

Uniform Electronic Legal Material Act

Issues Memorandum for 2011 Uniform Law Commission Annual Meeting

Increasingly, state governments are publishing laws, statutes, agency rules, and court rules and decisions online. In some states, important state-level legal material is no longer published in books, but is only available online. While electronic publication of legal material has facilitated public access to the material, it has also raised concerns. Is the legal material official, authentic, government data that has not been altered? For the long term, how will this electronic legal material be preserved? How will the public access the material 10, 50, or 100 years from now? The Uniform Electronic Legal Material Act (UELMA) provides a consistent, outcomes-based approach to solving these problems that can be adopted in every state and territory.

In summary, the act requires that official electronic legal material be:

1. *Authenticated*, by providing a method to determine that it is unaltered,
2. *Preserved*, either in electronic or print form, and
3. *Accessible*, for use by the public on a permanent basis.

If a state preserves legal material electronically, it must provide for back-up and recovery, and ensure the integrity and continuing usability of the material.

If electronic legal material is authenticated, it is presumed to be an accurate copy of the legal material. If a state enacts UELMA, the presumption that its authenticated electronic legal material is accurate applies in every other state that has enacted UELMA. If another state enacts UELMA, and authenticates its electronic legal material, it is presumed to be an accurate copy for use in the enacting state. Adoption of UELMA will harmonize requirements for acceptance of electronic legal material across jurisdictional boundaries.

Both because of the cross-jurisdictional application of the act, and to promote wide enactment, the drafting committee recommended that the act be designated as a uniform act rather than a model act. In addition, the drafting committee recommended that the name “Uniform Authentication and Preservation of State Electronic Legal Materials Act” be shortened to “Uniform Electronic Legal Material Act”. Both recommendations were approved by the Uniform Law Commission Executive Committee in March, 2011. Consistent with the uniform act designation, the drafting committee made policy choices to focus the act’s requirements on outcomes, rather than specific technology. This approach permits states to use a wide range of cost options in implementing the act. In addition, the outcomes-based, technology-neutral language in UELMA provides maximum flexibility for states as technology standards for authentication, preservation, and access to electronic legal material continue to develop and evolve.