

D R A F T  
FOR DISCUSSION ONLY

# **AUTHENTICATION AND PRESERVATION OF STATE ELECTRONIC LEGAL MATERIALS ACT**

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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For February 25 – 27, 2011 Drafting Committee Meeting

Includes changes from November 2010 Drafting Committee Meeting

Clean Version

*Without Prefatory Note or Comments*

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*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

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MATERIALS ACT**

**TABLE OF CONTENTS**

SECTION 1. SHORT TITLE. ....	1
SECTION 2. DEFINITIONS.....	1
SECTION 3. OFFICIAL ELECTRONIC LEGAL MATERIAL.....	2
SECTION 4. AUTHENTICATION OF ELECTRONIC LEGAL MATERIAL.....	3
SECTION 5. EFFECT OF AUTHENTICATION.....	3
SECTION 6. PRESERVATION OF ELECTRONIC LEGAL MATERIAL.....	3
SECTION 7. PUBLIC ACCESS TO ELECTRONIC LEGAL MATERIAL. ....	3
SECTION 8. STANDARDS.....	3
SECTION 9. UNIFORMITY OF APPLICATION AND CONSTRUCTION.....	4
SECTION 10. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. ....	4
SECTION 11. EFFECTIVE DATE.....	4



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. OFFICIAL ELECTRONIC LEGAL MATERIAL.**

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

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

21 (2) meet the requirements of Sections 4, 6, and 7.

22 (b) If the official publisher publishes a print record of the legal material, the official  
23 publisher may designate an electronic record as official if the requirements of Sections 4, 6, and

1 7 are met.

2 **SECTION 4. AUTHENTICATION OF ELECTRONIC LEGAL MATERIAL.** The  
3 official publisher of legal material in an electronic record that is designated as official under  
4 Section 3 shall authenticate the record by providing a method for users to determine that the  
5 electronic record is unaltered from the one published by the official publisher.

6 **SECTION 5. EFFECT OF AUTHENTICATION.**

7 (a) Legal material in an electronic record that is authenticated under Section 4 is  
8 presumed to be an accurate copy of the legal material.

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

11 **SECTION 6. PRESERVATION OF ELECTRONIC LEGAL MATERIAL.** The  
12 official publisher of legal material in an electronic record shall preserve all published electronic  
13 legal material that is or was designated as official under Section 3. To preserve legal material in  
14 an electronic record, the official publisher shall:

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

18 **SECTION 7. PUBLIC ACCESS TO ELECTRONIC LEGAL MATERIAL.** The  
19 official publisher of legal material in an electronic record shall ensure that the electronic legal  
20 material that is required to be preserved under Section 6 is reasonably available on a permanent  
21 basis for use by the general public.

22 **SECTION 8. STANDARDS.** In implementing the requirements of this [act], the  
23 official publisher shall consider:

- 1 (1) standards and practices of other jurisdictions;
- 2 (2) any standards on authentication and preservation of records adopted by national
- 3 standard-setting bodies; and
- 4 (3) the needs of electronic record users.

5 **SECTION 9. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In  
6 applying and construing this uniform act, consideration must be given to the need to promote  
7 uniformity of the law with respect to its subject matter among the states that enact it.

8 **SECTION 10. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**  
9 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal  
10 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq.,  
11 but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or  
12 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15  
13 U.S.C. Section 7003(b).

14 **SECTION 11. EFFECTIVE DATE.** This act is effective on \_\_\_\_\_, for  
15 electronic legal material designated official under Section 3 and first published on or after that  
16 date.