

DRAFT
FOR DISCUSSION ONLY

AUTHENTICATION AND PRESERVATION OF STATE ELECTRONIC LEGAL MATERIALS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

April 2010 Interim Draft

Without Prefatory Note or Comments

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ON UNIFORM STATE LAWS

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April 15, 2010

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MATERIALS ACT**

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1 **AUTHENTICATION AND PRESERVATION**
2 **OF STATE ELECTRONIC LEGAL MATERIALS ACT**

3 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Authentication and
4 Preservation of State Electronic Legal Materials Act.

5 **SECTION 2. DEFINITIONS.** For the purposes of this [act]:

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

8 (2) “Legal material” means:

9 (A) a law or statute enacted by the [state legislature];

10 (B) a codified law or statute; [and]

11 (C) an administrative rule adopted under [the state APA][;] [and]

12 [(D) any other state administrative rule][;] [and]

13 [(E) a decision of a state administrative agency that has precedential effect][;]

14 [and]

15 [(F) an appellate judicial decision or other judicial decision that has precedential

16 effect][;] [and]

17 [(G) any other record, as specified]].

18 (3) “Official publisher” means:

19 (A) for a law or statute enacted by the [state legislature], the [agency or official];

20 (B) for a codified law or statute, the [agency or official]; [and]

21 (C) for an administrative rule adopted under [the state APA], the [agency or
22 official][;] [and]

23 [(D) for any other state administrative rule, the [agency or official][;] [and]

24 [(E) for a decision of a state administrative agency that has precedential effect, the

1 [agency or official][;] [and]

2 [(F) for an appellate judicial decision or other judicial decision that has

3 precedential effect, the [agency or official][;] [and]

4 [(G) for any other record specified, the [agency or official][;] [and]

5 [(H) for any legal material for which no official publisher is designated, the

6 [secretary of state or other agency or official]].

7 (4) “Publish” means to produce, display, present, or release to the public.

8 (5) “Record” means information that is inscribed on a tangible medium or that is stored in

9 an electronic or other medium and is retrievable in perceivable form.

10 (6) “State” means a state of the United States, the District of Columbia, Puerto

11 Rico, the United States Virgin Islands, or any territory or insular possession subject to the

12 jurisdiction of the United States.

13 (7) [Other definitions to be added?]

14 **SECTION 3. OFFICIAL ELECTRONIC LEGAL MATERIAL.**

15 (a) If the official publisher of legal material publishes a print version of the legal material,

16 the official publisher may designate an electronic version as official if the requirements of

17 Sections 4, 6, and 7 are met.

18 (b) If the official publisher of legal material publishes the legal material only in an

19 electronic version, the official publisher shall:

20 (1) designate the electronic version as official; and

21 (2) meet the requirements of Sections 4, 6, and 7.

22 **SECTION 4. AUTHENTICATION OF ELECTRONIC LEGAL MATERIAL.** The

23 official publisher of legal material in an electronic record that is designated official under Section

1 3 shall authenticate the record. To authenticate the record, the official publisher shall certify that
2 the electronic record is a true and correct copy of the legal material it purports to be by
3 providing:

4 (1) a method for users to determine that the electronic record is unaltered from the one
5 published by the official publisher; and

6 (2) sufficient information to determine that the certification is valid.

7 **SECTION 5. EFFECT OF AUTHENTICATION.**

8 (1) Electronic legal material authenticated under Section 4 is presumed to be a true and
9 correct copy of the legal material it purports to be.

10 (2) Electronic legal material from another state that is authenticated in a manner that
11 complies with Section 4 is presumed to be a true and correct copy of the legal material it purports
12 to be.

13 **SECTION 6. PRESERVATION OF ELECTRONIC LEGAL MATERIAL.** The
14 official publisher of legal material in an electronic record shall preserve all published legal
15 material. To preserve legal material, the official publisher shall establish procedures to:

16 (1) protect the electronic record, which includes retention of formatting with legal
17 significance; and

18 (2) provide for back-up and disaster recovery; and

19 (3) ensure the continuing usability of the legal material, which may include periodic
20 updating into new electronic formats if necessary.

21 **SECTION 7. PUBLIC ACCESS TO ELECTRONIC LEGAL MATERIAL.** The
22 official publisher of legal material shall ensure that the legal material preserved under Section 6
23 is reasonably available on a permanent basis for use by the general public. If the legal material is

1 published only in an electronic record, the official publisher shall continue to publish it in an
2 electronic record.

3 **SECTION 8. STANDARDS.** In implementing the requirements of this [act], the
4 official publisher shall consider:

5 (1) standards and practices of other jurisdictions;

6 (2) any standards on authentication and preservation of records adopted by national
7 standard-setting bodies; and

8 (3) the needs of electronic record users.

9 **SECTION 9. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
10 applying and construing this uniform act, consideration must be given to the need to promote
11 uniformity of the law with respect to its subject matter among the states that enact it.

12 **SECTION 10. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
13 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
14 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq.,
15 but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
16 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
17 U.S.C. Section 7003(b).

18 **SECTION 11. EFFECTIVE DATE.** This [act] takes effect [date]...