

D R A F T
FOR DISCUSSION ONLY

~~AUTHENTICATION AND PRESERVATION OF STATE~~ ELECTRONIC LEGAL MATERIALS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

~~Includes changes from February 2011 Drafting Committee Meeting~~

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~~Clean Version~~ Redline Version

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~~January 31~~ March 15, 2011

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~~AUTHENTICATION AND PRESERVATION OF STATE~~ ELECTRONIC LEGAL
MATERIALS ACT

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~~AUTHENTICATION AND PRESERVATION OF STATE~~ ELECTRONIC LEGAL
MATERIALS ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the ~~Authentication and~~
~~Preservation of State~~ Electronic Legal Materials 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:

(A) the [Constitution of this state];

(~~AB~~) ~~a law or statute enacted by the [state legislature]~~ [legislative enactments]
enacted by the [Legislature];

(~~BC~~) ~~a codified law or statute of this state~~ [name of state code]; [and]

(~~CD~~) ~~any~~ rule adopted by a state agency which has the ~~force and~~ effect of law[;]
[and]

~~[(DE)~~ a decision of a state administrative agency which has precedential effect]
[;] [and]

~~[(EF)~~ a judicial decision of a state court ~~that~~which has precedential effect][;] [and]

~~[(FG)~~ state court rules]~~[/];[and]].~~

~~[(G) [any other record]].~~

(3) “Official publisher” means:

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

(~~AB~~) ~~for a law or statute~~ [legislative enactments] enacted by the [~~state~~
Legislature], the [insert appropriate agency or official];

(~~BC~~) for ~~a codified law or statute~~ [name of state code], the [insert appropriate agency or official]; [and]

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

(~~DE~~) for any rule not published in the [insert name of administrative code], the state agency adopting the rule]; [and]

(~~EF~~) for a state administrative agency ~~a decision of a state administrative agency~~ which has precedential effect, the [insert appropriate agency or official]; [and]

(~~FG~~) for a state court judicial decision ~~of a state court that which~~ has precedential effect, the [insert appropriate agency or official]; [and]

(~~GH~~) for state court rules, the [insert appropriate agency or official].~~}; [and]~~

~~[(H) [for any other record], the [insert appropriate agency or official]; [and]~~

~~[(I) for any other legal material, the [insert secretary of state or other appropriate agency or official]].~~

(4) “Publish” means to display, present, or release to the public.

(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.

SECTION 3. ~~OFFICIAL ELECTRONIC LEGAL MATERIAL~~ APPLICABILITY.

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

1 **SECTION 4. LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD.**

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

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

5 (2) meet the requirements of Sections 45, 67, and 78.

6 (b) If ~~the~~an official publisher publishes legal material in a record other than an electronic
7 record, a print record of the legal material, the ~~official~~ publisher may designate an electronic
8 record as official if the requirements of Sections 45, 67, and 78 are met.

9 **SECTION 45. AUTHENTICATION OF ELECTRONIC ~~LEGAL~~**
10 **MATERIAL RECORD.** ~~The~~An official publisher of legal material in an electronic record that
11 is designated as official under Section 34 shall authenticate the record by providing a method for
12 users to determine that the ~~electronic~~ record is unaltered from the one published by the ~~official~~
13 publisher.

14 **SECTION 56. EFFECT OF AUTHENTICATION.**

15 (a) Legal material in an electronic record that is authenticated under Section 45 is
16 presumed to be an accurate copy of the legal material.

17 (b) The presumption under (a) ~~above~~ applies to ~~electronic~~ legal material in an electronic
18 record designated as official by ~~from~~ another state that has adopted this [act].

19 **SECTION 67. PRESERVATION OF ~~ELECTRONIC~~ LEGAL MATERIAL IN**
20 **ELECTRONIC RECORD.**

21 (a) ~~The~~An official publisher of legal material in an electronic record shall provide for the
22 preservation, electronically or non-electronically, of a record that is or was designated as official

1 ~~under Section 4. preserve all published electronic legal material that is or was designated as~~
2 ~~official under Section 3.~~

3 ~~(b) To preserve legal material in an electronic record~~ If legal material is preserved in an
4 ~~electronic record~~, the official publisher shall:

- 5 (1) ensure the integrity of the ~~electronic~~ record;
6 (2) provide for back-up and disaster recovery of the ~~record~~ ~~electronic record~~; and
7 (3) ensure the continuing usability of the ~~legal~~ material.

8 **SECTION 78. PUBLIC ACCESS TO ~~ELECTRONIC~~ LEGAL MATERIAL IN**
9 **OFFICIAL ELECTRONIC RECORD.** ~~The~~ An official publisher of legal material in an
10 electronic record that is required to be preserved under Section 7 shall ensure that the ~~electronic~~
11 ~~legal~~ material ~~that is required to be preserved under Section 6~~ is reasonably available on a
12 permanent basis for use by the ~~general~~ public.

13 **SECTION 89. STANDARDS.** In implementing ~~the requirements of~~ this [act], ~~the~~ an
14 official publisher of legal material shall consider:

- 15 (1) standards and practices of other jurisdictions;
16 (2) the most recent standards regarding preservation of, authentication of, and public
17 access to legal material in an electronic record and other electronic records, as promulgated ~~any~~
18 ~~standards on authentication and preservation of records adopted~~ by national standard-setting
19 bodies; ~~and~~
20 (3) the needs of ~~electronic record~~ users of legal material in an electronic record; and -
21 (4) the views of governmental officials and entities and other interested persons.

22 **SECTION 910. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
23 applying and construing this uniform act, consideration must be given to the need to promote

1 | uniformity of the law with respect to its subject matter among~~the~~ states that enact it.

2 | **SECTION ~~1011~~. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**
3 | **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
4 | Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq.,
5 | but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
6 | authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
7 | U.S.C. Section 7003(b).

8 | **SECTION ~~1112~~. EFFECTIVE DATE.** This act is effective on _____, ~~for~~
9 | ~~electronic legal material designated official under Section 3 and first published on or after that~~
10 | ~~date.~~