

DRAFT  
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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March 2010 Strike and Score Draft

*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.*

March 17, 2010

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

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1 communicated, or stored by electronic means, and readable online.

2 (3) “Legal material” means a record which is:

3 (A) a law or statute enacted by the state legislature in a legislative session;

4 (B) a codified law or statute;

5 (C) a state administrative rule adopted under [the state APA]; ~~agency or~~  
6 ~~official];~~

7 [(D) ~~for~~ any other state administrative rule; ~~agency or official];~~

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

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

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

12 ~~(6) “Official” means governmentally mandated or approved by statute or rule.~~

13 ~~(74) “Official Ppublisher” means:~~

14 (A) for a law or- statute enacted by the state legislature in a legislative session,  
15 [agency or official];

16 (B) for a codified law or statute, [agency or official];

17 (C) for a state administrative rule ~~f~~adopted under [the state APA], [agency or  
18 official];

19 [(D) for any other state administrative rule, [agency or official];] ~~;~~

20 [(E) for a decision of a state administrative agency that has precedential effect,  
21 [agency or official];]

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

1 [(G) for any other record specified, [agency or official].:]

2 [(H) for any legal material for which no official publisher is designated, [secretary  
3 of state or other agency or official].] ~~an agency, department, board, commission, authority,  
4 institution, or instrumentality of state government, whether in the legislative, executive, or  
5 judicial branch, with the responsibility to publish a document pursuant to governmental mandate  
6 or as approved by statute or rule.~~

7 ~~(8) “Permanent public access” means current, continuous and future public use.~~

8 (95) “Person” means an individual, corporation, business trust, estate, trust,  
9 partnership, limited liability company, association, joint venture, public corporation,  
10 government, or governmental subdivision, agency, or instrumentality, or any other legal or  
11 commercial entity.

12 ~~(10) “Preservation” means providing for permanent, uninterrupted access to the  
13 intellectual content of a document, either in its original publication form or as reformatted by the  
14 official publisher.~~

15 (116) “Publish” means to produce or release for general distribution<sup>[bb1]</sup>.

16 (7) “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 (128) “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 (913) [Other definitions to be added?]

22 **Alternative 1**

23 **SECTION 3. APPLICABILITY.** This [act] applies to an electronic document that is

1 ~~published on the Internet.~~

2 **Alternative 2**

3 ~~{SECTION 3.- APPLICABILITY. This [act] applies to an electronic document that is~~  
4 ~~published only on the Internet, or is published on the Internet and is designated official.~~

5 ~~(1Aa) If the official publisher publishes a print version of the legal material, the~~  
6 ~~official publisher may designate an electronic version as official if the requirements of Sections~~  
7 ~~4, 6, and 7 are met.~~

8 ~~(Bb) If the electronic document is the only version of the readily accessible to~~  
9 ~~the public, if the legal material is published only in an electronic version, it must be designated~~  
10 ~~official and must meet the requirements of Sections 4, 6, and 7 of this [act].~~

11 ~~(2) If the official publisher provides a print version of the electronic document, the~~  
12 ~~official publisher may designate the electronic version as official provided that the requirements~~  
13 ~~of Sections 4, 6, and 7 of this [act] are met.~~

14 ~~(3) If the official publisher provides a print version of the electronic document and~~  
15 ~~designates only the print version as official, the electronic version must, at a minimum, be~~  
16 ~~identified clearly as unofficial on its online display. The online display must also explain the~~  
17 ~~procedure by which the public can obtain a certified copy of the official version of the~~  
18 ~~document.]~~

19 **End of Alternatives**

20 **SECTION 4.- AUTHENTICATION OF ELECTRONIC DOCUMENTS.-LEGAL**  
21 **MATERIAL.** The official publisher of legal material in an electronic record that is designated  
22 official under Section 3 shall authenticate the record. To authenticate, the official publisher  
23 shall certify that the electronic record is a true and correct copy of the content of the legal

1 material it purports to be by providing:

2 (1) a method for users to determine that the content of the electronic record is ~~unaltered~~  
3 from the one published by the official publisher, and

4 (2) sufficient information to determine that the certification is valid.

5 ~~(1) The official publisher of an electronic document subject to this [act] must~~  
6 ~~authenticate the . At a minimum, authentication must include:~~

7 ~~(A) certification that establishes a chain of custody for the document from its~~  
8 ~~official publication to the computer system in which it is stored permanently; and~~

9 ~~(B) protection of the transmission of the document by security measures designed~~  
10 ~~to prevent corruption of or tampering with the document from the computer system in which it is~~  
11 ~~stored permanently to the computer system of the user.~~

12 ~~(2) An authenticated electronic document must display clearly an indicator of its~~  
13 ~~authenticity.~~

14 ~~(3) If an official publisher enters into a contract with a person to publish a document, the~~  
15 ~~official publisher must require compliance with this [act] as a term of the contract.~~

16 **SECTION 5. EFFECT OF AUTHENTICATION**<sup>[bb2]</sup>. Electronic legal material  
17 authenticated under Section 4 is presumed to be a true and correct copy of the content of the  
18 legal material it purports to be.

19 **SECTION 5. PRIMA FACIE EVIDENCE.** ~~An electronic document authenticated~~  
20 ~~under Section 4 is prima facie evidence of the content of the original document.~~

21 **SECTION 6. PRESERVATION.** The official publisher of ~~an~~ electronic legal material  
22 document subject to this [act] ~~must provide for preservation of the document, including the~~  
23 ~~current text and all amendments, changes, and superseded versions. At a minimum, preservation~~

1 ~~must include:~~ shall preserve the legal material. To preserve, the official publisher shall provide a  
2 method to:

3 ~~(A) documentation of the data format used in the original document creation;~~

4 ~~(B) periodic archiving of the data, in paper or electronic form or both; and~~

5 ~~(C) periodic updating of the document in new electronic formats, as necessary to provide~~  
6 ~~continuing permanent public access to the document. [BB3]~~

7 (1) protect the content, including provisions for back-up and disaster recovery; and

8 (2) ensure the continuing usability of the content, which may include periodic updating of  
9 the content in new electronic formats if necessary.

10 **SECTION 7. ~~PERMANENT~~ PUBLIC ACCESS.** The official publisher ~~must shall~~  
11 provide for ~~continuing permanent~~ public access to the legal material. Public access means the  
12 legal material is reasonably available for use by the general public. ~~document, including the~~  
13 forms of the document preserved as required by Section 6. If a document ~~the legal material is is~~  
14 made available published only in an electronic version exclusively electronically, the official  
15 publisher shall continue to publish it it must remain available electronically permanently, either  
16 in its original location or in an archived location. The official publisher must ensure that all  
17 amended, changed, or superseded documents shall remain available on conditions of access  
18 similar to those in effect for then current documents.

19 **SECTION 8. ~~UNIFORMITY OF STANDARDS.~~**

20 ~~(aa)~~ This [act] must be applied and construed to promote uniformity of the law with  
21 respect to its subject matter among the states that enact it.

22 ~~(bb)~~ In implementing the requirements of this [act], the official publisher must consider:

23 (1) standards and practices of other jurisdictions;

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

4 **SECTION 9. DOCUMENTS-LEGAL MATERIAL FROM ANOTHER STATES.**

5 Electronic legal material from another A document from another state that is authenticated by  
6 that state consistent with Section 4 of this [act] is presumed to be a true and correct copy of the  
7 content of the legal material it purports to be. prima-facie evidence of the content of that  
8 document<sup>[bb4]</sup>.

9 **SECTION 10. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**

10 **NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal**

11 signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.) but does not

12 modify, limit or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize

13 electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C.

14 Section 7003(b)). This [act] modifies, limits, and supersedes the federal Electronic Signatures in

15 Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit,

16 or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic

17 delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

18 **SECTION 11. EFFECTIVE DATE.** This [act] takes effect [date]...