

UNIFORM ELECTRONIC LEGAL MATERIAL ACT

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

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WITH PREFATORY NOTE AND COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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DRAFTING COMMITTEE FOR UNIFORM ELECTRONIC LEGAL MATERIAL 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, Office of the Revisor of Statutes, 700 State Office Bldg., 100 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, MN 55155, *Chair*

JERRY L. BASSETT, Legislative Reference Service, 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 S. 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 Ave. S., Minneapolis, MN 55455, *President*

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

AMERICAN BAR ASSOCIATION ADVISORS

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.uniformlaws.org

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UNIFORM ELECTRONIC LEGAL MATERIAL ACT

Prefatory Note

Introduction. Providing information online is integral to the conduct of state government in the 21st 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 designating a publication in electronic format to be an official publication. 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 user. The information is susceptible to being altered, whether accidentally or maliciously, at each point where it is stored, transferred, or accessed. Any such alterations can be virtually undetectable by the consumer. A major issue raised by the change to an electronic format, therefore, is whether the information presented to 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.” (American Association of Law Libraries, STATE-BY-STATE REPORT ON AUTHENTICATION OF ONLINE LEGAL RESOURCES 8 (2007)). In the context of this act, the content originator is the official publisher. When a document is authentic, it means that the version of the legal resource presented to the user is the same as that published by the official publisher. Authentication provides an electronic method to establish the integrity of the document, demonstrating that the information has not been tampered with or altered during the transfer between the official publisher and the end-user. 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 a much larger concern in the electronic age than in the print age, where legal information typically exists in multiple copies. The content of a print work is “fixed” once printed, making the text easily verifiable and changes readily detectable. Many years of experience allow us to determine when we can trust the integrity of a printed document. It stands to reason, therefore, that before state governments can transition fully into the electronic legal information environment they must develop procedures to ensure the trustworthiness of their electronic legal information.

The ease with which electronic legal information is created and changed raises a second critical consideration: how is legal information with long-term, historical 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 decisions and other resources. It is typical for more than one library, archive, or institution to keep a copy of these historical documents, further assuring their preservation.

Electronic information resides, however, on a computer or other storage device. New versions of computer hardware and software and changing storage media continually result in an inability to read or access older files, thereby making their content unavailable. As hardware, software, and storage media change, old documents are preserved by “migrating” to 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 their storage methods up-to-date. The governmental and societal benefits of electronic creation and distribution are limited severely if state government information becomes unusable because of technological changes.

A third issue raised by the electronic creation and distribution of legal material 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 legal information; that is, electronic legal information should be authenticated and widely available on a permanent basis. 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 American Indian tribes. These governments face the same issues as the larger state government, and likewise must manage the entire life cycle of government information, from creation and publication to preservation. This act can be adapted for use by any governmental entity.

About the act. The Uniform Electronic Legal Material Act (UELMA) provides states with an outcomes-based approach to the authentication and preservation of electronic legal material. That is, the goals of the authentication and preservation program outlined in the act are to enable end-users to verify the trustworthiness of the legal material they are using and to provide a framework for states to preserve legal material in perpetuity in a manner that allows for permanent access.

The act does not require specific technologies, leaving the choice of technology for authentication and preservation up to the states. Giving states the flexibility to choose any technology that meets the required outcomes allows each state to choose the best and most cost-effective method for that state. In addition, this flexible, outcomes-based approach anticipates that technologies will change over time; the act does not tie a state to any specific technology at any time.

It should be noted that there are some important issues this act does not address, leaving them to other law or policy. First, this act does not mandate that states publish legal material electronically; choice of format is left entirely to a state's discretion. Second, the act does not require a state to convert older legal material from print format to electronic format. Print remains an accepted medium for preservation of and access to legal material. If, however, a state converts older legal material from print to electronic format, and if the state then designates that electronic format as official, the requirements of the act apply.

Third, this act does not deal with copyright issues, leaving those to federal law and state practice. Fourth, this act does not affect or supersede any rules of evidence; it only provides that electronic legal material that is authenticated is presumed to be a true copy. Fifth, the act does not affect existing state law regarding the certification of printed documents.

Sixth, this act does not interfere with the contractual relationship between a state and a commercial publisher with which the state contracts for the production of its legal material. The act requires that the official publisher be responsible for implementing the terms of the act, regardless of where or by whom the legal material is actually printed or distributed. For the purposes of the act, only a state agency, officer, or employee can be the official publisher, although state policy may allow a commercial entity to produce an official version of the state's legal material.

The UELMA is intended to be complementary to the Uniform Commercial Code (UCC, which covers sales and many commercial transactions), the Uniform Real Property Electronic Recording Act (URPERA, which provides for electronic recording of real property instruments), and the Uniform Electronic Transactions Act (UETA, which deals with electronic commerce). Each of these acts covers a unique topic, as does the UELMA, which addresses management of the most important state-level legal materials. The UELMA is not intended to conflict with any of these acts.

Conclusion. The use of digital information formats has 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 legal material. Technology changes quickly enough that state governments must address this issue, as existing electronic legal information is already in danger of being lost. 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 was developed through extensive discussion and debate during five meetings of the Drafting Committee.

The Drafting Committee was assisted by numerous advisors and observers, representing a wide range of organizations. In addition to the American Bar Association advisors listed above,

important contributions were made by the observers who attended meetings, participated in conference calls, and submitted many comments on and suggestions for the various drafts of the act. The act is better for their contributions.

UNIFORM ELECTRONIC LEGAL MATERIAL ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Electronic Legal Material Act.

SECTION 2. DEFINITIONS. In this [act]:

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

(2) “Legal material” means, whether or not in effect:

(A) the [insert name of constitution of this state];

(B) the [insert name of session laws];

(C) the [insert name of state code]; [or]

(D) a state agency rule that has or had the effect of law[;] [or]

[(E) the following categories of state administrative agency decisions [insert categories of decisions to be included]][;] [or]

[(F) reported decisions of the following state courts: [specify courts]][;] [or]

[(G) state court rules][;] [or]

[(H) [list any other category of legal material to be included]].

(3) “Official publisher” means:

(A) for [insert name of constitution of this state], the [insert appropriate agency or official];

(B) for [insert name of session laws], the [insert appropriate agency or official];

(C) for [insert name of state code], the [insert appropriate agency or official]; [or]

(D) for a rule published in the [insert name of administrative code], the [insert appropriate agency or official][;] [or]

[(E) for a rule not published in the [insert name of administrative code], the state agency adopting the rule][;] [or]

[(F) for a state administrative agency decision included under paragraph (2)(E), the [insert appropriate agency or official]][;] [or]

[(G) for a state court decision included under paragraph (2)(F), the [insert appropriate agency or official]][;] [or]

[(H) for state court rules, the [insert appropriate agency or official]][;] [or]

[(I) for [any other category of legal material included], [insert appropriate agency or official]].

(4) “Publish” means to display, present, or release to the public, or cause to be displayed, presented, or released to the public, by the official publisher.

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

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

Legislative Note: *With regard to Section 2(2), drafters will need to insert, in the place indicated by bracketed language, the proper name or title for several types of state legal material including the state constitution, session laws, statutory code, and administrative code, as well as the proper name or title of other legal material, provided as alternatives, the enacting state chooses to include in the act’s coverage.*

If additional legal material is added, each type should be identified by its proper name or title and given its own subparagraph. If additional legal material is added to Section 2(2), a corresponding addition must be made to Section 2(3).

With regard to Section 2(3), drafters will need to insert, in the place indicated by bracketed language, the proper name or title for several types of state legal material, including the state constitution, session laws, statutory code, and administrative code, as well as the proper name or title of any other publications the enacting state includes in the act’s coverage. The name of the legal material inserted in place of the bracketed language must correspond

exactly with the name in the corresponding definition of legal material in Section 2(2).

Drafters will need to insert, in the place indicated by bracketed language, the proper name of the agency or state officer or employee designated as the official publisher.

With regard to Section 2(3)(H), drafters may need to make distinctions between courts, including courts of last resort, appellate level courts, and trial courts, including different types and levels of trial courts, depending on how court rules are promulgated or approved in the enacting state.

Comment

Several definitions used in this act are standard in Conference acts, including “electronic,” “record,” and “state.” These words, so defined, have been used in other acts promulgated by the Conference, including notably the Uniform Electronic Transactions Act (UETA), which has been adopted by 47 states, the District of Columbia, and the U.S. Virgin Islands as of March 2011. (The definition of “state” in UETA includes a second sentence regarding Indian tribes and Alaskan villages that is not part of this act’s definition.) The use of these terms in the same manner in several acts leads to a consistency within the laws of each state adopting the several acts, in addition to the sought-after uniformity among states.

Legal material. (Section 2(2)). The definition of “legal material” is intentionally narrow. As drafted, it includes only the most basic state-level legal documents: the state constitution, session laws, codified laws, and administrative rules with the effect of law. The act suggests as alternatives a range of additional legal material.

Among the additional legal material suggested for inclusion is state administrative agency decisions. An enacting state may choose to include those administrative agency decisions that are treated in that state as having the effect of law, for example, or the state may choose to include or exclude certain agency decisions in the act’s coverage, in which situation the decisions should be listed with specificity. Each enacting state is given discretion to determine which, if any, of its administrative agency decisions should be covered by the act.

In some states, the publication of judicial decisions and court rules is handled by the judicial branch, over which the state legislature may have no authority to mandate specific procedures such as those created by this act. Because of this potential separation of powers issue, judicial decisions and court rules are included in this act as an alternative in the definition of legal material. If an enacting state includes judicial decisions or court rules, some differentiation between legal material issued by the state’s various courts (i.e. trial courts of various types, appellate courts, and supreme court) may be necessary.

Enacting states may decide to expand the definition of legal material beyond that offered as alternatives. For example, in some states, an initiative or referendum process may result in the creation of statutory law outside of, or in addition to, the legislative process. An enacting state may choose to include in the definition of legal material the various documents created in an initiative or referendum process, including especially the final, uncodified form (similar to a session law) as passed by popular vote. States may decide to include enacted, but subsequently vetoed, legislation. Other states may decide to include certain categories of municipal or county

legal material in the act. The definition of legal material is left to the discretion of the enacting state, beyond the four categories of basic state-level legal material defined in this Section .

Many important sources of law, such as legislative journals and calendars, reports of legislative confirmations and other hearings, versions of bills, gubernatorial orders and proclamations, attorney general opinions, and many agency publications, might be included in the act's coverage under the discretionary section 2 (2) (H). Whether a state legislature can include in the act the records from certain executive branch officials (executive orders and proclamations, or attorney general opinions, for example) raises a separation of powers issue similar to that regarding judicial decisions.

If additional legal material is added to Section 2(2), a corresponding addition must be made to Section 2(3) that identifies an official publisher for the legal material.

Official publisher. (Section 2(3)). The state must designate an official publisher for each type of legal material defined in Section 2(2). This can, and most likely will, be an existing state agency, officer, or employee that already has responsibility for the publication of the legal material. The official publisher is the state actor charged with carrying out the provisions of this act.

To complete the definition of official publisher, an appropriate government agency or employee for each type of legal material must be identified, as indicated by bracketed language. Because the legal material may come from different departments, and even different branches, of government, the official publisher may be one employee or agency, or several.

This act only applies to legal material published by the official publisher designated in this Section. Many states contract with commercial printers or publishers for the production of their legal material, and under this act states can continue to contract out the production of their legal material as desired. The act does not interfere with the contractual relationship between the state and the commercial publisher. However, a commercial publisher cannot serve as official publisher of legal material for the purposes of this act.

SECTION 3. APPLICABILITY. This [act] applies to all legal material in an electronic record that is designated as official under Section 4 and first published electronically on or after [the effective date of this [act]].

***Legislative Note:** To include a preexisting publication in the coverage of the act, the following changes should be made. First, the present language of Section 3 should become subsection (a). Second, subsection (b), as follows, should be added: “(b) This [act] applies to the following legal material in an official electronic record that was first published before [the effective date of this [act]]: [insert proper name or title here].”*

If preexisting legal material is included in the act's coverage, drafters should include the material in the definition of legal material in Section 2(2), and designate an official publisher for the material in Section 2(3), as necessary.

Comment

This act is intended to complement, and not affect, an enacting state's existing public records or records management laws and practices, under which non-electronic legal material is preserved. This act does not affect a state's responsibility to preserve non-electronic legal material.

The UELMA applies to legal material designated as official and first published in an electronic record on or after the act's effective date in the enacting state. If, after the effective date, an enacting state republishes legal material in an electronic record that was previously not published in an electronic record, and if the state designates as official the newly republished legal material, the UELMA applies. This may occur, for example, when the state is transitioning a category of legal material from print to electronic format. If legal material as defined by the act is first published only in an electronic record subsequent to the effectiveness of the act, the state must meet the requirements of the UELMA.

SECTION 4. LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD.

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

- (1) designate the electronic record as official; and
- (2) comply with Sections 5, 7, and 8.

(b) An official publisher that publishes legal material in an electronic record and also publishes the material in a record other than an electronic record may designate the electronic record as official if the publisher complies with Sections 5, 7, and 8.

Comment

This act does not direct a state to publish its legal material in any specific format or formats. The act leaves policy decisions regarding format of its legal material to the state.

There are no publication standards for legal information shared among the states at this time, and within a single state there may be multiple publishing practices for legal material. For example, today in a single state, the state's code may be published in a yearly paperback edition and electronically, court reports may be published in hardbound volumes, and the administrative regulations may be available in a looseleaf format or only in an electronic format. All states are transitioning from a print-only publishing environment to either an environment in which legal materials are published in a mix of formats or one in which legal materials are published in electronic format only. Many states publish the same legal material in both print and electronic formats. A state may designate as official as many formats of its legal material as it wishes. If

legal material in an electronic record is designated as official, the requirements of the act must be met regardless of whether the state publishes the same legal material in another format.

As a matter of courtesy to the user of electronic legal material, if the electronic version is not designated as official, the state should include information that displays with the legal material that explains the source of or the procedure by which the public can obtain a copy of the official version of the legal material.

Where the legal material is published only in an electronic format, the official publisher is required to designate as official the electronic format. This is a common sense requirement; if legal material is available from the state government in one version only, it follows that that version must be official.

SECTION 5. AUTHENTICATION OF OFFICIAL ELECTRONIC RECORD. An official publisher of legal material in an electronic record that is designated as official under Section 4 shall authenticate the record. To authenticate an electronic record, the publisher shall provide a method for a user to determine that the record received by the user from the publisher is unaltered from the official record published by the publisher.

Comment

As matters of public policy, a state should make its official legal material available in a trustworthy form and citizens should be able to ascertain the trustworthiness of electronic official legal material. Reliable and accurate government legal material is necessary to allow those who use the information to make informed decisions based on it. The UELMA supports governments in fulfilling their obligations to provide trustworthy legal information so that citizens may participate knowledgeably in their own governance. The act also provides assurances to the legal community that the legal material it needs are accurate and reliable.

This act guides a state in implementing both policies. The intent of this act is to be technology-neutral, leaving it to the enacting state to choose its preferred technology for authentication of legal material in an electronic record from among the options available. The technology-neutral approach also allows the state to change technologies when necessary or desirable.

Authentication of electronic legal documents is an issue of both national and worldwide concern. Numerous governments and organizations are beginning to authenticate legal material and develop best practices. As of March, 2011, there are several U.S. jurisdictions in which legal material in an electronic record is being authenticated. Their practice offers guidance on specific technologies. For example, the United States Government Printing office provides official, authenticated Public Laws and other legal material using digital signatures (*see* <http://www.gpoaccess.gov/authentication/faq.html#1>). Utah authenticates its administrative code using hash values (*see* www.rules.utah.gov/publicat/code.html). Delaware provides an

authenticated electronic version of administrative rules using a digital signature (*see*, <http://regulations.delaware.gov/AdminCode/>). Arkansas issues its opinions in an authenticated, electronic format, also using digital signatures (*see* http://courts.arkansas.gov/court_opinions/sc/2009a/20090528/published/09-540.pdf).

France’s electronic JOURNAL OFFICIEL, the official record of its legislation and regulations, is authenticated (*see* <http://journal-officiel.gouv.fr/>). South Korea has announced, as part of its transition to a more electronic environment, that it will improve its practices so that “digital documents are considered as valid as their printed versions” (<http://www.koreaherald.com/business/Detail.jsp?newsMLId=20101205000243>).

The Hague Conference on Private International Law, a 72-member inter-governmental organization that develops multilateral legal instruments, has developed a best practices document requiring authentication of its official electronic legal materials. The “Guiding Principles to be Considered in Developing a Future Instrument,” begun in 2008, includes principles for Integrity and Authoritativeness that state, in part:

4. State Parties are encouraged to make available authoritative versions of their legal materials provided in electronic form.
5. State Parties are encouraged to take all reasonable measures available to them to ensure that authoritative legal materials can be reproduced or re-used by other bodies with clear indications of their origins and integrity (authoritativeness).

These Principles, when completed and adopted, will apply to the development of all instruments coming from the Hague Conference, and the principles will become standards for organizations and jurisdictions worldwide. This act adds to these emerging standards by approaching the issue from an outcomes-based perspective.

As shown in the examples above, products that are cost-effective, convenient, and immediate in outcome are already available for electronic authentication of legal material. As authentication of electronic information becomes standard, more products for and methods of authentication will be developed. This Section describes a technological outcome only— authentication of an electronic record. In order to allow states maximum flexibility, neither this section nor any other section of the act specifies any particular technologies or methods of authentication.

Regardless of the method of authentication, it is important that official publishers designate a “baseline” copy of all published legal material that constitutes the definitive document against which all others are compared for the purpose of authenticating the legal material. The format of the baseline copy may vary, depending on the practices of the official publisher and the type of legal material. The baseline copy will ensure that the legal material required to be preserved under Section 7, and to which public access is made available in Section 8, is accurate and trustworthy.

SECTION 6. EFFECT OF AUTHENTICATION.

- (a) Legal material in an electronic record that is authenticated under Section 5 is

presumed to be an accurate copy of the legal material.

(b) If another state has adopted a law substantially similar to this [act], legal material in an electronic record that is designated as official and authenticated by the official publisher in that state is presumed to be an accurate copy of the legal material.

(c) A party contesting the authentication of legal material in an electronic record authenticated under Section 5 has the burden of proving by a preponderance of the evidence that the record is not authentic.

Comment

The intent of this act is to provide the end-user of electronic legal material with a presumption that authenticated legal material is accurate. The act extends the same presumption to authenticated electronic legal material that is provided to legal material published in a book, and results in the same shift in the burden of proof as occurs when a party questions the accuracy of the print legal material. This is the legal outcome of authentication.

The act does not affect or supersede any rules of evidence, and leaves further evidentiary effect to existing state law and court rules. The presumption that authenticated electronic legal material is an accurate copy is not determinative of any criteria a court may wish to establish regarding admissibility and reliability of electronic legal material. Beyond any steps necessary to authenticate electronic information as required by Section 5, no burden is imposed on courts, lawyers, or other users.

Authentication provides only a presumption of accuracy, and a party disputing the accuracy of legal material in an authenticated electronic record can offer proof as to its inaccuracy. Authentication of an electronic record provides the same level of assurance of accuracy of the electronic record that publication in a printed book provides. Just as the reader of a book can look at the book to determine if the document has been altered, the user of electronic legal material can use the authentication method to determine if the electronic document has been altered.

This act does not affect the practice of certification, and courts retain discretion to require a certified copy to meet a particular evidentiary standard. Certification is a long-standing practice in which an official publisher reviews a printed document and adds a notarization or other verification that the document is an accurate copy of the original.

The act does not require electronic legal material from another state to be authenticated for use in the enacting state. However, if another state has adopted this act, the same presumption of accuracy applies to its authenticated electronic legal material. Widespread adoption of this act will further the recognition and use of electronic legal material.

SECTION 7. PRESERVATION AND SECURITY OF LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD.

(a) An official publisher of legal material in an electronic record that is or was designated as official under Section 4 shall provide for the preservation and security of the record in an electronic form or a form that is not electronic.

(b) If legal material is preserved under subsection (a) in an electronic record, the official publisher shall:

- (1) ensure the integrity of the record;
- (2) provide for backup and disaster recovery of the record; and
- (3) ensure the continuing usability of the material.

Comment

Legal material retains its value regardless of whether it is currently in effect. This includes legal material that is subsequently amended or repealed, as happens with statutes, as well as legal material such as cases that may be reversed or overruled. Legal material does not cease to be legal material with the passage of time. For example, the outcome of today's lawsuit may depend on rights or obligations created by yesterday's statutes or regulations. Researchers need historical as well as current legal material to understand the development of legal doctrine and predict its future course. Legal material must be saved and protected—preserved—to allow for future use.

The best practices document of the Hague Conference on Private International Law, “Guiding Principles to be Considered in Developing a Future Instrument,” acknowledges the importance of preservation of all legal material in its delegation to each state of the responsibility for preserving its legal material. The Guiding Principles document states that: “7. State Parties are encouraged to ensure long-term preservation and accessibility of their legal materials . . .”. This act provides guidance to an enacting state to allow it to meet this principle.

Enacting states are given discretion to decide what electronic legal material must be preserved. This is done through the definition of legal material in Section 2. Section 7 requires that any legal material included in the Section 2 definitions and designated as official under section 4 must be preserved. The preservation requirement is intended to cover all materials typically published with the defined legal material. For example, state session laws usually include lists of legislators and state officials, memorials, proposed or final state constitutional amendments, and resolutions, all of which should be preserved along with the legislative enactments.

The UELMA does not address the measures taken by states to secure their internal information, prior to the point of official publication. This act applies only to legal material that has been officially published and thereby made available to the public. Section 7 (a) requires that an official publisher provide for the preservation and security of electronic legal material designated as official, in either electronic or non-electronic form. This gives states the flexibility to preserve electronic legal material in a print format or in an electronic format. Regardless of the method chosen for preserving legal material, the official publisher's practices should be carried out in accordance with existing public records and records management laws.

If legal material is preserved in print form, procedures to do so securely are well-established and are therefore not specified in the act. Traditionally, multiple copies of law books have been maintained by several libraries in diverse geographic locations. This method of preservation and security can be replicated for electronic legal material by printing multiple copies and distributing them in the same manner as books. Many states have an official state archivist, whose duties include preserving copies of important documents such as legal material and who may be able to provide assistance in preserving electronic legal material.

If legal material is preserved electronically, however, Section 7 (b) of the act requires certain outcomes. Electronic records must be securely stored to ensure their integrity. In addition to other possible security measures, best practices for secure storage of electronic records call for the maintenance of multiple copies that are geographically and administratively separated. As with preservation in print form, the existence of multiple electronic copies maximizes the possibility that at least one copy of important records will remain available, even after a natural disaster or other emergency.

To maintain security over time, backup copies of electronic records must be made periodically. A backup copy provides an identical version of an electronic record that is usable in case the original is lost or unusable. The backup process may be incremental, essentially tracking all changes to the original, or a continuous backing up of the entire system that saves the complete text of each version, among other methods. Whatever method the state chooses must back-up the original material plus subsequent changes; a changed record becomes a new record with content that must also be backed-up. Legal material is continually updated; states must develop systems that recognize the dynamic nature of legal material and provide for appropriate preservation.

Preservation requires that the electronic records be migrated to new storage media from time to time. Just as cassette tapes were replaced by CD-ROMs which were then replaced by digital music formats, storage media for electronic records has and will continue to change over time. While the nature of new technologies is not known at the present time, the fact that new technologies will be developed is a certainty. Costs of storage media are decreasing rapidly as the marketplace produces new products and methods. The anticipation of the Drafting Committee is that preservation of electronic records will be cost neutral when compared with the current system of storing tangible legal material.

In migrating to new storage media, the official publisher should preserve the legally significant formatting of electronic legal material. Legal material is often complex in organization and presentation. The formatting of the legal material, including italicization,

indentation, numbering, bold face fonts, and internal subdivisions and subsections, can be significant. Hierarchies are defined and priorities are established, for example, by formatting, and legislative intent is made clear.

The act does not impose a duty to convert non-electronic legal material retrospectively to an electronic format. Choice of format is entirely up to the state. If, however, the official publisher chooses to digitize non-electronic legal material and designate that material as official, the requirements of the act must be met once the legal material is published in an electronic format.

SECTION 8. PUBLIC ACCESS TO LEGAL MATERIAL IN OFFICIAL

ELECTRONIC RECORD. An official publisher of legal material in an electronic record that is required to be preserved under Section 7 shall ensure that the material is reasonably available for use by the public on a permanent basis.

Comment

Our democratic system of government depends on an informed citizenry. Legal material includes information essential to all citizens in a democracy, whether the legal material is effective currently, has been repealed or overruled, or is of historical value only. To exercise their rights to participate in our democracy, citizens must have reasonable access to all legal material.

This section highlights the importance to the citizenry of legal material by requiring permanent public access to electronic legal material. Permanent public access to official electronic legal material allows citizens to stay informed of legal developments and carry out their democratic responsibilities. Any legal material in an electronic record designated as official under Section 4 of this act must be preserved under Section 7. All legal material required to be preserved under Section 7 of the act must be publicly accessible under this Section.

Legal material preserved under this act must be “reasonably available” to the general public. Reasonable availability does not necessarily mean that the information must be accessible around the clock, every day of the year. An enacting state has discretion to decide what is reasonable, which should be determined in a manner consistent with other state practice. Providing public access to state records is routinely done by state archives, whose practices may provide important guidance to official publishers. Reasonable availability may mean that the legal material can be used during business hours at publicly accessible locations, such as designated state offices, public libraries, a state repository or archive, or similar location.

Access to preserved electronic legal material may be limited by the state’s determination of reasonableness, but access must be offered permanently. That is, the preserved electronic legal material must remain available in perpetuity. This requirement makes electronic legal material comparable to print legal material, which is stored on a permanent basis in libraries, archives, and offices.

The Hague Conference’s “Guiding Principles to be Considered in Developing a Future Instrument” state that “2. State Parties are also encouraged to make available for free access relevant historical materials . . .”. In order to provide for maximum flexibility, and recognizing economic realities, however, the act does not address the issue of cost for access to electronic legal material. The result is that providing free access or charging reasonable fees for access to electronic legal material is a decision left up to the states.

SECTION 9. STANDARDS. In implementing this [act], an official publisher of legal material in an electronic record shall consider:

- (1) standards and practices of other jurisdictions;
- (2) the most recent standards regarding authentication of, preservation and security of, and public access to, legal material in an electronic record and other electronic records, as promulgated by national standard-setting bodies;
- (3) the needs of users of legal material in an electronic record;
- (4) the views of governmental officials and entities and other interested persons; and
- (5) to the extent practicable, methods and technologies for the authentication of, preservation and security of, and public access to, legal material which are compatible with the methods and technologies used by other official publishers in this state and in other states that have adopted a law substantially similar to this [act].

Comment

The language of this section, based on a similar provision in the Uniform Real Property Electronic Recording Act, requires consideration of standards and best practices for the authentication, preservation, and permanent access of electronic records. As private sector organizations, government agencies, and international organizations tackle these issues, their work may offer guidance to states as this act is implemented on an on-going basis. Like many other technology-related procedures, standards and best practices for management of electronic records are in a state of development and refinement. For example, appropriate information security is a key element of the authentication process, and security standards are currently being developed. The state’s own standards should include a method to evaluate the effectiveness of the official publisher’s implementation of this act.

Each enacting state is encouraged to consider a single system for authentication of, preservation and security of, and public access to its legal material. A single system will lead to

financial and personnel efficiencies in implementation and maintenance, and avoid confusion on the part of the users. While each enacting state will determine its own practices, states are encouraged to communicate, coordinate, and collaborate in the development of authentication, preservation, and permanent access standards.

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

SECTION 11. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 12. EFFECTIVE DATE. This [act] takes effect

Comment

This act applies to legal material in an electronic record designated as official and first published after the effective date of the act, as noted in Section 3. Additional time may be needed, beyond the usual date of effectiveness of its statutes, for a state to prepare policies and procedures to meet the requirements of authentication, preservation and public access of electronic legal material.