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seen too many times, and I am shocked that a cabinet secretary would be so clearly out of touch with reality.

Secretary Shalala, I challenge you to meet me in any American community at any time for a look at the food banks and soup kitchens filled with senior citizens, children, American veterans, and working families.

Hunger is a fact. It is the underbelly of our booming economy. You can choose not to look at it; but it is real, and it is ugly. It plagues 26 million of our fellow Americans each year. Please come take a look.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER pro tempore (Mr. WATTS of Oklahoma). Members should direct their remarks in debate to the Chair and not to others in the second person.

CELEBRATING FLAG DAY

(Mr. GIBBONS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GIBBONS. Mr. Speaker, ladies and gentlemen, today is Flag Day, of course, and a day to honor the symbol of our Nation, a symbol of our independence and a symbol of American ideals.

Historically, the idea of celebrating an annual holiday honoring the United States flag and the anniversary of the official adoption of "The Stars and Stripes" is believed to have first originated in 1885 by a school teacher in Wisconsin.

In the years following, the tradition grew; and in 1916, President Woodrow Wilson established Flag Day by a proclamation.

Over 3 decades later, President Truman would sign an Act of Congress officially designating June 14 of each year as National Flag Day.

I, like many Americans, look at our flag and see our history, our triumphs; and most importantly, I see our future.

Today is a day to unite to pay tribute to the symbol which has grown with our country and represented our Nation's ideas since it first flew as "The Stars and Stripes" in 1777.

On this day, I am proud to honor our flag and all that it represents.

PAYING TRIBUTE TO THE PEOPLE OF TROY

(Mr. MCNULTY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MCNULTY. Mr. Speaker, on this Flag Day 2000, I rise to salute and pay tribute to the people of Troy and surrounding areas for the wonderful display of patriotism which I witnessed over this past weekend. On Sunday, tens of thousands of people from Troy and surrounding areas came together to celebrate the fact that we live in the freest and most open democracy on the face of the Earth.

They actually recognized the fact that freedom is not free, and that we paid a tremendous price for it. And so today, I remember with gratitude all of those who, like my brother, Bill, made the supreme sacrifice, all of those who in the past wore the uniform of the United States military, like some of the people I am looking at in this very Chamber.

Also, I thank all of those who currently are in active service in our military protecting our interests here at home and around the globe.

□ 1100

CHRISTIAN MEN'S FREEDOM FORUM 2000

(Mr. CLYBURN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CLYBURN. Mr. Speaker, on July 4, 2000, I will join the gentleman from Maryland (Mr. CUMMINGS), the gentleman from Florida (Mr. HASTINGS), the gentlewoman from Ohio (Mrs. JONES), the gentlewoman from Florida (Ms. BROWN) and the gentleman from Mississippi (Mr. THOMPSON) at the Firstar Center in Cincinnati, Ohio. As members of the Congressional Black Caucus, we join in support of the goals and objectives of the Christian Men's Freedom Forum 2000, which will convene on the eve of the African Methodist Episcopal Church's Quadrennial.

We will interact with men and women from across the United States who appreciate and recognize the positive effect an open and honest exchange of ideas can bring to the body politic in this great Nation. It is the goal of the Christian Men's Freedom Forum'S National Chair, Bishop Vincent R. Anderson, whose keen vision set in motion this extraordinary challenge to acknowledge our ideological differences while embracing our core common ideals. As we prepare to celebrate Independence Day, all Americans should seek to embrace and replicate this initiative.

Bishop Anderson is to be congratulated for this tremendous undertaking. This nonpartisan, nondenominational forum is the kind of collective effort that has, in the past, and could today, help to close the gap between those who have strong voices and those who feel they have no voices at all.

Mr. Speaker, let me close with the hope that on Independence Day we will find it within ourselves to not only commemorate our Nation's founding, but also to celebrate such constructive undertakings.

WORLD AWAITING RESULTS OF IRANIAN TRIAL OF JEWISH HOSTAGES

(Mr. WEINER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WEINER. Mr. Speaker, today the world awaits the result of the show trial of 13 Jewish hostages in Iran. They have been held for over a year simply because they are Jewish. Without evidence, without a chance to confront their accusers, without lawyers of their own choosing, these 13 hostages have been subjected to a kangaroo court.

But Iran's new so-called moderate government is also on trial here. If Iran does not free these hostages, and soon, it should be a clear sign that that country has not changed its stripes.

Our response? Well, we should offer no more favorable trade agreements, such as the ones we did for rugs and pistachios recently. We should offer no more IMF or World Bank loans.

The fate of these 13 Iranian Jewish hostages should be our litmus test of Iran's new-found moderation. The world, Mr. Speaker, is watching.

MOURNING CHILD VICTIMS OF GUN VIOLENCE

(Ms. JACKSON-LEE of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, today is Flag Day, and I rise to salute the flag, for the flag symbolizes freedom. But it should also symbolize safety.

This evening I will mourn the thousands upon thousands of children who die every day at the hand of gun violence. It is time that we recognize as Americans that we can pass real gun safety legislation in this House and in the Senate, if it would adhere to the values of this Nation.

How tragic it is in my own community, Sunday, June 11, that a 14-year-old girl shot and killed a 16-year-old boy; to find out that a 3-year-old accidently shot himself in the foot with his father's gun, found in a linen closet; that on June 8, a 12-year-old middle school student in Chesapeake, Virginia, was charged after he brought a gun to school; that a 13-year-old shot a teacher; that a 6-year-old-shot another 6-year-old; and that the overall rate of firearm deaths for children younger than 15 years of age is 12 times greater than the other 25 industrialized nations.

How much longer will we mourn? It is time now to stand up for our children and pass real gun safety legislation.

PROVIDING FOR CONSIDERATION OF S. 761, ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

Mr. SESSIONS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 523 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

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H. RES. 523

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (S. 761) to regulate interstate commerce by electronic means by permitting and encouraging the continued expansion of electronic commerce through the operation of free market forces, and other purposes. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read.

The SPEAKER pro tempore. The gentleman from Texas (Mr. SESSIONS) is recognized for 1 hour.

Mr. SESSIONS. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to my friend, the gentleman from Ohio (Mr. HALL), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

(Mr. SESSIONS asked and was given permission to revise and extend his remarks, and include extraneous material.)

Mr. SESSIONS. Mr. Speaker, the legislation before us today on this beautiful Flag Day provides for the consideration of S. 761, the Electronic Signatures in Global and National Commerce Act. The rule waives all points of order against the conference report and against its consideration. The rule provides that the conference report shall be considered as read.

Mr. Speaker, today the House takes a step forward towards promoting the new economy and facilitating the growth of electronic commerce. Important legislation to update the laws that govern how business is transacted will be considered by Congress with the passage of this law. Furthermore, the underlying legislation will allow all Americans to benefit from the efficiencies resulting from advances in technology.

Under current law, contracts and agreements among businesses and individuals are considered binding when the second party indicates agreement to terms with that signature. This system has worked fine for many years. However, the widespread use of computers and electronic means of communication have made this system antiquated and inefficient. The Electronic Signatures in Global and National Commerce Act will ensure that the United States will remain the leader in the 21st Century marketplace by giving legal and uniform status to electronic signatures. Electronic signatures would become binding, just like a handwritten signature.

Under the legislation, Americans would still be covered by the existing consumer protection laws should they choose to use this type of signature. Additionally, the legislation requires consent of the consumer to use electronic signature. No consumer would be forced into using electronic signature if they would feel more comfortable using a handwritten or normal signature.

Electronic signatures will change the way businesses interact with other businesses, how business works with their customers, and even how government serves its citizenry. Electronic signatures will make it easier for people to pay their bills, apply for a loan, trade securities, purchase goods, and contract services. Electronic signatures will also give greater protections to consumers through advanced encryption technologies. Not only is it far more difficult to fraudulently use an electronic signature than traditional signature, but electronic signatures leave a trail that would lead to the door of those who seek to defraud us.

Much has been done by this Congress to encourage the development of so-called new economy industries. Last summer, this Congress passed legislation that helped all but eliminate the computer glitch known as the Y2K bug. A few months later, the Republican majority brought legislation to the House floor to protect patents for Americans inventors and innovators. Recently, the House passed a moratorium on taxation of the Internet.

The legislation we are considering today is yet another effort by the Republican-led Congress to ensure that our Nation remains at the forefront of the emerging electronic global marketplace.

I would urge my colleagues to support this rule.

Mr. Speaker, I reserve the balance of my time.

Mr. HALL of Ohio. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank the gentleman from Texas (Mr. SESSIONS) for yielding me time.

Mr. Speaker, as my colleague from Texas has explained, this rule waives all points of order against the conference report.

Electronic commerce is growing at an explosive rate. In a recent survey of top business executives, it indicates that in the next 2 years, many companies expect a seven-fold increase in their Internet sales. By the year 2002, on-line sales could make up 25 percent of total sales. That is a revolution in the way Americans do business.

However, our laws are still written for the pen and paper days. We must adopt our legal system to keep pace with the digital age.

The measure before us would give legal validity to electronic signatures on business transactions, and this will help e-commerce by providing a uniform standard among the states. I am pleased that this conference agreement includes protections aimed at reducing consumer fraud.

This conference agreement represents a bipartisan consensus with broad support among high-tech companies, State Attorneys General and consumer groups. My understanding is that the President will sign it. It looks like a good bill and a good rule. I support the rule and the conference report.

Mr. Speaker, I reserve the balance of my time.

Mr. SESSIONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, a lot of the work that has been done on this, not only the bill but also the conference report, is directly as a result of those Members who serve on the Committee on Commerce. Today I am pleased to be with the gentleman from Louisiana (Mr. TAUZIN), who is a part of not only this negotiation, but also the ongoing effort to make this bill and further bills that may be in our future better for consumers of America.

Mr. Speaker, I yield such time as he may consume to the gentleman from Louisiana (Mr. TAUZIN).

(Mr. TAUZIN asked and was given permission to revise and extend his remarks.)

Mr. TAUZIN. Mr. Speaker, I rise in support of this rule and encourage Members not only to support the rule, but to adopt this conference report. This is the culmination of several attempts in this Congress and other Congresses to find a compromise with the other body and with Members of this body that would properly and legally make valid signatures of Americans, and, in fact, signatures of citizens of the world, in the electronic commerce age, and also to make the records, electronic records behind the documents and agreements we reach electronically, legally binding records upon the parties who sign those agreements and enter into those contracts in the electronic age.

Americans tell us that privacy and security are the two biggest concerns as we enter this new e-commerce age, making sure in effect that as we enter this age, that citizens who take advantage of electronic commerce, both to sell their products and services, or to purchase them, will have the knowledge that, number one, they are dealing in a secure system, so this bill is written in a way that is technologically neutral and calls upon the genius and creativity of this amazing new marketplace to develop the highly encrypted products that are going to make commerce in the electronic age even more secure than commerce in the paper age.

Secondly, I want to commend this House and this Congress for the activities we have already undertaken to protect privacy in the key areas that are most of concern to Americans, the areas of medical information privacy, the area of children's information privacy, and, most recently, in the financial services bill, in protecting people's privacy as they deal with their financial records, with mortgages and bank accounts and security transactions in the Internet age.

I also want to point out that there are some people that are afraid of this age. I suppose every time there were major changes in the way Americans did business, in the way we interacted with one another, there was fear.

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When the telegraph first came upon the scene, I can assure you there were the similar fears that the telegraph was somehow going to create a world that people would live in fear of. In fact, there is a wonderful book called "The Victorian Internet" which traces the history of the telegraph and speaks of the same concerns that people in the world had about the telegraph that we hear about the Internet today.

But what was true with the telegraph is also true with the Internet and electronic commerce: It is upon us, it is an age which is arriving rapidly, and more and more Americans are finding that they can have more efficient businesses and more efficient transactions when they in fact become conversant with the Internet and conversant with the possibilities of the Internet in learning and trading and in long distance medicine, in amazing new opportunities it will make for the people of the world.

This bill is a major step forward in making sure that that world is secure; that there are legally binding, responsible actions taken as a result of interacting on the Internet; that when I sell my products to you and you sign up, it is as valid a deal as if you came to my store and purchased my products.

□ 1115

I can count on them to honestly keep their contract, and they can honestly count on me to live up to my agreement to sell them those products and services according to the terms of our agreement.

Like many bills, this is a compromise. This bill contains in my opinion a little overreach. It contains a little too much bureaucracy, a little too much in the way in which we insist that people consent first to join this Internet world. It may need some work in the future for us to improve it.

I am the first to tell Members it is not perfect in that regard. It literally goes overboard to make sure that when people consent to be part of the electronic age, that they really consent. It even has language in it that says that we have to prove that we are capable of receiving all the documents and notices and information that we are consenting to be part of in the electronic age; not just giving our e-mail address as we would give our phone number and address in the paper age, but actually proving that our computer is capable of handling all the information that is going to be faxed or e-mailed to us as part of the electronic transaction.

Let me also say that nothing in this bill requires one to be part of this electronic commerce age if they do not want to be, no more than one is required to own a credit card if they do not want to. My father, whom I lost 9 years ago and miss dearly, and will this summer when we always celebrate his birthday, I do not think he ever owned a credit card. He never made a credit purchase. I have made up for it, believe me. I use a lot of credit.

But the bottom line is that nothing requires an American to use the services of the Internet or to use this bill to sign electronically for purchases and sales. This is purely voluntary. It is an opt-in system. We have to consent to it. We have to know what we are consenting to. We have to prove we are capable of literally giving the consent, prove we have the equipment and means by which to engage in electronic business in this new age. It is a pretty extensive consent agreement provision.

It also contains language making sure that the consumer protection laws of every State are incorporated, that they are maintained. Nothing takes away from the protections that consumers now enjoy from those who would like to defraud us.

The beautiful thing about this new age is that electronic signatures can be more precise, much more precisely identified, than the signature we write on a paper that can be copied by some people. Electronic signatures with heavy encryption can be much more secure than the world of paper we now live in.

Secondly, it can be much more efficient. I want to invite all Americans to think of this. When we used to have a business in the old brick and mortar age before the Internet that depended upon citizens being able to come into the store, get to the store in a car, by bike, by foot, we had a limited marketplace.

Today with the Internet the marketplace is global. Today, with a little store in Chack Bay, Louisiana, selling tobasco or other great seasonings, we can enjoy now a worldwide market on the Internet and sell to a whole community of people that is global.

Making that system work efficiently and creating legally binding agreements in that system is what this bill is all about, literally to facilitate global commerce. The bill contains features that insist that our government negotiate with other countries, to insist that they have similar legally binding provisions in their laws so when our citizens interact and sell products to their citizens or vice versa, when we buy products from them, we both have legally binding agreements, just as much as we do here in the good old U.S.A. on this great Flag Day.

This is again not a perfect bill, it may need refinements in the future. I think it is a little too bureaucratic than I would like, but it is a great step forward. I endorse it fully. This rule ought to be adopted. We need to pass this bill.

Mr. Speaker, I would urge my colleagues not only to pay this bill some attention, but also to do what they can to inform the citizens on their own websites about this new capability that Congress is enacting today to further advance the security of transaction in the e-commerce age and to further advance the ability of Americans to be part of this incredible new opportunity age that the Internet and e-commerce is going to make for all of our citizens.

Mr. SESSIONS. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. DREIER), who has been an active participant in ensuring that not only e-commerce but the financial services of this country are not only market-based and leading edge, but also consumer-friendly.

(Mr. DREIER asked and was given permission to revise and extend his remarks.)

Mr. DREIER. Mr. Speaker, I thank my friend for yielding time to me. I congratulate him on the fine work that he has done on this extremely important issue.

Mr. Speaker, I rise in strong support of this rule because it provides for the consideration of a conference report that is critically important to businesses and consumers in the 21st century information economy.

Senate Bill 761 will empower consumers of financial products and other goods and services, and establish the framework for competition in the emerging electronic marketplace. For this, I want to applaud the gentleman from Virginia (Chairman BLILEY) for his strong efforts and the great work he has done in moving this legislation forward.

I know I saw my friend, the gentleman from Louisiana (Mr. TAUZIN) someplace. There he is, and I want to congratulate him, too, for all the effort he has put into this.

Enactment of this e-sign conference report will transform the way we work, the way we are educated, the way we contract for goods and services, and the way we are governed. The next great transition in the 21st century economy is likely to result in many large corporations moving the bulk of their inventory, production, and supply operations to an online environment.

Establishment of a clear, uniform national framework governing both digital signatures and records will allow American businesses to become significantly more efficient and productive through business-to-business use of the Internet.

Mr. Speaker, as important as this measure is to our high-tech economy, it is not just about the way business will do business. Our actions today will impact people. We all know how the quality of life of so many hard-working American families is tied directly to the amount of quality time away from the work and chores of daily life.

This landmark legislation will make it easier for people using just a computer and a modem to pay their bills, apply for mortgages, trade securities, and purchase goods and services wherever and whenever they choose. That will be a win-win clearly for millions of American working families.

As important as this bill is to today's global electronic marketplace, we need to be prepared to deal with the reality that the pace of innovation and change in the new Internet economy has a direct impact on the pace of legislative innovation required here in the Congress.

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It is not a criticism of this very strong legislation to recognize that when the U.S. computer industry operates with a 3-month innovation cycle, the new economy may render some of its provisions obsolete unless we move quickly on follow-up legislation.

There is a need, for example, to clarify the legality and reliability of electronic authentication applications. There is also concern that S. 761 will impose unnecessary burdens on businesses and consumers, and the ambiguities in the conference report may actually create new avenues for class action litigation.

For example, under the conference report, consumers who initially consent in paper and ink to receive electronic records will need to either reconsent or reconfirm or confirm their consent by electronic means. Then each time there are changes in any of the hardware or software requirements for accessing a record that consumers have consented to receive electronically, the provider must obtain new consents from all of the affected consumers.

In addition, it must be possible to "reasonably demonstrate" that a consumer will be able to access the various forms of electronic records that the consumer has consented to receive. This is a requirement that has no parallel in the paper world. To ensure that consumers can get the full benefits of these electronic records provisions, consumers should only need to consent once either on paper or electronically, with the ability to withdraw their consent if changes create a problem for them.

There is concern that S. 761 may actually create a new basis for denying legal effect to electronic records if they are not in a form that could be retained and accurately reproduced for later reference by any parties who are entitled to retain them. It is my hope, Mr. Speaker, that Congress will be able to respond effectively to these and other challenges that would be brought on by the rapidly changing nature of the Internet economy.

In the meantime, as I have said, this is a bill that deserves overwhelmingly strong bipartisan support. I join again in congratulating my colleagues, who have worked long and hard on this. I am proud to have been a strong supporter of this effort for the past several years, and I urge adoption of the rule and the conference report.

Mr. HALL of Ohio. Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Mr. Speaker, I thank the gentleman from Ohio for yielding time to me.

Mr. Speaker, I rise to support the conference report on the e-sign bill. I want to congratulate the gentleman from Virginia (Chairman BLILEY) for his excellent leadership on this bill, along with the gentleman from Michigan (Mr. DINGELL), the gentleman from Louisiana (Mr. TAUZIN), the gentleman from Ohio (Mr. OXLEY). This is an historic day on the floor of the House.

The legislation will create a legal framework for electronic commerce in the new economy, but the new economy must have old values. That is the formula that we are constructing here on the floor today. It will grow, electronic commerce, as an increasingly important part of our economy, and increasingly it will be important for us to be able to authenticate and to validate electronic transaction.

This is important for both ends of the transaction. For both the buyer and the seller there has to be a way in which there is authentication. There has to be a way in which there is validation.

As we come here today, we begin the new era of a digital John Hancock which can ensure that an electronic signature is valid and that records are established that guarantee that both ends of the transaction are in fact valid.

Today many secure electronic technologies such as cryptographic digital signatures allow consumers and businesses to send a file across the Internet embodying a contract, a signed contract, that can be authenticated on the other end of the transmission. The increased comfort people will have with the technology and their legal rights will serve to enhance electronic commerce and continue to drive electronic growth.

Think of this: In 1999, there was $3.4 trillion worth of electronic commerce in the United States, $3.4 trillion. How much of that was online? Pick a number in your own minds of the $3.4 trillion; $20 billion, that is all, about 7/10ths of 1 percent. As each year goes by there is going to be a dramatic increase.

In order to make people feel comfortable to move their transactions from the real world to the virtual world, we must give them the same kinds of guarantees. This legislation strikes the right balance by clarifying that electronic contracts or agreements that are otherwise required to be in writing must accurately reflect the information set forth in the contract after it was first generated, and must remain accessible for later reference, transmission, and printing.

So Mr. Speaker, this is a great day. I think a new era is dawning. I want to congratulate the gentleman from Virginia (Mr. BLILEY) once again for his great leadership, and the gentleman from Michigan (Mr. DINGELL), the gentleman from Louisiana (Mr. TAUZIN), and the gentleman from Ohio (Mr. OXLEY).

Mr. Speaker, I rise to support the conference report on the ESIGN bill and I want to congratulate Chairman BLILEY for his fine work in the conference and commend Mr. DINGELL, Mr. TAUZIN, and Mr. OXLEY for their excellent work as well.

We return to the House today with a conference report that advances the needs of the Digital Age without compromising fundamental consumer protections.

This legislation provides a legal framework for electronic commerce in the new economy. It's clear that as electronic commerce grows it will become increasingly important to authenticate and validate electronic transactions. This is important for both ends of any transaction, for both the buyer and the seller. Effective authentication of electronic signatures will help to reduce fraud and financial losses.

Technology exists today that permits an electronic signature—a 'digital John Hancock'—to be affixed to computer files in a manner that is difficult to reproduce. Today, many secure electronic technologies such as cryptographic digital signatures, allow consumers and businesses to send a file across the Internet embodying a contract, a signed contract, that can be authenticated on the other end of the transmission. The increased comfort that people will have with the technology and their legal rights will serve to enhance electronic commerce and continue to drive economic growth.

Many current laws, however, do not legally recognize the validity of electronic signatures, contracts, or records. Many laws, regulations and procedures require "written," real world signatures on documents, or the provision of "paper" records, both for commercial transactions.

Without question many existing requirements for written records are antiquated whose provision or availability in an electronic version of the same information can suffice to meet any legal requirements or policy goals.

However, there are many other existing requirements for written records which are not antiquated and whose provision or availability in written form serves clear consumer protection goals. As we progress into the digital future, this conference report is careful not to jettison prematurely many important consumer protection provisions simply to demonstrate our enthusiasm for all things digital.

The legislation strikes the right balance by clarifying that electronic contracts or agreements that are otherwise required to be in writing must accurately reflect the information set forth in the contract after it was first generated and must remain accessible for later reference, transmission, and printing. The conference report also preserves a consumers right to receive records in writing. If a consumer wants a record that is required to be in writing to be provided in writing, a consumer still has that right while allowing other consumers, who may prefer to receive records in electronic form, to elect to do so.

This conference report also fixes and vastly improves the process by which consumers may "opt-in" to receiving electronic records. A consumer wishing to receive specific records in electronic form must seperately and affirmatively consent to the provision of such records in electronic form in order for a vendor to provide electronic records.

In addition this legislation also safeguards the consumer protection policies that have historically served to adequately inform consumers of potentially life-changing events or safety issues. The conference report wisely requires written notices for any notice dealing with court orders and official court documents—including legal briefs and court pleadings, any notice concerning the cancellation of utility services such as water, heat or power service, for foreclosure or eviction notices. It also would require the continuation of written

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notices for the cancellation or termination of health insurance or benefits or life insurance benefits.

We are still a long way from the day when computers will be as ubiquitous as the telephone, but this conference report helps set the legal framework for that day. The "ESIGN" bill takes that important step into the Digital Age.

I again, want to commend Chairman BLILEY on this landmark bill and commend Mr. DINGELL, Chairman TAUZIN, and Mr. OXLEY for their fine bipartisan work.

Mr. Speaker, I also want to mention of few items related to the financial implications of the conference report. As many members may recall, H.R. 1714, the House version of the Conference Report, initially contained a separate securities law title. Although the Conference Report does not include separate securities title, it contains language intended to resolve satisfactorily the various issues that were addressed by the House securities title and which were the subject of SEC Chairman Levitt's April 21, 2000 letter to the conferees.

For example, Section 104(a) of the Conference Report protects standards and formats developed by the SEC for electronic filing systems such as EDGAR and the IARD, as well as for systems are developed by securities industry self-regulatory organization filing systems such as the CRD, which the NASD and the states use for registering securities firms and their personnel.

Section 101(d) recognizes the importance of accuracy and accessibility in electronic records, which is of utmost importance for investor protection and prevention of fraud. Section 104(b)(3) recognizes the need for agencies, such as the SEC, to provide performance standards relating to accuracy, document integrity, and accessibility in their electronic recordkeeping and retention rules. This is intended to preserve requirements such as the SEC's existing electronic recordkeeping rule, Rule 17a–4(f), which specifies that electronic recordkeeping systems must preserve records in a non-rewriteable and non-erasable manner. The Conferees also expect the SEC to work with the securities SROs to the extent necessary to ensure that accuracy, accessibility, and integrity standards also cover SRO recordkeeping requirements in an electronic environment.

Section 104 of the Conference Report specifically permits federal regulatory agencies, such as the SEC, to interpret the law to require retention of written records in paper form if there is a compelling governmental interest in law enforcement for imposing such requirement, and if, imposing such requirement is essential to attaining such interest. For example, we specifically expect the SEC would be able to use this provision to require brokers to keep written records of all disclosures and agreements required to be obtained by the SEC's penny stock rules.

Finally, the Conference Report's consent provisions similar to much of the SECs guidance in the electronic delivery area. Section 104(d)(1) permits agencies such as the SEC to continue to provide flexibility in interpreting consent provisions anticipated by the Conference Report. In addition, a specific provision contained in Section 104(d)(2) anticipates that the SEC will act to clarify that documents, such as sales literature, that appear on the same website as, or which are hyperlinked to, the final prospectus required to be delivered under the federal securities laws, can continue to be accessed on a website as they are today under SEC guidance for electronic delivery.

Mr. HALL of Ohio. Mr. Speaker, I yield myself the balance of my time, although I really do not have much to add. The rule and resolution looks in very good shape. Many of us really support it.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SESSIONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it would be wonderful if we all agreed on all points of legislation like we are agreeing today on this conference report. What we have heard today described is an agreement that we have made between the parties, the Democrats and the Republicans, about a new way of doing business.

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In fact, the agreement that we believe that this conference report represents is not exactly leading edge but it is a beginning. It is a start of an opportunity for consumers, for retailers, for people who are engaged in financial transaction and financial services to encourage a new world that is there.

We have heard the gentleman from Louisiana (Mr. TAUZIN) describe his view and vision, along with the chairman of the Committee on Rules, that they felt like that there were too many roadblocks that are put in the way of consumers and too many things that were required, answers back and forth and limitations being placed upon consumers.

This is a good start and it does not take a complete agreement to have a deal. What we have today is a deal. What we have today is a rule that has been agreed to, where both sides have come to the table, have openly agreed; and so we are going to support this conference report.

I would submit an article of some writing that has been in the paper today about how we are going to have to continue in our endeavor to make sure that in the future that we come back and readdress this issue so that consumers and people engaged in financial services have fewer roadblocks in order to get their job done. I support this rule.

[From the Financial Times, June 12, 2000]

CAVEAT SURFER SHOULD BE THE E-COMMERCE MOTTO

(By Amity Shlaes)

Perhaps the most exciting thing about the new internet world is that it undermines the assumptions of the old one. In the internet world, we get along without many things we were long assured had to be: centralised authority, standardised addresses and so on. Technologies that would have been dismissed as chaotic a few years ago turn out to function very well without extra regulation, thank you.

The new world has already found its own muse—the writer Virginia Postrel. She calls for the combating of what she dubs an ideology of stasis—"the notion that the good society is one of stability, predictability and control, and government's responsibility is to curb, direct or end unpredictable market evolution".

But chaos, even functioning chaos, is not to everyone's liking. Governments these days are desperate to claim the new e-territory, even to dominate it. On the level of instinct, this strikes most people as laughable. Nothing, not even fund-raising controversy, has subjected Al Gore to more ridicule than his statement that he fathered the internet.

This naturally does not stop governments from trying. Fear is their main weapon. Without new protections, they suggest, the internet will give rise to Hollywood-type nightmares—abuses of consumers, online perverts who prey on eight-year-olds, global financial crashes and so on. Some concerns are legitimate—the most serious being Napster—style raids on intellectual property. But governments also raise these issues as a political device.

In this context, the humdrum push-and-pull about bits of technology legislation making their way through the various Western legislatures takes on new meaning. Consider a skirmish in Washington this week about legislation on internet contracts. Like a new British law, it would allow firms and customers to conclude paper-free transactions. The fact that Congress has made the digital signatures bill the centrepiece of new internet legislation should come as good news to freedom-loving types. For contract law is by its nature private: contracts require only two parties, and diminish, even obviate, the need for nosy government.

But the e-signature bill also caught the interest of the centralisers. Lawmakers led by Tom Bliley, a Republican Congressman from Virginia, insisted that the old culture of contracts cannot protect consumers from the fresh dangers of the internet. So they inserted requirements so onerous as to deter online consumers, not a crowd noted for its patience in the first place.

Under the bill as it stood late last week, internet users would have been required to send any number of repeated e-mails reconfirming their consent to the contract at every stage of a transaction, as well as demonstrating that they had absorbed every bit of legal boilerplate. Predictably, this provoked the concern of the Charles Schwabs, Dreyfuses and banks of this world. The financial community has the most to lose if the new law deters customers.

But the extra consumer measures also gave pause to Phil Gramm, chairman of the Senate banking committee. Mr. Gramm is less worried by brokerages than by principle—the principle that the online frontier not be colonised by the old regulatory culture. He points out that the new bill goes beyond anything that already applies in contract law.

"What happened to 'Let the buyer beware?'" he asks. "Common law and a thousand years of paper contracts established duties and responsibilities for people participating in commerce. You don't want to change that relationship so that e-commerce undermines contracts and commerce." On Friday, enough of the obstacles were stripped out to win Mr. Gramm's grudging support, but others remained.

"We have gone from having two different versions of a bill that would have been an A or an A minus, to a low B at best," says James Lucier of Prudential Securities. Henry Judy, a lawyer with the Washington office of Kirkpatrick & Lockhart, has compared US and UK legislation. He says the latter "is broader, but some of the precise consumer issues dealt with by the US legislation are left in the UK bill to later administrative decisions". The British e-consumer is not safe from government fiat—as another bill allowing e-mail surveillance shows.

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Nor are e-signatures the only area where the control question is a matter of legislative controversy. During the spring the US media have made internet privacy for shoppers a huge issue. The finance editor of Consumer Reports has demanded that websites create "in your face" privacy warnings. The Federal Trade Commission is now pushing Congress to regulate websites.

On the tax front, the freedom types have been victorious—but only for now. Lawmakers led by Congressman Chris Cox of California recently succeeded in extending a moratorium on new taxes on the internet. But this expires in five years and many states are lobbying hard for a nationally coordinated sales tax regime.

Across the Atlantic, the European Commission has been lobbying so strongly for new taxing authority that it has stirred the ire of the US Treasury. Of course, it is easier to bash someone else's tax arrangements than to stand firm on taxes at home. Globally, the tax issue remains in play; the internet may end up bringing more taxation, rather than less.

Particularly troubling here is the assumption that the internet is inherently more treacherous than the telegraph, the telephone or any other new medium that went before. That is questionable. A few years into the internet era, we have yet to see the electronic world wreak huge damage. Five months and a few days later, concerns about the Year 2000 bug already seem an irrelevance.

Why not proceed with optimism? After all, we were wise enough to let the internet happen. Now the challenge is to be wise enough to let it grow.

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. BLILEY. Mr. Speaker, pursuant to House Resolution 523, I call up the conference report on the Senate bill (S. 761) to regulate interstate commerce by electronic means by permitting and encouraging the continued expansion of electronic commerce through the operation of free market forces, and for other purposes.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore (Mr. GIBBONS). Pursuant to the rule, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of June 8, 2000, at page H4115).

The SPEAKER pro tempore. The gentleman from Virginia (Mr. BLILEY) and the gentleman from Michigan (Mr. DINGELL) each will control 30 minutes.

The Chair recognizes the gentleman from Virginia (Mr. BLILEY).

GENERAL LEAVE

Mr. BLILEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and to insert extraneous material on the conference report on S. 761.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. BLILEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, for thousands of years dating back to the ancient Egyptians, pen and paper has been the medium by which so much of everyday life has been conducted. Paper has been the lifeblood of commerce for centuries, but that is changing. Now with the Internet age upon us, paper does not have the hold that it once had on so many of us. More and more Americans are getting their news from the Internet rather than a newspaper. E-mail is replacing handwritten letters. Consumers are using e-tickets instead of paper airline tickets. In less than 6 years, the Internet has revolutionized the way people communicate and conduct business.

Every day, the line between what has to be done in paper and what can be done electronically is being moved. The Internet is stretching the creativity and ingenuity of some of the brightest people in our society today. It is altering the practices and lives of all of our Nation's citizens, and much more is to come. It is appropriate that in the first year of the new millennium, Congress is ready to give final approval to the legislation before us today that will further move us from the paper age to the digital age.

I think we are all in agreement that Congress should not do anything that would stifle the growth of the Internet and electronic commerce. That is why 2 years ago the Committee on Commerce began an intensive initiative to better understand the issues surrounding the Internet and electronic commerce. As a result of those hearings, we saw the need to provide legal vitality to electronic documents and electronically signed contracts and agreements if electronic commerce was to grow and flourish. Rather than seeking to regulate, the committee chose to remove those legal roadblocks to unfettered growth of electronic commerce. It has been my mantra that when approaching electronic commerce issues, Congress' first obligation is to do no harm.

Last November, the House overwhelmingly passed H. 1714, the Electronic Signatures in Global and National Commerce Act, better known as E-Sign. The House-passed bill was a very good foundation to get us to this end product.

Working with our colleagues in the other body, we were able to craft a bipartisan consensus conference report that will stand the test of time.

Mr. Speaker, this conference report is founded on a simple premise. Any requirement in law that a contract be signed or that a document be in writing can be met by an electronically signed contract or an electronic document. We are simply giving the electronic medium the same legal effect and enforceability as the medium of paper.

This conference report will allow consumers to engage in a whole host of activities on the Internet that today are not possible. For example, today a consumer can apply for a mortgage or get a quote on a life insurance policy; but when it comes time to close the deal, a consumer must physically sign the contract.

E-Sign will allow the entire transaction to be done electronically, and the transaction will have the same legal effect and enforceability as a paper contract.

Equally important, the conference report extends the same principle to electronic records.

Mr. Speaker, I do want to take a moment to discuss the important consumer provisions in this bill which were the subject of much discussion throughout the negotiating process. First, under E-Sign, engaging in electronic transactions is purely voluntary.

No one will be forced into using or accepting an electronic signature or record. Consumers that do not want to participate in electronic commerce will not be forced or duped into doing so.

Second, all existing Federal and State consumer protection laws remain in place.

Third, we have included a strong consumer consent provision whereby consumers are provided clear disclosure of terms before they consent to any agreement. We also have included an important provision to ensure that consumers will be able to access any electronic record that is sent to them.

Mr. Speaker, E-Sign is about the future. It is about laying the legal foundation of electronic commerce for many years to come. It is about promoting the development of new technologies that will enable consumers and businesses to have a greater certainty and security in their transactions. It is also about developing new products and new services that few of us can even imagine today. E-Sign is the most important high technology vote that this Congress will undertake. If one supports the U.S. high-tech industry, they will vote yes on this bill, which has unanimous support among the high-tech community. A vote in support of S. 761 is a vote in support of providing consumers with great confidence and certainty in on-line transactions. It is a vote in support of allowing businesses to provide new and innovative services on-line.

I urge my colleagues to support the conference report on E-Sign.

Before I conclude, I would like to extend my appreciation to all of the members of the conference committee for their work and thoughtfulness. I extend my thanks to my friend, the gentleman from Michigan (Mr. DINGELL), the ranking member of the Committee on Commerce, for his assistance. In addition, I thank the fine help of the other House conferees, the gentleman from Louisiana (Mr. TAUZIN), the gentleman from Ohio (Mr. OXLEY), and the gentleman from Massachusetts (Mr. MARKEY). Each has made a valuable addition to the process.

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Further, I want to thank the members of the other body for their contributions. Republican and Democrat Senators from the commerce, banking and judiciary committees were critical to reaching final support for the conference report. This is truly a remarkable day, and I thank the participants for helping to bring this overwhelming victory to the American people.

The following statement is intended to serve as a guide to the provisions of the conference report accompanying S. 761, the Electronic Signatures in Global and National Commerce Act. The differences between the Senate bill, House amendment, and substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the managers, and minor drafting and clerical changes.

SHORT TITLE

Senate bill

Section 1 establishes the short title of the bill as the "Millennium Digital Commerce Act."

House amendment

Section 1 establishes the short title of the bill as the "Electronic Signature in Global and National Commerce Act".

Conference substitute

The conference report adopts the House provision.

ELECTRONIC RECORDS AND SIGNATURES IN COMMERCE

GENERAL RULE OF VALIDITY

Senate bill

Section 5(a) of the Senate bill sets forth the general rules that apply to electronic commercial transactions affecting interstate commerce. This section provides that in any commercial transaction affecting interstate commerce a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

Section 5(b) authorizes parties to a contract to adopt or otherwise agree on the terms and conditions on which they will use and accept electronic signatures and electronic records in commercial transactions affecting interstate commerce.

House amendment

Section 101(a) of the House amendment establishes a general rule that, with respect to any contract or agreement affecting interstate commerce, notwithstanding any statute, regulation or other rule of law, the legal effect, validity, and enforceability of such contract or agreement shall not be denied on the ground that: (1) the contract or agreement is not in writing if the contract or agreement is an electronic record; and (2) the contract or agreement is not signed or affirmed by written signature if the contract or agreement is signed or affirmed by an electronic signature.

Section 101(b) provides that with respect to contracts or agreements affecting interstate commerce, the parties to such contracts or agreements may establish procedures or requirements regarding the use and acceptance of electronic records and electronic signatures acceptable to such parties. Further, the legal effect, validity, or enforceability for such contracts or agreements shall not be denied because of the type or method of electronic record or electronic signature selected by the parties.

Nothing in section 101(b) requires a party to enter into any contract or agreement utilizing electronic signatures or electronic records. Rather, it gives the parties the option to enter freely into online contracts and agreements.

Conference Substitute

The conference report adopts a substitute provision that follows the House amendment.

The general rule provides that notwithstanding any statute, regulation, or other rule of law (other than titles one and two) with respect to any transaction in or affecting interstate or foreign commerce: (1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form, and (2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

The conference report makes clear that title I of the conference substitute does not (1) limit, alter, or otherwise affect any requirements imposed by a statute, regulation, or rule of law relating to the rights and obligations of persons under such statute, regulation, or rule of law other than requirements that contracts or other records be written, signed, or in non-electronic form; or (2) require any person, with respect to a record other than a contract, to agree to use or accept electronic records or electronic signatures.

The conference report includes an opt-in provision allowing consumers to consent to receive electronic records as described below. If a statute, regulation, or other rule of law requires that a record relating to a transaction in or affecting interstate or foreign commerce be provided or made available to a consumer in writing, an electronic record may be substituted if (1) the consumer affirmatively consents to receive an electronic record and has not withdrawn such consent, (2) the consumer, prior to consenting, is provided with a clear and conspicuous statement informing the consumer of rights or options to have the record provided or made available on paper, and the right of the consumer to withdraw the consent to electronic records and of any conditions, consequences (which may include termination of the parties' relationships), or fees in the event of withdrawal of consent. Further, the consumer is informed of whether the consent applies only to the initial transaction or to identified categories of records that follow the initial transaction. Disclosure must also be made describing the procedures the consumer must use to withdraw consent and to update information needed to contact the consumer electronically. The consumer must also be informed of how after the consent, the consumer may, upon request, obtain a paper copy of electronic records, and whether any fee will be charged for such copy.

Pursuant to subsection (c)(1)(C)(i), the consumer must be provided, prior to consenting, with a clear and conspicuous statement describing the hardware and software requirements to access and retain electronic records.

Subsection (c)(1)(C)(ii) requires that the consumer's consent be electronic or that it be confirmed electronically, in a manner that reasonably demonstrates that the consumer will be able to access the various forms of electronic records to which the consent applies. The requirement of a reasonable demonstration is not intended to be burdensome on consumers or the person providing the electronic record, and could be accomplished in many ways. For example, the "reasonable demonstration" requirement is satisfied if the provider of the electronic records sent the consumer an e-mail with attachments in the formats to be used in providing the records, asked the consumer to open the attachments in order to confirm that he could access the documents, and requested the consumer to indicate in an e-mailed response to the provider of the electronic records that he or she can access information in the attachments. Similarly, the "reasonable demonstration" requirement is satisfied if it is shown that in response to such an e-mail the consumer actually accesses records in the relevant electronic format. The purpose of the reasonable demonstration provision is to provide consumers with a simple and efficient mechanism to substantiate their ability to access the electronic information that will be provided to them.

Subsection (c)(1)(D) requires that after the consent of a consumer if a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent, the person providing the electronic record must provide the consumer with a statement of the revised hardware and software requirements for access to and retention of the electronic records, and the right to withdraw consent without the imposition of any fees for such withdrawal and without the imposition of any condition or consequence that was not disclosed. Further, the provider must, pursuant to subparagraph (C)(ii) perform the consumer access test again.

Subsection (c)(2) includes a savings clause making clear that nothing in this title affects the content or timing of any disclosure or other record required to be provided or made available to any consumer under any statute, regulation, or other rule of law. Further, subsection (c)(2) provides that if a law that was enacted prior to this Act expressly requires a record to be provided or made available by a specified method that requires verification or acknowledgment of receipt, the record may be provided or made available electronically only if the method used provides verification or acknowledgment of receipt (whichever is required).

Section 101(c)(3) makes clear that an electronic contract or electronic signature cannot be deemed ineffective, invalid, or unenforceable merely because the party contracting with a consumer failed to meet the requirements of the consent to electronic records provision. Compliance with the consent provisions of section 101(c) is intended to address the effectiveness of the provision of information in electronic form, not the validity or enforceability of the underlying contractual relationship or agreement between the parties. In other words, a technical violation of the consent provisions cannot in and of itself invalidate an electronic contract or prevent if from being legally enforced. Rather, the validity and enforceability of the electronic contract is evaluated under existing substantive contract law, that is, by determining whether the violation of the consent provisions resulted in a consumer failing to receive information necessary to the enforcement of the contract or some provision thereof. For example, if it turns out that the manner in which a consumer consented did not "reasonably demonstrate" that she could access the electronic form of the information at a later date, but at the time of executing the contract she was able to view its terms and conditions before signing, the contract could still be valid and enforceable despite the technical violation of the electronic consent provision.

Subsection (c)(4) provides that withdrawal of consent by a consumer shall not affect the

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legal effectiveness, validity, or enforceability of electronic records provided or made available to that consumer in accordance with paragraph (1) prior to implementation of the consumer's withdrawal of consent. A consumer's withdrawal of consent shall be effective within a reasonable period of time after receipt of the withdrawal by the provider of the record. Failure to comply with paragraph (1)(D) may, at the election of the consumer, be treated as a withdrawal of consent for purposes of this paragraph.

Subsection (c)(5) makes clear that this subsection does not apply to any records that are provided or made available to a consumer who has consented prior to the effective date of this title to receive such records in electronic form as permitted by any statute, regulation, or other rule of law.

Subsection (c)(6) provides an oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of this subsection except as otherwise provided under applicable law.

Section 101(d) addresses statutory and regulatory record retention requirements. It states that when a statute, regulation, or other rule of law requires that a record, including a contract, be retained that requirement is satisfied by the retention of an electronic record, if two criteria are met. First, the electronic record must accurately reflect the information set forth in the contract or record required to be retained. Second, that electronic record must remain accessible to all parties who by law are entitled to access the record for the period set out in that law. Moreover, the electronic record must be in a form capable of accurate reproduction for later reference. The reproduction may be by way of transmission, printing or any other method of reproducing records.

Section 101(e) addresses statutory and regulatory requirements that certain records, including contracts, be in writing. The statute of frauds writing requirement exemplifies one such legal requirement. The section states that an electronic record or contract may be denied legal effect and enforceability under section 101(a) of this Act, if such an electronic record is not in a form that is capable of being retained and accurately reproduced for later reference by all parties entitled to retain that contract or record. This provision is intended to reach two qualities of "a writing" in the non-electronic world. The first such quality of "a writing" is that it can be retained, e.g., a contract can be filed. The second such quality of "a writing" is that it can be reproduced, e.g., a contract can be copied.

Subsection (f) clarifies that nothing in title I affects the proximity requirement of any statute, regulation, or other rule of law with respect to any warning, notice, disclosure, or other record required to be posted, displayed, or publicly affixed.

Subsection (g) provides that if a statute, regulation, or other rule of law requires a signature or record to be notarized, acknowledged, verified, or made under oath, that requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable statute, regulation, or rule of law, is attached to or logically associated with the signature or record. This subsection permits notaries public and other authorized officers to perform their functions electronically, provided that all other requirements of applicable law are satisfied. This subsection removes any requirement of a stamp, seal, or similar embossing device as it may apply to the performance of these functions by electronic means.

Subsection (h) provides legal effect, validity and enforceability to contracts and record relating to a transaction in or affecting interstate or foreign commerce that were formed, created or delivered by one or more electronic agents.

Subsection (i) makes clear that the provisions of title I and II cover the business of insurance.

Subsection (j) provides protection from liability for an insurance agent or broker acting under the direction of a party that enters into a contract by means of an electronic record or electronic signature if: (1) the agent or broker has not engaged in negligent, reckless, or intentional tortious conduct; (2) the agent or broker was not involved in the development or establishment of such electronic procedures; and (3) the agent or broker did not deviate from such procedures.

AUTHORITY TO ALTER OR SUPERSEDE GENERAL RULE

Senate bill

Section 5(g) of the Senate bill provides that section 5 does not apply to any State in which the Uniform Electronic Transaction Act is in effect.

House amendment

Section 102(a) of the House amendment provides that a State statute, regulation or other rule of law enacted or adopted after the date of enactment of H.R. 1714 may modify, limit, or supersede the provisions of section 101 (except as provided in section 102(b)) if that State action: (1) is an adoption or enactment of the UETA as reported by the NCCUSL or specifies alternative procedures or requirements recognizing the legal effect, validity and enforceability of electronic signatures; and (2) for statutes enacted or adopted after the date of enactment of this Act, makes specific reference to the provisions of section 101.

Section 102(b) provides that no State statute, regulation, or rule of law (including those pertaining to insurance), regardless of date of enactment, that modifies, limits, or supersedes section 101 shall be effective to the extent that such statute, regulation, or rule of law: (1) discriminates in favor of or against a specific technology, method, or technique; (2) discriminates in favor of or against a specific type or size of entity engaged in the business of facilitating the use of electronic signatures and electronic records; (3) is based on procedures or requirements that are not specific and that are not publicly available; and (4) is otherwise inconsistent with the provisions of section 101.

Section 103(c) provides that a State may, by statute, regulation or rule of law enacted or adopted after the date of enactment of this Act, require specific notices to be provided or made available in writing if such notices are necessary for the protection of the public health or safety of consumers. A consumer may not, pursuant to section 101(b)(2) consent to the provision or availability of such notice solely as an electronic record.

Conference substitute

The conference report adopts a substitute provision. Section 102 of the conference report provides a conditioned process for States to enact their own statutes, regulations or other rules of law dealing with the use and acceptance of electronic signatures and records and thus opt-out of the federal regime. The preemptive effects of this Act apply to both existing and future statutes, regulations, or other rules of law enacted or adopted by a State. Thus, a State could not argue that section 101 does not preempt its statutes, regulations, or other rules of law because they were enacted or adopted prior to the enactment of this Act.

Section 102(a) provides that a State statute, regulation or other rule of law may modify, limit, or supersede the provisions of section 101 only if that State action: (1) constitutes an adoption or enactment of the Uniform Electronic Transactions Act (UETA) as reported and recommended for enactment by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1999; or (2) specifies alternative procedures or requirements (or both) for the use or acceptance of electronic signatures or electronic records for establishing the legal effect, validity and enforceability of contracts or records.

It is intended that any State that enacts or adopts UETA in its State to remove itself from Federal preemption pursuant to subsection (a)(1) shall be required to enact or adopt UETA without amendment. Any variation or derivation from the exact UETA document reported and recommended for enactment by NCCUSL shall not qualify under subsection (a)(1). Instead, such efforts and any other effort may or may not be eligible under subsection (a)(2). Thus, a State that enacted a modified version of UETA would not be preempted to the extent that the enactment or adoption by a State met the conditions imposed in subsection (a)(2).

Subsection (a)(1) places a significant limitation on a State that attempts to avoid Federal preemption by enacting or adopting a clean UETA. Section 3(b)(4) of UETA, as reported and recommended for enactment by NCCUSL, allows a State to exclude the application of that State's enactment or adoption of UETA for any "other laws, if any, identified by State." This provision provides a potential enormous loophole for a State to prevent the use or acceptance of electronic signatures or electronic records in that State. To remedy this, subsection (a)(1) requires that any exception utilized by a State under section 3(b)(4) of UETA shall be preempted if it is inconsistent with title I or II, or would not be preempted under subsection (a)(2)(ii) (technology neutrality).

As stated above, subsection (a)(2) is designed to cover any attempt except a strict enactment or adoption of UETA (which would be covered by subsection (a)(1)), by a State to escape Federal preemption by enacting or adopting specific alternative procedures or requirements for the use or acceptance of electronic signatures or records. This includes any regulations or State action taken to implement a clean enactment or adoption of UETA. Thus, a regulation or other rule of law issued to implement a State's enactment or adoption of a clean UETA would fall under and be tested against the standards contained in subsection (a)(2) if it strays in any manner from the strict, specific text of UETA, as reported and recommended for enactment by NCCUSL.

Further, some States are enacting or adopting a strict, unamended version of UETA as well as enacting or adopting a companion or separate law that contains further provisions relating to the use or acceptance of electronic signatures or electronic records. Under this Act, such action by the State would prompt both subsection (a)(1) (for the strict enactment or adoption of UETA) and subsection (a)(2) (for the other companion or separate legislation). Subsection (a)(2) would also apply for any amendments made by a state in the future to their statutes, regulations or rules of law pertaining to the original enactment or adoption of UETA that qualified under subsection (a)(1).

Subsection (a)(2) contains two important conditions that limit the extent to which a state could utilize it to opt-out of the federal regime. Specifically, such alternative procedures or requirements: (1) must be consistent with this title and title II; and (2) do not require, or accord greater legal status or effect

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to, the implementation or application of a specific technology or technological specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic signatures or records. It is not intended that the singular use of technology or technological specification in subsection (a)(2)(A)(ii) allows a State to set more than one technologies at the expense of other technologies in order to meet this standard. Instead, this limitation is intended to prevent States from setting any specific technology or technological specification, unless otherwise specifically permitted. Further, inclusion of the "or accord greater legal status or effect to" is intended to prevent a state from giving a leg-up or impose an additional burden on one technology or technical specification that is not applicable to all others.

In addition, subsection (a)(2)(B) requires that a State that utilizes subsection (a)(2) to escape federal preemption must make a specific reference to this Act in any statute, regulation, or other rule of law enacted or adopted after the date of enactment of this Act. This provision is intended, in part, to make it easier to track action by the various States under this subsection for purposes of research.

Section 102(b) provides a specific exclusion to the technology neutrality provisions contained in subsection (a)(2)(A)(ii) for procurement by a state, or any agency or instrumentality thereof.

Section 102(c) makes clear that subsection (a) cannot be used by a State to circumvent this title or title II through the imposition of nonelectronic delivery methods under section 8(b)(2) of UETA. Any attempt by a State to use 8(b)(2) to violate the spirit of this Act should be treated as effort to circumvent and thus be void.

SPECIFIC EXCLUSIONS

Senate bill

Section 5(d) of the Senate bill excludes from the application of this section any statute, regulation or other rule of law governing: (1) the Uniform Commercial Code as in effect in any state, other than sections 1-107 and 1-206 and Articles 2 and 2A; (2) premarital agreements, marriage, adoption, divorce, or other matters of family law; (3) documents of title which are filed of record with a governmental unit until such time that a State or subdivision thereof chooses to accept filings electronically; (4) residential landlord-tenant relationships; and (5) the Uniform Health-Care Decisions Act as in effect in a State.

House amendment

Section 103(a) of the House amendment excludes from the application of section 101 any contract, agreement or record to the extent that it is covered by: (1) a statute, regulation or rule of law governing the creation and execution of wills, codicils, or testamentary trusts; (2) a statute, regulation or other rule of law governing adoption, divorce, or other matters of family law; (3) the Uniform Commercial Code as in effect in any state, other than sections 1-107 and -206 and Articles 2 and 2A; (4) any requirement by a Federal regulatory agency or self-regulatory agency that records be filed or maintained in a specified standard or standards (except that nothing relieves any Federal regulatory agency of its obligation under the Government Paperwork Elimination Act, title XVII of Public Law 105-277); (5) the Uniform Anatomical Gift Act; or (6) the Uniform Health-Care Decisions Act.

Section 103(b) excludes from the application of section 101: (1) any contract, agreement or record between a party and a State agency if the State agency is not acting as a market participant in or affecting interstate commerce; (2) court orders or notices or official court documents (including briefs, pleading and other writings) required to be executed in connection with court proceedings; or (3) any notice concerning: (A) the cancellation or termination of utility services, (B) default, acceleration, repossession, foreclosure or eviction, or the right to cure under a credit agreement secured by, or a rental agreement for, a primary residence of an individual or the cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities).

Conference substitute

The conference report adopts a substitute provision that follows the House amendment.

Section 103(a) excludes from the application of section 101 any contract, agreement or record to the extent that it is covered by: (1) a statute, regulation or rule of law governing the creation and execution of wills, codicils, or testamentary trusts; (2) a statute, regulation or other rule of law governing adoption, divorce, or other matters of family law; (3) the Uniform Commercial Code as in effect in any state, other than sections 1-107 and 1-206 and Articles 2 and 2A; (4) any requirement by a Federal regulatory agency or self-regulatory agency that records be filed or maintained in a specified standard or standards (except that nothing relieves any Federal regulatory agency of its obligation under the Government Paperwork Elimination Act, title XVII of Public Law 105-277); (5) the Uniform Anatomical Gift Act; or (6) the Uniform Health-Care Decisions Act.

Section 103(b) excludes from the application of section 101: (1) court orders or notices or official court documents (including briefs, pleading and other writings) required to be executed in connection with court proceedings; or (2) any notice of: (A) the cancellation or termination of utility services, (B) default, acceleration, repossession, foreclosure or eviction, or the right to cure under a credit agreement secured by, or a rental agreement for, a primary residence of an individual or the cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities).

The exclusion pertaining to utility services applies to essential consumer services including water, heat and power. This provision does not apply to notices for other broadly used important consumer services, such as telephone, cable television, and Internet access services, etc. Electronic cancellation or termination notices may be used in association with those other services, assuming all of the other elements of Section 101 are met.

Section 103(c)(1) directs the Secretary of Commerce, acting through the Assistant Secretary for Communication and Information, to review the operation of the exclusions in subsections (a) and (b) over a period of three years to determine if such exclusions are necessary for the protection of consumers. The Assistant Secretary shall submit the findings of this review to Congress within three years of the date of enactment of this Act.

Section 103(c)(2) provides that a Federal regulatory agency, with respect to matter within its jurisdiction, may extend, after proper notice and comment and publishing a finding that one or more of exceptions in subsections (a) or (b) are not longer necessary for the protection of consumers and eliminating such exceptions will not increase the material risk of harm to consumers, the application of section 101 to such exceptions.

APPLICABILITY TO FEDERAL AND STATE GOVERNMENTS

Senate bill

The Senate bill contained no provision affecting the authority of Federal regulatory agencies.

House amendment

The House amendment provided in Section 103 that the authority of Federal regulatory agencies would be preserved over records filed or maintained in a specific standard or standards.

Conference substitute

The conference report adopts a substitute provision that follows the House amendment.

Section 104(a) provides that subject to section 104(a)(2), a Federal regulatory agency, a self-regulatory organization, or State regulatory agency may specify standards or formats for the filing of records with that agency or organization, including requiring paper filings or records. While the conference report preserves such authority to such agencies or organizations, it is intended that use of such authority is rarely exercised. Section 104(b)(1) provides that subject to section 104(b)(2) and section 104(c), a Federal regulatory agency or State regulatory agency that is responsible for rulemaking under any other statute may interpret section 101 with respect to such statute through (i) the issuance of regulations pursuant to a statute; or (2) to the extent such agency is authorized by statute to issue orders or guidance, the issuance of orders or guidance of general applicability that are publicly available and published (in the Federal Register in the case of an order or guidance issued by a Federal regulatory agency). However, this does not grant any Federal regulatory agency or State regulatory agency authority to issue regulations, orders, or guidance pursuant to any statute that does not authorize issuance of orders or guidance.

Section 104(b)(2) provides for limitations on the interpretational authority of agencies. Specifically, a Federal regulatory agency shall not adopt any regulation, order, or guidance described in section 104(b)(1), and a State regulatory agency is preempted by section 101 from adopting any regulation, order, or guidance described above unless: (I)—(A) such regulation, order, or guidance is consistent with section 101; (B) such regulation, order, or guidance does not add to the requirements of such section; and (C) such agency finds, in connection with the issuance of such regulation, order, or guidance, that—(i) there is a substantial justification for the regulation, order, or guidance; (II) the methods selected to carry out that purpose—(I) are substantially equivalent to the requirements imposed on records that are not electronic records; and (II) will not impose unreasonable costs on the acceptance and use of electronic records; and (iii) the methods selected to carry out that purpose doe not require the implementation or application of a specific technology or technological specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures.

The conference report provides for more limited Federal and State interpretative authority over other functions related to records. This Act grants no additional or new rulemaking authority to any Federal or State agency. The conference report provides that if Federal or State regulators possessed specific rulemaking authority under their organic statutes, they could use that rulemaking authority to interpret section 101 subject to strict conditions. Those conditions include determinations that such regulation, order or guidance: (1) is consistent with section 101; and (2) does not add to the requirements of the section. Additionally, the conference report requires that any Federal agency show conclusively that: (a) there is a substantial justification for the regulation and the regulation is necessary to protect an important public interest; (b) the methods used to carry out that purpose are the least restrictive alternative consistent

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with that purpose; (c) the methods are substantially equivalent to the requirements imposed or records that are not electronic records; and (d) such methods will not impose new costs on the acceptance and use of electronic records. The conference report requires strict technological neutrality of any Federal or State regulation, order or guidance. Absent such technological neutrality, any such regulation, order or guidance is void.

The conference report is designed to prevent Federal and State Regulators from undermining the broad purpose of this Act, to facilitate electronic commerce and electronic record keeping. To ensure that the purposes of this Act are upheld, Federal and State regulatory authority is strictly circumscribed. It is expected that Courts reviewing administrative actions will be rigorous in seeing that the purpose of this Act, to ensure the widest use and dissemination of electronic commerce and records are not undermined.

Subsection (b)(3)(A) provides authority to a Federal or State regulatory agency to interpret section 101(d) in a manner to specify specific performance standards to assure accuracy, record integrity, and accessibility of records that are required to be retained. Subsection (b)(3) extends this authority to override the technology neutrality provision contained in subsection (b)(2)(C)(iii) but only if doing so (1) serves an important governmental objective; and (2) is substantially related to the achievement of that objective. Further, subsection (b)(3)(A) does not allow a Federal or State regulatory agency to require the use of a particular type of software or hardware in order to comply with 101(d).

Subsection (b)(3)(B) provides authority to a Federal or State regulatory agency to interpret section 101(d) to require retention of paper records but only if (1) there is a compelling government interest relating to law enforcement or national security for imposing such requirement, and (2) imposing such requirement is essential to attaining such interest. It is important to note that the test in subsection (b)(3)(B) is higher and more stringent than in subsection (b)(3)(A). This is intentional as it is an effort to impose an extremely high barrier before a Federal or State regulatory agency will revert back to requiring paper records. However, this does not diminish the test contained subsection (b)(3)(A). It, too, is intended to be an extremely high barrier for a Federal or State regulatory agency to meet before the technology neutrality provision is violated. It is intended that use of either of these tests will be necessary in only a very, very few instances. It is expected that Federal and State agencies take all action and exhaust all other avenues before exercising authority granted in paragraph (3).

Subsection (b)(4) exempts procurement by a Federal or State government, or any agency or instrumentality thereof from the technology neutral requirements of subsection (b)(2)(C)(iii).

Subsection (c)(1) makes clear that nothing in subsection (b), except subsection (b)(3)(B), allows a Federal or State regulatory agency to impose or reimpose any requirement that a record be in paper form.

Subsection (c)(2) makes clear that nothing in subsection (a) or (b) relieves any Federal regulatory agency of its obligations under the Government Paperwork Elimination Act.

Subsection (d)(1) provides authority to a Federal or State regulatory agency to exempt without condition a specified category or type of record from the consent provisions in section 101(c) if such exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers. It is intended that the test under subsection (d)(1) not be read too limiting. There are vast numbers of instances when section 101(c) may not be appropriate or necessary and should be exempted by the appropriate regulator.

Subsection (d)(2) requires the Securities and Exchange Commission, within 30 days after date of enactment, to issue a regulation or order pursuant to subsection (d)(1) exempting from the consent provision any records that are required to be provided in order to allow advertising, sales literature, or other information concerning a security issued by an investment company that is registered under the Investment Company Act of 1940, or concerning the issuer thereof, to be excluded from the definition of a prospectus under section 2(a)(10)(A) of the Securities Act of 1933.

Section 104(e) provides that the Federal Communications Commission shall not hold any contract for telecommunications service or letter of agency for a preferred carrier change, that otherwise complies with the Commission's rules, to be legally ineffective, invalid or unenforceable solely because an electronic records or electronic signature was used in its formation or authorization.

The Federal Communications Commission (FCC) has been very slow, even reticent, to clearly authorize the use of an Internet letter of agency for a consumer to conduct a preferred carrier change. As a result of the Commission's repeated failure to act on this matter, the conference report provides specific direction to the Commission to recognize Internet letters of agency for a preferred carrier change.

STUDIES

Senate bill

Section 7 of the Senate bill directs the Department of Commerce and Office of Management and Budget (OMB) to report to Congress within 18 months on Federal laws and regulations that might pose barriers to electronic commerce, including suggestions for reform.

House amendment

Section 104 of the House amendment directs the Secretary of Commerce (the Secretary), acting through the Assistant Secretary for Communications and Information, to conduct an inquiry regarding any State statute, regulation, or rule of law enacted or adopted after enactment on the extent to which such statute, regulation, or rule of law complies with section 102(b). Section 104(b) requires the Secretary to submit the report described in paragraph(a) at the conclusion of the five year period.

Section 104(c) requires the Secretary, within eighteen months after the date of enactment, to conduct an inquiry regarding the effectiveness of the delivery of electronic records to consumers using electronic mail as compared with the delivery of written records by the United States Postal Service and private express mail services. The Secretary shall submit a report to Congress regarding the results of such inquiry at the conclusion of the eighteen month period.

Conference substitute

The Senate recedes to the House with an amendment. Specifically, the conference report retains subsection 104(c) of the House amendment and redesignates it as section 104(a) of the conference report. Further, the conference report includes a new subsection (b) that requires the Secretary of Commerce and the Federal Trade Commission, within one year after date of enactment, to submit a report to the Congress analyzing: (1) the benefits provided to consumers by the consumer access test of the consent provision (section 101(c)(1)(C)(ii)); (2) any burdens imposed on electronic commerce by the provision, whether the benefits outweigh the burdens; (3) whether the absence of such procedure would increase consumer fraud; and (4) any suggestions for revising the provision. In conducting the evaluation, the Secretary of Commerce and FTC shall solicit the comments of the public, consumer representatives, and electronic commerce businesses.

DEFINITIONS

Senate bill

Section 4 sets forth the definitions of terms used in the bill: "electronic;" "electronic agent;" "electronic record;" "electronic signature;" "governmental agency;" "record;" "transaction;" and "Uniform Electronic Transaction Act."

House amendment

Section 104 of the House amendment defines the following terms: "electronic record;" "electronic signature;" "electronic;" "electronic agent;" "record;" "Federal regulatory agency;" and "self-regulatory agency."

Conference substitute

The conference report adopts a substitute provision adopting definitions for the following terms: "consumer;" "electronic;" "electronic agent;" "electronic record;" "electronic signature;" "Federal regulatory agency;" "Information;" "person;" "record;" and "transaction."

EFFECTIVE DATES

Senate bill

The Senate bill contained no provision.

House amendment

The House amendment contained no provision.

Conference substitute

The conference report creates a general delayed effective date for the bill, and creates specific delayed effective dates for certain provisions of the bill. Subsection (a) establishes that, except as provided in subsections (b), the provisions of the bill are effective October 1, 2000. Subsection (b) delays the effective date of the records retention provision until March 1, 2001 unless an agency has initiated, announced, proposed but not completed an action under subsection 104(b)(3), in which case it would be extended until June 1, 2001. Subsection (b)(2) delays the effective date of this Act by one year with regards to any transaction involving a loan guarantee or loan guarantee commitment made by the United States Government. The one year delay was granted to permit the federal government time to institute safeguards necessary to protect taxpayers from risk of default on loans guaranteed by the federal government.

Subsection (d) delays the effective date of section 101(c) for any records provided or made available to a consumer pursuant to title IV of the High Education Act of 1965 until the Secretary of Education publishes revised promissory notes under section 432(m) of such Act or one year after the date of enactment, whichever is earlier.

TRANSFERABLE RECORDS

TRANSFERABLE RECORDS

Senate bill

The Senate bill contained no provision.

House amendment

The House amendment contained no provision.

Conference substitute

The conference report adopts a new provision in recognition of the need to establish a uniform national standard for the creation, recognition, and enforcement of electronic negotiable instruments. The development of

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a fully-electronic system of negotiable instruments such as promissory notes is one that will produce significant reductions in transaction costs. This provision, which is based in part on Section 16 of the Uniform Electronic Transactions Act, sets forth a criteria-based approach to the recognition of electronic negotiable instruments, referred to as "transferable records" in this section and in UETA. It is intended that this approach create a legal framework within which companies can develop new technologies that fulfill all of the essential requirements of negotiability in an electronic environment, and in a manner that protects the interests of consumers.

The conference report notes that the official Comments to section 16 of UETA, as adopted by the National Conference of Commissioners on Uniform State Laws, provide a valuable explanation of the origins and purposes of this section, as well as the meaning of particular provisions.

The conference report notes that, pursuant to sections 3(c) and 7(d) of the UETA, an electronic signature satisfies any signature requirement under Section 16 of the UETA. It is intended that an electronic signature shall satisfy any signature requirement under this provision, as well. The conference report further notes that the reference in section 201(a)(1)(C) to loans "secured by real property" includes all forms of real property, including single-family and multi-family housing.

Development and Adoption of Electronic Signature Products

TREATMENT OF ELECTRONIC SIGNATURES IN INTERSTATE AND FOREIGN COMMERCE

Senate bill

Section 6 of the Senate bill sets out the principles that the United States Government should follow, to the extent practicable, in its international negotiations on electronic commerce as a means to facilitate cross-border electronic transactions.

Paragraph (1) advocates the removal of paper-based obstacles to electronic transactions. This can be accomplished by taking into account the enabling provisions of the Model Law on Electronic Commerce adopted by the United Nations Committee on International Trade Law (UNCITRAL) in 1996. Paragraph (2) permits that parties to a transaction shall have the opportunity to choose the technology of their choice when entering into an electronic transaction. Paragraph (3) permits parties to a transaction the opportunity to prove in a court or other proceeding that their authentication approach and transactions are valid. Paragraph (4) adopts a nondiscriminatory approach to electronic signatures.

House amendment

Section 201(a) of the House amendment directs the Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, to conduct an annual inquiry identifying: (1) any domestic or foreign impediments to commerce in electronic signature products and services and the manner and extent to which such impediments inhibit the development of interstate and foreign commerce; (2) constraints imposed by foreign nations or international organizations that constitute barriers to providers of electronic signature products and services; and (3) the degree to which other nations and international organizations are complying with the principles in section 201(b)(2).

Under subsection (a)(2), the Secretary is required to report to Congress the findings of each inquiry 90 days after completion of such inquiry.

Section 201(b) directs the Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, to promote the acceptance and use of electronic signatures on an international basis in accordance with section 101 of the bill and with designated principles. In addition, the Secretary of Commerce is directed to take all actions to eliminate or reduce impediments to commerce in electronic signatures, including those resulting from the inquiries required pursuant to subsection (a).

The designated principles are as follows: free-markets and self-regulation, rather than government standard-setting or rules, should govern the development and use of electronic signatures and electronic records; neutrality and nondiscrimination should be observed among providers of and technologies for electronic records and electronic signatures; parties to a transaction should be allowed to establish requirements regarding the use of electronic records and electronic signatures acceptable to the parties; parties to a transaction should be permitted to determine the appropriate authentication technologies and implementation for their transactions with the assurance that the technology and implementation will be recognized and enforced; the parties should have the opportunity to prove in court that their authentication approaches and transactions are valid; electronic records and signatures in a form acceptable to the parties should not be denied legal effect, validity, or enforceability because they are not in writing; *de jure* or *de facto* imposition of electronic signature and electronic record standards on the private sector through foreign adoption of regulations or policies should be avoided; paper-based obstacles to electronic transactions should be removed.

Section 201(c) requires the Secretary of Commerce to consult with users and providers of electronic signatures and products and other interested parties in carrying out actions under this section.

Section 201(d) clarifies that nothing requires the Secretary or Assistant Secretary to take any action that would adversely affect the privacy of consumers.

Section 201(e) provides that the definitions in section 104 apply to this title.

Conference Substitute

The conference report adopts a substitute provision. Section 301(a)(1) directs the Secretary of Commerce to promote the acceptance and use of electronic signatures on an international basis in accordance with section 101 of the bill and with the set principles listed in subsection (a)(2). In addition, the Secretary of Commerce is directed to take all acts to eliminate or reduce impediments to commerce in electronic signatures.

Section 301(a)(2) lists the principles as follows: (1) Removal of paper-based obstacles to electronic transactions. This can be accomplished by taking into account the enabling provisions of the Model Law on Electronic Commerce adopted by the United Nations Committee on International Trade Law (UNCITRAL) in 1996; (2) Parties to a transaction shall have the opportunity to choose the technology of their choice when entering into an electronic transaction. Parties to a commercial transaction should be able to chose the appropriate authentication technologies and implementation models for their transactions. Unnecessary regulation of commercial transactions distorts the development and efficient operation of markets, including electronic markets. Moreover, the rapid development of the electronic marketplace is resulting in new business models and technological innovations. This is an evolving process. Therefore, government attempts to regulate may impede the development of newer alternative technologies; (3) Parties to a transaction the opportunity to prove in a court or other proceeding that their authentication approach and transactions are valid. Parties should have the opportunity to prove in court that the authentication methods that they select are valid and reliable; and (4) Adoption of a nondiscriminatory approach to electronic signatures and authentication methods from other jurisdictions.

Section 301(c) directs the Secretary to consult with users and providers of electronic signature products and services and other interested parties. Section 301(d) applies the definitions of "electronic signature" and "electronic record" in section 107 to this title.

Increasingly, online transactions are not just interstate but international in nature and this creates a clear need for international recognition of electronic signatures and records that will not create barriers to international trade. Title III directs the Secretary of Commerce to take an active role in bilateral and multilateral talks to promote the use and acceptance of electronic signatures and electronic records worldwide. It is intended that the Secretary promote the principles contained in this Act internationally. However, it is possible that some foreign nations may choose to adopt their own approach to the use and acceptance of electronic signatures and electronic records. In such cases, the Secretary should encourage those nations to provide legal recognition to contracts and transactions that may fall outside of the scope of the national law and encourage those nations to recognize the rights of parties to establish their own terms and conditions for the use and acceptance of electronic signatures and electronic records.

There is particular concern about international developments that seek to favor specific technologies of processes for generating electronic signatures and electronic records. Failure to recognize multiple technologies may create potential barriers to trade and stunt the development of new and innovative technologies.

Unfortunately, international developments on recognizing electronic signatures are troubling. The German Digital Signature Law of July 1997 runs counter to many of the widely accepted principles of electronic signature law in the United States. For example, the German law provides legal recognition only to signatures generated using digital signature technology, establishes licensing for certificate authorities, and sets a substantial role for the government in establishing technical standards. Further, a position paper on international recognition of electronic signatures released by the German government (International Legal Recognition of Digital Signatures, August 28, 1998) seeks to apply these principles internationally. This policy statement reemphasizes the principle that uniform security standards are necessary for all uses of digital signatures regardless of their use, supports mutual recognition of digital signatures only to those nations which have a similar regulatory structure for certification authority, and fails to provide legal effect to electronic signatures generated by other technologies.

The European Community is considering a framework for the use and acceptance of electronic signatures for its member countries. "Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community Framework for electronic signatures" lays out the European Community's approach to electronic signature legislation. Of particular interest is Article 7, International Aspects, which recognizes the legal validity of digital certificates issued in a non-European Community country. While international recognition of electronic signatures is important, there is concern that this approach will not recognize

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non-certificate based electronic signatures, such as those based on biometric technologies. The conference report notes that negotiations with the European Union on electronic signatures is a top priority.

COMMISSION ON CHILD ONLINE PROTECTION AUTHORITY TO ACCEPT GIFTS

Senate bill

The Senate bill contains no similar provision.

House amendment

The House amendment contains no similar provision.

Conference substitute

The conference report adopts a provision to amend section 1405 of the Child Online Protection Act by adding a new subsection (h), which allows the Commission on Online Child Protection to accept, use and dispose of gifts, bequests or devises of services or property for the purpose of aiding or facilitating the work of the Commission.

Mr. Speaker, I reserve the balance of my time.

Mr. DINGELL. Mr. Speaker, I yield myself 3 minutes.

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Mr. Speaker, I rise in support of this conference report and urge its adoption by the House.

I want to begin by paying tribute to my good friend, the chairman of the committee, the gentleman from Virginia (Mr. BLILEY), for his leadership in this matter.

Pieces of legislation which would not have met the test of the public interest have been reformed in the conference, and his leadership has played a significant part in those events, for which I salute him and thank him.

The conference report confers legal validity on electronic signatures and contracts involving transactions in interstate commerce and allows required consumer disclosures and other records to be transmitted and retained by businesses electronically rather than on paper.

This is the most far-reaching e-commerce legislation to be considered by this Congress. No one could be more pleased nor indeed more surprised than I am at the successful outcome of this conference.

As I mentioned, we started with a version that was anti-consumer and opposed by the Democratic conferees, by the administration, by all the States and by consumer groups. The Department of Justice and the State attorneys general submitted letters to the conference committee, pointing out how the draft would have undermined the government's ability to enforce civil and criminal laws against waste, fraud and abuse and would have destroyed many popular laws protecting consumers.

What then happened? Under the leadership of our friend and colleague, the gentleman from Virginia (Mr. BLILEY), chairman of the Committee on Commerce and the chairman of the conference, and Senator JOHN MCCAIN, chairman of the Committee on Commerce in the other body, a majority of the Republican conferees agreed to address these concerns. They recognized that this legislation must have adequate consumer protections or consumers would never have the necessary confidence to make e-commerce work.

I also want to commend Senators HOLLINGS, SARBANES, WYDEN, and LEAHY for their outstanding work on these issues. Without their assistance, certainly this matter would have been concluded differently and probably unsuccessfully.

These joint efforts led to the adoption of strong consumer consent provisions. These provisions require that consumers affirmatively consent to receive information in electronic form. Furthermore, these provisions require that the consumer actually demonstrate its ability to be open and to gain access to the information in the format that it will be transmitted. Other consumer protections contained in the conference report include requirements relating to integrity of records and security to guard against tampering. Federal regulatory agencies may grant exemptions from the consent requirements under certain limited circumstances. Businesses may be required to maintain paper copies of contracts or records, if there is a compelling law enforcement or national security interest.

Moreover, many critical documents continue to be provided and retained on papers, such as wills, adoption, divorce matters, court orders, utility termination notices, foreclosure and eviction notices, insurance cancellation, product recalls, and warnings required to accompany transportation of hazardous materials.

I am happy to report that all Democratic conferees and a majority of our Republican conferees have agreed to the conference report which we are considering today.

The conference report is also supported by the administration, the States, and consumer groups.

This bipartisan conference agreement is balanced, and it is fair to businesses, fair to consumers. It should become law.

Let me discuss a few of the details of the agreement.

I want to draw my colleagues attention to some important provisions to which the Conferees agreed during the conference.

Scope of Requirement.—Section 101(a). In recommending that the House vote to pass this conference report, I would like to clarify for members the kind of transactions that are covered by the bill. You will note that the definition of "transaction" includes business, commercial, or consumer affairs. The Conferees specifically rejected including "governmental" transactions. Members should understand that this bill will not in any way affect most governmental transactions, such as law enforcement actions, court actions, issuance of Government grants, applications for or disbursement of Government benefits, or other activities that the Government conducts that private actors would not conduct. Even though some aspects of such governmental transactions (for example, the Government's issuance of a check reflecting a Government benefit) are commercial in nature, they are not covered by this bill because they are part of a uniquely governmental operation. Likewise, activities conducted by private parties principally for governmental purposes are not covered by this bill. Thus, for example, the act of collecting signatures to place a nomination on a ballot would not be covered, even though it might have some nexus with commerce (such as the signature collectors' contract of employment).

General Rule of Validity.—Section 101(a)(1) and (2). The Conferees added the word "solely" in both sections 101(a)(1) and (2) to ensure that electronic contracts and signatures are not inadvertently immunized by this Act from challenge on grounds other than the absence of a physical writing or signature.

Preservation of Rights and Obligations.—Section 101(b)(1). The Conferees added a new Section 101(b)(1) which provides that this Title I does not "limit, alter, or otherwise affect any requirement imposed by a statute, regulation, or rule of law relating to the rights and obligations of persons under such statute, regulation, or rule of law other than a requirement that contracts or other records be written, signed, or in nonelectronic form." This savings clause makes clear that existing legal requirements that do not involve the writing, signature, or paper form of a contract or other record are not affected by Title I. Thus, for example, a transaction into which a consumer enters electronically is still subject to scrutiny under applicable State and Federal laws that prohibit unfair and deceptive acts and practices. So, if a consumer were deceived or unfairly convinced in some way to enter into the electronic transaction, State and Federal unfair and deceptive practices laws might still apply even though the consumer was properly notified of their rights under Section 101(c) and consent to the electronic notices and contracts was properly obtained. In other words, compliance with the Act's consumer consent requirements does not make it unnecessary for the transaction and parties to the transaction to comply with other applicable statutes, regulations or rules of law.

Preservation of Rights and Obligations.—Section 101(b)(2). The Act specifically avoids forcing any contracting party—whether the Government or a private party—to use or accept electronic records and electronic signatures in their contracts. Thus, for example, where the Government makes a direct loan, the bill would not require the use or acceptance of electronic records or signatures in the loan transaction, because the Government would be a party to the loan contract. The Conferees recognized that, in some instances, parties to a contract might have valid reasons for choosing not to use electronic signatures and records, and it is best to allow contracting parties the freedom to make that decision for themselves.

Protections Against Waste, Fraud and Abuse.—Sections 101(b)(2), 102(b) and 104(b)(4). Members should note that several provisions of the conference report are designed to address concern about protecting taxpayers from waste, fraud and abuse in connection with government contracting or other instances in which the Government is a market participant. For example, Sections 101(b)(2) 102(b) and 104(b)(4) and others

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give agencies significant latitude to accept, reject, or place conditions on the use of electronic signatures and records when the Government is acting like a market participant.

Consent to Electronic Record.—Section 101(c)(1). The House bill included an amendment that required that consumers affirmatively consent before they can receive records (including required notices and disclosures and statements) electronically that are legally required to be provided or made available in writing. Among other changes to this section made in conference, the Conferees added an important new element: Section 101(c)(1)(C) of the conference report requires that the consumer "consents electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent." The purpose of this provision is to ensure that, when consumers agree to receive notices electronically, they are able to make an informed decision and that they can actually open, read, and retain the records that they will be sent electronically.

Today, many different technologies can be used to deliver information—each with its own hardware and software requirements. An individual may not know whether the hardware and software on his or her computer will allow a particular technology to operate. (All of us have had the experience of being unable to open an e-mail attachment.) Most individuals lack the technological sophistication to know the exact technical specifications of their computer equipment and software, especially if they are not at home when consent is sought. For these reasons, it is appropriate to require companies to establish an "electronic connection" with their customers in order to provide assurance that the consumer will be able to access the information in the electronic form in which it will be sent. This one-time "electronic check" can be as simple as an e-mail to the customer asking the customer to confirm that he was able to open the attachment (if the company plans to send notices to the customer via e-mail attachments) and a reply from the customer confirming that he or she was able to open the attachment. This responsibility is not unduly burdensome to e-commerce. As a matter of good customer relations, any legitimate company would want to confirm that it has a working communications link with its customers.

Preservation of Consumer Protections.—Section 101(c)(2)(A). The Conferees preserved an important provision from the House bill which provides that: "nothing in this title affects the content or timing of any disclosure or other record required to be provided or made available to any consumer under any statute, regulation, or other rule of law." So, for example, if a statute requires that a disclosure be provided within 24 hours of a certain event and that the disclosure include specific language set forth clearly and conspicuously, that requirement could be met by an electronic disclosure provided within 24 hours of that event, which disclosure included the specific language, set forth clearly and conspicuously. However, simply providing a notice electronically does not obviate the need to satisfy the underlying statute's requirements for timing and content.

Retention of Contracts and Records.—Section 101(d)(1) and Section 104(b)(3). The Conferees added provisions that state: "if a statute, regulation, and other rule requires that a contract or other record relating to a transaction . . . be retained," the requirement is met by retaining an electronic record of the information that "accurately reflects the information" and "remains accessible" to all who are entitled to it "in a form that is capable of being accurately reproduced for later reference. . . ." Moreover, Federal or State regulatory agencies may interpret this requirement to specify performance standards to "assure accuracy, record integrity, and accessibility of records that are required to be retained." Moreover, these performance standards can be specified in a manner that does not conform to the technology neutrality provisions, provided that the requirement serves, and is substantially related to the achievement of, an important governmental objective. These record retention provisions are essential to the capacity of federal and State regulatory and law enforcement agencies to ensure compliance with laws. For example, the only way in which a Government agency can determine if participants in large Government programs are complying with financial and other requirements of those programs may be to require that records be retained in a form that can be readily accessible to government auditors. Similarly, agencies must be able to require that companies implement anti-tampering protections to ensure that electronic records cannot be altered easily by money launderers or embezzlers or others seeking to hide their illegal activity. Without the ability of these agencies to ascertain program compliance through electronic record retention, taxpayers could be exposed to far greater risk of fraud and abuse. Similarly, bank and other financial regulators need to require that records be retained in order that their examiners can insure the safety and soundness of the institutions and their compliance with all relevant regulatory requirements. The standards set forth in the SEC's existing electronic recordkeeping rule, Rule 17a–4(f), such as the requirement that an electronic recordkeeping system preserve records in a non-rewritable and non-erasable manner, are essential to the SEC's investor protection mission and are consistent with the provisions of the conference report. The Conferees also expect the SEC to work with the securities self-regulatory organizations (SROs) to the extent necessary to ensure that accuracy, accessibility, and integrity standards also cover SRO recordkeeping requirements in an electronic environment.

Section 104(b)(3)(B) of the conference report permits Federal regulatory agencies to interpret the law to require retention of written records in paper form, if there is a compelling governmental interest in law enforcement for imposing such requirement, and if imposing such requirement is essential to attaining such interest. The Conferees expect the SEC would be able to use this provision to require brokers to keep written records of agreements required to be obtained by the SEC's penny stock rules.

Exemptions to Preemption.—Section 102(a). This subsection expressly gives the States the authority to modify, limit or supersede provisions of Section 101 in certain ways if the State enacts the provisions of the Uniform Electronic Transactions Act as approved and recommended for enactment by the National Conference of Commissioners on Uniform State Laws in 1999 (UETA).

Prevention of Circumvention.—Section 102(c). Under Section 102(a), States may supersede this Act if they adopt UETA, subject to certain limitations section forth in Section 102(a). Section 8(b)(2) of UETA allows States to impose delivery requirements. Section 102(c) makes clear that States retain the authority provided under Section 8(b)(2), provided that the State does not circumvent Titles I or II of this Act by imposing nonelectronic delivery methods. Thus, provided that the delivery methods required are electronic and do not require that notices and records be delivered in paper form, States retain their authority under Section 8(b)(2) of UETA to establish delivery requirements.

Filing and Access Requirements.—Section 104(a) of the conference report protects standards and formats developed by a Federal regulatory agency, self-regulatory organization, or State regulatory agency for records required to be filed with it. Thus standards and formats developed by the SEC for electronic filings for systems such as EDGAR and IARD, and similarly, the CRD system, a joint federal-state system for registering securities firms and their personnel, all would be covered by Section 104(a). The standards and formats for EDGAR, the IARD, and the CRD have been developed over many years, and both the SEC and securities industry have expended significant resources to make these complex systems work for regulators and investors alike. The importance of this provision has been intensified by the very real threat of security breaches by computer hackers.

Preservation of Existing Rulemaking Authority.—Section 104(b). This Act will affect requirements that are imposed by Federal and state statutes, regulations, and rules of law. No one agency is charged with interpreting its provisions; instead, under Section 104(b), regulatory agencies that have authority to interpret other statutes may interpret Section 101 with respect to those statutes to the extent of their existing interpretative authority. This provision provides important protection to both affected industry and consumers. It is impossible to envision all of the ways in which this Act will affect existing statutory requirements. This interpretative authority will allow regulatory agencies to provide legal certainty about interpretations to affected parties. Moreover, this authority will allow regulatory agencies to take steps to address abusive electronic practices that might arise that are inconsistent with the goals of their underlying statutes. For example, if a broker were to deceive a person into pledging equity in their home for a loan based on false representations about the loan's terms and conditions, the broker's action could be challenged under any applicable statute that prohibited such deception and false representations, even if the consumer executed the loan documents electronically and consented to the use of the electronic contract and records in compliance with the terms of this Act. Without this authority, predators might argue that this Act somehow immunizes the abusive practice, notwithstanding the underlying statutory requirement, and consumers and competitors would have to wait for resolution of the issue through litigation.

I would also like to clarify the nature of the responsibility of Government agencies in interpreting this bill. As the bill makes clear, each agency will be proceeding under its pre-existing rulemaking authority, so that regulations or guidance interpreting section 101 will

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be entitled to the same deference that the agency's interpretations would usually receive. This is underlined by the bill's requirements that regulations be consistent with section 101, and not add to the requirements of that section, which restate the usual Chevron test that applies to and limits an agency's interpretation of a law it administers. Giving each agency authority to apply section 101 to the laws it administers will ensure that this bill will be read flexibly, in accordance with the needs of each separate statute to which it applies.

Any reading under which courts would apply an unusual test in reviewing an agency's regulations would generate a great deal of litigation, creating instability and needlessly burdening the courts with technical determinations. Likewise, because these regulations will be issued under preexisting legal authority, any challenges to those regulations will proceed through the methods prescribed under that preexisting authority, whether pursuant to the Administrative Procedure Act or some other statute. Again, this will ensure that any challenges to such regulations are resolved promptly and minimize any resulting instability and burden. Of course, such regulations must satisfy the requirements of the Act.

Authority To Exempt From Consent Provision.—Section 104(d)(1) and (2). It is my understanding that the conference report's consent provisions are similar to much of the SEC's guidance in the electronic delivery area. Section 104(d)(1) permits agencies such as the SEC to continue to provide flexibility in interpreting the consent provisions anticipated by the conference report. In addition, a specific provision contained in Section 104(d)(2) anticipates that the SEC will act to clarify that documents, such as sales literature, that appear on the same Web site as, or which are hyperlinked to, the final prospectus required to be delivered under the federal securities laws, can continue to be accessed on a Web site as they are today under SEC guidance for electronic delivery.

Mr. Speaker, I reserve the balance of my time.

Mr. BLILEY. Mr. Speaker, I yield 3 minutes to the gentleman from Virginia (Mr. DAVIS).

(Mr. DAVIS of Virginia asked and was given permission to revise and extend his remarks.)

Mr. DAVIS of Virginia. Mr. Speaker, I rise today to express my strong support for S. 761, the Electronic Signatures in Global and National Commerce Act. This legislation marks a critical positive step towards promoting the growth and development of electronic commerce which has emerged as the driving force in our Nation's economy.

Today there are approximately 17 million households on-line and that number is expected to almost triple by 2004. Revenue generated from the Internet increased by 62 percent and totaled $524 billion in 1999. That figure is likely to reach $850 billion by the end of 2000 and a staggering $1.6 trillion by 2003.

Now what these figures demonstrate is the seemingly boundless potential that electronic commerce has to offer our economy in terms of both economic prosperity and ease of communication. Our computers are windows to a diverse and limitless electronic venue that mimics the traditional free market but which is still developing in terms of the parameters under which consumers and businesses interact with each other.

The E-Sign bill adopts one of the most critical components of any successful market economy to the digital environment: The existence of the rule of law and the enforcement of written agreements and transactions that follow predetermined rules of notice, disclosure rights and obligations. All other things being equal, when parties know that the signatures guarantee accountability, that they gain benefits, and at the same time undertake certain obligations in return, their behavior is necessarily shaped by the certainty which results when parties are contractually bound. Of course, this paradigm which has been rooted in common law for centuries and dominates contracts course work during the first year of law school, is the essence of paper-based contracts and transactions.

Now, as we enter the digital age and the dynamic electronic marketplace expands, the absence of a uniform legal mechanism for digital signatures and records threatens to restrain the booming commerce that is taking place over the Internet.

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With the Internet as the marketplace of the 21st century, increasing its use depends on developing and retaining consumer and business confidence in the legal enforcement of digital signatures.

S. 761 creates this necessary legal certainty. By allowing American businesses and individuals the ability to engage in commerce, knowing that their transactions are full and legal and valid, I believe we will see enormous savings to business, greater efficiency in the market, and faster paperless transactions that will translate into lower costs for consumers.

Another important objective in passing this legislation is the assurance that American principles on the use and acceptance of electronic signatures and records will be emulated overseas, ensuring that American businesses will not be put at a competitive disadvantage by restrictive foreign laws.

Let me finish by thanking the gentleman from Virginia (Mr. BLILEY), who has worked very hard to bring this well thought-out and critical measure to the floor today. S. 761 is an important step in reconciling our legal system with modern-day technology. It is essential to fostering the continued growth of electronic commerce that is propelling America's economic prosperity in the Information Age. I urge all my colleagues to vote in favor of this conference report.

Mr. DINGELL. Mr. Speaker, I yield 1½ minutes to the distinguished gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Mr. Speaker, I thank the very distinguished gentleman from Michigan (Mr. DINGELL), our senior Democrat in the Congress, for yielding me this time and for his strong support of this conference report.

Mr. Speaker, the Internet has become an integral part of our daily lives at work and at home. Because of the Internet, the American people have access to services and information that were unheard of 5 or 10 years ago. Approval of this conference report is a step towards ensuring that American businesses and consumers are able to take the fullest advantage of the digital revolution by being able to contract as well as to communicate over the Internet.

This legislation promotes the use of electronic signatures by providing a consistent and predictable national framework of rules governing the use of electronic signatures. It will provide consumers and companies doing business on the Internet legal certainty over electronic signatures until all 50 States pass their own legislation on the legality of electronic transactions under the Uniform Electronic Transaction Act.

It is not an attempt to regulate electronic commerce. It merely declares the validity of electronically created *contracts and records. But it retains* individual choice and personal security. As the supportive statements of the gentleman from Virginia (Chairman BLILEY) and the gentleman from Michigan (Mr. DINGELL), the ranking Democrat, have underscored, this is balanced, bipartisan legislation that will allow the American people to utilize the Internet to its fullest potential. So I urge a unanimous vote on this conference report.

Mr. BLILEY. Mr. Speaker, I yield 3 minutes to the gentleman from Louisiana (Mr. TAUZIN), chairman of the subcommittee.

(Mr. TAUZIN asked and was given permission to revise and extend his remarks.)

Mr. TAUZIN. Mr. Speaker, let me first thank the gentleman from Virginia (Mr. BLILEY), the chairman of our Committee on Commerce and the leader of our conference with the Senate, for the production of this incredibly, I think, historic act today. Let me also thank the gentleman from Michigan (Mr. DINGELL) and the gentleman from Massachusetts (Mr. MARKEY), who joined the gentleman from Ohio (Mr. OXLEY) and I as the five Members of the conference committee who duked it out with 17 Senators on the conference committee in order to produce this, I think, very good result, and, as I said, which we endorse today, albeit the fact that we believe at some point we are going to have to come back and make some repairs in it in order to make sure this does not become a haven for civil class-action lawsuits.

Having said that, let me also use this moment to pay special homage and thanks to the gentleman from Richmond, Virginia (Mr. BLILEY), the chairman of the Committee on Commerce,

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who is today adding another star on the chest of this warrior for telecommunications reform.

The gentleman from Virginia (Mr. BLILEY), as my colleagues know, was our chairman when he produced the historic 1996 Telecommunications Act that rewrote the 1930s laws on telecommunications, something we have been trying to do for a decade, and accomplished under his chairmanship.

The gentleman from Virginia (Mr. BLILEY) recently produced for us the conference report and the final action on the bill to deregulate satellites in this country and around the world, and that was an amazing and important accomplishment of his tenure.

I mentioned earlier the on-line privacy acts that are going to provide Americans with much more security and privacy as they enter this new world of electronic commerce. Much of it is the work of the gentleman from Virginia (Chairman BLILEY).

The national 911 bill that will provide a national number for people to call in terms of emergencies on the Nation's highways is a product of his tenure as chairmanship; now this historic digital signature act of the year 2000.

But the gentleman from Virginia (Mr. BLILEY) is not through. This afternoon, we take up anti-spam legislation to protect Americans on the Internet from the avalanche of damaging and very disruptive spam operations that hurt electronic commerce and damage our capacity to use the Internet efficiently to communicate with one another.

He is a cosponsor with me of the Truth in Billing Act to do something about making sure the telephone company bills we get clearly disclose what all those charges are about so Americans understand what is on that massive and complicated telephone bill. The gentleman from Virginia (Mr. BLILEY) has been truly a warrior of the telecommunications reform.

Today, we not only celebrate a historic, I think, beginning of making sure that electronic commerce is secure and legal and binding into the future, but I also see the gentlewoman from California (Ms. ESHOO), who I want to commend for her early work on this issue for many years. But today we not only celebrate the passage of this act, we celebrate, as the gentleman from Virginia (Mr. BLILEY) is nearing his retirement, an incredible series of accomplishments on behalf of the chairman of our Committee on Commerce.

Mr. Speaker, today I rise in support of the Conference Report to accompany S. 761, the "Electronic Signatures in Global and National Commerce Act." This historic legislation, I believe, will promote the growth of electronic commerce and the Internet economy.

For the first time in our nation's history, this legislation mandates that electronic signatures and records may take the place of handwritten signatures and hard, or paper, documents. And for the first time in our history, electronic signatures and records will have full legal validity.

This bill, once enacted into law, will bring enormous savings to business through greater efficiency, faster transactions, and reduced paperwork. Moreover, consumers will save from lower transactions costs.

S. 761, I must also mention, provides for extensive consumer protection. Not only are existing state and federal consumer protection laws unaffected, but the provisions regarding consent afford consumers with the greatest possible safeguards against fraud imaginable. Consumers must opt-in to electronic transactions, receive full disclosure of terms and conditions, and ultimately prove that they can electronically access and retain the information that is the subject of the consent. I submit that in all my time in Congress, I have never seen a more involved statutory framework for purposes of manifesting consent.

In addition, S. 761 does not ignore international developments. It directs the Secretary of Commerce to examine foreign laws that may be an impediment to the use and acceptance of electronic signatures and records. The Secretary must also promote e-signatures overseas and work to remove the foreign barriers and impediments to commerce in electronic signatures and records.

Finally, this legislation before us technology neutral. Mr. Speaker, in developing this legislation, the Conference Committee recognizes that certain technologies are more secure than others. The Committee also recognizes that consumers and businesses must as well be free to select the technology that is most appropriate for their particular needs, taking into account the importance of a transaction, the special nature of a transaction, and the corresponding need for assurances. To this extent, S. 761 is consistent with the "Government Paperwork Elimination Act" that we passed last Congress.

Mr. DINGELL. Mr. Speaker, I yield 3½ minutes to the distinguished gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Mr. Speaker, I thank the gentleman from Michigan for yielding me this time. I would like to engage in a colloquy, if I may, with the gentleman from Virginia (Mr. BLILEY) on the consumer consent provision in the conference report on electronic signatures.

Is it the understanding of the gentleman from Virginia, Mr. Speaker, that pursuant to subsection 101(c)(1)(C)(ii) of the conference report, a consumer's affirmative consent to the receipt of electronics records needs to "reasonably demonstrate" that the consumer will be able to access the various forms of electronic records to which the consent applies?

Mr. BLILEY. Mr. Speaker, will the gentleman yield?

Mr. MARKEY. I am glad to yield to the gentleman from Virginia.

Mr. BLILEY. Yes, Mr. Speaker. The conference report requires a "reasonable demonstration" that the consumer will be able to access the electronic records to which the consent applies. By means of this provision, the conferees sought to provide businesses and consumers with a simple and efficient mechanism to substantiate consumers' ability to access the electronic information that will be provided to them.

Mr. MARKEY. Mr. Speaker, I agree. The conferees did not intend that the "reasonable demonstration" requirement would substantially burden either consumers or the person providing the electronic record. In fact, the conferees expect that a "reasonable demonstration" could be satisfied in many ways.

Does the gentleman from Virginia agree with me that conferees intend that the reasonable demonstration requirement is satisfied if the provider of the electronic records sent the consumer an e-mail with attachments in the formats to be used in providing the records, asked the consumer to open the attachments in order to confirm that he could access the documents, and requested the consumer to indicate in an e-mail response to the provider of the electronic records that he or she can access information in the attachments?

Mr. BLILEY. Mr. Speaker, will the gentleman further yield?

Mr. MARKEY. I yield to the gentleman from Virginia.

Mr. BLILEY. Yes, Mr. Speaker. An e-mail response from a consumer that confirmed that the consumer can access the electronic records in the formats provided to the consumer as e-mail attachments would satisfy the reasonable demonstration requirement.

Mr. MARKEY. Mr. Speaker, does the gentleman from Virginia also agree with me that the reasonable demonstration requirement is satisfied if it is shown that, in response to such an e-mail, the consumer actually accesses records in the relevant electronic format?

Mr. Speaker, I yield to the gentleman from Virginia (Mr. BLILEY).

Mr. BLILEY. Yes, Mr. Speaker. The requirement is satisfied if it is shown that, in response to such an e-mail, the consumer actually accesses the information contained in electronic records in the relevant format.

Mr. MARKEY. Mr. Speaker, on another matter, with respect to penny stocks, would the gentleman from Virginia agree that conference reports preserve the ability of the SEC to require written customer statements with respect to a purchase of penny stocks, as was required in the House-passed version of this bill?

Mr. BLILEY. Mr. Speaker, if the gentleman will yield, the gentleman from Massachusetts is correct. Following enactment of the Penny Stock Reform Act of 1990, the SEC has developed a cold call rule that requires brokers to obtain a signed customer statement regarding any penny stock to be purchased before any transaction takes place.

In addition, customers are provided with important written disclosures involving risks of investing in penny stocks. Section 104 of the conference report specifically permits Federal regulatory agencies, such as the SEC, to

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interpret the law to require retention of written records in paper form if there is a compelling governmental interest in law enforcement for imposing such a requirement and if imposing such a requirement is essential to attaining such interest. The conferees expect the SEC would be able to use this provision to require brokers to keep written records of all disclosures and agreements required to be obtained by the SEC's penny stock rule.

Mr. MARKEY. Mr. Speaker, without question, penny stocks are a very special category of extremely dangerous investments that I think will require that the SEC needs to be able to ensure additional disclosure and agreements to continue to be done in writing to help protect consumers against fraud and facilitate the SEC securities law enforcement mission. I thank the gentleman from Virginia (Mr. BLILEY) very much for his assistance.

The SPEAKER pro tempore (Mr. GIBBONS). The Chair advises the Members that the gentleman from Virginia (Mr. BLILEY) has 18 minutes remaining, and the gentleman from Michigan (Mr. DINGELL) has 22 minutes remaining.

Mr. BLILEY. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio (Mr. OXLEY), chairman of the Subcommittee on Finance and Hazardous Materials.

(Mr. OXLEY asked and was given permission to revise and extend his remarks.)

Mr. OXLEY. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in support of the E-Sign conference report. This legislation is deceptively simple. It provides that anywhere in law a written signature or paper record is required, that requirement can be satisfied by an electronic signature or electronic record. Other than repealing some of our law school educations, this legislation provides a real future for electronic commerce.

Its application is clearly sweeping. It will promote legal certainty in all online transactions. In so doing, it will accelerate the growth of electronic commerce. E-Sign is a rare example of legislation in which Congress is being proactive rather than reactive.

Because the access to financial information has improved dramatically, the Internet provides significant opportunities for more Americans to become directly involved in the capital markets.

Be it trading stocks on-line, assembling a retirement portfolio or getting a mortgage on-line, E-Sign will allow consumers to do it faster, cheaper, and better.

Today, millions of Americans trade securities and manage their investments on-line. The cost savings to investors are enormous. Full-service brokerage can cost as much as $400 per trade. On-line brokerage costs less than $10 per trade at some firms.

One goal of E-Sign is to allow consumers to open accounts on-line without mandating a physical signature or a brokerage agreement and mailing it back to the broker. E-Sign will lower transaction costs to firms and improve the audit trail for customers.

E-Sign will also facilitate an increase of the provision of insurance products on-line and provide for on-line mortgages. It has been estimated that consumer savings will amount to $5 billion in mortgages alone.

I want to highlight two other provisions to which I contributed. The first is the amendment that I sponsored to allow letters of agency, or LOAs, to be submitted over the Internet for the purpose of changing telecommunications carriers.

The second provision of which I took special interest is intended to limit the liability exposure of insurance agents so they are not liable for deficiencies in electronic procedures.

I want to take this opportunity to commend the gentleman from Virginia (CHAIRMAN BLILEY) for his leadership once again on this important legislation. It is a fitting legacy to his chairmanship, along with Gramm-Leach-Bliley, Litigation Reform, and the Telecommunications Act, among many others. Under the gentleman's leadership, the Committee on Commerce has become the e-commerce committee.

I also want to thank the gentleman from Michigan (Mr. DINGELL), the gentleman from Massachusetts (Mr. MARKEY), and the gentleman from Louisiana (Mr. TAUZIN) for their work on the conference.

E-Sign is not just a bill that will benefit companies that develop new technology. It will also help American businesses, large and small, use technology to develop their businesses and provide new and innovative services to consumers.

This a proud day for the Congress, a proud day for the Committee on Commerce.

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Mr. DINGELL. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. GREEN).

Mr. GREEN of Texas. Mr. Speaker, I thank the gentleman from Michigan (Mr. DINGELL), the ranking member, and also the gentleman from Virginia (Mr. BLILEY), the chairman of the committee, for their yeomen's efforts on this bill.

Our signature is our word. It binds all agreements. The signatures of our forefathers freed our country. Today, in many respects, we are going to free the American consumer. The legislation before us today will allow an electronic signature to replace a written signature for many business transactions.

The electronic signature, in many instances, will speed transactions between consumers and businesses across States and across nations. Not having to sign and mail important documents does come, however, at a price. As a member of the Committee on Commerce and the Subcommittee on Telecommunications, Trade, and Consumer Protection, I supported ensuring that consumers are protected from the fraudulent use of their name. To this end, a balanced disclosure policy that allows consumers the choice of receiving important documents either on paper or electronically has been incorporated in this legislation.

While there are a great many people in this country that are computer literate, there are those that are more comfortable in signing their names to paper. This bill accommodates those people. I also want to point out that not all documents are eligible for the electronic signature. Wills, court orders, foreclosures, termination of health benefits are just examples of the documents that must be delivered and signed directly by the consumer.

This legislation will continue our progress into the new digital millennium, and I am pleased the conference committee produced this solid bipartisan legislation that helps and protects the American consumers.

Mr. Speaker, this is a good piece of legislation, and again I thank the chairman of the committee and also our ranking member for their efforts on this.

Mr. BLILEY. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. ARMEY), the distinguished majority leader.

Mr. ARMEY. Mr. Speaker, I thank the gentleman from Virginia for yielding me this time, and let me thank the Committee on Commerce for another very, very good piece of legislative work. Not only was it an outstanding job in committee, preparing this bill for the floor, but even in the sometimes more rigorous business of working with the other body in conference committee we find the dedication of the committee to be excellent, and we have before us an excellent product.

Mr. Speaker, we live in a world of innovation and invention that boggles the mind. Each day we use dozens of new technologies that we would not even have imagined a few short years ago. Today, we are removing government obstacles that prevent consumers and businesses from making the most of these wonders of technology. We are checking off a major item in our e-contract with high-tech America.

Most of us see the advantages of technology in our daily lives as consumers, but there is a larger, invisible benefit: Increasing productivity in every business in America. Our modern economy makes it possible for a business to go on-line and order supplies quickly and accurately. It is simple and it is paperless, with one little hitch: Today, no sale is a legal contract without a piece of paper on file somewhere. The materials are ordered, the products are custom made, the special delivery instructions are carried out, all with just a few strokes of the keyboard. But for legal backup that paper must always be stored in a file cabinet somewhere.

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This bill changes all that. Now, an electronic document will be considered a contract for legal purposes. A simple change with a dramatic impact. Just think of all those file cabinets full of purchase orders and invoices that will be no longer needed.

Consumers will see the benefits in their lives, too. Today, they can go on-line to buy a car, do all the research, figure out what they want to buy and find the exact car they want among all the dealerships nationwide. But when they go to finally settle on the deal, today, they have got to commit pen to paper and wait on regular mail.

A consumer can go on-line to research and find a mortgage but, again, that last step must be on paper and delivered by snail mail. We can get a world of information on mutual funds by searching on-line; but, again, that last step has to be on paper, delivered by the post office.

This bill changes all that. It eliminates the paper, the delay, the inconvenience by letting the consumer open that account on-line, confident that the transaction has the same standing in law as if they had signed a contract on paper at a bank or investment company. More importantly, we consumers can choose to have information about our accounts sent to us electronically rather than on paper. Instead of storing shoe boxes full of monthly statements, we can receive statements by e-mail and save them on our computers.

With this bill, Mr. Speaker, each of us will have increased confidence that an on-line transaction has the same legal standing as if we had traveled down to the bank, stood in line for an hour, and signed a bunch of papers. What we get from this bill, Mr. Speaker, is paperless transactions. What we receive is electronic records. With this bill, we save our time, we save frustration, and we save trees.

Mr. DINGELL. Mr. Speaker, I yield 2 minutes to the gentlewoman from New York (Mrs. MALONEY).

Mrs. MALONEY of New York. Mr. Speaker, I thank the ranking member, who is also the dean of our caucus, for his leadership on this issue and so many others and, of course, the gentleman from Virginia (Mr. BLILEY).

We are at the beginning of a new century which is more information, more wired, and technology driven. Our ever-more global new economy is changing the way Americans work and communicate with each other. This conference committee report is part of that change, and I fully endorse it.

This legislation knocks down another barrier to a fully incorporated digital information-based economy. The bill requires that e-signatures be treated legally, the same as written ones, for commercial contracts, agreements and records. For consumers, this bill means less paperwork, major time savings and reduced costs. This will greatly increase the attractiveness and efficiency of on-line commerce.

An important privacy protection will require consumers to opt in to receive records electronically. This strikes an important balance, ensuring that consumers' interests are adequately protected as transactions are increasingly completed in digital form.

While the information economy is changing the way people live around the world, it is having an even more profound impact on the congressional district in New York City, which I represent, particularly the silicon alley area. The technology industry is responsible for 100,000 new jobs in New York City alone in the 1990s. These are highly desirable, professional jobs that are an important addition to our city. This bill is an important step in keeping this progress moving forward.

I thank the conferees for their important work on this bipartisan issue, and I urge its passage.

Mr. BLILEY. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. COX), a member of the committee and chairman of the Republican Policy Committee.

Mr. COX. Mr. Speaker, I thank the gentleman for yielding me this time, and I rise in strong support of this conference report. I would like to thank the chairman of the full committee for his leadership of our House effort in the House-Senate conference. It is a very, very important step for this Congress that we are completing action on this legislation.

The growing use of the Internet, of course, gave rise to the need for this legislation. It created questions about whether or not a piece of paper, pen and ink, would be necessary in order to make a contract that otherwise was negotiated and agreed to on-line.

We have just started a new millennium. In the last millennium, several centuries ago, there were similar questions about whether one could form a contract in some way other than with a stamp and hot wax, and I am happy to say that with such high-tech inventions as the ballpoint pen at hand, legislatures all over the world recognized the efficiency of permitting people to make agreements that were legally binding without a stamp and hot wax. Now, in the 21st century, we are asking ourselves again whether the latest technology will be sufficient to form an agreement. We have agreed that the answer must be yes.

No longer will there be inconsistency among the 50 States over the question of whether a contract is a contract just because it was made over the Internet. Now, an electronic signature, that is an individual's agreement given on-line, will be just as legally valid as the handwritten signature. And this is a good thing, because they are not just mere substitutes for one another.

In fact, an electronic signature is more secure. Present-day technology permits us to ascertain more accurately whether or not the individual is actually the person making the agreement or whether the person at the other side of the contract is the contracting party much more so than signatures, which can more easily be forged. Digital signatures also permit us to ascertain whether or not the contract itself is the very contract that we thought we were signing or whether it has been altered in some way. These are real benefits over paper and ink.

There is one other thing about this conference report that is worth mentioning, and that is that it permits the parties themselves to agree on the specific technologies that they find satisfactory in coming to a meeting of the minds. When we pass legislation that is going to be valid not just for a month or for a year; but for the indefinite future, it is vitally important we permit technology to advance, that we not impede it with our legislative enactments. And this flexibility, my colleagues, I think, is a very important aspect of this legislation.

Finally, I am pleased that this legislation directs the Commerce Department, the executive branch of our government to work with foreign governments to make sure that this rule, which will now apply in the 50 States, also applies worldwide.

Mr. DINGELL. Mr. Speaker, I yield 2½ minutes to the gentlewoman from California (Ms. ESHOO).

Ms. ESHOO. Mr. Speaker, I rise in support of this very important conference report that is before us today. As so many of my colleagues have mentioned, we have moved into a new era, from pen and quill, from wax, from all kinds of imprints that would conclude a contractual agreement between parties.

Back in 1996, I believe I was the first to establish a virtual district office, where constituents could go on-line to fill out the government forms. But I very quickly realized that they could not sign off on these forms. So it was in that Congress that I brought to my colleagues the whole issue of digital signatures.

The government now, because of the legislation that I had introduced in the last Congress, and it became law, now allows for digital signatures. But today, this legislation, very importantly, recognizes that electronic commerce is here, here to stay, and that we, too, have to extend across the States to businesses and to individuals the allowance of what we now call a digital signature.

I am very proud of the work that we did that is reflected in the legislation that I introduced, and building on it, of course, what our chairman and so many others have done. Two very important aspects of this legislation are that the financial services community is included in this and, very importantly, that there are consumer protections. Our chairman accepted the work that some of us did. There was a very important amendment that the gentleman from Washington (Mr. INSLEE), the gentleman from Virginia (Mr. MORAN), myself, and others introduced. That strengthened the backbone of this

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bill. It has made it better for the consumer. It has made it better for our Nation. I salute him for his leadership.

Mr. Speaker, I thank those that have worked as conferees and have held onto this. And I think that as we embark upon this Internet revolution, this new economy, that there are more challenges upon us. And I think the first, and one of the major steps, is being taken today. So I urge my colleagues to accept this conference report. It is a very important one.

I look to the future of building on the issues of privacy, of cyber security, of intellectual property, of copyright and also of financial reporting standards. Please vote for this. This is a step that matches the new century, and I salute our chairman for his leadership on it.

Mr. BLILEY. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. FOSSELLA), a member of the committee.

(Mr. FOSSELLA asked and was given permission to revise and extend his remarks.)

□ 1215

Mr. FOSSELLA. Mr. Speaker, I thank the chairman of the committee for yielding me the time and to add to those who have said prior how this will add, I think, to a wonderful legacy that the gentleman from Virginia (Chairman BLILEY) has earned as chairman of the Committee on Commerce and the ranking member and others who participated.

Mr. Speaker, I rise today in support of the conference report to S. 761, the Electronic Signatures in Global and National Commerce Act.

The most recent Commerce Department report on the digital economy released last week was aptly titled Digital Economy 2000. Interestingly, this is a change from the two previous reports, which were entitled The Emerging Digital Economy.

The Commerce Department's reasoning for the title change was simple: the digital economy is no longer emerging but, rather, it has already arrived.

The Electronic Signatures in Global and National Commerce Act, better known as E-SIGN, is the most important step that Congress has taken to date ensuring that not only the benefits of the digital economy are sustained but, more importantly, that those benefits are grown and enhanced substantially.

By according electronic records and signatures the same legal effect and enforceability as those enjoyed by non-electronic records and signatures, E-SIGN enables more complex transactions to take place among a wider range of economic participants.

For example, the American consumer no longer will be limited to purchases of books or CDs on-line. Rather, with the enactment of E-SIGN, the American consumer can participate in complex on-line transaction, such as the purchase of a home, a life insurance policy, or the establishment of an IRA, to name but a few.

Moreover, E-SIGN will empower small businesses to more effectively compete with large corporations. Those businesses will be empowered to engage in on-line transactions which are more complex in nature and greater in value.

Both the American consumer and the small businessman can more fully harness the efficiencies and the value of the digital economy with E-SIGN.

America's larger economies will also benefit from the added legal certainty brought to the digital marketplace with E-SIGN.

With that, and for all those reasons mentioned above, Mr. Speaker, I urge strong support of this legislation.

Mr. DINGELL. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from California (Mr. BERMAN).

Mr. BERMAN. Mr. Speaker, I thank the gentleman for yielding me the time.

Mr. Speaker, I am very pleased to rise in support of passage of the conference report.

When the bill first came before the House, I had some very serious concerns that it might undermine the many consumer laws that we have fought hard to develop, the laws that are the very basis of relationships of trust between consumers and merchants.

At that time, many of us warned that a bill unfriendly to consumers would not be good for the very industries that wanted it, those moving into the new world of electronic commerce.

Validating electronic signatures and contracts is essential for the continued growth and security of e-commerce. But this important goal is expanded by some with the aim of eliminating virtually all paper requirements; and that expansion, to my way of thinking, was excessive.

For instance, H.R. 1714 as originally passed allowed regulated industries to eliminate paper records but did not require businesses to maintain their records in a form that could be accessed by government regulators.

Our efforts to oppose the worst of this legislation have led to a very good result. The conference has reshaped the bill to protect consumers from fraud and to provide assurances that consumers will know their legal rights before they opt-in in receiving electronic records, understand what records will be affected, and to be able to get the records in paper should they need to.

Further, the report preserves State and Federal unfair deceptive practices laws.

The conference report establishes a principle that the Internet must be a safe place for consumers. I credit my Democratic colleagues, the gentleman from Michigan (Mr. DINGELL) and his other colleagues on the conference committee, for defending the need to preserve consumer protections and the excellent leadership of the gentleman from Virginia (Chairman BLILEY) in achieving an appropriate balance in an excellent piece of legislation.

I am confident that, in passing this report, we will be passing a bill that will enable electronic conference to go ahead without undermining consumer protections or the Government's ability to fulfill its role in industry oversight. A very good job has been done by the conference committee.

I urge the passage of the bill.

Mr. BLILEY. Mr. Speaker, I yield 2½ minutes to the gentlewoman from Maryland (Mrs. MORELLA).

Mrs. MORELLA. Mr. Speaker, I thank the gentleman for yielding me the time. I also thank the gentleman from Virginia (Chairman BLILEY) for the leadership he has shown in bringing this bill to the floor and all the other achievements in this Congress and previous Congresses. We are going to miss him. And again, I appreciate seeing him in this real successful effort.

The gentleman from Michigan (Mr. DINGELL), the ranking member, has been great. A lot of people have worked on this conference report. I and the American public appreciate that very much.

I certainly am in strong support of the bipartisan conference report on the Electronic Signatures in Global and National Commerce Act. I am delighted to see such a comprehensive agreement has been reached.

The fast growth of electronic commerce that has fueled the economic boom in recent years needs to be fostered, and this bill does that.

By validating electronic contracts, placing them with an equal legal standing as paper contracts, while assuring essential consumer protections, this conference report will further ensure that the scope of private enterprise on the Internet remains limited only by imagination. All of these elements have been considered.

As the States continue to set up their own regulations, Federal guidelines need to be in place which establish a framework for handling electronic signatures. I am encouraged that such a mechanism has been constructed that does not impede on the State's role of protecting consumers and the solvency of our Nation's financial institutions.

This legislation in many ways is a recognition of a new era of human history. For thousands of years, paper has been the foundation of commerce. All contracts and official records needed to be physically kept. They had to make their mark in ink.

But every day more shopping, lending, and a myriad of other business transactions are conducted over the Internet. The concept is simple, but it signifies a major change. The pen is replaced by the keyboard. The paper is replaced by disk drives. The result is the promotion of e-commerce and the high-tech explosion that has so drastically altered today's society.

This conference report, however, does not take this step lightly. There is an understanding of the newness of the

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medium. And to balance the concerns of cautious consumers, the legislation includes provisions meant to protect their interests.

For instance, businesses must receive the consumer's consent before they conduct their dealings electronically. Also, very sensitive information still must be transmitted physically. Cancellation or termination of health insurance cannot be done via e-mail.

As is often the case, society acts and Congress follows. By enacting this legislation today, we begin to remove some barriers to the electronic revolution to clear the Internet open for business.

Mr. DINGELL. Mr. Speaker, I yield 2½ minutes to the distinguished gentleman from Washington State (Mr. INSLEE).

Mr. INSLEE. Mr. Speaker, I rise with a note of personal satisfaction that the House has been able to succeed in fashioning a true bipartisan bill. I think that is largely due to the efforts of the gentleman from Michigan (Mr. DINGELL), the ranking member, and the gentleman from Virginia (Chairman BLILEY). Their years in service and experience have really paid off here in leading this House to be able to find this consensus.

Sometimes new Members, like myself, need to recognize the ability for experience to pay off here; and that has happened in this case.

Mr. Speaker, this is a great bill because, simply, it will allow business to move at the speed of light rather than the speed of paper. I think in the halls of Congress we have got to recognize that there is incredible genius out there every minute of every hour creating new products, new consumer benefits. And we in the House have to make sure that we help them do that; we remove barriers that are standing in their way.

I represent an extremely high-tech district, Redmond, Washington, north of Seattle, where every day there are geniuses coming up with new technologies. And this is really a single statement, I think, that the House is going to move ahead and recognize a new fact. And that new fact is this: there are no just high-tech issues anymore. Everything is high tech. This is a statement that the House understands that.

Secondly, Mr. Speaker, I want to say that we have achieved a market success in making sure that consumer rights are protected when this new technology is used.

Several of us had an amendment when the bill was in the House that made sure that all consumer protections in the country, all the substantive notices and consumer protections, in fact those protections of consumers will remain in under this new law.

In addition, it will make sure that only when consumers want to use electronic measures will they be used. So it is a great day.

Mr. DINGELL. Mr. Speaker, will the gentleman yield?

Mr. INSLEE. I yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Speaker, I think the gentleman is raising an issue which is important. I would like to observe that the House and, I think, the people of the country owe the gentleman from Washington (Mr. INSLEE) a substantial vote of thanks for his leadership on this matter.

He offered the amendment which very significantly improved the legislation by affording very significant protections to consumers and to the public who would use this legislation. That amendment remains in the legislation, and it is going to be very helpful.

I hope the gentleman is proud of what he has done, because the country owes him a debt for his significant accomplishment in this matter.

Mr. INSLEE. Mr. Speaker, I thank the gentleman for his comments. I will always yield to anyone who has comments of that nature. I thank the gentleman so much. That is high praise from the source.

Mr. Speaker, it is a good day for the House.

Mr. BLILEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as we approach the end of this process on this historic piece of legislation, I do want to take a moment to recognize the hard work of our respective staffs who were instrumental in getting us here today.

First let me thank my staff: Paul Scolese; Ramsen Betfarhard; David Cavicke; Linda Bloss-Baum, by the way who just gave birth to a new baby girl named Alexandra; and Mike O'Rielly. These guys did an outstanding job on this bill, and they know more about the substance of this bill than anyone.

I also want to thank Consuela Washington and Bruce Gwinn on the staff of the gentleman from Michigan (Mr. DINGELL) and Colin Crowell and Jeff Duncan from the staff of the gentleman from Massachusetts (Mr. MARKEY).

Further, let me thank the diligent staff from the other body, especially Maureen McLaughlin from the Senate Commerce Committee. Maureen was an outstanding asset to the conference committee.

I must also express deep thanks to Andy Pincus of the Department of Commerce. His willingness to work on this issue in a constructive manner is one of the reasons we are here today.

All of these people have made this successful day possible, and I extend my heartfelt gratitude. I thank them for their tireless work and dedication.

I would also take a moment to read through a sampling of the groups that support this legislation:

Business Software Alliance, Microsoft, America Online, Information Technology Association of America, American Express Company, DLJDirect, American Bankers Association, Citigroup, Information Technology Industry Council, American Electronics Association, Fannie Mae, Freddie Mac, National Association of Realtors, Oracle, Cable & Wireless, Sallie Mae, U.S. Chamber of Commerce, Real Estate Roundtable, Consumer Mortgage Coalition, Mortgage Bankers Association, Electronic Financial Services Council, Intuit, Federal Express, National Association of Manufacturers, Coalition of Electronic Authentication, America's Community Bankers, and Investment Company Institute.

Mr. Speaker, I reserve the balance of my time.

Mr. DINGELL. Mr. Speaker, I yield back the balance of my time.

Mr. BLILEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank the gentleman from Michigan (Mr. DINGELL) for his cooperation and particularly the hard work of his staff, as I said before. This is a good bill.

I would just like to say in closing a word about process. We have said about as much as needs to be said about this bill. But I would like to say to all of my colleagues that I find that, if we sit down at the table with our colleagues on the other side of the aisle and we respect their positions, their opinions, they will respect ours; and if we are sincere about reaching an agreement, we usually can do so.

It is better to do that than to stand on opposite sides of a room and throw rhetorical grenades at each other. We do too much of that.

The American people sent us up here to do a job. We are doing that in the finest tradition with this bill.

Mr. CROWLEY. Mr. Speaker, I would like to express my strong support for the electronic signatures legislation.

As legislators, it is part of our job to help ensure a sound economy. Supporting the growing high-tech industry helps us accomplish this important part of our job.

That is why I am proud to support the Electronic Signatures in Global and National Commerce Act and the Conference Report. This much needed legislation will provide legal certainty and a national standard for business-to-business contracts and some consumer contracts that were agreed to on-line, as well as ensure important consumer protections.

As anyone who has taken out a mortgage knows, courier and other fees can be a substantial cost to consumers. By allowing for on-line transactions, we can help bring down the costs associated with contracts for anything we can purchase on-line.

Mr. Speaker, back in the 80's, pundits were predicting the paperless office. Well, it's the year 2000 and we're still not there. Part of the problem is our antiquated system of rules and differing state laws, which although important, can serve as a hindrance to interstate commerce over the Internet.

With this legislation, we will be effectively removing one of the greatest roadblocks to Internet services. I was proud to cast my vote in support of

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this legislation in November, and I am proud to cast my vote in support of the conference report today.

I would like to commend the conferees for agreeing to this balanced report and for all of their hard work. This is an important and complicated piece of legislation and I believe they deserve a great deal of credit for preparing this package.

I urge all of my colleagues to support this important legislation.

Mr. SANDLIN. Mr. Speaker, today I voice my support for the conference report on S. 761, Electronic Signatures in Global and National Commerce Act. Now, more than ever, business is conducted through the Internet and the need for a federal standard on electronic contracts, agreements and records is critical to the integrity of many of these transactions.

This historic piece of legislation will essentially give the electronic signature the same legal effect as a written signature. Although 40 states already have enacted laws to provide for the use of electronic signatures, these laws vary greatly. The new federal law, as proposed in this conference agreement, would allow states to modify the law, provided that the modifications are consistent with the federal standard and technology neutral.

Not only does the proposed national standard give states flexibility with regards to its implementation, but it also protects the consumer. Under this agreement, a business must present the consumer with a statement informing them of their right to have notices and records provided electronically or in writing. Consumer protections are further ensured by allowing the consumer to withdraw the original consent agreement and requiring the business to provide the alternative source of transmission.

Mr. Speaker, I look forward to the new freedom that this conference report will provide in interstate and foreign commerce. Consumers will now have complete confidence that their electronic contracts, agreement and records carry the full weight of law. The E-signature conference report is a landmark in that it aligns federal law with the latest technology without being partial to the technology industry itself. I commend my colleagues for all of the hard work they have done on this historic piece of legislation to ensure its swift passage into law.

Mr. LAFALCE. Mr. Speaker, I rise today in strong support of the conference report. The Congress today takes an important step in recognizing the importance to our economy of electronic commerce. In so doing, Congress also ensures that millions of Americans can begin to enjoy the benefits of a safe, reliable, and consumer-friendly electronic marketplace. As President Clinton has indicated, the bipartisan agreement we are adopting today is responsible and balanced, and includes protections to provide consumers with the confidence that is essential to conduct on-line transactions in a safe, reliable, and trustworthy manner. As a result, this legislation comes to the House floor with strong bipartisan and Administration support. President Clinton, in fact, has urged the Congress to send the legislation to his desk for his immediate signature. I am therefore proud to support this bipartisan agreement.

The legislation achieves the important objective of facilitating the use of electronic records and signatures in interstate and foreign commerce. The bill also provides that agreements, records, or contracts entered into have the same legal effect and recognition as paper transactions. Both of these objectives are complemented with provisions to ensure that consumers receive the same level of legal protection regardless of whether they conduct their transactions on paper or on line. For example, consumers must affirmatively consent electronically to receiving electronic records in a manner that reasonably demonstrates that they can access the information provided. In addition, the legislation provides that certain notices must be provided in paper, such as notices critical for the protection of consumers and public health and safety, notices of cancellation of all forms of insurance and insurance benefits, notices of default or actions to collect debts, and others.

When this legislation was initially debated on the House floor last year, I expressed concerns about its impact on existing consumer and fair lending laws and regulations. My concern centered on the potential for consumers to receive one level of protection for in-person, paper transactions, and another for on-line transactions. I was also concerned about the potential for unscrupulous and predatory practices. As a result, Banking Committee Chairman Leach and I, at my behest, wrote to the Federal Reserve to elicit their views on the legislation. The Federal Reserve, which administers consumer financial services and fair lending laws, shared my concerns and agreed that preserving its regulatory authority was essential to protecting consumers under existing consumer laws. I am happy to note that the conference report preserves this important regulatory authority, which has the dual benefit of protecting consumers from predatory practices, and providing the legal clarity that spares businesses from unnecessary litigation.

Mr. Speaker, as electronic commerce continues its rapid expansion, I fully support an approach that facilitates this growth while also *protecting the rights of consumers. This* conference report accomplishes both of these important goals. As our economy moves into the *Electronic Age, this legislation will provide* American consumers with the basic protections that they have come to know and expect from their financial service providers and from *commerce in general.*

Mr. WELLER. Mr. Speaker, thank you for *this opportunity to support S. 761, the* Conference Report on the Electronic Signatures in Global and National Commerce Act. This effort is groundbreaking, as this conference report is largest and most significant legislation on electronic commerce to date.

This bill ensures that electronic signatures and electronic records transferred via the Internet will have the same legal effect, validity or enforceability as contracts and other records signed by hand on paper. The scope of this legislation is broad and will protect interstate commerce. I am certain that the result of this important legislation will be greater confidence and security in conducting business and transactions over the Internet.

In the recent months, we have come far in our efforts to promote and encourage the growth of Internet use and e-commerce. A few weeks ago, the House voted to extend the existing moratorium on Internet taxation for an additional 5 years. I believe that this important step will give the new e-economy the time it needs to grow and flourish at a time when the number of new websites and Internet users is doubling every 100 days!

Additionally, the House passed legislation recently to eliminate the outdated 3 percent excise tax on telephone use. This tax was originally collected to help pay the Spanish-American War, a war that ended more than 100 years ago! Today, more than 90% of Internet users access the Web over telephone lines. I believe it is time to repeal this outdated tax and make the information highway just that—a freeway not a tollway.

Mr. Speaker, I am proud to support the Conference Report on S. 761. I encourage my colleagues to do the same.

Mr. CONYERS. Mr. Speaker, the Internet has the potential to be the most pro-consumer development in recent history. It can empower consumers to obtain more useful information about products—such as price comparisons, safety information, and features—and to help consumers make more educated purchases.

But the Internet will never reach its full potential if consumers do not feel secure in the electronic marketplace. If we allow the Internet to become a lawless "Wild Wild West" and a safe-haven for fraudulent businesses, people will simply refuse to engage in on-line commerce. Ultimately, this is a bad result both for the Internet and for consumers.

The electronic signature legislation that the House passed last fall was deeply flawed. It set up a false choice between consumer protection and electronic commerce. In fact, the two can—and should—go hand in hand.

While I supported legislation that validated electronic signatures and contracts, I opposed *H.R. 1714 because it left consumers* vulnerable to fraud, and it undermined numerous federal and state consumer protection laws.

H.R. 1714 also weakened the ability of federal and state regulators to enforce important safety regulations and monitor industries such as the financial services industry, and the insurance industry.

As a result of the hard work of House and Senate Democrats and the Administration, the Conference Report that is before us today is a great improvement over the House-passed bill.

The Conference Report contains several new provisions to protect consumers. Unlike the House bill, the Conference Report requires that consumers receive a notice of their rights before they consent to receive documents electronically. Now, there will truly be "informed consent" by the consumer.

Equally important, under the Conference Report, the consumer's consent must be in the electronic form that will be used to provide the information. This is a vast improvement over the original bill because it ensures that a consumer can actually receive and open the electronic notices that are provided to him or her.

The Conference Report also creates a framework so that federal regulatory agencies can use their rulemaking authority to create guidelines for how to *properly deliver and* manage electronic records. This way, the government has the flexibility and authority to prevent abuses and fraud.

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Some Senate Republicans oppose this Conference Report. They say it gives consumers too many rights and does not do enough to grease the wheels for the financial services industry. I could not disagree more.

The Conference Report demonstrates that Congress can facilitate electronic commerce at the same time that we protect consumers. I am confident that this is what is best for the Internet in the long run.

Mr. BLILEY. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore (Mr. FOLEY). The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. BLILEY. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this motion will be postponed.

□ 1230

RECESS

The SPEAKER pro tempore (Mr. FOLEY). Pursuant to clause 12 of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 12 o'clock and 30 minutes p.m.), the House stood in recess subject to the call of the Chair.

□ 1531

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. LAHOOD) at 3 o'clock and 31 minutes p.m.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Ms. Wanda Evans, one of his secretaries.

CONFERENCE REPORT ON S. 761, ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

The SPEAKER pro tempore. The pending business is the question of agreeing to the conference report on the Senate bill, S. 761, on which the yeas and nays are ordered.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. The question is on the conference report.

The vote was taken by electronic device, and there were—yeas 426, nays 4, not voting 4, as follows:

[Roll No. 271]

YEAS—426

Abercrombie
Ackerman
Aderholt
Allen
Andrews
Archer
Armey
Baca
Bachus
Baird
Baker
Baldacci
Baldwin
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Becerra
Bentsen
Bereuter
Berkley
Berman
Berry
Biggert
Bilbray
Bilirakis
Bishop
Blagojevich
Bliley
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonior
Bono
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brady (TX)
Brown (FL)
Brown (OH)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Capps
Capuano
Cardin
Carson
Castle
Chabot
Chambliss
Clay
Clayton
Clement
Clyburn
Coble
Coburn
Collins
Combest
Condit
Conyers
Cooksey
Costello
Cox
Coyne
Cramer
Crane
Crowley
Cubin
Cummings
Cunningham
Davis (FL)
Davis (IL)
Davis (VA)
Deal
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Ewing
Farr
Fattah
Filner
Fletcher
Foley
Forbes
Ford
Fossella
Fowler
Frank (MA)
Franks (NJ)
Frelinghuysen
Frost
Gallegly
Ganske
Gejdenson
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Green (TX)
Green (WI)
Greenwood
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill (IN)
Hill (MT)
Hilleary
Hilliard
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hutchinson
Hyde
Inslee
Isakson
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Kasich
Kelly
Kennedy
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kingston
Kleczka
Klink
Knollenberg
Kolbe
Kucinich
Kuykendall
LaFalce
LaHood
Lampson
Lantos
Largent
Larson
Latham
LaTourette
Lazio
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Luther
Maloney (CT)
Maloney (NY)
Manzullo
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McDermott
McGovern
McHugh
McInnis
McIntosh
McIntyre
McKeon
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Metcalf
Mica
Millender-McDonald
Miller (FL)
Miller, Gary
Miller, George
Minge
Mink
Moakley
Mollohan
Moore
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Napolitano
Neal
Nethercutt
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Ose
Owens
Oxley
Packard
Pallone
Pascrell
Pastor
Payne
Pease
Pelosi
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pickett
Pitts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Reyes
Reynolds
Riley
Rivers
Rodriguez
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Roybal-Allard
Royce
Rush
Ryan (WI)
Ryun (KS)
Sabo
Salmon
Sanchez
Sanders
Sandlin
Sanford
Sawyer
Saxton
Scarborough
Schaffer
Schakowsky
Scott
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shows
Shuster
Simpson
Sisisky
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Spence
Spratt
Stabenow
Stark
Stearns
Stenholm
Strickland
Stupak
Sununu
Sweeney
Talent
Tancredo
Tanner
Tauscher
Tauzin
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Thune
Thurman
Tiahrt
Tierney
Toomey
Towns
Traficant
Turner
Udall (CO)
Udall (NM)
Upton
Velazquez
Visclosky
Vitter
Walden
Walsh
Wamp
Waters
Watkins
Watt (NC)
Watts (OK)
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Weygand
Whitfield
Wicker
Wilson
Wise
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NAYS—4

Chenoweth-Hage
Paul
Stump
Taylor (MS)

NOT VOTING—4

Cook
Danner
Sensenbrenner
Vento

□ 1553

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

ANNOUNCEMENT REGARDING PLANS TO ATTEND "TO KILL A MOCKINGBIRD" AT KENNEDY CENTER

(Mr. CALLAHAN asked and was given permission to address the House for 1 minute.)

Mr. CALLAHAN. Mr. Speaker, many of my colleagues are interested tonight in attending the performance of "To Kill a Mocking Bird" at the Kennedy Center, and we are trying desperately to work out arrangements with the leadership to roll the votes. If votes are rolled, there will be three buses waiting at the foot of the Capitol steps between 6:30 p.m. and 7:00 p.m. to take my colleagues to the Kennedy Center and then bring them back after the performance.

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Document No. 104

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