

D R A F T
FOR DISCUSSION ONLY

AUTHENTICATION AND PRESERVATION OF STATE ELECTRONIC LEGAL MATERIALS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

December 2009 Interim Draft

Without Prefatory Note or Comments

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September 23, 2009

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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.

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1 AUTHENTICATION AND PRESERVATION OF STATE ELECTRONIC LEGAL
2 MATERIALS ACT

3
4 SECTION 1. SHORT TITLE. This [act] may be cited as the Authentication and
5 Preservation of State Electronic Legal Materials Act.

6 SECTION 2. DEFINITIONS. ~~For the purposes of this [act]. In this [act]:~~

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

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

11 (3) “Document” means the following primary law materials published by or under the
12 authority of the government of this state: state level legal material, including:

13 (A) laws or statutes passed by the state legislature in each legislative session; of
14 this state at a particular legislative session;

15 (B) codified laws or statutes of this state;

16 (C) state administrative rules ~~of this state~~ that have the force and effect of law,
17 ~~and;~~

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

19 [(E) appellate judicial decisions and other judicial decisions of this state that have
20 precedential value;]

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

23 [(G) other items as specified.]

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

Comment [bb2]: I think we need to indicate that the “document” comes from the government; otherwise, would not the act apply to anyone publishing the law?

Comment [bb3]: This anticipates the action of the Drafting Committee on the state APA that is considering recommending state administrative agency decisions have precedential effect. We will have to monitor the actions of that Drafting Committee to determine whether this is actually included or not.

Comment [bb4]: The alternative nature of this language recognizes that, in some states, the publication of judicial decisions is a function of the judicial branch, not the legislative branch.

Comment [bb5]: The Notes to Section 2 will include elaboration of this point, including that the [act] can be adapted by Native American Indian tribal governments.

Comment [bb6]: Definition from Study Committee draft.

1 (35) “Electronic document” means a document created, generated, sent,
2 communicated, or stored by electronic means, and readable online;
3 (6) “Official” means governmentally mandated or approved by statute or rule;
4 (7) “Official Publisher” means an agency, department, board, commission, authority,
5 institution, or instrumentality of state government, whether in the legislative, executive, or
6 judicial branch, with the responsibility to publish a document pursuant to governmental mandate
7 or as approved by statute or rule.
8 (8) “Permanent public access” means current, continuous and future public use;
9 (49) “Person” means an individual, corporation, business trust, estate, trust,
10 partnership, limited liability company, association, joint venture, public corporation,
11 government, or governmental subdivision, agency, or instrumentality, or any other legal or
12 commercial entity.

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

17 (10) “Preservation” means providing for permanent, uninterrupted access to the
18 intellectual content of a document, either in its original publication form or as reformatted by the
19 official publisher;

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

21 (612) “State” means a state of the United States, the District of Columbia, Puerto
22 Rico, the United States Virgin Islands, or any territory or insular possession subject to the
23 jurisdiction of the United States.

Comment [bb7]: I am trying to define out such “electronic” media as microfiche, CDs, DVDs, etc.

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

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

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

4 *Alternate Version*

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

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

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

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

17 **I**

18 **SECTION 4. AUTHENTICATION OF ELECTRONIC DOCUMENTS.** (1) The
19 official publisher of an electronic document subject to this [act] must authenticate ~~it~~ the
20 document. At a minimum, authentication must include:

21 ~~(+A) documentation certification that establishes a chain of custody for the~~
22 document from its official publication to the computer system in which it is stored permanently;
23 and that the computer system used to create and store the document contains security measures

1 ~~designed to minimize corruption of or tampering with the document, and establishes a chain of~~
2 ~~eustody for the document;~~

3 ~~(2B) protection of the transmission of the document by security measures~~
4 ~~designed to prevent corruption of or tampering with the document from the computer system in~~
5 ~~which it is stored permanently to the computer system of the user.~~
6 ~~from the computer system in which it was created to the web site on which it is displayed, with~~
7 ~~an appropriate indicator of web site authentication; and~~

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

10 ~~(2) An authenticated electronic document must display clearly an indicator of its~~
11 ~~authenticity.~~

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

14 **SECTION 5. PRIMA FACIE EVIDENCE.** ~~If the publication of an electronic~~
15 ~~document meets the requirements in section 4 the electronic document is prima facie evidence~~
16 ~~that it is the complete document that it purports to be.—An electronic document authenticated~~
17 ~~under Section 4 is prima facie evidence of the content of the original document.~~

18 **SECTION 6. PRESERVATION ~~AND PERMANENT ACCESS.~~** The official
19 publisher of an electronic document subject to this [act] must provide for preservation of the
20 document, including the current text and all amendments, changes, and superseded versions. At
21 a minimum, preservation must include: establish a plan both for
22 preservation of the document and for permanent public access to the document.—At a minimum,
23 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.

1 (4A) documentation of the data format used in the original document creation;
2 (2B) periodic archiving of the data, in paper or electronic form or both; and
3 (3C) periodic updating of the document in new electronic formats, as necessary to
4 provide ~~long term~~ continuing permanent public access to the document.

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

12 **SECTION 8. UNIFORMITY OF STANDARDS.**

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

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

16 (1) standards and practices of other jurisdictions;

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

19 (3) the needs of electronic document users.

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

1 ~~SECTION 5. AUTHENTICATION OF ELECTRONIC DOCUMENTS.~~ The
2 official publisher of an electronic document which meets the criteria in section 4 (a) or (b) must
3 authenticate it...

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