

BILL ANALYSIS

Senate Research Center
86R4346 CJC-F

H.B. 402
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Business & Commerce
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Because official, printed copies of legal materials are expensive, many persons access legal materials primarily online. The Uniform Electronic Legal Material Act (UELMA) has been adopted in 18 states and the District of Columbia to address this issue. In those jurisdictions, UELMA allows the official publisher to designate an electronic record as the official version of legal materials. A person looking at the law online can verify that it is a legitimate source, which creates a presumption of accuracy.

H.B. 402 would add Texas to the growing list of states enacting UELMA. This would increase accessibility to legal materials while lowering costs for attorneys and pro se litigants.

H.B. 402 amends current law relating to the adoption of the Uniform Electronic Legal Material Act.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 2051, Government Code, by adding Subchapter E, as follows:

SUBCHAPTER E. UNIFORM ELECTRONIC LEGAL MATERIAL ACT

Sec. 2051.151. **SHORT TITLE.** Authorizes this subchapter to be cited as the Uniform Electronic Legal Material Act.

Sec. 2051.152. **DEFINITIONS.** Defines "electronic," "legal material," "official publisher," "publish," and "record" for purposes of this subchapter.

Sec. 2051.153. **APPLICABILITY.** (a) Provides that 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, 2021.

(b) Provides that 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.** (a) Requires the official publisher, if the official publisher publishes legal material only in an electronic record, to:

(1) designate the electronic record as official; and

(2) comply with Sections 2051.155, 2051.157, and 2051.158.

(b) 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 Sections 2051.155, 2051.157, and 2051.158.

Sec. 2051.155. AUTHENTICATION OF OFFICIAL ELECTRONIC RECORD. (a) Requires the official publisher, if the official publisher designates an electronic record as official in accordance with Section 2051.154, to authenticate the record.

(b) Provides that the official publisher authenticates an electronic record 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.

Sec. 2051.156. EFFECT OF AUTHENTICATION. (a) Provides that legal material in an electronic record that is authenticated as provided by Section 2051.155 is presumed to be an accurate copy of the legal material.

(b) Provides that if another state has adopted a law that is substantially similar to this subchapter, legal material in an electronic record that is authenticated in that state is presumed to be an accurate copy of the legal material.

(c) Provides that a party contesting the authenticity of legal material in an electronic record authenticated as provided by Section 2051.155 has the burden of proving by a preponderance of the evidence that the record is not authentic.

Sec. 2051.157. PRESERVATION AND SECURITY OF LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD. (a) Requires the official publisher of legal material in an electronic record designated as official in accordance with Section 2051.154 to provide for the preservation and security of the record in an electronic form or in a form that is not electronic.

(b) Requires the official publisher, if legal material is preserved under Subsection (a) 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.

Sec. 2051.158. PUBLIC ACCESS. Requires the official publisher of legal material in an electronic record that is required to be preserved under Section 2051.157 to ensure that the material is reasonably available for use by the public on a permanent basis.

Sec. 2051.159. STANDARDS. Requires the official publisher of legal material in an electronic record, in implementing this subchapter, to consider:

(1) the standards and practices of other jurisdictions;

(2) the most recent standards regarding authentication, preservation, and security of and public access to legal material in an electronic record and other electronic records, as adopted by national standard-setting bodies;

(3) the needs of users of legal material in electronic records;

(4) the views of governmental officials and entities and other interested persons; and

(5) to the extent practicable, the methods and technologies for the authentication, preservation, and security of and public access to legal

material that are compatible with the methods and technologies used by official publishers in other states that have adopted a law that is substantially similar to this subchapter.

Sec. 2051.160. UNIFORMITY OF APPLICATION AND CONSTRUCTION. Requires consideration, in applying and construing this subchapter, to be given to the need to promote uniformity of the law with respect to the subject matter of this subchapter among states that enact a law similar to this subchapter.

Sec. 2051.161. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. Provides that this subchapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of that Act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that Act (15 U.S.C. Section 7003(b)).

SECTION 2. (a) Requires an official publisher in the executive branch of state government to 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) Provides that the Texas State Library and Archives Commission (TSLAC) 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. Requires the implementation plan to:

(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 is authorized to 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) Authorizes the implementation plan developed under Subsection (b) of this section to 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) Requires TSLAC to provide the implementation plan developed under Subsection (b) of this section to the legislature not later than September 1, 2020.

SECTION 3. (a) Requires an official publisher in the legislative branch of state government to 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) Requires 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, to develop an implementation plan for the applicable provisions of Subchapter E, Chapter 2051, Government Code, as added by this Act. Requires the implementation plan to:

(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 is authorized to 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) Authorizes the implementation plan developed under Subsection (b) of this section to 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) Requires an official publisher in the legislative branch of state government to 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, 2020.

SECTION 4. Effective date: September 1, 2019.