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## Judiciary Committee

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### SB 5039

**Title:** An act relating to the uniform electronic legal material act.

**Brief Description:** Adopting the uniform electronic legal material act.

**Sponsors:** Senators Pedersen, O'Ban, Frockt and Padden; by request of Uniform Law Commission.

#### Brief Summary of Bill

- Adopts the Uniform Electronic Legal Material Act, creating a framework for authentication, preservation, and accessibility of legal material in an official electronic record.
- Defines the Washington State Constitution, session laws, Revised Code of Washington, certain agency rules, the Washington State Register, and the Washington Administrative Code as "legal material."

**Hearing Date:** 3/14/17

**Staff:** Audrey Frey (786-7289).

#### Background:

The Uniform Electronic Legal Material Act (UELMA), completed by the Uniform Law Commission (ULC) in 2011, provides states with a framework for authentication and preservation of official electronic legal material, such as statutes, laws, and agency rules that are officially published on the Internet or in any other electronic format. (The ULC is composed of state commissions on uniform laws. The purpose of the ULC is to determine which areas of law should be made uniform, and to promote uniformity by drafting and proposing uniform statutes. States decide whether to enact a uniform law or not.) Currently, 13 states have enacted a version of the UELMA.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

State governments increasingly publish statutes, laws, agency rules, and other legal materials electronically. In some states, important state-level legal material is no longer published in books and is only available on the internet.

In Washington, most state-level legal material is still officially published in books. For example, although the Revised Code of Washington (RCW) is available online, the online version of the RCW is not official; the official publication of the RCW is the set of hard copy volumes published by the Statute Law Committee (SLC) containing the certificate of compliance required by chapter 1.08 RCW. (The SLC is the legislative agency that oversees the functions and performance of the Office of the Code Reviser.) The only state-level legal material published electronically that is deemed official is the Washington State Register (WSR).

The UELMA requires that legal material in an official electronic record 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.

The UELMA does not require publication of legal material in an electronic record. A state has the discretion to publish nonelectronic or hard copies of legal material. However, if a state decides to publish legal material solely in an electronic record, the UELMA requires that the electronic record be designated as official.

*Authentication.* The UELMA requires states to provide a method for users to verify that legal material in an official electronic record is unaltered, but it does not require use of any particular authentication technology. For example, the SLC uses an inexpensive program that certifies an electronic copy of the WSR, in whole or in part, when requested. When an issue of the WSR is downloaded or viewed as a PDF file on the WSR website, the PDF file contains a digital signature stating that the document is certified by the Office of the Code Reviser.

Under the UELMA, if electronic legal material is authenticated, it is presumed to be an accurate copy of the legal material. That presumption also applies in every other state that has enacted the UELMA.

*Preservation.* With respect to preservation of legal material in an official electronic record, the UELMA requires that states either preserve the record electronically or in print. If a state chooses to preserve a record electronically, it must ensure the record's integrity, provide for backup and disaster recovery, and ensure the continuing usability of the material.

*Accessibility.* The UELMA requires that states ensure that legal material in an official electronic record is reasonably available for use by the public on a permanent basis.

### **Summary of Bill:**

A new chapter, titled the Uniform Electronic Legal Material Act (UELMA), is added to Title 1 RCW, creating a framework for authentication, preservation and security, and public access of official electronic legal material.

*Definitions.* Certain key terms are defined. "Legal material" is defined to include the Washington State Constitution, the session laws, the Revised Code of Washington (RCW),

agency rules that have the effect of law, the Washington State Register, and the Washington Administrative Code.

"Official publisher" is defined in relation to each category of legal material. The Secretary of State is the official publisher of the Washington State Constitution. The Statute Law Committee is the official publisher of the session laws, the RCW, the Washington State Register, and the Washington Administrative Code. With respect to any agency rules that are not published in the Washington State Register, the state agency adopting the rule is the official publisher.

*Applicability.* The UELMA applies to all legal material in an official electronic record first published electronically on or after January 1, 2018, except that with respect to issues of the Washington State Register, the UELMA applies to all issues first published electronically on or after May 7, 2008.

*Legal Material in an Official Electronic Record.* If legal material is published solely in electronic form by the official publisher, the publisher shall: (1) designate the electronic record as official; and (2) comply with the authentication, preservation and security, and public access sections of this chapter.

*Authentication.* An official publisher of legal material in an official electronic record shall authenticate the record. To authenticate an electronic record, the publisher shall provide a method for a user to determine that the record is unaltered.

*Effect of Authentication.* Legal material in an electronic record that is authenticated is presumed to be an accurate copy of the legal material. If another state has adopted a substantially similar law, legal material in an official electronic record authenticated by the official publisher in that state is presumed to be accurate. A party contesting authentication has the burden of proving by a preponderance of the evidence that the record is not authentic.

*Preservation and Security.* An official publisher of legal material in an official electronic record shall provide for the preservation and security of the record in an electronic form or a form that is not electronic. If legal material is preserved in an electronic record, the official publisher is required to ensure the integrity of the record, provide for backup and disaster recovery of the record, and ensure the continuing usability of the material.

*Public Access.* An official publisher of legal material in an electronic record that is required to be preserved shall ensure that the material is reasonably available for use by the public on a permanent basis.

*Standards.* In implementing the UELMA, an official publisher of legal material in an electronic record shall consider: (1) standards and practices of other jurisdictions; (2) the most recent standards regarding authentication, preservation and security, and public access of legal material in an electronic record, as promulgated by national standard-setting bodies; (3) the needs of users of legal material in an electronic record; (4) the views of governmental officials and entities and other interested persons; and (5) to the extent practicable, methods and technologies for the authentication, preservation and security, and public access of legal material which are compatible with the methods and technologies used by other official publishers in this state and in other states that have adopted laws substantially similar to the UELMA.

*Uniformity of Application and Construction.* In applying and construing the UELMA, consideration must be given to the need to promote uniformity of the law among states that enact the UELMA.

*Relation to the Federal Electronic Signatures in Global and National Commerce Act.* The UELMA modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act (ESGNCA), except as it pertains to electronic delivery of certain notices. This section responds to specific language in the ESGNCA that authorizes state statutes to modify, limit, or supersede certain provisions of the ESGNCA as long as certain requirements are satisfied, and is designed to avoid preemption of state law under that federal legislation.

*Courts Excluded.* The UELMA does not apply to any court or agency of the judicial branch.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on January 1, 2018.