

2003 Assembly Bill 755

Date of enactment: **April 20, 2004**

Date of publication*: **May 4, 2004**

2003 WISCONSIN ACT 294

AN ACT *to repeal* 137.04, 137.06 and 224.30 (2); *to renumber* 137.05 (title); *to renumber and amend* 137.05; *to amend* chapter 137 (title), subchapter I (title) of chapter 137 [precedes s. 137.01], 137.01 (3) (a), 137.01 (4) (a), 137.01 (4) (b), subchapter II (title) of chapter 137 [precedes 137.04], 889.29 (1), 910.01 (1), 910.02 and 910.03; and *to create* 137.11 to 137.24, 137.25 (2) and 137.26 of the statutes; **relating to:** electronic transactions and records and granting rule-making authority.

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

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

CHAPTER 137

AUTHENTICATIONS AND ELECTRONIC TRANSACTIONS AND RECORDS

SECTION 5. Subchapter I (title) of chapter 137 [precedes s. 137.01] of the statutes is amended to read:

CHAPTER 137

SUBCHAPTER I

NOTARIES AND COMMISSIONERS OF DEEDS; NONELECTRONIC

NOTARIZATION AND ACKNOWLEDGEMENT

SECTION 6. 137.01 (3) (a) of the statutes is amended to read:

137.01 (3) (a) Every Except as authorized in s. 137.19, every notary public shall provide an engraved official seal which makes a distinct and legible impression or official rubber stamp which makes a distinct and legible imprint on paper. The impression of the seal or the imprint of the rubber stamp shall state only the following: "Notary Public," "State of Wisconsin" and the name of

the notary. But any notarial seal in use on August 1, 1959, shall be considered in compliance.

SECTION 7. 137.01 (4) (a) of the statutes is amended to read:

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

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

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

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

* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

CHAPTER 137
SUBCHAPTER II
ELECTRONIC SIGNATURES
TRANSACTIONS AND RECORDS:
ELECTRONIC NOTARIZATION
AND ACKNOWLEDGEMENT

SECTION 10. 137.04 of the statutes is repealed.

SECTION 10t. 137.05 (title) of the statutes is renumbered 137.25 (title).

SECTION 11. 137.05 of the statutes is renumbered 137.25 (1) and amended to read:

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

SECTION 12. 137.06 of the statutes is repealed.

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

137.11 Definitions. In this subchapter:

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

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

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

(4) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this subchapter and other applicable law.

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

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

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

(8) "Electronic signature" means 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.

(9) "Governmental unit" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2m) This subchapter 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.

(2p) This subchapter applies to a transaction governed by the federal Electronic Signatures in Global and National Commerce Act, 15 USC 7001, et seq., but this subchapter is not intended to limit, modify, or supersede 15 USC 7001 (c).

(2r) To the extent that it is excluded from the scope of 15 USC 7003, this subchapter does not apply to a notice to the extent that it 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 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.

(3) This subchapter applies to an electronic record or electronic signature otherwise excluded from the application of this subchapter under subs. (2), (2m), and (2r) to the extent it is governed by a law other than those specified in subs. (2), (2m), and (2r).

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

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

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

(2) This subchapter applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is

determined from the context and surrounding circumstances, including the parties' conduct.

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

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

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

137.14 Construction. This subchapter shall be construed and applied:

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

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

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

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

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

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

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

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

(2) If a law other than this subchapter requires a record 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, then:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Remains accessible for later reference.

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

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

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

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

(6) (a) Except as provided in sub. (6), a record retained as an electronic record in accordance with sub. (1) satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted

after the effective date of this paragraph [revisor inserts date], specifically prohibits the use of an electronic record for the specified purpose.

(b) 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 established under ss. 16.61, and 16.611 and the retention requirements for documents of local governmental units established under s. 16.612.

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

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

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

137.22 Automated transactions. In an automated transaction:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) A system satisfies the requirements of sub. (2), and a person is deemed to have control of a transferable

record, if the transferable record is created, stored, and assigned in such a manner that:

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

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

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

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

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

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

(4) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in s. 401.201 (20), of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under chs. 401 to 411, including, if the applicable statutory requirements under s. 403.302 (1), 407.501, or 409.330 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable record of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and endorsement are not required to obtain or exercise any of the rights under this subsection.

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

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

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

137.25 (2) The department of administration shall promulgate rules concerning the use of electronic records and electronic signatures by governmental units, which shall govern the use of electronic records or signatures by governmental units, unless otherwise provided by law. 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 other states and the federal government and nongovernmental persons interacting with governmental units of this state. The standards may include alternative provisions if warranted to meet particular applications.

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

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

SECTION 15am. 224.30 (2) of the statutes is repealed.

SECTION 18. 889.29 (1) of the statutes is amended to read:

889.29 (1) If any business, institution or member of a profession or calling in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, or to be recorded on an optical disk or in electronic format, the original may be destroyed in the regular course of business, unless its preservation is required by law. Such reproduction or optical disk record, when reduced to comprehensible format and when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction of a record or an enlarged copy of a record generated from an original record stored in optical disk or electronic format is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original. No such record is inadmissible solely because it is in electronic format.

SECTION 19. 910.01 (1) of the statutes is amended to read:

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

SECTION 20. 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, s. 137.21, or by other statute.

SECTION 21. 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. No duplicate is inadmissible solely because it is in electronic format.

SECTION 21m. Nonstatutory provisions.

(1) Using the procedure under section 227.24 of the statutes, the department of 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.

SECTION 22m. Initial applicability.

(1) The treatment of sections 137.01 (3) (a) and (4) (a) and (b), 137.04, 137.05 (title), 137.06, 137.11 to 137.24, 137.25 (2), 889.29 (1), 910.01 (1), 910.02, and 910.03, subchapters I (title) and II (title) of chapter 137, and chapter 137 (title) of the statutes and the renumbering and amendment of section 137.05 of the statutes first apply to electronic records or electronic signatures that are created, generated, sent, communicated, received, or initially stored on the effective date of this subsection.