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THE UNIFORM ELECTRONIC LEGAL MATERIAL ACT: “DESIRABLE AND PRACTICABLE” FOR NORTH DAKOTA?

RHONDA R. SCHWARTZ*

I.	INTRODUCTION	325
II.	BACKGROUND SURVEYS AND SUMMIT	327
	A. AALL PERMANENT PUBLIC ACCESS SURVEY	327
	B. AALL AUTHENTICATION SURVEY	328
	C. AALL NATIONAL SUMMIT	330
III.	THE UNIFORM LAW COMMISSION AND THE UNIFORM ELECTRONIC LEGAL MATERIAL ACT	331
	A. UELMA: DEFINITIONS	332
	B. UELMA: APPLICABILITY	333
	C. UELMA: OFFICIAL ELECTRONIC RECORD	333
	D. UELMA: AUTHENTICATION AND ITS EFFECTS	334
	E. UELMA: PRESERVATION AND SECURITY	334
	F. UELMA: PUBLIC ACCESS	335
IV.	NORTH DAKOTA COMMISSION ON UNIFORM STATE LAWS	335
	A. MEMBERSHIP	335
	B. DUTIES	336
V.	NORTH DAKOTA AND THE UELMA	336
VI.	CONCLUSION	340

I. INTRODUCTION

Democracy and an informed citizenry go hand-in-hand; citizens need to be well-informed in order to make knowledgeable decisions about their

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civic life. As citizens increasingly turn to the Internet to access information, the information located on government websites in particular needs to be trustworthy. Because digital information can be easily manipulated, it is essential to be able to trust the integrity of the information located online.

Fortunately, citizens have online access to numerous official publications from all three branches of the federal government—the executive, legislative, and judiciary—via the U.S. Government Printing Office (GPO) and its Federal Digital System (FDsys), “America’s Authentic Government Information.”¹ GPO’s FDsys provides many services: it is a content management system, a preservation repository, and an advanced search engine. These features are described briefly on the FDsys website:

A Content Management System

FDsys provides free online access to official [f]ederal [g]overnment publications and securely controls digital content throughout its lifecycle to ensure content integrity and authenticity.

A Preservation Repository

The repository guarantees long-term preservation and access to digital [g]overnment content. To meet this critical need for permanent access to [f]ederal [g]overnment information, FDsys follows archival system standards.

An Advanced Search Engine

FDsys combines modern search technology with extensive metadata creation to ensure the highest quality search experience.²

When citizens access federal congressional bills or public laws, via Fdsys, for example, citizens are assured that the information, or digital content, retrieved has been controlled “throughout its lifecycle to ensure content integrity and authenticity.”³ GPO uses digital signature technology to certify documents on FDsys, assuring those accessing the site that the documents (i.e., bills and public laws) are unchanged since dissemination by GPO.⁴ In addition to certifying documents, GPO uses digital signature technology and adds a visible “Seal of Authenticity” to authenticated and

1. FDSYS: GPO’S FED. DIGITAL SYS., <http://www.gpo.gov/fdsys/> (last visited Dec. 20, 2011).

2. *About FDsys*, FDSYS: GPO FED. DIGITAL SYS., <http://www.gpo.gov/fdsysinfo/aboutfdsys.htm> (last visited Dec. 20, 2011).

3. *Id.*

4. *Authentication: Frequently Asked Questions*, FDSYS: GPO FED. DIGITAL SYS., <http://www.gpo.gov/authentication/faq/> (last visited Dec. 20, 2011).

certified PDF documents.⁵ The GPO Seal of Authenticity is a graphic of an eagle flanked by the words “Authenticated U.S. Government Information.”⁶ Further, citizens accessing FDsys are assured that the content will be both preserved and accessible in the future.

The same need for access to trustworthy information exists at the state level because, as the North Dakota Humanities Council puts it, “democracy demands thoughtful and informed citizens”⁷ In an effort to promote discussion of the authentication, preservation, and accessibility of state-level official electronic legal material, this article discusses the new Uniform Electronic Legal Material Act (UELMA). Part II provides background information on two important surveys and a national summit from the American Association of Law Libraries. Part III describes the purpose of the Uniform Law Commission, outlines the development of the UELMA, and provides particular information with regard to UELMA definitions, applicability, official electronic records, authentication, preservation, and public access. Part IV describes the North Dakota Commission on Uniform State Laws. Finally, Part V considers whether or not the UELMA might be a good fit for North Dakota.

II. BACKGROUND SURVEYS AND SUMMIT

A. AALL PERMANENT PUBLIC ACCESS SURVEY

Recognizing “the ready availability of legal information is a necessary requirement for a just and democratic society,”⁸ the vision of the American Association of Law Libraries (AALL) and its members is to “advocate and work toward fair and equitable access to authentic current and historic legal information.”⁹ In 2002, the AALL Government Relations Committee and the AALL Washington Affairs Office conducted a fifty-state survey, along with the District of Columbia and Puerto Rico, “to assess the level of permanent public access to electronic government information across all state governments.”¹⁰ “Permanent public access” was defined in the survey

5. *Id.*

6. *Id.*

7. *About North Dakota Humanities Council*, N.D. HUMAN. COUNCIL, <http://www.nd-humanities.org/about.html> (last visited Dec. 20, 2011).

8. *About Us*, AM. ASS’N OF L. LIBRARIES, <http://www.aallnet.org/top-menu/about> (last visited Dec. 20, 2011). The AALL is a professional association, founded in 1906, with over 5000 members, including law librarians and related professionals representing law schools, law firms, courts, corporate legal departments, as well as federal, state, and local government agencies. *Id.*

9. *Id.*

10. *State-by-State Report on Permanent Public Access to Electronic Government Information*, AM. ASS’N OF L. LIBRARIES, <http://www.aallnet.org/Archived/Government-Relations/Issue-Briefs-and-Reports/2003/ppareport.html> (last visited Dec. 20, 2011).

as “the process by which applicable government information that has been disseminated in an electronic format, including via the Internet, is preserved for current, continuous and future access.”¹¹ The “AALL ha[d] long been engaged in educating policymakers about the loss of electronic government information at the federal level,”¹² but now turned its attention “to research what, if anything, state governments [were] doing to meet the enormous challenges of ensuring permanent public access to state electronic government information.”¹³

In the 2003 survey entitled “State-by-State Report on Permanent Public Access to Electronic Government Information,” the findings revealed “only one state—Colorado—ha[d] enacted legislation that explicitly address[ed] permanent public access.”¹⁴ In June 2003, Colorado amended its state library laws to ensure the Colorado State Publications Depository and Distribution Center (then a section of the Colorado State Library) “shall coordinate with state agencies, depository libraries, or other entities *permanent public access* to state publications, regardless of format.”¹⁵ The results of the Permanent Public Access survey confirmed that much work lies ahead to increase awareness of the possible loss of electronic government information at the state level.

B. AALL AUTHENTICATION SURVEY

A follow-up survey was undertaken by the members of AALL and was completed in 2006. The results of the survey were reported in the 2007 “State-by-State Report on Authentication of Online Legal Resources.”¹⁶ The survey, known informally as the Authentication Survey, asked about the trustworthiness of state-level primary legal resources on the Internet.¹⁷ The legal resources surveyed were “state administrative codes and registers, state statutes and session laws, and state high and intermediate appellate

11. RICHARD J. MATTHEWS ET AL., AM. ASS'N OF LAW LIBRARIES, STATE-BY-STATE REPORT ON PERMANENT PUBLIC ACCESS TO ELECTRONIC GOVERNMENT INFORMATION 8 (June 2003), *available at* <http://www.aallnet.org/Archived/Government-Relations/Issue-Briefs-and-Reports/2003/state-report.pdf>.

12. *Id.* at 2.

13. *Id.*

14. *Id.*

15. 2003 Colo. Sess. Laws 2465 (emphasis added). The law amended section 24-90-205 of the Colorado Revised Statutes. *Id.*

16. *See generally*, RICHARD J. MATTHEWS & MARY ALICE BAISH, AM. ASS'N OF LAW LIBRARIES, STATE-BY-STATE REPORT ON AUTHENTICATION OF ONLINE LEGAL RESOURCES (Mar. 2007), *available at* http://www.aallnet.org/Documents/Government-Relations/authen_rprt/authenfinalreport.pdf.

17. *Id.* at 3.

court opinions.”¹⁸ Specifically, the survey examined which of those government-hosted resources on the Internet were “official” and capable of being considered “authentic.”¹⁹

Instructions for those AALL members completing the Authentication Survey included the following working definitions for an online *official* legal resource and an online *authentic* legal resource:

An *official* version of regulatory materials, statutes, session laws, or court opinions is one that has been governmentally mandated or approved by statute or rule. It might be produced by the government, but does not have to be.²⁰

....

An *authentic* text is one whose content has been verified by a government entity to be complete and unaltered when compared to the version approved or published by the content originator. Typically, an *authentic* text will bear a certificate or mark that conveys information as to its certification, the process associated with ensuring that the text is complete and unaltered when compared with that of the content originator. An *authentic* text is able to be *authenticated*, which means that the particular text in question can be validated, ensuring that it is what it claims to be.²¹

The broad answer to the question of whether state-level primary legal resources on the Internet were trustworthy was provided in the Executive Summary to the report: “A significant number of the state online legal resources are *official* but none are *authenticated* or afford ready authentication by standard methods. State online primary legal resources are therefore not sufficiently trustworthy. Citizens and law researchers may reasonably doubt their authority and should approach such resources critically.”²²

An AALL follow-up survey and report in 2009-2010 revealed, subsequent to the original survey, some states were working to make changes to the official and authentic status of their online legal information: Arkansas designated the online versions of its supreme court and court of appeals decisions as official and time stamped the decisions to certify their authenticity; Colorado designated its online code of regulations and its register as official; Delaware designated both its administrative code and

18. *Id.*

19. *Id.* at 7.

20. *Id.* at 8.

21. *Id.*

22. *Id.* at 7.

register as official and published the official version of recent session laws on its state website; Georgia designated its online supreme court opinions as official; Ohio employed a digital signature to indicate authenticity of its online supreme court opinions; Utah and Washington designated their online administrative codes as official; and the District of Columbia certified its online statutory code.²³

C. AALL NATIONAL SUMMIT

In April 2007, after the publication of the original Authentication Survey, the AALL convened a national summit to further study issues related to digital authentication. The AALL National Summit on Authentic Legal Information in the Digital Age brought together the AALL leadership and representatives from the American Bar Association (ABA), the National Conference of State Legislators, the National Conference of Commissioners on Uniform State Laws (NCCUSL), along with officials from state courts, state legislatures, state archives, and the federal government.²⁴

At the Summit's session on "The Technological Solutions for Best Practices," Michael Wash, chief technical officer at the GPO, explained how, in the shift from print to digital content, the GPO was working to develop its content management system, the then-named Future Digital System (now referred to as FDsys, Federal Digital System).²⁵ Another speaker and panelist at the AALL National Summit was Michele Timmons, the Minnesota revisor of statutes and a commissioner of the NCCUSL.²⁶ At a session on "Legal Solutions," "Timmons raised the possibility of asking NCCUSL to create a study committee to determine if there [were] legal standards for official status and authentication that could be written into either a uniform law or a model act."²⁷

23. AM. ASS'N OF LAW LIBRARIES, 2009-10 UPDATES TO THE STATE-BY-STATE REPORT ON AUTHENTICATION OF ONLINE LEGAL RESOURCES 2 (Feb. 2010), available at <http://www.aallnet.org/Documents/Government-Relations/authen-rprt-updates/2009aallauthenticationreportupdates.pdf>.

24. Mary Alice Baish, *Washington Brief*, AALL SPECTRUM, July 2007, at 6, available at http://www.aallnet.org/main-menu/Publications/spectrum/Archives/Vol-11/pub_sp0707/pub-sp0707-wash.pdf.

25. *Id.* at 7.

26. *Id.*

27. *Id.*

III. THE UNIFORM LAW COMMISSION AND THE UNIFORM ELECTRONIC LEGAL MATERIAL ACT

The NCCUSL is also known in recent years as the Uniform Law Commission (ULC).²⁸ “[T]he purpose of the [ULC is] to promote uniformity in the law among the several States on subjects as to which uniformity is desirable and practicable.”²⁹ Twice each year, the ULC’s Committee on Scope and Program solicits proposals for new study and drafting projects. After the 2007 AALL National Summit, Commissioner Timmons submitted a proposal to the ULC to create a Study Committee to research issues regarding digital authentication. The ULC approved the Study Committee and named Timmons chair. By the end of April 2009, the Study Committee submitted a report recommending the ULC “form a drafting committee to prepare a draft uniform law describing minimum standards for the authentication and preservation of online state legal materials.”³⁰ The Study Committee’s draft for a potential uniform law, the then-named “Uniform Authentication of Online State Legal Materials Act,” was attached to the report.³¹

At the July 2009 Annual Conference of the ULC, the Executive Committee of the ULC approved the Study Committee’s recommendation to create a Drafting Committee on the authentication and preservation of online state legal materials.³² Timmons continued her service and was named chair of the Drafting Committee. The Committee subsequently prepared several interim drafts of the uniform law in 2010, along with a 2010 discussion draft submitted at the ULC’s July 2010 Annual Conference.³³

At the July 2011 Annual Conference, the ULC “approved and recommended for enactment in all the states” the uniform law, now titled

28. *Constitution*, UNIFORM LAW COMMISSION, <http://www.nccusl.org/Narrative.aspx?title=Constitution> (law visited Dec. 20, 2011).

29. *Id.*

30. STUDY COMM. ON AUTHENTICATION OF ONLINE STATE LEGAL MATERIALS, REPORT AND RECOMMENDATION FOR DRAFTING COMMITTEE 1 (Apr. 30, 2009), available at <http://www.aallnet.org/Documents/Government-Relations/2009apr30-report.pdf>.

31. *Id.* at 5; see also UNIF. AUTHENTICATION OF ONLINE STATE LEGAL MATERIALS ACT (Draft 2009), available at <http://www.aallnet.org/Documents/Government-Relations/2009apr30-draft.pdf>.

32. UNIF. LAW COMM’N, ANNUAL MEETING OF THE COMMITTEE OF SCOPE AND PROGRAM (July 2009), available at <http://www.nccusl.org/Shared/Docs/Scope/Scope%20Minutes%207%2010%2009%20FINAL.pdf>.

33. See generally AUTHENTICATION & PRES. OF STATE ELEC. LEGAL MATERIALS ACT (Discussion Draft July 2009), available at <http://www.aallnet.org/Documents/Government-Relations/2010am-draft.pdf>.

the “Uniform Electronic Legal Material Act.”³⁴ On October 4, 2011, the final version of the uniform law was published with the Prefatory Note and Comments.³⁵ The ULC sent the Act to the ABA’s House of Delegates for approval at the ABA Midyear Meeting in February 2012 in New Orleans; the House of Delegates approved the Act. The UELMA is set out in some detail below.

A. UELMA: DEFINITIONS

There are six key terms or phrases defined in section 2 of the UELMA: “electronic,” “legal material,” “official publisher,” “publish,” “record,” and “state.”³⁶ The term “electronic” is defined as “relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.”³⁷ As noted in the comment to section 2, the definition for “electronic” is the standard definition used throughout other acts promulgated by the ULC (e.g., the Uniform Electronic Transactions Act).³⁸

The meaning of “legal material,” “whether or not in effect,”³⁹ is narrowly defined to include the state constitution, state session laws, state code, and any “state agency rule that has or had the effect of law.”⁴⁰ However, the Act suggests additional materials that might be included along with the basic documents are state administrative agency decisions, judicial decisions, court rules, and “any other category of legal material.”⁴¹ The inclusion of the additional legal material is left to the discretion of the enacting states, taking into account those states whose judicial branches administer judicial decisions and court rules.

The “official publisher” means the appropriate state agency or state official.⁴² As indicated in the comment section, the Act does not interfere with any contractual relationship a state may have with a commercial publisher, but “a commercial publisher cannot serve as official publisher.”⁴³ For this Act, the “official publisher” is the state actor (i.e., the agency or

34. UNIF. ELEC. LEGAL MATERIAL ACT (Without Prefatory Note or Comments 2011), *available at* <http://www.aallnet.org/Documents/Government-Relations/2011July-UniformElectronicLegalMaterialAct.pdf>.

35. UNIF. ELEC. LEGAL MATERIAL ACT (With Prefatory Note and Comments 2011), *available at* http://www.law.upenn.edu/bll/archives/ulc/apselm/UELMA_Final_2011.htm.

36. *Id.* § 2.

37. *Id.*

38. *Id.* § 2 cmt.

39. *Id.* § 2.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.* § 2 cmt.

official) charged with the responsibility to carry out the provisions of the Act.⁴⁴

According to the Act, “[p]ublish means to display, present, or release to the public, or cause to be displayed, presented, or released to the public, by the official publisher.”⁴⁵ Additionally, “[r]ecord 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.”⁴⁶ “State,” the final term defined in the Act, “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.”⁴⁷

B. UELMA: APPLICABILITY

Section 3 of the UELMA addresses the applicability of the Act: it “applies to all legal material in an electronic record that is designated as official under [s]ection 4 and first published electronically on or after [the effective date of this [act]].”⁴⁸ The accompanying legislative note to section 3 provides changes in the language that should be made if a particular state wants to include a preexisting publication in the coverage of the Act.⁴⁹ As the comment to section 3 observes, the Act does not affect a state’s records management laws and practices with regard to non-electronic legal material.⁵⁰

C. UELMA: OFFICIAL ELECTRONIC RECORD

If a state’s official publisher publishes legal material *only* in an electronic record format, section 4 of the UELMA provides that “the publisher shall designate the electronic record as official” as well as “comply with [s]ections 5 [authentication], 7 [preservation], and 8 [public access]” of the Act.⁵¹ Section 4 also provides that if legal material is published by the official publisher in an electronic record format *and* in another non-electronic record format, the official publisher “may designate the electronic record as official if the publisher complies with [s]ections 5,

44. *Id.*

45. *Id.* § 2.

46. *Id.*

47. *Id.*

48. *Id.* § 3.

49. *Id.* § 3 legislative note.

50. *Id.* § 3 cmt.

51. *Id.* § 4.

7, and 8.”⁵² It is important to note that the Act does not specify a particular format in which a state must publish its legal material.

D. UELMA: AUTHENTICATION AND ITS EFFECTS

Section 5 of the Act addresses the authentication of an official electronic record: “An official publisher of legal material in an electronic record that is designated as official under [s]ection 4 shall authenticate the record.”⁵³ However, the Act remains technology-neutral in how that authentication should occur, and further provides that “[t]o authenticate an electronic record, the publisher shall provide a method for a user to determine that the record received by the user from the publisher is unaltered from the official record published by the publisher.”⁵⁴

Section 6 of the Act provides, in part: “Legal material in an electronic record that is authenticated under [s]ection 5 is presumed to be an accurate copy of the legal material.”⁵⁵ As noted in the comment, the authentication required by the Act provides only a presumption of accuracy and does not affect or supersede any existing rules of evidence.⁵⁶

E. UELMA: PRESERVATION AND SECURITY

Section 7 of the UELMA provides for the preservation and security of legal material: “An official publisher of legal material in an electronic record that is or was designated as official under [s]ection 4 shall provide for the preservation and security of the record in an electronic form or a form that is not electronic.”⁵⁷ To comply with the Act, preservation and security of the electronic record must take place; however, there is flexibility for the states as to whether the required preservation and security of the electronic record will be in an electronic form *or* in a non-electronic form.⁵⁸ If legal material is preserved in an electronic form, section 7 also provides that the official publisher must “(1) ensure the integrity of the record; (2) provide for backup and disaster recovery of the record; and (3) ensure the continuing usability of the material.”⁵⁹

52. *Id.*

53. *Id.* § 5.

54. *Id.*

55. *Id.* § 6.

56. *Id.* § 6 cmt.

57. *Id.* § 7.

58. *Id.*

59. *Id.*

F. UELMA: PUBLIC ACCESS

Section 8 of the Act addresses the need for public access to legal material.⁶⁰ “An official publisher of legal material in an electronic record that is required to be preserved under [s]ection 7 shall ensure that the material is reasonably available for use by the public on a permanent basis.”⁶¹ States can determine what is meant by “reasonably available” and whether or not to charge a reasonable fee for access to the electronic legal material.⁶²

IV. NORTH DAKOTA COMMISSION ON UNIFORM STATE LAWS

A. MEMBERSHIP

By statute in North Dakota, the Commission on Uniform State Laws consists of an individual practicing law in North Dakota; the dean or a full-time faculty member of the University of North Dakota School of Law; a North Dakota judge; a member of the North Dakota House of Representatives and a member of the North Dakota Senate; and a member of the Legislative Council.⁶³ The North Dakota Commission also consists of any residents of North Dakota who have been elected life members of the national ULC and may also consist of any residents of North Dakota “who have been previously appointed to at least five years of service on the [C]ommission.”⁶⁴ With the exception of the members of the North Dakota House and Senate, the member of the Legislative Council, and the life members, the Governor appoints the Commissioners, who must be residents of North Dakota if first appointed after July 21, 2011.⁶⁵ Commissioners first appointed after July 21, 2011 must be residents of North Dakota.⁶⁶ The Legislative Management appoints the members of the Commission from the North Dakota House and Senate⁶⁷, while the chair of the Legislative Management appoints the member of the Legislative Council to the Commission.⁶⁸

60. *Id.* § 8.

61. *Id.*

62. *Id.* § 8 cmt.

63. N.D. CENT. CODE § 54-55-01 (Supp. 2011).

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

B. DUTIES

The members of the North Dakota Commission on Uniform State Laws attend the annual meetings of the national ULC and promote uniformity in state laws on those subjects where uniformity is “desirable and practicable.”⁶⁹ During each biennial legislative session, the North Dakota Commission provides the Legislative Assembly with a report of its transactions, along with its advice and recommendations for legislation.⁷⁰ The report includes “the recommendations of the [L]egislative [M]anagement with respect to uniform and model laws recommended by the [C]ommission.”⁷¹ Throughout “the interim between legislative sessions, the [C]ommission may submit its recommendations for enactment of uniform and model laws to the [L]egislative [M]anagement for its review and recommendation.”⁷²

V. NORTH DAKOTA AND THE UELMA

State governments are increasingly publishing state-level legal material in electronic formats, and in some states, state-level legal material is no longer published in print, but is only available electronically. States, seeking to exercise fiscal responsibility, are looking for ways to reduce costs for the preparation, printing, and distribution of print material. North Dakota is no exception.

In June 2010, subscribers to the North Dakota Administrative Code received notice from the Secretary of State that the North Dakota Legislative Council made the decision to eliminate the paper format of the Administrative Code and to instead publish the Administrative Code in CD-ROM format, effective July 1, 2010.⁷³ The accompanying letter from the Legislative Council outlined the benefits of this change, which included a significant reduction in the subscription price: since July 2005, the price of a print supplement subscription had been \$260 and the price of a full set had been \$460.⁷⁴ With the publication of the CD-ROM, the price of an annual subscription to the Administrative Code would be reduced to sixty dollars, with additional CD-ROM copies available for an additional thirty

69. *Id.* § 54-55-04.

70. *Id.*

71. *Id.*

72. *Id.*

73. Letter from Alvin A. Jaeger, N.D. Sec’y of State, to N.D. Admin. Code Subscribers (June 18, 2010) (on file with author).

74. Letter from N.D. Legislative Council to Alvin A. Jaeger, N.D. Sec’y of State (May 25, 2010) (on file with author).

dollars each.⁷⁵ In addition to the reduced price, another benefit to the CD-ROM format is the retention of disks will allow subscribers to accumulate historical documents and will “allow users to look at versions of the Administrative Code from any point in time for which they have retained the disks.”⁷⁶

The North Dakota Administrative Code is also available online at the North Dakota Legislative Branch website.⁷⁷ The following information, important to users of this information, is provided on the website:

The Legislative Council publishes the Administrative Code which is the codification of all rules of state administrative agencies, as that term is defined by North Dakota Century Code [s]ection 28-32-02. Many state agencies are not administrative agencies as defined by [s]ection 28-32-02. Although rules of those agencies are not required to be published in the Administrative Code, some agencies have consented to placing their rules in the code. Those agencies are identified with an explanatory note on the title page for that agency. The Administrative Code was initially published July 1, 1978. The Administrative Code is updated with quarterly supplements. The Administrative Code is published in a CD-ROM version, for which subscriptions may be obtained from the Secretary of State, and an Internet version, available here. The Internet version is derived from the database prepared by the North Dakota Legislative Council. It may vary in some respects from the text in the CD-ROM version. Updates generally will appear in the Internet version sooner than in the CD-ROM version. Information about subscriptions is available under Subscription Services.⁷⁸

The state code, the North Dakota Century Code, is published by authority of the Legislative Assembly under the supervision and with the assistance of the Legislative Council and the Secretary of State. The North Dakota Century Code is currently published in print by LexisNexis. The Century Code is also available online at the North Dakota Legislative

75. *Id.*

76. *Id.* Access to historical versions of the Administrative Code is available through the CD-ROMs that have been retained. The CD-ROMs include quarterly Administrative Rules Committee (ARC) Supplements which identify, via the overstrike and underscore feature, the text of rules being added or removed. The ARC Supplements generally appear in the Internet version, via the North Dakota Legislative Branch website, sooner than in the CD-ROM version. Some offices or libraries may have retained the superseded print pages of the North Dakota Administrative Code prior to the July 2010 publication of the initial CD-ROM.

77. *North Dakota Administrative Code*, ND.GOV, <http://www.legis.nd.gov/information/rules/admincode.html> (last visited Dec. 20, 2011).

78. *Id.*

Branch website.⁷⁹ The following information, also important to users of this information, is provided at the website:

WARNING!!! The North Dakota Century Code on this website may or may not contain currently applicable law. The database that provides the code information includes bills enacted in 2011, provisions of which may take effect on different effective dates. Thus, some sections of the code may be in effect and others may not have taken effect as of the date you use this site.

The Century Code system contains the Constitution of North Dakota and the North Dakota Century Code. The version of the Century Code on this system is derived from the bill drafting database used by the North Dakota Legislative Council. It may vary in some respects from that text of the code as contained in the published version available from LexisNexis. The Century Code includes all statutory changes made by the 62nd (2011) Legislative Assembly, which adjourned on Thursday, April 28, 2011.⁸⁰

Are the citizens of North Dakota confident about where to best access trustworthy state-level legal information? In general, providing access to government information for citizens has long been an important consideration for North Dakota. North Dakota has “sunshine laws,” which provide that government meetings and records must be open to the public unless specifically authorized by statute to be closed.⁸¹ North Dakota also has printing laws that provide for the publication of state session laws and pocket supplements,⁸² the state constitution,⁸³ and the state code,⁸⁴ and stipulate for the distribution of public documents.⁸⁵ In addition, a particular section in the printing laws provides for the authentication of the state session laws: “In each authenticated volume of the session laws there must be a general certificate made by the secretary of state and the legislative council to the effect that all laws, memorials, and resolutions contained therein are correct copies of the originals in the office of the secretary of state.”⁸⁶

79. *2011 North Dakota Century Code*, ND.GOV, <http://www.legis.nd.gov/information/statutes/cent-code.html> (last visited Dec. 20, 2011).

80. *Id.*

81. *See* N.D. CENT. CODE §§ 44-04-18 to -19 (2007 & Supp. 2011).

82. N.D. CENT. CODE § 46-03-11.

83. *Id.* § 46-03-11.1.

84. *Id.* § 46-03-11.2.

85. *See id.* §§ 46-04-01 to -20.

86. *Id.* § 46-03-15.

North Dakota also provides for the stewardship of its state documents and records. For example, the North Dakota Century Code has a provision regarding the required distribution of copies of certain state publications—“all publications issued by all executive, legislative, and judicial agencies of state government intended for general public distribution”—for certain libraries.⁸⁷ “State publications” are specifically defined in the statute, as well.⁸⁸

In addition, the North Dakota Century Code provides for the preservation of records found to be archival resources.⁸⁹ Both “record” and “state record” are defined in the statute.⁹⁰ There is also a provision for public access to those archival resources “at reasonable times, subject to appropriate restrictions and regulations.”⁹¹

Further, North Dakota has initiated and participated in various projects regarding the transition of state materials from print to digital format. For example, the North Dakota Supreme Court launched its website in August 1996 and now has opinions online from December 1965 forward.⁹² More recently, working with the Minnesota Historical Society as the lead partner, the North Dakota Legislative Council and the State Historical Society of North Dakota participated in a project working with state legislatures to explore enhanced access to legislative digital records. The Library of

87. N.D. CENT. CODE § 54-24-09 (2008).

88. *Id.*

State publications are specifically defined as public documents appearing as reports, directories, statistical compendiums, bibliographies, laws or bills, rules, regulations, newsletters, bulletins, state plans, brochures, periodicals, committee minutes, transcripts of public hearings, other printed matter, audiotapes, videotapes, films, filmstrips, or slides, but not those administrative or training materials used only within the issuing agency.

Id.

89. *Id.* § 54-46-08.1. “Any records found to be of permanent value for research, reference, or other use appropriate to document the organization, function, policies, and transactions of government must be transferred to the state archivist for preservation as archival resources.” *Id.* (cross-referencing N.D. CENT. CODE ch. 55-02.1 with regard to archival resources and the state archivist).

90. *Id.* § 54-46-02(2)-(3).

2. “Record” means document, book, paper, photograph, sound recording or other material, regardless of physical form or characteristics, made or received pursuant to law or in connection with the transaction of official business

3. “State record” means:

- a. A record of a department, office, commission, board, or other agency, however designated, of the state government.
- b. A record of the state legislative assembly held by agency.
- c. A record of any court of record, whether of statewide or local jurisdiction.
- d. Any other record designated or treated as a state record under state law.

Id.

91. *Id.* § 55-02.1-08.

92. *See generally* N.D. SUP. CT., <http://www.ndcourts.gov> (last updated Jan 5, 2012).

Congress and its National Digital Information Infrastructure and Preservation Program funded the project, entitled “A Model Technological and Social Architecture for the Preservation of State Government Digital Information.”⁹³ The objectives of the project were to “[c]apture, preserve and provide access to ‘at risk’ digital content from state legislatures; t]est the model in [Minnesota; d]etermine capacity of other states to adapt the model[; p]romote the results through education and outreach[; and c]onnect to national cyberinfrastructure.”⁹⁴

With a long-standing practice of providing its citizens with access to information, will North Dakota continue to provide additional state-level *legal* material online? Will the electronic legal material be official and at some point be available *only* online? If the answer to these questions is yes, then a follow-up question might be: would the UELMA be a good fit for North Dakota? Would adoption of the uniform law be “desirable and practicable” in this state? It seems, at the very least, that *conversations* about these questions and the UELMA would be both desirable and practicable.

“The [UELMA] 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.”⁹⁵ The UELMA was drafted to utilize an outcomes-based approach rather than a prescriptive approach, leaving the choice of selecting suitable and cost-effective technology for authentication and preservation up to the individual states.⁹⁶ North Dakota could productively enter into this conversation.

VI. CONCLUSION

As the methods and means of providing access to state-level legal material continue to evolve, consideration of the UELMA is a reasonable step toward ensuring that, where applicable, the citizens of North Dakota will have access to authenticated, preserved, and accessible official

93. *Minnesota State Archives*, MINN. HIST. SOC’Y (Dec. 22, 2011), <http://www.mnhs.org/preserve/records/legislativerecords/>.

94. *Digital Preservation*, LIBR. OF CONGRESS, http://www.digitalpreservation.gov/partners/states_mn.html (last visited Jan 5, 2012).

95. *Electronic Legal Material Act Summary*, UNIFORM LAW COMMISSION, <http://www.uniformlaws.org/ActSummary.aspx?title=Electronic%20Legal%20Material%20Act> (last visited Dec. 20, 2011).

96. *Id.* For a review of five different methods of electronic authentication, along with a description of six examples of authentication implementation and corresponding estimated costs, see OFFICE OF LEGISLATIVE COUNSEL, AUTHENTICATION OF PRIMARY LEGAL MATERIALS AND PRICING OPTIONS (Dec. 2011), *available at* http://www.mnhs.org/preserve/records/legislative_records/docs_pdfs/CA_Authentication_WhitePaper_Dec2011.pdf.

electronic legal material. Citizens, thus equipped, can continue to participate fully in their state government.