

DRAFT
FOR DISCUSSION ONLY

**AUTHENTICATION AND PRESERVATION OF STATE
ELECTRONIC ~~LEGAL MATERIALS~~ LAW-ACT**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

November 19 – 20, 2010 Committee Meeting Draft

Without Prefatory Note or Comments

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October 29, 2010

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

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1 | **AUTHENTICATION AND PRESERVATION OF STATE ELECTRONIC ~~LEGAL~~**
2 | **~~MATERIALS~~LAW ACT**
3 |

4 | **SECTION 1. SHORT TITLE.** This [act] may be cited as the Authentication and
5 | Preservation of State Electronic ~~Legal Materials~~Law Act.

6 | **SECTION 2. DEFINITIONS.** In this [act]:

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

9 | (2) “~~Legal material~~” Law means:

10 | (A) a law or statute enacted by the [state legislature];

11 | (B) a codified law or statute of this state ; [and]

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

13 | [and]

14 | [(D) a decision of a state administrative agency which has
15 | precedential effect][;] [and]

16 | [(E) a judicial decision of a state court that has precedential effect][;] [and]

17 | [(F) state court rules][;][and]

18 | [(G) [any other record]].

19 | (3) “Official publisher” means:

20 | (A) for a law or statute enacted by the [state legislature], the [insert appropriate
21 | agency or official];

22 | (B) for a codified law or statute, the [insert appropriate agency or official]; [and]

23 | (C) for a rule published in the [insert administrative code], the [insert appropriate
24 | agency or official] [;] [and]

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~~ LAW.**

18 | (a) If the official publisher publishes the ~~legal material~~ law only in an electronic record,
19 | the 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~~ law, 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~~**

3 **LAW.** The official publisher of ~~legal material~~ law in an electronic record that is designated as
4 official under Section 3 shall authenticate the record by providing a method for users to
5 determine that the electronic record is unaltered from the one published by the official publisher.

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

7 (a) ~~Legal material~~ Law 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~~ law from
10 another state that has adopted this [act].

11 **SECTION 6. PRESERVATION OF ELECTRONIC ~~LEGAL MATERIAL~~ LAW.**

12 The official publisher of ~~legal material~~ law in an electronic record shall preserve all published
13 electronic ~~legal material~~ law that is or was designated as official under Section 3. To preserve
14 ~~legal material~~ law in 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~~ law.

18 **SECTION 7. PUBLIC ACCESS TO ELECTRONIC ~~LEGAL MATERIAL~~ LAW.**

19 The official publisher of ~~legal material~~ law in an electronic record shall ensure that the
20 electronic ~~legal material~~ law that is required to be preserved under Section 6 is reasonably
21 available on a permanent 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~~ law designated official under Section 3 and first published on or after
16 that date.

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