

SUBJECT: Providing a framework for publishing legal materials online

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Smithee, Farrar, Clardy, Hernandez, Laubenberg, Raymond, Schofield, Sheets, S. Thompson

0 nays

WITNESSES: For — Barbara Bintliff; (*Registered, but did not testify*: Blanca Gonzales, Sierra Club, Tarrant County Democratic Women’s Club, Southwest Democrats of Fort Worth; Brittney Booth, Texas Business Law Foundation; Rhoda Goldberg, Gloria Meraz, Dorcas Hand, and Anita Patel, Texas Library Association; Jane O’Connell; Danielle Plumer)

Against — None

On — Jon Heining, Texas Legislative Council; (*Registered, but did not testify*: David Slayton, Office of Court Administration; Robert Sumners and Lindsey Wolf, Office of the Secretary of State)

BACKGROUND: In 2011, the Uniform Law Commission established the Uniform Electronic Legal Materials Act, which sets up a framework for making online legal material available to the public with the same integrity provided by publication in a law book. The framework of the Uniform Electronic Legal Materials Act is intended to ensure accurate and authentic legal information as online publishing of legal materials becomes increasingly common.

DIGEST: CSHB 1799 would create requirements for official legal materials published online by the Texas Legislative Council and the secretary of state after January 1, 2017.

Under the bill, the Texas Legislative Council would be the official publisher of the Constitution and statutes of Texas, and the secretary of state would be the official publisher of the general or special laws passed

in a regular or special session of the Legislature and state agency rules.

The bill would require an official publisher who published legal material only in an electronic record to designate the record as official, authenticate the record, preserve its security, and ensure that it was reasonably available for use by the public on a permanent basis. The bill also would allow an official publisher who published legal material both in an electronic record and in a non-electronic record to designate the electronic record as official if the official publisher authenticated the record, preserved its security, and ensured that it was reasonably available for use by the public on a permanent basis.

An official publisher would authenticate an electronic record by providing a method to determine that it was unaltered from the official record. Authenticated legal material would be presumed to be an accurate copy of the legal material. Under the bill, legal materials authenticated in states with a law that was substantially similar to the bill would be presumed to be accurate. A party seeking to contest the authenticity of legal material in an electronic record would have to show by a preponderance of the evidence that the record was not authentic.

Under the bill, the official publisher would preserve legal material by ensuring the integrity of the record, providing for backup and disaster recovery, and ensuring the continuing usability of the material.

In implementing the provisions of the bill, the official publisher would consider:

- the standards and practices of other jurisdictions;
- standards adopted by national standard-setting bodies;
- the needs of users of legal material in electronic records;
- the views of governmental officials and entities and other interested persons; and
- the methods and technologies used by other states.

The provisions of the bill would be applied and construed to promote

uniformity of the law among the states.

The bill would modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act, but would not modify, limit, or supersede provisions of that act that relate to disclosures to consumers and would not authorize electronic delivery of notices by courts.

This bill would take effect September 1, 2015.

NOTES:

The Legislative Budget Board estimates an initial negative impact to general revenue of \$252,000 in fiscal 2016 for software purchases by both the secretary of state and the Texas Legislative Council and for a contractor to setup, install, and configure the software. Beyond that, the LBB estimates a cost of about \$163,000 during session years and about \$34,000 during non-session years for software maintenance and editors.