

D R A F T  
FOR DISCUSSION ONLY

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

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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March 5 – 7, 2010 Committee Meeting Draft

*Without Prefatory Note or Comments*

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January 7, 2010

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

**Comment [bb1]:** 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.

**TABLE OF CONTENTS**

SECTION 1. SHORT TITLE ..... 1  
SECTION 2. DEFINITIONS..... 1  
SECTION 3. APPLICABILITY..... 2  
[SECTION 3. APPLICABILITY..... 2  
SECTION 4. AUTHENTICATION OF ELECTRONIC DOCUMENTS. .... 3  
SECTION 5. PRIMA FACIE EVIDENCE. .... 4  
SECTION 6. PRESERVATION..... 4  
SECTION 7. PERMANENT PUBLIC ACCESS..... 4  
SECTION 8. UNIFORMITY OF STANDARDS ..... 4  
SECTION 9. DOCUMENTS FROM OTHER STATES. .... 5  
SECTION 10. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT..... 5  
SECTION 11. EFFECTIVE DATE..... 5



1 (6) "Official" means governmentally mandated or approved by statute or rule.

Comment [bb8]: This definition comes from the AALL Authentication Report, p. 8.

2 (7) "Official Publisher" means an agency, department, board, commission, authority,  
3 institution, or instrumentality of state government, whether in the legislative, executive, or  
4 judicial branch, with the responsibility to publish a document pursuant to governmental mandate  
5 or as approved by statute or rule.

6 (8) "Permanent public access" means current, continuous and future public use.

7 (9) "Person" means an individual, corporation, business trust, estate, trust,  
8 partnership, limited liability company, association, joint venture, public corporation,  
9 government, or governmental subdivision, agency, or instrumentality, or any other legal or  
10 commercial entity.

11 (10) "Preservation" means providing for permanent, uninterrupted access to the  
12 intellectual content of a document, either in its original publication form or as reformatted by the  
13 official publisher.

14 (11) "Publish" means to produce or release for general distribution.

15 (12) "State" means a state of the United States, the District of Columbia, Puerto  
16 Rico, the United States Virgin Islands, or any territory or insular possession subject to the  
17 jurisdiction of the United States.

18 (13) [Other definitions to be added?]

#### 19 **Alternative 1**

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

#### 22 **Alternative 2**

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

1 published only on the Internet, or is published on the Internet and is designated official.

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

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

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

13 **End of Alternatives**

14 **SECTION 4. AUTHENTICATION OF ELECTRONIC DOCUMENTS.**

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

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

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

22 (2) An authenticated electronic document must display clearly an indicator of its  
23 authenticity.

1 (3) If an official publisher enters into a contract with a person to publish a document, the  
2 official publisher must require compliance with this [act] as a term of the contract.

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

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

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

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

19 **SECTION 8. UNIFORMITY OF STANDARDS.**

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

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

- 23 (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.

1 (2) any standards on authentication and preservation of documents adopted by  
2 national standard-setting bodies; and

3 (3) the needs of electronic document users.

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

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

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

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