



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

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### **S.B. 139**

132nd General Assembly

(As Reported by H. Government Accountability and Oversight)

**Sens.** Skindell and Eklund, Thomas, Coley, Brown, Dolan, Hoagland, LaRose, Manning, Obhof, O'Brien, Oelslager, Schiavoni, Sykes, Tavares, Terhar, Williams

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### **BILL SUMMARY**

- Enacts the Uniform Electronic Legal Material Act, which specifies requirements for the Secretary of State, the Legislative Service Commission, and other state agencies that publish official electronic versions of legal materials, such as the Ohio Constitution, the Revised Code, and administrative rules.
- Applies only to electronic legal material that is designated official and is first published electronically on or after the bill's effective date.
- Requires an agency that publishes legal material only in an electronic record to designate it as official and comply with the bill's requirements.
- Allows an agency that publishes legal material both electronically and in another format to choose whether to designate the electronic record as official, and requires the agency to follow the bill's requirements if it decides to make the electronic record official.
- Prescribes procedures for an agency to follow when it publishes official electronic legal material, including authenticating the record, providing for its preservation and security, and making it reasonably available to the public on a permanent basis.
- Specifies that electronic legal material that is authenticated under the bill or under a substantially similar law in another state is presumed to be an accurate copy of that material.
- Requires a party that contests the authentication of official electronic legal materials to prove by a preponderance of the evidence that the record is not authentic.

- Requires a court that applies and construes the bill to consider the need to promote uniformity of the Uniform Electronic Legal Materials Act with respect to its subject matter among states that enact it.
- States that the bill modifies, limits, and supersedes certain provisions of the federal Electronic Signatures in Global and National Commerce Act.

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## CONTENT AND OPERATION

The bill enacts the Uniform Electronic Legal Material Act, which specifies requirements for state agencies that publish official versions of legal materials in electronic format and provides for those records to be presumed authentic when they are used in court. The bill applies to all electronic legal material that is designated as official and is first published electronically on or after the bill's effective date.<sup>1</sup>

### Legal materials and publishers

The table below lists the types of legal materials covered by the bill and the agencies designated by the bill as the official publishers of those materials.

Legal material	Official publisher
Ohio Constitution	Secretary of State
Session laws (acts of the General Assembly)	Secretary of State
Revised Code	Legislative Service Commission
Administrative Code	Legislative Service Commission
State agency rules that are not published in the Administrative Code and that have or had the effect of law	Agency adopting the rule
Final decisions of state administrative agencies	Agency making the decision

Under the bill, if an agency publishes legal material only in an electronic record, the agency must designate the record as official and comply with the bill's requirements with respect to the record. If the agency publishes legal material both in an electronic record and in another format, the agency may designate the electronic record as official. If the agency chooses to do so, the bill applies to the record.

The bill provides the following definitions for the terms used above:<sup>2</sup>

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<sup>1</sup> R.C. 149.21(B) and (C).

<sup>2</sup> R.C. 149.21 and 149.22.



- "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- "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.
- "Publish" means to display, present, or release to the public or to cause to be displayed, presented, or released to the public, by the official publisher.

### **Requirements for official electronic legal materials**

The bill requires the publisher of an official electronic legal material to do all of the following:<sup>3</sup>

- Authenticate the record by providing a method for a user to determine that the record received from the publisher is unaltered from the official record;
- Provide for the preservation and security of the record in an electronic or nonelectronic form;
- Ensure the integrity and continuing usability of the material;
- Provide for backup and disaster recovery of the record;
- Ensure that the material is reasonably available for use by the public on a permanent basis.

In doing so, the publisher must consider all of the following:<sup>4</sup>

- Standards and practices of other jurisdictions;
- 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;
- The needs of users of legal material in an electronic record;

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<sup>3</sup> R.C. 149.23(A) and 149.24.

<sup>4</sup> R.C. 149.25.



- The views of governmental officials and entities and other interested persons;
- To the extent practicable, methods and technologies for the authentication of, preservation and security of, and public access to, legal material that are compatible with the methods and technologies used by other official publishers in Ohio and in other states that have adopted a law substantially similar to the bill (see "**Use of official electronic legal materials,**" below).

## **Use of official electronic legal materials**

The bill includes provisions that allow for electronic legal materials to be used in court without authenticating them against a paper record. Electronic legal material that is authenticated under the bill is presumed to be an accurate copy of the legal material.

Further, electronic legal material that is designated as official and authenticated by the official publisher in another state that has adopted a law substantially similar to the bill is presumed to be an accurate copy of that legal material. As used in the bill, "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. According to the National Conference of Commissioners on Uniform State Laws, which created model legislation for the Uniform Electronic Legal Material Act, 17 states and the District of Columbia have enacted laws based on the model.

Under the bill, a party that contests the authentication of official electronic legal materials must prove by a preponderance of the evidence that the record is not authentic.<sup>5</sup>

## **Application and construction**

A court that applies and construes the bill must consider the need to promote uniformity of the Uniform Electronic Legal Material Act with respect to its subject matter among states that enact it.<sup>6</sup>

The bill also states generally that it modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act. Under that Act, with

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<sup>5</sup> R.C. 149.21(A)(6) and 149.23 and Uniform Law Commission, *Legislative Fact Sheet – Electronic Legal Material Act*, available at [uniformlaws.org/LegislativeFactSheet.aspx?title=Electronic%20Legal%20Material%20Act](http://uniformlaws.org/LegislativeFactSheet.aspx?title=Electronic%20Legal%20Material%20Act), accessed May 3, 2018.

<sup>6</sup> R.C. 149.21(C) and 149.26.



certain exceptions, a signature, contract, or other record relating to a transaction in or affecting interstate commerce may not be denied legal effect, validity, or enforceability solely because it is in electronic form. That Act specifically allows a state to modify, limit, or supersede it by adopting the Uniform Electronic Transactions Act. For example, under the bill, a court may invalidate an electronic record solely because it is electronic if the official publisher of that record prints a paper version of the record and has chosen not to authenticate the electronic version under the terms of the bill.

However, the bill does not modify, limit, or supersede the federal law that allows mandatory consumer disclosure information to be provided electronically only with the consumer's consent and in accordance with certain other regulations.<sup>7</sup>

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## HISTORY

ACTION	DATE
Introduced	04-25-17
Reported, S. Gov't Oversight & Reform	10-25-17
Passed Senate (32-0)	10-25-17
Reported, H. Gov't Accountability & Oversight	04-11-18

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<sup>7</sup> R.C. 149.27 and 15 U.S.C. 7001 through 7006.

