

Ohio Senate Government Oversight & Reform Committee
Hearing on Senate Bill 139 – Uniform Electronic Legal Material Act (ULEMA)
Written Testimony of Uniform Law Commissioner Jeff Ferriell

Chairman Coley, Vice Chairman Uecker, Ranking Member Schiavoni, and other members of the Committee.

I've been on the faculty at Capital University Law School since 1987 and over the last 38 years I've taught at Capital, two other Ohio law schools, and occasionally at other law schools on the west coast. Since 2007 I've been a member of the Ohio Council on Uniform State Laws and accordingly serve as a member of Ohio's delegation to the National Conference of Commissioners on Uniform State Laws, now also known as the Uniform Law Commission (or ULC).

For the past several decades state governments, including Ohio, have been publishing their laws, statutes, agency rules, and court rules and decisions online. In some states, including Ohio, official versions of important state-level legal material are not published by the state in books. Unauthenticated official versions are available online, although unofficial versions are available from several commercial publishers. To be sure, electronic publication of these materials has gone a long way toward facilitating public access to state laws, but it has also raised a few key issues that UELMA addresses. First, is concern about the authenticity of online material, when only limited efforts are taken to ensure that they have not been altered. Fortunately, I don't think we've had problems with our websites being hacked, but others are in a better position to know about this. A second issue, which is particularly acute in Ohio, is how long official versions of official state laws, statutes, and regulations will be preserved and continue to be made available to the public in the short-term and long-term future.

The Uniform Electronic Legal Material Act (UELMA) provides states with an outcomes-based approach to the authentication and preservation of electronic legal material. The goals of the authentication and preservation program outlined in the Act are to enable end-users to verify the trustworthiness of the legal material they are using and to provide a framework for states to preserve legal material in perpetuity in a manner that allows for permanent access.

The Act imposes three basic requirements on states that publish official versions of its legal materials online: It requires official electronic legal materials 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.

If government agencies that publish electronic legal material online take steps to ensure that the materials are authenticated, the Act creates a legal presumption that the online version is an accurate copy of the legal material originally adopted by the General Assembly, state agency, or if it applies to judicial decisions, the court that issued the decision. If Ohio adopts UELMA, there

will be a presumption not just in Ohio, but in other UELMA states, that Ohio's authenticated electronic legal materials are accurate. This same presumption will apply in Ohio, that other ULEMA state's electronic legal materials are accurate for use in Ohio. To date, 15 states have adopted ULEMA: Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Idaho, Maryland, Minnesota, Nevada, North Dakota, Pennsylvania, and West Virginia. Adoption of UELMA will harmonize standards for acceptance of electronic legal material across state boundaries.

UELMA requires that if a state preserves its legal materials electronically, it must provide for back-up and recovery, and ensure the integrity and continuing usability of the material. The act has no special requirements if a state chooses to preserve its legal material in print format, in recognition of the years of experience all states have in the preservation of print materials.

Senate Bill 139 proposes extending the scope of the act to the Ohio Constitution, the Session Laws of the General Assembly, the Ohio Revised Code, State Agency Rules that have the effect of law, and final decisions of state administrative agencies. Proposed § 149.21(A)(2). Separation of Power concerns prevent extending it to judicial decisions, but the ULC hopes that the provisions of the Act will be extended to decisions by state courts through the Supreme Court's rule-making process.

The act designates an official publisher for each category of legal material. Senate Bill 139 designates the Ohio Secretary of State as the official publisher of the Ohio Constitution and the Session Laws of the General Assembly, designates the Legislative Service Commission as the official publisher of the Ohio Revised Code and the Ohio Administrative Code, and the State Agency that has adopted any administrative rules that are not included in the Administrative Code or that has rendered a final decision. See Proposed § 149.21(A)(3).

Significantly, UELMA will not interfere with the contractual relationship between a state and a commercial publisher with which the state contracts for the production of its printed legal materials. Nor does it require the use of any specific technologies. Instead, it leaves choice of technology for authentication and preservation up to the state, and probably to the publisher of each type of electronic legal material within its scope. This will give Ohio the flexibility to choose any technology that meets the required outcomes allows the state to choose what it determines is the best and most cost-effective method to comply with the act's requirements. This flexible, outcomes-based approach anticipates that technologies will change over time and thus does not tie Ohio, or other states that adopt ULEMA, to any specific technology at any time.

UELMA is intended to complement the Uniform Commercial Code (in Chapters 1301-1305, & 1307-1310 of the Ohio Revised Code), which covers sales and many commercial transactions), the Uniform Real Property Electronic Recording Act, which has not yet been adopted in Ohio, and the Uniform Electronic Transactions Act (Ohio Revised Code Chapter 1306) which deals with electronic commerce.

In conclusion, the Uniform Electronic Legal Materials Act addresses the critical need to manage electronic legal information in a manner that guarantees the trustworthiness of and continuing access to important state legal materials. I encourage you to support its adoption.