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ROLL NUMBER

DESCRIPTION

2192

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2192

# 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2192**

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 31, 2007**

Recorder Job Number: **2424**

Committee Clerk Signature 

Minutes:

**Marilyn Foss – General counsel for ND Bankers Association - In Favor**

**TESTIMONY # 1** Goes over testimony. Gives specific legal recognition on electronic signature maintenance by bank. Word-for-word from corporations act. Chapter 916, excluded transactions important to banks, bank deposits, transfers and secure transactions were carved out and excluded. With continual grown it is needed. The bill cannot challenge it because it is in electronics.

**S Klein:** This is not just banks, also other areas of commerce?

**M Foss:** Yes. Talks about banking records, anyone with an issue w/banks. Also credit unions.

**S Potter:** How prove is fraud in these case, is there any, in electronic signatures?

**M Foss:** Actually, depending on system to do electronic transaction, you need 2 people. To do a transaction, you have to have the consent of the other person, they both have access to the transaction. Printed versions need to be the same. It doesn't eliminate the paper.

**S Potter:** Would you recommend an amendment?

**M Foss:** No.

**Bob Entringer – Assistant Commissioner, Dept. of financial Institutions - In Favor**

**TESTIMONY # 2**

**S Hacker:** Can you give me an example?

**B Entringer:** For bank purposes, Marilyn and both our offices, our goal is to have those electronically signed. Signature has to be notarized, that we can't do electronically.

**S Hacker:** If the signature needs a notary, are we eliminating that?

**B Entringer:** Not sure. Notary cannot do it electronically. I think it has to be in writing.

**M Foss:** Example: since the exclusions in 916 are specific in banks, deposits and collections, transfers; transfers run over computers one to another, may be ambiguity about that. Another exclusion in 916 is security interests.

**S Hacker:** Get this clear, it does not affect notaries.

**M Foss:** There would be no affect on notaries at this time.

**S Wanzek:** Say there is a document that I need to sign but need it notarized, can I do that electronically and transfer that information if the notary signature is on?

**M Foss:** The Secretary of State will have to hear that. We're trying to keep the sanctity of the notary.

**S Potter:** In the future, will this eliminate notaries?

**M Foss:** No, but will be working on ways to make notarization be able to be done by electronic means, but I don't think we're there yet.

## **NEUTRAL POSITION**

**Bruce Hicks – Assistant Director Oil and Gas Division – Indus. Comm. - *Neutral***

### **TESTIMONY # 3** Goes over testimony

**S Klein:** Your concern is the opportunity for someone to force a document and pass as someone else's signature. Wouldn't you think the banking industry would also have that concern?

**B Hicks:** I think they're required to take what the person wants to use in an electronic signature. There needs to be some language that there is a mutually agreed upon signature and then they would have some security requiring securely embedded rather than just an attachment to the document. Someone can use it on another document without the other person even knowing it. If you had something embedded in it, it would give some verification to the process.

**S Potter:** This bill only regards legal recognition. You can't throw out a contract because of an electronic signature.

**B Hicks:** Definitions, contain items have to be approved to be accepted.

**S Klein:** Have you visited with banking? You need to get together to get your questions answered.

**Q? O? N?**

**CLOSE**

# 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2192 B**

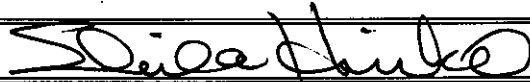
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 31, 2007**

Recorder Job Number: **2444**

Committee Clerk Signature



Minutes:

**S Klein:** Government agencies are regulated under different chapter, so that wouldn't apply to them anyway, it's a consensual thing, you aren't forced to accept electronic record, but you can't. It's all about giving the ability.

**Do Pass S Wanzek**

**Second by Hacker**

**Roll: 6-0 -1**

**Carrier S Hacker**

**CLOSED**

Date: 1-31

Roll Call Vote: 1

### 2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2192

Senate INDUSTRY BUSINESS & LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Wanzek Seconded By Hacker

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Arthur Behm	✓	
Vice Chair Nicholas Hacker	✓		Senator Joel Heitkamp	✓	
Senator John Andrist			Senator Tracy Potter	✓	
Senator Terry Wanzek	✓				

Total Yes 6 No 0

Absent 1

Floor Assignment Hacker

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2192: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2192 was placed on the Eleventh order on the calendar.**



2007 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2192

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2192**

## House Industry, Business and Labor

Check here for Conference Committee

Hearing Date: **5 March 2007**

Recorder Job Number: **4337**

Committee Clerk Signature

*Jan Prindle*

Minutes:

**Chairman Kaiser opened the hearing of SB 2192.**

**Marilyn Foss, general counsel for the ND Bankers Association, testified in favor of the bill. (Testimony Attached.)**

**Representative Ruby:** I can think some entities that are so particular that the original document be signed that they require leaving the pen to make sure it's not a copy. Has the status of that changed? Is that not as important as it used to be?

**Foss:** It is clear that more entities have become more comfortable doing business electronically and that the security for electronic transactions has improved. Nonetheless, under this bill and chapter if an entity or person chose to do business in writing that right is preserved.

**Chairman Kaiser:** Is a debit card an electronic statement? A legal, accepted one?

**Foss:** Yes, it certainly is. It's not that it's illegal to accept them, what this bill does is take away the claim that is an issue of evidence. If the entity is keeping it's evidence electronically you can still offer that as evidence of the transaction. That is generally speaking what this goes to.

**Representative Amerman:** Did we pass a bill last session that companies could make their employees use debit cards?

**Foss:** The bill that was passed two sessions ago that allowed pay via a money card. It wasn't really a debit card but a cash card.

**Representative Amerman:** If it was a mandatory thing, would it be illegal.

**Foss:** As it was drafted it was not mandatory and I don't recall that it was amended to make it mandatory. Nonetheless we did make it legal to pay and be paid by a payroll card in this state.

**Representative Dietrich:** What comes to mind is electronic communication of contracts. Real estate contracts are very exacting. You might have slight changes in contracts. You may make changes of the amount agreed upon. Each time that we make a communication change now we have initials, cross outs, initials by all four parties or both parties concerned. How would you communicate that type of contract?

**Foss:** If I were engaging in an electronic transaction where there were changes, personally I would change the entire document and the document that I transmitted would be correct. It wouldn't have little notations. As you know, with word processing it is relatively easy to make changes. I would note that this bill does not accord an electronic record any greater sanctity than we now accord a written record. It doesn't say that just because an electronic occurred that you can't challenge its authenticity or can't claim that there was a mistake. People have electronic records on both sides. You can't have forgeries as you can with a written record. This bill doesn't say that those kinds of disputes won't happen anymore. What it does say is that the electronic record of the transaction if it was done electronically and there is consent—that's the record.

**Representative Dietrich:** Could you text message a bank asking them to make a deposit or withdrawal?

**Foss:** That would be an electronic communication. It would not be effective unless you had consented to it and the bank had also consented to it. As you know before banks consent you

go through a fairly elaborate process to get in to a secure internet banking system. That's how the bank is consenting to it. If you just email to their contact that is not the same as the bank consenting to it.

**Representative Dietrich:** What other states are you aware of that have this provision in their law.

**Foss:** Many states have bills to facilitate electronic commerce. I can't say that I know of one that hasn't got to this specific method because this method was taken from our adoption of corporations, LLCs, etc. In coming up with the model for this, I took our own state laws as it applies to other entities that are created by the state. The federal government has adopted global electronic signatures. ND has adopted chapter 916 which was the model act at the time. I would also note that the federal bank regulatory agencies have adopted fairly extensive regulations for electronic commerce and security just because that is the way people are doing business now and those regulations insure that banks will be protected by maintaining proper security for themselves and their customers.

**Representative Amerman:** I work at the Bobcat Company and our pay comes from New Jersey or someplace. I have direct deposit. Is that an electronic transaction?

**Foss:** I would regard it to be an electronic transaction.

**Representative Amerman:** I mentioned debit cards before and I'm pretty sure we passed the bill that an employer if they wanted to could make all their employees go direct deposit. So that would not be in compliance. Is that correct?

**Foss:** That wouldn't be my conclusion. That is another section of law that applies to validate that method of commerce not that they are not in compliance.

**Representative Clark:** I don't know if you could mandate direct deposit for all your employees because of some of our employees don't even have checking accounts.

**Representative Zaiser:** This is in response to that. Two sessions ago we did pass that out of this committee and that was one of my arguments that the employee must accept electronic payment and they put it in a savings account or some such thing.

**Greg Tschider, representing the Mid-America Credit Union Association, testified in favor of the bill.** I would like to respond to Representative Amerman. The bill that was discussed is the stored value card bill that applied to employees' wages. That was not compulsory. If an employee elected that they wanted their wages paid on a stored value port, then the employer could issue a stored value card to them. The old law was that you couldn't do that. So as an employer you could have some employees who want a check, some people who want direct deposit, and some people who want stored value. That was the stored value card bill.

The fact of the matter is that the world is moving to electronic everything. In the legal world we can't even file paper anymore with the US Court system. Everything has to be done electronically. The state court system is now talking about it. It's just a fact of life. For those of us who aren't as competent as we should be in some of these areas we either have to live with it and learn how to deal with it or we will become dinosaurs. Even in law school they write their exams electronically. Representative Dietrich raised some very interesting questions on how do you work this when you have one here person here with a contract and one person over there and you better be careful on how you put your things together. In the end both parties should end up with a document that looks the same electronically. That's a safeguard there, I hope. We go through new technologies and it's always a learning experience and sometimes we get things a bit right and sometimes we get things a bit wrong; but the fact of the matter is that we are blessed with it and this bill basically just protects our bottom. We can certainly argue that we have the authority and all these electronics are according to Hoyle. We just don't want to give somebody the opportunity.

**Representative Kasper:** I don't see that this is mandatory. Correct me if I'm wrong. On page two all the underlined language talks about how the record will be the legal document if this and that occurs. No where in here does it say that if the person does not wish to use an electronic transfer it does not mandate that he or she uses electronic signatures. I think this protected but in demanding that they must use it. They can decline and would have to be allowed that opportunity.

**Tschider:** That's correct. It does relieve some of the concerns of the older generation who don't want to use a certain methodology that we can go to paper if that's what they desire.

**Chairman Kaiser closed the hearing of SB 2191 and asked the wishes of the Committee.**

**Representative Dietrich: I move Do Pass.**

**Representative Thorpe: I second.**

**Representative Amerman:** I have no problem with this bill but I still think if we passed that bill on direct deposit this is bailing them out.

**Representative Kasper:** I recall that bill that you are talking about and it was that the employee had the right to opt out of receiving that payroll electronically. I'm sure that was in the bill and the employee could not be forced.

**A roll call vote taken: Yes: 13, No: 0, Absent: 1 (Boe)**

**Representative Dietrich will carry the bill.**

Date: 3-5-07  
Roll Call Vote #: \_\_\_\_\_

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2192

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Rep Dietrich Seconded By Rep Thorpe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe		
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe	X	
Rep. Dosch	X		Rep. Zaiser	X	
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 13 No 0

Absent 1

Floor Assignment Rep Dietrich

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2192: Industry, Business and Labor Committee (Rep. Kelser, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2192 was placed on the Fourteenth order on the calendar.**



2007 TESTIMONY

SB 2192

TESTIMONY OF MARILYN FOSS  
SENATE BILL NO. 2192

Mr. Chairman, members of the IBL committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association. I appear today to support S.B. 2192 to give specific legal recognition to electronic records and signatures in bank transactions and to fill in a possible void in our laws to support electronic commerce.

Substantively, the bill is identical to the business corporation law (N.D.C.C. 10-19.1-01.1) which was enacted in 2003. (The definitions of section 1 are also modeled on the definitions of the corporation law as codified at section 10-19.1-01.) Given this, you may be asking why we need another law on the same subject. Sections 10-19.1-01 and 10-19.1-01.1 are included within the business corporation act and apply to business corporations.<sup>1</sup> But, as a matter of both technicality and substance, banks are not “business” corporations, so that, without SB 2192, there is lingering uncertainty about how a court would regard an electronic signature or an electronic record in the context of a dispute involving a bank transaction where there is an electronic signature or an electronic record of the transaction, and perhaps, not a paper one. S.B. 2192 removes that uncertainty without affecting anyone’s ability to challenge an electronic signature or an electronic record on any ground, except its electronic form.

I want to note that the North Dakota legislative assembly has acted to recognize electronic commerce since at least 2001 when N.D.C.C. Chapter 9-16, Electronic Transactions, was enacted. However, the limited scope of that chapter affects banks and

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<sup>1</sup> Statutes governing other North Dakota business entities such as partnerships, LLCs, etc. also include provisions for legal recognition of electronic signatures and records.

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may be seen to discourage certain electronic banking transactions. This is because of subsection 2 of N.D.C.C. section 9-16-02, Scope, which excludes negotiable instruments, bank deposits and collections, funds transfers, letters of credit, and secured transactions, and testamentary trusts from Chapter 9-16, unless there is a separate law to recognize electronic signatures and records for such transactions. Transactions such as these are of particular interest to banks. However, I am not aware of a law other than Chapter 9-16 that clearly gives legal recognition to electronic bank transactions that are also covered by Title 41 or the laws of wills and trusts. Our intention is for S.B. 2191 to be the "other law". Under subsection 3 of section 9-16-02, once the "other law" is in place, Chapter 9-16 rules for interpreting electronic transactions do apply to electronic banking transactions.

In closing, I also want to point out that nothing in this bill or any other state law allows a bank to require a person to transact their business via an electronic form without their consent. Furthermore, consent must exist for each individual transaction. It is not presumed that a person having once agreed to do business electronically has agreed to do so for all transactions.

We believe that electronic commerce has progressed sufficiently since 2001 to now specify that all transactions and bank recordkeeping may be in electronic form. For that reason we feel that SB 2192 deserves a DO PASS and ask you to give it your favorable consideration. Thank you.

Marilyn Foss, Lobbyist #76  
North Dakota Bankers Association  
223-5303 or 355-4538  
marilyn@ndba.com

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1-31-2007

TESTIMONY FOR SENATE BILL NO. 2192

Senate Industry, Business and Labor Committee

Testimony of Robert J. Entringer, Assistant Commissioner, Department of Financial Institutions in support of Senate Bill No. 2192

Chairman Klein and members of the Senate Industry, Business and Labor Committee, my name is Bob Entringer, Assistant Commissioner for the North Dakota Department of Financial Institutions. I am here today to testify in support of Senate Bill No. 2192.

Mr. Chairman and members of the Committee, the Department of Financial Institutions has begun the process of converting records to electronic filing and part of the project includes the ability to accept electronically signed documents. Many of the documents we require banks, credit unions, and other licensees to submit need a signature and this bill makes it clear that we are able to accept documents which are signed electronically. In the beginning of our electronic document management system (EDMS) project we asked about the need to amend our statutes to be able to accept electronic signatures and we were told it probably wasn't necessary due to chapter 9-16 of the North Dakota Century Code. We certainly concur with the North Dakota Banker Association that removing

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any ambiguity in Title 6 of the North Dakota Century Code as to the effect of an electronic signature is a positive move.

Mr. Chairman and members of the Committee, I too would urge a DO PASS recommendation and would be happy to answer any questions that you may have.

Thank you.

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# Oil and Gas Division

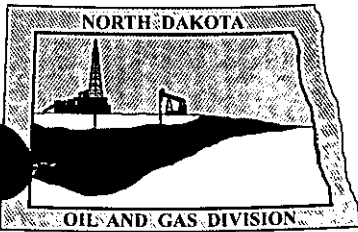
Lynn D. Helms - Director      Bruce E. Hicks - Assistant Director

**Department of Mineral Resources**

Lynn D. Helms - Director

**North Dakota Industrial Commission**

www.oilgas.nd.gov



Senate Bill No. 2192  
Industry, Business and Labor Committee

Testimony By  
Bruce E. Hicks  
Assistant Director  
Oil and Gas Division  
Department of Mineral Resources  
North Dakota Industrial Commission

Mr. Chairman and members of the Industry, Business and Labor Committee, my name is Bruce Hicks. I am the Assistant Director of the Oil and Gas Division of the North Dakota Industrial Commission.

Although we do not appear in opposition of electronic signatures, we do have the following concerns with the proposed new subsections:

1. Would require an agency to accept any sound (dog bark) or symbol (letter X) to be used as an electronic signature—since no encryption is required, unauthorized parties could easily submit documents that “appear” to be sent by authorized users.
2. Doesn't allow agency/business input on acceptable electronic signature—this does not require any uniqueness and would allow multiple parties to use the same electronic signature.
3. Who has the burden of proof that it is a valid signature on the document.

The definition of “electronic signature” should be amended to read:

“Electronic signature means a mutually agreed upon unique electronic sound, symbol, or process securely embedded in a record by a person with the intent to sign the record.”

This definition would provide the security of a certificate authority or encryption to validate the electronic signature.

TESTIMONY OF MARILYN FOSS  
SENATE BILL NO. 2192

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I want to note that the North Dakota legislative assembly has acted to recognize electronic commerce since at least 2001 when N.D.C.C. Chapter 9-16, Electronic Transactions, was enacted. However, the limited scope of that chapter affects banks and

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may be seen to discourage certain electronic banking transactions. This is because of subsection 2 of N.D.C.C. section 9-16-02, Scope, which excludes negotiable instruments, bank deposits and collections, funds transfers, letters of credit, and secured transactions, and testamentary trusts from Chapter 9-16, unless there is a separate law to recognize electronic signatures and records for such transactions. Transactions such as these are of particular interest to banks. However, I am not aware of a law other than Chapter 9-16 that clearly gives legal recognition to electronic bank transactions that are also covered by Title 41 or the laws of wills and trusts. Our intention is for S.B. 2191 to be the "other law". Under subsection 3 of section 9-16-02, once the "other law" is in place, Chapter 9-16 rules for interpreting electronic transactions do apply to electronic banking transactions.

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