

DRAFT
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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March 18, 2010

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

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

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

6 **SECTION 2. DEFINITIONS.** For the purposes of this [act]:

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

9 (2) “Electronic record” means a record created, generated, sent, communicated, or stored
10 by electronic means, and readable online.

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

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

13 (B) a codified law or statute;

14 (C) a state administrative rule adopted under [the state APA];

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

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

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

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

20 (4) “Official publisher” means:

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

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

24 (C) for a state administrative rule adopted under [the state APA], [agency or

official];

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

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

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

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

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

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

(6) “Publish” means to produce or release for general distribution.

(7) “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.

(8) “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.

(9) [Other definitions to be added?]

SECTION 3. APPLICABILITY.

(a) If the official publisher 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 legal material is published only in an electronic version, it must be designated official and must 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 official under Section 3 shall authenticate the record. To authenticate, the official publisher shall certify that the electronic record is a true and correct copy of the content of the legal material it purports to be by providing:

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

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

SECTION 5. EFFECT OF AUTHENTICATION. Electronic legal material authenticated under Section 4 is presumed to be a true and correct copy of the content of the legal material it purports to be.

SECTION 6. PRESERVATION. The official publisher of electronic legal material subject to this [act] shall preserve the legal material. To preserve, the official publisher shall provide a method to:

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

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

SECTION 7. PUBLIC ACCESS. The official publisher shall provide for public access to the legal material. Public access means the legal material is reasonably available for use by

1 the general public. If the legal material is published only in an electronic version, the official
2 publisher shall continue to publish it electronically

3 **SECTION 8. UNIFORMITY OF STANDARDS.**

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

6 (b) In implementing the requirements of this [act], the official publisher must consider:

7 (1) standards and practices of other jurisdictions;

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

10 (3) the needs of electronic record users.

11 **SECTION 9. LEGAL MATERIAL FROM ANOTHER STATE.** Electronic legal
12 material from another state that is authenticated consistent with Section 4 is presumed to be a
13 true and correct copy of the content of the legal material it purports to be.

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

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