

## Uniform Electronic Legal Material Act Bill (H. 43)

### What Is the Problem Being Addressed?

Access to government information is essential for a well-functioning democracy. As citizens, attorneys, judges, and pro se litigants increasingly turn to the Internet to access information, it is critical that legal material located on government websites be trustworthy and reliable. However, as evidenced by the American Association of Law Libraries' *State-by-State Report on Authentication of Online Legal Resources*, while more states are putting their primary legal material online, most have not addressed preservation, permanent public access or digital authentication of their resources.

### What Is the Solution?

The *Uniform Electronic Legal Material Act (UELMA)*, approved by the Uniform Law Commission (ULC) in 2011, will ensure that online state legal material deemed official will be preserved and will be permanently available to the public in unaltered form. *UELMA* does not prescribe specific technologies so that states can determine their preferred system. It has been introduced in Massachusetts as House Bill No.43. Last year, H. 38, was reported favorably out of the Joint Committee on the Judiciary and referred to the House Committee on Ways and Means.

The act requires that if legal material is published only in electronic form, it must be designated official. Official electronic legal material must be:

1. *Authenticated*, by providing a method to determine that it is unaltered;
2. *Preserved*, either in electronic or print form; and
3. *Accessible*, for use by the public on a permanent basis.

### What Legal Materials Are Covered by UELMA and H. 43?

The act applies to electronic legal materials that have been designated official. Four categories of basic state legal material are specifically named in the proposed bill, including the state constitution, state session laws, codified laws, judicial opinions and agency regulations which have the effect of law.

### Who Supports UELMA?

The Uniform Law Commission, the American Association of Law Libraries (AALL) and the American Bar Association all support *UELMA*. Many other stakeholders -- including the U.S. Government Publishing Office, the National Archives and Records Administration, the Society of American Archivists, the National Center for State Courts, and the Association of Reporters of Judicial Decisions -- were observers to the ULC drafting committee. The Council of State Governments also approved *UELMA* as "Suggested State Legislation." *UELMA* has been enacted in California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Minnesota, Nevada, North Dakota, Oregon and Pennsylvania. It has been introduced this session in Maryland, New York, Texas and Washington, DC.

### Why Should Massachusetts Take Action?

By adopting *UELMA*, Massachusetts will establish itself as a leader among states that have recognized that electronic legal material must be trustworthy and accessible. At this point, all of the primary law covered in the bill is available in analog form in Massachusetts, but their online equivalents provided by the government do not meet the standards for authentication, preservation and accessibility. Enactment of *UELMA* will put a set of principles in place if a body in the future decides to publish in only online form or designate their online materials for use of the public as official.

Past experience has shown that decisions about publication of the law in Massachusetts can sometimes have unanticipated consequences for businesses/institutions and people who need legal information and the libraries that serve them. When the Massachusetts Register was repurposed in 1987 to be the updating pages for the CMR, while this helped the CMR be kept more up-to-date, it also made it considerably more difficult and expensive to determine what regulations were in effect at any particular time in the past.

The enactment of Stat. 2012, ch.165 has severely limited production of print copies of some public documents, leaving law libraries unable to acquire print copies while the electronic copy on the web has not been deemed official and authenticated. Enacting *UELMA* will put a framework in place to prevent disruption to the permanent public access to Massachusetts authenticable legal information by a concerned citizenry.

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