

DRAFT
FOR DISCUSSION ONLY

AUTHENTICATION AND PRESERVATION OF STATE ELECTRONIC LEGAL MATERIALS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

March 5 – 7, 2010 Committee Meeting Draft

Without Prefatory Note or Comments

Copyright © 2009
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

January 7, 2010

**DRAFTING COMMITTEE FOR AUTHENTICATION AND PRESERVATION OF
STATE ELECTRONIC LEGAL MATERIALS ACT**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in drafting this Act consists of the following individuals:

MICHELE L. TIMMONS, 700 State Office Bldg. 100 Rev. Dr. Martin Luther King Jr. Blvd.,
St. Paul, MN 55155, *Chair*

JERRY L. BASSETT, 613 Alabama State House, 11S. Union St., Montgomery, AL 36130

DAVID D. BIKLEN, 153 N. Beacon St., Hartford, CT 06105

DIANE F. BOYER-VINE, State Capitol, Room 3021, Sacramento, CA 95814-4996

STEPHEN Y. CHOW, 125 Summer St., Boston, MA 02110-1624

VINCENT C. DeLIBERATO, Jr., Main Capitol Bldg., Room 641, Harrisburg, PA 17120-0033

JOHN S. GILLIG, P.O. Box 4285, 91 C Michael Davenport Blvd., Frankfort, KY 40604

GENE H. HENNIG, 500 IDS Center, 80 South Eighth St., Minneapolis, MN 55402-3796

STEVEN L. WILLBORN, University of Nebraska College of Law, Ross McCollum Hall, 42 &
Fair St., P.O. Box 830902, Lincoln, NE 68583-0902

BARBARA A. BINTLIFF, University of Colorado at Boulder, 424 Wolf Law Bldg., 401 UCB,
Boulder, CO 80309-0401, *Reporter*

EX OFFICIO

ROBERT A. STEIN, University of Minnesota Law School, 229 19th Avenue South,
Minneapolis, MN 55455, *President*

JACK DAVIES, 1201 Yale Pl., Unit 2004, Minneapolis, MN 55403-1961, *Division Chair*

EXECUTIVE DIRECTOR

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.nccusl.org

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

TABLE OF CONTENTS

SECTION 1. SHORT TITLE.	1
SECTION 2. DEFINITIONS.	1
SECTION 3. APPLICABILITY.	2
[SECTION 3. APPLICABILITY.	2
SECTION 4. AUTHENTICATION OF ELECTRONIC DOCUMENTS.	3
SECTION 5. PRIMA FACIE EVIDENCE.	4
SECTION 6. PRESERVATION.	4
SECTION 7. PERMANENT PUBLIC ACCESS.	4
SECTION 8. UNIFORMITY OF STANDARDS.	4
SECTION 9. DOCUMENTS FROM OTHER STATES.	5
SECTION 10. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.	5
SECTION 11. EFFECTIVE DATE.	5

1 (6) “Official” means governmentally mandated or approved by statute or rule.

2 (7) “Official Publisher” means an agency, department, board, commission, authority,
3 institution, or instrumentality of state government, whether in the legislative, executive, or
4 judicial branch, with the responsibility to publish a document pursuant to governmental mandate
5 or as approved by statute or rule.

6 (8) “Permanent public access” means current, continuous and future public use.

7 (9) “Person” means an individual, corporation, business trust, estate, trust,
8 partnership, limited liability company, association, joint venture, public corporation,
9 government, or governmental subdivision, agency, or instrumentality, or any other legal or
10 commercial entity.

11 (10) “Preservation” means providing for permanent, uninterrupted access to the
12 intellectual content of a document, either in its original publication form or as reformatted by the
13 official publisher.

14 (11) “Publish” means to produce or release for general distribution.

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

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

19 **Alternative 1**

20 **SECTION 3. APPLICABILITY.** This [act] applies to an electronic document that is
21 published on the Internet.

22 **Alternative 2**

23 **[SECTION 3. APPLICABILITY.** This [act] applies to an electronic document that is

1 published only on the Internet, or is published on the Internet and is designated official.

2 (1) If the electronic document is the only version of the document readily accessible to
3 the public, it must be designated official and must meet the requirements of Sections 4, 6, and 7
4 of this [act].

5 (2) If the official publisher provides a print version of the electronic document, the
6 official publisher may designate the electronic version as official provided that the requirements
7 of Sections 4, 6, and 7 of this [act] are met.

8 (3) If the official publisher provides a print version of the electronic document and
9 designates only the print version as official, the electronic version must, at a minimum, be
10 identified clearly as unofficial on its online display. The online display must also explain the
11 procedure by which the public can obtain a certified copy of the official version of the
12 document.]

13 **End of Alternatives**

14 **SECTION 4. AUTHENTICATION OF ELECTRONIC DOCUMENTS.**

15 (1) The official publisher of an electronic document subject to this [act] must
16 authenticate the document. At a minimum, authentication must include:

17 (A) certification that establishes a chain of custody for the document from its
18 official publication to the computer system in which it is stored permanently; and

19 (B) protection of the transmission of the document by security measures designed
20 to prevent corruption of or tampering with the document from the computer system in which it is
21 stored permanently to the computer system of the user.

22 (2) An authenticated electronic document must display clearly an indicator of its
23 authenticity.

1 (3) If an official publisher enters into a contract with a person to publish a document, the
2 official publisher must require compliance with this [act] as a term of the contract.

3 **SECTION 5. PRIMA FACIE EVIDENCE.** An electronic document authenticated
4 under Section 4 is prima facie evidence of the content of the original document.

5 **SECTION 6. PRESERVATION.** The official publisher of an electronic document
6 subject to this [act] must provide for preservation of the document, including the current text and
7 all amendments, changes, and superseded versions. At a minimum, preservation must include:

8 (A) documentation of the data format used in the original document creation;

9 (B) periodic archiving of the data, in paper or electronic form or both; and

10 (C) periodic updating of the document in new electronic formats, as necessary to provide
11 continuing permanent public access to the document.

12 **SECTION 7. PERMANENT PUBLIC ACCESS.** The official publisher must provide
13 for continuing permanent public access to the document, including the forms of the document
14 preserved as required by Section 6. If a document is made available exclusively electronically, it
15 must remain available electronically permanently, either in its original location or in an archived
16 location. The official publisher must ensure that all amended, changed, or superseded documents
17 shall remain available on conditions of access similar to those in effect for then-current
18 documents.

19 **SECTION 8. UNIFORMITY OF STANDARDS.**

20 (a) This [act] must be applied and construed to promote uniformity of the law with
21 respect to its subject matter among the states that enact it.

22 (b) In implementing the requirements of this [act], the official publisher must consider:

23 (1) standards and practices of other jurisdictions;

1 (2) any standards on authentication and preservation of documents adopted by
2 national standard-setting bodies; and

3 (3) the needs of electronic document users.

4 **SECTION 9. DOCUMENTS FROM OTHER STATES.** A document from another
5 state that is authenticated by that state consistent with Section 4 of this [act] is prima facie
6 evidence of the content of that document.

7 **SECTION 10. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
8 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
9 signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.) but does not
10 modify, limit or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize
11 electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C.
12 Section7003(b)).

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