

SUBJECT: Adopting the Uniform Electronic Legal Material Act

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Leach, Farrar, Y. Davis, Julie Johnson, Krause, Meyer, Neave, Smith, White

0 nays

WITNESSES: For — Barbara Bintliff; (*Registered, but did not testify*: Trish McAllister, Texas Access to Justice Commission; Jay Bowlby; Ghada Ghannam; Kolby Monnig)

Against — None

On — Jeffrey Archer, Texas Legislative Council; (*Registered, but did not testify*: Robert Summers, Secretary of State)

DIGEST: HB 402 would adopt the Uniform Electronic Legal Material Act, which would designate the state's official publishers of legal material in an electronic record and impose certain requirements for these materials.

Official publishers. The Texas Legislative Council would be the official publisher of the state constitution, while 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 of any state agency rule adopted under the Administrative Procedure Act.

Official publication. If an official publisher published legal material only in an electronic record, the publisher would have to designate that electronic record as official. If the official publisher published legal material in an electronic record and also published the material in a different record, the publisher could designate the electronic record as official.

To be official, an electronic record would have to comply with

authentication, preservation, and public access requirements.

An official publisher would not be required to publish legal material on or before the date on which the legal material took effect.

Authentication. An official publisher would be required to authenticate an official electronic record of legal material by providing a method for a viewer to determine that the electronic record was unaltered from the published official record.

An electronic record of legal material that was authenticated in this state or in a state with a law that was substantially similar to this bill would be presumed to be an accurate copy of the legal material. A party contesting the authenticity of legal material in an authenticated electronic record would have the burden of proving by a preponderance of the evidence that the record was not authentic.

Preservation. An official publisher would be required to preserve and secure an official electronic record in an electronic or other form. If preserved in an electronic record, the official publisher would have to ensure the integrity of the record, provide for its backup and disaster recovery, and ensure its continued usability.

Public access. Legal material in an official electronic record would have to be made reasonably available to the public on a permanent basis.

Standards. In implementing the requirements of this bill, an official publisher would be required to consider the standards and practices of other jurisdictions, the most recent standards regarding electronic records as adopted by national standard-setting bodies, the needs of users, and the perspectives of interested persons.

To the extent practicable, an official publisher also would have to consider the methods and technologies that would be compatible with those used by official publishers in other states that have adopted a law substantially similar to this bill. Consideration would be given to the need to promote

the uniformity of the law regarding electronic records of legal material among such states.

Federal law. The bill would modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act, except with regard to provisions relating to consumer disclosures and the delivery of certain notices.

Implementation plans. Texas Legislative Council would be required to consult with the lieutenant governor, the House speaker, the Senate Committee on Administration, and the House Committee on Administration to develop an implementation plan for the authentication and preservation of electronic legal materials. The secretary of state would develop such a plan in consultation with the Texas State Library and Archives Commission.

These implementation plans would have to advise as to the method by which each type of legal material could be authenticated, preserved, and made permanently available and would establish a timeline for the official publisher to comply with the requirements of this bill.

The Texas Legislative Council would be required to submit its implementation plan to the lieutenant governor and the House speaker by September 1, 2020. The Texas State Library and Archives Commission would have to submit the secretary of state's implementation plan to the Legislature by that same date.

Effective date. The bill would apply to all legal material in an electronic record designated as official and first published electronically by an official publisher on or after January 1, 2021.

The bill would take effect September 1, 2019.