

EXHIBIT 4
DATE 4/12/2011
SB 354

Wheat, Mike

From: Kieran Marion [kmarion@uniformlaws.org]
Sent: Wednesday, April 06, 2011 4:50 PM
To: Kieran Marion; Wheat, Mike
Cc: fryp@socket.net; Joseph Colquitt
Subject: RE: UUFDA Montana - ESIGN Boilerplate Problem (Resending - Fixing Typo)

Importance: High

Justice Wheat,

Thank you for your question on section 8 of UUFDA.

This language, which we refer to in-house as the "ESIGN Boilerplate," gets a lot of questions, and it goes into virtually every uniform act that is drafted. In 1999, the ULC promulgated the Uniform Electronic Transactions Act ("UETA"), and Congress followed suit in 2000 with the federal Electronic Signatures In Global and National Commerce Act ("ESIGN"). Together, UETA (adopted in 49 jurisdictions, including Montana) and the federal law form the basic law for e-commerce and how electronic signatures and documents are equated to manual versions in transactions.

Basically, the federal law's provisions expressly preempt state law in its covered area, with several express exceptions. First, if the state law enactment is an original and uniform adoption of UETA (or is wholly consistent with ESIGN's provisions), or alternatively, if it is a later-passed law that potentially contemplates electronic activity, the federal law expressly will allow certain of its provisions to be trumped in favor of the operation of state law. BUT, if the state law in question is a later-passed, post-UETA law, it should specifically reference the federal law along with the intent for the new state law to control. This language is that reference for later-passed laws, and kicks in to the extent that you might have any potential electronic activity under a given law. ESIGN does not allow state law to trump several of its notice provisions (consumer, judicial, etc.), which are the sections of federal law referenced in the language.

So essentially, the section does specifically state that state law will govern but ONLY to the extent that the federal law expressly allows it to do so.

Hopefully that's helpful? I have also cc'ed Joe Colquitt (our Drafting Committee Reporter and ULC Alabama Commissioner) and Pat Fry, our Chair of the UETA Drafting Committee, in case she can help with a truly expert perspective – she's one of our best!

Thank you,
Kieran

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