

"sunset." The reported bill would maintain a strong federal hand in the commercial law of electronic signatures and records within a State even after it adopts the UETA. This is true because the bill would lift its preemptive effect only to the extent that the UETA "as in effect in such State," or any other law of the State, is "not inconsistent, in any significant manner" with the provisions of this Act.

The pervasiveness and strength of this continuing federal influence over States' laws is shown by the broad and unqualified wording of some of the substantive provisions of section 103. For example, subsection 103(a)(3) provides: "If a law requires a record to be in writing, or provides consequences if it is not, an electronic record satisfies the law." Similarly, subsection (a)(4) provides that wherever a law "requires a signature, or provides consequences in the absence of a signature, the law is satisfied with respect to an electronic record if the electronic record includes an electronic signature," and subsection (a)(5) provides highly specific requirements for ensuring that a legal record-retention requirement will be satisfied by an electronic record. With such provisions in section 103, the bill's continuing preemption of all State laws which are "not inconsistent in any significant manner" with the provisions of this Act would perpetuate federal law as the core of the commercial law of electronic signatures and records in every state. As emphasized in our Department's testimony before the Subcommittee, deference to state law in the area of commercial transactions has been the hallmark of the legal system in this country. The reported bill remains inconsistent with this important tradition which has produced a system of commercial law widely considered the best in the world.

Subsections 103(a) (3), (4) and (5), which I have just mentioned, coupled with the broad party autonomy language of section 103(b), would also place excessive limits on governmental authority. In particular, these provisions would appear to preclude virtually any regulation of private parties' authentication of recordkeeping practices in the sphere of electronic commerce, as is common and recognized as appropriate with respect to paper-based transactions.* But these regulations, including consumer protection laws, laws governing financial transactions, and others, are essential to ensure that the public interest is protected.

For example, raising concerns similar to those noted in this Department's testimony on H.R. 1714, Banking Committee Chairman Leach recently wrote to Commerce Committee Chairman Bliley noting that the federal financial regulatory agencies have raised a concern about the language of the section of H.R. 1714 (section 103(b) of the version before your Committee) relating to the autonomy of parties to a contract to set their own requirements with respect to electronic records and signatures. Specifically, he noted the need to ensure that the bill's party autonomy provisions would not limit

*These provisions are similar to some contained in S. 761, as reported by the Senate Commerce Committee. I expressed support for that measure because it ensured that contracts could not be invalidated because they were in electronic form or because they were signed electronically. At the time the bill was reported, the spillover effect of these provisions on existing consumer protection and regulatory standards had not been identified. Now that this effect has become clear, and it is equally clear that enactment of this measure is desired by some precisely because of this spillover effect, we must oppose these provisions as currently drafted.

government authority to engage in limited regulation of authentication- or records-related matters in certain private party transactions in the public interest. We agree; for example, given the unqualified authorization provided by subsection 103(b) to private parties to determine the "methods" as well as the "terms and conditions" under which they will use and accept electronic signatures and records, banks would be free to adopt methods that could result in the absence of adequate records or sound authentications of transactions when the bank examiner arrives.

Chairman Leach also noted that the Federal Reserve Board has raised concerns regarding the application of H.R. 1714 to negotiable instruments, such as checks and notes. He pointed out that the National Conference of Commissioners on Uniform State Laws recognized some of these concerns and therefore excluded transactions covered by the Uniform Commercial Code from coverage under UETA. We agree with the concerns raised by Chairman Leach and believe that amendments or clarifications along the lines he has suggested continue to be needed in the context of H.R. 1714 as reported to your Committee.

Consumer protection is another important area where the public interest has been found to require government oversight. States, as well as the Federal government, must not be shackled in their ability to provide safeguards in this area. Yet this is precisely what this legislation would do.

Section 104, "Study of Legal and Regulatory Barriers to Electronic Commerce," is consistent with the Administration's commitment to ensure the careful review of possible legal and regulatory barriers to electronic commerce. Indeed, this provision in the bill as reported focuses upon barriers to electronic commerce, as such, rather than more narrowly upon commerce in electronic signature products and services. We believe this focus is appropriate. However, to avoid duplication of agency reporting, we would recommend against inclusion of the Office of Management and Budget as an agency to receive initial agency reports under the provision.

In summary, we believe that the bill as reported by the Subcommittee addresses some important concerns of the Administration that were set out in our earlier testimony. However, H.R. 1714 in the form reported to your Committee retains significant flaws that would have to be addressed before the Administration could support the bill. We would be pleased to continue to work with your Committee on this important legislation.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

ANDREW J. PINCUS.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting a treaty and sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

A REPORT RELATIVE TO THE CONTINUATION OF THE NATIONAL EMERGENCY WITH RESPECT TO SUDAN—MESSAGE FROM THE PRESIDENT—PM 69

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent the enclosed notice, stating that the Sudanese emergency is to continue in effect beyond November 3, 1999, to the *Federal Register* for publication.

The crisis between the United States and Sudan that led to the declaration on November 3, 1997, of a national emergency has not been resolved. The Government of Sudan continues to support international terrorism and efforts to destabilize neighboring governments, and engage in human rights violations, including the denial of religious freedom. Such Sudanese actions pose a continuing unusual and extraordinary threat to the national security and foreign policy of the United States. For these reasons, I have determined that it is necessary to maintain in force the broad authorities necessary to apply economic pressure on the Government of Sudan.

WILLIAM J. CLINTON.

THE WHITE HOUSE, October 29, 1999.

MESSAGE FROM THE HOUSE

ENROLLED JOINT RESOLUTION SIGNED

A message from the House of Representatives announced that the Speaker has signed the following enrolled joint resolution on October 28, 1999:

H.J. Res. 73. Joint resolution making further continuing appropriations for the fiscal year 2000, and for other purposes.

The enrolled joint resolution was signed by President pro tempore (Mr. THURMOND) on October 28, 1999.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with