

## USA-PELMA

### Introduction

Providing information online has become integral to the conduct of state government in the 21<sup>st</sup> century. The ease and speed with which information can be created, updated, and distributed electronically, especially in contrast to the time required for the production of print materials, enables governments to meet their obligations to provide legal information to the public in a timely and cost-effective manner. State governments have moved rapidly to the online distribution of legal information, in some instances declaring a publication in electronic format to be an official publication equivalent to a print version. Some state governments are eliminating certain print publications altogether. The availability of government information online facilitates transparency and accountability, provides widespread access, and encourages citizen participation in the democratic process. Changing to an electronic environment also raises new issues in information management.

Electronic legal information moves from its originating computer through a series of other computers or servers until it eventually reaches the individual consumer. The information is susceptible to being altered, whether accidentally or maliciously, at each transfer. Any such alterations are virtually undetectable. A major issue raised by the change to an electronic environment, therefore, is whether the information consulted by consumers is trustworthy, or authentic.

“An *authentic* text is one whose content has been verified by a government entity to be complete and unaltered when compared to the version approved or published by the content originator.”<sup>1</sup> When a document is authentic, it means that the version of the legal resource seen on the screen is the same version that was approved by the lawmakers. A chain of custody for that document has been established that ensures its integrity, establishing that the transfer between the document originator and the publishing agency has not been tampered with, and that the document between the publishing agency and the user has not been tampered with. Few state governments have taken the actions necessary to ensure that the electronic legal information they create and distribute remains unaltered and is, therefore, trustworthy or authentic.

Authenticity is an issue unknown in the print age, where legal information typically exists in multiple copies, the content of which is “fixed” once printed, making the text easily verifiable and changes readily detectable. It stands to reason, however, that before state governments can transition fully into the electronic legal information environment they must ensure the trustworthiness of their electronic legal information.

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<sup>1</sup> American Association of Law Libraries, STATE-BY-STATE REPORT ON AUTHENTICATION OF ONLINE LEGAL RESOURCES 8 (2007).

The ease with which electronic legal information is created and changed raises a second critical consideration: how is legal information with long-term value (including, for example, amended statutes, repealed sections of regulations, and overruled cases) preserved for future use? In a print environment, information is preserved by maintaining paper copies of key legislative documents, administrative materials, and judicial resources. It is typical for more than one library, archive, or institution to keep a copy of outdated documents, further insuring their preservation.

Electronic information resides, ultimately, on a computer. New versions of computer hardware and software and changing storage media continually result in an inability to read or access older files, thereby losing their content. As hardware, software, and storage media change, old documents are preserved by “migrating” to the new formats. Electronic legal information of long-term value must be preserved in a usable format. Unfortunately, few states have addressed this critical need, and fewer still have an infrastructure in place to monitor older data and keep its storage method up-to-date. The governmental and societal benefits of electronic creation and distribution are limited severely if state government information becomes unreadable because of technological changes.

A third issue raised by the electronic creation and distribution of legal materials flows from the necessity of preserving all forms of documents with long-term value: the issue is the responsibility of state government to make its legal resources easily, and permanently, accessible. Legal information is consulted by citizens, legislators, government administrators and officials, judges, attorneys, researchers, and scholars, all of whom may require access to both the current law and to older materials, including that which has been amended and superseded. Once properly preserved, electronic legal information of long-term value must also be easily accessible on the same basis as other electronic legal information; that is, electronic legal information should be authenticated and widely available, on a permanent basis, at little or no cost. State governments must ensure an informed citizenry, which is essential for our democracy to function.

The issues that arise as state governments transition to an electronic legal information environment are common to every state. These issues are also encountered by subdivisions of state government, including municipalities and counties, as well as the Native American Indian tribes. This [act] can be adapted for use by any governmental entity. These subdivisions face the same situation as state government, and likewise must manage the entire life cycle of government information, from creation and publication to preservation.

**What this [act] does—key concepts (add text here at end of drafting process; the following is a placeholder)**

Scope of [act]: official state action only, not unofficial publishers; definition of “document” can be expanded or modified

Authentication/Trustworthiness: Proper authentication of electronic materials is critical because of the ease with which such data can be created, altered, and manipulated.

Preservation: all versions of “law” must be kept

Permanent public access: and all versions must be accessible easily

Alternative provisions: describe, if any

Full faith and credit.

## **Conclusion**

Digital information formats have become fundamental and indispensable to the operation of state government. This [act] addresses the critical need to manage electronic legal information in a manner that guarantees the trustworthiness of and continuing access to important state documents. Technology changes quickly enough that state governments must address this issue, as existing electronic legal documents are in danger of being lost already. A [uniform act] will allow state governments to develop similar systems of authentication and preservation, aiding the free flow of information across state lines and the sharing of experiences and expertise to keep costs as low as possible.

A uniform act should set forth provisions that can be efficiently followed and that achieve the stated purposes of the act. The Drafting Committee believes that this proposed [uniform act] meets these requirements. The [act] is straightforward in its terms, creates no additional administrative offices, and has no requirement of judicial or administrative oversight. The [act] is based on proposed language from the Study Committee, developed through extensive discussion and debate.

The Drafting Committee was assisted by numerous advisors and observers, representing an array of organizations. In addition to the American Bar Association advisor(s) listed above, important contributions were made by [observers, etc. . . .]