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## **OLR Bill Analysis**

### **SB 235**

#### ***AN ACT CONCERNING THE ADOPTION OF THE UNIFORM ELECTRONIC LEGAL MATERIAL ACT.***

#### **SUMMARY:**

This bill enacts the Uniform Electronic Legal Material Act (UELMA).

UELMA provides for the authentication and preservation of electronic records of legal material published by the state (e.g., the General Statutes or court cases). The bill does not require the state to publish legal material electronically, but sets certain requirements if the state does so and designates the record as official.

Among other things, the bill provides that properly authenticated electronic legal materials are presumed to be accurate copies of the official material.

EFFECTIVE DATE: July 1, 2013

#### **UELMA**

#### ***§ 2-3 — Applicability and Definitions***

The bill applies to all legal material in an electronic record that is designated as official under the bill and first published electronically on or after July 1, 2013. Thus, in addition to new material, the bill applies to older material being converted into an electronic format if that format is designated as the official version (see below).

The following definitions apply in the bill.

“Legal material” means the following, whether or not they are in effect: the state constitution; the General Statutes; state agency regulations; and reported decisions of the state Supreme, Appellate, and Superior courts.

The “official publisher” of legal material varies depending on the material. The secretary of the state is the official publisher of the state constitution and state agency regulations. The Joint Committee on Legislative Management is the official publisher of the General Statutes. The Commission on Official Legal Publications is the official publisher of reported court decisions.

A “state” means a U.S. state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or any territory or insular possession subject to U.S. jurisdiction.

#### **§ 4 — *Legal Material in Official Electronic Records***

Under the bill, if an official publisher publishes legal material only in an electronic record, the publisher must (1) designate the electronic record as the official record and (2) comply with the bill’s provisions on authentication (§ 5), preservation and security (§ 7), and permanent public access (§ 8).

If the official publisher publishes legal material in both an electronic and non-electronic record, it can designate the electronic record as the official record if it complies with the provisions noted above.

#### **§ 5 — *Authentication of Official Electronic Records***

The bill requires the official publisher to authenticate an official electronic record. To do so, the publisher must provide a way for a user to determine that the record he or she receives from the official publisher is the same as the version that the publisher designated as the official version. (The bill does not specify how a publisher might do this.)

#### **§ 6 — *Effect of Authentication***

Under the bill, authenticated legal material in an electronic record is presumed to be an accurate copy of the legal material. Someone contesting such an authentication has the burden of proving by a preponderance of the evidence that the record is not authentic.

The bill specifies that legal material in electronic records maintained by other states is presumed to be an accurate copy if that state has

properly authenticated it.

**§ 7 — Preservation and Security**

The bill requires an official publisher of legal material in an electronic record that is or was designated as official to provide for the record's preservation and security, in electronic form or otherwise. Publishers that preserve such material electronically must (1) ensure the record's integrity, (2) provide for its backup and recovery in case of disaster, and (3) ensure the material's continuing usability.

**§ 8 — Public Access**

Official publishers of legal material in an electronic record that must be preserved under the bill must ensure that the material is reasonably and permanently available for public use.

**§ 9 — Standards**

The bill requires official publishers of legal material in electronic records, in implementing the bill, to consider:

1. other jurisdictions' standards and practices;
2. the most recent authentication, preservation, security, and public access standards promulgated by national standard-setting bodies, and standards or guidelines that the state librarian or public records administrator establishes addressing these topics and their applicability to legal material in electronic records covered by the bill and other unspecified electronic records;
3. the needs of the material's users;
4. the views of government officials, government entities, and other interested persons; and
5. to the extent practicable, methods and technologies for giving public access to and authenticating, preserving, and securing legal material that are compatible with those used by other official publishers in Connecticut and other states that have

adopted a law substantially similar to UELMA.

**§ 10 — Uniformity of Application and Construction**

The bill specifies that in applying and construing UELMA, consideration must be given to the need to promote uniformity of law with respect to its subject matter among states that enact it.

**§ 11 — E-SIGN Act**

The bill provides that its provisions modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce (E-SIGN) Act. But they do not (1) modify, limit, or supersede E-SIGN's provisions on consumer disclosures (such as when consumers are considered to have consented to electronic disclosures) or (2) authorize electronic delivery of specified notices not subject to E-SIGN (see BACKGROUND).

**BACKGROUND**

***E-SIGN***

The federal E-SIGN Act (15 USC § 7001 et seq.) validates the use of electronic records and signatures in commercial transactions. The act does not apply to:

1. court orders or notices, or official court documents required to be executed in connection with court proceedings;
2. utility cancellation or termination notices;
3. notices of eviction, foreclosure, repossession, acceleration, default, or the right to cure, under a rental agreement or a credit agreement secured by someone's primary residence;
4. notices that life insurance benefits, health insurance, or health insurance benefits are being cancelled or terminated, other than with respect to annuities;
5. notices of the recall or material failure of products that could endanger health or safety; and

6. documents required for transporting or handling hazardous material, pesticides, or other toxic or dangerous material (15 USC § 7003(b)).

Connecticut has also enacted the Connecticut Uniform Electronic Transactions Act (CUETA) (CGS §§ 1-266 to 1-286). CUETA and E-SIGN overlap significantly.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 40 Nay 0 (03/13/2013)