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State legislative salaries range from \$95,291 annually in California to only \$200 annually in New Hampshire. (*The Book of the States, 2011 Table 3.9*)

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Public Access to Official State Statutory Material Online

By Jennifer Burnett | Wednesday, September 21, 2011 at 4:28 pm



Download the entire report, including state profiles.

As state leaders begin to realize and utilize the incredible potential of technology to promote transparency, encourage citizen participation and bring real-time information to their constituents, one area may have been overlooked. Every state provides public access to their statutory material online, but only seven states—Arkansas, Delaware, Maryland, Mississippi, New Mexico, Utah and Vermont—provide access to official versions of their statutes online. This distinction may seem academic or even trivial, but it opens the door to a number of questions that go far beyond simply whether or not a resource has an official label.

Has the information online been altered—intentionally or not—from its original form? Who is responsible for mistakes? How often is it updated? Is the information secure? If the placement of a resource online is not officially mandated or approved by a statute or rule, its reliability and accuracy are difficult to gauge.

As state leaders have moved quickly to provide information electronically to the public, they may have overlooked the process and manner in which that information is conveyed online. Several states, such as Delaware, have recognized this issue and met it head-on, establishing procedures and rules that clarify the status of their statutory material. The Uniform Law Commission recently approved The Uniform Electronic Legal Material Act, which provides guidance for states as they move to provide the most reliable information possible to the public through electronic means.

Key Findings

All states offer access to their statutes online.

Every state provides some form of public access to its statutes online, either by directly hosting a database of the statutes on the official state website or by providing a link on its website to content provided on a third-party's site.

A majority of states do not provide free public access to official versions of their state statutes online.

Seven states—Arkansas, Delaware, Maryland, Mississippi, New Mexico, Utah and Vermont—provide access to official versions of their statutes online.

The manner in which state websites deliver access to their statutes — official or otherwise — varies significantly.

Some state websites offer sophisticated tools to search their statutes, while other states provide more rudimentary tools.

Many state websites offer a disclaimer regarding their online content.

Most states provide a general waiver of warranty that limits the liability of the state with respect to the accuracy of its online content. Many state websites provide a disclaimer regarding the official nature of its content, although the clarity of the disclaimers and the manner in which the disclaimers are displayed varies significantly.

Most states maintain a contract with LexisNexis and/or West Publishing.

Most states publish official or unofficial print versions of their statutes through LexisNexis and/or West, but a user generally must pay for access to those statutes. Seven states—Arkansas, Colorado, Georgia, Maryland, Mississippi, Tennessee and Vermont—contract with LexisNexis to provide free online access to their statutes through programs called LexisNexis Total Solutions or Michie's Legal Resources. Four of the seven states that provide online access to their official statutes do so through this service.

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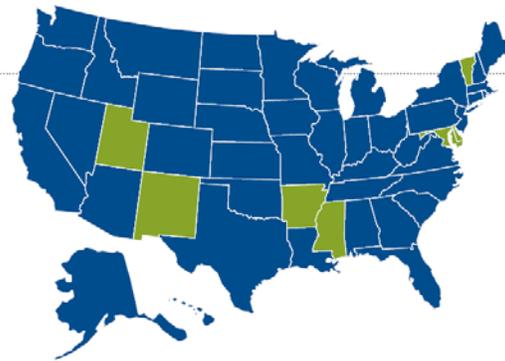
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Background

The reason public access to government information matters is simple, Associate U.S. Attorney General Tom Perrelli told an audience of federal workers in March:² “You’ve often heard it said that sunlight is the best disinfectant. And the recognition is that, for us to do better, it’s critically important for the public to know what we’re doing.”

At the most basic level, free and open public access to the law that governs this country—federal and state—is necessary to create the transparency that is fundamental to a functional participatory democracy. Furthermore, as a democratic society, the citizens of this country are the driving force behind all its institutions, including those institutions that create and compose the law. The court eloquently relays this concept in *State of Georgia v. Harrison Co.*, saying, “the citizens are the authors of the law, and therefore its owners, regardless of who actually drafts the provisions, because the law derives its authority from the consent of the public, expressed through the democratic process...”³ It logically follows that, as the “owners” of the law, citizens should have unfettered access to that which they own.

In the early 1960s, a team of University of Pittsburgh employees under the leadership of professor John Harty successfully converted the public health statutes of all 50 states into a digital format, using punched cards and magnetic tape.⁴ Over the past 50 years the world has exploded into a more technologically advanced society than the one Harty knew. According to a recent study by the Nielson Co., more than 80 percent of Americans now have a computer in their homes, and of those, almost 92 percent have Internet access.⁵ With this explosion of technology comes the unprecedented potential to offer the public free and open access to government and legal material through electronic means.

But state governments provide access to the most basic building blocks of legal information—state laws—in different ways. In 2003, the American Association of Law Libraries published the *State-by-State Report on Permanent Public Access to Electronic Government Information*,⁶ which strived to identify the steps state governments were taking to provide the public access to government information online, particularly primary legal materials.

Three years later, the association wrote a follow-up to that report—the *State-by-State Report on Authentication of Online Legal Resources*. The purpose of this report moved beyond merely identifying which states provided access—permanent or otherwise—to electronic primary law resources⁷ and sought to determine how trustworthy those electronic legal resources were by both traditional authentication definitions and emerging definitions related to online content.

Both the 2003 and 2006 reports found that while some states provided access to official⁸ resources online, those resources were not trustworthy. “A significant number of the state online legal resources are official but none are authenticated or afford ready authentication by standard methods. State online primary legal resources are therefore not sufficiently trustworthy,” the report said.

Following up on the findings made by American Association of Law Libraries, The Council of State Governments surveyed the legislative websites of the 50 states and interviewed key staff members for clarification in an effort to identify the official status of primary legal material provided online by states as of July 2011. A majority of states do not provide official online resources. Identification of authentication measures was beyond the scope of this survey. Furthermore, this survey focused solely on the official status of state statutes online, rather than all of the states’ primary legal materials.

Moving Forward

The Uniform Electronic Legal Material Act, for which the Uniform Law Commission gave final approval in July 2011, is intended to provide, according to the commission, “a consistent, outcomes-based approach to solving (the problem of non-uniform state electronic legal

materials) that can be adopted in every state and territory."

The act provides a clear way in which states can identify the official publisher of a given government record, including state statutory material. The act also provides comprehensive guidance in establishing the key components of an authenticated and official electronic record system. The content of the model act can be found here.



Download the entire report, including state profiles.

References:

1 Black's Law Dictionary provides us with a working definition for an "official" legal resource, defining the term as "an official version of regulatory materials, statutes, session laws, or court opinions is one that has been governmentally mandated or approved by statute or rule. It might be produced by the government, but does not have to be."

2 Carrie Johnson, [Has Obama Lived Up to His Pledge on Transparency?](#) National Public Radio, (March 15, 2011).

3 *State of Georgia v Harrison Co*, 548 F Supp 110, 114 (ND Ga 1982)

4 William G. Harrington, A Brief History of Computer-Assisted Legal Research, 77 LAW LIBR. J. 543, 544 (1985).

5 An Overview of Home Internet Access in the U.S, The Nielson Company, (December 2008).

6 Richard J. Matthews, et al., State-by-State Report on Permanent Public Access to Electronic Government Information, The American Association of Law Libraries, (2003).

7 The report targeted six sources of law: state administrative codes and registers, state statutes and session laws, and state high and intermediate appellate court opinions.

8 The AALL report uses Black's Law Dictionary to provide a definition of an official legal resource, defining the term as "an official version of regulatory materials, statutes, session laws, or court opinions is one that has been governmentally mandated or approved by statute or rule. It might be produced by the government, but does not have to be."

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