

# HOUSE BILL REPORT

## SB 5039

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**As Reported by House Committee On:**  
Judiciary

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

**Brief Description:** Adopting the uniform electronic legal material act.

**Sponsors:** Senators Pedersen, O'Ban, Frockt and Padden; by request of Uniform Law Commission.

**Brief History:**

**Committee Activity:**

Judiciary: 3/14/17, 3/22/17 [DP].

**Brief Summary of Bill**

- Adopts the Uniform Electronic Legal Material Act, creating a framework for authentication, preservation, and accessibility of legal material in an official electronic record.
- Defines the Washington State Constitution, session laws, Revised Code of Washington, certain agency rules, the Washington State Register, and the Washington Administrative Code as "legal material."

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Muri, Assistant Ranking Minority Member; Frame, Goodman, Graves, Haler, Hansen, Kirby, Klippert, Orwall and Shea.

**Staff:** Audrey Frey (786-7289).

**Background:**

The Uniform Electronic Legal Material Act (UELMA), completed by the Uniform Law Commission (ULC) in 2011, provides states with a framework for authentication and preservation of official electronic legal material, such as statutes, laws, and agency rules that are officially published on the Internet or in any other electronic format. (The ULC is

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composed of state commissions on uniform laws. The purpose of the ULC is to determine which areas of law should be made uniform, and to promote uniformity by drafting and proposing uniform statutes. States decide whether to enact a uniform law or not.) Currently, 13 states have enacted a version of the UELMA.

State governments increasingly publish statutes, laws, agency rules, and other legal materials electronically. In some states, important state-level legal material is no longer published in books and is only available on the Internet.

In Washington, most state-level legal material is still officially published in books. For example, although the Revised Code of Washington (RCW) is available online, the online version of the RCW is not official; the official publication of the RCW is the set of hard copy volumes published by the Statute Law Committee (SLC) containing the certificate of compliance required by chapter 1.08 RCW. (The SLC is the legislative agency that oversees the functions and performance of the Office of the Code Reviser.) The only state-level legal material published electronically that is deemed official is the Washington State Register (WSR).

The UELMA requires that legal material in an official electronic record 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.

The UELMA does not require publication of legal material in an electronic record. A state has the discretion to publish nonelectronic or hard copies of legal material. However, if a state decides to publish legal material solely in an electronic record, the UELMA requires that the electronic record be designated as official.

*Authentication.* The UELMA requires states to provide a method for users to verify that legal material in an official electronic record is unaltered, but it does not require use of any particular authentication technology. For example, the SLC uses an inexpensive program that certifies an electronic copy of the WSR, in whole or in part, when requested. When an issue of the WSR is downloaded or viewed as a Portable Document Format (PDF) file on the WSR website, the PDF file contains a digital signature stating that the document is certified by the Office of the Code Reviser.

Under the UELMA, if electronic legal material is authenticated, it is presumed to be an accurate copy of the legal material. That presumption also applies in every other state that has enacted the UELMA.

*Preservation.* With respect to preservation of legal material in an official electronic record, the UELMA requires that states either preserve the record electronically or in print. If a state chooses to preserve a record electronically, it must ensure the record's integrity, provide for backup and disaster recovery, and ensure the continuing usability of the material.

*Accessibility.* The UELMA requires that states ensure that legal material in an official electronic record is reasonably available for use by the public on a permanent basis.

## **Summary of Bill:**

A new chapter, titled the Uniform Electronic Legal Material Act (UELMA), is added to Title 1 RCW, creating a framework for authentication, preservation and security, and public access of official electronic legal material.

*Definitions.* Certain key terms are defined. "Legal material" is defined to include the Washington State Constitution, the session laws, the Revised Code of Washington (RCW), agency rules that have the effect of law, the Washington State Register, and the Washington Administrative Code.

"Official publisher" is defined in relation to each category of legal material. The Secretary of State is the official publisher of the Washington State Constitution. The Statute Law Committee is the official publisher of the session laws, the RCW, the Washington State Register, and the Washington Administrative Code. With respect to any agency rules that are not published in the Washington State Register, the state agency adopting the rule is the official publisher.

*Applicability.* The UELMA applies to all legal material in an official electronic record first published electronically on or after January 1, 2018, except that with respect to issues of the Washington State Register, the UELMA applies to all issues first published electronically on or after May 7, 2008.

*Legal Material in an Official Electronic Record.* If legal material is published solely in electronic form by the official publisher, the publisher shall: (1) designate the electronic record as official; and (2) comply with the authentication, preservation and security, and public access sections of this chapter.

*Authentication.* An official publisher of legal material in an official electronic record shall authenticate the record. To authenticate an electronic record, the publisher shall provide a method for a user to determine that the record is unaltered.

*Effect of Authentication.* Legal material in an electronic record that is authenticated is presumed to be an accurate copy of the legal material. If another state has adopted a substantially similar law, legal material in an official electronic record authenticated by the official publisher in that state is presumed to be accurate. A party contesting authentication has the burden of proving by a preponderance of the evidence that the record is not authentic.

*Preservation and Security.* An official publisher of legal material in an official electronic record shall provide for the preservation and security of the record in an electronic form or a form that is not electronic. If legal material is preserved in an electronic record, the official publisher is required to ensure the integrity of the record, provide for backup and disaster recovery of the record, and ensure the continuing usability of the material.

*Public Access.* An official publisher of legal material in an electronic record that is required to be preserved shall ensure that the material is reasonably available for use by the public on a permanent basis.

*Standards.* In implementing the UELMA, 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, preservation and security, and public access of legal material in an electronic record, 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, preservation and security, and public access of 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 laws substantially similar to the UELMA.

*Uniformity of Application and Construction.* In applying and construing the UELMA, consideration must be given to the need to promote uniformity of the law among states that enact the UELMA.

*Relation to the Federal Electronic Signatures in Global and National Commerce Act.* The UELMA modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act (ESGNCA), except as it pertains to electronic delivery of certain notices. This section responds to specific language in the ESGNCA that authorizes state statutes to modify, limit, or supersede certain provisions of the ESGNCA as long as certain requirements are satisfied, and is designed to avoid preemption of state law under that federal legislation.

*Courts Excluded.* The UELMA does not apply to any court or agency of the judicial branch.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on January 1, 2018.

**Staff Summary of Public Testimony:**

(In support) All legal materials used to be in books, but the world has changed dramatically. Right now, only the Washington State Register (WSR) is official online, but in the not too distant future the Revised Code of Washington (RCW) and the Washington Administrative Code (WAC) might be in their official form online. This act tries to get ahead of the shift to electronic publication by providing for preservation of electronic legal materials and a process for authentication. Through the good work and patience of the Code Reviser, there is a way to do that without much cost.

The Law Librarians of Puget Sound (LLOPS) support this bill. The Uniform Electronic Legal Material Act (UELMA) would provide Washington with a technology-neutral, outcomes-based approach to make sure that online state legal material deemed official will be permanently preserved and made available to the public in unaltered form. This bill passed out of the Senate unanimously, and it is hoped that it will receive the same support in the

House of Representatives. The LLOPS represents over 100 librarians and legal information professionals who work in diverse settings: law firms, law schools, state law libraries, courts, counties, and corporate law libraries. The LLOPS is a chapter of the American Association of Law Libraries (AALL) which strongly supports the enactment of UELMA.

This bill will ensure that online legal material is guaranteed the same level of authority traditionally provided by print publications. Anyone accessing Washington's primary legal material online will be able to verify the trustworthiness of the material. People who use and rely on these materials are: legislators, lawyers, judges, and law students—but also include self-represented litigants, small business owners, and other citizens.

Ten years ago this problem was first identified in a report by AALL: many state governments were putting legal resources online without assuring their trustworthiness and reliability through digital authentication. People using this type of information online need to be sure that it is accurate and unaltered. When someone pulls a volume off the shelf in the law library, they can trust and see for themselves that the text is unaltered. There needs to be the same level of trust when looking at the RCW online. Digital authentication provides that level of trust.

The bill also addresses two other things: preservation and public access. Preservation is keeping older, superseded materials safe so that people can find out with confidence what the law was at an earlier time. Public access to legal material on a permanent basis is really an important component of access to justice: citizens need to be able to find, use, and rely on legal materials, whether in an electronic copy or print copy.

The most important piece of this legislation is permanent accessibility. As the transition from print to digital happens, authenticated versions of legal materials need to be locked down so that everyone can get to them, forever. That is the intent of the bill. Books last a long time—600 or 700 years. Having authenticated law is critical so that digital material has the same reliability as books.

The only document that is currently online-only is the WSR, and the online version is official. The Statute Law Committee (SLC) is already authenticating the WSR the way UELMA requires. The RCW, the WAC, and the session laws are still printed on paper, and there are no current plans to change that. Some years ago, when sales fell due to everyone accessing the laws online, there was a worry that with economies of scale, the SLC would not be able to continue printing things in books. But, with a lot of hard work, research, and by working with Legislative Support Services—which runs the print shop for the Legislature—the laws can continue to be printed on paper as long as anyone wants to buy a set, because they are being printed on-demand and at-cost.

The authentication technology that is currently being used with the WSR can also be used in any of these other legal databases. The program is fairly inexpensive and applies to Portable Document Format (PDF) files. It works by placing a digital tag on a PDF file saying that it is authentic. Authentication can also be done on a case-by-case basis for any PDF file.

LegTech, which manages all of the online content for the Legislature, including all of the bills, the WAC, and the RCW, have been ahead of the curve for many years on security. The

commitment was made many years ago that anything put online would be there permanently and be accessible, which means that if the technology changes years from now, the databases will be converted to match whatever software is being used. A statute was passed in 2011 at the request of the SLC to make that clear. The SLC is already on-board with all of the mandates of this bill.

(Opposed) None.

**Persons Testifying:** Senator Pedersen, prime sponsor; Peggy Jarrett, University of Washington Law Library; Robert Mead, Washington State Law Library; and Kyle Thiessen, Statute Law Committee.

**Persons Signed In To Testify But Not Testifying:** None.