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STATE ELECTRONIC LEGAL MATERIALS ACT

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Comment [bbb]: I can’t make changes to this page at this time—the embedded links don’t let me fiddle with the text. We can fix this later.
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. For the purposes of this [act],

(1) “Authenticate” means to verify that the content of a document is complete and unaltered from the version published by the official publisher.

(2) “Chain of custody” means a chronological documentation, or paper trail, showing the official control and transfer(s) of a document, whether physical or electronic.

(3) “Document” means the following primary law materials published by or under the authority of the government of this state:

(A) laws or statutes passed by the state legislature in each legislative session;

(B) codified laws or statutes;

(C) state administrative rules that have the force and effect of law;

[(D) decisions of state administrative agencies that have precedential effect;]

[(E) appellate judicial decisions and other judicial decisions that have precedential value;]

[(F) primary law materials of local governments or political subdivisions of the state; and]

[(G) other items as specified.] 

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

(5) “Electronic document” means a document created, generated, sent, communicated, or stored by electronic means, and readable online.
“Official” means governmentally mandated or approved by statute or rule.

“Official Publisher” means an agency, department, board, commission, authority, institution, or instrumentality of state government, whether in the legislative, executive, or judicial branch, with the responsibility to publish a document pursuant to governmental mandate or as approved by statute or rule.

“Permanent public access” means current, continuous and future public use.

“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.

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

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

“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.

[Other definitions to be added?]

Alternative 1

SECTION 3. APPLICABILITY. This [act] applies to an electronic document that is published on the Internet.

Alternative 2

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

(1) If the electronic document is the only version of the document readily accessible to the public, it must be designated official and must meet the requirements of Sections 4, 6, and 7 of this [act].

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

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

**End of Alternatives**

SECTION 4. AUTHENTICATION OF ELECTRONIC DOCUMENTS.

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

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

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

(2) An authenticated electronic document must display clearly an indicator of its authenticity.
(3) If an official publisher enters into a contract with a person to publish a document, the official publisher must require compliance with this [act] as a term of the contract.

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

SECTION 6. PRESERVATION. The official publisher of an electronic document subject to this [act] must provide for preservation of the document, including the current text and all amendments, changes, and superseded versions. At a minimum, preservation must include:

(A) documentation of the data format used in the original document creation;
(B) periodic archiving of the data, in paper or electronic form or both; and
(C) periodic updating of the document in new electronic formats, as necessary to provide continuing permanent public access to the document.

SECTION 7. PERMANENT PUBLIC ACCESS. The official publisher must provide for continuing permanent public access to the document, including the forms of the document preserved as required by Section 6. If a document is made available exclusively electronically, it must remain available electronically permanently, either in its original location or in an archived location. The official publisher must ensure that all amended, changed, or superseded documents shall remain available on conditions of access similar to those in effect for then-current documents.

SECTION 8. UNIFORMITY OF STANDARDS.

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

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

(1) standards and practices of other jurisdictions;

Comment [bb9]: Instead of requiring a “plan” for preservation, I suggest that we outline what needs to be done and let the states figure out how to accomplish it.
(2) any standards on authentication and preservation of documents adopted by
national standard-setting bodies; and
(3) the needs of electronic document users.

SECTION 9. DOCUMENTS FROM OTHER STATES. A document from another
state that is authenticated by that state consistent with Section 4 of this [act] is prima facie
evidence of the content of that document.

SECTION 10. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal
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.
Section7003(b)).

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

Comment [bb10]: Not sure we need this
language; need to consult with Pat Fry.