



The Judiciary, State of Hawai'i

Testimony to the House Committee on Judiciary

Representative Karl Rhoads, Chair

Representative Sharon E. Har, Vice Chair

Friday, January 25, 2013, 2:00 pm
State Capitol, Conference Room 325

by

Jenny R.F. Fujinaka

State Law Librarian

Bill No. and Title: House Bill 18, Relating to THE UNIFORM ELECTRONIC LEGAL MATERIAL ACT (UELMA)

Purpose: Establishes authentication and other requirements for selected legal materials if they are published exclusively in electronic form, but does not require electronic publication.

Judiciary's Position:

The Judiciary supports HB 18.

This bill is prompted by the Uniform Law Commission, which passed UELMA in 2011. It is supported by the American Bar Association and the American Association of Law Libraries. Several states have enacted and/or introduced UELMA, including California and Colorado. Supporters of UELMA have found that the Act promotes efficiency, increases and ensures access to electronic legal materials, and provides a mechanism to ensure legal materials are preserved should their print counterparts be eliminated. UELMA also supports and enhances the public's increasing dependence on online documents for legal research and writing.

As the public becomes increasingly more reliant upon online access to legal research and documentation, it is important that electronic legal material be permanent, reliable, and authentic, especially where legal materials are created digitally and/or published only in electronic format. This bill ensures these objectives. Additional objectives this bill will achieve are as follows:



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- The availability of government information online facilitates transparency and accountability, provides widespread access to essential information, and encourages citizen participation. The Uniform Electronic Legal Material Act (UELMA) addresses the need to effectively provide and manage electronic government information in a manner that guarantees trustworthiness and continued access.
- UELMA provides for authentication, preservation, and accessibility of official electronic state legal material. The Act sets forth provisions that may be efficiently followed and will achieve the stated purposes of the act. Adoption of UELMA will assist state governments in guaranteeing the free flow of trustworthy legal information.
- UELMA requires official publishers to consider the most recent standards for the preservation of, authentication of, and access to electronic legal material. UELMA recognizes that technology will continue to change and improve, and supports collaboration among jurisdictions in choosing and implementing new technologies.
- UELMA does not affect any relationships between an official state publisher and a commercial publisher, leaving those relationships to contract law. Copyright laws are unaffected by the act. The act does not affect the rules of evidence; judges will continue to be able to make decisions about the admissibility of electronic evidence in their courtrooms.
- UELMA does not require specific technologies, leaving the choice of technology for authentication and preservation up to the states. Giving states the flexibility to choose any technology that meets the required outcomes allows each state to choose the best and most cost-effective method for that state.
- Adoption of UELMA will harmonize standards for acceptance of electronic legal material across jurisdictional boundaries. If Hawai'i enacts UELMA, the presumption that Hawai'i's authenticated electronic legal material is accurate applies in every other state that has enacted UELMA. If another state enacts UELMA, and authenticates its electronic legal material, that state's authenticated legal material is presumed to be an accurate copy for use in Hawai'i.

Thank you for the opportunity to testify on HB18.

January 24, 2013

The Honorable Karl Rhoads
Chair
Committee on Judiciary
House of Representatives
State Capitol
415 South Beretania Street
Honolulu, HI

The Honorable Sharon E. Har
Vice Chair
Committee on Judiciary
House of Representatives
State Capitol
415 South Beretania Street
Honolulu, HI

Dear Chair Rhoads and Vice Chair Har:

I write in support of House Bill 18. I strongly urge the Judiciary Committee to approve the *Relating to the Uniform Electronic Legal Material Act*, which will enact the *Uniform Electronic Legal Material Act (UELMA)* and provide Hawaii with a technology-neutral, outcomes-based approach to ensuring that online state legal material deemed official will be preserved and made permanently available to the public in unaltered form.

Relating to the Uniform Electronic Legal Material Act addresses the urgent problem, identified in the American Association of Law Libraries' 2007 *State-by-State Report on Authentication of Online Legal Resources*, that more and more states are eliminating their print legal resources in favor of online-only, without assuring trustworthiness and reliability. This bill will ensure that online legal material is guaranteed the same level of trustworthiness traditionally provided by print publication.

Importantly, HB 18 will ensure that anyone -- whether a citizen, judge, legislator, attorney or researcher -- will be able to verify the state legal material available to them online.

UELMA is supported by the Uniform Law Commission (ULC), the American Bar Association and the American Association of Law Libraries, of which I am a member. Many other stakeholders -- including the U.S. Government Printing Office, the National Archives and Records Administration, the Society of American Archivists, the National Center for State Courts, and the Association of Reporters of Judicial Decisions -- were observers to the ULC drafting committee.

I strongly urge you to support HB 18 Relating to the Uniform Electronic Legal Material Act. By adopting *UELMA*, Hawaii will establish itself as a leader among states that have recognized that official, electronic legal material must be authenticated, preserved and made permanently available to the public. Thank you very much for your consideration of this important matter.

Sincerely,

Roberta Woods, Law Librarian

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University of Hawaii at Mānoa
2525 Dole St.
Honolulu, HI 96822

**TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION**

on H.B. NO. 18

RELATING TO THE UNIFORM ELECTRONIC LEGAL MATERIAL ACT.

BEFORE THE HOUSE COMMITTEE ON JUDICIARY

DATE: Friday, January 25, 2013, at 2:00 p.m.
Conference Room 325, State Capitol

PERSON(S) TESTIFYING: **KEN TAKAYAMA** or **PETER HAMASAKI**
Commission to Promote Uniform Legislation

Chair Rhoads and Members of the Committee:

My name is Ken Takayama, and I am a member of the state Commission to Promote Uniform Legislation.

Thank you very much for this opportunity to testify in **strong support** of (H. B. No. 18), which enacts the Uniform Electronic Legal Materials Act (UELMA). This Act is a precautionary measure. It establishes certain requirements and standards in the event that specified official government agencies elect to publish specified legal publications (the state constitution, Hawaii Revised Statutes, state administrative agency rules, or appellate court decisions) **solely** in electronic form.

As such, the measure anticipates the possibility official agency publishers may elect to publish these legal publications solely in electronic form, for example, as a cost saving measure. Under this measure, the publishing agency would be required to provide a means of authenticating the material to determine that the electronic contents are unaltered, and preserved, in electronic or print form, and accessible for use by the public on a permanent basis.

The national Uniform Law Commission developed the UELMA in great part at the urging of archivists and law librarians—information science professionals who are dedicated to preserving the integrity and accuracy of important documents. The state Commission to Promote Uniform Legislation believes these concerns are well founded, and that the issues addressed by this measure are important not only to lawyers, but to government agencies—legislatures in particular, as well as to the general public.

It is important to note that the measure does **not** require the electronic publication of any materials. It's provisions apply **only** if one of the specified agencies elects to publish one of the specified legal publications solely in electronic form. The provisions of the UELMA are more fully summarized in the attachment to this testimony.

Thank you very much for this opportunity to testify.



Electronic Legal Material Act Summary

Increasingly, state governments are publishing laws, statutes, agency rules, and court rules and decisions online. In some states, important state-level legal material is no longer published in books, but is only available online. While electronic publication of legal material has facilitated public access to the material, it has also raised concerns. Is the legal material official, authentic, government data that has not been altered? For the long term, how will this electronic legal material be preserved? How will the public access the material 10, 50, or 100 years from now? 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 requires that official electronic legal material 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 electronic legal material is authenticated, it is presumed to be an accurate copy of the legal material. If your state enacts UELMA, the presumption that your authenticated electronic legal material is accurate applies in every other state that has enacted UELMA. If another state enacts UELMA, and authenticates its electronic legal material, its legal material is presumed to be an accurate copy for use in your state. Adoption of UELMA will harmonize standards for acceptance of electronic legal material across jurisdictional boundaries.

If a state preserves legal material 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.

State policy and discretion allow each state to determine which categories of legal information will be included in the act's coverage. For each category of legal information, an official publisher is named. The act requires that the official publisher be responsible for implementing the terms of the act, regardless of where or by whom the legal material is actually printed or distributed. For the purposes of the act, only a state agency, officer, or employee can be the official publisher, although state policy may allow a commercial entity to produce an official version of the state's legal material. The UELMA does not interfere with the contractual relationship between a state and a commercial publisher with which the state contracts for the production of its legal material.

The UELMA does not require specific technologies, leaving the choice of technology for authentication and preservation up to the states. Giving states the flexibility to choose any technology that meets the required outcomes allows each state to choose the best and most cost-effective method for that state. In addition, this flexible, outcomes-based approach anticipates that technologies will change over time; the act does not tie a state to any specific technology at any time.

The UELMA is intended to be complementary to the Uniform Commercial Code (UCC, which covers sales and many commercial transactions), the Uniform Real Property Electronic Recording Act (URPERA, which provides for electronic recording of real property instruments), and the Uniform Electronic Transactions Act (UETA, which deals with electronic commerce).

In conclusion, the UELMA addresses the critical need to manage electronic legal information in a manner that guarantees the trustworthiness of and continuing access to important state legal material.