

## **BILL ANALYSIS**

C.S.H.B. 1032  
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Judiciary & Civil Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties contend that the increasing public reliance on electronic information requires safeguards to ensure that state legal material is trustworthy and permanently accessible. C.S.H.B. 1032 seeks to address this issue by providing for the authentication, preservation, and security of certain electronic state legal material through adoption of the Uniform Electronic Legal Material Act.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 1032 amends the Government Code to require the official publisher, defined in the bill as the Texas Legislative Council with regard to the state constitution and as the secretary of state with regard to general or special laws and state agency rules, if the official publisher publishes legal material only in an electronic record, to designate the electronic record as official and comply with the bill's provisions regarding the authentication of an official electronic record, the preservation and security of legal material in an official electronic record, and public access to legal material in an electronic record. The bill authorizes the official publisher, if the official publisher publishes legal material in an electronic record and also publishes the material in a record other than an electronic record, to designate the electronic record as official if the official publisher complies with those bill provisions. The bill defines, among other terms, "legal material" as, whether or not in effect, the state constitution, the general or special laws passed in a regular or special session of the Texas Legislature, and a state agency rule adopted in accordance with the Administrative Procedure Act.

C.S.H.B. 1032 requires the official publisher to authenticate an electronic record that the official publisher designates as official by providing a method with which a person viewing the electronic record is able to determine that the electronic record is unaltered from the official record published by the official publisher. The bill establishes that legal material in an authenticated electronic record is presumed to be an accurate copy of the legal material and further establishes that legal material in an electronic record that is authenticated in another state, defined by the bill as a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, that has adopted a law that is substantially similar to the bill's provisions is presumed to be an accurate copy of the legal material. A party contesting the authenticity of legal

material in an authenticated electronic record has the burden of proving by a preponderance of the evidence that the record is not authentic.

C.S.H.B. 1032 requires the official publisher of legal material in an electronic record designated as official to provide for the preservation and security of the record in an electronic form or in a form that is not electronic. The bill requires the official publisher, if legal material is preserved in an electronic record, to ensure the integrity of the record, provide for backup and disaster recovery of the record, and ensure the continuing usability of the legal material in the record. The bill requires the official publisher of legal material in an electronic record that is required to be preserved to ensure that the material is reasonably available for use by the public on a permanent basis.

C.S.H.B. 1032 sets out certain standards and other factors that the official publisher of legal material in an electronic record is required to consider in implementing the bill's provisions. The bill requires consideration to be given, in applying and construing the bill's provisions, to the need to promote uniformity of the law with respect to the subject matter of the bill's provisions among the states that enact a similar law. The bill sets out provisions concerning the effect of the bill in relation to the federal Electronic Signatures in Global and National Commerce Act. The bill applies to all legal material in an electronic record that is designated as official by the official publisher and is first published electronically by the official publisher on or after January 1, 2019, and establishes that the official publisher is not required to publish legal material on or before the date on which the legal material takes effect.

C.S.H.B. 1032 requires an official publisher in the executive branch of state government to comply with the applicable provisions of the bill in accordance with an implementation plan required by the bill to be jointly developed by such publisher and the Records Management Interagency Coordinating Council, sets out requirements for that plan, and establishes that the implementation plan may provide for such compliance to be phased in over a period of time. The bill requires the Records Management Interagency Coordinating Council to provide the implementation plan to the legislature not later than September 1, 2018.

C.S.H.B. 1032 requires an official publisher in the legislative branch of state government to comply with the applicable provisions of the bill in accordance with an implementation plan required by the bill to be developed by such publisher in consultation with the lieutenant governor, the speaker of the house of representatives, the Senate Committee on Administration, and the House Committee on Administration, sets out requirements for that plan, and establishes that the implementation plan may provide for such compliance to be phased in over a period of time. The bill requires such publisher to provide the implementation plan to the lieutenant governor and the speaker of the house of representatives not later than September 1, 2018.

#### **EFFECTIVE DATE**

September 1, 2017.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1032 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

##### INTRODUCED

SECTION 1. Chapter 2051, Government Code, is amended by adding Subchapter E to read as follows:

##### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 2051, Government Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. UNIFORM ELECTRONIC LEGAL MATERIAL ACT  
Sec. 2051.151. SHORT TITLE.

Sec. 2051.152. DEFINITIONS. In this subchapter:

(1) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) "Legal material" means, whether or not in effect:

(A) the constitution and statutes of this state;

(B) the general or special laws passed in a regular or special session of the Texas Legislature; and

(C) a state agency rule adopted in accordance with Chapter 2001.

(3) "Official publisher" means:

(A) for legal material described by Subdivision (2)(A), the Texas Legislative Council; and

(B) for legal material described by Subdivision (2)(B) or (C), the secretary of state.

(4) "Publish" means displaying, presenting, or releasing to the public, or causing to be displayed, presented, or released to the public, legal material by the official publisher.

(5) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

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

Sec. 2051.153. APPLICABILITY.

This subchapter applies to all legal material in an electronic record that is:

(1) designated as official by the official publisher under Section 2051.154; and

(2) first published electronically by the official publisher on or after January 1, 2019.

Sec. 2051.154. LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD.

Sec. 2051.155. AUTHENTICATION OF

SUBCHAPTER E. UNIFORM ELECTRONIC LEGAL MATERIAL ACT  
Sec. 2051.151. SHORT TITLE.

Sec. 2051.152. DEFINITIONS. In this subchapter:

(1) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) "Legal material" means, whether or not in effect:

(A) the constitution of this state;

(B) the general or special laws passed in a regular or special session of the Texas Legislature; and

(C) a state agency rule adopted in accordance with Chapter 2001.

(3) "Official publisher" means:

(A) for legal material described by Subdivision (2)(A), the Texas Legislative Council; and

(B) for legal material described by Subdivision (2)(B) or (C), the secretary of state.

(4) "Publish" means displaying, presenting, or releasing to the public, or causing to be displayed, presented, or released to the public, legal material by the official publisher.

(5) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

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

Sec. 2051.153. APPLICABILITY. (a)

This subchapter applies to all legal material in an electronic record that is:

(1) designated as official by the official publisher under Section 2051.154; and

(2) first published electronically by the official publisher on or after January 1, 2019.

(b) The official publisher is not required to publish legal material on or before the date on which the legal material takes effect.

Sec. 2051.154. LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD.

Sec. 2051.155. AUTHENTICATION OF

OFFICIAL ELECTRONIC RECORD.

Sec. 2051.156. EFFECT OF AUTHENTICATION.

Sec. 2051.157. PRESERVATION AND SECURITY OF LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD.

Sec. 2051.158. PUBLIC ACCESS.

Sec. 2051.159. STANDARDS.

Sec. 2051.160. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

Sec. 2051.161. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

No equivalent provision.

OFFICIAL ELECTRONIC RECORD.

Sec. 2051.156. EFFECT OF AUTHENTICATION.

Sec. 2051.157. PRESERVATION AND SECURITY OF LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD.

Sec. 2051.158. PUBLIC ACCESS.

Sec. 2051.159. STANDARDS.

Sec. 2051.160. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

Sec. 2051.161. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

SECTION 2. (a) An official publisher in the executive branch of state government shall comply with the applicable provisions of Subchapter E, Chapter 2051, Government Code, as added by this Act, in accordance with an implementation plan developed under Subsection (b) of this section.

(b) The Records Management Interagency Coordinating Council and an official publisher in the executive branch of state government are jointly responsible for developing an implementation plan for the applicable provisions of Subchapter E, Chapter 2051, Government Code, as added by this Act. The implementation plan must: (1) for each applicable type of legal material defined by Subchapter E, Chapter 2051, Government Code, as added by this Act, advise as to the method by which the legal material may be authenticated, preserved, and made available on a permanent basis; and

(2) establish a timeline for the official publisher to comply with Sections 2051.154, 2051.155, 2051.157, and 2051.158, Government Code, as added by this Act.

(c) The implementation plan developed under Subsection (b) of this section may provide for compliance by an official publisher in the executive branch of state government with Sections 2051.154, 2051.155, 2051.157, and 2051.158, Government Code, as added by this Act, to be phased in over a period of time.

(d) The Records Management Interagency Coordinating Council shall provide the implementation plan developed under Subsection (b) of this section to the legislature not later than September 1, 2018.

No equivalent provision.

SECTION 3. (a) An official publisher in the legislative branch of state government shall comply with the applicable provisions of Subchapter E, Chapter 2051, Government Code, as added by this Act, in accordance with an implementation plan developed under Subsection (b) of this section.

(b) An official publisher in the legislative branch of state government, in consultation with the lieutenant governor, the speaker of the house of representatives, the Senate Committee on Administration, and the House Committee on Administration, shall develop an implementation plan for the applicable provisions of Subchapter E, Chapter 2051, Government Code, as added by this Act. The implementation plan must:

(1) for each applicable type of legal material defined by Subchapter E, Chapter 2051, Government Code, as added by this Act, recommend the method by which the legal material may be authenticated, preserved, and made available on a permanent basis; and

(2) establish a timeline for the official publisher to comply with Sections 2051.154, 2051.155, 2051.157, and 2051.158, Government Code, as added by this Act.

(c) The implementation plan developed under Subsection (b) of this section may provide for compliance by an official publisher in the legislative branch of state government with Sections 2051.154, 2051.155, 2051.157, and 2051.158, Government Code, as added by this Act, to be phased in over a period of time.

(d) An official publisher in the legislative branch of state government shall provide the implementation plan developed under Subsection (b) of this section to the lieutenant governor and speaker of the house of representatives not later than September 1, 2018.

SECTION 2. This Act takes effect January 1, 2018.

SECTION 4. This Act takes effect September 1, 2017.