



Uniform Law Commission

The National Conference of Commissioners on Uniform State Laws

Contact Us: 312.450.6600

Electronic Legal Material Act Summary

Increasingly, state governments are publishing laws, statutes, agency rules, and court rules and decisions online. In some states, important state-level legal material is no longer published in books, but is only available online. While electronic publication of legal material has facilitated public access to the material, it has also raised concerns. Is the legal material official, authentic, government data that has not been altered? For the long term, how will this electronic legal material be preserved? How will the public access the material 10, 50, or 100 years from now? The Uniform Electronic Legal Material Act (UELMA) provides states with an outcomes-based approach to the authentication and preservation of electronic legal material. The goals of the authentication and preservation program outlined in the Act are to enable end-users to verify the trustworthiness of the legal material they are using and to provide a framework for states to preserve legal material in perpetuity in a manner that allows for permanent access.

The Act requires that official electronic legal material be:

1. Authenticated, by providing a method to determine that it is unaltered;
2. Preserved, either in electronic or print form; and
3. Accessible, for use by the public on a permanent basis.

If electronic legal material is authenticated, it is presumed to be an accurate copy of the legal material. If your state enacts UELMA, the presumption that your authenticated electronic legal material is accurate applies in every other state that has enacted UELMA. If another state enacts UELMA, and authenticates its electronic legal material, its legal material is presumed to be an accurate copy for use in your state. Adoption of UELMA will harmonize standards for acceptance of electronic legal material across jurisdictional boundaries.

If a state preserves legal material electronically, it must provide for back-up and recovery, and ensure the integrity and continuing usability of the material. The act has no special requirements if a state chooses to preserve its legal material in print format, in recognition of the years of experience all states have in the preservation of print materials.

State policy and discretion allow each state to determine which categories of legal information will be included in the act's coverage. For each category of legal information, an official publisher is named. The act requires that the official publisher be responsible for implementing the terms of the act, regardless of where or by whom the legal material is actually printed or distributed. For the purposes of the act, only a state agency, officer, or employee can be the official publisher, although state policy may allow a commercial entity to produce an official version of the state's legal material. The UELMA does not interfere with the contractual relationship between a state and a commercial publisher with which the state contracts for the production of its legal material.

The UELMA does not require specific technologies, leaving the choice of technology for authentication and preservation up to the states. Giving states the flexibility to choose any technology that meets the required outcomes allows each state to choose the best and most cost-effective method for that state. In addition, this flexible, outcomes-based approach anticipates that technologies will change over time; the act does not tie a state to any specific technology at any time.

The UELMA is intended to be complementary to the Uniform Commercial Code (UCC, which covers sales and many commercial transactions), the Uniform Real Property Electronic Recording Act (URPERA, which provides for electronic recording of real property instruments), and the Uniform Electronic Transactions Act (UETA, which deals with electronic commerce).

In conclusion, the UELMA addresses the critical need to manage electronic legal information in a manner that guarantees the trustworthiness of and continuing access to important state legal material.

© 2012 The National Conference of Commissioners on Uniform State Laws. All Rights Reserved.

UNIFORM ELECTRONIC LEGAL MATERIAL ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTIETH YEAR
VAIL, COLORADO
JULY 7 - JULY 13, 2011

WITHOUT PREFATORY NOTE OR COMMENTS

COPYRIGHT © 2011

By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

October 4, 2011

UNIFORM ELECTRONIC LEGAL MATERIAL ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Electronic Legal Material Act.

SECTION 2. DEFINITIONS. In this [act]:

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

(2) “Legal material” means, whether or not in effect:

(A) the [insert name of constitution of this state];

(B) the [insert name of session laws];

(C) the [insert name of state code]; [or]

(D) a state agency rule that has or had the effect of law[;] [or]

[(E) the following categories of state administrative agency decisions [insert categories of decisions to be included]] [;] [or]

[(F) reported decisions of the following state courts: [specify courts]] [;] [or]

[(G) state court rules] [;] [or]

[(H) [list any other category of legal material to be included]].

(3) “Official publisher” means:

(A) for [insert name of constitution of this state], the [insert appropriate agency or official];

(B) for [insert name of session laws], the [insert appropriate agency or official];

(C) for [insert name of state code], the [insert appropriate agency or official]; [or]

(D) for a rule published in the [insert name of administrative code], the [insert appropriate agency or official] [;] [or]

[(E) for a rule not published in the [insert name of administrative code], the state agency adopting the rule][;] [or]

[(F) for a state administrative agency decision included under paragraph (2)(E), the [insert appropriate agency or official]][;] [or]

[(G) for a state court decision included under paragraph (2)(F), the [insert appropriate agency or official]][;] [or]

[(H) for state court rules, the [insert appropriate agency or official]][;] [or]

[(I) for [any other category of legal material included], [insert appropriate agency or official]].

(4) “Publish” means to display, present, or release to the public, or cause to be displayed, presented, or released to the public, by the official publisher.

(5) “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.

(6) “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.

Legislative Note: *With regard to Section 2(2), drafters will need to insert, in the place indicated by bracketed language, the proper name or title for several types of state legal material including the state constitution, session laws, statutory code, and administrative code, as well as the proper name or title of other legal material, provided as alternatives, the enacting state chooses to include in the act’s coverage.*

If additional legal material is added, each type should be identified by its proper name or title and given its own subparagraph. If additional legal material is added to Section 2(2), a corresponding addition must be made to Section 2(3).

With regard to Section 2(3), drafters will need to insert, in the place indicated by bracketed language, the proper name or title for several types of state legal material, including the state constitution, session laws, statutory code, and administrative code, as well as the proper name or title of any other publications the enacting state includes in the act’s coverage. The name of the legal material inserted in place of the bracketed language must correspond

exactly with the name in the corresponding definition of legal material in Section 2(2).

Drafters will need to insert, in the place indicated by bracketed language, the proper name of the agency or state officer or employee designated as the official publisher.

With regard to Section 2(3)(H), drafters may need to make distinctions between courts, including courts of last resort, appellate level courts, and trial courts, including different types and levels of trial courts, depending on how court rules are promulgated or approved in the enacting state.

SECTION 3. APPLICABILITY. This [act] applies to all legal material in an electronic record that is designated as official under Section 4 and first published electronically on or after [the effective date of this [act]].

***Legislative Note:** To include a preexisting publication in the coverage of the act, the following changes should be made. First, the present language of Section 3 should become subsection (a). Second, subsection (b), as follows, should be added: “(b) This [act] applies to the following legal material in an official electronic record that was first published before [the effective date of this [act]]: [insert proper name or title here].”.*

If preexisting legal material is included in the act’s coverage, drafters should include the material in the definition of legal material in Section 2(2), and designate an official publisher for the material in Section 2(3), as necessary.

SECTION 4. LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD.

(a) If an official publisher publishes legal material only in an electronic record, the publisher shall:

- (1) designate the electronic record as official; and
- (2) comply with Sections 5, 7, and 8.

(b) An official publisher that publishes legal material in an electronic record and also publishes the material in a record other than an electronic record may designate the electronic record as official if the publisher complies with Sections 5, 7, and 8.

SECTION 5. AUTHENTICATION OF OFFICIAL ELECTRONIC RECORD. An official publisher of legal material in an electronic record that is designated as official under Section 4 shall authenticate the record. To authenticate an electronic record, the publisher shall

provide a method for a user to determine that the record received by the user from the publisher is unaltered from the official record published by the publisher.

SECTION 6. EFFECT OF AUTHENTICATION.

(a) Legal material in an electronic record that is authenticated under Section 5 is presumed to be an accurate copy of the legal material.

(b) If another state has adopted a law substantially similar to this [act], legal material in an electronic record that is designated as official and authenticated by the official publisher in that state is presumed to be an accurate copy of the legal material.

(c) A party contesting the authentication of legal material in an electronic record authenticated under Section 5 has the burden of proving by a preponderance of the evidence that the record is not authentic.

SECTION 7. PRESERVATION AND SECURITY OF LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD.

(a) An official publisher of legal material in an electronic record that is or was designated as official under Section 4 shall provide for the preservation and security of the record in an electronic form or a form that is not electronic.

(b) If legal material is preserved under subsection (a) in an electronic record, the official publisher shall:

- (1) ensure the integrity of the record;
- (2) provide for backup and disaster recovery of the record; and
- (3) ensure the continuing usability of the material.

SECTION 8. PUBLIC ACCESS TO LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD. An official publisher of legal material in an electronic record that is required to be preserved under Section 7 shall ensure that the material is reasonably available

for use by the public on a permanent basis.

SECTION 9. STANDARDS. In implementing this [act], an official publisher of legal material in an electronic record shall consider:

- (1) standards and practices of other jurisdictions;
- (2) the most recent standards regarding authentication of, preservation and security of, and public access to, legal material in an electronic record and other electronic records, as promulgated by national standard-setting bodies;
- (3) the needs of users of legal material in an electronic record;
- (4) the views of governmental officials and entities and other interested persons; and
- (5) to the extent practicable, methods and technologies for the authentication of, preservation and security of, and public access to, legal material which are compatible with the methods and technologies used by other official publishers in this state and in other states that have adopted a law substantially similar to this [act].

SECTION 10. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 11. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the 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 12. EFFECTIVE DATE. This [act] takes effect