

DRAFT
FOR DISCUSSION ONLY

AUTHENTICATION AND PRESERVATION OF STATE ELECTRONIC LEGAL MATERIALS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

November 19 – 20, 2010 Committee Meeting Draft [with changes made at November meeting](#)

Without Prefatory Note or Comments

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ON UNIFORM STATE LAWS

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October 29, 2010

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MATERIALS ACT**

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1 (C) for a rule published in the [insert administrative code], the [insert appropriate
2 agency or official] an administrative rule adopted under [the state administrative procedures
3 law], the [agency or official];] [and]

4 [(D) for any rule not published in the [insert administrative code], the state agency
5 adopting the rule any other state administrative rule, the [agency or official];] [and]

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

8 [(F) ~~an appellate judicial decision or other~~ for a judicial decision of a state court
9 that has precedential effect, the [insert appropriate agency or official];] [and]

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

11 [(GH)~~for~~ any other record], ~~specified,~~ the [insert appropriate agency or
12 official];] [and]

13 [(HI) for any other legal material, ~~for which no official publisher is designated,~~
14 the [insert secretary of state or other appropriate agency or official]].

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

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

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

21 SECTION 3. OFFICIAL ELECTRONIC LEGAL MATERIAL.

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

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

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

3 ~~If the official publisher of legal material publishes a print version of the legal material, the~~
4 ~~official publisher may designate an electronic version as official if the requirements of Sections~~
5 ~~4, 6, and 7 are met.~~

6 (b) If the official publisher publishes a print record of the legal material, the official
7 publisher may designate an electronic record as official if the requirements of Sections 4, 6, and
8 7 are met.

9 ~~If the official publisher of legal material publishes the legal material only in an electronic~~
10 ~~version, the official publisher shall:~~

11 ~~(1) designate the electronic version as official; and~~

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

13 **SECTION 4. AUTHENTICATION OF ELECTRONIC LEGAL MATERIAL.** The
14 official publisher of legal material in an electronic record that is designated as official under
15 Section 3 shall authenticate the record by providing a. ~~To authenticate the record, the official~~
16 ~~publisher shall:~~

17 ~~(1) certify that the electronic record is a true and correct copy of the legal material;~~

18 ~~(2) provide sufficient information to determine that the certification is valid; and (3)~~

19 provide a method for users to determine that the electronic record is unaltered from the one
20 published by the official publisher.

21 **SECTION 5. EFFECT OF AUTHENTICATION.**

22 (a) Legal material in an electronic record that is authenticated under Section 4 is
23 presumed to be an accurate ~~a true and correct~~ copy of the legal material.

1 (b) ~~Legal material in an electronic record from another state that is authenticated by that~~
2 ~~state in a manner that complies with Section 4 is presumed to be a true and correct copy of the~~
3 ~~legal material. The presumption under (a) above applies to electronic legal material from~~
4 ~~another state that has adopted this [act].~~

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

9 (1) ~~protect~~ ensure the integrity of the electronic record, ~~which includes retention of~~
10 ~~formatting with legal significance;~~

11 (2) provide for back-up and disaster recovery of the electronic record; and

12 (3) ensure the continuing usability of the legal material. ~~—legal material, which may~~
13 ~~include periodic~~
14 ~~updating into new electronic formats as necessary.~~

15 **SECTION 7. PUBLIC ACCESS TO ELECTRONIC LEGAL MATERIAL.** The
16 official publisher of legal material in an electronic record shall ensure that the electronic legal
17 material that is required to be preserved under Section 6 is reasonably available ~~[without charge]~~
18 on a permanent basis for use by the general public. ~~If the legal material is published only in an~~
19 ~~electronic record, the official publisher shall continue to publish it in an electronic record.~~

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

22 (1) standards and practices of other jurisdictions;

23 (2) any standards on authentication and preservation of records adopted by national

1 standard-setting bodies; and

2 (3) the needs of electronic record users.

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

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

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

15