

EXHIBIT D

What follows are a series of minor amendments to the UETA that may be promulgated by the ULC and made available to the States for enactment. The Committee recommends that these amendments not be promulgated for presentation to the States. The Committee is providing these draft amendments solely for information purposes.

If these amendments are promulgated for enactment by the States, the exception to preemption provision found in the implementing legislation in Alternative 2 would need to be amended to recognize the 1999 UETA *as amended* as the law excepted from preemption by E-Sign. Accordingly, the following amendments are drafted to be consistent with the provisions of the Convention.

The following amendments to the text and commentary of the Uniform Electronic Transactions Act as finalized and promulgated by the Uniform Law Conference in 1999 are proposed for approval by the ULC and submission to the States for their consideration and enactment:

1. UETA AMENDMENT NO. 1

SECTION 6. CONSTRUCTION AND APPLICATION

Section 6. Construction and Application is not amended but the following Comment 3 is proposed for addition:

The provisions of this Act derive largely from the United Nations 1996 Model Law on Electronic Commerce. The United Nations Convention on the Use of Electronic Communications in International Contracts is also largely derived from the Model Law. Accordingly, this Act is to be interpreted and applied consistently with the provisions of the Convention in order to promote uniformity and the observance of good faith.

2. UETA AMENDMENT NO. 2

SECTION 10. EFFECT OF CHANGE OR ERROR.

Section 10. Effect of Change or Error is hereby amended as follows:

By amending Paragraph (4) to restrict the non-waivability of the provisions of paragraphs (2) and (3) of Section 10 to transactions to which a consumer is a party. Section 10 paragraph (4) would now read as follows:

....

(4) Paragraphs (2) and (3) may not be varied by agreement by any party to a transaction entered into by either party for personal, family, or household purposes.

REPORTER'S NOTE.

EXHIBIT D

1. This amendment retains the non-waivability protections of Section 10 in consumer transactions (to which the Convention does not apply) while permitting parties to non-consumer transactions, including international transactions covered by the Convention, to alter the effect of the provisions of Section 10 by agreement, consistent with the provisions of Articles 3 and 14 of the Convention.

3. UETA AMENDMENT NO. 3

SECTION 15. TIME AND PLACE OF SENDING AND RECEIPT.

Section 15, Time and place of Sending and Receipt is hereby amended as follows:

By adding to subsection (b) a new provision addressing receipt at an information processing system of the recipient but not designated or used by the recipient for receipt of electronic records of the sort being sent, and by adding at the end of subsection (b) a provision creating a rebuttable presumption of receipt. Subsection (b) would now read as follows (the added provisions are underlined):

....

(b) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

- (1) (A) it enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record, and
or
(B) it enters another information processing system of the recipient and the recipient becomes aware that the electronic record has been sent to that information processing system and is able to retrieve the electronic record, and

- (2) it is in a form capable of being processed by that system.

An electronic record is presumed to be received when it enters the information processing system under subsection (b)(1)(A).

REPORTER'S NOTE

1. To assure consistency with the provisions of Article 10(2) of the Convention, subsection 15(b)(1)(B) has been added to provide that receipt at an undesignated information processing system requires that the recipient be aware that the electronic record is available through that information processing system.

EXHIBIT D

2. The final sentence in Subsection 15(b) is added to address the issue of large information systems, parts of which may be outside the control of the recipient, as well as filters that may be outside the control of the recipient and prevent the recipient receiving an electronic record, even though the record may have entered an information processing system designated by the recipient. For example, the information processing system may be maintained in a manner that prevents the actual receipt of electronic records because they are filtered as an ordinary part of the business of the recipient, e.g., spam filters. The last sentence permits a recipient to attempt to rebut the presumption of receipt through proof that the electronic record in fact never reached an information processing system to which the recipient had access. The ability to prove non-receipt brings Section 15 into consonance with Article 10 of the Convention. Of course parties are free to contract out of this presumption and place the risk of filters on the party receiving the electronic record.
3. Under the Convention an “electronic communication” is received when “it becomes capable of being retrieved by the addressee at an electronic address designated by the addressee.” Section 15 provides for receipt when an electronic record enters the recipient’s information processing system. The concept of retrieval “at an electronic address” is equivalent to entering “an information processing system.” The UETA and the Convention both are derived from the 1996 UNICITRAL Model Law on Electronic Commerce, which employed the term “information system.” This term was changed in the Convention to comport with other domestic legislation based on the Model Law and to address the development of filters and large information systems, but the Notes to the Convention specifically provide that the concept of receipt in each formulation is the same. See Convention explanatory notes 185 and 187.