

HOUSE BILL REPORT

HB 1471

As Passed House:
February 28, 2005

Title: An act relating to authentication of documents.

Brief Description: Changing provisions relating to authentication of documents.

Sponsors: By Representatives Lovick, McDonald and Takko.

Brief History:

Committee Activity:

Judiciary: 2/9/05, 2/11/05 [DP].

Floor Activity:

Passed House: 2/28/05, 89-0.

Brief Summary of Bill

- Modernizes authentication requirements for copies of official documents and records.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 9 members: Representatives Lantz, Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Kirby, Serben, Springer and Wood.

Staff: Christopher Abbott (786-7119).

Background:

In court proceedings, parties who wish to introduce a document into evidence must overcome three specific hurdles in addition to the normal evidentiary requirements. First, the document must be shown to be authentic. Second, the contents of a document might be hearsay and, if so, must fit within an exception to the hearsay rule. Finally, court rules require production of either an original or a mechanically or electronically produced duplicate in most circumstances.

Under state law, copies of public records meet all three hurdles if they satisfy statutory requirements for the particular type of document. Court records, public records of state agencies, recorded instruments (deeds, mortgages, etc.) filed in offices with official seals, and county records may all be admitted into evidence if accompanied by an official seal and certification from a clerk or other custodian of the records. Copies of certified written

instruments may also be sent by telegraph and have the same effect as if the original were sent.

The Legislature last updated the seal requirement in 1881. When a seal is required to authenticate public records, it must be impressed directly on the paper, although a wafer or wax seal is not required. When the document is telegraphed, the seal requirement is satisfied if the telegraph contains the letters "L.S." or the word "seal." The party challenging the authenticity of the telegraphed document bears the burden of proof.

A search of appellate level decisions reveals no successful challenges to admission of a document because of an improperly affixed seal. The only reported case to address the issue occurred in 1992. In *State v. Smith*, Division One of the Court of Appeals upheld admission of a faxed copy of a document that had been impressed with a seal prior to transmission.

Summary of Bill:

Seals required to authenticate documents need only be printed onto the document in some fashion, including a printout from an electronic document bearing the seal, to be considered valid. Additionally, certified copies of official documents may be sent by fax or other electronic transmission and still be treated as genuine.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The bill will allow court clerks to affix seals on formats other than paper and transmit documents through means other than telegraph without having to worry that they will not have the same legal force and effect. The current statute has been in place since 1881, and it's time to update it to reflect modern technology. In 1881, telegraph was the only method of transmitting documents over a distance. The statute should reflect modern methods.

Testimony Against: None.

Persons Testifying: Representative Lovick, prime sponsor; and Debbie Wilke, Washington Association of County Officials.

Persons Signed In To Testify But Not Testifying: None.