

SENATE BILL REPORT

SB 6361

As of January 21, 2016

Title: An act relating to the uniform electronic legal material act.

Brief Description: Adopting the uniform electronic legal material act.

Sponsors: Senators Pedersen and Padden; by request of Uniform Law Commission.

Brief History:

Committee Activity: Law & Justice: 1/21/16.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Melissa Burke-Cain (786-7755)

Background: A state publishes important legal materials, such as its statutes and administrative rules, as an official state record. A state also preserves historical versions of its published legal materials for public use when the legal materials change over time. Generally, a state either publishes its official records directly or through a contract with a publishing vendor. Increasingly, states make electronic records available online using available technology. Online versions make state records readily available to the public, but if the official record is electronic, the official publisher must authenticate the legal materials as unaltered and complete. A state must also preserve a stable and usable form of its legal materials in each version of the official records it maintains electronically for permanent use.

The Uniform Electronic Legal Material Act (UELMA) creates a standard framework a state can use to authenticate and preserve its official state records and the legal material contained in the official records, if the official records are maintained electronically. UELMA doesn't require a state to publish electronic versions of official state records or mandate any particular technology. A state has discretion to publish only hard copies, or to publish both electronic and hard copies, or may elect to publish the official version only in an electronic form. When a state publishes an official record electronically its users must be able to verify the legal material in the record has not been altered. When the state preserves an official record electronically, it must ensure the legal material's integrity, provide for backup and disaster recovery, and ensure the record continues to be in useable form and is reasonably available for public use on a permanent basis. UELMA modifies, limits, and supersedes a federal law, the electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et. seq. except for Section 101(c) of that federal law and the notice requirements in

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Section 103(b) of that federal law. The Uniform Law Commission approved UELMA in 2011. To date, 12 states have adopted it. Three additional states have introduced the uniform act in 2016.

Summary of Bill: Washington's Constitution, session laws, the Revised Code of Washington (RCW), the Washington Administrative Code (WAC), rules published in the Washington State Register (WSR), and state agency rules having the force and effect of law that are not published in the WSR are the "legal materials" published in official records. The Secretary of State is the official publisher of Washington's Constitution. The statute law committee is the official publisher of the RCW, session laws, WSR, and WAC. The adopting state agency is the official publisher for rules not published in the WSR. If an official publisher of legal materials publishes legal materials solely in electronic form, it must designate the electronic record as the official record and authenticate it. If legal materials are published in both an electronic and a non-electronic version, the official publisher can designate the electronic version as the official record so long as the publisher authenticates it.

When authenticated, the electronic record is presumed to be an accurate copy of the legal materials in Washington State's official records. The same presumption applies to other states' official records if the states publish and authenticate electronic official records under a law substantially similar to the UELMA. A contesting party must prove an electronic official record is not authentic by a preponderance of evidence.

If the legal materials in an official record are preserved in electronic form, the official publisher must ensure the legal materials are complete, intact, usable, and publically available. The official publisher must also provide for back-up and disaster recovery of legal materials in its electronic official records. The official publishers must consider several factors when selecting the technology and methods used to authenticate and preserve official records electronically. These factors include: the best practices of other jurisdictions, the users' needs, compatibility of the selected system with other electronic records systems in Washington, and compatibility of Washington's systems with those of other states that adopt substantially similar laws to the UELMA. The courts and agencies of the judicial branch are exempt from compliance with this law.

Appropriation: None.

Fiscal Note: Requested on January 19, 2016.

Committee/Commission/Task Force Created: No.

Effective Date: January 1, 2017.

Staff Summary of Public Testimony: PRO: This bill addresses access, permanency, and security of official publications available in electronic format. Currently, the WSR is the only legal material that is published in its official form exclusively in electronic format. For our official publications, the online access and security are in place and the current standards in use now meet or exceed what this bill would require. The code reviser's office is using an inexpensive tool for authentication. An application generates a certificate of authenticity on

the document that verifies the official source and verifies the document has not been altered. If the document has been tampered with, the certificate shows up as invalid.

Persons Testifying: PRO: Senator Pedersen, prime sponsor, Kyle Thiessen, Code Reviser.

Persons Signed In To Testify But Not Testifying: No one.