AUTHENTICATION AND PRESERVATION OF STATE ELECTRONIC LEGAL MATERIALS ACT

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

March 2010 Strike and Score Draft

Without Prefatory Note or Comments

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March 17, 2010
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## AUTHENTICATION AND PRESERVATION OF 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],

(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 record” means a document record created, generated, sent,
communicated, or stored by electronic means, and readable online.

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

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

(B) a codified law or statute;

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

(D) any other state administrative rule;

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

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

(G) any other record, as specified.

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

(2A) “Official Publisher” means:

(A) for a law or statute enacted by the state legislature in a legislative session,

(B) for a codified law or statute,

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

(D) for any other state administrative rule,

(E) for a decision of a state administrative agency that has precedential effect,

(F) for an appellate judicial decision or other judicial decision that has precedential effect,

and

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

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

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

(9) “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.

(10) “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.

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

(12) “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.

(13) “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.

Alternative 1

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

(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 electronic document is the only version of the readily accessible to the public, 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 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. 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.

(1) The official publisher of an electronic document subject to this [act] must authenticate the. 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.- 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 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 legal material 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—shall preserve the legal material. To preserve, the official publisher shall provide a
method to:

(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:

(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. PERMANENT PUBLIC ACCESS. The official publisher shall provide for continuing permanent public access to the legal material. Public access means the legal material is reasonably available for use by the general public. A document, including the forms of the document preserved as required by Section 6, if a document the legal material is made available published only in an electronic version exclusively electronically, the official publisher shall continue to publish 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] [records] adopted by national standard-setting bodies; and

(3) the needs of electronic [document] [record] users.

SECTION 9. DOCUMENTS LEGAL MATERIAL FROM ANOTHER STATES.

Electronic legal material from another state that is authenticated by that state consistent with Section 4 of this [act] is presumed to be a true and correct copy of the content of the legal material it purports to be; 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 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] takes effect [date]…