

D R A F T
FOR DISCUSSION ONLY

AUTHENTICATION AND PRESERVATION OF STATE ELECTRONIC LEGAL MATERIALS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

February 25-27, 2011, Committee Meeting Draft with Proposals

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 31, 2011

**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, 11 S. Union St., Montgomery, AL 36130

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

DIANE F. BOYER-VINE, Office of Legislative Counsel, State Capitol, Room 3021,
Sacramento, CA 95814-4996

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

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

GENE H. HENNIG, 500 IDS Center, 80 South 8th 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 Texas School of Law, 727 E. Dean Keeton St., Austin,
TX 78705, *Reporter*

EX OFFICIO

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

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

AMERICAN BAR ASSOCIATION ADVISOR

LUCY THOMSON, 915 N. Quaker Dr., Alexandria, VA 22302, *ABA Advisor*

PHYLLIS B. PICKETT, 401 Legislative Office Bldg., 300 N. Salisbury St., Raleigh, NC 27603,
ABA Section Advisor

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 4. OFFICIAL ELECTRONIC LEGAL MATERIAL.....	2
SECTION 5. AUTHENTICATION OF ELECTRONIC LEGAL MATERIAL.....	3
SECTION 6. EFFECT OF AUTHENTICATION.....	3
SECTION 7. PRESERVATION OF ELECTRONIC LEGAL MATERIAL.....	3
SECTION 8. PUBLIC ACCESS TO ELECTRONIC LEGAL MATERIAL.....	3
SECTION 9. STANDARDS.....	4
SECTION 10. UNIFORMITY OF APPLICATION AND CONSTRUCTION.....	4
SECTION 11. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.....	4
SECTION 12. EFFECTIVE DATE.....	5

1 [(D) for any rule not published in the [insert administrative code], the state agency
2 adopting the rule][:] [and]

3 [(E) for a decision of a state administrative agency which has precedential effect,
4 the [insert appropriate agency or official]][:] [and]

5 [(F) for a judicial decision of a state court that has precedential effect, the [insert
6 appropriate agency or official]][:] [and]

7 [(G) for state court rules, the [insert appropriate agency or official]][:] [and]

8 [(H) [for any other record], the [insert appropriate agency or official]][:] [and]

9 [(I) for any other legal material, the [insert secretary of state or other appropriate
10 agency or official]].

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

12 (5) “Record” means information that is inscribed on a tangible medium or that is stored in
13 an electronic or other medium and is retrievable in perceivable form.

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

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

20 **SECTION 4. OFFICIAL ELECTRONIC LEGAL MATERIAL.**

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

23 (1) designate the electronic record as official; and

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

2 (b) If the official publisher publishes a print record of the legal material, the official
3 publisher may designate an electronic record as official if the requirements of Sections 5, 7, and
4 8 are met.

5 **SECTION 5. AUTHENTICATION OF ELECTRONIC LEGAL MATERIAL.** The
6 official publisher of legal material in an electronic record that is designated as official under
7 Section 4 shall authenticate the record by providing a method for users to determine that the
8 electronic record is unaltered from the one published by the official publisher.

9 **SECTION 6. EFFECT OF AUTHENTICATION.**

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

12 (b) The presumption under (a) above applies to electronic legal material from another
13 state that has adopted this [act].

14 **SECTION 7. PRESERVATION OF ELECTRONIC LEGAL MATERIAL.** The
15 official publisher of legal material in an electronic record shall preserve all published electronic
16 legal material that is or was designated as official under Section 4. To preserve legal material in
17 an electronic record, the official publisher shall:

- 18 (1) ensure the integrity of the electronic record;
19 (2) provide for back-up and disaster recovery of the electronic record; and
20 (3) ensure the continuing usability of the legal material.

21 **SECTION 8. PUBLIC ACCESS TO ELECTRONIC LEGAL MATERIAL.** The
22 official publisher of legal material in an electronic record shall ensure that the electronic legal
23 material that is required to be preserved under Section 7 is reasonably available on a permanent

1 basis for use by the general public.

2 **Alternative**

3 **[SECTION 8. PUBLIC ACCESS TO ELECTRONIC LEGAL MATERIAL.** The
4 official publisher of legal material in an electronic record that is required to be preserved under
5 Section 7 shall ensure that users may reasonably access and view the text of the legal material in
6 an electronic record at no charge. Fees may be charged for other services provided in relation to
7 the legal material in an electronic record.]

8 **End of Alternative**

9 **SECTION 9. STANDARDS.** In implementing the Sections of this [act], the official
10 publisher shall consider:

11 (1) standards, practices, and customs of other jurisdictions, including those that have
12 enacted this [act];

13 (2) the most recent standards regarding preservation of, authentication of, and public
14 access to electronic legal material and other electronic records as promulgated by national
15 standard-setting bodies;

16 (3) the needs of electronic legal material users; and

17 (4) the views of governmental officials and entities and other interested persons.

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

21 **SECTION 11. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
22 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
23 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq.,

1 but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
2 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
3 U.S.C. Section 7003(b).

4 **SECTION 12. EFFECTIVE DATE.** This act is effective on _____.