

Draft 92-09 Marked to Show Changes from May 22, 2009 Draft

Dear,

Herewith for your consideration is legislation amending the Electronic Signatures in Global and National Commerce Act of 2000, 15 USC §7001, et seq. This legislation is being provided as necessary to implement the provisions of the United Nations Convention on the Use of Electronic Communications in International Contracts (the UN Convention) currently before the United States Senate for its advice and consent. In the event that the UN Convention is ratified by the United States Senate as a non-self-executing treaty, the attached legislation will be required to implement the terms of the UN Convention.

Respectfully submitted,

IMPLEMENTING LEGISLATION

The Electronic Signatures in Global and National Commerce Act, 15 USC § 7001 et seq, is amended by adding the following Section 7001A:

15 USC §7001A. Additional Provisions for Certain International Business Transactions

(a) In General –This section applies to transactions which are covered by the Convention in accordance with the terms of Chapter 1 of the Convention. This section does not apply to transactions:

(i) excluded from the Convention by Article 2 of the Convention, including transactions for personal, family or household purposes; or

(ii) excluded from the Convention by any declaration of exclusion filed by the United States of America in accordance with Articles 19 and 21 of the Convention

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~~(iii) in which a consumer is one of the parties to the transaction.~~

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(b) Application of the Convention – Subject to subsection (a), unless and to the extent otherwise ~~expressly~~ agreed between parties to a transaction covered by this section, the terms and provisions of the Convention shall apply to the ~~transaction-transaction and supersede this Act and any applicable State law to the contrary.~~

(c) Exception for Transactions covered by the UETA – Unless the parties to a transaction expressly agree to the contrary, subsection (b) does not apply to a transaction to the extent it is governed by a State statute, regulation, or other rule of law that constitutes an enactment or adoption of, or is consistent with, the Uniform Electronic Transactions Act as approved and recommended by the National Conference of Commissioners on Uniform State Laws in 1999 (the “UETA”). Notwithstanding the foregoing sentence, ~~in no event shall any~~ limitation on party autonomy imposed under Section 8 or Section 10 of the UETA shall be given effect in a transaction governed by this Section 7001A.

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The Electronic Signatures in Global and National Commerce Act, 15 USC § 7001 et seq, is amended by adding the following Subsection to Section 7006:

(2) Convention – the term “Convention” means the 2005 United Nations Convention on the Use of Electronic Communications in International Contracts, ratified by the United States in 2009.

The remaining subsections of Section 7006 shall be renumbered as required

NOTE – The changes are made to avoid redundancy and to soften the tone of the legislation relative to the effect of domestic law

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EXPLANATORY NOTE

By adding a new Section 7001A to E-Sign, the substance of existing E-Sign remains unaffected and will continue to apply domestically or in international transactions not covered by the Convention. Through the declarations recommended to be taken, and this amendment of E-Sign, the Convention is implemented, through E-Sign, as the law applicable to international contracts covered by the Convention. State law, in the form of consistent legislation, particularly the UETA, is preserved through the exception to preemption provision in §7001A(c). 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.