

BILL ANALYSIS

C.S.H.B. 1799
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Many people believe that increasing public reliance on electronic information requires safeguards to ensure that certain information relating to state law that is published online is trustworthy, secure, and permanently accessible. Interested parties contend that a person viewing an electronic record of such information should be able to determine that the record is unaltered from the official record and be assured of the continuing usability of the record. Equally important, the parties say, is ensuring that the information is reasonably available for use by the public on a permanent basis. C.S.H.B. 1799 would enact the Uniform Electronic Legal Material Act in Texas to ensure that official electronic legal materials, such as the Texas Constitution, statutes, and state agency rules, are authenticated, preserved, and accessible.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1799 amends the Government Code to require the official publisher, defined in the bill as the Texas Legislative Council with regard to the state constitution and statutes and the secretary of state with regard to general or special laws and state agency rules, if the official publisher publishes legal material only in an electronic record, to designate the electronic record as official and comply with the bill's provisions regarding the authentication of an official electronic record, the preservation and security of legal material in an official electronic record, and public access to legal material in an electronic record. The bill authorizes the official publisher, if the official publisher publishes legal material in an electronic record and also publishes the material in a record other than an electronic record, to designate the electronic record as official if the official publisher complies with those bill provisions. The bill defines "legal material" to mean, whether or not in effect, the state constitution and statutes, the general or special laws passed in a regular or special session of the Texas Legislature, and a state agency rule adopted in accordance with the state Administrative Procedure Act. The bill requires the official publisher to authenticate the record if the official publisher designates an electronic record as official and specifies that the official publisher authenticates an electronic record by providing a method with which a person viewing the electronic record is able to determine that the electronic record is unaltered from the official record published by the official publisher.

C.S.H.B. 1799 establishes that legal material in an authenticated electronic record is presumed to be an accurate copy of the legal material and further establishes that legal material in an

electronic record that is authenticated in another state, defined to mean 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, that has adopted a law that is substantially similar to the bill's provisions is presumed to be an accurate copy of the legal material. The bill establishes that a party contesting the authenticity of legal material in an authenticated electronic record has the burden of proving by a preponderance of the evidence that the record is not authentic.

C.S.H.B. 1799 requires the official publisher of legal material in an electronic record designated as official to provide for the preservation and security of the record in an electronic form or in a form that is not electronic. The bill requires the official publisher, if legal material is preserved in an electronic record, to ensure the integrity of the record, provide for backup and disaster recovery of the record, and ensure the continuing usability of the legal material in the record. The bill requires the official publisher of legal material in an electronic record that is required to be preserved to ensure that the material is reasonably available for use by the public on a permanent basis.

C.S.H.B. 1799 requires the official publisher of legal material in an electronic record, in implementing the bill's provisions, to consider the standards and practices of other jurisdictions; the most recent standards regarding authentication, preservation, and security of and public access to legal material in an electronic record and other electronic records, as adopted by national standard-setting bodies; the needs of users of legal material in electronic records; the views of governmental officials and entities and other interested persons; and, to the extent practicable, the methods and technologies for the authentication, preservation, and security of and public access to legal material that are compatible with the methods and technologies used by official publishers in other states that have adopted a law that is substantially similar to the bill's provisions. The bill requires consideration, in applying and construing the bill's provisions, to be given to the need to promote uniformity of the law with respect to the subject matter of the bill among the states that enact a similar law.

C.S.H.B. 1799 modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act but does not modify, limit, or supersede a provision of that act relating to certain consumer disclosures or authorize electronic delivery of any of the notices described in another provision of that act setting out specific exceptions regarding such disclosures. The bill applies to all legal material in an electronic record that is designated as official by the official publisher and first published electronically by the official publisher on or after January 1, 2017.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1799 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Chapter 2051, Government Code, is amended by adding Subchapter E to read as follows: <u>SUBCHAPTER E. UNIFORM ELECTRONIC LEGAL MATERIAL ACT</u>	SECTION 1. Chapter 2051, Government Code, is amended by adding Subchapter E to read as follows: <u>SUBCHAPTER E. UNIFORM ELECTRONIC LEGAL MATERIAL ACT</u>

Sec. 2051.151. SHORT TITLE.

Sec. 2051.152. DEFINITIONS. In this subchapter:

(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 and statutes of this state;

(B) the general or special laws passed in a regular or special session of the Texas Legislature; and

(C) a state agency rule adopted in accordance with Chapter 2001.

(3) "Official publisher" means the Texas Legislative Council.

(4) "Publish" means displaying, presenting, or releasing to the public, or causing to be displayed, presented, or released to the public, legal material 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.

Sec. 2051.153. APPLICABILITY.

Sec. 2051.154. LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD.

Sec. 2051.155. AUTHENTICATION OF OFFICIAL ELECTRONIC RECORD.

Sec. 2051.156. EFFECT OF AUTHENTICATION.

Sec. 2051.157. PRESERVATION AND SECURITY OF LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD.

Sec. 2051.158. PUBLIC ACCESS.

Sec. 2051.151. SHORT TITLE.

Sec. 2051.152. DEFINITIONS. In this subchapter:

(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 and statutes of this state;

(B) the general or special laws passed in a regular or special session of the Texas Legislature; and

(C) a state agency rule adopted in accordance with Chapter 2001.

(3) "Official publisher" means:

(A) for legal material described by Subdivision (2)(A), the Texas Legislative Council; and

(B) for legal material described by Subdivision (2)(B) or (C), the secretary of state.

(4) "Publish" means displaying, presenting, or releasing to the public, or causing to be displayed, presented, or released to the public, legal material 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.

Sec. 2051.153. APPLICABILITY.

Sec. 2051.154. LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD.

Sec. 2051.155. AUTHENTICATION OF OFFICIAL ELECTRONIC RECORD.

Sec. 2051.156. EFFECT OF AUTHENTICATION.

Sec. 2051.157. PRESERVATION AND SECURITY OF LEGAL MATERIAL IN OFFICIAL ELECTRONIC RECORD.

Sec. 2051.158. PUBLIC ACCESS.

Sec. 2051.159. STANDARDS.

Sec. 2051.160. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

Sec. 2051.161. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

SECTION 2. This Act takes effect September 1, 2015.

Sec. 2051.159. STANDARDS.

Sec. 2051.160. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

Sec. 2051.161. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

SECTION 2. Same as introduced version.