



The Judiciary, State of Hawai'i

**Testimony to the
House Committee on Consumer Protection and Commerce**
Representative Angus L.K. McKelvey, Chair
Representative Derek S.K. Kawakami, Vice Chair

House Committee on Judiciary
Representative Karl Rhoads, Chair
Representative Sharon E. Har, Vice Chair

Thursday, March 14, 2013, 5:00 pm
State Capitol, Conference Room 325

by
Jenny R.F. Fujinaka
State Law Librarian

Bill No. and Title: Senate Bill 32, 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 Senate Bill No. 32.

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,



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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:

- 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 Senate Bill No. 32.

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

**on S.B. NO. 32
RELATING TO THE UNIFORM ELECTRONIC LEGAL MATERIAL ACT.**

**BEFORE THE HOUSE COMMITTEES ON JUDICIARY
AND ON CONSUMER PROTECTION & COMMERCE**

DATE: Thursday, March 14, 2013, at 5:00 p.m.

LOCATION: Conference Room 325, State Capitol

PERSON(S) TESTIFYING: **KEN TAKAYAMA**

Commission to Promote Uniform Legislation

Chair Rhoads, Chair McKelvey, and Members of the Committees:

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 (S. B. No. 32), 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, session laws, state administrative agency rules, or appellate court decisions) **solely** in electronic form.

This measure is the companion to H.B. No. 18, which the House Committee on Judiciary passed unamended on January 31, 2013.

As such, the measure anticipates the possibility that 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.

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March 14, 2013

Rep. Angus L.K. McKelvey, Chair
and members of the House Committee on Consumer Protection & Commerce
Rep. Karl Rhoads, Chair
and members of the House Committee on Judiciary
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **Senate Bill 1370, S.D. 2 (Mediation Affecting Judicial Foreclosure)**
Hearing Date/Time: Thursday, March 14, 2013, 5:00 p.m.

I am Marvin Dang, the attorney for the **Hawaii Financial Services Association** (“HFSA”). The HFSA is a trade association for Hawaii’s consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans, and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

The HFSA opposes this Bill.

The purposes of this Bill are to: (1) expand the application of mandatory mortgage foreclosure dispute resolution by requiring mortgagees, at the mortgagor's election, to participate in mediation to avoid foreclosure or mitigate damages from foreclosure prior to filing a judicial foreclosure action for property that has been the mortgagor's primary residence for a specified period, (2) apply the dispute resolution requirement to judicial foreclosure actions filed prior to the effective date of this bill and pending an initial court hearing, (3) exempt the dispute resolution requirement to judicial foreclosure actions if the mortgagee engages in loss mitigation procedures with the mortgagor, (4) establish notification requirements for a mortgagee to notify a mortgagor with respect to loss mitigation options, and (5) require that an attorney affirm that a mortgagee engaged in loss mitigation procedures with the mortgagor when filing for a judicial foreclosure action.

This Bill attempts to address issues related to servicing delinquent loans.

It should be noted that a foreclosure action is the last resort for a lender when a borrower’s mortgage loan is delinquent. Before commencing a foreclosure action (whether judicial or nonjudicial), a lender will consider many pre-foreclosure options such as a loan modification, a short sale, or a deed in lieu of foreclosure. Furthermore, five major national lenders/servicers are subject to the court-approved National Mortgage Settlement of 2012 with 49 state Attorneys General (including Hawaii’s Attorney General) and the U.S. Department of Justice.

Additionally, beginning on January 10, 2014, the mortgage servicing rules of the federal Consumer Financial Protection Bureau (“CFPB”) will be effective. As stated in the testimony of the Mortgage Bankers Association of Hawaii in opposition to this Bill:

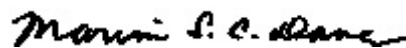
“The new rules require servicers to provide loss mitigation options to delinquent borrowers prior to foreclosure and cannot foreclose until the mortgage is 120 days past due. Servicers will be required to make live contact or make a good faith attempt with the delinquent borrower by the 36th day of delinquency and provide the borrower with the available loss mitigation options. Servicers will be required to send out a written notice of the available loss mitigation

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options by the 45th day of delinquency. Servicers will be required to provide the borrower with continuity of contact and be accessible to the borrower by phone; have access to all the information the borrower provided; and be able to assist the borrower when they call. Servicers will be required to establish and follow loss mitigation procedures. These procedures must acknowledge a borrower's application for loss mitigation options within 5 business days of receipt of an application. If the application is not complete, the borrower must be provided with a list of information or documentation that is required to complete the application. Servicers are required to evaluate a borrower for loss mitigation options if the loss mitigation application is received 37 days before a scheduled foreclosure sale date and complete the loss mitigation evaluation within 30 days of receipt of a complete loss mitigation application and provide the borrower with a written decision. A borrower is able to appeal a denial of a loss mitigation request if the appeal is received at minimum 90 days prior to a scheduled foreclosure date. Servicers will not be allowed to "dual track," whereby the servicer simultaneously evaluates a loan for loss mitigation options at the same time the foreclosure is in process."

The provisions in this Bill unnecessarily duplicate the existing practices of lenders and servicers, the terms of the National Mortgage Settlement, and the requirements in the CFPB rules. Accordingly, this Bill should be held at this time.

Thank you for considering our testimony.



MARVIN S.C. DANG
Attorney for Hawaii Financial Services Association

(MSCD/hfsa)

**TESTIMONY IN SUPPORT
of S.B. NO. 32
RELATING TO THE UNIFORM ELECTRONIC LEGAL MATERIAL ACT.
BEFORE THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE
and
COMMITTEE ON THE JUDICIARY**

DATE: Thursday, March 14, 2013, at 5:00 p.m.

LOCATION: Conference Room 325, State Capitol

PERSON TESTIFYING: Roberta Woods, Law Librarian, William S. Richardson School of Law at the University of Hawai'i at Mānoa, AALL Member

Chairs McKelvey and Rhoads, and Members of the Committees:

My name is Roberta Woods, I am a Law Librarian at the William S. Richardson School of Law at the University of Hawai'i at Mānoa and a member of the American Association of Law Libraries (AALL).

I write in support of Senate Bill 32. The Judiciary Committee heard testimony on companion bill, House Bill 18, and passed, unamended on January 31, 2013.

I strongly urge the Consumer Protection & Commerce Committee and 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 Hawai'i 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, SB 32, like its companion 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. 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 SB 32 Relating to the Uniform Electronic Legal Material Act. By adopting *UELMA*, Hawai'i 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.

kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 13, 2013 9:36 AM
To: CPCtestimony
Cc: felinitous@yahoo.com
Subject: Submitted testimony for SB8 on Mar 14, 2013 17:30PM

SB8

Submitted on: 3/13/2013

Testimony for CPC on Mar 14, 2013 17:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Mary James	Individual	Comments Only	No

Comments: I strongly support this bill. It will help prevent unnecessary pain for numerous pet animals. In addition to the pain experienced by the animals treated by nonveterinarians, there may be other unforeseen outcomes which a person without veterinarian training would be unable to address, inadvertently injuring or killing an animal. Finally, this bill emphasizes that veterinarian training is critical for the performance of surgical procedures. Thank you for hearing this bill.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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