

BILL ANALYSIS

H.B. 402
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

There have been calls to adopt uniform guidelines regarding the publication of official legal materials online in order to promote efficiency, transparency, and accountability in state government. H.B. 402 seeks to address these calls through the adoption of the Uniform Electronic Legal Material Act.

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

H.B. 402 amends the Government Code to require the official publisher, if the official publisher publishes legal material only in an electronic record, to designate the electronic record as official and to comply with the bill's provisions relating to 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 provisions. The bill defines, among other terms, "legal material" as, whether or not in effect, the state constitution, 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 Administrative Procedure Act and "official publisher" as the Texas Legislative Council with regard to the state constitution and as the secretary of state with regard to general or special laws and state agency rules..

H.B. 402 requires the official publisher to authenticate an electronic record that the official publisher designates as official by providing a method with which a person viewing the record is able to determine that the record is unaltered from the official record published by the official publisher. The bill establishes that legal material in an authenticated electronic record is presumed to be an accurate copy of the legal material and that legal material in an electronic record that is authenticated in another state 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. 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.

H.B. 402 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 of legal material in an electronic record, if such legal material is so preserved, to ensure the integrity of the record, to provide for backup and disaster recovery of the record, and to ensure the continuing usability of the legal material in the record. The bill requires the official publisher to ensure that legal material in an electronic record that is required to be preserved is reasonably available for use by the public on a permanent basis.

H.B. 402 sets out certain standards and other factors the official publisher of legal material in an electronic record is required to consider in implementing the bill's provisions. The bill requires consideration to be given, in applying and construing the bill's provisions, to the need to promote uniformity of the law with respect to the subject matter of the bill's provisions among states that enact a similar law. The bill sets out provisions concerning the effect of the bill in relation to the federal Electronic Signatures in Global and National Commerce Act. 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, 2021, and establishes that the official publisher is not required to publish legal material on or before the date on which the legal material takes effect.

H.B. 402 requires the official publisher in the executive branch of state government to comply with the applicable provisions of the bill in accordance with an implementation plan required by the bill to be jointly developed by such an official publisher and the Texas State Library and Archives Commission (TSLAC), sets out requirements for that plan, and establishes that the plan may provide for compliance by such an official publisher to be phased in over a period of time. The bill requires TSLAC to provide the implementation plan to the legislature not later than September 1, 2020.

H.B. 402 requires the official publisher in the legislative branch of state government to comply with the applicable provisions of the bill in accordance with an implementation plan required by the bill to be developed by such an official publisher in consultation with the lieutenant governor, the speaker of the house of representatives, the Senate Committee on Administration, and the House Committee on Administration, sets out requirements for that implementation plan, and establishes that the implementation plan may provide for compliance by such an official publisher to be phased in over a period of time. The bill requires such an official publisher to provide the implementation plan to the lieutenant governor and the speaker of the house of representatives not later than September 1, 2020.

EFFECTIVE DATE

September 1, 2019.