call up House Resolution 523 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 523
Resolved, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (S. 761) to regulate interstate commerce by electronic means by permitting and encouraging the continued expansion of electronic commerce through the operation of free market forces, and other purposes. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read.

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

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

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

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

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

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

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

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

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

I would urge my colleagues to support this rule.

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

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

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

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

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

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

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

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

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

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

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

Secondly, I want to commend this House and this Congress for the activities we have already undertaken to protect privacy in the key areas that are most of concern to Americans, the areas of medical information privacy, the area of children’s information privacy, and, most recently, in the financial services bill, in protecting people’s privacy as they deal with their financial records, with mortgages and bank accounts and security transactions in the Internet age.
I also want to point out that there are some people that are afraid of this age. I suppose every time there were major changes in the way we did business, in the way we interacted with one another, there was fear.

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

But what was true with the telegraph is also true with the Internet and electronic commerce: It is upon us, it is an age which is arriving rapidly, and more and more transactions are being conducted on the Internet; that when I sell my products to you and you sign up, it is as valid a deal as if you came to my store and purchased my products.

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

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

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

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

But the bottom line is that nothing requires an American to use the services of the Internet or to use this bill to sign electronically for purchases and sales. This is purely voluntary. It is an opt-in system. We have to consent to it. We have to know what we are consenting to. We have to prove we are capable of literally giving the consent, prove we have the equipment and means by which to engage in electronic business in this new age. It is a pretty extensive consent agreement provision. It is only by insuring that if a law is enacted making sure that the consumer protection laws of every State are incorporated, that they are maintained. Nothing takes away from the protections that consumers now enjoy from those who would like to defraud us.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As important as this bill is to today’s global electronic marketplace, we need to be prepared to deal with the reality that the pace of innovation and change in the new Internet economy has a direct impact on the pace of legislative innovation required here in the Congress. It is not a criticism of this very strong legislation to recognize that when the U.S. computer industry operates with a 3-month innovation cycle, the new economy may render some of its provisions obsolete unless we move quickly on follow-up legislation.

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

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

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

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

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

Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts (Mr. MARKEE).

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

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

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

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

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

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

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

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

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

The legislation strikes the right balance by clarifying that electronic contracts or agreements that are otherwise required to be in writing must accurately reflect the information set forth in the contract after it was first generated, and must remain accessible for later reference, transmission, and printing.

So Mr. Speaker, this is a great day. I think a new era is dawning. I want to congratulate the gentleman from Virginia (Chairman BLILEY) once again for his great leadership, and the gentleman from Michigan (Mr. DINGELL), the gentleman from Louisiana (Mr. TAUZIN), and the gentleman from Ohio (Mr. OXLEY).
The Conference Report also specifies permits federal regulatory agencies, including the SEC, to use the ESIGN Act to require retention of written records in paper form if there is a compelling governmental interest in law enforcement for imposing such requirement, and if, imposing such requirement is essential to attaining such interest. For example, we must be able to use this provision to require brokers to keep written records of all disclosures and agreements required to be obtained by the SEC’s penny stock rules.

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

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

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

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

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

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

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

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

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

(From the Financial Times, June 12, 2000)

CAVEAT SURFER SHOULD BE THE E-COMMERCE MOTTO

(By Ammy Shales)

Perhaps the most exciting thing about the new internet world is that it challenges the assumptions of the old one. In the internet world, we get along without many things we were long assured had to be: centralised ownership, regulation, and so on.

Technologies that would have been dismissed as chaotic a few years ago turn out to function surprisingly well without extra regulation.

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

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

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

But governments also raise these issues as a political device.

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

But the e-signature bill also caught the interest of the centralisers. Lawmakers led by Tom Bliley, a Republican Congressman from Virginia, insisted that the old culture of contracts cannot protect consumers from the fresh dangers of the internet. So they insisted on requirements so onerous that they had absorbed every bit of legal boilerplate. Predictably, this provoked the concern of the Charles Schwabe,
Dreyfuses and banks of this world. The financial system is the most to lose if the new law deters customers.

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

"What happened to 'Let the buyer beware'" he asks. "Common law and a thousand years of paper contracts established duties and responsibilities for people participating in commerce. You don't want to change that relationship so that e-commerce undermines contracts and commerce."

On Friday, enough of the obstacles were stripped out to win Mr. Gramm's grudging support, but others remained. "We have gone from having two different versions of a bill that would have been an A or an A minus, to a low B at best," says James Lucier of Prudential Securities. Harry F. Markopolous, the Washington office of Kirkpatrick & Lockhart, has compared US and UK legislation. He says the latter "is broader, but some of the precise consumer protections by the US legislation are left in the UK bill to later administrative decisions". The British e-consumer is not safe from government fiat—as another bill allowing antitrust shows.

Nor are e-signatures the only area where consumer provisions in this bill which the House approved yesterday and the Senate is expected to pass today that will further move us from the paper age to the digital age. We also have included an agreement. We also have included an

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Mr. Speaker, E-Sign is about the future. It is about laying the legal foundation of electronic commerce for many years to come. It is about promoting the development of new technologies that will enable consumers and businesses to have a greater certainty and security in their transactions. It is also about developing new products and new services that few of us can even imagine today. E-Sign is the most important high technology vote that this Congress will undertake.

If one supports the U.S. high-tech industry, they will vote yes on this bill, which has unanimous support among the high-tech community. A vote in support of S. 761 is a vote in support of providing consumers with great confidence and certainty in on-line transactions. It is a vote in support of allowing businesses to provide new and innovative services on-line.

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

Before I conclude, I would like to extend my appreciation to all of the members of the conference committee for their work and thoughtfulness. I extend special thanks to my friend, the gentleman from Michigan (Mr. DINGELL), the gentleman from Louisiana (Mr. TAUZIN), the gentleman from Massachusetts (Mr. MARKEY). Each has made a valuable addition to the process.

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

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

**Short Title**

**Senate bill**

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

**House amendment**

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

**Conference substitute**

The conference report adopts the House provision.
of any fees for such withdrawal and without the immediate and unconditional restoration of the sequence that was not disclosed. Further, the provider must, pursuant to subparagraph (C)(ii) perform the consumer access test again.

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

Section 101(c)(3) makes clear that an electronic contract or electronic signature cannot be deemed ineffective, invalid, or unenforceable merely because the party contracting or executing under the direction of a party that enters into a contract by means of an electronic agent or broker did not deviate from such contract or record required to be retained. This subsection also makes clear that an electronic record relating to a transaction in or affecting interstate or foreign commerce that was enacted prior to this Act is not subject to the Uniform Electronic Transactions Act (UETA) in 1999; or (2) specifies alternative procedures or requirements (or both) for the use or acceptance of electronic signatures and electronic records; (3) is based on procedures or requirements that are not specific and that are not publicly available; and (4) is otherwise inconsistent with the provisions of section 101(b)(2) consent to the provision or availability of such notice solely as an electronic record.

Section 102(a) of the House amendment provides that a State statute, regulation, or other rule of law (including those pertaining to insurance), regardless of date of enactment, that modifies, limits, or supersedes section 101 shall be effective to the extent that such statute, regulation, or rule of law: (1) discriminates in favor of or advance specific electronic signatures or electronic records; (2) discriminates in favor of or against a specific type or size of entity engaged in the business of facilitating the use of electronic signatures or electronic records; (3) is based on procedures or requirements that are not specific and that are not publicly available; and (4) is otherwise inconsistent with the provisions of section 101.

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

Conference substitute

The conference report adopts a substitute provision. Section 102 of the conference report provides a conditioned process for States to enact their own statutes, regulations, and other rules of law that apply to both existing and future statutes, regulations, or other rules of law enacted or adopted by a State. Thus, a State could not argue that section 101 does not preempt its statutes, regulations, or other rules of law because they were enacted or adopted prior to the enactment of this Act.

Section 102(a) provides that a State statute, regulation or other rule of law may modify, limit, or supersede the provisions of section 101 only if that State action: (1) constitutes an adoption or enactment of the Uniform Electronic Transactions Act (UETA) as reported and recommended for enactment by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1999; or (2) specifies alternative procedures or requirements (or both) for the use or acceptance of electronic signatures or electronic records that are consistent with the provisions of section 101.
subsection (a)(1). Instead, such efforts and any other regulations or requirements that may be adopted under subsection (a)(2). Thus, a State that enacted a modified version of UETA would not be preempted to the extent that the enactment or adoption by a State met the condition in subsection (a)(1).

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

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

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

Subsection (a)(2) contains two important conditions that limit the extent to which a state could utilize it to opt-out of the federal regime. Specifically, such alternative procedures or requirements: (1) must be consistent with this title and title II; and (2) do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technological specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic signatures or records. It is not intended that the simple introduction of a technological specification in subsection (a)(2)(A)(ii) allows a State to set more than one technologies at the expense of other technologies. Thus, this subsection does not permit the inclusion of the "or accord greater legal status or effect to" is intended to prevent a state from giving a leg-up or impose an additional burden on one technology or technical specification that is not applicable to all others.

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

Section 102(b) provides a specific exclusion to the technology neutrality provisions contained in subsection (a)(2) for laws or regulations of a State or subdivision thereof that: (1) are specific regulations or rules of law governing the creation or execution of wills, trusts, or testamentary trusts; (2) a statute, regulation or other rule of law governing adoption, divorce, or other matters of family law; (3) the Uniform Commercial Code as in effect in any state, other than sections 1-107 and 1-206 and Articles 2 and 2A; (4) any requirement by a Federal regulatory agency or self-regulatory agency that records that be filed or maintained in a specified standard or standards (except that nothing relieves any Federal regulatory agency of its obligation under the Government Paperwork Elimination Act, title XVII of Public Law 103-322); (5) the Uniform Anatomical Gift Act; (6) the Uniform Health-Care Decisions Act; (7) any contract, agreement or record to the extent that it is covered by: (1) a statute, regulation or other rule of law governing the creation or execution of wills, trusts, or testamentary trusts; (2) a statute, regulation or other rule of law governing adoption, divorce, or other matters of family law; (3) the Uniform Commercial Code as in effect in any state, other than sections 1-107 and 1-206 and Articles 2 and 2A; (4) any requirement by a Federal regulatory agency or self-regulatory agency that records be filed or maintained in a specified standard or standards (except that nothing relieves any Federal regulatory agency of its obligation under the Government Paperwork Elimination Act, title XVII of Public Law 103-322); (5) the Uniform Anatomical Gift Act; (6) the Uniform Health-Care Decisions Act.

Section 103(a) excludes from the application of section 101 any contract, agreement or record to the extent that it is covered by: (1) a statute, regulation or other rule of law governing adoption, divorce, or other matters of family law; (2) a statute, regulation or other rule of law governing the creation or execution of wills, trusts, or testamentary trusts; (3) the Uniform Commercial Code as in effect in any state, other than sections 1-107 and 1-206 and Articles 2 and 2A; (4) any requirement by a Federal regulatory agency or self-regulatory agency that records be filed or maintained in a specified standard or standards (except that nothing relieves any Federal regulatory agency of its obligation under the Government Paperwork Elimination Act, title XVII of Public Law 103-322); (5) the Uniform Anatomical Gift Act; (6) the Uniform Health-Care Decisions Act.

Section 103(b)(2) provides that a Federal regulatory agency, with respect to matters within its jurisdiction, may extend, after good cause is found, the exclusions in subsections (a) and (b) over a period of three years to determine if such exclusions are necessary for the protection of consumers. The Assistant Secretary shall submit the findings of this report to Congress within three years of the date of enactment of the Act. The exclusion pertaining to utility services applies to essential consumer services including water, heat and power. This provision does not apply to other broadly used important consumer services, such as telephone, cable television, and internet access services. The Electronic Signature in- cellulization or termination or records. This provision is intended, in part, to make it easier to track action by the various States under this subsection for purposes of research.

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

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Section 103(c)(3) provides that the Federal regulatory agency, with respect to matters within its jurisdiction, may extend, after good cause is found, the exclusions in subsections (a) and (b) over a period of three years to determine if such exclusions are necessary for the protection of consumers. The Assistant Secretary shall submit the findings of this report to Congress within three years of the date of enactment of the Act.

Section 103(c)(4) provides that the conference report adopts a substitute provision that follows the House amendment.

Section 103(a)(1) excludes from the application of section 101 any contract, agreement or record to the extent that it is covered by: (1) a statute, regulation or other rule of law governing adoption, divorce, or other matters of family law; (2) a statute, regulation or other rule of law governing the creation or execution of wills, trusts, or testamentary trusts; (3) the Uniform Commercial Code as in effect in any state, other than sections 1-107 and 1-206 and Articles 2 and 2A; (4) any requirement by a Federal regulatory agency or self-regulatory agency that records be filed or maintained in a specified standard or standards (except that nothing relieves any Federal regulatory agency of its obligation under the Government Paperwork Elimination Act, title XVII of Public Law 103-322); (5) the Uniform Anatomical Gift Act; (6) the Uniform Health-Care Decisions Act.

Section 103(b) excludes from the application of section 101 any contract, agreement or record to the extent that it is covered by: (1) a statute, regulation or other rule of law governing adoption, divorce, or other matters of family law; (2) a statute, regulation or other rule of law governing the creation or execution of wills, trusts, or testamentary trusts; (3) the Uniform Commercial Code as in effect in any state, other than sections 1-107 and 1-206 and Articles 2 and 2A; (4) any requirement by a Federal regulatory agency or self-regulatory agency that records be filed or maintained in a specified standard or standards (except that nothing relieves any Federal regulatory agency of its obligation under the Government Paperwork Elimination Act, title XVII of Public Law 103-322); (5) the Uniform Anatomical Gift Act; (6) the Uniform Health-Care Decisions Act.
The conference report is designed to pre-
vent Federal and State REGULATORS from un-
derring the broad purpose of this Act, to
facilitate electronic commerce and elec-
tronic record keeping. To ensure that the
SECURITIES AND EXCHANGE COMMISSION
and the Federal Trade Commission, within
18 months on Federal laws and regulations
that might pose barriers to ele-
ctronic commerce, including suggestions for
reform.

Section 104(e) provides that the Federal
Communications Commission MIGHT hold
any contract for telecommunications service
or letter of agency for a preferred carrier
change, that otherwise complies with the
Commission’s rules, to be legally ineffective,
invalid or unenforceable solely because an
 electronic records or electronic signature
was used in its formation or authorization.

The Federal Communications Commission
has been very slow, even reticent, to
clarify the use of an Internet let-
ter of agency for a consumer to conduct a
preferred carrier change. As a result of
the Commission’s repeated failure to act on
this matter, the conference report provides
specific direction to the Commission to recog-
nize Internet letters of agency for a preferred
carrier change.

STUDIES

Section 7 of the Senate bill directs the De-
partment of Commerce and Office of Manage-
ment and Budget (OMB) to report to Con-
gress within 18 months on Federal laws and
regulations that might pose barriers to ele-
ctronic commerce, including suggestions for
reform.

House amendment

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

Subsection (c) requires the Secretary, with-
in eighteen months after the date of enact-
ment, to conduct an inquiry regarding the
effectiveness of the delivery of electronic
records to consumers using electronic mail
as compared with the delivery of written
records by the United States Postal Service
and private express mail services. The Sec-
etary shall submit a report to Congress re-
garding the results of such inquiry at the
conclusion of the eighteen month period.

Conference substitute

The Senate recedes to the House with an
amendment. Specifically, the conference re-
port retains subsection 104(c) of the House
amendment and redesignates it as section
104(a) of the conference report. Further,
the conference report includes a new subsection
(b) that requires the Secretary of Commerce to
timeliness of an Internet letter of agency that
distributes under section 2(a)(10)(A) of the Secu-
rities Act of 1933.

Section 191(c) provides that the Federal
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garding the results of such inquiry at the
conclusion of the eighteen month period.
conducting the evaluation, the Secretary of Commerce shall solicit the comments of the public, consumer representatives, and electronic commerce businesses.

**DEFINITIONS**

**Senate bill**


**House amendment**


**Conference substitute**


**EFFECTIVE DATES**

The House amendment contained no provision.

**Senate bill**

The Senate bill contained no provision.

**House amendment**

The House amendment contained no provision.

**Conference substitute**

The conference report creates a general delayed effective date for the bill, and creates specific delayed effective dates for certain provisions of the bill. Subsection (a) establishes that, except as provided in subsections (b) and (c), the provisions of the bill are effective October 1, 2000. Subsection (b) delays the effective date of the records retention provision until March 1, 2001 unless an agency has initiated, announced, proposed, but not completed an action under subsection 104(b)(3), in which case it would be extended until June 1, 2001.

**TRANSFERABLE RECORDS**

**Senate bill**

The Senate bill contained no provision.

**House amendment**

The House amendment contained no provision.

**Conference substitute**

The conference report adopts a new provision on transferable records which is based in part on Section 16 of the Uniform Electronic Transactions Act, sets forth a criteria-based approach to the recognition of electronic negotiable instruments, referred to as "transferable records" in this section and in UETA. It is intended that this approach creates a legal framework within which technological developments that fulfill all of the essential requirements of negotiability in an electronic environment, and in a manner that protects the interest of parties, is adopted.

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

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

**TREATMENT OF ELECTRONIC SIGNATURES IN INTERSTATE AND FOREIGN COMMERCE**

**Senate bill**

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

**Paragraph (1)** advocates the removal of paper-based obstacles to electronic transactions. This can be accomplished by taking appropriate action to (1) incorporate provisions of the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1996; (2) Parties to a transaction shall have the opportunity to choose the technology of their choice when entering into an electronic transaction. Paragraph (3) allows, with the consent of the parties to a transaction, the opportunity to prove in court that their authentication approaches and transactions are valid, electronic records and signatures in a form acceptable to the parties should not be denied legal effect, validity, or enforceability because they are not in writing; de jure or de facto imposition of electronic signatures and electronic record standards on the private sector through foreign adoption of regulations or policies should be avoided; paper-based obstacles to electronic transactions should be removed.

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

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

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

**Conference Substitute**

The conference report adopts a substitute provision. Section 201(a)(1) directs the Secretary of Commerce to promote the acceptance and use of electronic signatures on an international basis in accordance with section 101 of the bill and with the set principles listed in subsection (a)(2). In addition, the Secretary of Commerce is directed to take all actions to eliminate or reduce impediments to commerce in electronic signatures.

**Section 201(a)(2)** lists the principles as follows: (1) Removal of paper-based obstacles to electronic transactions. This can be accomplished by taking into account the enabling provisions of the Model Law on Electronic Commerce adopted by the United Nations Committee on International Trade Law (UNCITRAL) in 1996; (2) Parties to a transaction shall have the opportunity to choose the technology of their choice when entering into an electronic transaction. Parties to a commercial transaction should be able to choose the appropriate authentication technology and implement for their transactions. Unnecessary regulation of commercial transactions distorts the development and efficient operation of markets. Moreover, the rapid development of the electronic marketplace is resulting in new business
CONGRESSIONAL RECORD—HOUSE

June 14, 2000

What then happened? Under the leadership of our friend and colleague, the gentleman from Virginia (Mr. BLILEY), Chairman of the Committee on Commerce and the chairman of the conference, and Senator JOHN MCCAIN, Chairman of the Committee on Commerce in the other body, a majority of the members of the conference also agreed to address these concerns. They recognized that this legislation must have adequate consumer protections or consumers would never have the necessary confidence to make e-commerce work. I also want to commend Senators HOLLINGS, SARABANES, WYDEN, and LEAHY for their outstanding work on these issues. Without their assistance, certainly this matter would have been concluded differently and probably unsuccessfully.

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

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

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

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

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

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

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

Scope of Requirement.—Section 101(a).

In recommending that the House vote to pass this conference report, I would like to clarify for members the kind of transactions that are covered by the bill. You will note that the definition of "transaction" includes business, commercial, or consumer affairs. The Conference
parties the freedom to make that decision for themselves.

Protection 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 concerns about protecting taxpayers from waste, fraud and abuse in connection with government contracting or other transactions 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 (including required notices and disclosures and statements that are legally required to be provided or made available in writing. Among other changes to this section made in conference, the Conference added an important new element: Section 101(c)(1)(C) of the conference report requires that the consumer “consents electronically,” or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent.” The purpose of this provision is to ensure that, when consumers agree to receive notices electronically, they are able to make an informed decision and that they can actually open, read, and retain the records that they will be sent electronically.

Today, many different technologies can be used to deliver information—each with its own hardware and software requirements. An individual may not know whether the hardware and software on his or her computer will allow him or her to open a file. (All of us have had the experience of being unable to open an e-mail message because our computer or software on his or her computer will 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 collector’s contract of employment).

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

Preservation of Rights and Obligations.—Section 101(b)(1). The Conference 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 that a requirement that contracts or other records be written, signed, or in nonelectronic form.” This savings clause makes clear that existing legal requirements that do not involve the writing, signature, or paper form of a contract or other record are not affected by Title I. Thus, for example, a transaction into which a consumer enters electronically is still subject to scrutiny under antitrust and Federal trade laws. Those laws 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 171(f) and consent to the electronic notices and contracts was properly obtained. In other words, compliance with the Act’s consumer consent requirements does not make it unnecessary for the transaction and parties to the transaction to comply with other applicable statutes, regulations or rules of law.

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

Retention of Contracts and Records.—Section 101(d)(1) and Section 104(b)(3). The Conference added provisions that state: “If a statute, regulation, and other rule require that a contract or other record relating to a transaction be retained,” the requirement is met by retaining an electronic record of the information “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 and 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 conflict with 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 regulation 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-terrorism protections to ensure that electronic records cannot be altered easily by money launderers or embezzlers or others seeking to hide their illegal activity. Without the ability of these agencies to ascertain program compliance through electronic record retention, taxpayers could be exposed to far greater risk of fraud and abuse. Similarly, bank and other financial regulators need to require that records be retained in order that their examiners can insure the safety and soundness of the institutions and their compliance with all relevant regulatory requirements. The standards set forth in the SEC’s existing electronic recordkeeping rule, Rule 17a-4(f), such as the requirement that electronic records be preserved in a non-rewritable and non-erasable manner, are essential to the SEC’s investor protection mission and are consistent with the provisions of the conference report. The Conference also expect that the SEC to work with securities self-regulatory organizations (SROs) to the extent necessary to ensure that accuracy, accessibility, and integrity standards also cover SRO recordkeeping requirements in an electronic environment.
Section 104(b)(3)(B) of the conference report permits Federal regulatory agencies to interpret, with respect to those statutes to the extent of their existing interpretative authority, whether pursuant to any one of the separate statutes to which it applies. Giving each agency will be proceeding under its preexisting rulemaking authority, so that regulations or guidance interpreting section 101 will be entitled to the 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 separate statutes to which it applies.

Any reading under which rules or regulations are challenged, any challenges to those regulations will proceed through the methods prescribed under that preexisting authority, whether pursuant to the Administrative Procedure Act or some other statute. Again, this will ensure that any regulations or guidance interpreting this bill will be entitled to the deference that the courts with technical determinations.

Likewise, because these regulations will be issued under preexisting legal authority, any challenges to those regulations will proceed through the methods prescribed under that preexisting authority, whether pursuant to the Administrative Procedure Act or some other statute. Again, this will ensure that any regulations or guidance interpreting this bill will be entitled to the deference that the courts with technical determinations.

It is my understanding that the conference report’s concern provisions are similar to much of the SEC’s guidance in the electronic delivery area. Section 104(d)(1) permits agencies such as the SEC to continue to provide flexibility in interpreting the consent provisions anticipated by the conference report. In addition, a specific provision contained in Section 104(d)(2) anticipates that the SEC will act to clarify that documents, such as sales literature, that appear on the same Web site as, or which are otherwise linked to, the document required to be delivered under the federal securities laws, can continue to be accessed on a Web site as, or which are otherwise linked to, the document required to be delivered under the SEC guidance in the electronic delivery area.

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

Mr. BLILEY. Mr. Speaker, I yield 3 minutes to the gentlema
time. Mr. BLILEY. Mr. Speaker, I yield 3 minutes to the gentleman from Virginia (Mr. DAVIS).
Another important objective in passing this legislation is the assurance that American principles on the use and acceptance of electronic signatures and records will be emulated overseas, ensuring that American businesses will not be put at a competitive disadvantage by restrictive foreign laws.

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

Mr. Speaker, I yield 1 1/2 minutes to the distinguished gentleman from Virginia (Mr. MORA.N).

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

Having said that, let me also use this moment to pay special homage and thanks to the gentleman from Richmond, Virginia (Mr. BLILEY), the chairman of the Committee on Commerce, today adding another star on the chest of this warrior for telecommunications reform.

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

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

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

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

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

He is a cosponsor with me of the Truth in Billing Act to do something about some of the company bills we get clearly discuss what all those charges are about so Americans understand what is on that massive and complicated telephone bill.

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

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

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

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

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

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

Finally, this legislation before us technology neutral. Mr. Speaker, in developing this legislation, the Conference Committee recognizes that certain technologies are more secure than others. The Committee also recognizes that consumers and businesses must as well be free to select the technology that is most appropriate for their particular needs, taking into account the importance of a transaction, the special nature of a transaction, and the corresponding need for assurances. To this extent, S. 761 is consistent with the “Government Paperwork Elimination Act” that we passed last Congress.
Mr. DINGELL. Mr. Speaker, I yield 3½ minutes to the distinguished gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Mr. Speaker, I thank the gentleman from Michigan (Mr. DINGELL) for his leadership and the gentleman from Virginia (Mr. BLILEY) very much for his assistance. I commend the gentleman from Virginia (Mr. BLILEY) for his leadership, along with Gramm-Leach-Bliley, Litigation Reform, and the Telecommunications Act, among many others. Under the gentleman’s leadership, the Committee on Commerce has become the e-commerce committee.

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

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

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

Mr. MARKEY. Mr. Speaker, I agree. Does the gentleman from Virginia further yield?

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

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

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

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

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

Mr. BLILEY. Yes, Mr. Speaker. I am glad to yield to the gentleman from Virginia.

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

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

In addition, customers are provided with important written disclosures involving risks of investing in penny stocks. Section 104 of the conference report specifically permits Federal regulatory agencies, such as the SEC, to interpret the law to require retention of written records in paper form if there is a compelling governmental interest in law enforcement for imposing such a requirement and if imposing such a requirement is essential to attaining such interest. The conference expects that the SEC would be able to use this provision to require brokers to keep written records of all disclosures and agreements required to be obtained by the SEC’s penny stock rule.

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

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

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

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

The application is clearly sweeping. It will provide legal certainty in all online transactions. In so doing, it will accelerate the growth of electronic commerce. E-Sign is a rare example of legislation in which Congress is being proactive rather than reactive. Because the access to financial information has improved dramatically, the Internet provides significant opportunities for more Americans to become directly involved in the capital markets.

Is it the understanding of the gentleman from Virginia, Mr. Speaker, that pursuant to subsection 10(c)(1)(C)(i) of the conference report, in a consumer's affirmative consent to the receipt of electronic records needs to "reasonably demonstrate" that the consumer will be able to access the various forms of electronic records to which the consent applies?

Mr. MARKEY. Mr. Speaker, that pursuant to subsection 10(c)(1)(C)(i) of the conference report, in a consumer's affirmative consent to the receipt of electronic records needs to "reasonably demonstrate" that the consumer will be able to access the various forms of electronic records to which the consent applies.

Mr. Speaker, I yield to the gentleman from Virginia.

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

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

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

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

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

The second provision of which I took special interest is intended to limit the liability exposure of insurance agents so they are not liable for deficiencies in electronic procedures. I want to take this opportunity to commend the gentleman from Virginia (Chairman BLILEY) for his leadership once again on this important legislation. It is a fitting legacy to his chairmanship, along with Gramm-Leach-Bliley, Litigation Reform, and the Telecommunications Act, among many others. Under the gentleman’s leadership, the Committee on Commerce has become the e-commerce committee.
I also want to thank the gentleman from Michigan (Mr. DINGELL), the gentleman from Massachusetts (Mr. MARKEY), and the gentleman from Louisiana (Mr. TAUZIN) for their work on the conference.

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

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

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

Mr. GREEN of Texas. Mr. Speaker, I thank the gentleman from Michigan (Mr. BLILEY) who is also the chairman of the Committee on Commerce, our ranking member for their efforts on this bill.

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

The electronic signature, in many instances, will speed transactions between consumers and businesses across States and across nations. Not having to sign and mail important documents does come, however, at a price. As a member of the Committee on Commerce and the Subcommittee on Telecommunications, Trade, and Consumer Protection, I supported ensuring that consumers are protected from the dangers of online fraud.

To this end, a balanced disclosure policy that allows consumers the choice of receiving important documents either on paper or electronically has been incorporated in this legislation.

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

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

Mr. BLILEY. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. ARMEE), the distinguished major of this committee.

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

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

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

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

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

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

This bill changes all that. It eliminates the paper, the delay, the inconvenience by letting the consumer open that account on-line, confident that the transaction has the same standing in law as if they had signed a contract on paper at a bank or investment company. More importantly, we consumers can choose to have information about our accounts sent to us electronically rather than on paper. Instead of storing shoe boxes full of monthly statements, we can receive statements by e-mail and save them on computers. With this bill, Mr. Speaker, each of us will have increased confidence that an on-line transaction has the same legal standing as if we had traveled down to the bank, stood in line for an hour, and signed a bunch of papers. What we get from this bill, Mr. Speaker, is paperless transactions. What we receive is electronic records. With this bill, we save our time, we save frustration, and we save trees.

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

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

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

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

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

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

This bill is an important tool in keeping this progress moving forward.

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

Mr. BLILEY. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. COX), a member of the committee and chairman of the Republican Policy Committee.
Mr. COX. Mr. Speaker, I thank the gentleman for yielding me this time, and I rise in strong support of this conference report. I would like to thank the chairman of the full committee for his leadership of our House effort in the House-Senate conference. It is a very, very important step for this Congress that we are completing action on this legislation.

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

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

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

In fact, an electronic signature is more secure. Present-day technology permits us to ascertain more accurately whether or not the individual is actually the person making the agreement. The person at the other side of the contract is the contracting party much more so than signatures, which can more easily be forged. Digital signatures also permit the contracting party much more so than signatures the same legal effect and permanence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Moreover, E-SIGN will empower small businesses to more effectively compete with large corporations. Those businesses will be empowered to engage in on-line transactions which are more complex in nature and greater in value. Both the American consumer and the small businessman can more fully harness the efficiencies and the value of the digital economy with E-SIGN.

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

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

Mr. DINGELL. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from California (Mr. BERMAN).
Mr. BERMAN. Mr. Speaker, I thank the gentleman for yielding me the time.

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

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

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

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

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

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

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

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

I am confident that, in passing this bill to the floor and all the other achievements in this Congress and previous Congresses, we are going to miss him. And again, I appreciate seeing him in this real successful effort.

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

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

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

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

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

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

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

This conference report, however, does not take this step lightly. There is an understanding of the newness of the medium. And to balance the concerns of cautious consumers, the legislation includes provisions meant to protect their interests.

For instance, businesses must receive the consumer’s consent before they can use his or her personal information electronically. Also, very sensitive information still must be transmitted physically. Cancellation or termination of health insurance cannot be done via e-mail.

As is often the case, society acts and is informed by those who are changing the world. The gentleman from Michigan (Mr. DINGELL), the ranking member, and the gentleman from Virginia (Chairman BLILEY). Their years in service and experience have really paid off here in guiding this House to be able to find this consensus.

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

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

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

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

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

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

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

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

CONGRESSIONAL RECORD—HOUSE

June 14, 2000

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

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

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

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

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

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

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

Mr. INSLEE. I yield to the gentleman from Michigan.
Mr. BLILEY. Mr. Speaker, I yield myself such time as I may consume.

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

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

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

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

I must also express deep thanks to Andy Pincus of the Department of Commerce. His willingness to work on this issue in a constructive manner is one of the reasons we are here today, and I think these people have made this successful day possible, and I extend my heartfelt gratitude. I thank them for their tireless work and dedication.

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


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

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

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

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

It is better to do that than to stand on opposite sides of a room and throw rhetorical grenades at each other. We do too much of that. The American people sent us up here to do a job. We are doing that in the finest tradition with this bill.

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

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

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

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

Mr. Speaker, back in the 60’s, pundits were predicting the paperless office. Well, it’s the year 2000 and we’re still not there. Part of the problem is our antiquated system of rules and differing state laws, which although important, can serve as a hindrance to interstate commerce over the Internet. With this legislation, we will be effectively removing one of the greatest roadblocks to Internet services. I was proud to cast my vote in support of this legislation in November, and I am proud to cast my vote in support of the conference report.

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

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

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

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

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

Mr. Speaker, I look forward to the new freedom that this conference report will provide in interstate and foreign commerce. Consumers will now have complete confidence that their electronic contracts, agreement and records carry the full weight of law.

The e-signature conference report is a landmark in that it aligns federal law with the latest technology without being partial to the technology industry itself. I commend my colleagues for all of their hard work, and the work done on this historic piece of legislation to ensure its swift passage into law.

Mr. LAFALCE. Mr. Speaker, I rise today in strong support of the conference report. The Congress today takes an important step in recognizing the importance to our economy of electronic commerce. In so doing, Congress also ensures that millions of Americans can begin to enjoy the benefits of a safe, reliable, and consumer-friendly electronic marketplace.

As President Clinton has indicated, the bipartisan agreement we are adopting today is responsible and balanced, and includes protections to provide consumers with the confidence that is essential to conduct on-line transactions in a safe, reliable, and trustworthy manner. As a result, this legislation comes to the House floor with strong Administration support. President Clinton, in fact, has urged the Congress to send the legislation to his desk for his immediate signature. I am therefore proud to support this bipartisan agreement.

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

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

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

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

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

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

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

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

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

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

The electronic signature legislation that the House passed last fall was deeply flawed. It set up a false choice between consumer protection and electronic commerce. In fact, the Senate bill, the Conference Report requires consumers to receive a notice of their rights and that—a freeway not a tollway.

Mr. Speaker, I supported legislation that validated electronic signatures and contracts, I opposed H.R. 1714 because it left consumers vulnerable to fraud, and it undermined numerous federal and state consumer protection laws. H.R. 1714 also weakened the ability of federal and state regulators to enforce important safety regulations and monitor industries such as the financial services industry, and the insurance industry.

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

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

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

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

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

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

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

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

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

The yeas and nays were ordered.

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

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

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

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