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STATE ELECTRONIC LEGAL MATERIALS ACT
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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. For the purposes of this [act], in 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: state level legal material, including:
   (A) laws or statutes passed by the state legislature in each legislative session of this state;
   (B) codified laws or statutes of this state;
   (C) state administrative rules of this state that have the force and effect of law, and;
   (D) decisions of state administrative agencies that have precedential effect;
   (E) appellate judicial decisions and other judicial decisions of this state that have precedential value;
   (F) primary law materials of local governments or political subdivisions of the state;
   (G) other items as specified.

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

“Official Publisher” means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of a state government with the responsibility to publish a document, or a person designated under contract with the responsible agency or instrumentality of state government to publish a document.

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

Alternate Version

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.

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) documentation that establishes a chain of custody for the document from its official publication to the computer system in which it is stored permanently; and that the computer system used to create and store the document contains security measures...
designed to minimize corruption of or tampering with the document, and establishes a chain of
custody for the document;

(2B) 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.

from the computer system in which it was created to the web site on which it is displayed, with
an appropriate indicator of web site authentication; and

———(3) assurance that the document displayed on the web site is the document it purports to
be and is complete, with an appropriate indicator of document authentication.

(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. If the publication of an electronic
document meets the requirements in section 4 the electronic document is prima facie evidence
that it is the complete document that it purports to be—An electronic document authenticated
under Section 4 is prima facie evidence of the content of the original document.

SECTION 6. PRESERVATION AND PERMANENT ACCESS. 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: establish a plan both for
preservation of the document and for permanent public access to the document. At a minimum,
the plan must include:

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.
(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 long-term 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;

(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 8. 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)).

[Note: Not sure we need this language; need to consult with Pat Fry]

SECTION 9. EFFECTIVE DATE. This [act] takes effect [date]…

Alternative Version

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

SECTION 4. OFFICIAL VERSION.

(a) If the electronic document is the only version of the document readily accessible to the public, it must be designated official and meet the requirements of sections 5 and 7.

(b) If the official publisher continues to provide a print version of the electronic document, the official publisher may designate the electronic version as official, and must then meet the requirements of sections 5 and 7.

(c) If the official publisher continues to provide a print version of the electronic document, and designates only the print version as official, the electronic version must at a minimum be clearly identified as unofficial upon entry to the web site. [In addition, the web site must contain an explanation of an alternative procedure for the public to obtain a certified copy of the official version of the document.]
SECTION 5. AUTHENTICATION OF ELECTRONIC DOCUMENTS. The official publisher of an electronic document which meets the criteria in section 4 (a) or (b) must authenticate it...

SECTION 7. PRESERVATION AND PERMANENT ACCESS. The official publisher of an electronic document which meets the criteria in section 4 (a) or (b) must establish a plan...