

Memorandum 2013-14

**Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act:
E-SIGN**

Section 502 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (“UAGPPJA”) addresses the governing law for electronic signatures and records under UAGPPJA. In particular, this section provides that the act modifies, limits, and supersedes portions of a federal law on electronic records and signatures, while allowing other provisions of that federal law to stand unmodified.

In the discussion draft that the Commission considered in February, the staff included a placeholder provision modeled on Section 502 of UAGPPJA (proposed Prob. Code § 2112) and explained that the staff intended to conduct further research to understand the meaning, effect, and implications of this provision. *See* Memorandum 2013-9, p. 43.

This memorandum presents the findings from staff’s research on Section 502 of UAGPPJA. For reference, the following resources are attached to this memorandum as Exhibits.

Exhibit p.

- Text of the federal Electronic Signatures in Global and National Commerce Act (“E-SIGN”) 1
- “Relationship to Electronic Signatures in Global and National Commerce Act”: The Standard Section in Uniform and Model Acts 15

TREATMENT OF ELECTRONIC SIGNATURES AND RECORDS IN UAGPPJA

Section 502 of UAGPPJA, entitled “Relationship to Electronic Signatures in Global and National Commerce Act,” provides:

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

The discussion draft attached to Memorandum 2013-9 included this section without any substantive changes (minor modifications were made to conform to local drafting practice).

By its terms, Section 502 of UAGPPJA seeks to exempt the records designated in UAGPPJA from the requirements of the federal Electronic Signatures in Global and National Commerce Act (“E-SIGN”). However, by its terms, Section 502 does not excuse compliance with (1) E-SIGN’s required consumer disclosures (15 U.S.C. § 7001(c)) and (2) E-SIGN’s limitations on the types of notices that can be transmitted electronically (15 U.S.C. § 7003(b)).

E-SIGN Section 102 (15 U.S.C. § 7002) authorizes exemptions from the requirements of E-SIGN, such as the exemption provided UAGPPJA Section 502. More specifically, Section 102 provides a two-prong exemption from preemption for state statutes, regulations, and laws that meet certain specified conditions.

The goals of this memorandum are (1) to explore the authority provided by E-SIGN Section 102 and the limits of such authority and (2) to describe the implications of UAGPPJA Section 502 for California, accounting for the state’s previous adoption of the Uniform Electronic Transactions Act (“UETA”; “CA-UETA” will be used to refer to the uniform act, as adopted by California). This memorandum is intended to serve as background for the Commission as it decides whether to include the language of UAGPPJA Section 502 in its recommendation.

HISTORY OF ELECTRONIC SIGNATURE LAWS

Before analyzing E-SIGN Section 102 and the implications of UAGPPJA Section 502 for California, it will be helpful to provide some background on the history of electronic signature laws. The following discussion describes (1) the development of UETA, (2) California’s enactment of UETA, and (3) the development of E-SIGN.

Development of Uniform Electronic Transactions Act

Due to the considerable growth in electronic transactions in the 1990s, the Uniform Law Commission (“ULC”), also known as the National Conference of Commissioners on Uniform State Laws (“NCCUSL”), began work in the latter half of the decade to establish a legal framework for the new era of electronic commerce. In 1997, a ULC committee prepared the first draft of what would later become UETA. After developing and discussing several rounds of drafts, ULC approved the final draft of UETA at its annual conference in July 1999.

In drafting UETA, ULC sought to remove barriers to conducting transactions electronically. “The objective of UETA is to make sure that transactions in the electronic marketplace are as enforceable as transactions memorialized on paper and with manual signatures, but without changing any of the substantive rules of law that apply.” Electronic Transactions Act Summary Webpage, *sited at* <www.uniformlaws.org>; *see also* Memorandum from B. Beard, Reporter to the Uniform Electronic Transactions Act Drafting Committee and Observers (Mar. 19, 1999), *available at* <www.uniformlaws.org>.

Although the details of UETA are beyond the scope of this memorandum, there are several features of the uniform act, listed below, that provide important context for answering the specific questions addressed herein.

- **Scope:** UETA is circumscribed by its limited purpose of seeking to “remove barriers to electronic commerce by validating and effectuating electronic records and signatures.” UETA Prefatory Note 1 (1999). Thus, UETA does not cover all electronic records and signatures, but extends “only to electronic records and signatures relating to a transaction, defined as those interactions between people relating to business, commercial and governmental affairs.” Although there are a few exceptions to UETA (see next item), it appears that a broad, but well-defined scope of transactions was viewed as central to the goal of providing certainty and uniformity around electronic transactions. *See id* at 2.
- **Excluded Transactions:** Section 3 of UETA explicitly identifies a narrow group of transactions for exclusion, such as certain transactions under the Uniform Commercial Code. In addition, this section includes a placeholder for other laws, if any, that the jurisdiction deems appropriate for exclusion. California, in its adoption of UETA identified some 60 state laws to exclude from this Act. More information on the specific exclusions, the policy considerations leading to those exclusions, and Congress’s view of

such exclusions and the need for uniformity are discussed later in this memorandum.

- **Consent to Transact Electronically:** Section 5(b) of UETA limits the Act's applicability to situations where parties have agreed to transact electronically. California adopted this language, but added language limiting how such an agreement could occur (e.g., the agreement cannot be inferred from electronic payment or reached in a standard form contract that is not electronic). *See* Civ. Code § 1633.5. E-SIGN does not include an analogous "agreement to agree electronically" requirement. Rather, E-SIGN explicitly states that "a signature, contract, or other record relating to [a transaction in interstate commerce] may not be denied legal effect, validity, or enforceability solely because it is in electronic form" and "a contract relating to [a transaction in interstate commerce] may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation." 15 U.S.C. § 7001(a).

California's Enactment of the Uniform Electronic Transactions Act

While ULC was developing UETA, the California Legislature began discussing Senate Bill 820 (Sher), which was modeled on the developing uniform act. To address the rapidly expanding field of e-commerce as quickly as possible, the Legislature elected to move ahead with the bill while ULC was finalizing UETA.

Given that the [UETA] draft is still a work-in-progress and has not even been considered in total by the full conference, it may be premature to pass SB 820 this year. However, e-commerce is a reality that perhaps should be dealt with sooner rather than later, and as long as interested parties (especially the consumer groups) are actively participating in the work-in-progress, the bill should move.

Senate Judiciary Committee Analysis of SB 820 (May 11, 1999), p. 3. Although California was the first state to enact UETA, it was not the only state that wanted to address this issue quickly. By June 2000, eighteen states had enacted UETA and it was under consideration in eleven others. Wittie & Winn, *Electronic Records and Signatures Under the Federal E-SIGN Legislation and the UETA*, 56 BUS. LAW. 293, 296 (2000).

SB 820 was sponsored by the California Commissioners on Uniform State Laws. While the bill was proceeding through the legislature, ULC approved the final version of UETA. After this approval, SB 820 was amended to explicitly

state that it “may be cited as the ‘Uniform Electronic Transactions Act.’” *See* Civ. Code § 1633.1.

As SB 820 moved through the Legislature, however, Consumers Union advocated for a number of changes to the uniform act. SB 820 was amended to incorporate several of Consumers Union’s recommendations. In particular, California utilized the UETA placeholder provision for exceptions from the Act to exclude some 60 different transactions discussed elsewhere in California’s statutes. *See* Civ. Code § 1633.3(b)(4), (c); Consumers Union Website: Uniform Electronic Transactions Act - Proposed amendments to protect consumers & The California exemptions to UETA, *sited at* < www.consumersunion.org>.

Thus, although CA-UETA “may be cited as the ‘Uniform Electronic Transactions Act,’” it includes exceptions that are not specified in UETA itself. CA-UETA is codified in Civil Code Sections 1633.1 to 1633.17.

E-SIGN

Concurrently with the development of UETA and California’s enactment of CA-UETA, Congress was working on Senate Bill 761 and House Bill 1714, both of which addressed electronic signatures and records. The conference committee created to harmonize these bills created the final E-SIGN law.

“The base E-SIGN rule, set forth in Section 101(a) of the Act, places electronic records and signatures on a legal par with their paper and ink counterparts. It provides that records and signatures relating to transactions in or affecting interstate or foreign commerce may not be denied legal effect, validity, or enforceability solely because they are in electronic form or because an electronic signature or electronic record is used in their formation.” Wittie & Winn, *supra*, at 297 (citations omitted).

The legislative history for both Senate Bill 761 and House Bill 1714 indicates that the legislature viewed E-SIGN as immediately necessary to provide national uniformity for electronic transactions until such uniformity could be achieved through the states adopting UETA. For instance, the author of Senate Bill 761 acknowledged the ongoing development of UETA and stated “[t]he ... Act is an interim measure to provide relief until the States adopt the provisions of the UETA. It will provide companies the baseline they need until a national baseline governing the use of electronic authentication exists at the State level.” 145 Cong. Rec. S3584, *3585 (Apr. 12, 1999); *see also* House Report 106-341 (Oct. 15, 1999).

During the debates on Senate Bill 761 and House Bill 1714, one of the divisive issues was the leeway for differing consumer protection rules in the states. *See*,

e.g., 145 Cong. Rec. S14881, *14882-89 (Nov. 19, 1999); 145 Cong. Rec. H11162, *11162-69 (Nov. 1, 1999). In particular, some members of Congress voiced concern that the federal bill would eliminate consumer protections offered by states. For example, Senator Leahy said “it is ironic to hear Members who speak the rhetoric of states’ rights on a regular basis to ... advocate a bill that would preempt thousands of state laws ranging from the common-law statute of frauds to California’s recent enactment of a modified version of the [UETA].” 145 Cong. Rec. S13151, *13153 (Oct. 26, 1999); *see also* Statement of Senator Leahy, 145 Cong. Rec. S13547, *13548 (Oct. 29, 1999); Statement of Representative Delahunt, 145 Cong. Rec. H11732, *11739 (Nov. 9, 1999).

In contrast, other members of Congress indicated that the states’ differing treatment of electronic notice, signatures, and records was part of the problem that the E-SIGN legislation was seeking to resolve. For example, Representative Cannon cautioned:

Between Section 3(b)(5) of UETA, which permits a State to exclude any of its laws from the application of UETA, and the [Senate bill’s] substantially similar variation language, a State is completely free to institute its own electronic commerce laws regardless of such laws’ effect on interstate commerce. That is exactly what happened in California, the first State to adopt UETA.

145 Cong. Rec. H11732, *11752 (Nov. 9, 1999); *see also* Senator Abraham’s Explanatory Statement of Conference Committee Report, 146 Cong. Rec. S5281, *5285 (Jun. 16, 2000).

In the Conference Committee, the House and Senate members worked to resolve the language differences in the different versions of the electronic signature bills. In doing so, the committee, working from the House’s preemption language, developed the current language of Section 102 of E-SIGN.

E-SIGN PREEMPTION

This section of the memorandum briefly describes the scope of E-SIGN, explains E-SIGN’s preemption provision, and finally describes ULC’s response to the enactment of that provision.

Scope of E-SIGN: Sections 101 and 103 (15 U.S.C. §§ 7001, 7003)

E-SIGN Section 101 (15 U.S.C. § 7001) specifies requirements relating to electronic transactions. E-SIGN’s scope is broad, covering a signature, contract,

or other record relating to a transaction in or affecting interstate commerce. 15 U.S.C. § 7001(a).

However, E-SIGN provides several exclusions to this general rule. E-SIGN Section 103 (15 U.S.C. Section 7003) lists a number of exceptions to which the requirements of E-SIGN Section 101 do not apply. This list includes “court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings.” 15 U.S.C. § 7003(b)(1).

E-SIGN further allows states to limit the applicability of the requirements of E-SIGN Section 101 through its preemption provision, Section 102.

E-SIGN Preemption Provision: Section 102 (15 U.S.C. § 7002)

Subsection (a) of E-SIGN Section 102 governs preemption generally; the remainder of Section 102 appears irrelevant for present purposes. As codified, subsection (a) creates a two-prong test for determining whether a state law is exempt from E-SIGN preemption, and thus may effectively modify E-SIGN’s requirements for electronic transactions. Subsection (a) provides that

[a] State statute, regulation, or other rule of law may modify, limit, or supersede the provisions of section 7001 of this title with respect to State law only if such statute, regulation, or rule of law —

(1) constitutes an enactment or adoption 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, except that 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 subchapter II of this chapter, or would not be permitted under paragraph (2)(A)(ii) of this subsection; or

(2)(A) specifies the alternative procedures or requirements for the use or acceptance (or both) of electronic records or electronic signatures to establish the legal effect, validity, or enforceability of contracts or other records, if —

(i) such alternative procedures or requirements are consistent with this subchapter and subchapter II of this chapter; and

(ii) such alternative procedures or requirements do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures; and

(B) if enacted or adopted after June 30, 2000, makes specific reference to this chapter.

15 U.S.C. § 7002(a).

Under the first prong (paragraph (a)(1)), a state's enactment or adoption of the final version of UETA may, subject to certain exceptions, "modify, limit, or supersede" the requirements of E-SIGN Section 101 (15 U.S.C. § 7001). In other words, in specified circumstances a state's enactment or adoption of UETA is not preempted by E-SIGN.

Under the second prong (paragraph (a)(2)), a state law may effectively specify alternative procedures or requirements for electronic transactions if all of the following requirements are met:

- (1) Those alternative procedures or requirements are consistent with E-SIGN.
- (2) As compared to E-SIGN, those procedures or requirements do not require or give greater legal status or effect to implementation or application of a specific technology or technical specification for the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures.
- (3) The state law specifically refers to E-SIGN.

In other words, a state law may deviate from E-SIGN's requirements for electronic records without being preempted if it satisfies all of the above criteria.

By its terms, the preemption exemption provided by E-SIGN Section 102(a) applies only to the requirements in E-SIGN Section 101 (15 U.S.C. § 7001). For the text of E-SIGN Section 101, see Exhibit pp. 2-6.

Post-E-SIGN Activity by the Uniform Law Commission

After the enactment of E-SIGN, ULC took steps to protect its uniform laws from E-SIGN preemption claims. To meet the second prong of E-SIGN's preemption test and provide a defense against such claims, ULC created a standard provision (known as "the Standard Section") for its uniform acts that provide for electronic records, agreements, or signatures.

According to a document approved by ULC's executive council, the Standard Section "provides an express defense against preemption by E-Sign for uniform ... acts that provide for electronic records, signatures and communications." Exhibit p. 15. The ULC document explains:

E-Sign expressly provides that state law[s] governing electronic records and signatures will not be preempted by federal law if they are consistent with the intent of E-Sign and "make specific reference to this Act," even though the effect may be "to modify,

limit, or supersede” E-Sign’s rules. (15 USC 7002(a)) The standard section in uniform ... acts simply states that the specific act conforms to the requirements of 15 USC 7002(a) (Section 102 of E-Sign), thereby avoiding any claim that federal law preempts provisions in that act.

Id. The Standard Section is thus designed to satisfy the second prong of E-SIGN Section 102.

The same ULC document further explains that the Standard Section might not even be necessary, but is included in an abundance of caution:

Since 1999, all uniform and model acts have provisions that provide for electronic records and signatures. They are, in fact, drafted to be consistent with E-Sign and the [UETA], which the NCCUSL promulgated in 1999. The probability for conflict between state and federal law is, therefore, very limited to non-existent with respect to uniform and model acts. *The Standard Section further immunizes them from any claims for conflict by meeting the express technical requirements of E-Sign.*

Id. (emphasis added).

The Standard Section has already been included in a number of uniform acts enacted by California, including the Uniform Anatomical Gift Act (Health & Safety Code § 7151.30), Uniform Commercial Code (Com. Code § 1108), Uniform Limited Partnership Act of 2008 (Corp. Code § 15912.03), Uniform Prudent Management of Institutional Funds Act (Prob. Code § 18509), Revised Uniform Limited Liability Company Act (Corp. Code § 17713.02), and Uniform Electronic Legal Material Act (Gov’t Code § 10300).

E-SIGN AND UAGPPJA

Having described E-SIGN generally, its preemption provision, and ULC’s reaction to that preemption provision, we now turn to the interrelationship between E-SIGN and UAGPPJA. First, we examine UAGPPJA’s references to electronic records. Next, we consider how E-SIGN would apply to UAGPPJA electronic records, absent UAGPPJA Section 502 (“Relation to Electronic Signatures in Global and National Commerce Act”). Finally, we discuss the potential impact of UAGPPJA Section 502.

Electronic Records Under UAGPPJA

UAGPPJA's definition of "record" includes information stored electronically. UAGPPJA § 102(12). However, UAGPPJA contains only a few references to records or electronic information. In particular, the staff noted the following:

- In certain circumstances, UAGPPJA Section 104 requires a court to make a record of a communication with a court in another state. The accompanying Comment explains that the Act does not preclude electronic communications. Certain required communications could therefore occur electronically and any related recordkeeping could also be electronic.
- UAGPPJA Section 105 allows courts to request a "record of a hearing" from other courts.
- UAGPPJA Section 106 explicitly provides for electronic depositions and testimony for out-of-state witnesses.

All of these records described in UAGPPJA relate to court proceedings, although they might not necessarily be filed in court (e.g., a deposition transcript usually is not filed). Notably, UAGPPJA does not provide any recordkeeping standards or requirements for electronic records.

Application of E-SIGN to UAGPPJA Electronic Records

The electronic records created under UAGPPJA fall within the broad scope of E-SIGN, which covers records relating to a transaction in or affecting interstate commerce. 15 U.S.C. § 7001(a). Thus, UAGPPJA records would be subject to the requirements of E-SIGN Section 101, unless they fall within one of the defined preemption exemptions in E-SIGN Section 102 or an exclusion described in E-SIGN Section 103.

Application of E-SIGN Section 101 might not be problematic, because its requirements are very general. The affirmative requirements of Section 101 that appear relevant (subsections a, d, and g) would only allow for electronic records (which UAGPPJA already does), ensure that those records are stored in a format that ensures continued accessibility of the information, and describe the circumstances under which electronic notarized/acknowledged documents will be given credence. See Exhibit pp. 2, 4-5. UAGPPJA does not provide conflicting guidance on those points; in fact, ULC has not identified any specific provisions of E-SIGN that would impede the implementation of UAGPPJA. Communications with B. Orzeske (2/21/13 & 2/22/13). Consequently, as ULC pointed out in its explanation of the Standard Section, "[t]he probability for

conflict between state and federal law is ... very limited to non-existent.” Exhibit p. 15.

Further, most, if not all, electronic records generated under UAGPPJA may be exempt from the requirements of E-SIGN Section 101 because they qualify under E-SIGN Section 103 as “court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings.” 15 U.S.C. § 7003(b)(1). As described above, all of the records identified in UAGPPJA appear to relate to a court proceeding. Depending on whether those records are deemed “official court documents required to be executed in connection with court proceedings,” they could fall within the Section 103 exception.

Assuming that is not the case, and that there is a conflict of some kind between E-SIGN and UAGPPJA, only then would one reach the question of whether E-SIGN preempts UAGPPJA. If that question arises, UAGPPJA Section 502 is designed to ensure that there is no preemption.

UAGPPJA SECTION 502

UAGPPJA Section 502 is ULC’s Standard Section, previously described. It provides:

This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

This provision does not attempt to satisfy the requirements for exemption under the first prong of E-SIGN’s preemption test, which focuses on whether a state has adopted UETA and in what form. *See* E-SIGN § 102(a)(1) (15 U.S.C. § 7002(a)(1)). It is debatable whether the first prong would apply in California, because, as noted previously, CA-UETA differs in significant respects from the final version of UETA approved by ULC. Analysis of that issue is beyond the scope of this memorandum.

Rather, the Standard Section is intended to qualify a uniform act for exemption under the second prong of E-SIGN’s preemption test, regardless of whether a state has adopted UETA and would qualify for the first prong. Communications with B. Orzeske (2/21/13 & 2/22/13). Under the second prong,

a state law may effectively specify alternative procedures or requirements for electronic transactions if all of the following requirements are met:

- (1) Those alternative procedures or requirements are consistent with E-SIGN.
- (2) As compared to E-SIGN, those procedures or requirements do not require or give greater legal status or effect to implementation or application of a specific technology or technical specification for the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures.
- (3) The state law specifically refers to E-SIGN.

See E-SIGN § 102(a)(2) (15 U.S.C. § 7002(a)(2)).

The following evaluates whether UAGPPJA Section 502 comports with each of these requirements:

- (1) **Alternative procedures or requirements are consistent with E-SIGN.** UAGPPJA allows for electronic records. UAGPPJA § 102(12) (definition of record). However, in its review of UAGPPJA, staff did not identify any “alternative procedures or requirements” for such records. Consequently, the staff cannot determine whether any such procedures or requirements are “consistent” with E-SIGN. If there is ever a claim that UAGPPJA is preempted by E-SIGN, that issue would presumably need to be litigated in determining whether Section 502 exempts UAGPPJA from E-SIGN preemption.
- (2) **Does not require application of a specific technology or technical specification.** UAGPPJA does not require use of a specific electronic technology or technical specification for records.
- (3) **Specifically refers to E-SIGN.** UAGPPJA Section 502 expressly refers to E-SIGN.

Assuming that the first point discussed above is satisfied, UAGPPJA Section 502 would seem to meet the requirements of the second prong of the E-SIGN preemption test. In other words, Section 502 would then be sufficient to accomplish its goal of ensuring that UAGPPJA is not preempted by E-SIGN.

CONCLUSION

Based on the research and analysis herein, staff concludes that, while UAGPPJA might be fully consistent with E-SIGN, and UAGPPJA records might be excluded from E-SIGN under the court record exclusion in E-SIGN Section 103, **nonetheless it would be prudent for the Commission to include UAGPPJA**

Section 502 in its proposed version of the uniform act. Although Section 502 may be unnecessary, staff believes that a clear expression of intent regarding the applicable law for UAGPPJA records would offer some potential benefit, require little effort, and would not have any negative consequences. **Is the Commission comfortable with this approach?**

Respectfully submitted,

Kristin Burford
Staff Counsel

Text of Electronic Signatures in Global and National Commerce Act (“E-SIGN”),
as codified¹

UNITED STATES CODE	2
TITLE 15: COMMERCE AND TRADE.....	2
CHAPTER 96: ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE	2
Subchapter I: Electronic Records and Signatures in Commerce	2
§ 7001. General Rule of Validity	2
§ 7002. Exemption to Preemption	6
§ 7003. Specific Exceptions	7
§ 7004. Applicability to Federal and State Governments	8
§ 7005. Studies	10
§ 7006. Definitions.....	10
Subchapter II: Transferable Records	12
§ 7021. Transferable Records	12
Subchapter III: Promotion of International Electronic Commerce	13
§ 7031. Principles Governing the Use of Electronic Signatures in International Transactions.....	13



1. The U.S. Office of the Code Revision Counsel U.S. Code website <<http://uscodebeta.house.gov/>> is the source of the codified text reproduced herein.

1 UNITED STATES CODE

2 TITLE 15: COMMERCE AND TRADE

3 CHAPTER 96: ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL
4 COMMERCE

5 Subchapter I: Electronic Records and Signatures in Commerce

6 **§ 7001. General Rule of Validity**

7 (a) In general

8 Notwithstanding any statute, regulation, or other rule of law (other than this
9 subchapter and subchapter II of this chapter), with respect to any transaction in or
10 affecting interstate or foreign commerce—

11 (1) a signature, contract, or other record relating to such transaction may not be
12 denied legal effect, validity, or enforceability solely because it is in electronic
13 form; and

14 (2) a contract relating to such transaction may not be denied legal effect,
15 validity, or enforceability solely because an electronic signature or electronic
16 record was used in its formation.

17 (b) Preservation of rights and obligations

18 This subchapter does not—

19 (1) limit, alter, or otherwise affect any requirement imposed by a statute,
20 regulation, or rule of law relating to the rights and obligations of persons under
21 such statute, regulation, or rule of law other than a requirement that contracts or
22 other records be written, signed, or in nonelectronic form; or

23 (2) require any person to agree to use or accept electronic records or electronic
24 signatures, other than a governmental agency with respect to a record other than a
25 contract to which it is a party.

26 (c) Consumer disclosures

27 (1) Consent to electronic records

28 Notwithstanding subsection (a) of this section, if a statute, regulation, or other
29 rule of law requires that information relating to a transaction or transactions in or
30 affecting interstate or foreign commerce be provided or made available to a
31 consumer in writing, the use of an electronic record to provide or make available
32 (whichever is required) such information satisfies the requirement that such
33 information be in writing if—

34 (A) the consumer has affirmatively consented to such use and has not withdrawn
35 such consent;

1 (B) the consumer, prior to consenting, is provided with a clear and conspicuous
2 statement—

3 (i) informing the consumer of (I) any right or option of the consumer to have the
4 record provided or made available on paper or in nonelectronic form, and (II) the
5 right of the consumer to withdraw the consent to have the record provided or made
6 available in an electronic form and of any conditions, consequences (which may
7 include termination of the parties' relationship), or fees in the event of such
8 withdrawal;

9 (ii) informing the consumer of whether the consent applies (I) only to the
10 particular transaction which gave rise to the obligation to provide the record, or
11 (II) to identified categories of records that may be provided or made available
12 during the course of the parties' relationship;

13 (iii) describing the procedures the consumer must use to withdraw consent as
14 provided in clause (i) and to update information needed to contact the consumer
15 electronically; and

16 (iv) informing the consumer (I) how, after the consent, the consumer may, upon
17 request, obtain a paper copy of an electronic record, and (II) whether any fee will
18 be charged for such copy;

19 (C) the consumer—

20 (i) prior to consenting, is provided with a statement of the hardware and
21 software requirements for access to and retention of the electronic records; and

22 (ii) consents electronically, or confirms his or her consent electronically, in a
23 manner that reasonably demonstrates that the consumer can access information in
24 the electronic form that will be used to provide the information that is the subject
25 of the consent; and

26 (D) after the consent of a consumer in accordance with subparagraph (A), if a
27 change in the hardware or software requirements needed to access or retain
28 electronic records creates a material risk that the consumer will not be able to
29 access or retain a subsequent electronic record that was the subject of the consent,
30 the person providing the electronic record—

31 (i) provides the consumer with a statement of (I) the revised hardware and
32 software requirements for access to and retention of the electronic records, and (II)
33 the right to withdraw consent without the imposition of any fees for such
34 withdrawal and without the imposition of any condition or consequence that was
35 not disclosed under subparagraph (B)(i); and

36 (ii) again complies with subparagraph (C).

37 (2) Other rights

38 (A) Preservation of consumer protections

39 Nothing in this subchapter affects the content or timing of any disclosure or
40 other record required to be provided or made available to any consumer under any
41 statute, regulation, or other rule of law.

42 (B) Verification or acknowledgment

1 If a law that was enacted prior to this chapter expressly requires a record to be
2 provided or made available by a specified method that requires verification or
3 acknowledgment of receipt, the record may be provided or made available
4 electronically only if the method used provides verification or acknowledgment of
5 receipt (whichever is required).

6 (3) Effect of failure to obtain electronic consent or confirmation of consent

7 The legal effectiveness, validity, or enforceability of any contract executed by a
8 consumer shall not be denied solely because of the failure to obtain electronic
9 consent or confirmation of consent by that consumer in accordance with paragraph
10 (1)(C)(ii).

11 (4) Prospective effect

12 Withdrawal of consent by a consumer shall not affect the legal effectiveness,
13 validity, or enforceability of electronic records provided or made available to that
14 consumer in accordance with paragraph (1) prior to implementation of the
15 consumer's withdrawal of consent. A consumer's withdrawal of consent shall be
16 effective within a reasonable period of time after receipt of the withdrawal by the
17 provider of the record. Failure to comply with paragraph (1)(D) may, at the
18 election of the consumer, be treated as a withdrawal of consent for purposes of this
19 paragraph.

20 (5) Prior consent

21 This subsection does not apply to any records that are provided or made
22 available to a consumer who has consented prior to the effective date of this
23 subchapter to receive such records in electronic form as permitted by any statute,
24 regulation, or other rule of law.

25 (6) Oral communications

26 An oral communication or a recording of an oral communication shall not
27 qualify as an electronic record for purposes of this subsection except as otherwise
28 provided under applicable law.

29 (d) Retention of contracts and records

30 (1) Accuracy and accessibility

31 If a statute, regulation, or other rule of law requires that a contract or other
32 record relating to a transaction in or affecting interstate or foreign commerce be
33 retained, that requirement is met by retaining an electronic record of the
34 information in the contract or other record that—

35 (A) accurately reflects the information set forth in the contract or other record;
36 and

37 (B) remains accessible to all persons who are entitled to access by statute,
38 regulation, or rule of law, for the period required by such statute, regulation, or
39 rule of law, in a form that is capable of being accurately reproduced for later
40 reference, whether by transmission, printing, or otherwise.

41 (2) Exception

1 A requirement to retain a contract or other record in accordance with paragraph
2 (1) does not apply to any information whose sole purpose is to enable the contract
3 or other record to be sent, communicated, or received.

4 (3) Originals

5 If a statute, regulation, or other rule of law requires a contract or other record
6 relating to a transaction in or affecting interstate or foreign commerce to be
7 provided, available, or retained in its original form, or provides consequences if
8 the contract or other record is not provided, available, or retained in its original
9 form, that statute, regulation, or rule of law is satisfied by an electronic record that
10 complies with paragraph (1).

11 (4) Checks

12 If a statute, regulation, or other rule of law requires the retention of a check, that
13 requirement is satisfied by retention of an electronic record of the information on
14 the front and back of the check in accordance with paragraph (1).

15 (e) Accuracy and ability to retain contracts and other records

16 Notwithstanding subsection (a) of this section, if a statute, regulation, or other
17 rule of law requires that a contract or other record relating to a transaction in or
18 affecting interstate or foreign commerce be in writing, the legal effect, validity, or
19 enforceability of an electronic record of such contract or other record may be
20 denied if such electronic record is not in a form that is capable of being retained
21 and accurately reproduced for later reference by all parties or persons who are
22 entitled to retain the contract or other record.

23 (f) Proximity

24 Nothing in this subchapter affects the proximity required by any statute,
25 regulation, or other rule of law with respect to any warning, notice, disclosure, or
26 other record required to be posted, displayed, or publicly affixed.

27 (g) Notarization and acknowledgment

28 If a statute, regulation, or other rule of law requires a signature or record relating
29 to a transaction in or affecting interstate or foreign commerce to be notarized,
30 acknowledged, verified, or made under oath, that requirement is satisfied if the
31 electronic signature of the person authorized to perform those acts, together with
32 all other information required to be included by other applicable statute,
33 regulation, or rule of law, is attached to or logically associated with the signature
34 or record.

35 (h) Electronic agents

36 A contract or other record relating to a transaction in or affecting interstate or
37 foreign commerce may not be denied legal effect, validity, or enforceability solely
38 because its formation, creation, or delivery involved the action of one or more
39 electronic agents so long as the action of any such electronic agent is legally
40 attributable to the person to be bound.

41 (i) Insurance

42 It is the specific intent of the Congress that this subchapter and subchapter II of
43 this chapter apply to the business of insurance.

- 1 (j) Insurance agents and brokers
2 An insurance agent or broker acting under the direction of a party that enters
3 into a contract by means of an electronic record or electronic signature may not be
4 held liable for any deficiency in the electronic procedures agreed to by the parties
5 under that contract if—
6 (1) the agent or broker has not engaged in negligent, reckless, or intentional
7 tortious conduct;
8 (2) the agent or broker was not involved in the development or establishment of
9 such electronic procedures; and
10 (3) the agent or broker did not deviate from such procedures.

11 **§ 7002. Exemption to Preemption**

12 (a) In general

13 A State statute, regulation, or other rule of law may modify, limit, or supersede
14 the provisions of section 7001 of this title with respect to State law only if such
15 statute, regulation, or rule of law—

16 (1) constitutes an enactment or adoption of the Uniform Electronic Transactions
17 Act as approved and recommended for enactment in all the States by the National
18 Conference of Commissioners on Uniform State Laws in 1999, except that any
19 exception to the scope of such Act enacted by a State under section 3(b)(4) of such
20 Act shall be preempted to the extent such exception is inconsistent with this
21 subchapter or subchapter II of this chapter, or would not be permitted under
22 paragraph (2)(A)(ii) of this subsection; or

23 (2)(A) specifies the alternative procedures or requirements for the use or
24 acceptance (or both) of electronic records or electronic signatures to establish the
25 legal effect, validity, or enforceability of contracts or other records, if—

26 (i) such alternative procedures or requirements are consistent with this
27 subchapter and subchapter II of this chapter; and

28 (ii) such alternative procedures or requirements do not require, or accord greater
29 legal status or effect to, the implementation or application of a specific technology
30 or technical specification for performing the functions of creating, storing,
31 generating, receiving, communicating, or authenticating electronic records or
32 electronic signatures; and

33 (B) if enacted or adopted after June 30, 2000, makes specific reference to this
34 chapter.

35 (b) Exceptions for actions by States as market participants

36 Subsection (a)(2)(A)(ii) of this section shall not apply to the statutes,
37 regulations, or other rules of law governing procurement by any State, or any
38 agency or instrumentality thereof.

39 (c) Prevention of circumvention

40 Subsection (a) of this section does not permit a State to circumvent this
41 subchapter or subchapter II of this chapter through the imposition of nonelectronic

1 delivery methods under section 8(b)(2) of the Uniform Electronic Transactions
2 Act.

3 **§ 7003. Specific Exceptions**

4 (a) Excepted requirements

5 The provisions of section 7001 of this title shall not apply to a contract or other
6 record to the extent it is governed by—

7 (1) a statute, regulation, or other rule of law governing the creation and
8 execution of wills, codicils, or testamentary trusts;

9 (2) a State statute, regulation, or other rule of law governing adoption, divorce,
10 or other matters of family law; or

11 (3) the Uniform Commercial Code, as in effect in any State, other than sections
12 1–107 and 1–206 and Articles 2 and 2A.

13 (b) Additional exceptions

14 The provisions of section 7001 of this title shall not apply to—

15 (1) court orders or notices, or official court documents (including briefs,
16 pleadings, and other writings) required to be executed in connection with court
17 proceedings;

18 (2) any notice of—

19 (A) the cancellation or termination of utility services (including water, heat, and
20 power);

21 (B) default, acceleration, repossession, foreclosure, or eviction, or the right to
22 cure, under a credit agreement secured by, or a rental agreement for, a primary
23 residence of an individual;

24 (C) the cancellation or termination of health insurance or benefits or life
25 insurance benefits (excluding annuities); or

26 (D) recall of a product, or material failure of a product, that risks endangering
27 health or safety; or

28 (3) any document required to accompany any transportation or handling of
29 hazardous materials, pesticides, or other toxic or dangerous materials.

30 (c) Review of exceptions

31 (1) Evaluation required

32 The Secretary of Commerce, acting through the Assistant Secretary for
33 Communications and Information, shall review the operation of the exceptions in
34 subsections (a) and (b) of this section to evaluate, over a period of 3 years,
35 whether such exceptions continue to be necessary for the protection of consumers.
36 Within 3 years after June 30, 2000, the Assistant Secretary shall submit a report to
37 the Congress on the results of such evaluation.

38 (2) Determinations

39 If a Federal regulatory agency, with respect to matter within its jurisdiction,
40 determines after notice and an opportunity for public comment, and publishes a
41 finding, that one or more such exceptions are no longer necessary for the
42 protection of consumers and eliminating such exceptions will not increase the

1 material risk of harm to consumers, such agency may extend the application of
2 section 7001 of this title to the exceptions identified in such finding.

3 **§ 7004. Applicability to Federal and State Governments**

4 (a) Filing and access requirements

5 Subject to subsection (c)(2) of this section, nothing in this subchapter limits or
6 supersedes any requirement by a Federal regulatory agency, self-regulatory
7 organization, or State regulatory agency that records be filed with such agency or
8 organization in accordance with specified standards or formats.

9 (b) Preservation of existing rulemaking authority

10 (1) Use of authority to interpret

11 Subject to paragraph (2) and subsection (c) of this section, a Federal regulatory
12 agency or State regulatory agency that is responsible for rulemaking under any
13 other statute may interpret section 7001 of this title with respect to such statute
14 through—

15 (A) the issuance of regulations pursuant to a statute; or

16 (B) to the extent such agency is authorized by statute to issue orders or
17 guidance, the issuance of orders or guidance of general applicability that are
18 publicly available and published (in the Federal Register in the case of an order or
19 guidance issued by a Federal regulatory agency).

20 This paragraph does not grant any Federal regulatory agency or State regulatory
21 agency authority to issue regulations, orders, or guidance pursuant to any statute
22 that does not authorize such issuance.

23 (2) Limitations on interpretation authority

24 Notwithstanding paragraph (1), a Federal regulatory agency shall not adopt any
25 regulation, order, or guidance described in paragraph (1), and a State regulatory
26 agency is preempted by section 7001 of this title from adopting any regulation,
27 order, or guidance described in paragraph (1), unless—

28 (A) such regulation, order, or guidance is consistent with section 7001 of this
29 title;

30 (B) such regulation, order, or guidance does not add to the requirements of such
31 section; and

32 (C) such agency finds, in connection with the issuance of such regulation, order,
33 or guidance, that—

34 (i) there is a substantial justification for the regulation, order, or guidance;

35 (ii) the methods selected to carry out that purpose—

36 (I) are substantially equivalent to the requirements imposed on records that are
37 not electronic records; and

38 (II) will not impose unreasonable costs on the acceptance and use of electronic
39 records; and

40 (iii) the methods selected to carry out that purpose do not require, or accord
41 greater legal status or effect to, the implementation or application of a specific
42 technology or technical specification for performing the functions of creating,

1 storing, generating, receiving, communicating, or authenticating electronic records
2 or electronic signatures.

3 (3) Performance standards

4 (A) Accuracy, record integrity, accessibility

5 Notwithstanding paragraph (2)(C)(iii), a Federal regulatory agency or State
6 regulatory agency may interpret section 7001(d) of this title to specify
7 performance standards to assure accuracy, record integrity, and accessibility of
8 records that are required to be retained. Such performance standards may be
9 specified in a manner that imposes a requirement in violation of paragraph
10 (2)(C)(iii) if the requirement (i) serves an important governmental objective; and
11 (ii) is substantially related to the achievement of that objective. Nothing in this
12 paragraph shall be construed to grant any Federal regulatory agency or State
13 regulatory agency authority to require use of a particular type of software or
14 hardware in order to comply with section 7001(d) of this title.

15 (B) Paper or printed form

16 Notwithstanding subsection (c)(1) of this section, a Federal regulatory agency or
17 State regulatory agency may interpret section 7001(d) of this title to require
18 retention of a record in a tangible printed or paper form if—

19 (i) there is a compelling governmental interest relating to law enforcement or
20 national security for imposing such requirement; and

21 (ii) imposing such requirement is essential to attaining such interest.

22 (4) Exceptions for actions by government as market participant

23 Paragraph (2)(C)(iii) shall not apply to the statutes, regulations, or other rules of
24 law governing procurement by the Federal or any State government, or any agency
25 or instrumentality thereof.

26 (c) Additional limitations

27 (1) Reimposing paper prohibited

28 Nothing in subsection (b) of this section (other than paragraph (3)(B) thereof)
29 shall be construed to grant any Federal regulatory agency or State regulatory
30 agency authority to impose or reimpose any requirement that a record be in a
31 tangible printed or paper form.

32 (2) Continuing obligation under Government Paperwork Elimination Act

33 Nothing in subsection (a) or (b) of this section relieves any Federal regulatory
34 agency of its obligations under the Government Paperwork Elimination Act (title
35 XVII of Public Law 105–277).

36 (d) Authority to exempt from consent provision

37 (1) In general

38 A Federal regulatory agency may, with respect to matter within its jurisdiction,
39 by regulation or order issued after notice and an opportunity for public comment,
40 exempt without condition a specified category or type of record from the
41 requirements relating to consent in section 7001(c) of this title if such exemption
42 is necessary to eliminate a substantial burden on electronic commerce and will not
43 increase the material risk of harm to consumers.

1 (2) Prospectuses

2 Within 30 days after June 30, 2000, the Securities and Exchange Commission
3 shall issue a regulation or order pursuant to paragraph (1) exempting from section
4 7001(c) of this title any records that are required to be provided in order to allow
5 advertising, sales literature, or other information concerning a security issued by
6 an investment company that is registered under the Investment Company Act of
7 1940 [15 U.S.C. 80a-1 et seq.], or concerning the issuer thereof, to be excluded
8 from the definition of a prospectus under section 77b(a)(10)(A) of this title.

9 (e) Electronic letters of agency

10 The Federal Communications Commission shall not hold any contract for
11 telecommunications service or letter of agency for a preferred carrier change, that
12 otherwise complies with the Commission's rules, to be legally ineffective, invalid,
13 or unenforceable solely because an electronic record or electronic signature was
14 used in its formation or authorization.

15 **§ 7005. Studies**

16 (a) Delivery

17 Within 12 months after June 30, 2000, the Secretary of Commerce shall conduct
18 an inquiry regarding the effectiveness of the delivery of electronic records to
19 consumers using electronic mail as compared with delivery of written records via
20 the United States Postal Service and private express mail services. The Secretary
21 shall submit a report to the Congress regarding the results of such inquiry by the
22 conclusion of such 12-month period.

23 (b) Study of electronic consent

24 Within 12 months after June 30, 2000, the Secretary of Commerce and the
25 Federal Trade Commission shall submit a report to the Congress evaluating any
26 benefits provided to consumers by the procedure required by section
27 7001(c)(1)(C)(ii) of this title; any burdens imposed on electronic commerce by
28 that provision; whether the benefits outweigh the burdens; whether the absence of
29 the procedure required by section 7001(c)(1)(C)(ii) of this title would increase the
30 incidence of fraud directed against consumers; and suggesting any revisions to the
31 provision deemed appropriate by the Secretary and the Commission. In conducting
32 this evaluation, the Secretary and the Commission shall solicit comment from the
33 general public, consumer representatives, and electronic commerce businesses.

34 **§ 7006. Definitions**

35 For purposes of this subchapter:

36 (1) Consumer

37 The term "consumer" means an individual who obtains, through a transaction,
38 products or services which are used primarily for personal, family, or household
39 purposes, and also means the legal representative of such an individual.

40 (2) Electronic

1 The term “electronic” means relating to technology having electrical, digital,
2 magnetic, wireless, optical, electromagnetic, or similar capabilities.

3 (3) Electronic agent

4 The term “electronic agent” means a computer program or an electronic or other
5 automated means used independently to initiate an action or respond to electronic
6 records or performances in whole or in part without review or action by an
7 individual at the time of the action or response.

8 (4) Electronic record

9 The term “electronic record” means a contract or other record created,
10 generated, sent, communicated, received, or stored by electronic means.

11 (5) Electronic signature

12 The term “electronic signature” means an electronic sound, symbol, or process,
13 attached to or logically associated with a contract or other record and executed or
14 adopted by a person with the intent to sign the record.

15 (6) Federal regulatory agency

16 The term “Federal regulatory agency” means an agency, as that term is defined
17 in section 552(f) of title 5.

18 (7) Information

19 The term “information” means data, text, images, sounds, codes, computer
20 programs, software, databases, or the like.

21 (8) Person

22 The term “person” means an individual, corporation, business trust, estate, trust,
23 partnership, limited liability company, association, joint venture, governmental
24 agency, public corporation, or any other legal or commercial entity.

25 (9) Record

26 The term “record” means information that is inscribed on a tangible medium or
27 that is stored in an electronic or other medium and is retrievable in perceivable
28 form.

29 (10) Requirement

30 The term “requirement” includes a prohibition.

31 (11) Self-regulatory organization

32 The term “self-regulatory organization” means an organization or entity that is
33 not a Federal regulatory agency or a State, but that is under the supervision of a
34 Federal regulatory agency and is authorized under Federal law to adopt and
35 administer rules applicable to its members that are enforced by such organization
36 or entity, by a Federal regulatory agency, or by another self-regulatory
37 organization.

38 (12) State

39 The term “State” includes the District of Columbia and the territories and
40 possessions of the United States.

41 (13) Transaction

1 The term “transaction” means an action or set of actions relating to the conduct
2 of business, consumer, or commercial affairs between two or more persons,
3 including any of the following types of conduct—

4 (A) the sale, lease, exchange, licensing, or other disposition of (i) personal
5 property, including goods and intangibles, (ii) services, and (iii) any combination
6 thereof; and

7 (B) the sale, lease, exchange, or other disposition of any interest in real property,
8 or any combination thereof.

9 Subchapter II: Transferable Records

10 § 7021. Transferable Records

11 (a) Definitions

12 For purposes of this section:

13 (1) Transferable record

14 The term “transferable record” means an electronic record that—

15 (A) would be a note under Article 3 of the Uniform Commercial Code if the
16 electronic record were in writing;

17 (B) the issuer of the electronic record expressly has agreed is a transferable
18 record; and

19 (C) relates to a loan secured by real property.

20 A transferable record may be executed using an electronic signature.

21 (2) Other definitions

22 The terms “electronic record”, “electronic signature”, and “person” have the
23 same meanings provided in section 7006 of this title.

24 (b) Control

25 A person has control of a transferable record if a system employed for
26 evidencing the transfer of interests in the transferable record reliably establishes
27 that person as the person to which the transferable record was issued or
28 transferred.

29 (c) Conditions

30 A system satisfies subsection (b) of this section, and a person is deemed to have
31 control of a transferable record, if the transferable record is created, stored, and
32 assigned in such a manner that—

33 (1) a single authoritative copy of the transferable record exists which is unique,
34 identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6),
35 unalterable;

36 (2) the authoritative copy identifies the person asserting control as—

37 (A) the person to which the transferable record was issued; or

38 (B) if the authoritative copy indicates that the transferable record has been
39 transferred, the person to which the transferable record was most recently
40 transferred;

1 (3) the authoritative copy is communicated to and maintained by the person
2 asserting control or its designated custodian;

3 (4) copies or revisions that add or change an identified assignee of the
4 authoritative copy can be made only with the consent of the person asserting
5 control;

6 (5) each copy of the authoritative copy and any copy of a copy is readily
7 identifiable as a copy that is not the authoritative copy; and

8 (6) any revision of the authoritative copy is readily identifiable as authorized or
9 unauthorized.

10 (d) Status as holder

11 Except as otherwise agreed, a person having control of a transferable record is
12 the holder, as defined in section 1–201(20) of the Uniform Commercial Code, of
13 the transferable record and has the same rights and defenses as a holder of an
14 equivalent record or writing under the Uniform Commercial Code, including, if
15 the applicable statutory requirements under section 3–302(a), 9–308, or revised
16 section 9–330 of the Uniform Commercial Code are satisfied, the rights and
17 defenses of a holder in due course or a purchaser, respectively. Delivery,
18 possession, and endorsement are not required to obtain or exercise any of the
19 rights under this subsection.

20 (e) Obligor rights

21 Except as otherwise agreed, an obligor under a transferable record has the same
22 rights and defenses as an equivalent obligor under equivalent records or writings
23 under the Uniform Commercial Code.

24 (f) Proof of control

25 If requested by a person against which enforcement is sought, the person
26 seeking to enforce the transferable record shall provide reasonable proof that the
27 person is in control of the transferable record. Proof may include access to the
28 authoritative copy of the transferable record and related business records sufficient
29 to review the terms of the transferable record and to establish the identity of the
30 person having control of the transferable record.

31 (g) UCC references

32 For purposes of this subsection, all references to the Uniform Commercial Code
33 are to the Uniform Commercial Code as in effect in the jurisdiction the law of
34 which governs the transferable record.

35 Subchapter III: Promotion of International Electronic Commerce

36 **§ 7031. Principles Governing the Use of Electronic Signatures in International Transactions**

37 (a) Promotion of electronic signatures

38 (1) Required actions

39 The Secretary of Commerce shall promote the acceptance and use, on an
40 international basis, of electronic signatures in accordance with the principles
41 specified in paragraph (2) and in a manner consistent with section 7001 of this

1 title. The Secretary of Commerce shall take all actions necessary in a manner
2 consistent with such principles to eliminate or reduce, to the maximum extent
3 possible, the impediments to commerce in electronic signatures, for the purpose of
4 facilitating the development of interstate and foreign commerce.

5 (2) Principles

6 The principles specified in this paragraph are the following:

7 (A) Remove paper-based obstacles to electronic transactions by adopting
8 relevant principles from the Model Law on Electronic Commerce adopted in 1996
9 by the United Nations Commission on International Trade Law.

10 (B) Permit parties to a transaction to determine the appropriate authentication
11 technologies and implementation models for their transactions, with assurance that
12 those technologies and implementation models will be recognized and enforced.

13 (C) Permit parties to a transaction to have the opportunity to prove in court or
14 other proceedings that their authentication approaches and their transactions are
15 valid.

16 (D) Take a nondiscriminatory approach to electronic signatures and
17 authentication methods from other jurisdictions.

18 (b) Consultation

19 In conducting the activities required by this section, the Secretary shall consult
20 with users and providers of electronic signature products and services and other
21 interested persons.

22 (c) Definitions

23 As used in this section, the terms “electronic record” and “electronic signature”
24 have the same meanings provided in section 7006 of this title.

**“RELATIONSHIP TO ELECTRONIC SIGNATURES
IN GLOBAL AND NATIONAL COMMERCE ACT”**

THE STANDARD SECTION IN UNIFORM AND MODEL ACTS

The Standard Section in uniform and model acts titled: “Relationship to Electronic Signatures in Global and National Commerce Act” (known colloquially as E-Sign) provides an express defense against preemption by E-Sign for uniform and model acts that provide for electronic records, signatures and communications. E-Sign was enacted into federal law in 2000. (15 USC 7001 et seq) It principally governs the legal validity of electronic records and signatures in private and governmental transactions in the United States. It overcomes statute of frauds requirements that continue to retain paper only and manual signature only limitations. E-Sign expressly provides that state law governing electronic records and signatures will not be preempted by federal law if they are consistent with the intent of E-Sign and “make specific reference to this Act,” even though the effect may be “to modify, limit, or supersede” E-Sign’s rules. (15 USC 7002(a)) The standard section in uniform or model acts simply states that the specific act conforms to the requirements of 15 USC 7002(a) (Section 102 of E-Sign), thereby avoiding any claim that federal law preempts provisions in that act. Since 1999, all uniform and model acts have provisions that provide for electronic records and signatures. They are, in fact, drafted to be consistent with E-Sign and the Uniform Electronic Transactions Act, which the NCCUSL promulgated in 1999. The probability for conflict between state and federal law is, therefore, very limited to non-existent with respect to uniform and model acts. The Standard Section further immunizes them from any claims for conflict by meeting the express technical requirements of E-Sign.