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FOR DISCUSSION ONLY

AUTHENTICATION AND PRESERVATION OF STATE ELECTRONIC LEGAL MATERIALS ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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Without Prefatory Note or Comments

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October 29, 2010

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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 any of the following records created in this state:

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

(B) a codified law or statute; [and]

(C) an administrative rule adopted under [the state administrative procedures law][;] [and]

[(D) any other state administrative rule][;] [and]

[(E) a decision of a state administrative agency that has precedential effect][;] [and]

[(F) an appellate judicial decision or other judicial decision that has precedential effect][;] [and]

[(G) any other record, as specified]].

(3) "Official publisher" means, for the following legal material:

(A) a law or statute enacted by the [state legislature], the [agency or official];

(B) a codified law or statute, the [agency or official]; [and]

(C) an administrative rule adopted under [the state administrative procedures law], the [agency or official][;] [and]

[(D) any other state administrative rule, the [agency or official][;] [and]

[(E) a decision of a state administrative agency that has precedential effect, the [agency or official][;] [and]

[(F) an appellate judicial decision or other judicial decision that has precedential effect, the [agency or official][;] [and]

[(G) any other record specified, the [agency or official][;] [and]

[(H) any legal material for which no official publisher is designated, the [secretary of state or other 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.

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

(b) If the official publisher of legal material publishes the legal material only in an electronic version, the official publisher shall:

(1) designate the electronic version as official; and

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

SECTION 4. AUTHENTICATION OF ELECTRONIC LEGAL MATERIAL. The

official publisher of legal material in an electronic record that is designated as official under Section 3 shall authenticate the record. To authenticate the record, the official publisher shall:

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

(2) provide sufficient information to determine that the certification is valid; and(3) provide a method for users to determine that the electronic record is unaltered from the one published by the official publisher.

SECTION 5. EFFECT OF AUTHENTICATION.

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

(b) Legal material in an electronic record from another state that is authenticated by that state in a manner that complies with Section 4 is presumed to be a true and correct copy of the legal material.

SECTION 6. PRESERVATION OF ELECTRONIC LEGAL MATERIAL. The official publisher of legal material in an electronic record shall preserve all published electronic legal material. To preserve electronic legal material, the official publisher shall:

(1) protect the electronic record, which includes retention of formatting with legal significance;

(2) provide for back-up and disaster recovery; and

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

SECTION 7. PUBLIC ACCESS TO ELECTRONIC LEGAL MATERIAL. The official publisher of legal material in an electronic record shall ensure that the electronic legal material preserved under Section 6 is reasonably available [without charge] on a permanent basis

for use by the general public. If the legal material is published only in an electronic record, the official publisher shall continue to publish it in an electronic record.

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

(1) standards and practices of other jurisdictions;

(2) any standards on authentication and preservation of records adopted by national standard-setting bodies; and

(3) the needs of electronic record users.

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

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

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