

UNIFORM ELECTRONIC LEGAL MATERIAL ACT*

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTIETH YEAR
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WITHOUT PREFATORY NOTE OR COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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*The following text is subject to revision by the Committee on Style of the National Conference of Commissioners on Uniform State Laws.

UNIFORM ELECTRONIC LEGAL MATERIAL ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Electronic Legal Material Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) “Legal material” means, whether or not in effect:

(A) the [Constitution of this state];

(B) the [insert name of session laws];

(C) the [insert name of state code]; [and]

(D) a state agency rule that has or had the effect of law[;] [and]

[(E) the following categories of state administrative agency decisions [insert categories of decisions to be included]][;] [and]

[(F) reported decisions of the following state courts: [specify courts]][;] [and]

[(G) state court rules]][;] [and]

[(H) [list any other category of legal material to be included]].

(3) “Official publisher” means:

(A) for [the Constitution of this state], the [insert appropriate agency or official];

(B) for [insert name of session laws], the [insert appropriate agency or official];

(C) for [insert name of state code], the [insert appropriate agency or official];

[and]

(D) for a rule published in the [insert name of administrative code], the [insert appropriate agency or official]][;] [and]

[(E) for a rule not published in the [insert name of administrative code], the state agency adopting the rule][;] [and]

[(F) for a state administrative agency decision included under paragraph (2)(E), the [insert appropriate agency or official]][;] [and]

[(G) for a state court decision included under paragraph (2)(F), the [insert appropriate agency or official]][;] [and]

[(H) for state court rules, the [insert appropriate agency or official]][;] [and]

[(I) for [any other category of legal material included], [insert appropriate agency or official]].

(4) “Publish” means to display, present, or release to the public, or cause to be displayed, presented, or released to the public, by the official publisher.

(5) “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.

(6) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

Legislative Note: *With regard to Section 2(2), drafters will need to insert, in the place indicated by bracketed language, the proper name or title for several types of state legal material including the state constitution, session laws, statutory code, and administrative code, as well as the proper name or title of other legal material, provided as alternatives, the enacting state chooses to include in the act’s coverage.*

If additional legal material is added, each type should be identified by its proper name or title and given its own subparagraph. If additional legal material is added to Section 2(2), a corresponding addition must be made to Section 2(3).

With regard to Section 2(3), drafters will need to insert, in the place indicated by bracketed language, the proper name or title for several types of state legal material, including the state constitution, statutory code, session laws, and administrative code, as well as the proper name or title of any other publications the enacting state includes in the act’s coverage. The name of the legal material inserted in place of the bracketed language must correspond

exactly with the name in the corresponding definition of legal material in Section 2(2).

Drafters will need to insert, in the place indicated by bracketed language, the proper name of the agency or state officer or employee designated as the official publisher.

With regard to Section 2(3)(H), drafters may need to make distinctions between courts, including courts of final resort, appellate level courts, and trial courts (including different types and levels of trial courts), depending on how court rules are promulgated or approved in the enacting state.

SECTION 3. APPLICABILITY. This [act] applies to all legal material in an electronic record that is designated as official under Section 4 and first published electronically on or after the effective date of the [act].

Legislative Note: *To include a preexisting publication in the coverage of the act, the following changes should be made. First, the present language of Section 3 should become subsection (a). A second subsection (b), as follows, should be added: (b) This[act] applies to the following legal material in an official electronic record that was first published before [the effective date of this act]:[insert proper name or title here].*

If preexisting legal material is included in the act's coverage, drafters should include the material in the definition of legal material in Section 2(2), and designate an official publisher for the material in Section 2(3), as necessary.

SECTION 4. LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD.

(a) If an official publisher publishes legal material only in an electronic record, the publisher shall:

(1) designate the electronic record as official; and

(2) meet the requirements of Sections 5, 7, and 8.

(b) An official publisher that publishes legal material in a record other than an electronic record may designate an electronic record as official if the requirements of Sections 5, 7, and 8 are met.

SECTION 5. AUTHENTICATION OF OFFICIAL ELECTRONIC RECORD. An official publisher of legal material in an electronic record that is designated as official under Section 4 shall authenticate the record. To authenticate an electronic record, the publisher shall

provide a method for a user to determine that the record received by the user from the publisher is unaltered from the official record published by the publisher.

SECTION 6. EFFECT OF AUTHENTICATION.

(a) Legal material in an electronic record that is authenticated under Section 5 is presumed to be an accurate copy of the legal material.

(b) If another state has adopted an act substantially similar to this [act], legal material in an electronic record designated as official and authenticated by that state is presumed to be an accurate copy of that legal material.

(c) A party contesting the authentication of legal material has the burden of proving by a preponderance of the evidence that the legal material is not authentic.

SECTION 7. PRESERVATION OF LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD.

(a) An official publisher of legal material in an electronic record that is or was designated as official under Section 4 shall provide for the preservation and security of the record in an electronic form or a form that is not electronic.

(b) If legal material is preserved in an electronic record, the official publisher shall:

- (1) ensure the integrity of the record;
- (2) provide for backup and disaster recovery of the record; and
- (3) ensure the continuing usability of the material.

SECTION 8. PUBLIC ACCESS TO LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD. An official publisher of legal material in an electronic record that must be preserved under Section 7 shall ensure that the material is reasonably available for use by the public on a permanent basis.

SECTION 9. STANDARDS. In implementing this [act], an official publisher of legal

material shall consider:

- (1) standards and practices of other jurisdictions;
- (2) the most recent standards regarding authentication of, preservation and security of, and public access to, legal material in an electronic record and other electronic records, as promulgated by national standard-setting bodies;
- (3) the needs of users of legal material in an electronic record;
- (4) the views of governmental officials and entities and other interested persons; and
- (5) to the extent practicable, the use of methods and technologies for the authentication of, preservation and security of, and public access to, legal material that are in harmony and compatible with the methods and technologies used by other official publishers in this state and in other states that have adopted this [act].

SECTION 10. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 11. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 12. EFFECTIVE DATE. This [act] takes effect . . .