

Legislative Analysis



UNIFORM ELECTRONIC LEGAL MATERIAL

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4779 as enacted
Public Act 488 of 2018
Sponsor: Rep. Robert L. Kosowski

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4780 as enacted
Public Act 655 of 2018
Sponsor: Rep. Klint Kesto

House Committee: Law and Justice
Senate Committee: Government Operations
Complete to 2-10-19

BRIEF SUMMARY: House Bill 4779 amends the Legislative Council Act to create a new chapter entitled “Uniform Electronic Legal Material,” which provides for the designation and authentication of certain electronic legal records. This new chapter comes from the Uniform Law Commission (ULC).

House Bill 4780 amends Public Act 193 of 1970 (regarding the compilation of laws and rules) to codify current practice, to make editorial changes, and to make changes that reflect the enactment of HB 4779.

FISCAL IMPACT: House Bill 4779 could increase state costs associated with authentication, archiving, and onsite storage of the required legal material if it were determined that the provisions of the bill required technology services and administration exceeding current capacity.

THE APPARENT PROBLEM:

According to a representative from the ULC, legal materials in their print form are disappearing more frequently. This means that often they are available only electronically, if at all. In addition, new legal material is being procured only electronically and may not be available in print form. For both surviving and newly created legal materials online, the public needs to know that they are authentic and trustworthy to use or reference. Some feel that a uniform system would ensure the authentication and preservation of all legal materials for the future.

THE CONTENT OF THE BILLS:

House Bill 4779 adds Chapter 1A (Uniform Electronic Legal Material) to the Legislative Council Act. Briefly, the bill does the following:

- Defines *legal material* to mean the State Constitution, public acts, Michigan Compiled Laws, rules promulgated under the Administrative Procedures Act, and

materials related to and created by the Michigan courts as provided for in a cooperative agreement under Chapter 1A.

- Designates the Legislative Service Bureau as the official publisher of the State Constitution, public acts, and Michigan Compiled Laws. The Office of Performance and Transformation is the official publisher of departmental rules promulgated under the Administrative Procedures Act.

Authentication

- Requires that legal material published in an electronic record be authenticated by the official publisher. Once authenticated as being unaltered from the official record published by the publisher, the material is presumed to be an accurate copy of the legal material.
- Places the burden of proving, by a preponderance of the evidence, that a record is not authentic on the party contesting the authentication of the legal material.

Preservation

- Requires an official publisher to provide for the preservation and security of an electronic record designated as official under the bill in an electronic form or a form that is not electronic. The official publisher must ensure the integrity of the record, provide for backup and disaster recovery, and ensure the continuing usability of the material.
- Requires an official publisher to ensure that material in an electronic record required to be preserved is reasonably available for use by the public on a permanent basis.

Publication

- Establishes a framework for an official publisher to follow when publishing legal material in an electronic record only.
- Requires an official publisher to consider the standards and practices of other jurisdictions; the most recent standards regarding authentication, preservation and security, and public access of legal material in an electronic record; the needs of users; the views of governmental officials, entities, and other interested persons; and the methods and technologies for authentication, preservation, security, and public access of legal material in an electronic record.

The council administrator (who is the chief executive officer of all Legislative Council agencies) is authorized to enter into a cooperative agreement under Chapter 1A with the Supreme Court Administrative Office regarding the authentication, preservation, and publication of materials related to and created by Michigan courts.

The new Chapter 1A applies to all legal material in an electronic record designated as official and first published electronically on or after December 27, 2018 (the effective date of House Bill 4779).

MCL 4.1121 et seq.

House Bill 4780 amends Public Act 193 of 1970, regarding the compilation of laws and rules, to do all of the following:

- Make the compilation of laws provided by the Legislative Council available to the general public.
- Change agency references from “Office of Regulatory Reform” to “Office of Performance and Transformation” throughout.
- Task the Legislative Council with the following, in addition to current practices, regarding the compilation of the laws of this state:
 - Including the date that the compilation was last designated as official.
 - Identifying the most recent public act included in the compilation.
 - Within 180 days after the bill’s effective date, examining the electronic compilation of the Michigan Compiled Laws and designating the compilation official if it meets the requirements of Chapter 1A of the Legislative Council Act (enacted by HB 4779).
 - Authenticating the compilation after the final adjournment of a regular session held in an even-numbered year.
- Task the Office of Performance and Transformation with the following:
 - Arranging the administrative rules without alteration.
 - Providing appropriate headings and titles.
 - Providing for an index or a means of searching the compilation.
 - Including any notes, references, and other materials it considers necessary or appropriate.
 - Designating the electronic compilation of the administrative rules as official under Chapter 1A of the Legislative Council Act.

The bill places the burden of proving, by a preponderance of the evidence, that a compilation designated as official is not accurate on the party contesting the accuracy.

House Bill 4780 takes effect March 29, 2019.

MCL 8.41 and 8.47

BACKGROUND INFORMATION:

According to the ULC’s website, the ULC, also known as the National Conference of Commissioners on Uniform State Laws (NCCUSL), provides states with nonpartisan legislation to bring clarity and stability to critical areas of state law.¹ The ULC drafted the Uniform Electronic Legal Material Act (UELMA) to establish an outcomes-based, technology-neutral framework for providing online legal material with the same level of trustworthiness traditionally provided by publication in a law book. As of February 2019, 20 states, including Michigan, have enacted UELMA, with legislation pending in two others.²

¹ <http://www.uniformlaws.org/aboutulc/overview>

² <https://www.uniformlaws.org/committees/community-home?CommunityKey=02061119-7070-4806-8841-d36afc18ff21>

ARGUMENTS:

For:

Supporters of the bills argue that legal materials are important for everyone because many people rely on the information, including judges, lawyers, law students, business owners, defendants, and everyday citizens. In order to utilize the legal materials, they have to be up-to-date, reliable, and trustworthy. The new Uniform Electronic Legal Material chapter would ensure that the important legal materials remain dependable and available to the public.

Against:

No arguments or concerns were presented in opposition to the bills.

Legislative Analyst: Emily S. Smith
Fiscal Analyst: Benjamin Gielczyk

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.