connection with court proceedings.

Further, the Act 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 including annuities; (d) recall of a product, or material failure of a product, that risks endangering health or safety; or (e) a law requiring a document to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.

In addition, the Act applies to a transaction governed by the Federal Electronic Signatures in Global and National Commerce Act (“E-Sign”), but the Act is not intended to limit, modify, or supersede certain provisions contained in 15 U.S.C. s. 7001. Thus, the Act allows the state to avoid preemption of its laws by the federal E-Sign law.

The Act also provides that the Department of Administration (DOA) shall promulgate rules concerning the use of electronic records and electronic signatures by governmental units. These rules must include standards regarding the receipt of electronic records or electronic signatures that promote consistency and interoperability or compatibility with other standards adopted by other governmental units of the state as well as other states and the federal government and nongovernmental persons interacting with governmental units of the state. The Public Records Board is also given rule-making authority to prescribe standards for retention of records under the Act.

The Act makes other changes in Wisconsin statutes to accommodate the provisions of UETA.

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