

IMPLEMENTING LEGISLATION

An Act

To implement the United Nations Convention on the Use of Electronic Communications in International Contracts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Short Title.

This Act may be cited as “International Electronic Commerce Convention Implementation Act of 20__.”

Section 2. Findings and Purpose.

(a) Findings

(1) The ability to employ electronic communications in international contractual transactions is essential;

(2) Laws that promote predictable enforcement of transactions employing electronic communications increase the value of such transactions, support responsible domestic and international commercial practice and reduce commercial risk;

(3) The United Nations Convention on the Use of Electronic Communications in International Contracts (~~the “Convention”~~) achieves these objectives;

(4) Because rules validating the employment of electronic media on an equal legal footing with tangible media as provided by the Convention are already embodied in the text of the Uniform Electronic Transactions Act, UETA-implementation of the Convention may be accomplished through application of the niform Electronic Transactions Act UETA.

(5) Representatives of Federal and State law bodies in the United States as well as representative of global commercial interests were leaders in the development of the Convention.

(6) Implementation of the Convention by the United States would further the uniformity and harmonization of international commercial law.

(b) Purpose.

The purpose of this Act is to implement the United Nations Convention on the Use of Electronic Communications in International Contracts in the United States.

Section 3. Definitions. In this Act,

- (a) “Convention” means the United Nations Convention on the Use of Electronic Communication in International Contracts, a copy of which is attached to this Act as Appendix A.
- (b) “Data Messages” means information, generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange, electronic mail, telegram, telex, or telecopy.
- (c) “Electronic Communication” means any communication that the parties make by means of data messages.
- (d) “E-Sign” means the Electronic Signatures in Global and National Commerce Act of 2000. ~~“Foreign Jurisdiction” means a jurisdiction other than the United States or a State.~~
- (e) “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.
- (f) “UETA” or “Uniform Electronic Transactions Act,” means the Official 1999 Text of the Uniform Electronic Transactions Act, as approved and recommended for enactment in all the States by the National Conference of Commissioners on Uniform State Laws in 1999.

Section 4. Scope. Notwithstanding any other provision of federal or state law, this Act applies to electronic communications that are within the scope of the Convention in accordance with the terms of Chapter 1 of the Convention.

Section 5. Implementation of the Convention in the United States of America.

Except as otherwise provided in Section 6 below, and unless and to the extent otherwise agreed between parties to a transaction, the terms and provisions of the Convention, a true and correct copy of which is attached as Appendix A, shall apply to electronic communications that are within the scope of the Convention in accordance with the terms of Chapter 1 of the Convention.

Section 6. Exemption to preemption.

A State statute, regulation or other rule may modify, limit, or supersede the provisions of this subchapter with respect to electronic communications within the scope of the Convention ~~State law~~ only to the extent such statute, regulation, or rule of law constitutes an enactment or adoption of the UETA except that (i) any exception to the Scope of such Act enacted by a State under section 3(b)(4) of such Act shall be preempted to the extent such exception is inconsistent

with this subchapter or the Declarations taken by the United States of America with regard to the scope of the Convention, and (ii) any provision of such Act limiting party autonomy shall be preempted to the extent such limitation is inconsistent with the terms of the Convention.

REITZ ALTERNATIVE SECTION 6

Section 6. Application of UETA .

If (i) but for Section 5, the law governing the validity and enforceability of an electronic communication between parties whose places of business are in different nations would be the law of a state of the United States, and (ii) the Uniform Electronic Transactions Act (“UETA”) promulgated in 1999 by the National Conference of Commissioners on Uniform State Laws is in force in that state, then an electronic communication that is valid and enforceable under UETA is valid and enforceable under the Convention.

REITZ EXPLANATORY NOTE

Section 6 recognizes the substantive congruity of the Convention and UETA as promulgated by the Uniform Law conference. To the extent that a state has enacted UETA with provisions that vary in substance from the Official Text of UETA promulgated by the Uniform Law Conference, the variations are not within Section 6.]

[Section 7. Exclusions

- (1) This Chapter and the terms of the Convention shall apply to electronic communications related to, or used in a contract or other record to the extent it is governed by Sections 1-107 (Revised Section 1-306) and 1-206 (deleted from Revised Article 1), Article 2 (Sales of Goods), or Article 2A (Lease of Goods) of the Uniform Commercial Code, as in effect in any jurisdiction in the United States of America.
- (2) This Chapter and the terms of the Convention shall not apply:
 - (a) to electronic communications excluded from the Convention by Article 2 of the Convention, including electronic communications relating to contracts concluded for personal, family or household purposes; or
 - (b) to electronic communications related to, or used in
 1. A contract or other record to the extent it is governed by
 - a. A law governing the creation and execution of wills, codicils, or testamentary trusts;
 - b. A law governing adoption, divorce, or other matters relating to family law; or
 - c. The Uniform Commercial Code, as in effect in any jurisdiction in the United States, other than Sections 1-107 (Revised section 1-306) and 1-206 (deleted from Revised Article 1) and Articles 2 and 2A.

2. Court orders or notices, or official, court documents (including briefs, pleadings and other writings) required to be executed in connection with court proceedings;
3. Any notice of
 - a. The cancellation or termination of utility services (including water, heat, and power);
 - b. Default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or rental agreement for, a primary residence of an individual;
 - c. The cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities);
 - d. Recall of a product, or material failure of a product, that risks endangering health or safety.
4. Any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.]

LEGISLATIVE NOTE: Section 7 tracks the specific inclusions and exclusions found in the proposed declarations in the Letter of Submittal (Exhibit A). These provisions are included to track the existing exclusions from E-Sign and the UETA. The first paragraph is included to assure that parties outside the United States are fully aware that the Convention will apply to validate electronic communications used in connection with international contracts for the sale or lease of goods that may be governed by the Uniform Commercial Code. The inclusion of these provisions in this legislation is intended to provide greater notice to parties than simply leaving the exclusions as part of the Declarations made by the United States upon ratification of the Convention. However, these exclusions most likely already are excluded by the Convention, and inclusion in this legislation could raise an inference that the United States government believes that these types of communications are not excluded. It may not be desirable to create this negative inference. The question of whether to include Section 7 in this legislation is left to Congress.

EXPLANATORY NOTE

Through this proposed legislation the Convention is implemented as the law applicable to electronic communications covered by the Convention.

Section 6 preserves the application of State law, in the form of the UETA through an exception to preemption provision that parallels the exception to preemption provision in existing E-Sign. The principal discrepancy between the UETA and the Convention relates to the question of UETA limits on party autonomy which are specifically excluded from the preemption exception, and therefore operate to preserve party autonomy in contracts governed by the Convention.

The exclusions included in Section 7 are consistent with the exclusions noted in the United States Declarations in Exhibit A, the Letter of Submittal. These exclusions track the exclusions in E-Sign as well as the exclusions from the UETA. They are intended to assure that the scope of coverage of the law applicable in domestic transactions (whether E-Sign or UETA) and international business transactions (under this legislation) is parallel.

EXPLANATORY NOTE

~~THROUGH THIS PROPOSED LEGISLATION THE CONVENTION IS IMPLEMENTED AS THE LAW APPLICABLE TO ELECTRONIC COMMUNICATIONS COVERED BY THE CONVENTION. THE EXCLUSIONS LISTED BELOW ARE CONSISTENT WITH THE EXCLUSIONS NOTED IN THE UNITED STATES DECLARATIONS IN EXHIBIT A, THE LETTER OF SUBMITTAL. THESE EXCLUSIONS TRACK THE EXCLUSIONS IN THE FEDERAL E-SIGN LEGISLATION AS WELL AS THE EXCLUSIONS FROM THE UETA. THE EXCLUSIONS MAY BE INCLUDED IN A SEPARATE SECTION 7 TO THE ABOVE FEDERAL LEGISLATION IF THIS IS CONSIDERED NECESSARY. THEY ARE PROVIDED TO ASSURE THAT THE SCOPE OF COVERAGE OF THE LAW APPLICABLE IN DOMESTIC TRANSACTIONS (WHETHER E-SIGN OR UETA) AND INTERNATIONAL BUSINESS TRANSACTIONS (UNDER THIS LEGISLATION) IS PARALLEL. HOWEVER, THESE EXCLUSIONS ARE MOST LIKELY ALREADY EXCLUDED BY THE CONVENTION, AND INCLUSION IN THIS LEGISLATION COULD RAISE THE POSSIBILITY THAT BY INCLUDING THEM AS EXPRESS EXCLUSIONS, THE UNITED STATES GOVERNMENT BELIEVES THAT THEY ARE NOT OTHERWISE EXCLUDED UNDER THE CONVENTION. IT MAY NOT BE DESIRABLE TO PROVIDE THIS SUGGESTION.~~

~~SECTION 6 PRESERVES THE APPLICATION OF STATE LAW, IN THE FORM OF THE UETA THROUGH AN EXCEPTION TO PREEMPTION PROVISION THAT PARALLELS THE EXCEPTION TO PREEMPTION PROVISION IN EXISTING E-SIGN. THE PRINCIPAL DISCREPANCY BETWEEN THE UETA AND THE CONVENTION RELATES TO THE QUESTION OF UETA LIMITS ON PARTY AUTONOMY WHICH ARE SPECIFICALLY EXCLUDED FROM THE PREEMPTION EXCEPTION, AND THEREFORE OPERATE TO PRESERVE PARTY AUTONOMY IN CONTRACTS GOVERNED BY THE CONVENTION.~~

SECTION 7. EXCLUSIONS

~~This Chapter and the terms of the Convention shall not apply:~~

- ~~(a) — to electronic communications excluded from the Convention by Article 2 of the Convention, including electronic communications relating to contracts concluded for personal, family or household purposes; or~~
- ~~(b) to electronic communications related to, or used in~~
 - ~~1. — A contract or other record to the extent it is governed by~~
 - ~~a. — A law governing the creation and execution of wills, codicils, or testamentary trusts;~~
 - ~~b. — A law governing adoption, divorce, or other matters relating to family law; or~~

EXHIBIT C – Draft Federal Legislation Enacting the Convention as Federal Law with
Exemption from Preemption Provision — 052710 Draft Marked to Show Changes from 051510
Draft

- ~~e. — The Uniform Commercial Code, as in effect in any jurisdiction in the United States, other than Sections 1-107 (Revised section 1-306) and 1-206 (deleted from Revised Article 1) and Articles 2 and 2A.~~
- ~~2. — Court orders or notices, or official, court documents (including briefs, pleadings and other writings) required to be executed in connection with court proceedings;~~
- ~~3. — Any notice of~~
 - ~~a. — The cancellation or termination of utility services (including water, heat, and power);~~
 - ~~b. — Default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or rental agreement for, a primary residence of an individual;~~
 - ~~c. — The cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities);~~
 - ~~d. — Recall of a product, or material failure of a product, that risks endangering health or safety.~~
- ~~4. — Any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.~~