HOUSE DOCKET, NO. 64 FILED ON: 1/15/2019

HOUSE . . . . . No. 64

So much of the recommendations of the Commission on Uniform State Laws (House, No. 56) as relates to the Uniform Electronic Legal Material Act. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to the Uniform Electronic Legal Material Act.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The General Laws are hereby amended by inserting after chapter 4:--

CHAPTER 5

UNIFORM ELECTRONIC LEGAL MATERIAL ACT

SECTION 1. SHORT TITLE. This chapter may be cited as the Uniform Electronic Legal Material Act.

SECTION 2. DEFINITIONS. In this chapter:

(1) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) "Legal material" means, whether or not in effect:

(A) the Constitution of the Commonwealth of Massachusetts

(B) the Session Laws;

(C) the General Laws;

(D) a state agency rule or decision that has or had the effect of law;

(E) other material published in the Massachusetts Register or the Code of Massachusetts Regulations; or

(F) the reported decisions and rules of the following state courts: the Supreme Judicial Court, the Appeals Court and the Trial Court.

(3) “Official publisher” means:

(A) for the material recited in subsections (2)(A)-(C), the Secretary of the Commonwealth;

(B) for the material recited in subsection (2)(D) that is not published in the Massachusetts Register or the Code of Massachusetts Regulation, the state agency;

(C) for the material recited in subsection (2)(E), the Secretary of the Commonwealth; or

(E) for the material recited in subsection (2)(F), the Reporter of Decisions of the Supreme Judicial Court.

(4) “Publish” means to display, present, or release to the public, or cause to be displayed, presented, or released to the public, by the official publisher.

(5) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(6) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

SECTION 3. APPLICABILITY. This chapter applies to all legal material in an electronic record that is designated as official under section 4 and first published electronically on or after the effective date of this Act.

SECTION 4. LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD.

(a) If an official publisher publishes legal material only in an electronic record, the publisher shall:

(1) designate the electronic record as official; and

(2) comply with sections 5, 7, and 8.

(b) An official publisher that publishes legal material in an electronic record and also publishes the material in a record other than an electronic record may designate the electronic record as official if the publisher complies with sections 5, 7, and 8.

SECTION 5. AUTHENTICATION OF OFFICIAL ELECTRONIC RECORD. An official publisher of legal material in an electronic record that is designated as official under section 4 shall authenticate the record. To authenticate an electronic record, the publisher shall provide a method for a user to determine that the record received by the user from the publisher is unaltered from the official record published by the publisher.

SECTION 6. EFFECT OF AUTHENTICATION.

(a) Legal material in an electronic record that is authenticated under section 5 is presumed to be an accurate copy of the legal material.

(b) If another State has adopted a law substantially similar to this Act, legal material in an electronic record that is designated as official and authenticated by the official publisher in that State is presumed to be an accurate copy of the legal material.

(c) A party contesting the authentication of legal material in an electronic record authenticated under section 5 has the burden of proving by a preponderance of the evidence that the record is not authentic.

SECTION 7. PRESERVATION AND SECURITY OF LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD.

(a) An official publisher of legal material in an electronic record that is or was designated as official under section 4 shall provide for the preservation and security of the record in an electronic form or a form that is not electronic.

(b) If legal material is preserved under subsection (a) in an electronic record, the official publisher shall:

(1) ensure the integrity of the record;

(2) provide for backup and disaster recovery of the record; and

(3) ensure the continuing usability of the material.

SECTION 8. PUBLIC ACCESS TO LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD. An official publisher of legal material in an electronic record that is

required to be preserved under section 7 shall ensure that the material is reasonably available for use by the public on a permanent basis.

SECTION 9. STANDARDS. In implementing this Act, an official publisher of legal material in an electronic record shall consult the persons identified in section 17 of chapter 110G and consider:

(1) standards and practices of other jurisdictions;

(2) the most recent standards regarding authentication of, preservation and security of, and public access to, legal material in an electronic record and other electronic records, 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 of, preservation and security of, and public access to, 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 a law substantially similar to this chapter.

SECTION 10. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 11. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This Act 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. This Act takes effect on July first, two thousand and nineteen.