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Mr. GORTON. In one minor respect, the senior Senator from Michigan is in error. My own handwritten first draft said "proposed." I simply acceded to the recommendation of the Senator from Michigan that we use the word "recommend."

Clearly, what we are speaking about is the promulgation of a rule, and nothing can be promulgated by the Department of Transportation without approval of a joint resolution of Congress. So whether it recommends or proposes, they are going to have to come here before any rule takes place.

In connection with my earlier answer, all of these bars are off in a year. We will be right back here next year. I hope maybe not debating the same issue. I hope we may have been able to reach a conclusion on it.

Finally, the point of all these words, what we are now doing is instructing our conferees to a conference with the House of Representatives, and it is the words and the requirement that come out of that conference committee, of course, that will govern actual future action.

My intention as a member of that conference committee, and perhaps the only one in this colloquy who is a member of that conference committee, will be to see to it that we have a very thorough study of this subject. I hope, like my colleagues from Michigan, that it will recommend stronger corporate average fuel economy standards, but I am willing to listen to the experts in that connection. If it does, I will support them in this body, but if something else happens, we will be debating this issue again next year. The law that applies to corporate average fuel economy standards today will apply when this fiscal year is over once again, and the same kind of rulemaking will take place then.

I hope I have not spoken too long on this subject, but I think we ought to get on with it now and do the job that needs to be done.

Mr. ABRAHAM. Mr. President, I wish to indicate I was actually speaking on the floor at the time that the initial exchange of documents took place, but from the point at which I concluded my remarks and began discussing this issue with the Senator from Michigan and the Senator from Washington, it was certainly my understanding that the intention, and certainly our side's intention, in urging the word "recommend" be employed was to make precisely the distinction which my colleague from Michigan just indicated. Certainly there was an important element to that change from my point of view, as I know there was from his.

I am hopeful as the process moves forward that it will do so in the constructive way we have outlined. We ought to make clear a rulemaking procedure is where "a proposed set of rules" would be the term of art used. For a study, which is what we intended here—a recommendation is different from the proposal that might stem from an actual rulemaking. That is my interpretation of the discussions in which I at least took part.

UNANIMOUS CONSENT AGREEMENT

Mr. REID. Mr. President, I have a statement on behalf of the majority leader.

I ask unanimous consent that immediately following the disposition of the motion to instruct the conferees, the Senate turn to the e-signatures conference report under the previous consent.

I further ask consent that when the Senate resumes the DOD authorization bill at 3 p.m. on Monday, it be considered under the following terms:

That the pending B. Smith amendment and the Warner amendment be laid aside and Senator KENNEDY be recognized to offer his amendment regarding hate crimes, and immediately following that offering, the amendment be laid aside and Senator HATCH or his designee be recognized to offer his hate crimes amendment.

I further ask that the two amendments be debated concurrently and that no amendments be in order to either amendment prior to the votes in relation thereto and that the vote occur in relation to the Hatch amendment to be followed by the Kennedy amendment following the vote in relation to the Murray amendment on Tuesday.

I also ask that at 9:30 a.m. on Tuesday, Senator DODD be recognized to offer his amendment relative to a Cuba commission and there be 120 minutes equally divided on the amendment prior to a motion to table and no amendments be in order prior to the vote, with the vote occurring in a stacked sequence following the two votes ordered regarding hate crimes.

I further ask consent that at 11:30 a.m. on Tuesday, the Dodd amendment be laid aside and Senator MURRAY be recognized to offer her amendment relative to abortions and there be a time limit of 2 hours under the same terms as outlined above with the vote occurring at 3:15 p.m. on Tuesday.

I further ask consent that the Senate stand in recess between the hours of 12:30 p.m. and 2:15 p.m. on Tuesday in order for the weekly party conferences to meet.

I also ask that there be 4 minutes of debate prior to each vote in the voting sequence on Tuesday and no further amendments be in order prior to the 3:15 p.m. votes.

I finally ask consent that the Senate proceed to S. 2522, the foreign operations appropriations bill following the disposition of the above mentioned amendments and any amendments thereto and no call for the regular order serve to displace this bill, except one made by the majority leader or minority leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the conference report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to 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 for other purposes, having met, after full and free conference, have agreed that to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings at pages H4115-18 of the RECORD of June 8, 2000.)

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I yield 2 minutes to the Senator from Massachusetts.

Mr. KERRY. Mr. President, I promised I would not go in front of Senator WYDEN.

I yield to the Senator from Oregon.

Mr. MCCAIN. How long does the Senator from Oregon need?

Mr. WYDEN. I was contemplating speaking about 5 minutes. But, again, I do not want to inconvenience my colleagues.

Mr. MCCAIN. I yield 5 minutes to the Senator from Oregon, followed by 2 minutes to the Senator from Massachusetts, and then those of us on the beleaguered majority will have our say.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, the conference agreement on digital signatures that is going to be overwhelmingly approved tomorrow morning may be the big sleeper of this Congress, but it certainly was not the "big easy."

The fact of the matter is, when we started on this in March of 1999, Senator ABRAHAM and I envisioned a fairly simple interim bill. We were looking at electronic signatures to make sure that in the online world, when you sent an electronic signature, it would carry the same legal weight as a "John Hancock" in the offline world.

But as we prepared—after this passed the Commerce Committee—to move forward with a pretty innocuous bill, the financial services and insurance industries came to us with what we thought was a very important and thoughtful concept; and that was to revolutionize e-commerce, to go beyond establishing the legal validity of e-signatures to include electronic records, keeping important records electronically. We were told by industry—and correctly so—that this would give America a chance to save billions and billions of dollars and thousands of

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hours, as our companies chose to spend their funds on matters other than paper recordkeeping.

At the same time, the consumer groups that sought this proposal were extremely frightened. They saw this as an opportunity for unscrupulous individuals to come on in and rip off senior citizens, to foreclose on people's homes, to cut off health insurance, and things of that nature, by just perhaps an e-mail into cyberspace.

Chairman MCCAIN is here. This is truly a bipartisan effort in every respect. I had a chance to work with my senior colleagues on this side, Senator LEAHY, Senator HOLLINGS, Senator SARBANES, and our friend Senator KERRY, who is here. And let me tell you, it ultimately took three Senate committees 8 months and thousands of hours to get it done. We had to bring together key principles of what is known as the old economy, such as consumer protection and informed consent, and fuse them together with the principles of the new economy and the online world, and the chance to save time and money through electronic records and electronic signatures.

What we tried to say, on this side of the aisle, and what we were able to get a bipartisan agreement around, is the proposition that consumer rights are not virtual rights. We have to make sure—and we have it in this legislation—that the protections that apply offline would apply online. We were able to do it without enduring all kinds of unnecessary redtape and bureaucracy. I wanted the bill to unleash the potential of electronic signatures and records for industry without shattering a cornerstone of American commerce: the right of individual consumers to have meaningful and informed consent and to keep accurate records of their contracts and transactions.

I believe the conference agreement before the Senate has met the challenge of protecting consumer rights in the new economy.

Consumer rights are not virtual rights. Consumers must enjoy the same basic rights in the online world as they have in the off-line world. Through the electronic consumer consent provision in Section 101(c) that I authored with Senators LEAHY, HOLLINGS and SARBANES, I believe we have adequately translated offline consumer protections into online consumer protections.

Let me just spend a minute describing this key provision of the conference agreement. This provision requires that consumer consent must be meaningful. We all know of cases where someone said, "Just e-mail me that document," only to have that person call later, saying "Gee, I couldn't open the document, can you fax it to me?" I can't recall how many times this exact thing happened to our own staff during the negotiation of this agreement.

Meaningful consumer consent doesn't mean being given a pageful of hardware and software specification gobbledygook. It means consenting electronically so that a consumer knows he or she can receive, read and retain the information in an electronic record.

Section 101(c) provides that if a statute, regulation or other rule of law requires that information relating to a transaction be provided or made available to a consumer in writing, the vendor can use electronic means if the consumer, prior to consenting, has been given a clear and conspicuous statement of his or her rights. The consumer must be informed of the option of getting the record on paper, and what the consequences are if he or she later withdraws the electronic consent in favor of returning to paper records. Some vendors, for example, may be able to achieve considerable savings by using electronic records, and offer customers a much more attractive price for doing business online rather than through traditional paper and snail mail. But a vendor might not want to be locked into a lower price if the buyer reverts to paper later in the life of the contract. This provision will assure a consumer will be informed up front of any change in the cost if the consumer withdraws consent to receive records electronically subsequent to consummation of the contract. This could happen, for instance, if a consumer finds he cannot access the documents electronically, or the vendor chooses to upgrade his software and the consumer does not want to go to the expense of upgrading his system to accommodate the change.

The consumer must also be informed of the hardware and software necessary to access and retain records electronically, how to withdraw electronic consent, how to update information needed to contact the consumer electronically, the categories of records that will be provided or made available electronically, how a consumer may request a paper copy of an electronic record and whether a fee will be charged for such copy. If a vendor changes the electronic system used to obtain the original consent electronically, the vendor must obtain the consent electronically again using the new system and the same two-way consent process.

Most importantly, the consumer must consent electronically or confirm his or her consent electronically in a manner that reasonably demonstrates that the consumer can access the information in the electronic form that will be used to provide the information. This is critical. "Reasonably demonstrates" means just that. It means the consumer can prove his or her ability to access the electronic information that will be provided. It means the consumer, in response to an electronic vendor enquiry, actually opens an attached document sent electronically by the vendor and confirms that ability in an e-mail response.

It means there is a two-way street. It is not sufficient for the vendor to tell the consumer what type of computer or software he or she needs. It is not sufficient for the consumer merely to tell the vendor in an e-mail that he or she can access the information in the specified formats. There must be meaningful two-way communication electronically between the vendor and consumer.

At the heart of these provisions is the concern—shared by many in the industry as well—that electronic communication, e-mail, is not as reliable or as ubiquitous as traditional first class mail. Until advances in electronic mail technology eliminate such concerns and until the vast majority of Americans are comfortable using the technology of the New Economy, consent to use electronic records requires special care and attention. Because of such concerns, there are some areas where the use of electronic notice and records are simply not appropriate today. Section 103 of the conference agreement recognizes this by continuing to require paper notice. These areas include shutting off a consumer's utilities, canceling or terminating health insurance or benefits or life insurance benefits, foreclosing on someone's primary residence, recall of a product that risks endangering health or safety and documents required to accompany the transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials. What happens, for example, if a hazmat truck loaded with toxic waste spills its cargo, endangering a community, and the only notice about the hazardous cargo was posted on the company's website? Is it fair to allow a mortgage lender to foreclosure on someone's home just because their ISP went out of business and they weren't receiving their payment notices electronically? The exceptions we fought for in this section of the conference agreement will protect consumers.

Before paying tribute to those who worked so hard on this bill, I believe it is important to the legislative history to say a brief word about the process. This is necessary because, unfortunately, statements are being made or inserted in the RECORD and colloquies are being offered that seek to weaken, undermine and even directly contradict the actual words of the text of the Conference Agreement. This appears to come from some quarters that do not share the majority view of those who signed the Conference documents. As one of the principal sponsors of the Senate measures, S. 761, I am compelled to point out that the actual text of the legislation can and should stand on its own.

The negotiations that led to the final legislative document were very difficult and contentious. Because of this, part of the agreement on the final language included a commitment—a sort of "gentleman's agreement" if you will—from all the signers of the Conference Agreement not to prepare the normal Statement of Managers that accompanies a Conference document. There is no Statement of Managers for

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S. 761, and no one should pretend there is. As one of the key managers for the Senate, I can attest that I did not participate in negotiating such a document, not did I acquiesce to one prepared by another party or parties or sign one.

The conference agreement is the product of many, many long days and nights of negotiations. Commerce Committee Chairman MCCAIN, Ranking Democrat Senator HOLLINGS, Senators LEAHY and SARBANES, and Senator ABRAHAM all contributed to this product. The efforts of our distinguished colleagues in the House, Commerce Committee Chairman BLILEY and Ranking Democrat JOHN DINGELL, were critical in this process. I would also like to recognize some of the key staff and Administration officials who did yeoman work to produce this agreement. In particular, Senator HOLLINGS' Counsel, Mosses Boyd, and his Commerce Committee Staff Director, Kevin Kayes, Senator LEAHY's outstanding Judiciary counsel, Julie Katzman, Senator SARBANES' Banking Staff, Marty Gruenberg and Jonathan Miller. Chairman MCCAIN's very able and patient counsel, Maureen McLaughlin, and Senator ABRAHAM's lead staffer on this bill, Kevin Kolevar. Sarah Rosen-Wartell of the White House staff and Commerce Department General Counsel Andy Pincus also deserve praise for their hard work on this bill.

This conference agreement came perilously close on more than one occasion to running off the rails, but each time the will was found to resume negotiations and try to bring the conference to a close. This is also a tribute to the hard work of a handful of consumer and industry groups who did not want to give up on the process. I urge my colleagues to vote for this agreement, which lays another important cornerstone for electronic commerce.

At the end of the day, this is not a perfect bill. I do not think any of the conferees would argue that it is. But it is a very good bill. It is a very good bill because, as a result of three Senate committees and thousands of hours, we took key principles of what was known as the old economy—consumer protection, informed consent, making sure that the vulnerable, the elderly, and people for whom the home and health care are lifeline concerns—we ensured that they will be protected, while at the same time allowing those in the financial services industry, who came to us with sensible suggestions for saving time and money—by taking records from paper to the electronic world—to have their concerns addressed, while at the same time being true to fundamental values of consumer protection and the fusing together of the new and the old economy. That is what I think makes this legislation so special.

Chairman MCCAIN is here. He and his staff did an extraordinary job, as did Senator ABRAHAM. I cannot say enough good things about four senior Democrats—Senator LEAHY, Senator SARBANES, Senator HOLLINGS, and Senator KERRY—because they helped us champion those consumer protection principles that were so important and helped us get this bill done right.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I join my colleague from Oregon in expressing support for what we have achieved here. I begin by thanking Senator MCCAIN, Senator SARBANES, and Senator HOLLINGS for their leadership. They helped to create the climate within which we were able to finally get together with the House leadership.

But also I thank the distinguished Senator from Oregon. He is extraordinarily knowledgeable in this arena and very creative. And he works hard at it. He really has helped to shape the outcome of this in a significant way. I think he has done a very good job of outlining the tensions that existed here.

Many of us thought, at the outset of this endeavor, that we could accomplish this quickly. We ran into, as he said, complications along the road. The key to many of us was that even as we provided the legal capacity for electronic signatures to take place and certain recordkeeping to take place, we did not want to diminish the rights of our citizens to have access to information about them, we did not want their ability to be able to make corrections to be diminished somehow. We did not want to diminish their right to know about themselves or about their own transactions in a way that would diminish their position in the marketplace. And that is a difficult thing. We worked through that. I think we are still going to be working through that for some time.

But the important thing is that this phenomenon, this revolution that is taking place in America and across the globe in how we do business, needed to be——

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. KERRY. Will the Senator yield me 30 more seconds?

Mr. MCCAIN. I yield the Senator 30 more seconds.

Mr. KERRY. That revolution needed to be able to continue in its most creative form and, frankly, with the best upside possible for the people to whom we are all accountable, who are the consumers, the citizens, and the people who ultimately we want to have benefit from this. I think this legislation is very positive in that regard.

I thank the chairman of the Commerce Committee, Senator MCCAIN, for his leadership and his courtesy in letting the usually mostly abused and beleaguered minority take a dominant position at the outset of the debate. It is characteristic of him that he allowed us to do that. It is a very momentary glimpse of freedom we are not used to. We thank him for that. It is just whetting our appetite and only makes us work harder to have that dominant position forever.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I appreciate both my friend from Oregon and my friend from Massachusetts for their work on this bill. I appreciate their comments. It is a great pleasure to work with both of them on the Commerce Committee.

I think sometimes it is worthy of note, in these days of tension, that on the Commerce Committee we have a great habit of working in a bipartisan fashion. I would argue that no bill that I know of has been reported out of our committee that was not a bipartisan effort. No bill has been reported out, that I know of in the years that I have been the chairman, that was strictly along party lines.

Mr. President, tonight the Senate considers the conference report for S. 761, the Electronic Signatures in Global and National Commerce Act. Before I summarize the bill, I want to note for the RECORD the importance of this measure.

The bipartisan legislation would be a significant achievement for this Congress and the American people. Today in America we are in the midst of a phenomenal transformation from the industrial age to the information age.

Even as we speak, Americans are on the Internet, browsing, researching, and experiencing in ever-greater numbers. They are also buying. In fact, electronic commerce is one of the principle engines driving our Nation's unprecedented economic growth. For example, Forrester Research has estimated that consumer spending online will total $185 billion by 2003. During this past holiday season alone, online merchants transacted an estimated $5-7 billion dollars worth of commerce—a 300% increase in business from 1998.

But one great barrier to the continued growth of Internet commerce is the lack of consistent, national rules governing the use of electronic signatures. A majority of States have enacted electronic authentication laws, but no two of these laws are the same. This inconsistency deters businesses and consumers from using electronic signature technologies to authorize contracts or transactions.

This bipartisan legislation can eliminate this unnecessary barrier to the growth of electronic commerce by providing consistent, fair rules governing electronic signatures and records.

This bill will do the following:

It would ensure that consistent rules for validating electronic signatures and transactions apply throughout the country. Thus providing industry with the legal certainty needed to grow electronic commerce.

It empowers businesses to replace expensive warehouses full of awkward and irreplaceable paper records with electronic records that are easily searched or duplicated. Moreover,

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State and Federal agencies are prohibited from requiring a business to keep paper records except under extreme circumstances—where they can show a compelling government interest. To prevent abuses of electronic record-keeping, however, the bill also authorizes regulatory agencies to define document integrity standards that are necessary to insure against fraud.

It would also ensure that private commercial actors get to choose the type of electronic signatures that they want to use. This will ensure that the free market—not government bureaucrats—will determine which technologies succeed. To that end, the legislation also prohibits States or Federal agencies from according "greater legal status or effect" to one specific technology.

And this bill recognizes that without consumer confidence, the Internet can never reach its full potential. Thus, this bill empowers consumers to conduct transactions or receive records electronically without foregoing the benefits of State consumer disclosure requirements.

Specifically, the bill would provide that when consumers choose to conduct transactions or receive records electronically, electronic records can satisfy laws requiring a written consumer disclosure if: consumers have been given a statement explaining what records they are agreeing to receive electronically, the procedures for withdrawing consent, and any relevant fees, and consumers consent, or confirm consent electronically, in a manner that reasonably demonstrates that they can actually access the information.

The goal of these consumer protection provisions is basic fairness. To that end, if a business changes hardware or software requirements in a way that precludes the consumer from accessing or retaining the records, the consumer can withdraw consent—without a fee.

But the bill also ensures that these consumer protections do not become unduly burdensome as technology advances. Thus, for example, the bill provides that a Federal regulatory agency can exempt categories of records from the consumer consent provisions if this would eliminate a substantial burden on e-commerce without jeopardizing consumers.

I also note that the bill directs the Secretary of Commerce and the Federal Trade Commission to report to Congress on the benefits and burdens of the bill's consumer protection provisions. It also directs the Secretary of Commerce to report to Congress within 12 months on the effectiveness of delivering consumer notices via email.

This is important legislation, and my colleague from Michigan, Senator ABRAHAM, is to be commended for his foresight in introducing this legislation. He is responsible for the formulation of it. He has shepherded it through for many months. I commend him for his work on this legislation. It is safe to say this legislation and conference report would not be here today if not for the efforts of Senator ABRAHAM. I also commend Senators STEVENS, BURNS, WYDEN, LEAHY, HOLLINGS and SARBANES for their commitment to bipartisan agreement on the critical issues raised by this legislation. And, I thank Chairman BLILEY and ranking member DINGELL in the House, for their dedication and leadership on this issue.

Reaching a bipartisan agreement on the issues raised by this legislation has not been easy. In fact, the conferees to this bill have spent months considered the often-conflicting views of various industries, consumer protection groups, State governments and federal agencies.

Needless to say, the bill that emerged from this broad and contentious process had to try to strike a fair balance between the often-conflicting interests of these groups. As a result, some factions may have had doubts about the bill because they thought that a narrower or partisan legislative process might have produced a bill more slanted towards their narrow interests.

But that sort of thinking is short-sighted and fatally flawed: Where this legislation is concerned, a narrow or partisan approach would have jeopardized the growth of electronic commerce. This would have harmed businesses, consumers and the national economy—including the same special interests that a narrower approach might have sought to favor.

We must recognize that this bill represents one step in the continuing—and unfinished—process of integrating electronic transactions and the Internet into the mainstream of American commerce. This process of integration must continue if we are to continue to enjoy the unprecedented economic growth that e-commerce and technology have helped bring to this country.

But electronic commerce cannot continue to grow and develop without broad support from consumers, businesses and governments. Consumers will not support electronic commerce if they discover that electronic transactions strip them of traditional protections.

Nor will businesses support electronic commerce if they cannot realize the cost savings it offers. Finally, governments may not enact laws supporting electronic commerce should such transactions strip their citizens of rights that they have previously enjoyed.

Electronic signatures legislation must, therefore, balance the interests of these various groups without unduly favoring any of them: it must give electronic commerce the certainty it needs to grow while preserving the consumer protections that States have chosen to apply in paper-based commercial transactions.

The broad and bipartisan support enjoyed by this legislation is the surest sign that it has achieved its most important objective: It has struck a fair balance between competing interests that will ensure continued broad support for the growth of electronic commerce.

Mr. President, the Electronic Signatures in Global and National Commerce Act is a positive, confidence-creating tool that will allow the Internet to continue to develop towards its full potential as a conduit for information, communication and commerce. It will enable businesses and consumers alike to rely on digital signatures regardless of their physical location. Uniform standards for digital signatures will decrease costs while increasing certainty and consumer confidence. The value of these public benefits should not be underestimated.

In closing, I want again to thank Chairman BLILEY, and Ranking Member DINGELL in the House for all of their work. In the Senate, I note the hard work of the ranking member of the committee, Mr. HOLLINGS, Senator WYDEN, and others. Without their efforts this bill would not be before us today. I especially, again, recognize the incredible job done by Senator ABRAHAM, the original sponsor of the legislation, the original shepherd, the person who played a key and vital role in the formulation of these final agreements.

Given the importance of these issues to consumers, businesses and our global economy, I urge my colleagues to support this legislation.

I ask unanimous consent that a listing of the groups that support S. 761 be printed in the RECORD.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

GROUPS THAT SUPPORT S. 761

1. Business Software Alliance.
2. Microsoft.
3. America Online.
4. Information Technology of America.
5. American Express Company.
6. DLJDirect.
7. American Bankers Association.
8. Citigroup.
9. Information Technology Industry Council.
10. American Electronics Association.
11. Fannie Mae.
12. Freddie Mac.
13. National Association of Realtors.
14. Oracle.
15. Cable & Wireless.
16. Sallie Mae.
17. US Chamber of Commerce.
18. Real Estate Roundtable.
19. Consumer Mortgage Coalition.
20. Mortgage Bankers Association.
21. Electronic Financial Services Council.
22. Intuit.
23. Federal Express.
24. National Association of Manufacturers.
25. Coalition for Electronic Authentication.
26. America's Community Bankers.
27. Investment Company Institute.

Mr. LEAHY. Mr. President, I am pleased that the Senate is finally going to be considering the conference report on S. 761, the Electronic Signatures and Global and National Commerce Act.

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I wish to be compassionate this Thursday evening. Tomorrow when the delayed votes occur, I will be in Vermont. But I am never sorry to be in Vermont. I will regret missing the final tally. I was honored to serve as a conferee and to help develop the conference report. I signed the conference report. I supported final passage. I go back to my native State secure in the knowledge that this will pass overwhelmingly with strong bipartisan support.

The legislation is intended to permit and encourage the continued expansion of electronic commerce and promote public confidence in the integrity and reliability of online commerce. These are worthy goals—goals I have long sought to advance. For example, in the last Congress, many of us worked together to pass the Government Paperwork Elimination Act. That gave a framework for the Federal Government's use of electronic forums and also electronic signatures.

Many of us have worked together in a very successful, bipartisan effort to promote the widespread use of inscription and to relax outdated export controls in this critical technology for ensuring the confidentiality and integrity of online communications and storing of computer information. We have areas as diverse as enhancing copyright, to patent potential for technology, to addressing the problems of cybercrime. We have been able to work together in a constructive, bipartisan way to make real progress to allow electronic commerce to flourish.

The conference report is a product of such bipartisan cooperation. We all know there were some bumps along the way. At one point, industry representatives were warned against even speaking with Democrats. Fortunately, those warnings were not heeded, and the final product is bipartisan.

I commend Chairman BLILEY from the other body, and Chairman MCCAIN from this body, for making this a real conference in which all conferees—Republicans and Democrats—had an opportunity to air their concerns and contribute to the final report.

All of us might have written some provision differently. But the conference report is, as conference reports should be, a solid and reasonable consensus bill that brought in the best of each of us.

It will establish a Federal framework for the use of electronic signatures for contracts and records to preserve essential safeguards and protect consumers.

It is geared to the five basic principles articulated by the Democratic Senators in a letter dated March 28, 2000, which assures effective consumer consent for the replacement of paper notices with electronic notices.

It ensures that electronic records are accurate.

It enhances legal certainty for electronic signatures.

It avoids unnecessary litigation.

It avoids unintended consequences in areas outside the scope of the bill by providing clear Federal regulatory authority.

It avoids facilitating predatory or unlawful practices.

This is not rocket science. But they want to make sure the American people can trust the electronic world as they trust paperwork. The American public have enough concern when they go online. They worry whether their privacy will be protected and whether damage by a computer virus will hurt their computer, whether a computer hacker will steal personal information or adopt their identity, wreak havoc with their good name, or whether their children will meet a sexual predator. These are all drags on electronic commerce and show the people have to be concerned.

The AARP found that of consumers over the age of 45, half of them worry that electronic contracts will give them less protection than paper contracts. That is what we want to avoid.

The United States has been the incubator of the Internet throughout its infancy. And the world closely watches whenever we in our country debate or enact policies that affect the Internet. That is another reason why we must act carefully and intelligently when we pass Internet-related laws. The rest of the world watches and follows our example.

We have produced a charter for the next growth phase of e-commerce. This bill will be closely watched, widely read, and will be emulated across the world. Because of that and because most Americans want to make sure we can take our consumer laws for granted, we are presented the most significant consumer issues of a decade or longer. We have improved what the bill almost became considerably, to the benefit of consumers and in the interests of the smooth and sensible forward progress of Internet commerce.

This bill does strike a constructive balance. It advances electronic commerce but doesn't terminate or mangle the basic rights of consumers.

Mr. President, I am pleased that the Senate is finally considering the conference report on S. 761, "The Electronic Signatures in Global and National Commerce Act". I wish that we could pass it tonight. Tomorrow, when the delayed vote occurs, I will be in Vermont. While I am never sorry to be in Vermont, I will regret missing the final tally. I was honored to serve as a conferee and help develop the conference report. I signed the conference report and support its final passage. I go back to my native State secure in the knowledge that it will pass overwhelmingly.

This legislation is intended to permit and encourage the continued expansion of electronic commerce and to promote public confidence in the integrity and reliability of online promises. These are worthy goals, and they are goals that I have long sought to advance.

For example, in the last Congress, many of us worked together to pass the Government Paperwork Elimination Act, which established a framework for the federal government's use of electronic forms and electronic signatures. Many of us have worked together in a successful bipartisan effort to promote the widespread use of encryption and relax out-dated export controls on this critical technology for ensuring the confidentiality and integrity of online communications and stored computer information. In areas as diverse as enhancing copyright and patent protections for new technologies and updating our criminal laws to address new forms of cybercrime, we have been able to work together in a constructive, bipartisan way to make real progress on a sound legal framework for electronic commerce to flourish.

The conference report is the product of such bipartisan cooperation. I think we all know that there were some bumps along the way. At one point, industry representatives were warned against even speaking with any Democrats. But the final product is bipartisan. It is an example of Congress at work rather than at loggerheads. It is legislators legislating rather than politicians posturing and unnecessarily politicizing important matters of public policy.

I commend Chairman BLILEY and Chairman MCCAIN for making this a real conference, in which all conferees, Republican and Democratic, had an opportunity to air their concerns and contribute to the final report. We all might have written some provisions differently, but the conference report is a solid and reasonable consensus bill that will establish a Federal framework for the use of electronic signatures, contracts, and records, while preserving essential safeguards protecting the Nation's consumers.

The conference report adheres to the five basic principles for e-sign legislation articulated by the Democrat Senators in a letter dated March 28, 2000.

It ensures effective consumer consent to the replacement of paper notices with electronic notices.

It ensures that electronic records are accurate, and relevant parties can retain and access them.

It enhances legal certainty for electronic signatures and records and avoids unnecessary litigation by authorizing regulators to provide interpretive guidance.

It avoids unintended consequences in areas outside the scope of the bill by providing clear federal regulatory authority for records not covered by the bill's "consumer" provisions.

And, it avoids facilitating predatory or unlawful practices.

These principles are not rocket science but are simply intended to ensure that the electronic world is no less safe for American consumers than the paper world. The American public has enough concern when they go online. They worry whether their privacy will

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be protected, whether a damaging computer virus will attack their computer, whether a computer hacker will steal their personal information, adopt their identity and wreak havoc with their good names, or whether their kids will meet a sexual predator. These worries are all serious drags on electronic commerce.

An AARP survey of computer users over the age of 45 released on March 31st found that almost half of respondents already think that electronic contracts would give them less protection than paper contracts, while only one-third believe they would have the same degree of protection. With this conference report, we have avoided aggravating consumers' worries. Companies doing business online want to reassure consumers and potential customers that their interests will be protected online, not heighten their concern about electronic commerce. Our conference report should be helpful in this regard.

Mr. President, the United States has been the incubator of the Internet through its infancy. The world closely watches whenever we debate or enact policies that affect the Internet, and that is another reason why we must act carefully and intelligently whenever we pass Internet-related laws. What we have produced here is the charter for the next growth phase of e-commerce, and this bill will be closely read and widely emulated. Because of the potential this bill had for eviscerating scores of basic state consumer protection laws that most Americans today take for granted, this bill also has presented us with perhaps the most significant consumer issues of a decade or longer—not for what, thank goodness, this bill is in its final form, but for what this bill nearly became in its earlier stages. To the benefit of consumers and in the interest of the smooth and sensible forward progress of Internet commerce, this bill largely strikes a constructive balance. It advances electronic commerce without terminating or mangling the basic rights of consumers.

Before I discuss specific provisions of the conference report, I note that I saw in the CONGRESSIONAL RECORD of the House proceedings a statement by Chairman BLILEY that is formatted like a managers' statement of a conference report. I feel I must clarify that those are Mr. BLILEY's views, not a statement of the managers. In fact, I saw it for the first time today, when I picked up the CONGRESSIONAL RECORD, and have not yet had a chance to study it thoroughly.

I will now describe how the conference report gives effect to the Democratic Senators' five basic principles.

First, the conference report will ensure informed and effective consumer consent to the replacement of paper notices and disclosures with electronic notices and disclosures, so that consumers are not forced or tricked into receiving notices and disclosures in an electronic form that they cannot access or decipher.

Under the House bill, a business could obtain a consumer's "consent" simply by specifying the hardware and software needed to access the notices and disclosures. This approach would have done little or nothing to protect technologically unsophisticated consumers, who may not know whether they have the necessary hardware and software even if the technical specifications are provided.

I maintained that any standard for affirmative consent must require consumers to consent electronically to the provision of electronic notices and disclosures in a manner that verified the consumer's capacity to access the information in the form in which it would be sent. Such a mechanism provides a check against coercion, and additional assurance that the consumer actually has an operating e-mail address and the other technical means for accessing the information.

Section 101(c) of the conference report requires the use of a technological check, while leaving companies with ample flexibility to develop their own procedures. The critical language, which Senator WYDEN and I developed and proposed, provides that a consumer's consent to the provision of information in electronic form must involve a demonstration that the consumer can actually receive and read the information. Section 101(c) also provides that if there is a material change in the hardware or software requirements needed to access or retain the information, the company must again verify that the consumer can receive and read the information, or allow the consumer to withdraw his or her consent without the imposition of any conditions, consequences or fees. In addition, prior to any consent, a consumer must be notified of his or her rights, including the right to receive notices on paper and any available option for reverting to paper after an electronic relationship has been established.

Senator GRAMM has criticized the conference report on the ground that its technological check on consumer consent unfairly discriminates against electronic commerce. But those most familiar with electronic commerce have never seriously disputed the need for a technological check. In fact, many high tech firms have acknowledged that it is good business practice to verify that their customers can open their electronic records, and many already have implemented some sort of technological check procedure. I am confident that the benefits of a one-time technological check far outweigh any possible burden on e-commerce, and it will greatly increase consumer confidence in the electronic marketplace.

Let me make special note of section 101(c)(3), a late addition to the conference report. Without this provision, industry representatives were concerned that consumers would be able to back out of otherwise enforceable contracts by refusing to consent, or to confirm their consent, to the provision of information in an electronic form. At the same time, however, companies wanted to preserve their autonomy as contracting parties to condition their own performance on the consumer's consent. For example companies anticipated that they might offer special deals for consumers who agreed not to exercise their right to paper notices. Section 101(c)(3) makes clear that failure to satisfy the consent requirements of section 101(c)(1) does not automatically vitiate the underlying contract. Rather, the continued validity of the contract would turn on the terms of the contract itself, and the intent of the contracting parties, as determined under applicable principles of State contract law. Failure to obtain electronic consent or confirmation of consent would, however, prevent a company from relying on section 101(a) to validate an electronic record that was required to be provided or made available to the consumer in writing.

I should also explain the significance of section 101(c)(6), which was added at the request of the Democratic conferees. This provision makes clear that a telephone conversation cannot be substituted for a written notice to a consumer. For decades, consumer laws have required that notices be in writing, because that form is one that the consumer can preserve, to which the consumer can refer, and which is capable of demonstrating after the fact what information was provided. Under appropriate conditions, electronic communications can mimic those characteristics; but oral notice over the telephone will never be sufficient to protect consumer interests.

Second, the conference report will ensure that electronic contracts and other electronic records are accurate and that relevant persons can retain and access them. Consumers must be able to retain electronic records and must have some assurance that they provide reasonable guarantees of the accuracy and integrity of the information that they contain.

Under section 101(e) of the conference report, the legal effect of an electronic contract or record may be denied if it is not in a form that can be retained and accurately reproduced for later reference and settlement of disputes. This means that the parties to a contract may not satisfy a statute of frauds requirement that the contract be in writing simply by flashing an electronic version of the contract on a computer screen. Similarly, product warranties must be provided to purchasers in a form that they can retain and use to enforce their rights in the event that the product fails.

Third, the conference report will enhance legal certainty for electronic signatures and records and avoid unnecessary litigation by authorizing Federal and State regulators to provide

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interpretive guidance. Even with the representation on this conference of Members from committees of varied jurisdiction, we could not begin to think of every circumstance that might arise in the future as to which this legislation will apply. It was therefore essential to provide regulatory agencies with sufficient flexibility and interpretive authority to implement the statutes modified by the legislation.

Most importantly, the conference report preserves substantial authority for Federal and State regulators with respect to record-keeping requirements. In a letter dated May 23, 2000, the Department of Justice expressed concern that an early draft of the conference report, produced by certain Republican conferees, would "seriously undermine the government's ability to investigate, try and convict criminals who alter or hide required records in programs such as Medicare, Medicaid, and federal environmental laws." The Department explained:

> Record Retention. As presently drafted, the bill leaves the public at risk for serious waste, fraud, and abuse. For example, under the current bill, there is nothing to prevent a Medicare contractor from retaining its financial records on a spreadsheet (such as Excel or Quattro Pro). However, because those programs generally contain no security features to monitor changes to the files they create, anyone could change one number on a spreadsheet, which would then change all other numbers affected by the impermissible entry, reflecting a financial picture different from the reality. The government could have its hands tied in seeking to establish rules to ensure that such records could not be altered.

The Department's concerns regarding the Federal Government were shared by the States, whose regulators need and deserve the same flexibility as Federal regulators. This is particularly true in areas where the States are the primary regulators, as they are with respect to insurance and State-chartered banks. Having pressed this point throughout the conference, I am pleased that the final report treats Federal and State regulators with equal respect, and that it has won the support of the National Conference of State Legislatures.

Under earlier drafts of this conference report, as in H.R. 1714 as passed by the House, a requirement that a record be retained could be met by retaining an electronic record that accurately reflected the information set forth in the record "after it was first generated in its final form as an electronic record." By striking that final phrase, we made clear that agencies, through their interpretive authority, can ensure that electronic records remain accurate throughout the period that they are required by law to be retained. For additional certainty, we expressly authorized agencies to set performance standards to assure the accuracy, integrity, and accessibility of records that are required to be retained and, if necessary, to require retention of a record in paper form. We also delayed the effective date of the Act with respect to record retention requirements, to give agencies time to put in place appropriate regulations designed to assure effective and sustainable record retention, and to prevent companies from retaining materials in any easily alterable form that they chose until regulations are forthcoming. Together, these changes will avoid facilitating lax record-keeping practices that could impede the enforcement of program requirements, anti-fraud statutes, environmental laws, and many other laws and regulations.

Fourth, the conference report will avoid unintended consequences for laws and regulations governing "records" outside its intended focus on business-to-consumer and business-to-business transactions. I was seriously concerned that the sweeping legislation passed by the House would allow hazardous materials transporters to provide truckers with the required description of the materials via electronic mail, so that key information might not be available to clean-up crews in the event an accident disabled the driver. Similarly, I worried that the House bill would allow employers to provide OSHA-required warnings on a Web site rather than on a dangerous machine.

The conference report raises no such concerns. For one thing, it specifically excludes from its scope any documents required to accompany the transportation or handling of hazardous materials, pesticides, and other toxic or dangerous materials. For another thing, it expressly preserves all Federal and State requirements that information be posted, displayed or publicly affixed. In addition to allaying concerns about OSHA-warnings, this provision ensures that the bill will not inadvertently undermine Federal and State labeling requirements, such as requirements that poisonous products be labeled with the skull and crossbones symbol.

Perhaps more importantly, the scope of the legislation has been narrowed. As reported by the conference committee, the bill covers signatures, contracts and records relating to a "transaction" in or affecting interstate or foreign commerce, with the critical term—"transaction"—defined to mean "an action or set of actions relating to the conduct of business, consumer, or commercial affairs between two or more persons." The conferees specifically rejected including "governmental" affairs in this definition. Thus, for example, the bill would not cover records generated purely for governmental purposes, such as regular monitoring reports on air or water quality that an agency may require pursuant to the Clean Air Act, Clean Water Act, Safe Drinking Act, or similar Federal or State environmental laws.

Fifth and finally, the conference report avoids the problem created by many earlier drafts, including the House bill, of potentially facilitating unfair and deceptive practices. It does this through a broad savings clause which clarifies that the bill does not limit any legal requirement or prohibition other than those involving the writing, signature, or paper form of a contract. Laws—including common law rules—that prohibit fraud, unfair or deceptive trade practices, or unconscionable contracts are not affected by this Act. A wrongdoer may not argue that fraudulent conduct that complies with the technical requirements of section 101(c) is beyond the reach of anti-fraud laws. By the same token, a consumer is always entitled to assert that an electronic signature is a forgery, was used without authority, or otherwise is invalid for reasons that would invalidate the effect of a signature in written form.

This legislation has come a long way in conference. It is far from the reckless bill it was in danger of becoming. Still, it is far from perfect. As a general matter, I believe it may still be unduly preemptive of State regulatory and record-keeping authority. It is ironic that the same Members who claim to be vigilant guardians of States' rights are so quick to impose broad Federal mandates on the States when it suits their political interests. The majority has failed to explain why the expansion of the Internet justifies jettisoning the federalist principles that have governed our Republic for more than two centuries. I have worked hard, in connection with this bill and others, to preserve State authority in areas traditionally reserved to the States, particularly where there is no conflict between the Federal goals and State jurisdiction. We should preempt State authority only when there is a demonstrated need to establish a national standard, and even then, only for as long as is necessary.

That being said, the conference report appropriately rejects the massively preemptive approach taken by earlier versions of this legislation, including the House-passed bill. As the National Governors' Association observed in a letter to Congress dated March 14, 2000, "H.R. 1714's ambiguity with respect to preemption [was] very troubling". It authorized States to "modify, limit, or supersede" the Federal statute by adopting the Uniform Electronic Transactions Act (UETA), but then rendered this authorization irrelevant by stating that no State law (including UETA) was effective to the extent that it was inconsistent with the Federal statute or technology specific.

By contrast, the conference report does not preempt the laws of those States that adopt UETA, so long as UETA is adopted in a uniform manner. Such exceptions to UETA as a State may adopt are preempted, but only to the extent that they violate the principle of technological neutrality or are otherwise inconsistent with the Federal statute. This affords States considerable flexibility; for example, a

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State may enact UETA to incorporate the consumer consent procedures set forth in section 101(c).

In addition, section 104(a) of the conference report expressly preserves governmental filing requirements. Federal agencies are already working toward full acceptance of electronic filings, pursuant to the schedule established by the Government Paperwork Elimination Act. I am confident that State agencies will follow our lead. Until they are technologically equipped to do so, however, they have an unqualified right under section 104(a) to continue to require records to be filed in a tangible printed or paper form.

I have a number of other concerns about the conference report. In particular, I am troubled that the conference report fails to provide a clear Federal rule—or, indeed, any rule at all—concerning how it is intended to affect requirements that information be sent, provided, or otherwise delivered. The absence of a delivery provision is particularly conspicuous given the fact that the prototype for this legislation does include such a provision. Section 8(a) of UETA provides that if a law requires information to be sent in writing to another person (but does not specify a particular method of delivery), the requirement is satisfied if the information is sent in an electronic record that the recipient can retain. Under section 8(b), if a law requires information to be sent by a specified method—whether by regular U.S. Mail, express mail, registered mail, certified mail, or another method—then the information must be sent by the method specified in the other law, except that parties may contract out of regular mail requirements to the extent permitted by the other law. UETA also contains a detailed rule for determining when an electronic record is sent, and when it is received.

The conference report touches upon the issue of delivery in section 101(c)(2)(B), but only with respect to specified methods that require verification or acknowledgment of receipt, such as registered or certified mail. What happens to State law requirements that a notice be sent by first-class mail or personal delivery? How about a law that requires information to be provided, sent, or delivered in writing, but does not specify a particular method of delivery? I raised these questions during the conference, but the conference report provides few answers.

The conference report does provide some guidance in the case of States that enact UETA. In such States, section 8(a) of UETA will govern with respect to general delivery requirements, and section 8(b)(2) of UETA will govern with respect to requirements that information be delivered by a specified method, subject to section 102(c) of the federal legislation. Section 102(c) prevents States that enact UETA from circumventing the federal legislation through the imposition of new nonelectronic delivery methods. Thus, States enacting UETA may continue to prescribe specific delivery methods, so long as there is an electronic alternative for any nonelectronic delivery methods.

This leaves the question of how the Federal legislation will affect Federal delivery requirements and State delivery requirements in non-UETA States. Because our bill is silent on this question, and because repeal and preemption by implication are disfavored, a court or agency interpreting the legislation could reasonably conclude that these Federal and State delivery requirements remain in full force and effect. Indeed, this interpretation is practically compelled by the plain language of the legislative text. It does, however, have the potential to undermine one of our key legislative objectives—that is, the elimination of unintended and unwarranted barriers to electronic commerce. For this reason, it will be tempting to discern in this legislation some sort of plan to permit electronic delivery of information whenever delivery is required by law, even when the law specifies a particular method by which delivery must be made. Let me assure the courts and regulators that have occasion to read these words that this legislator had no such plan.

Had we in fact addressed this issue in conference, my goal would have been to ensure that any specific requirement that information be sent or delivered not be relaxed or weakened through this Act. I believe an electronic method of delivery should be at least as reliable, secure, and effective as the method it replaces. Thus, a law that requires information to be delivered to a person by first class mail should not be satisfied simply by posting the information on a Web site; at a minimum, the person must also be notified of the location and availability of the information. Nor is information delivered, in my view, if it is electronically posted for an unreasonably short period of time, or sent electronically in a manner that inhibits the ability of the recipient to store or print the information.

Having failed to address the issue of delivery, we may be compelled to revisit the issue at a later date. We will, by then, have the benefit of the Commerce Department's study under section 105(a) of the conference report, regarding the effectiveness and reliability of electronic mail as compared with more traditional methods of delivery.

Another troubling provision in the conference report appears at the end of section 101, and concerns the liability of insurance agents and insurance brokers. This provision appeared for the first time in a conference draft produced by the Republican conferees on May 15th. In its original incarnation, this provision gave insurance agents and brokers absolute immunity from liability if something went wrong as a result of the use of electronic procedures. This was not just a shield from vicarious liability, or even from negligence; rather, it was an absolute shield, which would protect insurance agents and brokers from their own reckless or even wilful conduct. No matter that insurance agents and brokers are perfectly capable of protecting themselves through their contracts with insurance companies and their customers. Senator HOLLINGS and I opposed the provision as unnecessary and indefensible as a matter of policy, and we succeeded in transforming it into a clarification that insurance agents and brokers cannot be held vicariously liable for deficiencies in electronic procedures over which they had no control. In this form, the provision remains in the bill as a stark reminder of the power of special interests.

Section 104(d)(1) is another political compromise that blemishes this conference report, although I believe its actual impact will be negligible. It provides that Federal agencies may exempt a specified category or type of record from the consumer consent requirements of section 101(c), but only if such exemption is "necessary" to eliminate a "substantial" burden on electronic commerce, and it will not increase the material risk of harm to consumers. While Chairman BLILEY indicated in his floor statement yesterday that this test should not be read as too limiting, the opposite is true. The test is, and was intended to be, demanding. The exemption must be "necessary," and not merely "appropriate," as Chairman BLILEY suggested. It should also be noted that the conferees considered and specifically rejected language that would have authorized State agencies to exempt records from the consent requirements.

Finally, I want to discuss the concept of technology neutrality that is so central to this bill. This legislation is, appropriately, technology neutral. It leaves it to the parties to choose the authentication technology that meets their needs. At the same time, it is undeniable that some authentication technologies are more secure than others. Nothing in the conference report prevents or in any way discourages parties from considering issues of security when deciding which authentication technology to use for a particular application. Indeed, such considerations are wholly appropriate.

Pursuant to the Government Paperwork Elimination Act, passed by the previous Congress, the Office of Management and Budget (OMB) has adopted regulations to permit individuals to obtain, submit and sign government forms electronically. These regulations direct Federal agencies to recognize that different security approaches offer varying levels of assurance in an electronic environment and that deciding which to use in an application depends first upon finding a balance between the risks associated with the loss, misuse or compromise of the information,

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and the benefits, costs and effort associated with deploying and managing the increasingly secure methods to mitigate those risks.

The OMB regulations recognize that among the various technical approaches, in an ascending level of assurance, are "shared secrets" methods (e.g., personal identification numbers or passwords), digitized signatures or biometric means of identification, such as fingerprints, retinal patterns and voice recognition, and cryptographic digital signatures, which provide the greatest assurance. Combinations of approaches (e.g., digital signatures with biometrics) are also possible and may provide even higher levels of assurance.

In developing this legislation, the conference committee recognized that certain technologies are more secure than others and that consumers and businesses should select the technology that is most appropriate for their particular needs, taking into account the importance of the transaction and its corresponding need for assurance.

Mr. President, the benefits of electronic commerce should not, and need not, come at the expense of increased risk to consumers. I am delighted that we have been able to come together in a bipartisan effort in which Democrats and Republicans in the Senate and House are joining in s-sign legislation that will encourage electronic commerce without sacrificing consumer protections. I want to commend Senator HOLLINGS, Senator SARBANES and Representative DINGELL, the ranking Democrats on the other Committees participating in the House-Senate Conference, for their leadership and steadfast efforts on behalf of our dual objectives. I thank Chairman BLILEY and Chairman MCCAIN for allowing the conference process to work and to result in a report that so many of us can support. I also want to praise Senator WYDEN for his dedication to this project and for never losing sight of the need to create a balanced bill. It has been a privilege to work with all of these distinguished Members on this landmark legislation.

I am profoundly grateful to the Administration for its work on this legislation. Andy Pincus, Sarah Rosen Wartell, Michael Beresik, Gary Gensler, and Gregory Baer, in particular, have devoted countless hours to ensuring that the conference report will create a reasonable and responsible framework for electronic commerce.

I would also like to thank the Senate and House staff who worked so hard to bring this matter to a reasonable conclusion. On my staff, Julie Katzman and Beryl Howell. In addition, Maureen McLaughlin, Moses Boyd, Carol Grunberg, Marty Gruenberg, Jonathan Miller, Kevin Kayes, Steve Harris, David Cavicke, Mike O'Rielly, Paul Scolese, Ramsen Betfarhad, James Derderian, Bruce Gwinn, Consuela Washington, and Jeff Duncan—all deserve credit for their role in crafting the consensus legislation that the Senate passes today. Thanks, too, to House Legislative Counsel Steve Cope, for his technical assistance and professionalism throughout this conference.

This conference report enjoys strong bipartisan and bicameral support. It passed the House of Representatives yesterday by an overwhelming majority. It has been well received by industry and consumer representatives alike, by the States as well as by the Administration. I urge its speedy passage into law.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. ABRAHAM. Mr. President, I am proud to rise this evening to discuss legislation that I am very confident we will pass tomorrow—the conference report to S. 761, the Electronic Signatures and Global National Commerce Act. This is the culmination of nearly two years' effort, and I deeply appreciate all of the generous assistance on the part of my colleagues who helped move this bill through the legislative process.

I believe that hindsight will prove this to be one of the most important pieces of legislation to emerge from the 106th Congress. This legislation will eliminate the single most significant vulnerability of electronic commerce, which is the fear that everything it revolves around—electronic signatures, contracts, and other records—could be rendered invalid solely by virtue of their being in "electronic" form, rather than in a tangible, ink and paper format.

This bill will literally supply the pavement for the e-commerce lane of the information superhighway. What we do today truly changes tomorrow, and I am certain that this legislation will prove to have a tremendous positive impact on electronic commerce—and on the general health of our economy—for decades to come.

Mr. President, thanks to the development of secure electronic signatures and records, individuals, businesses, and even governments are increasingly able to enter transactions without ever having to travel—whether the travel is a short drive across town or a thousand-mile flight. They are turning on a computer and opening e-mail, rather than scheduling drop-offs at mailboxes or pick-ups from courier services.

They are able to transact now, rather than "tomorrow, before 10AM", or over the next few days, depending on mail volume (and, of course, except for on Sunday). They are paying transactions costs in the fractions of cents, rather than in 33 cent increments. And as we move forth into the electronic world, "they" will increasingly include even the smallest businesses and consumers, who will find themselves able to take advantage of many of the technologies and efficiencies available only to the largest of firms.

Even now, consumers are realizing the time and cost benefits of electronic commerce at a rapidly escalating rate. On-line catalogs are everywhere, all the time, and always in competition to provide the best service at the lowest price. And for the average family in America, on-line lending and real estate brokerage services are making the most significant of all purchases—the purchase of a family home—available over the Internet. Changes to home-buying over the near term will be dramatic. Rapid document and service delivery will reduce a transaction typically measured in days or weeks to minutes or hours, and the ability of a consumer to quickly assess the rates offered by scores of lenders will increase competition and lower mortgage costs and rates for every consumer. Mr. President, Franklin Raines, the Chairman and CEO of Fannie Mae, told an investor conference in May that ". . . the application of electronic commerce to the U.S. mortgage finance industry should help the U.S. homeownership rate reach 70 percent over the next decade." Mr. President, and Chairman Raines, I look forward to that future.

But for e-commerce to continue growing, we must have a consistent, predictable, national framework of rules governing the use of electronic signatures and records. Current legal inconsistencies are deterring businesses from fully utilizing electronic signature technologies. And the ability of one court, in one jurisdiction, to rule against the validity of a contract solely because of its electronic form threatens to destabilize the entirety of electronic commerce—bringing down the whole house of cards.

The National Conference of Commissioners on Uniform State Law has developed a uniform system for the use of electronic signatures. Their product, the Uniform Electronic Transactions Act, or UETA, is an excellent piece of work and I look forward to its enactment in all fifty states. But as some state legislatures are not in session next year, and as other states face more immediately pressing issues, it will likely take three to four years for all the states to enact the UETA.

That is a long time in the high-technology sector—far too long to permit, when this Congress possesses the ability to bridge the gap.

With this in mind, Mr. President, in November of 1998—shortly after the passage of the first electronic signature legislation, the Government Paperwork Elimination Act, which I also co-authored with my friend, Senator WYDEN—I initiated a series of discussions with both industry and states for the purpose of developing a plan to foster the continued growth of electronic signatures and electronic commerce. In January of 1999, my staff had produced draft legislation which I invited Chairman BLILEY to consider introducing in the House of Representatives. Over the next several months, Senator WYDEN and I worked with Republicans and Democrats in both chambers to refine this legislation. On March 25 of 1999,

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Senators WYDEN, MCCAIN, BURNS, LOTT, and I introduced the "Millennium Digital Commerce Act" (S. 761); Representative ANNA ESHOO introduced the House companion later that day. My staff continued to consult with Chairman BLILEY in order to refine our substantive approach to this issue, and his electronic signature legislation, H.R. 1714, was introduced on May 6, 1999. As I noted, S. 761 was the first electronic signature bill introduced in the 106th Congress. Thanks to the gracious assistance of Chairman MCCAIN, our bill received its first hearing in the Senate Commerce Committee on May 27 of last year. On June 23 it was passed out of the Commerce Committee on a unanimous 19-0 vote. I would note that the version of the bill passed out by the Committee included provisions regarding both electronic signatures and electronic records.

During the fall of 1999, we made several attempts to pass this bill by unanimous consent agreement in the Senate, but unfortunately, we were unable to proceed because several Members had concerns relating to the inclusion of electronic records in the legislation. Given our need to accommodate the Senate's schedule, we made a decision to pass a substitute bill that excluded the records provisions, and the Abraham-Wyden-Leahy substitute amendment passed the Senate unanimously on November 19, 1999.

At the time the Senate passed S. 761, Senator LOTT and I made clear our intention to work for inclusion of electronic records provisions in the final bill. I am pleased to say that with much effort, the bill is being passed today as conceived nearly two years ago—granting legal certainty to both electronic records and signatures.

Mr. President, at this point I would like to speak to several of the key principles of this legislation, which I believe will provide the legal framework needed for the continued growth of e-commerce.

The general rule of this legislation ensures the legal certainty of e-commerce in very clear, targeted terms: "a signature, contract, or other record . . . may not be denied legal effect, validity, or enforceability solely because it is in electronic form".

Mr. President, the word "solely" is pivotal in this context: it means that electronic writings are not to be discriminated against, but instead are to be judged according to existing principles of contract law.

With this language, the "achilles heel" of all of e-commerce is protected—the "electronic" nature of a contract will not be used to attack the validity of a contract.

Mr. President, I view this as my single most important contribution to the future of electronic commerce, and would like to thank Senators MCCAIN, WYDEN, GRAMM, and HATCH for their counsel and support in writing this section of the legislation.

This section of the legislation was added to ensure that no ambiguity existed with respect to our treatment of existing contract law. Although we strongly believe that our General Rule is formulated in the least onerous incarnation, Section 101(b) clarifies that principles of contract law, which have been established over a millennium of commerce, remain in effect and should continue to guide transactions nationwide. It is the strong belief of the conference that the decision whether or not to participate in electronic commerce is completely voluntary, and if the parties decide to do so, the bill grants parties to a transaction the freedom to determine the technologies and business methods to employ in the execution of an electronic contract or other record.

Under the consent provisions, a consumer must affirmatively consent to the provision of records in electronic form, and there must be a reasonable demonstration that the consumer can access electronic records. For the immediate future, the conference envisions this "electronic consent" to take the form of either a web-page based consumer affirmation, or a reply to a business' electronic mailing which includes an affirmation by the consumer that he or she could open provided attachments. I eagerly await future technology developments that render the burdens this section imposes on consumers and businesses obsolete.

This provision, in combination with the simple fact that the use of electronic records by a consumer and right to contract generally are completely voluntary, should ensure that no consumer will be forced by any business to accept any electronic document that the consumer does not wish to receive.

It is well worth noting that the term "consumer" does not include business-to-business transactions, which will allow businesses to take full advantage of the efficiency opportunities presented by this legislation.

As I have noted, the central purpose of this legislation is to establish a nation-wide baseline for the legal certainty of electronic signatures and records. The States themselves have recognized the need for uniformity in laws governing e-commerce, and in July of last year, the National Conference of Commissioners on Uniform State Law (NCCUSL) reported out model legislation designed to unify state law in a market-oriented, technology-neutral approach. I believe that the eventual adoption of UETA by all 50 states in a manner consistent with the version reported by NCCUSL will provide the same national uniformity which is established in the Federal legislation. For that reason, and at my insistence, when a state adopts the "Uniform Electronic Transactions Act" (UETA) as reported by NCCUSL, the federal preemption provided in this bill is superceded. In the meantime, the preemption contained in the Federal Act will ensure a uniform standard of legal certainty for both electronic signatures and electronic records.

Mr. President, I would like to address two additional points related to preemption. First, UETA includes a provision that permits a state to prescribe "delivery methods" for various records. I saw this as a potential loophole to the bill, which would allow a state to circumvent the intent of the general rule and require that an electronic document be delivered via physical methods—most likely "first class" mail. It should be clear to all that the federal legislation would not permit such a delivery method requirement, and we have specified as much in the preemption section. Second, I believed that the House version of the preemption was unnecessarily overbroad, and went so far as to seriously hamper the ability of a state or local government to perform those governing functions entrusted to it by the citizens. I am pleased that the conference agreed with my opinion, and that the language was changed in response.

The "consumer protection" provisions of this legislation specify that any notice of product recalls or cancellation, or termination of utility services, among other items, are to be excluded from the scope of this legislation. This means, of course, that the validity of these notices may be denied solely because they are in electronic form. I hope that industry does not shy away from providing these notices electronically—as well as in paper—as it seems to me that electronic "anyplace, anytime" notification of a product recall or utility shutoff would be extremely valuable. Especially to a resident of northern Michigan on business or vacation travel, whose furnace was subject to recall during the dead of winter.

Mr. President, because of the benefits of "anyplace, anytime" notice—and especially in light of the strong consent provisions in the bill—I believe consumers should be free to choose to receive any type record electronically, even those expressly precluded in this legislation. I hope the appropriate regulatory agencies will utilize the authority granted in this bill to allow all records, even those precluded from electronic transmission by this legislation, to be sent electronically.

The Legislation does not prevent states from establishing standards for electronic transactions with their constituents. Just as the Government Paperwork Elimination Act provided the Federal government the authority to set standards for electronic regulatory filing and reporting, so too should the States have the ability to set standards for electronic submission with a State or political subdivision. And, like any business, the Federal government and the States also have the ability to establish procedures and standards for procuring goods and services online.

The bill directs the Department of Commerce and Office of Management and Budget to report on Federal laws and regulations that might pose barriers to e-commerce and report back to

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Congress on the impact of such provisions and provide suggestions for reform. Such a report will serve as the basis for Congressional action, or inaction, in the future.

This was one of the final sections of the language to be modified in response to my concerns. The original proposal by the Administration to deny legal validity for records required to be retained by Federal or State law or regulation until October 1, of 2001 was, in my opinion, needlessly excessive and punitive to those consumers and businesses prepared to leap now into the electronic age. I maintained that Federal and State agencies should be provided only six months time to develop standards to ensure document validity and integrity, so as to not inappropriately burden the private sector. Objective individuals outside the process with experience in developing and implementing regulations at the Federal and State level assured me that six months was feasible. In the end, however, we effectively agreed upon an eight-month delayed implementation. And finally, language which House negotiators insisted upon which would have needlessly created an uneven playing field for the financial services industry was also dropped at my request.

Since the Internet is inherently an international medium, consideration must be given to the manner in which the U.S. will conduct business with overseas governments and businesses. This legislation therefore sets forth a series of principles for the international use of electronic signatures. In the last year, U.S. negotiators have been meeting with the European Commissioners to discuss electronic signatures in international commerce. In these negotiations, the U.S. Department of Commerce and the State Department have worked in support of an open system governing the use of authentication technologies. Some European nations oppose this concept, however. For example, Germany insists that electronic transactions involving a German company must utilize a German electronic signature application. I applaud the Administration for their steadfast opposition to that approach. This bill will bolster and strengthen the U.S. position in these international negotiations by establishing the following principles as the will of the Congress:

One, paper-based obstacles to electronic transactions must be eliminated.

Two, parties to an electronic transaction should choose the electronic authentication technology.

Three, parties to a transaction should have the opportunity to prove in court that their authentication approach and transactions are valid.

Four, the international approach to electronic signatures should take a non-discriminatory approach to electronic signature. This will allow the free market—not a government—to determine the type of authentication technologies used in international commerce.

Mr. President, it is my hope that adoption of these principles will increase the likelihood of an open, market-based international framework for electronic commerce.

Mr. President, two years ago I believed that if we, as a body, could maintain a spirit of bipartisanship and a strong commitment to principles of free commerce, that we were poised to produce the landmark accomplishment of this Congress. Well we took these commitments seriously, and I believe our work product will be hailed for generations to come as the grounds upon which the dream of a prosperous new economy became a reality—and well beyond our expectations.

I am pleased to say that we have already begun work on the next legislative effort to help this nation shift to the electronic world, addressing the apportionment of liability for violations of duty and trust, and the protection of information and user confidentiality in electronic commerce. Mr. President, I welcome the help of my colleagues who have been with me in the effort to protect electronic signatures and records, I look forward to again working closely with the states and industry, and I hope to deliver to the American public corresponding legislation that is as well-contemplated and effective as S. 761 in the next Congress.

Before I close, there are a number of individuals whom I would like to thank for their hard work, and without exception, for their endurance. First, I would like to recognize Chairman MCCAIN for his assistance and dedication to this effort. The Chairman was one of the original cosponsors of this legislation, and lent a great deal of support well before any of the current attention was being paid to the issue of the legal certainty of electronic commerce. Senator MCCAIN's constant momentum eliminated many obstacles over the past 18 months and kept this process moving forward.

Without his efforts and those of Mark Buse and Maureen McLaughlin of the Senate Commerce Committee staff, I certainly wouldn't be making this statement today.

I would also like to sincerely thank my friend, Senator PHIL GRAMM, Chairman of our Banking Committee, whose dedication to those important principles of economic freedom was a key ingredient in guiding our legislation through the past year and a half.

The expertise which he and his staffers Geoff Gray and Wayne Abernathy brought to the table was absolutely indispensable. Senator GRAMM ensured that this legislation's propound impact on the financial services industry will be a positive one.

I also want to acknowledge our Judiciary chairman, Senator HATCH, who I understand will not be participating in the final vote on this legislation tomorrow due to another commitment, but he and his staff likewise worked very closely with us throughout this effort.

The support and counsel of Senator WYDEN, my partner in introducing this bipartisan bill last year, has also been essential to bridging the conceptual differences between colleagues on both sides of the aisle. Despite the different approaches we occasionally endorsed, I could always count on his sincere efforts to find common ground on this legislation. Senator WYDEN and his legislative director, Carole Grunberg did yeoman's work on this bill, and for that I wish to express my true appreciation.

I also commend Senator PAT LEAHY and his counsel, Julie Katzman for their contributions to this bill. Indeed, we worked hard in putting together the ingredients that made up the Senate version of this legislation, the final amendment which was adopted by the Senate when we passed this last year. Senator LEAHY's continuing interest, involvement, and support were very important to our success.

I must also express my gratitude to the Senate leadership for their patience as well as their persistence in moving this legislation. I truly appreciate the assistance of Dave Hoppe, Jack Howard, Jim Sartucci, and Rene Bennett of the Senate Majority Leader's staff.

I would also like to give thanks to Massachusetts Governor Paul Cellucci for his assistance and support through the process of drafting this legislation. Massachusetts should be proud of the work done by their Governor and his staff on this bill, especially the Governor's Special Counsel for e-commerce, Daniel Greenwood, to assure that state and federal law governing e-commerce are complimentary.

Finally, I would like to recognize the efforts of three members of my own staff who are here tonight. My legislative assistant, Kevin Kolevar, my Judiciary Committee Counsel, Chase Hutto, and my Administrative Assistant Cesar Conda.

I thank them for their tireless efforts and loyalty, and recognize they possess both the tremendous vision necessary to conceive of this legislation back in November of 1998, and the dedication to bring it to the point of final passage today.

I would just indicate that without these three gentleman and their hard work, numerous impasses that seemed to have doomed this legislation would not have been surmounted. Their willingness to creatively examine the problems we were confronting and come up with new approaches that offered all the participants an opportunity to work together to find a common ground were absolutely indispensable to this success. I certainly can attest to the long hours that were put in by these individuals to make sure that we completed this project and that we are in a position to pass this legislation.

As people look back on this effort, and I think they will with a sense that

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this was an important achievement, all three of these individuals will be accorded the praise they deserve for their efforts.

In closing, let me urge my colleagues to support final passage of the conference report tomorrow morning. I believe that we are passing a very important, landmark piece of legislation that will provide a stimulus to the new economy the likes of which we have not previously seen. I believe it is one of the most important steps we can take as a Congress to remove some of the barriers and impediments that might prevent us from fully enjoying the benefits of the new technologies, and I believe that as it becomes the law of the land, and subsequently as it is used as a basis for the entering into of transactions through e-commerce, we will look back on these achievements with great pride. I am happy to have been part of it. I thank all of my colleagues who made this possible.

Mr. ROBB. Mr. President, I rise today in strong support of the conference report on the Millennium Digital Commerce Act, a bill which I believe will help us remove one of the most imposing barriers to the growth of electronic commerce—the lack of a way to verify the validity of contracts entered into over the web.

As the Internet becomes more ubiquitous in society and the lines between paper and electronic worlds blur, it is crucial that we find ways to adapt older regulatory structures such as contract law to the new world of Internet commerce. By providing a framework for digital signatures, the Millenium Digital Commerce Act will do just that, and I'm pleased that we're about to send it to the President's desk for signature.

I'm particularly pleased that the conferees were able to work through some of the complicated consumer protection issues on this bill. Throughout the conference negotiations, there were those who suggested that we should use this bill to relax some of our most important consumer protection laws. I appreciate the efforts of Senators LEAHY, MCCAIN, ABRAHAM and others in working to temper these efforts, and believe that the final product is much better for it.

While I strongly support this legislation, I regret that a prior commitment will prevent me from being here tomorrow to vote in favor of it. In my absence, I urge each of my colleagues to support this landmark agreement, which will help the Internet realize its full potential.

Mrs. BOXER. Mr. President, last night the other body overwhelmingly approved the conference report accompanying S. 761, the Electronic Signatures in Global and National Commerce Act, by a vote of 426-4. The Senate is expected to take the report up soon.

I support the conference report on S. 761 because paper-less transactions will give our Information Age economy a boost, and allow persons to shop for goods and services once unavailable on the Internet.

The ability to make binding contracts online, that reach across state borders, will drive down transaction costs. The financial industry alone expects to save millions of dollars a year due to efficiencies derived from electronic signatures.

Consumers will save money and time, also. With electronic signatures persons will no longer need to sign certain contracts in person or communicate via mail. Now, persons will be able to enter into contracts and purchase items, like care loans, from the comfort of their own homes. Certainly, consumers will save money with this new level of competition, and save time conducting their daily affairs.

As people are able to conduct more and more business transactions online, I think we'll look back one day and try to remember what it was like without electronic signatures.

Mr. President, I look forward to this bill becoming law.

Mr. GRAMM. Mr. President, I rise today in support of the conference report on S. 761, the Electronic Signatures in Global and National Commerce Act, also known as the E-SIGN bill. The bill establishes a uniform national standard for treating electronic signatures, contracts and disclosures are legally binding in the same way that physical signatures, paper contracts and paper disclosures are legally binding. The bill will allow American businesses to become more efficient and productive through use of the Internet and other forms of electronic commerce, rather than being forced to use paper for all binding agreements. Further, it will expand for consumers everywhere the availability of products and services as well as permit tremendous time savings. With consumers no longer bound by expensive and time-absorbing requirements to complete transactions through the mail or in person, consumer costs will decline and choices will grow. Working from home computers, people will increasingly be able to pay bills, apply for mortgages, trade securities, and purchase goods and services wherever and whenever they choose. The reach of the consumer will extend around the globe.

Mr. President, Senator SPENCER ABRAHAM deserves the lion's share of the credit for this legislation. He began this process back in 1998, fathering not only the Senate bill, but subsequently generating interest on the House side. He continued providing technical and drafting assistance throughout the process. Without Senator ABRAHAM's persistence, and his clear, constant vision of what we need to accomplish, there would be no bill.

This legislation will have a profound impact on the financial services industries. "Electronic records" is the term in the legislation that would encompass the disclosures that banks and other financial services companies must provide to consumers. Unlike the Senate bill, the House-passed bill included references to "electronic records" throughout the provisions of the bill. By including electronic records along with electronic signatures, the House bill extended the scope of the bill to cover disclosures required under various laws and regulations.

Far more than other industries, financial services companies such as banks, insurance companies and securities firms are impacted by these disclosure laws. Not only these industries, but these disclosure laws themselves fall under the jurisdiction of the Banking Committee. I am pleased that members of the Banking Committee were able to serve on the conference committee to ensure that these provisions were drafted in an appropriate and workable fashion.

There remain some problems with the bill, but I do not believe them to be overwhelming. There are those who are fearful of the electronic market place, and that fear found its expression in the debates in the conference committee. It found its expression in provisions in this bill that apply standards to electronic commerce that are not applied to paper commerce. That is not unusual. Every major technological advance has met with fear before its full benefits were embraced. It may seem odd, but not over one hundred years ago there was a very spirited congressional debate about whether it was safe to buy an automobile for transporting the President. Voices were loudly raised in Congress that automobile transportation was not safe, that it was too risky to let the President be transported in anything other than a horse-drawn carriage. Governments passed restrictions on automobile use that should silly to us today.

I believe that many of the fears that have been raised about electronic commerce will very soon sound silly. In fact, many of them do not make much sense today. That is why I am pleased that this legislation will allow the regulators to remove many of these onerous restrictions if the fears prove unfounded, as I expect that they will. And as I expect the fear to prove unfounded, I expect the regulators to act vigorously to remove unnecessary restrictions and requirements. Electronic commerce should labor under no greater regulatory restrictions than does the quill pen, if this is to be a system for the twenty-first century.

We will watch very closely the development of electronic commerce. If this legislation proves to put an unnecessary burden on electronic commerce, and if the regulators fail to act, or if legislation is needed, we will then take vigorous action in the Congress to correct the situation and make the purposes of this legislation a reality.

Mr. LAUTENBERG. Mr. President, this bill includes a critical measure to make .08 the national drunk driving standard.

Chairman SHELBY and I both care deeply about improving transportation

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across this country, but we also share a commitment to making sure our transportation systems are as safe as possible. One of the most important things we can do to keep our families safe on our nation's roads is to keep drunk drivers off those roads.

Mr. President, the Senate already voted in favor of the .08 standard in 1998. The Senate overwhelming passed the Lautenberg-DeWine .08 amendment to TEA-21 by a vote of 62-32.

But, ultimately, the American public did not get the safety legislation that they deserved when a national .08 standard was not included in the final TEA-21 conference report that was sent to the President.

The TEA-21 conference report removed the Senate-passed .08 standard and replaced it with an incentive grant program, that, while well intentioned, frankly is not working. Only two states have passed .08 BAC since TEA-21 was enacted two years ago and it seems very unlikely that any other state will be motivated by the incentive grants over the next few years.

Mr. President, we have learned with other effective drunk driving legislation such as the minimum 21 drinking age and zero tolerance that weak incentive programs do not work--but national standards do.

I would assure my colleagues that the .08 provisions in this bill today do not alter the TEA-21 incentive grant program. So if your state is receiving incentive grant funds, you will continue to receive every cent you are entitled to under the current program.

For over a decade—in both Republican and Democratic Administrations, the National Highway Traffic Safety Administration has been telling Congress that the .08 standard is the best way to ensure safety on our roads and lower the number of fatalities which result from drunk driving.

In fact, the National Highway Traffic Safety Administration (NHTSA) estimates that a national .08 standard will save approximately 500 lives per year.

Make no mistake—drivers at .08 are drunk and should not be on the road. According to NHTSA, at .08, drivers are impaired in their ability to steer, brake, change lanes, use good judgment and focus their attention.

Their ability to perform these critical tasks may decrease by as much as 60 percent.

We must keep these drivers off the road in order to keep our families safe.

I am grateful to my colleagues for including the .08 provisions in this bill today. Now we look to the House of Representatives to follow our lead and work with us to produce a conference report that retains this critical safety legislation.

I yield the floor.

Mr. HOLLINGS. Mr. President, I rise to speak in favor of the passage of the conference report on S. 761, the electronic signatures bill. This legislation was originally considered and reported by the Commerce Committee. The initial purpose of the legislation was to legalize the use of digital signatures for contracting electronically, mostly via the internet. The States for several years had been working on adopting a model law—the Uniform Electronic Transaction Act (UETA)—which was to be adopted by the States for the purpose of creating uniformity. This process was to be akin to the adoption of the Uniform Commercial Code (UCC). However, a number of industries, most notably those in the high-tech field, felt that it could take years for all States to adopt the model law. Thus, they sought Federal preemption. Bills eventually were introduced in both Chambers. Senator ABRAHAM introduced the legislation in the Senate, and Congressman BLILEY introduced legislation in the House (H.R. 1714).

As noted, the Senate bill—introduced on March 25, 1999—was referred to and considered by the Commerce Committee. After holding a hearing on May 27, 1999, the committee reported the bill on June 23, 1999. At that time, we were advised that the general purpose of the bill was to establish a Federal temporary and backup law, so as to ensure the national use of electronic signatures until the model law was adopted by the States.

During the committee's consideration of S. 761, I indicated that I did not have a problem with establishing uniformity; however, because the legislation ultimately affects State contract law, I was concerned about preserving the right of States to adopt their own laws, given that States already were working on the adoption of a model law. In the field of commercial law, the States had a similar experience with the UCC. Thus, I saw no reason to prevent the States from adhering to the same process with respect to digital signatures. I made it clear to Senator ABRAHAM that I would not support the bill—in fact, that I would seek to block its passage—if the legislation did not preserve the autonomy of States to adopt the model law that they were considering. I also sought to make sure States were able to adopt the model law in a manner consistent with their consumer protection laws. Senator ABRAHAM and I were able to come to an agreement so as to ensure that the legislation, as reported by the committee, was consistent with these principles. The legislation was unanimously reported by the committee on June 23, 1999.

Once reported, Senator LEAHY worked to procure a number of changes designed to ensure the non-applicability of the bill to certain agreements, including marital and landlord tenant relationships. The legislation was passed by the Senate on November 19, 1999.

I should note that before final passage of the bill, I objected to its passage by unanimous consent because of the inclusion of language providing that the legislation applied to the business of insurance. I objected because that language was not in the Senate bill as reported by the Commerce Committee, but more significantly, I objected because insurance companies are regulated by the States. Because the matter had not been addressed by the Commerce Committee, and because insurance is under the jurisdiction of the Commerce Committee, I wanted some clarification on the issue, and assurance that the issue of State insurance regulation would be addressed in the legislative conference on the bill. Senator ABRAHAM, through a colloquy, agreed that the issue would be addressed during conference discussions.

The House bill—H.R. 1714—was passed last November as well. It, however, was more extensive, and severe, than the Senate bill. It did not provide regulatory flexibility to the States to allow them to adopt the model law in conformance with their consumer protection laws; it included provisions regarding Government electronic filing and record keeping—which was beyond the original purpose of the legislation; and provisions specifying the manner in which consumers' consent could be obtained for the use of electronic signatures. Reservations and opposition to the bill were heard from state officials and the consumer community.

These groups had a right to be concerned about the bill. The legislation, pursuant to its "consent provisions" would have allowed consumers to be easily induced into giving their consent to contract electronically, even if they didn't own or have access to a computer. In other words, pursuant to certain inducements by a commercial entity—i.e., through an offer that the consumer could get the product cheaper if he or she agreed to a transaction electronically—consumers could have been placed in positions whereby they walked away from a commercial agreement in person without any paper or documentation and potentially no means of accessing the actual contents of the agreement later, including any additional notices or disclosures they're required to receive with consumer purchases. With respect to the record retention requirements that states impose on commercial entities, such as insurance companies, the legislation, would have substantially undermined the ability of States to ensure that businesses retained important documents, such as financial statements and records, and that States retained access to those documents.

The conference discussions on the bill began between the Senate and House immediately after the Senate conferees were appointed in March of this year. Subsequently, however, the majority staff of the Senate and House began to convene among themselves. On May 15, the majority presented a draft conference agreement to the Democratic Members. After reviewing the document, I made it clear that not only would I not support the proposal, but if offered up, I would do all I could to kill the measure. I should note, however, that every other Democratic

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Member of the conference—Senators LEAHY, SARBANES, WYDEN, KERRY, INOUYE, and ROCKEFELLER as well as Congressman DINGELL and Congressman MARKEY—in addition to the administration, opposed the measure. In light of this opposition, the majority Members, and the high-tech industry, knew they would not achieve passage of the proposal.

The problems with the draft include the following:

Similar to the House bill, it would have allowed businesses to induce consumers into signing and consummating contracts electronically even in face to face transactions. Consequently, a person could walk away from a major agreement without any paperwork. The actual agreement would have been e-mailed to the purchaser. In that situation, however, the consumer would have no way of proving that the document that he or she received by e-mail is the deal that he or she actually agreed to. Moreover, there would be no paperwork on warranties and no guarantee that a person could access the documents if that person doesn't own a computer or doesn't have the proper computer software of hardware.

Additionally, the draft provided that after a consumer consented, in the event a company changed the hardware or software that prevented the consumer from receiving or reviewing the document, the burden would have been on the consumer, not the company to purchase the correct hardware and software.

The draft also included the onerous record retention provisions of the House bill.

After the draft was rejected by the Democratic Members, I suggested to my friend, TOM BLILEY, the chairman of the Conference, that the only way a bill was going to pass this year was that it had to be an agreement of a bipartisan nature. Given that Congressman BLILEY's bill was so far different from where most Democrats were, I knew that if we could come to an agreement, we could achieve a bipartisan measure. He agreed. I suggested that he meet with a group of Democratic Members and the representatives of the administration to develop a bipartisan draft to present to the conference. He agreed to this recommendation as well. Subsequently, his staff met with Democratic staff members and representatives of the administration and eventually constructed a bipartisan Conference draft. That document included major revisions of the consumer consent, preemption and record retention provisions. Those provisions provided significantly more protections to consumers and protections of state regulatory authority.

When the draft was first presented to the conference, there were objections. However, it led to a second bipartisan discussion between the Democratic Members, along with the Administration and the two Republican principals, Congressman BLILEY and Senator MCCAIN—who also recognized the need for a bipartisan consensus. Through the efforts of Senator MCCAIN, we eventually were able to agree on a final draft of the bipartisan measure.

I am proud to say that the final conference report includes major protections for consumers and the States. Does it include all I would have liked for it to? Of course not. However, it does represent a commendable effort by Republican and Democratic conferees to put forth a law that accomplishes the original goal of establishing a legal framework for the new digital world, while maintaining important protections for American consumers. I have joined with Senators SARBANES and WYDEN introducing an explanatory statement of the legislation, which details how the bill affects consumers and State governments. I would, however, like to highlight a few important provisions:

(1) The agreement ensures that consumers, when giving consent to do a transaction electronically, before their consent can be valid, must be informed of their right to receive records in paper, and of the right to withdraw their consent once given, and that there be some demonstration that the consumer can actually access and retain the document.

(2) It ensures that consumers are able to withdraw consent to receive their required notices under the contract in the event the provider changes the hardware or software in a manner which prevents the consumer from accessing and retaining the document, without costs and fees.

(3) It preserves state unfair and deceptive trade practices laws, so as to ensure that the use of electronic signatures and electronic transactions cannot be used to evade the requirements and prohibitions of these laws.

(4) It preserves important aspects of Federal and State record retention laws and requirements, and gives States some reasonable time to conform their regulations in light of the legislation's affirmation of electronic record retention by regulated industries.

Mr. President, I would like to commend Congressman BLILEY, and Senator MCCAIN for their efforts to forge an agreement on the legislation. I also want to commend all my Democratic colleagues and their staff, and the representatives of the administration for their admirable work on this legislation.

Mr. SARBANES. Mr. President, I am very pleased to be able to bring to the floor of the Senate this conference report of S. 761, the Electronic Signatures in Global and National Commerce Act, along with my colleagues from the Commerce and Judiciary Committees.

First and foremost, the success of this effort is the result of the leadership of Chairman BLILEY and Chairman MCCAIN. Their commitment to working in a bipartisan manner ultimately carried the day.

I also want to thank Senator HOLLINGS, Senator LEAHY, Senator WYDEN, and Representative DINGELL. Without the leadership exhibited by these 4 members, and the long hours, hard work, and dedication of their key staff (Moses Boyd, Kevin Kayes, Julie Katzman, Carol Grunberg, Consuela Washington, and Bruce Gwinn) we would never have reached this agreement.

Finally, the Administration, through its representatives from the Commerce and Treasury Departments (Andy Pincus and Gary Gensler), as well as the White House (Sarah Rosen-Wartell), played a crucial and constructive role in putting together the package we have before us.

Mr. President, I support this bipartisan conference report. This new law creates a solid legal foundation upon which electronic commerce can grow and prosper, with benefits for many consumers and businesses.

It is apparent to all of us that more and more business will be done on-line in the future, and that this will be true both for business-to-business commerce and for consumer transactions.

We need to be mindful, however, that while this trend will likely continue, many Americans do not today participate in the electronic world. Indeed, they cannot participate in this world in any meaningful way.

To make this point, I want to share with my colleagues the findings of a July, 1999 Commerce Department report entitled "Falling Through the Net: Defining the Digital Divide."

First, about 70 percent of Americans do not yet have access to the internet;

Urban households with incomes of $75,000 and higher are more than twenty times more likely to have access to the internet than rural households at the lowest income levels and they are more than nine times more likely to have a computer at home;

Whites are more likely to have access to the internet from home than Blacks or Hispanics have from any location;

Regardless of income level, Americans living in rural areas lag on internet access. At the lowest income levels, those in urban areas are more than twice as likely to have access than rural families with the same income.

These facts are alarming. More distressing, is the fact that, as bad as these numbers are, the trends are moving in the wrong direction. The Commerce Department reports that the digital divide is actually growing.

For example, the gap between white and minority households has grown 5 percentage points in just one year, from 1997 to 1998.

The gap, based both on education and income increased by 25 and 29 percent in the past year, respectively.

These dramatic and disturbing findings underline the importance of ensuring that, as we move to an electronic world, we make sure that longstanding consumer protections survive the transition. Many of us made clear from the

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beginning that our goal was to ensure equivalent consumer protections for transactions conducted in the paper and electronic worlds. We have largely achieved that goal.

First among these protections is the common sense provision incorporated in the report that consumer consent to engage in electronic commerce be given electronically. This is a protection against unscrupulous and abusive practices as well as inadvertent mistakes by well meaning vendors.

Electronic consent will greatly enhance the consumer confidence to do business on-line, without resulting in additional burden on businesses—they are, after all, already committed to communicating with the consumer electronically.

The best demonstration of the importance of electronic consent is the fact that the initial conference draft that was provided to Conferees was circulated via e-mail. Yet, despite the fact that our staff is more technologically sophisticated than the average American consumer, many of them were unable to download the document and had to have paper copies hand delivered.

Now, imagine if that was a notice of change in mortgage servicing, or a notice that health insurance benefits are being cut back, or that auto insurance is being cancelled. That family could very well find itself with a sick child on no health insurance.

Electronic consent would have avoided that problem by ensuring that the consumer is able to read the records provided.

Electronic consent is not, as some people have sought to portray it, relevant only for a transitional period. Compatibility among systems is always important to check, given the significance of the records being transmitted. In addition, the U.S. mail is free to receive and comes to your door. You do not need a computer to receive the mail. You do not need to pay for an internet service provider, and you do not need to go to a public library to fain access to a computer if you don't have one at home. For all these reasons, electronic consent will be as important in the future as it is today.

Other concerns I had have also been addressed in this report.

We have provided both federal and state agencies with the authority to interpret and issue guidance on the proposed law. Providing this interpretive authority will provide businesses with a cost-effective way of getting guidance in how to implement the new law. Without this authority, these questions would have to have been answered by the courts, after extensive and expensive litigation. We have avoided that problem.

the conference report gives law enforcement agencies of federal and state governments the authority they need to detect and combat fraud, including the ability to require the retention of written records in paper form if there is a compelling governmental interest in law enforcement.

Let me raise one specific example, among many, of where this provision ought to be exercised. The Securities and Exchange Commission should use this provision to require brokers to keep written records of agreements required to be obtained by the SEC's penny stock rules. Investors in the securities markets have been the victims of penny stock abuse for more than a decade. The SEC must exercise every tool at its disposal to fight this kind of fraud.

Finally, we narrowed the scope of the legislation to ensure that certain notices that simply cannot effectively be made electronically, such as documents carried by vehicles hauling hazardous materials, will continue to be in paper form.

As many of you know, it was not at all clear that we were going to be able to deliver this bipartisan, largely consensus product to the floor. There were many times when negotiations threatened to unravel.

But we stuck to it; we continued to show a willingness to consider and reconsider many issues that came up, even after agreement on many of those issues was achieved. Eventually, we were able to close the few remaining gaps and come to a final compromise.

Mr. President, these changes make this a good piece of legislation worthy of our support. I urge all my colleagues to do so, and, once again, commend the leaders who brought this effort to a successful conclusion.

Finally, I ask unanimous consent to insert for the RECORD some more specific observations on a number of provisions of the legislation on behalf of Senator HOLLINGS, Senator, WYDEN, and myself. I think this will be helpful given the fact that no statement of managers was included with the final legislation.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATORS HOLLINGS, WYDEN, AND SARBANES REGARDING THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

We want to make a number of points about some of the important provisions in the Act we *are passing today.*

1. *Scope of Requirement.* Section 101 (a). In recommending that the Senate vote to pass this legislation, we 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 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. Companies and consumers should only be able to agree to reasonable electronic signature technologies. As the definition of the electronic signature makes clear, the electronic signature is only valid under this Act if the person intended to sign the contract. A person accepting an electronic signature should have a duty of care to determine if the signature really was created by the person to whom it is attributed.

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. As a result, laws or regulations or common law rules that prohibit fraud or unfair trade or deceptive practices or unconscionable contracts are not affected by this Act. The use of the word "solely" throughout section 101(a) is intended to ensure a contract, notice or disclosure which is provided electronically gains no additional validity or sanctity against challenge just because it is in electronic form. The validity of a consent obtained as the result of an unfair or deceptive practice can be challenged and found to be invalid, in which case any records which were provided electronically will be deemed to not have been provided to the consumer. 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 consented to the electronic notices and contract 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. The basic rules of good faith and fair dealing apply to electronic commerce.

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

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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 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 Records. Section 101(c)(1). The House bill included an amendment that required that consumers affirmatively consent before they can receive records (included required notices and disclosures and statements) electronically that are legally required to be provided or made available in writing. Special rules apply to electronic transactions entered into by consumers. It is the Congress' intent that the broadest possible interpretation should be applied to the concept of "consumer." The definition in Section 106(1) is intended to include persons obtaining credit and insurance, even salaries and pensions—because all of these are "products or services which are used primarily for personal, family or household purposes" as the word is defined in the Act. Amongst the 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, that they can actually open, read, and retain the records that they will be sent electronically. The Act requires that consumers consent electronically—or confirm their consent electronically—in either case, in a manner that allows the consumer to test his capacity to access and retain the electronic records that will be provided to him. The consumer's consent to receive electronic records is not valid unless it is confirmed electronically in a manner meeting the specific requirements of Section 101(c)(1)(C)(ii).

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. 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 or she 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 do 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." State and federal law requirements on delivering documents have not been addressed in this Act. The underlying rules on these issues still prevail. It is our view that records provided electronically to consumers must be provided in a manner that has the same expectation for the consumer's actual receipt as was contemplated when the state law requirement for "provided" was passed. 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 if 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.

Section 101(c)(3) is a narrow saving clause to preserve the integrity of electronic contracts: just because the consumer's consent to electronic notices and records was not obtained properly does not mean that the underlying contract itself is invalid. This provision only affects electronic records, it simply means that an electronic consent which fails to meet the requirements of section 101(c) does not create a new basis for invalidating the electronic contract itself.

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.

Accuracy and Ability to Retain Contracts and Other Records, 101(e). The Conferees added new language in section (e) of 101 to establish that a contract or record which is required under other law to be in writing loses its legal validity unless it is provided electronically to each party in a manner which allows each party to retain and use it at a later time to prove the terms of the record.

Exemptions to Preemption. Section 102(a) allows a state to "modify, limit or supersede section 101" in one of two ways: (1) by passing the Uniform Electronic Transactions Act ("UETA") as approved and recommended for enactment by the National Conferences of Commissioners on Uniform State Laws in 1999, or (2) by passing another law which specifies the requirements for use or acceptance of electronic records and electronic signatures which is consistent with this Act. These choices for states are not mutually exclusive. Of course, the rules for consumer consent and accuracy and retainability of electronic records under this Act shall apply in all states that pass the Uniform Electronic Transaction Act or another law on electronic records and signatures in the future, unless the state affirmatively and expressly displaces the requirements of federal law on these points. A state which passed UETA before the passage of this Act could not have intended to displace these federal law requirements. These states would have to pass another law to supercede or displace the requirements of section 101. In a state which enacts UETA after passage of this Act, without expressly limiting the consent, integrity and retainability subsections of 101, those requirements of this Act would remain in effect. The general provisions of UETA, such as the requirement for agreement to receive electronic records in UETA are not inconsistent with and do not displace the more specific requirements of section 101, such as the requirement for a consumer's consent and disclosure in section 101(c).

It is important to note that Section 103(b) lists certain notices which are exempted from the coverage of section 101 (such as notices of cancellation of utility service or insurance coverage). The legal result is that section 101 simply does not apply to the notices listed in section 103. Under section 102(a) a state only has the authority to modify, limit or supercede the coverage of section 101. We specifically intend that a state may not use its authority under section 102, to authorize solely electronic records of those notices listed in section 103.

Prevention of Circumvention. Section 102(c). Section 8(b)(2) of UETA allows States to impose delivery requirements for electronic records. Section 102(c) has the limited purpose of ensuring 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.

We believe that Title II of this Act separately addresses transferable records by establishing rules for creating, retaining and providing these records electronically. This Act places no limitation on a state's right to add consumer protections to transferable records.

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 that is charged with interpreting its provisions; instead, under Section

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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 loans 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 preexisting rulemaking authority, so that regulations or guidance interpreting section 101 will 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, and 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.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ABRAHAM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. ABRAHAM. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

VICTIMS OF GUN VIOLENCE

Mr. KERRY. Mr. President, it has been more than a year now since the Columbine tragedy, and still regrettably our friends on the other side of the aisle refuse to act on commonsense, sensible gun legislation. I understand the divisions in the Senate and in the country on the issue of guns. I am certainly not unmindful of the truth to some people's assertions regarding the degree to which personal responsibility enters into the actions of anybody with respect to guns.

Obviously, we need to create greater accountability on a personal level with respect to those actions. But common sense tells every single American that there are also basic things we can do to make this country safer for our children, things we can do to keep guns out of the hands of our children, things we can do to make our schools safer, ways in which guns themselves can become safer. I am deeply troubled by the numbers of people, particularly the number of children who have been wounded or killed by gunfire since Columbine, and who are killed and wounded by gunfire each year in this country.

All we are asking is that the juvenile justice conference meet, that the Senate do its business, that they finish the business, issue their report, and that the Congress have the courage and the willingness to vote on the conference report.

Until we do act, many of us on this side of the aisle—I would say the Democratic caucus—is prepared to read the names of those who have lost their lives to gun violence over the past year. We will continue to do so every single day that the Senate is in session.

The following are the names of people who were killed by gunfire, 1 year ago today:

Latonia Davis, 21, Charlotte, NC; Jacob B. Dodge, 24, Madison, WI; Elvin R. Dugan, 33, Oklahoma City, OK; Marcus E. Gray, 39, Chicago, IL; Dante Green, 26, Washington, DC; Dwayne Pate, 32, Washington, DC; Charles Vullo, 42, Houston, TX; Brandon Williams, 3, Hollywood, FL; Lennox Williams, 49, Hollywood, FL; Mae William, 44, Hollywood, FL; Unidentified male, 63, Portland, OR.

I hope my colleagues will join in releasing the juvenile justice bill from its prison and empowering the Senate to do its job and to pass the juvenile justice bill, which will make this country safer for our children.

I yield the floor.

DEFENSE APPROPRIATIONS ADD-ONS, INCREASES, AND EARMARKS

Mr. MCCAIN. Mr. President, I ask unanimous consent that my list of add-ons, increases, and earmarks to the fiscal year 2001 Defense appropriations bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEFENSE APPROPRIATIONS FOR FY 2001 ADD-ONS, INCREASES AND EARMARKS

[In millions of dollars]

TITLE II—OPERATIONS AND MAINTENANCE	
Army:	
Military Gator	5
GCCS-USFK	11.3
HEMTT vehicle recapitalization	10
Maintenance Automatic Identification Technology	2
LOGTECH	0.5
Fort Wainwright utilidors	10
Fort Greely runway repairs	7
Hunter UAV	5
Rock Island UPC subsidy	11.5
Watervliet UPC subsidy	11.5
Air Battle Captain	1.25
Joint Assessment Neurological Exam equipment	1.5
JCALS	10
Biometrics support	8
Army conservation and ecosystem management	2
Information Assurance-USFK IT security	2
Rock Island Bridge repairs	2.5
Fort Des Moines, Historic OCS memorial	2
Memorial Tunnel, Consequence management	5
Mounted Urban Combat Training, Fort Knox, Kentucky	4
Industrial Mobilization Capacity	68

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