THIRD MILLENNIUM ELECTRONIC COMMERCE ACT

Ms. COLLINS. Mr. President, I now ask unanimous consent that the Senate proceed to the consideration of Calendar No. 243, S. 761.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 761) to regulate interstate commerce by electronic means by permitting and encouraging the continued expansion of electronic commerce through the operation of free market forces, and other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE. This Act may be cited as the “Third Millennium Digital Commerce Act”.

SECTION 2. FINDINGS. The Congress makes the following findings:

(1) The growth of electronic commerce and electronic transactions represents a powerful force for economic growth, consumer choice, improved civic participation and wealth creation;

(2) The promotion of growth in private sector electronic commerce through Federal legislation is in the national interest because that market is globally important to the United States;

(3) A consistent legal foundation, across multiple jurisdictions, for electronic commerce will promote the growth of such transactions, and that such a foundation should be based upon a simple, technology neutral, non-regulatory, and market-based approach;

(4) The Nation and the world stand at the beginning of a large scale transition to an information society which will require innovative legal and policy approaches, and therefore, States can serve the national interest by constructing a national legal infrastructure necessary to support electronic commerce at the Federal and State levels within existing areas of jurisdiction.

SECTION 4. DEFINITIONS. In this Act:

(1) ELECTRONIC.—The term “electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) ELECTRONIC AGENT.—The term “electronic agent” means a computer program or an electronic signature either automated means used to initiate an action or respond to electronic records or performances in whole or in part without review by an individual at the time of the action or response.

(3) ELECTRONIC RECORD.—The term “electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means.

(4) ELECTRONIC SIGNATURE.—The term “electronic signature” means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.

(5) GOVERNMENTAL AGENCY.—The term “governmental agency” means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the Federal Government or of any county, municipality, or other political subdivision of a State.

(6) RECORD.—The term “record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(7) TRANSACTION.—The term “transaction” means an action or set of actions relating to the conduct of commerce between 2 or more persons, neither of which is the United States Government, a State, or an agency, department, board, commission, authority, institution, or instrumentality of the United States Government or of a State.

(8) UNIFORM ELECTRONIC TRANSACTIONS ACT.—The term “Uniform Electronic Transactions Act” means the Uniform Electronic Transactions Act as reported to State legislatures by the National Conference of Commissioners on Uniform Trade Law (UNCITRAL) and the National Conference of Commissioners on Uniform State Law in the form or any variation thereof that is authorized or provided for in such report.

SECTION 5. PRINCIPLES GOVERNING THE USE OF ELECTRONIC SIGNATURES IN INTERSTATE TRANSACTIONS. To the extent practicable, the Federal Government shall use the following principles in an international context to enable commercial electronic transactions:


(2) The parties to a contract shall determine the appropriate authentication technologies and implementation models for their transactions, with assurance that those technologies and implementation models will be recognized and enforced.

(3) Permit parties to a transaction to have the opportunity to prove in court or other proceedings that their agreement approaches and their transactions are valid.

(4) Take a non-discriminatory approach to electronic signatures and authentication methods from other jurisdictions.

SECTION 6. INTERSTATE CONTRACT CERTAINTY. (a) IN GENERAL.—The following rules apply to any commercial transaction affecting interstate commerce:

(1) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(2) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(3) If a law requires a record to be in writing, 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.

(b) METHODS.—The parties to a contract may agree on the terms and conditions on which they will use and accept electronic signatures and electronic records, including the methods therefore, in commercial transactions affecting interstate commerce. Notification requires that any party enter into such a contract.

(c) INTENT.—The following rules apply to any commercial transaction affecting interstate commerce:

(1) An electronic record or electronic signature is attributable to a person if it was the act of the person or if the person would be liable under State law for that act if it were performed in another form.

(2) The effect of an electronic record or electronic signature attributed to a person under paragraph (1) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties’ agreement, if any, and otherwise as provided by law.

(d) FORMATION OF CONTRACT.—A contract relating to a commercial transaction affecting interstate commerce may not be denied legal effect solely because its formation involved:

(1) The interaction of electronic agents of the parties; or

(2) The interaction of an electronic agent of a party and an individual whose actions are attributed to that individual’s own behalf or for a report to the Director of the Office of Management and Budget and the Secretary of Commerce identifying any provisions of law administered by such agency, or any regulations issued thereunder, that are in effect on the date of enactment of this Act, that may impose a barrier to electronic transactions,
Mr. L. EHLY, proposes an amendment numbered 2787.

Mr. ABRAHAM. Mr. President, I will yield to the Senator from Michigan.

Mr. LEAHY and other cosponsors. I also thank Senators MCCAINT, BURNS, and LOT, who joined as cosponsors. I also thank Senator LEAHY, Senator SARKANEN, Senator MCCAINT and others who have worked with Senator WYDEN and me in moving this through the legislative process. I express my appreciation to all my colleagues.

Part of the challenge we confront is when people are entering into contracts in this nonwritten context, the potential exists for questions to be raised as to the validity of the contractual arrangements. Without getting into all the details, the goal of the Millennium Digital Commerce Act is to address this issue. Approximately 42 States have already passed what in effect are digital signature authentication laws which address contracts entered into online or which address the validity of contracts entered into through the web. The problem is those 42 bills are all different. It is possible for people to argue that a contract is valid in one State and not valid in the State of the other contracting party and, thus, is an invalid document.

The purpose of our legislation is to try to make all such agreements valid if they fit or meet some parameters, identical to the ones the States are moving toward; a uniform system. In short, we believe this will be an interim approach until the States have passed a model uniform act. If we don’t do this, impediments will exist between parties who wish to contract via the Internet and through electronic commerce. We believe the passage of this bill will relieve those impediments and allow for e-commerce to continue to expand and grow and strengthen our economy.

I am very pleased at the passage of the bill today, and look forward to working with our counterparts in the House, they have passed a slightly different bill, to pound out a final consensus through the conferencing process and bring back to the Senate the output of that process. I hope to do this very early in the next session. So, too, do other States have passed a model uniform act. If we don’t do this, impediments will exist between parties who wish to contract via the Internet and through electronic commerce. We believe the passage of this bill will relieve those impediments and allow for e-commerce to continue to expand and grow and strengthen our economy.

I yield the floor.

Mr. LOT. Mr. President, I want to acknowledge the significant efforts of Senator ABRAHAM to author and pass legislation aimed at facilitating the growth of electronic commerce. Commerce that is a significant driving force behind our nation’s robust and expanding economy.

Today, the Senate passed by unanimous consent an Abraham substitute for S. 761, the Millennium Digital Commerce Act. This measure is important because it would ensure the legal certainty of electronic signatures in interstate commerce.

Mr. President, right now, there are over forty different state electronic authentication regimes in play. This patchwork of inconsistent and often conflicting state laws makes it difficult to conduct business-to-business and business-to-consumer transactions over the Internet. Those involved in electronic transactions want assurance that their contractual arrangements are legally binding.

Senator ABRAHAM took the lead on this issue and crafted a bill to ensure that a national framework would govern the use of electronic signatures. It is a rational, coherent, and minimalist approach, supported by America Online, American Bankers Association, American Council of Life Insurance, the American Electronics Association, American Financial Services Association, American Insurance Association, Microsoft, the Information Technology Association of America, the Information Technology Industry Council, Microsoft, NCR, the National Association of Manufacturers, National Retail Federation, and the U.S. Chamber of Commerce, among others.

Mr. President, in drafting his legislation, Senator ABRAHAM included key concepts and provisions developed by the National Conference of Commissioners on Uniform State Law, a group which included legal scholars, experts on electronic commerce, state officials and other interested stakeholders, spent the better part of two years drafting the Uniform Electronic Transactions Act (UETA). This model legislation was formally approved in August and is expected to be enacted on a state-by-state basis, much like the current process followed in approving the Uniform Commercial Code, over the next three to five years.

Senator ABRAHAM’s electronic signatures measure is timely in that it serves as an interim solution needed to fill the void until states approve the model UETA package.

I applaud the junior Senator from Michigan for his continuing leadership on technology issues and commend the Senate’s action today. This is definitely a significant step in the right direction.

Mr. President, Senator ABRAHAM, my colleagues on this side of the aisle, and I agree that the measure passed today, while a significant accomplishment, only gets consumers to the 50-yard line...
when it comes to e-commerce. In order to get to the end-zone, Congress still needs to address the issue of electronic records.

The Millennium Digital Commerce Act that was unanimously approved by the Senate Commerce Committee in July would have also provided legal certainty to electronic records. However, at least three logrolling objections from the minority, some of which were completely unrelated to this bill, thwarted repeated efforts to bring this crucial measure to the floor.

Mr. President, I would point out that the reported bill, with its electronic records provisions, had bipartisan support and was strongly endorsed by the Administration, not once, but twice. In fact the Office of Management and Budget’s Statement of Administration Policy states that it supports the passage of S. 761. Its provisions strike the appropriate balance between the needs of each State to develop its own laws in relation to commercial transactions and the needs of the Federal government to ensure that electronic commerce will not be impeded by the lack of consistency in the treatment of electronic authentication.

The Commerce Committee reported measure did not, as some contend, alter federal or state consumer protection laws. Instead, Senator ABRAHAM’s bill simply held that records could not be denied legal effect solely, and the key word is solely, because such records were in electronic form.

Mr. President, consumers stand the most to gain from electronic records and the most to lose if such records are not clearly granted legal effect, validity, and enforceability. In order to further assure confidence, Senator ABRAHAM, in earnest, offered a substitute version that largely incorporated key provisions of UETA, verbatim. Even so, and as perplexing as it would seem, his UETA substitute was opposed by the minority. Remember, these words developed and agreed to by an esteemed panel of national and state legal experts, and these are the same words that will go into effect as states adopt UETA during the next few years.

I would point out that the Department of Commerce, in its June 22, 1999 report the passage of S. 761 . . . [Its] provisions strike the appropriate balance between the needs of each State to develop its own laws in relation to commercial transactions and the needs of the Federal government to ensure that electronic commerce will not be impeded by the lack of consistency in the treatment of electronic authentication."

Mr. President, it is the seamless nature of the Internet that makes it such a phenomenal communications and business tool. But what if no one is left out of this new millennium paradigm, the legal certainty of electronic records must be codified in federal statute—at least until UETA is adopted nationally. It is my sincere hope that Congress will address the legality of electronic records in the near term so consumers will experience the full benefits and to reap the rewards of the Internet.

Again, I want to applaud the efforts of the Senate in passing S. 761, Senator ABRAHAM’s electronic signatures bill. This action is good for America’s consumers, good for America’s businesses, and good for our nation’s economy and prosperity.

Mr. President, Senator ABRAHAM has once again proven that he is a champion of technology, a guardian of the consumer, and an extremely effective legislator.

Mr. LEAHY. Mr. President, I am pleased that the Senate today is passing the Abraham-Leahy substitute amendment to S. 761, the Millennium Digital Commerce Act. This bill seeks to permit and encourage the continued expansion of electronic commerce, and to promote public confidence in its use and reliability. These are worthy goals—goals that I have long sought to advance. 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. Today’s legislation is part of our continuing efforts to ease the burdens of conducting business electronically.

This is an important bill on an issue of paramount concern to American businesses that engage in electronic commerce. It has had a long journey since it was reported by the Commerce Committee in June. As reported, the bill took a sweeping approach, preempting thousands of federal, state, and local laws that require contracts, records and signatures to be in traditional written form. I was concerned that such a sweeping approach would radically undermine legislation that is currently in place to protect consumers.

For example, the Committee-passed bill would have enabled businesses to use their superior bargaining power to compel or confuse consumers into waiving their rights to insist on paper disclosures and communications, even when they do not have the technological capacity to receive, retain, and print electronic records. Could a borrower be compelled to receive delinquency or foreclosure notices by electronic mail, even if she did not have a computer, or her computer could not read the notices in the electronic format in which they were sent? Would she be entitled to revert to paper communications if her computer broke or became obsolete? Could a company require customers to check its Web site for important safety information regarding its products, or for recall notices?

Under S. 761 as reported, the company would not have been required to provide any information on paper, even if a state consumer protection law so required. Crucially, it would not have to protect the consumer’s rights and obligations would not be received. It was federal preemption beyond need, to the detriment of American consumers.

The problem did not stop there. When information is provided electronically, for it to be useful at a later time to prove its contents, the electronic file must be tamperproof. Otherwise, a consumer could inadvertently change a single byte on the file and thus make it technically different from the original, and useless to prove its contents. The problem did not stop there. When information is provided electronically, for it to be useful at a later time to prove its contents, the electronic file must be tamperproof. Otherwise, a consumer could inadvertently change a single byte on the file and thus make it technically different from the original, and useless to prove its contents. The consumer would be left without any means of proving critical terms of the contract, including the terms of the warranty.

I have been working with Senator ABRAHAM and others since August to address these and other concerns I had with the bill. We crafted a bipartisan compromise several weeks ago, but it fell apart after certain industry representatives complained that it did not go far enough to relieve them of federal and state regulatory authority. Fortunately, other industry representatives recognized that this was not the primary intent of this legislation, and worked to get the legislative process back on track. I am pleased that we were able to do this and that we were able to reach agreement, for the second time, on an Abraham-Leahy substitute that encourages the continued expansion of electronic commerce, while leaving in place essential safeguards protecting the nation’s consumers.
In a letter dated November 5, 1999, the National Conference of State Legislatures identified what it believes were four essential criteria for any federal legislation related to electronic signatures:

1. Any preemption of state law and authority must be limited in duration. The idea should be to ensure the validity of most electronic signatures for a period of time, thus giving the states time to act. (2) States must be allowed to adopt the Uniform Electronic Transactions Act, or some similar legislation. (3) Essential state consumer protections must be preserved, along with the capacity of states to enact consumer protection measures in the future. (4) Any federal legislation must be limited to the topic of electronic signatures. It must not embrace any preemption of state regulatory and record keeping authority.

The Abraham-Leahy substitute meets these criteria. Most importantly, the scope of the bill has been limited to address the principal concern of industry. When Senator ABRAHAM introduced S. 761 earlier this year, he said it was intended to eliminate uncertainty about the legality of electronic contracts signed with electronic signatures. Consistent with this design, the Abraham-Leahy substitute ensures that contracts will not be denied legal effect that they otherwise have under state law solely because they are in electronic form or because they were signed electronically. However, as section 4(4) of the bill makes clear, an electronic signature is valid only if executed by a person who intended to sign the contract.

The purpose of this legislation is to facilitate electronic commerce over the Internet. It is not intended that this legislation be the basis for unfair or deceptive practices or the elimination of mandated information, disclosures, notices or content. For example, when the parties have conducted a transaction entirely in person, the fine print of a form contract cannot include an agreement that the contract can be provided electronically rather than on paper. The basic rules of good faith and fair dealing apply to electronic commerce, and this legislation is not intended to be a basis upon which consumers can be asked to agree to terms and conditions for using electronic signatures and electronic records which are unreasonable based on the circumstances surrounding the transaction.

Furthermore, accurate copies of contracts must be delivered to consumers. The Abraham-Leahy substitute amendment therefore provides that if a law requires a contract to be in writing, an electronic record of the contract will not satisfy such law unless it is delivered to all parties in a form that can be retained for later reference and used to prove the terms of the agreement. This important provision is intended to protect consumers who execute contracts online, by ensuring that contracts are provided in a tamperproof, or "read-only" format. The delivery of any other type of electronic record would make it useless to prove its terms in court.

The new legislation also improves on the Committee-passed version by eliminating the risk of forgery altogether. Under the law which established interpretive rules regarding the intent of the parties to an electronic transaction. These rules inappropriately allowed businesses to put the risk of forgery, unauthorized use, and identity theft on consumers, by making it easier for the proponent of an electronic record or electronic signature to prove its authenticity. By eliminating these rules, we have ensured that current contract and evidence laws remain in place. A person 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.

Having just last year worked with Senator Kyl on passage of the Kyl-Leahy substitute to S. 512, the Identity Theft and Assumption Deterrence Act, to combat identity theft, we should be careful to avoid taking actions that could have the unintended consequence of making such crimes easier to commit.

In his introductory floor statement, Senator Abraham stressed that S. 761 was an interim measure, which would provide a national baseline for the use of electronic signatures only until the states enacted their own e-signature legislation. To ensure the temporary nature of the federal preemption, the Abraham-Leahy substitute which passed the Senate yesterday, includes a significant change from earlier versions of S. 761, including the version reported by the Commerce Committee. The Committee bill preempted a state's laws until the state enacted the Uniform Electronic Transactions Act ("UETA") as reported by the National Conference of Commissioners on Uniform State Law, or any variation that was "authorized or provided for in such report." The full Senate votes today on language that gives states more leeway by providing them with information critical to making informed choices in the marketplace, understanding their rights and obligations during commercial transactions, and enforcing their rights when transactions go sour. Such laws should not be swept away without adequate assurance that consumers will be able to receive and retain the information electronically.

The AARP made this point in a letter to all Senators dated November 15, 1999, with respect to the more sweepingly preemptive H.R. 1714: "The time to investigate the implications of such a pivotal change in established consumer protections . . . is before, not after, legislation is enacted. Measures to take advantage of electronic market efficiencies must be tempered by a concern for legal and technological responsibilities that are being shifted to the consumer."

The benefits of electronic commerce should not, and need not, come at the expense of increased risk to consumers. I commend the Department of Commerce for its help in crafting a substitute amendment that is more carefully tailored to protect the interests of America's consumers. I also thank Senators SARBANES, who shared many of my concerns about the original bill's impact on consumers, and Senators ABRAHAM and WYDEN, for agreeing to address our concerns.

This bill shows what can be achieved by bipartisan cooperation and compromise. It enjoys broad support from the Administration, consumer representatives, and responsible companies and trade associations that care about their customers. I urge its speedy enactment into law.
I ask unanimous consent to include in the RECORD a Statement of Administration Policy dated November 8, 1999, in support of the Abraham-Leahy substitute amendment; a letter dated November 8, 1999, from the National Automobile Dealers Association, and a letter dated November 5, 1999, from the National Conference of State Legislatures.

STATEMENT OF ADMINISTRATION POLICY
November 8, 1999

(See statement of concern in the Record.)

S. 761—MILLENNIUM DIGITAL COMMERCE ACT (ABRAHAM-06 MICHIGAN and 11 COMPROMISES)

Electronic commerce can provide consumers and businesses with significant benefits in terms of costs, choice, and convenience. The Administration strongly supports the development of this marketplace and supports legislation that will advance that development, while providing appropriate consumer protection. Many businesses and consumers are using today's technological advances for extensive business over the Internet because of the lack of a predictable legal environment governing transactions. Both the Administration and the Administration have been working to address this important potential impediment to commerce.

S. 761 addresses important concerns associated with electronic commerce and the rise of the Internet as a worldwide commercial forum and marketplace. The Administration supports Senate passage of the amendment in the nature of a substitute to S. 761 expected to be offered by Senator Abraham, based on an agreement with Senators Leahy and Wyden. The Administration supports this version of S. 761 because the bill, as proposed to be amended, would: Ensure the legal validity of contracts that are made and signed electronically; preserve the ability of States to establish safeguards, such as consumer protection laws, to promote the public interest in electronic commerce; address private parties just as they can now establish safeguards for paper-based commerce; cover only commercial transactions between private parties that affect interstate commerce; affect Federal laws or regulations, but instead would give Federal agencies six months to conduct a careful study of barriers to electronic transactions under Federal laws or regulations and to develop plans to remove such barriers, where appropriate; and sunset completely as to the law of any State that enacts the Uniform Electronic Transactions Act.


Hon. PATRICK J. LEAHY, Ranking Member, Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR LEAHY: On behalf of the National Automobile Dealers Association (NADA), I am writing to express our concerns on S. 761, the Millennium Digital Commerce Act.

Like many entrepreneurs throughout the country, America's new car and truck dealers are using today's technological advances to better serve customers, and at NADA we understand the desire to accelerate the role of electronic commerce. However, we share your desire to preserve the state's role in this process.

The version of S. 761 that is now being presented comes closer to meeting NCSL's criteria than earlier versions of the bill. In general, this "compromise" version is taking the right approach to the issues. NCSL looks forward to working with the sponsors and others to resolve any remaining issues of preemption and consumer protection. NCSL much prefers the new compromise to other earlier versions of electronic signatures legislation which we vigorously opposed because of its unnecessary preemption of state consumer protection and contract law.

For additional information about NCSL's position, please call Joanne Emmons (202-624-8690) or Michael Bird (202-624-8686).

Sincerely,

Joanne G. Emmons, Michigan State Senate, Chair, NCSL Commerce and Communications Committee.

Mr. ABRAHAM. Mr. President, the Senate is soon expected to pass the Millennium Digital Commerce Act—a bill introduced by Senators Wyden, McCain, Burns, Lott and myself which is designed to promote electronic commerce. I rise today to speak in support of this legislation and to thank the co-sponsors for their tireless efforts to pass this legislation. I believe it will have a profound impact on the way commerce is conducted on the Internet.

By now, all of us have heard the prophetic pronouncements: "The Internet will change all of our lives." "The Computer Age is reshaping the world." And so on. These words are true, and a review of the indicators which document the Internet's extraordinary growth bear this out. In 1993 about 90,000 Americans had access to these on-line resources. By early 1999 that number had grown to about 81 million, an increase of about 900 percent. The Computer Industry Almanac predicts 320 million Internet users world-wide by the end of the year 2000.

And now the figures are coming in on how electronic commerce is transforming the way we do business. They are equally impressive. E-commerce between businesses has grown to an estimated $614.8 billion for 1999. 10 million customers shopped for some product using the Internet in 1998 alone. And 5.3 million households had access to financial transactions like electronic banking and stock trading by the end of 1999.

While the Internet has experienced almost exponential growth since its inception, there is still room to expand. Today, new technologies enable the Internet to serve as an efficient new tool for companies to transact business as never before. This capability is provided by the development of secure electronic authentication methods. These technologies permit an individual to positively identify the person with whom they are transacting business and to ensure that information being shared by the parties has not been tampered with or modified without the knowledge of both parties.

November 19, 1999

CONGRESSIONAL RECORD—SENATE
30873

November 8, 1999 (Senate)

We appreciate the opportunity to bring our concerns to your attention, and we appreciate all your efforts in addressing these matters before the legislation moves forward in the Senate.

Sincerely,

H. THOMAS GREENE,
Chief Operating Officer, Legislative Affairs.

NATIONAL CONFERENCE OF STATE LEGISLATURES,
Washington, DC, November 5, 1999.

Hon. PATRICK J. LEAHY,
Russell Senate Office Building, Washington, DC.

DEAR SENATOR LEAHY: The National Conference of State Legislatures understands the need to revise federal and state laws as technological advances propel electronic commerce. In particular, NCSL understands that legislation is needed to allow the more widespread use of electronic signatures as a means of encouraging such commerce.

Over 40 state legislatures have addressed various state law issues related to the validity of electronic signatures. Nevertheless, NCSL has in principle no objection to federal legislation on this same topic, provided that it is tightly focused on removing barriers to legitimate electronic commerce and does not broadly preempt essential elements of state consumer protection and contract law.

NCSL believes that federal legislation related to electronic signatures must meet certain criteria: (1) Any preemption of state law and authority must be limited in duration. The idea should be to ensure the validity of most electronic signatures for a period of time giving the states time to act. (2) States must be allowed to adopt the Uniform Electronic Transactions Act or some similar legislation. (3) Essential state consumer protection laws should be preserved, along with the capacity of states to enact consumer protection measures in the future. (4) Any federal legislation must be limited to the topic of electronic signatures and not embrace any preemption of state regulatory and record keeping authority.

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And now the figures are coming in on how electronic commerce is transforming the way we do business. They are equally impressive. E-commerce between businesses has grown to an esti-
While such technologies are seeing limited use today, the growth of this application has out-paced government’s ability to appropriately modify the legal framework governing the use of electronic signatures and other authentication methods.

The growth of electronic signature technologies will increasingly allow organizations to enter into contractual arrangements without ever having to drive across town or fly thousands of miles to personally meet with a client or potential business partner. The Internet is prepared to go far beyond the ability to buy a book or order apparel on-line. It is ready to lead a revolution in the execution of business transactions which may involve thousands or millions of dollars in products or services; transactions so important they require that both parties enter into a legally binding contract.

Mr. President, the Millennium Digital Commerce Act is designed to promote the use of electronic signatures in business transactions and contracts. At present, the greatest barrier to such transactions is the lack of a consistent and predictable national framework of rules governing the use of electronic signatures. Over forty States have enacted electronic authentication laws, and no two laws are the same. This inconsistency deters businesses from fully utilizing electronic signature technologies for contracts and other business transactions. The differences in our State laws create uncertainty about the effectiveness or legality of an electronic contract signed with an electronic signature. This legal uncertainty limits the potential of electronic commerce, and, thus, our nation’s economic growth.

For many years, the need for uniformity in electronic authentication rules was recognized early by the States. For the past two years, the National Conference of Commissioners on Uniform State Law, an organization comprised of e-commerce experts from the States, has been working to develop a uniform system for the use of electronic signatures for all fifty States. Their product, the Uniform Electronic Transactions Act, or UETA, was finished in July. As was expected, the UETA is an excellent piece of work and I look forward to the day when this model legislation is enacted by each of the 50 states.

But agreement on the final language of the UETA proposal is not the same as enactment, and despite the hard work of the Commissioners, uniformity will not occur until all fifty States actually enact the UETA. That will likely take some time. Because some State legislatures are not in session next year and others have more pressing legislative items, it could take three to four years for forty-five or fifty States to enact the UETA. When you consider the changes that have taken place in just the last two years, it is obvious that in the high-technology sector four years is an eternity.

The Digital Millennium Copyright Act is therefore designed as an interim measure to provide relief until the States adopt the provisions of the UETA. It will provide companies the federal framework they need until a national baseline governing the use of electronic authentication exists at the State level. Once States enact the UETA, the Federal preemption is lifted.

To be specific, this legislation promotes electronic commerce in the following manner. First and foremost, the legislation provides that the electronic signatures used to agree to a contract shall not be denied effect solely because they are electronic in nature. This provision assures that a company will be able to rely on an electronic contract and that another party will not be able to escape such certainty, this bill will reduce the likelihood of unsatisfied parties attempting to escape electronic contractual agreements and transactions.

To ensure a level playing field for all types of authentication, the bill grants parties the freedom to determine the technologies to be used in the execution of an electronic contract. In essence, this assures technology neutrality because businesses and consumers, not government, will make the decisions as to what type of electronic signatures and authentication technologies will be used in transactions.

Since the Internet is inherently an international medium, consideration must be given to the way in which the U.S. conducts 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 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 a transaction should choose the electronic authentication technology.
November 19, 1999

CONGRESSIONAL RECORD—SENATE

30875

CONGRESSIONAL RECORD—SENATE

consumer costs, these businesses are providing a service which is becoming increasingly popular with the American public. Rather than ignore this new market, or worse, condemn it, Congress should work with the industry and the proper regulatory agencies to ensure that these increased consumer opportunities are maintained and that consumer protections and provisions are modernized. I believe my proposal to permit individuals to opt-in to the receipt of records and to opt-out of receipt at any time represented a reasonable middle ground on this issue, and am disappointed that my colleagues and I could not agree on a framework for records based on this model.

I intend to continue working toward a resolution which will permit individuals the use of electronic signatures and records. It is simply in the long-term best interest of both consumers and the economy. And I am sure I will not labor on this effort alone. I am pleased to note that, among parties familiar with this debate, there is growing support for legislation to quickly address this important issue.

Mr. President, despite our philosophical differences, it was clear from the beginning that everyone involved was interested in working cooperatively to enact good legislation. And while I wish this bill could go further, I am nevertheless pleased with the product that we have passed today. So I want to thank Senator LEAHY and Senator SARBANES for their cooperation and hard work. I also want to recognize the efforts of the Ranking Member of the Commerce Committee, Senator HOLLINGS. Senator HOLLINGS made it clear very early that he had concerns surrounding the issue of preemption. His staff and mine worked quickly and effectively to find common ground on this legislation and his spirit of compromise allowed us to move forward on a bill that I do not doubt he would have written differently. I want to thank him for his contribution.

Finally, I wish to express my thanks to the Technology Division of the State of Massachusetts. Governor Paul Cellucci’s staff provided indispensable counsel on existing State law governing the use of electronic signatures and records. It is simply in the long-term best interest of both consumers and the economy. And I am sure I will not labor on this effort alone. I am pleased to note that, among parties familiar with this debate, there is growing support for legislation to quickly address this important issue.

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Regarding new laws on electronic transactions, the states have been engaged for some time, through the National Conference of Commissioners on Uniform State Laws, in the formulation of a model Uniform Electronic Transactions Act (UETA). Versions of the UETA will be enacted by the individual states. The bill we are considering today includes a revised definition of UETA, changed from the bill reported by the Commerce Committee, that gives states more flexibility to pass versions of UETA that best meet the needs of their citizens. It is intended that California's recently passed version of UETA, for example, meet this test.

I would like once again to thank my colleagues, Senator Abraham, Senator Leahy, and Senator Wyden for their hard work on this issue. I believe that we have reached an accommodation on this legislation that provides industry with the provisional legal certainty they seek, while ensuring that existing consumer laws are not diluted by the increasing use of electronic commerce. This is an important step toward making our commercial laws ready for the twenty-first century.

Mr. Lieberman. Mr. President, I rise today to express my support for the Millennium Digital Commerce Act of 1999. I thank Senators Abraham, Leahy, and Wyden for their leadership on this important issue. As a cosponsor of this legislation, I am proud of the steps it takes to support an important and still emerging technology and industry. The Millennium Digital Commerce Act will facilitate the continued growth of the Internet and of electronic commerce. With this legislation, the Senate recognizes the significant transformations taking place in our economy and why we do business today and into the future.

I think we all recognize that we are witnessing an electronic revolution. There is no shortage of statistics to prove what we are seeing all around us. According to a recent U.S. Department of Commerce report, approximately one third of the U.S. economic growth in the past few years has come from information technologies (over $1.1 trillion). Just this year, venture capitalists have invested more than $8 billion in Internet companies—twice the rate of last year.

According to a University of Texas report, e-commerce is growing at a much faster rate than many had expected. The digital economy generated more than $300 billion in revenue in 1998 and was responsible for 1.2 million jobs. Many e-commerce companies in my State of Connecticut, like MicroWarehouse in Norwalk, Coastal Tool & Supply in Hartford, and SageMaker Inc. of Fairfield, are leading the way in the digital economy.

In the Senate, I have worked to support the growth of e-commerce by co-sponsoring the Internet Tax Freedom Act which places a three year moratorium on new state and local taxes on the Internet in order to give the digital economy some breathing room to evolve.

This legislation takes further steps to continue the growth of e-commerce and is a powerful follow-on to the Internet Tax Freedom Act. With this legislation we will eliminate a major barrier to e-commerce by providing for the legal recognition of electronic signatures in contracting and by creating a temporary, national electronic signatures law to preempt a multitude of sometimes inconsistent state laws. This bill is technology neutral, allowing contracting parties to determine the appropriate electronic signature technology for their transaction. Importantly, this legislation is the result of thoughtful compromise. It gives electronic signatures more legal certainty but also provides for consumer protection. It deals with electronic signatures in creating contracts. It preempts state law only until the states enact their own statutes and standards as provided for by the Uniform Electronic Transactions Act (UETA).

Mr. President, I would like to thank those who have worked so diligently to create this Act. Through the collaborative and comprehensive approach of several of my colleagues, including Senators Abraham, Leahy, and Wyden, we now have legislation with language that achieves a broad public purpose. We are now able to continue supporting the growth and evolution of electronic commerce and technologies that will effectively bring us into the next century.

Mr. Wyden. Mr. President, for the past several years, Congress has been working in a bipartisan way to write the rules of the digital economy. We have made significant progress on Internet taxes, privacy, encryption and the Y2K problem. Now is the time to move forward on rules for electronic signatures.

The bill before us today, S. 761, is based on the premise that it’s better to be online than waiting in line. A growing number of Americans who now have to wait in line for things like a driver’s license or construction permit, could see their business expedited by a few clicks of their mouse.

We live in an increasingly mobile society, where young people get recruited for jobs clear across the country. They may need to move in a hurry but don’t have the time, for example, to pack up a home in Virginia and look for another one in Portland, Oregon. With the Internet, they can shop for a house in another town. With this electronic signatures bill, they can pretty much conclude the whole transaction of purchasing the house online.

The legislation puts electronic and paper contracts and agreements on equal footing legally. Like the Internet Tax Freedom Act, the bill would establish a national legal certainty between electronic and paper contracts and agreements. This means consumers will enjoy the same legal protections when purchasing a car or home online as when they walk into an auto dealership or sign all the documents in person. We worked long and hard to make sure that the system established here benefits consumers who wish to receive information electronically without treating those who use computers as second class citizens.

This legislation does not address the issue of electronic records because this matter deserves more thorough study and discussion. I intend to work with all interested parties on this—from consumer groups to financial services firms—over the course of the coming months to craft legislation that will extend the benefits of this measure to electronic records in a way that continues consumer protection.

Commercial transactions have traditionally been governed by State laws which are modeled on the Uniform Commercial Code. Forty-two states have some law in place relating to digital authentication. But differences between and among these laws can create confusion for entrepreneurs. The unstoppable growth of electronic commerce has led the States recently to develop a Uniform Electronic Transactions Act, or UETA (as part of the Uniform Commercial Code), to serve as a model for each State legislature in developing further its own electronic signatures law. However, only one—California—has enacted a UETA. The purpose of this legislation is to provide interim Federal legal validity for electronic contracts and agreements until each state enacts its own UETA. This means e-commerce will not be hamstrung by the lack of legal standing.

I would like to take a minute to run through the highlights of S. 761:

**Technological neutrality:** It allows electronic signatures to replace written signatures. In interstate commerce a contract cannot be denied legal effect solely because of an electronic signature, electronic record or an electronic agent was used in its formation.

**Choice of technology:** It does not dictate the type of electronic signature technology to be used; it allows the parties to a transaction to choose their own authentication technology.

**Consumer protections:** It protects consumer rights under State laws; it does not preempt State consumer protection laws. It assures that consumers without a computer are not treated as second class citizens. If a consumer buys a car online, the consumer is not be forced to use the computer to receive important recall or safety notices but retains the option to continue to get such notices through the mail.

**Limitation on commerce taxes:** The bill does not preclude the imposition of taxes on e-commerce by the states.

**Conformity with State laws:** It provides certainty by allowing States to conform their laws to the new digital economy.
November 19, 1999

No State preemption: Its provisions sunset when a State enacts UETA.

Exclusion of family law: It specifically excludes agreements relating to marriage, adoption, premarital agreements, divorce, residential landlord-tenant matters because these are not commercial transactions.

Repeal statutory barriers to electronic transactions: It requires OMB to report to Congress 18 months after enactment identifying statutory barriers to electronic transactions and recommending legislation to remove such barriers.

In conclusion, Mr. President, I wish to acknowledge the leadership on Sen. ABRAHAM in moving this legislation forward. He and I have teamed up successfully on other legislation, and it was a pleasure to work with him and his tireless staff on this bill. I also want to recognize the contribution of Senator LEAHY, particularly with regard to the consumer protection provisions, as well as the effort of Senator HOLLINGS. It took a bipartisan team to get this through the Senate today, and I look forward to continuing to work with this team as we go to conference with the House on S. 761.

I ask unanimous consent that my statement be printed in the record following Senator ABRAHAM’s statement on the passage of S. 761.

Mr. LIEBERMAN. Mr. President, I rise today to express my support for the Millennium Digital Commerce Act of 1999. I thank Senators ABRAHAM, LEAHY, and WYDEN for their leadership on this important issue. As a cosponsor of this legislation, I am proud of the steps it takes to support an important and still emerging technology and industry. The Millennium Digital Commerce Act will initiate the continued growth of the Internet and of electronic commerce. With this legislation, the Senate recognizes the significant transformations taking place in our economy and how we do business today and into the future.

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According to a University of Texas report, e-commerce is growing at a much faster rate than many had expected. The digital economy generated more than $300 billion in revenue in 1998 and was responsible for 1.2 million jobs. Many e-commerce companies in my State of Connecticut, like Micro-Warehouse in Norwalk, Coastal Tool & Supply in West Hartford, and Sagemaker Inc. of Fairfield, are leading the way in the digital economy. In the Senate, I have worked to support the growth of e-commerce by co-sponsoring the Internet Tax Freedom Act which places a three year moratorium on new state and local taxes on the Internet in order to give the digital economy some breathing room to evolve.

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Mr. President, I thank those who have worked so diligently to create this Act. Through the considerate and collaborative approach of several of my colleagues, including Senators ABRAHAM, LEAHY, and WYDEN, we now have legislation with language that achieves a broad public purpose. We are now able to continue supporting the growth and evolution of electronic commerce and technologies that will effectively bring us into the next century.

Ms. COLLINS. Mr. President, I ask unanimous consent the Senate proceed to consider the bill.

The PRESIDING OFFICER. The amendment is as follows:

MS. COLLINS. Mr. President, there is a substitute amendment at the desk submitted by Senators SESSIONS and JEFFORDS. I ask for its consideration.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1399) to amend title I of the Employee Retirement Income Security Act of 1974 to provide for the preemption of State law in certain cases relating to certain church plans.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 2788

(Purpose: To provide for a complete substitute)

Ms. COLLINS. Mr. President, there is a substitute amendment at the desk submitted by Senators SESSIONS and JEFFORDS. I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Ms. COLLINS] for Mr. SESSIONS, for himself, and Mr. JEFFORDS, proposes an amendment numbered 2788.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. PURPOSE.

The purpose of this Act is only to clarify the application to a church plan that is a welfare plan of State insurance laws that require or solely relate to licensing, solvency, insolvency, or the status of such plan as a single employer plan.

SEC. 2. CLARIFICATION OF CHURCH WELFARE PLAN STATUS UNDER STATE INSURANCE LAW.

(a) In General.—For purposes of determining the status of a church plan that is a welfare plan under provisions of a State insurance law described in subsection (b), such a church plan (and any trust under such plan) shall be deemed to be a plan sponsored by a single employer that reimburses costs from general church assets, or purchases insurance coverage with general church assets, or both.

(b) STATE INSURANCE LAW.—A State insurance law described in this subsection is a law that—

UNANIMOUS-CONSENT AGREEMENT

Ms. COLLINS. Mr. President, I ask unanimous consent at 4 p.m. that the Senate proceed to the Work Incentives conference report, and that there be 120 minutes equally divided in the usual form, with an additional 10 minutes under the control of Senator LOTT. I further ask consent that following the vote or yielding back of time, the vote on the adoption of the conference report occur immediately following the vote on adoption of the conference report to accompany H.R. 3195.

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

Ms. COLLINS. I further ask consent immediately following the vote on the adoption of the conference report, H. Con. Res. 236 be agreed to, and the motion to reconsider be laid upon the table.

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

CHURCH PLAN PARITY AND ENTANGLEMENT PREVENTION ACT OF 1999

Ms. COLLINS. Mr. President, I ask unanimous consent the health committee be discharged from further consideration of S. 1399 and that the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1399) to amend title I of the Employee Retirement Income Security Act of 1974 to provide for the preemption of State law in certain cases relating to certain church plans.