

SENATE BILL REPORT

SB 5039

As Passed Senate, February 28, 2017

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: Law & Justice: 1/19/17, 2/01/17 [DP].

Floor Activity:

Passed Senate: 2/28/17, 49-0.

Brief Summary of Bill

- Defines the Washington State Constitution, session laws, Revised Code of Washington, and agency rules as legal materials.
- Requires the state to designate the electronic record as the official record and authenticate it, if the state publishes legal materials solely in electronic form; authenticated records are presumed to be accurate.
- Grants that legal materials must be complete, intact, usable, and publically available on a permanent basis.
- Requires the state to provide for the back-up and disaster recovery of legal materials designated as the official record and published electronically.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille, Frockt and Wilson.

Staff: Tim Ford (786-7423)

Background: Increasingly, state governments provide electronic publication of its official legal materials such as the state constitution, laws, statutes, and agency rules online.

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.

Electronic publication of legal materials facilitates public access. Yet with electronic publication, the public concern is whether the legal material is official, authenticated, not altered, and that the material is preserved.

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 UELMA 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.

UELMA requires that official electronic legal material be:

- authenticated, by providing a method to determine that it is unaltered;
- preserved, either in electronic or print form; and
- accessible, for use by the public on a permanent basis.

Under 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 UELMA. UELMA does not require any adopting state to use any particular technology. UELMA does not require electronic publication of official state records. A state still has discretion to publish hard copies. However, when a state publishes 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, ensure the record continues to be in useable form, and make sure it is reasonably available for public use on a permanent basis.

The Uniform Law Commission approved UELMA in 2011. To date, 13 states have adopted it.

Summary of Bill: Washington State's legal materials are defined to include the 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 not published in the WSR. The Secretary of State, statute law committee, and agencies are official publishers for the state legal materials.

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, as 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 UELMA.

Legal materials must be 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.

Certain factors must be considered 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 UELMA.

The courts and agencies of the judicial branch are exempt from compliance with this law.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: The statute law committee is the official publisher for most of the documents that are defined as legal materials in the bill. The committee has been accomplishing the goals of the bill on our own for years. The session laws, RCW's, the WA state register, and the WA Administrative Code are all published electronically. The WA state register is published in electrical format only for about 7 to 8 years now. They are permanently available and publicly accessible. Authentication was a problem years ago when agencies were attempting to develop software of their own, however inexpensive commercial software is now available. The software is only a few hundred dollars to license each year. It authenticates the legal materials and would serve the purposes of the bill.

Washington is way out in front, compared to other states, in fulfilling the goals of the Uniform Electronic Legal Material Act. The Uniform Act, and the bill, are technology neutral. It allows the user to verify the trustworthiness of electronic legal materials. Users would include judges, legislators, lawyers, students, small businesses, and citizens. This is about access to justice. Many library users prefer electronic volumes in a law library. Digital, or electronic legal materials must be reliable, accurate, and not altered. The bill doesn't apply to judicial materials because there is a separation of powers concern. At some point the courts will accomplish the goals of this bill and make legal case materials published electronically.

Persons Testifying: PRO: Senator Pedersen, Prime Sponsor; Kyle Thiessen, Code Reviser & Statute Law Committee; Anna Endter, Univ. of WA, Law School & President, Law Librarians of Puget Sound; Robert Mead, WA State Law Library; Peggy Jarrett, Univ. of WA, Law School.

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