The Senate met at 9:31 a.m. and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Dear Father, the best of all fathers and the source of inspiration for what it means to be a father, we approach Your Holy Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable LINCOLN CHAFEE, a Senator from the State of Rhode Island, led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. L. CHAFEE). Under the previous order, the leadership time is reserved.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDING OFFICER. The Senator from Michigan is recognized.

SCHEDULE

Mr. ABRAHAM. Mr. President, I will begin with a brief statement on behalf of the majority leader. Today the Senate will immediately begin a vote on the conference report to accompany the digital signatures legislation. Following the vote, the Senate will be in a period of morning business with Senator CRAIG in control of the first hour.

For the information of all Senators, the Senate will resume consideration of the Department of Defense Authorization bill on Monday at 3 p.m. By previous consent, Senators HATCH and KENNEDY will be recognized to offer their amendments regarding hate crimes. Those amendments will be debated concurrently, with any votes ordered to take place on Tuesday at 3:15 p.m.

I thank my colleagues for their attention.

ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT—CONFERENCE REPORT—Resumed

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to vote on the conference report accompanying S. 761, which the clerk will report.

The legislative clerk read as follows:

The conference report on S. 761, an act to regulate interstate commerce by electronic means by permitting and encouraging the continued expansion of electronic commerce through the operation of free market forces, and for other purposes, made significant positive contributions to the bill. I am an original cosponsor of this legislation and I am very pleased with the conference report before the Senate today.

Yesterday, the House of Representatives voted overwhelmingly in favor of the conference report by a vote of 426-4. I urge my colleagues to support the conference report, which is a bipartisan product that will allow businesses to take advantage of the speed and efficiency of the Internet while also protecting consumers. I have no doubt that the passage of this legislation will help to make sure that electronic commerce can meet its full potential.

The issue of online authentication is one of the most important issues to the development of electronic commerce. Electronic commerce holds great promise, in particular, for states like my home state of Montana, where businesses and consumers have to deal with vast distances. E-commerce is expected to continue its upward surge to about $1.6 trillion by 2003, up from $500 billion last year. The explosion of information technology has created opportunities we should not let pass by.

In Montana, companies such as Healthdirectory.com and Vanns.com are taking advantage of the global markets made possible by the stunning reach of the Internet.

This bill allows for consumers to enter into binding contracts over the Internet and is a step toward creating a uniform system where contracts have the same validity across all 50 states. The bill is technology-neutral and does not impose government mandates on what formats or software businesses or consumers choose to use to conduct online commerce.

Numerous consumer safeguards are included in the conference report, including the requirement that consumers choose the format that companies use for online contracts. Also, safeguards are contained in the bill that will still require that critical notices such as insurance cancellation and mortgage foreclosure notices be sent on paper. Furthermore, consumers still have the right to receive any written notices on paper if they so choose.

The passage of the digital signatures bill is a critical step in ensuring the continued growth of the Internet-driven economy. This legislation grants additional choice and convenience to consumers and will also translate into more efficient products and services.

The conference report also includes the requirement that critical notices such as insurance cancellations and mortgage foreclosures be sent on paper. Furthermore, consumers still have the right to receive any written notices on paper if they so choose.

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CONSUMER CONSENT PROVISIONS

Mr. MCCAiN. Mr. President, I want to engage in a colloquy with the Senator from Michigan, who is the original sponsor of the electronic signatures legislation, to discuss the consumer consent provisions in the conference report.

Mr. ABRAHAm. Mr. President, I welcome the chance to participate in a colloquy about the consent provisions in the conference report.

Mr. MCCAiN. Is it the Senator’s understanding that pursuant to subsection 101(c)(1)(C)(ii) of the conference report 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. ABRAHAm. Yes. The conference report requires a “reasonable demonstration” that the consumer will be able to access the electronic records to which the consent applies. By means of this provision, the conferees sought to provide consumers with a simple and efficient mechanism to substantiate their ability to access the electronic information that will be provided to them.

Mr. MCCAiN. I agree. The conferees did not intend that the “reasonable demonstration” requirement would burden either consumers or the person providing the electronic record. In fact, the conferees expect that a “reasonable demonstration” could be satisfied in many ways. Does the Senator agree that the demonstration requirement is satisfied if the consumer confirms in an e-mail response to the provider of the electronic records that he or she can access information in the specified formats?

Mr. ABRAHAm. Yes. An e-mail response from a consumer that confirmed that the consumer can access electronic records in the specified formats would satisfy the “reasonable demonstration” requirement.

Mr. MCCAiN. Does the Senator also agree with me that the “reasonable demonstration” requirement would be satisfied, for instance, if the consumer responds affirmatively to an electronic query asking if he or she can access the electronic information or if the affirmative consent language includes the consumer’s acknowledgement that he or she can access the electronic information in the designated format?

Mr. ABRAHAm. Yes. A consumer’s acknowledgment or affirmative response to such a query would satisfy the “reasonable demonstration” requirement.

Mr. MCCAiN. Would the “reasonable demonstration” requirement be satisfied if it is shown that the consumer actually accesses electronic records in the relevant format?

Mr. ABRAHAm. Yes. The requirement is satisfied if it is shown that the consumer actually accesses electronic records in the relevant format.

Mr. MCCAiN. Mr. President, I appreciate my colleague’s willingness to participate in this colloquy to clarify the clear intent of the conference with respect to this provision.

LEGISLATIVE SCOPE

Mr. GRAMM. Mr. President, I would welcome the chance to participate in a colloquy about the scope of the electronic signature legislation.

Mr. ABRAHAm. Mr. President, is it the understanding of the Senator from Michigan that the conference report did not intend to scope or availability of any other federal statute, regulation and other rule of law (whether currently in effect or becoming effective in the future) that requires, authorizes or otherwise allows for the use of electronic signatures or electronic records, to the extent such federal statute, regulation, or other rule of law is consistent with the provisions of the act? Any such other statute, regulation or other rule of law will continue to be fully and independently effective. Rather, this act is intended to operate as a uniform national baseline permitting electronic signatures and electronic records to be used with respect to certain activities notwithstanding other inconsistent statutes, regulations or other rules of law. Am I correct in my statement regarding the intent of this legislation?

Mr. ABRAHAm. Yes, the Senator, the chairman of the Banking Committee, is correct. This act is intended to facilitate e-commerce and to provide legal certainty for electronic signatures, contracts and records where such certainty does not exist today. It is not in any way intended to limit the effectiveness of any other statute, regulation or other rule of law which permits the use of electronic records, electronic delivery, and electronic signatures, and which is otherwise consistent with the provisions of the act.

Mr. GRAMM. As to its coverage, does the Senator agree that this act is intended to operate very broadly to permit the use of electronic signatures and electronic records in all business, consumer and commercial contexts? This breadth is accomplished through the use of the term “transaction,” which is defined broadly to include any action or set of actions relating to the conduct of business, consumer or commercial affairs between two or more persons. For example, a unilateral action of one of the parties to the underlying transaction, or by any other person with any interest in the underlying transaction, or a response by one party to the other’s action, all are covered by the act. In this regard, it is the nature of the activity, and not the number of persons or the identity of any of the person or entity involved in the activity, that determines the applicability of the act. Have I stated the matter correctly?

Mr. ABRAHAm. Yes, this act applies to all actions or sets of actions related to the underlying business, consumer, or commercial relationship which is based on the nature of the activity and not the number of persons involved in the activity. The act is also intended to cover the related activities of those persons or entities who are counterparties to, or otherwise involved in or related to, the covered activity.

Mr. GRAMM. It is my understanding that this act, for example, covers any activity that would qualify as a financial activity, an activity incidental to a financial activity, or a complementary activity, under section 4(k) of the Bank Holding Company Act of 1956, as amended, whether that activity is conducted by, or subject to any limitations or requirements applicable to, a financial holding company.

In addition, it would cover all activities relating to employee benefit plans or any other type of tax-favored plan, annuity or account such as an IRA, a 403(b) annuity, or an education savings program, including all related tax and other required filings and reports. Is this correct?

Mr. ABRAHAm. Yes, and as a result, the act would apply to such activities as the execution of a prototype plan adoption agreement by an employer, the execution of an IRA application by an individual, and the waiver of a qualified joint and survivor annuity by a plan participant’s spouse and the designation of any beneficiary in connection with any retirement, pension, or related plan. It would cover an IRA, qualified State tuition program, insurance or annuity contract, or agreement to transfer ownership upon the death of a party to a transaction.

Mr. GRAMM. Mr. President, I appreciate my colleague’s willingness to participate in this colloquy to clarify the clear intent of the conference with respect to the scope of this act.

Mr. ABRAHAm. Mr. President, because the differences between the House and Senate passed bills required much careful contemplation on the part of the Conferences that may not be apparent in the final text of the Conference Report, and because the Conference did not produce an official interpretation of the Conference Report, as the primary author of S. 761, I have prepared an explanatory document that should serve as a guide to the intent behind the following provision of S. 761.

Mr. President, I ask unanimous consent that a section-by-section explanation of S. 761 be printed in the RECORD.
CONGRESSIONAL RECORD—SENATE
June 16, 2000

11158

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

EXEMPLARY STATEMENT OF S. 761, THE "ELECTRONIC SIGNATURE IN GLOBAL AND NATIONAL COMMERCE ACT"

SHORT TITLE

Senate bill

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

House amendment

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

Conference substitute

The conference report adopts the House provision.

ELECTRONIC RECORDS AND SIGNATURES IN COMMERCE

GENERAL RULE OF VALIDITY

Senate bill

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

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

House amendment

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

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

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

Conference Substitute

The House recaes to the Senate with an amendment:

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

Section 101(a) establishes a basic federal rule of non-discrimination with respect to the use of electronic signatures and electronic records, including electronic contracts. Subject to the Act's consumer consent requirement, exceptions (§ 101(b)), this federal rule of non-discrimination means that a State generally cannot refuse to allow parties to use electronic signatures and electronic records in lieu of paper records and handwritten signatures. This federal rule also means that if two parties agree with one another, electronically or otherwise, on the terms and conditions on which they will accept and use electronic signatures and electronic records in their dealings with one another and the parties could have reached an agreement regarding the use of signatures and records in the paper world, the State cannot refuse to give effect to the parties' agreement.

The term "solely" in section 101(a)(1) and 101(a)(2) is intended to prevent challenges to the legal effect, validity, or enforceability of an electronic signature or record or other record that are based on objections to the "electronic" quality of such signature, contract, or other record. In addition, Section 101(a)(2) also should be interpreted to permit a challenge based on the combination of a signature, contract, or other record being in electronic form (Section 101(a)(1)) and having an electronic signature or record used in its formation (Section 101(a)(2)); in this sense, solely truly means "solely or in part."

The conferences agreed to strike title III of the House bill (HR 1714) with respect to electronic records, signatures or agreements covered under the federal securities laws because the title I provisions of the conference agreement are intended to encompass the House title III provisions. The reference in section 101(a) of the conference agreement to "any transaction affecting interstate or foreign commerce" is intended to include electronic records, signatures and agreements governed by the Securities Exchange Act of 1934 and all electronic records, signatures and agreements used in financial planning, income tax preparation, and investments. Therefore, the conference agreement did not need to single out or treat differently electronic records, signatures and agreements regulated by federal securities laws in a separate title.

In section 101(b), the conference report makes clear that title I of the conference substitute does not (1) limit, alter, or otherwise affect any requirements imposed by a statute, regulation, or rule of law relating to the rights and obligations of persons under such statute, regulation, or rule of law other than requirements that contracts or other records are in non-electronic form; or (2) require any person, with respect to a record other than a contract, to agree to use or accept electronic records or electronic signatures.

Section 101(c) specifies consumer protections in commerce. If a statute, regulation, or other rule of law requires that a record be delivered to a consumer in response to the consumer's consent that an electronic record be provided or made available to a consumer in writing, an electronic record may be substituted if (1) the consumer affirmatively requests to receive an electronic record and has not withdrawn such consent, (2) the consumer, prior to consenting, is provided with a clear and conspicuous statement of consumer of rights or options to have the record provided or made available on paper, and the right of the consumer to withdraw the consent to electronic records and of any event of withdrawal of consent. Further, the consumer is informed of whether the consent applies only to the initial transaction or to identified categories of records that follow the initial transaction. Disclosure must also be made describing the procedures the consumer must use to withdraw consent and to update information needed to contact the consumer electronically. The consumer must also be informed of how of after the consent, the consumer may, upon request, obtain a paper copy of electronic records, and whether any fee will be charged for such copy.

Section 101(c) honors the provisions of other law (excepting rules of writing and consent requirements); the Act does not create new requirements for electronic commerce but simply allows disclosure of electronic records, including electronic records electronically instead of on paper. This means that if a consumer protection statute requires delivery of a paper copy of a disclosure or item to a consumer, then the consent and disclosure requirements of subsection (c)(1)(A-D) must be satisfied. Otherwise, subsection (c) does not disturb existing law.

Section 101(c)(1) refers to writings that are required to be delivered to consumers by some other law, such as the Truth-in-Lending Act, the Federal Trade Commission's Telemarketing and Consumer Fraud Protection Act, and the Fair Credit Reporting Act. Additionally: subsection (c) only applies to laws that are specifically intended for the protection of consumers. When a statute applies to consumers as well as to non-consumers, subsection (c)(1) should not apply. In this way, the subsection preserves those special consumer protection statutes enacted throughout this Nation without creating artificial constructs that do not exist under current law. At no time in the future should these provisions of the Act be intended to protect consumers (as defined in this legislation), be permitted to migrate through interpretation so as to apply to business-to-business transactions.

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

Subsection (c)(1)(C)(ii) requires that the consumer's consent be electronic or that it be confirmed electronically, in a manner that reasonably demonstrates that the consumer's consent is being accessed by the consumer, and is not burdensome on consumers or the person providing the electronic record, and could be accomplished in many ways. For example, the reasonable requirements that the consumer must satisfy if the provider of the electronic records sends the consumer an e-mail with attachments in the formats to be used in providing the records, and has opened the attachments in order to confirm that he could access the documents, and requested the consumer to indicate in an e-mail to the provider that she has opened the electronic records that he or she can access information in the attachments. Similarly, the
“reasonable demonstration” requirement is satisfied that in the case of such an e-mail the consumer actually accesses records in the relevant electronic format. The purpose of the reasonable demonstration provision is to provide consumers with a means of substantiating their ability to access the electronic information that will be provided to them.

Subsection (c)(1)(D) requires that after the consent of a consumer, if a change in the technology or software requirements needed to access electronic records provided or made available to a consumer under any statute, regulation, or rule of law, for any condition or consequence that was not disclosed.

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

Section 101(c)(3) makes clear that an electronic contract or electronic signature cannot be deemed ineffective, invalid, or unenforceable merely because the party contracting with a consumer failed to meet the requirements of the consent to electronic records provision.

Consenting to the consent provisions of section 101(c) is intended to address the effectiveness of the provision of information in electronic form, not the validity or enforceability of a writing. It is my intent that no requirement for the use of a stamp, seal, or similar device shall be effective within a reasonable period of time if the time is not voluntary by the provider of the record. Failure to comply with paragraph (1)(D) may, at the election of the consumer, be treated as a withdrawal of consent for purposes of this paragraph. With respect to Section 101(d)(1)(B), this subsection does not apply to any records that are provided or made available to a consumer who has consented prior to the effective date of this title to receive such records in electronic form as permitted by any statute, regulation, or other rule of law.

Subsection (i) makes clear that the provision of an oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of this subsection except as otherwise provided under applicable law.

It should be noted that Section 101(c)(6) does not preclude the consumer from using her voice to sign or approve that record. Proper voice signatures can be very effective in confirming a person’s informed intent to be legally obligated. Therefore, the consumer could create a voice signature to sign a text record that was required to be given to her “in writing”. Moreover, the person who originated the text record could record this voice signature as well. The spoken words of the signature might be something like “I Jane Consumer hereby sign and agree to this loan document and notice of interest charges.”

By way of clarification, the intent of this clause is to disqualify only oral communications that are not authorized under applicable law for such a purpose or required to be made a copy of the contract at that particular time, this section is not invoked. The record was in a form that was capable of being accessed and reproduced by the consumer who had chosen to use a device allowing retention and reproduction.

Subsection (f) clarifies that nothing in Title I predisposes the preference of any statute, regulation, or other rule of law with respect to any warning, notice, disclosure, or other record required to be posted, disclosed, or publicly displayed.

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

It is my intent that no requirement for the use of a stamp, seal, or similar device shall preclude the use of an electronic signature for these purposes.

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

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

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

Senate bill

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

House amendment

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

Section 102(b) provides that no State statute, regulation or rule of law enacting or adopting 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 100(b), consent to the provision or availability of such notice solely as an electronic record.

Conference substitute

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

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

It is intended that any State that enacts or adopts UETA in its State to remove itself from Federal preemption pursuant to subsection (a)(1) must continue to be bound by any Federal rule, 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 for technological peculiarities required to be contained in subsection (a)(2)(A)(ii) for procurement by a state, or any agency or instrumentality thereof.

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

SPECIFIC EXCLUSIONS

Senate bill

Section 5(d) of the Senate bill excludes from the application of this section any statute, regulation or other rule of law governing the Uniform Commercial Code as in effect in any state, other than sections 1–107 and 1–206 and Articles 2 and 2A; (2) premarital agreements, marriage, adoption, divorce and other matters governed by the Uniform Marriage and Dissolution of Marriage Act; and (3) the Uniform Law on Noncircumstances (excluding annuities).

Section 103(a) of the House amendment excludes from the application of section 101 any contract, agreement or record to the extent that it is covered by: (1) a statute, regulation or rule of law governing the creation and execution of wills, codicils, or testamentary trusts; (2) a statute, regulation or other rule of law governing adoption, dissolution of marriage and the Uniform Child Custody Jurisdiction and Enforcement Act as in effect in any state, other than sections 1–107 and 260 and Articles 2 and 2A; or (4) any requirement by a Federal regulatory agency or self-regulatory agency that records be filed or maintained in a specified standard or standards (except that nothing relieves any Federal regulatory agency of its obligation under the Government Paperwork Elimination Act, title XVII of Public Law 105–277); (5) the Uniform Anatomical Gift Act; or (6) the Uniform Health-Care Decisions Act.

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

Conference substitute

The conference report adopts a substitute provision in the Senate bill.

Section 103(a) excludes from the application of section 101 any contract, agreement
or record to the extent that it is covered by: (1) a statute, regulation or rule governing the collection and execution of wills, codicils, or testamentary trusts; (2) a statute, regulation or other rule of law governing adoption, divorce, or other matters of family law; (3) any rule of the Federal or United States Court of Claims with respect to the records of that court; or (4) any rule of the Federal Communications Commission with respect to the records of that Commission. (FCC) has been very slow, even reticent, to do so (1) serves an important government interest relating to law enforcement or national security for imposing such requirement; and (2) imposing such requirement is necessary to attain such interest. It is important to note that the test in subsection (b)(3)(B) is higher and more stringent than in subsection (b)(3)(A). This is intended that use of either of these tests will not be necessary in only a very, very few instances. It is expected that Federal and State agencies will take all action and exhaust all other avenues before exercising authority granted in paragraph (3).

Section 104(b)(1) exempts procurement by a Federal or State government, or any agency or instrumentality thereof from the technology neutrality requirements of subsection (b)(2)(C)(iii).

Subsection (c)(1) makes clear that nothing in subsection (b), except subsection (b)(3)(B), allows a Federal or State regulatory agency to exempt without condition a specified category or type of record from the consent provisions in section 101(c) if such exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers. It is intended that the test under subsection (d)(1) not be read too limiting. There are vast numbers of instances when section 101(c) may not be appropriate or necessary and should be exempted by the appropriate regulatory agency.

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

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

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

Section 7 of the Senate bill directs each Federal agency shall, not later than 6 months after the date of enactment of this Act, to provide a report to the Director of the Office of Management and Budget and the Secretary of Commerce identifying any provision of law administered by such agency, or any regulations issued by such agency and in effect on the date of enactment of this Act, that may impose a barrier to electronic transactions, or otherwise to the conduct of commerce online or by electronic means, including barriers imposed by a law or regulation directly or indirectly requiring that signatures, or records of transactions, be accomplished or retained in other than electronic form. In its report, each agency shall identify the barriers among those identified whose removal would require legislative action, and shall indicate agency plans to undertake regulatory action to remove such barriers among those identified as are caused by regulations issued by the agency.

Section 7(b) requires a report to Congress by The Secretary of Commerce, in consultation with the Director of the Office of Management and Budget and within 18 months after the date of enactment of this Act, and after the consultation required by subsection (c) of this section, report to the Congress concerning:

1) legislation needed to remove barriers to electronic transactions or otherwise to the conduct of commerce online or by electronic means; and
2) actions being taken by the Executive Branch and individual Federal agencies to remove such barriers as are caused by agency regulations or policies.

7(c) provides that the Secretary of Commerce shall consult with the General Services Administration, the National Archives and Records Administration, and the Attorney General concerning matters involving the authenticity of records, their storage and retention, and their usability for law enforcement purposes.

7(d) If the report required by this section omits recommendations for actions needed to fully remove identified barriers to electronic transactions or to online or electronic commerce, or otherwise make a finding with respect to the following reasons, including substantial reasons therefor, that such removal is impracticable or would be inconsistent with the implementation or enforcement of applicable laws.

House amendment

Section 104 of the House amendment makes a general direction that the provisions of the bill are effective until March 1, 2001 unless an agency has accomplished or retained in other than electronic form.

The conference report creates a general direction that the conference report is effective upon the date of enactment of this Act. The conference report includes several provisions regarding the effects of this Act, including:


2. Requires a report to Congress analyzing the effects of the provisions of the bill. The report shall be submitted to Congress by the Secretary of Commerce and FTC to solicit the comments from the public and to conduct the evaluation of the Secretary of Commerce. The report shall also contain the following:

   - A description of the public comments received.
   - An analysis of the impacts of the provisions of the bill.
   - A description of any efforts to remove barriers caused by agencies.

3. Requires a report to Congress by the Secretary of Commerce containing a finding or finding of any regulations issued by such agency.

4. Provides that the Secretary of Commerce shall consult with the appropriate Federal agencies and establish a uniform national standard for the creation, recognition, and enforcement of electronic negotiable instruments.

TREATMENT OF ELECTRONIC SIGNATURES IN INTERTATE 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 practical, in its implementation of laws on electronic commerce as a means to facilitate cross-border electronic transactions. Section 6 lists the principles as follows:

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

**House amendment**

Section 201(a) directs the Secretary of Commerce to conduct an annual inquiry identifying: (1) any domestic or foreign impediments to commerce in electronic signature products and services and the manner and extent to which such impediments inhibit the development of interstate and foreign commerce; (2) the extent to which other nations and international organizations are complying with the principles in section 201(b)(2). Under subsection (a)(2), the Secretary is required to report to Congress the findings, each inquiry 90 days after completion of such inquiry.

Section 201(b) directs the Secretary of Commerce to conduct an annual inquiry identifying: (1) any domestic or foreign impediments to commerce in electronic signature products and services and the manner and extent to which such impediments inhibit the development of interstate and foreign commerce; (2) the extent to which other nations and international organizations are complying with the principles in section 201(b)(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 should 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 technologies and implementation models for their transactions. Unnecessary regulation of commercial transactions distorts the development and efficient operation of markets, including electronic markets. More specifically, the rapid development of the electronic marketplace is resulting in new business models and technological innovations. This is an evolving process, therefore, government attempts to regulate may impede the development of newer alternative technologies; (3) Parties to a transaction the opportunity to prove in a court or other proceeding that their signatures are acceptable to parties to a transaction and transactions are valid. Parties should have the opportunity to prove in court that the authentication methods that they select are valid and reliable; and (4) Adoption of a nondiscriminatory approach to electronic signatures and authentication methods from other jurisdictions.

Section 201(c) directs the Secretary to consult with users and providers of electronic signature products and services and other interested parties to specify the definitions of ‘electronic signature’ and ‘electronic record’ in section 107 to this title. Increasingly, online transactions are not just interstate but multinational in nature, and this creates a clear need for international recognition of electronic signatures and records that will not create barriers to international trade. Title III directs the Secretary of Commerce to take an active role in bilateral and multilateral talks to promote the use and acceptance of electronic signatures and electronic records worldwide. It is intended that the Secretary promote the principles contained in this Act internationally. However, it is possible that some foreign nations may choose to adopt their own approach to the use and acceptance of electronic signatures and electronic records. In such cases, the Secretary should encourage those nations to develop legal recognition for contracts and transactions that may fall outside of the scope of the national law and encourage those nations to recognize the rights of parties to electronically establish their rights, terms and conditions for the use and acceptance of electronic signatures and electronic records.

There is particular concern about international developments that seek to favor electronic contract over paper-based methods. For example, Section 1994 of the German Civil Code allows a transaction to be formalized by means of an electronic record without the signature of the parties. The conference report notes that this approach will not recognize electronic signatures generated by other technologies.

**Conference substitute**

The Senate bill contains no similar provision.

**House amendment**

The House amendment contains no similar provision.

**Conference substitute**

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

Mr. WARNER. Mr. President, I want to offer my strong support for the Electronic Signatures in Global and National Commerce Act. This legislation removes legal barriers to electronic commerce by establishing important legal standards for electronic contracts and signatures.

With the passage of this important legislation, businesses will have the legal certainty that they require and consumers will have the assurance of safety and security. The measure represents a balanced approach. It ensures that protections in the digital world equal those in the paper world.
Mr. President, E-commerce offers tremendous benefits for businesses and consumers in terms of efficiency, choice, convenience, and lower costs. The measure will ensure the continued expansion of electronic commerce, the roots and future of which lie in Virginia. It will take electronic business-to-business and business-to-consumer commerce to the next level.

Mr. BENNETT. Mr. President, I rise to praise the hard work, commitment and diligence of Senator SPENCER ABRAHAM of Michigan. He navigated truly treacherous legislative and political waters to bring this legislation to shore. Were it not for his steadfast guidance of this legislation, there would be no E-Sign bill before us today. From the outset, Senator ABRAHAM had the vision and initiative to call a live a legislation that will allow American consumers and businesses to do transactions over the Internet with a greater confidence in their legal rights and responsibilities. And let me say this to my colleague, Senator ABRAHAM, this bill is much more than just an Internet in that almost instantaneously all kinds of people will come out of the woodwork to claim credit for your great achievement. Savor it, because those of us who worked by your side know well that the credit lies with you.

Throughout the conference I kept one goal in mind. We must make every effort to have a digital signature be equal to a paper signature both in the ease of use and in the eyes of the law. And while we did not fully succeed in that regard, this legislation is clearly a worthwhile step in the right direction and I intend to support its passage.

Mr. President, let me take one more moment to express, generally, some of my concerns about provisions that were added in the name of providing greater consumer protection and which were outside of the scope of the bills passed in the House and the Senate. I fear that the lack of clarity of several terms and phrases which were added in the conference and which are strung throughout the bill will create the opportunity for misunderstandings and lawsuits. Greater consultation among the conferees could have resolved these issues, and the public should share the same hopes for the success of this legislation. I sincerely hope that my concerns about the use of these terms is misplaced and that they will not come back to haunt us.

Finally, Mr. President, pursuant to the Government Paperwork Elimination Act passed by the previous Congress, the Office of Management and Budget has adopted regulations to permit individuals to obtain, submit and sign records electronically like the measures. These regulations direct Federal agencies to recognize that different security approaches offer varying levels of assurance in an electronic environment and that deciding which to use in an application depends first upon finding a balance between the risks associated with compromise of the information, and the benefits, costs and effort associated with deploying and managing the increasingly secure methods to mitigate those risks.

The OMB regulations recognize that among the various technical approaches, in an ascending level of assurance, are (1) "shared secrets" methods (e.g., personal identification numbers or passwords), (2) digitized signatures or biometric means of identification, such as fingerprints, retinal patterns and voice recognition, and (3) cryptographic digital signatures, which provide the greatest assurance. Combinations of approaches (e.g., digital signatures with bio-metrics) are also possible, and may offer even higher levels of assurance. The technical competence and experience of the service provider should be of paramount concern as we step into this brave new world. A positive first step in this regard is the General Services Administration's draft guidance on development of the ACES, or Access Certification for Electronic Services, Program for all federal agencies.

Mr. President, in developing this legislation, we recognized that certain technologies are more secure than others and that consumers and businesses must, just as the government, select and weigh which technology is most appropriate for their particular needs taking into account the importance of the transaction and its corresponding need for assurance.

Mr. ABRAHAM. Mr. President, I ask for the yeas and nays on the conference report accompanying S. 761.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the conference report. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Kentucky (Mr. BUNNING), the Senator from Colorado (Mr. CAMPBELL), the Senator from Utah (Mr. HATCH), the Senator from Oklahoma (Mr. INHOFE), the Senator from Kentucky (Mr. MCCONNELL), the Senator from Wyoming (Mr. THOMAS), and the Senator from Virginia (Mr. WARNER) are necessarily absent.

I further announce that if present and voting, the Senator from Kentucky (Mr. BUNNING), the Senator from Kentucky (Mr. MCCONNELL), the Senator from Utah (Mr. HATCH), and the Senator from Colorado (Mr. CAMPBELL) would each vote "aye."

Mr. REID. I announce that the Senator from Virginia (Mr. ROBB), the Senator from North Dakota (Mr. CONRAD), the Senator from North Dakota (Mr. DORGAN), the Senator from Iowa (Mr. HARKIN), the Senator from Vermont (Mr. LEAHY), and the Senator from Virginia (Mr. ROBB) are necessarily absent.

I further announce that, if present and voting, the Senator from Vermont (Mr. LEAHY) and the Senator from Iowa (Mr. HARKIN) would each vote "aye."

The PRESIDING OFFICER (Mr. HAGEL). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 87, nays 0, as follows:

[Rollcall Vote No. 133 Leg.]
YEAS—87

Abraham Feingold Lugar
Akaka Feinstein Mack
Allard Fitzgerald McCain
Ashcroft Frist Mikulski
Baucus Gorton Moynihan
Bayh Graham Murkowski
Bennett Gramm Murray
Biden Gramm Nasser
Bingaman Grasso Reed
Bond Gregg Reid
Breazeale Hagel Roberts
Brownback Helsms Rockefeler
Bryan Hollings Roth
Bunten Hutchinson Sanford
Byrd Hutchison Sarbanes
Chabot, L. Insley Schumer
Chafee, J. Jorgensen Sensenbrenner
Cochran Johnson Shelby
Cook Kennedy Smith (NJ)
Corzine Kerry Smith (OR)
Craig Korb Snow
Crapo Kohl Specter
Daniels Kyl Stevens
DeWine Landrieu Thompson
Dodd Lausenbergh Thurmond
Domenici Levin Torricelli
Durbin Lieberman Voinovich
Edwards Lincoln Wilson
Emz Lott Wyden

NOT VOTING—13

Boxer Harkin Robb
Bunning Hatch Thomas
Conrad Leahy Warner
Conrad Leahy Warner
Dorgan McConnell

The conference report was agreed to. Mr. LOTT. Mr. President, today the Senate has taken an important step in promoting and facilitating the growth of electronic commerce with the passage of the conference report to S. 761— the Electronic Signatures in Global and National Commerce Act. It was a long and difficult road to get to this point, following the bill's introduction in the Senate last March by my colleague and champion of E-signatures, Senator ABRAHAM. Many roadblocks had to be overcome along the way. In the end, many compromises were agreed to. This bill could have been done months ago; however, some wanted to make this a partisan issue. I am personally very pleased though I further announce that, if present and voting, the Senator from Vermont (Mr. LEAHY) and the Senator from Iowa (Mr. HARKIN) would each vote "aye."

The conference report was agreed to. Mr. LOTT. Mr. President, today the Senate has taken an important step in promoting and facilitating the growth of electronic commerce with the passage of the conference report to S. 761— the Electronic Signatures in Global and National Commerce Act. It was a long and difficult road to get to this point, following the bill's introduction in the Senate last March by my colleague and champion of E-signatures, Senator ABRAHAM. Many roadblocks had to be overcome along the way. In the end, many compromises were agreed to. This bill could have been done months ago; however, some wanted to make this a partisan issue. I am personally very pleased though I further announce that, if present and voting, the Senator from Vermont (Mr. LEAHY) and the Senator from Iowa (Mr. HARKIN) would each vote "aye."

S. 761 will establish legal certainty and validity for electronic signatures and electronic records. When engaging in business online, consumers and companies should feel secure and confident that their contracts and agreements will be honored. This bill recognizes and addresses those real needs now.
rather than waiting for all 50 States to adopt uniform laws. S. 761 will provide the basic foundation for the only rule available for all across America the real opportunity, if they so choose, to take advantage of electronic commerce. This, to me, is the crux of this legislation. The ability of our citizens in all 50 States to improve the quality of their lives. S. 761 provides that ability.

Some have expressed concern that this measure places a higher standard and unnecessary burdens on the on-line world than those in effect for the off-line world. I do not see it as does not. I believe a good-faith effort was made to provide the flexibility necessary for those with that great entrepreneurial spirit and imaginative ability to advance the Internet and electronic commerce. If, over time, bureaucracy does indeed impede the bill's intent, I expect that Congress will again assume responsibility and take corrective action.

The participation of several Members of Congress was integral to this bill's enactment. They include the chairmen of both the House and Senate Commerce Committees, Chairman BLILEY and Chairman MCCAIN, Chairman GRAMM of the Senate Banking Committee, and Chairman HATCH of the Senate Judiciary Committee. I extend my thanks to them and to all of the members of the conference for their attentiveness and commitment to this important issue.

I also want to take a few moments to express my special appreciation to my colleagues and good friend, Senator ABRAHAM. Senator ABRAHAM recognized early on the extreme importance of electronic signatures. It was his initiative that led to the 105th Congress' enactment of the Government Paperwork Elimination Act, a significant first step toward the eventual broad use and acceptance of electronic signatures. Senator ABRAHAM's continued stewardship, vision, and tireless efforts have led to the next logical step of now affording consumers the accessibility and opportunities in electronic commerce for the private sector and millions of consumers. I believe no other Senator worked as hard on, or knows as much about, this issue as Senator ABRAHAM. Without his hard work, keen judgment, and persistence, I do not believe we would be voting on this conference report today. Senator ABRAHAM is to be commended for his leadership in this area, and I look forward to working with him on other important technology issues facing Congress. It goes without saying that Congress could not operate without the dedicated efforts of staff. I want to identify those Senate staffers who worked hard to prepare this legislation for consideration.

Mr. ABRAHAM. Mr. President, I thank my colleagues on both sides of the aisle for their work on the legislation which has just passed. This is an extraordinarily important bill which will essentially open up opportunities in e-commerce that have previously not been existent for Americans. It will be a tremendous incentive to our economy. I express to all my colleagues my appreciation for their hard work on the legislation. It is a significant accomplishment for the Congress.

Mr. ABRAHAM. Mr. President, I thank my colleagues on both sides of the aisle for their work on the legislation which has just passed. This is an extraordinarily important bill which will essentially open up opportunities in e-commerce that have previously not been existent for Americans. It will be a tremendous incentive to our economy. I express to all my colleagues my appreciation for their hard work on the legislation. It is a significant accomplishment for the Congress.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, on behalf of Senator LEAHY, I ask unanimous consent that he be permitted to be absent from the service of the Senate today, Friday, June 16.

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

EXECUTIVE SESSION

The PRESIDING OFFICER. The nominations of Beverly B. Martin, of Georgia; Jay A. Garcia-Gregory, of Puerto Rico; and Laura Taylor Swain, of New York, which the clerk will report.

The legislative clerk read the nominations of Beverly B. Martin, of Georgia; Jay A. Garcia-Gregory, of Puerto Rico; and Laura Taylor Swain, of New York, to be U.S. District Judge for the District of Puerto Rico; and Laura Taylor Swain, of New York, to be U.S. District Judge for the Southern District of New York.

The PRESIDING OFFICER. Under the previous order, the nominations are confirmed, the motions to reconsider are laid upon the table, and the President will immediately be notified of the Senate's actions.

The nominations were considered and confirmed.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

MORNING BUSINESS

The PRESIDING OFFICER. There will now be a period for the transaction of morning business with Senators permitted to speak therein for up to 5 minutes each.

The Senator from Idaho.

Mr. CRAIG. Mr. President, I have served an hour of that time. I know there are other Senators who wish to speak. I will not use the whole hour. I would like to change the order. My colleague from Montana has a couple of minutes on an issue. My colleague from Minnesota wishes to speak for 10 minutes. Then I would take the remainder hour. We will not take all that hour. The Senator from Washington has comments she wants to make during this period of time. I ask unanimous consent that it follow in that order.

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

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. GRAMS. Mr. President, I will take a few minutes this morning to talk about an industry that is very important to the State of Minnesota, and that is our dairy industry.

June is National Dairy Month, and I come to the floor today to pay tribute to the family farmers who rise early every morning to supply fresh milk to our Nation. We as consumers assume there will always be dairy products in our grocery stores, without considering the hard work that is a daily requirement to get them there.

I grew up on a dairy farm myself, and I can remember those early morning