

## Electronic Signatures in Global and National Commerce Act (ESGNCA)

**PURPOSE:** To permit and encourage the expansion of electronic commerce through free market forces rather than governmental restrictions and mandates by promoting the validity, integrity and reliability of such transactions.

### **FACTS:**

- ? The bill will replace pen and paper signatures and gives validity and reliability to the use of electronic signatures.
- ? E-signatures can take several forms: a name typed at the end of a document, a digitized image of a handwritten signature, or a “digital signature” composed of a string of letters and numbers that can be unscrambled with encryption software.
- ? ESGNCA preempts state laws by setting a national benchmark for electronic signatures.
- ? According to the bill, no document will be denied legally binding status just because it is in electronic form.
- ? The law will help e-commerce thrive by giving the consumer confidence and trust that their transaction is secure and legally binding.
- ? The Inslee Amendment to the bill adds an “opt in” provision, meaning businesses are required to get consumer consent before substituting electronic copies of contracts, loans, etc. for paper ones.
- ? Once consumers do “opt in” they can do everything from open a brokerage account and sign a check to finalize a mortgage online.
- ? The law gives the Government the ability to do e-signatures when it comes to commercial transactions, which will make their contractual dealings faster and easier than the traditional pen and paper method.
- ? *Positive Aspects of ESGNCA:*
  - o President Clinton said that online signers are guaranteed the same protections they would receive when signing a paper contract.
  - o The law includes consumer protection provisions that require certain documents to still be transmitted on paper. These documents include: cancellation of basic services such as water, power and gas; court orders; eviction notices; cancellation of health or life insurance; product recalls, and paperwork to accompany the shipment of hazardous materials.
  - o By providing Government documents online and giving citizens the ability to sign them using a digital signature, the law makes Government agencies more accessible to the people.

- o The President believes that firms could potentially save billions of dollars by sending and retaining statements and other documents in electronic form.
  - o In the future warehouses previously housed with paper copies of documents will be replaced with a server the size of a VCR.
- ? *Negative Aspects of ESGNCA:*
- o Privacy advocates are concerned that this law could lead to everyone having a digital ID code or number that could be used to track their personal information.
  - o The bill does not detail which technology should be used to identify and authenticate the parties agreeing to a contract online.
  - o It puts the poor or those who do not have access to a computer and the computer illiterate at a disadvantage because they will be unable to conduct e-signature business.
  - o Challengers of the law also say that businesses could unfairly penalize those buyers who want a physical document.
  - o Opponents of the law said that the bill does not establish significant consumer protections against forgery of electronic signatures.
- ? The law takes effect on October 1, 2000, but as of March 1, 2001 companies may begin the electronic retention of legal records such as mortgages and financial securities.

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