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ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

SEPTEMBER 27, 1999.—Ordered to be printed

Mr. BLILEY, from the Committee on Commerce, submitted the following

R E P O R T

[To accompany H.R. 1714]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 1714) to facilitate the use of electronic records and signatures in interstate or foreign commerce, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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69–006

AMENDMENT

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Electronic Signatures in Global and National Commerce Act".

TITLE I—VALIDITY OF ELECTRONIC RECORDS AND SIGNATURES FOR COMMERCE

SEC. 101. GENERAL RULE OF VALIDITY.

(a) GENERAL RULE.—With respect to any contract or agreement entered into in or affecting interstate or foreign commerce, notwithstanding any statute, regulation, or other rule of law, the legal effect, validity, or enforceability of such contract or agreement shall not be denied—

(1) on the ground that the contract or agreement is not in writing if the contract or agreement is an electronic record; or

(2) on the ground that the contract or agreement is not signed or is not affirmed by a signature if the contract or agreement is signed or affirmed by an electronic signature.

(b) AUTONOMY OF PARTIES IN COMMERCE.—With respect to any contract or agreement entered into in or affecting interstate or foreign commerce—

(1) the parties to such contract or agreement may establish procedures or requirements regarding the use and acceptance of electronic records and electronic signatures acceptable to such parties; and

(2) the legal effect, validity, or enforceability of such contract or agreement shall not be denied because of the type or method of electronic record or electronic signature selected by the parties in establishing such procedures or requirements.

SEC. 102. AUTHORITY TO ALTER OR SUPERSEDE GENERAL RULE.

(a) PROCEDURE TO ALTER OR SUPERSEDE.—Except as provided in subsection (b), a State statute, regulation, or other rule of law enacted or adopted after the date of enactment of this Act may modify, limit, or supersede the provisions of section 101 if such statute, regulation, or rule of law—

(1)(A) constitutes an enactment or adoption of the Uniform Electronic Transactions Act as reported to the State legislatures by the National Conference of Commissioners on Uniform State Laws; or

(B) specifies the alternative procedures or requirements for the use or acceptance of electronic records or electronic signatures to establish the legal effect, validity, or enforceability of contracts or agreements;

(2) is enacted or adopted within 4 years after the date of enactment of this Act; and

(3) makes specific reference to the provisions of section 101.

(b) LIMITATIONS ON ALTERATION OR SUPERSESSION.—A State statute, regulation, or other rule of law (including an insurance statute, regulation, or other rule of law), regardless of its date of enactment or adoption, that modifies, limits, or supersedes section 101 shall not be effective to the extent that such statute, regulation, or rule—

(1) discriminates in favor of or against a specific technology, method, or technique of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures;

(2) discriminates in favor of or against a specific type or size of entity engaged in the business of facilitating the use of electronic records or electronic signatures;

(3) is based on procedures or requirements that are not specific or that are not publicly available; or

(4) is otherwise inconsistent with the provisions of section 101.

(c) ACTIONS TO ENJOIN.—Whenever it shall appear to the Secretary of Commerce that a State has enacted or adopted a statute, regulation, or other rule of law that is prohibited by subsection (b), the Secretary may bring an action to enjoin the enforcement of such statute, regulation, or rule, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond.

SEC. 103. SPECIFIC EXCLUSIONS.

The provisions of section 101 shall not apply to—

(1) a statute, regulation, or other rule of law governing the creation and execution of wills, codicils, or testamentary trusts; or

(2) a statute, regulation, or other rule of law governing adoption, divorce, or other matters of family law.

SEC. 104. DEFINITIONS.

For purposes of this title:

(1) ELECTRONIC RECORD.—The term "electronic record" means a writing, document, or other record created, stored, generated, received, or communicated by electronic means.

(2) ELECTRONIC SIGNATURE.—The term "electronic signature" means information or data in electronic form, attached to or logically associated with an electronic record by a person or an electronic agent, that is intended by a party to signify agreement to a contract or agreement.

(3) ELECTRONIC.—The term "electronic" means of or relating to technology having electrical, digital, magnetic, optical, electromagnetic, or similar capabilities regardless of medium.

(4) ELECTRONIC AGENT.—The term "electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records in whole or in part without review by an individual at the time of the action or response.

TITLE II—DEVELOPMENT AND ADOPTION OF ELECTRONIC SIGNATURE PRODUCTS AND SERVICES

SEC. 201. TREATMENT OF ELECTRONIC SIGNATURES IN INTERSTATE AND FOREIGN COMMERCE.

(a) INQUIRY REGARDING IMPEDIMENTS TO COMMERCE.—

(1) INQUIRIES REQUIRED.—Within 90 days after the date of the enactment of this Act, and annually thereafter, the Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall complete an inquiry to—

(A) identify any domestic and foreign impediments to commerce in electronic signature products and services and the manners in which and extent to which such impediments inhibit the development of interstate and foreign commerce;

(B) identify constraints imposed by foreign nations or international organizations that constitute barriers to providers of electronic signature products or services; and

(C) identify the degree to which other nations and international organizations are complying with the principles in subsection (b)(2).

(2) SUBMISSION.—The Secretary shall submit a report to the Congress regarding the results of each such inquiry within 90 days after the conclusion of such inquiry.

(b) PROMOTION OF ELECTRONIC SIGNATURES.—

(1) REQUIRED ACTIONS.—The Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall promote the acceptance and use, on an international basis, of electronic signatures in accordance with the principles specified in paragraph (2) and in a manner consistent with section 101 of this Act. The Secretary of Commerce shall take all actions necessary in a manner consistent with such principles to eliminate or reduce, to the maximum extent possible, the impediments to commerce in electronic signatures, including those identified in the inquiries under subsection (a) for the purpose of facilitating the development of interstate and foreign commerce.

(2) PRINCIPLES.—The principles specified in this paragraph are the following:

(A) Free markets and self-regulation, rather than government standard-setting or rules, should govern the development and use of electronic records and electronic signatures.

(B) Neutrality and nondiscrimination should be observed among providers of and technologies for electronic records and electronic signatures.

(C) Parties to a transaction should be permitted to establish requirements regarding the use of electronic records and electronic signatures acceptable to such parties.

(D) Parties to a transaction—

(i) should be permitted to determine the appropriate authentication technologies and implementation models for their transactions, with assurance that those technologies and implementation models will be recognized and enforced; and

(ii) should have the opportunity to prove in court or other proceedings that their authentication approaches and their transactions are valid.

(E) Electronic records and electronic signatures in a form acceptable to the parties should not be denied legal effect, validity, or enforceability on the ground that they are not in writing.

(F) De jure or de facto imposition of standards on private industry through foreign adoption of regulations or policies with respect to electronic records and electronic signatures should be avoided.

(G) Paper-based obstacles to electronic transactions should be removed.

(c) FOLLOWUP STUDY.—Within 5 years after the date of enactment of this Act, the Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall conduct an inquiry regarding any State statutes, regulations, or other rules of law enacted or adopted after such date of enactment pursuant to section 102(a), and the extent to which such statutes, regulations, and rules comply with section 102(b). The Secretary shall submit a report to the Congress regarding the results of such inquiry by the conclusion of such 5-year period and such report shall identify any actions taken by the Secretary pursuant to section 102(c) and subsection (b) of this section.

(d) CONSULTATION.—In conducting the activities required by this section, the Secretary shall consult with users and providers of electronic signature products and services and other interested persons.

(e) PRIVACY.—Nothing in this section shall be construed to require the Secretary or the Assistant Secretary to take any action that would adversely affect the privacy of consumers.

(f) DEFINITIONS.—As used in this section, the terms "electronic record" and "electronic signature" have the meanings provided in section 104 of the Electronic Signatures in Global and National Commerce Act.

TITLE III—USE OF ELECTRONIC RECORDS AND SIGNATURES UNDER FEDERAL SECURITIES LAW

SEC. 301. GENERAL VALIDITY OF ELECTRONIC RECORDS AND SIGNATURES.

Section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) is amended by adding at the end the following new subsection:

"(h) REFERENCES TO WRITTEN RECORDS AND SIGNATURES.—

"(1) GENERAL VALIDITY OF ELECTRONIC RECORDS AND SIGNATURES.—Except as otherwise provided in this subsection—

"(A) if a contract, agreement, or record (as defined in subsection (a)(37)) is required by the securities laws or any rule or regulation thereunder (including a rule or regulation of a self-regulatory organization), and is required by other Federal or State statute, regulation, or other rule of law to be in writing, the legal effect, validity, or enforceability of such contract, agreement, or record shall not be denied on the ground that the contract, agreement, or record is not in writing if the contract, agreement, or record is an electronic record;

"(B) if a contract, agreement, or record is required by the securities laws or any rule or regulation thereunder (including a rule or regulation of a self-regulatory organization), and is required by other Federal or State statute, regulation, or other rule of law to be signed, the legal effect, validity, or enforceability of such contract, agreement, or record shall not be denied on the ground that such contract, agreement, or record is not signed or is not affirmed by a signature if the contract, agreement, or record is signed or affirmed by an electronic signature; and

"(C) if a broker, dealer, transfer agent, investment adviser, or investment company enters into a contract or agreement with, or accepts a record from, a customer or other counterparty, such broker, dealer, transfer agent, investment adviser, or investment company may accept and rely upon an electronic signature on such contract, agreement, or record, and such elec-

tronic signature shall not be denied legal effect, validity, or enforceability because it is an electronic signature.

"(2) IMPLEMENTATION.—

"(A) REGULATIONS.—The Commission may prescribe such regulations as may be necessary to carry out this subsection consistent with the public interest and the protection of investors.

"(B) NONDISCRIMINATION.—The regulations prescribed by the Commission under subparagraph (A) shall not—

"(i) discriminate in favor of or against a specific technology, method, or technique of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures; or

"(ii) discriminate in favor of or against a specific type or size of entity engaged in the business of facilitating the use of electronic records or electronic signatures.

"(3) EXCEPTIONS.—Notwithstanding any other provision of this subsection—

"(A) the Commission, an appropriate regulatory agency, or a self-regulatory organization may require that records be filed in a specified electronic format or formats if the records are required to be submitted to the Commission, an appropriate regulatory agency, or a self-regulatory organization, respectively; and

"(B) the Commission may require that contracts, agreements, or records relating to purchases and sales, or establishing accounts for conducting purchases and sales, of penny stocks be manually signed, and may require such manual signatures with respect to transactions in similar securities if the Commission determines that such securities are susceptible to fraud and that such fraud would be deterred or prevented by requiring manual signatures.

"(4) RELATION TO OTHER LAW.—The provisions of this subsection apply in lieu of the provisions of title I of the Electronic Signatures in Global and National Commerce Act to a contract, agreement, or record (as defined in subsection (a)(37)) that is required by the securities laws.

"(5) DEFINITIONS.—As used in this subsection:

"(A) ELECTRONIC RECORD.—The term 'electronic record' means a writing, document, or other record created, stored, generated, received, or communicated by electronic means.

"(B) ELECTRONIC SIGNATURE.—The term 'electronic signature' means information or data in electronic form, attached to or logically associated with an electronic record, that is intended by a party to signify agreement to a contract or agreement.

"(C) ELECTRONIC.—The term 'electronic' means of or relating to technology having electrical, digital, magnetic, optical, electromagnetic, or similar capabilities regardless of medium.".

PURPOSE AND SUMMARY

The purpose of H.R. 1714, the Electronic Signatures in Global and National Commerce Act, is to facilitate the use and acceptance of electronic signatures and records in interstate and foreign commerce. The legislation is narrowly drawn so as to remove barriers to the use and acceptance of electronic signatures and records without establishing a regulatory framework that would hinder the growth of electronic commerce. The bill adds greater legal certainty and predictability to electronic commerce by according the same legal effect, validity, and enforceability to electronic signatures and records as are accorded written signatures and records. Such certainty, in turn, will further contribute to the growth of electronic commerce.

H.R. 1714 provides that with respect to any contract or agreement entered into in or affecting interstate commerce, 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 if the contract or agreement is an electronic record; and (2) the contract or agreement is not signed or is not affirmed

by a signature if the contract or agreement is signed or affirmed by an electronic signature. H.R. 1714 provides broad authority to the States to modify, limit, or supersede section 101 of the bill within four years of enactment, provided that any modification complies with certain minimum standards and principles appropriate for interstate commerce.

In addition, the bill directs the Secretary of Commerce to promote the acceptance internationally of electronic signatures and electronic signature products.

The bill also separately addresses securities transactions. It provides an exclusive Federal regulatory scheme for the use of electronic signatures and records in connection with contracts, agreements, or records that are required the securities laws. It amends the Federal securities laws to provide that a contract, agreement, or record that is required by the Federal securities laws, and is required by any other Federal or State provision to be in writing or to be signed, shall not be denied legal effect, validity, or enforceability on the ground that it is not in writing if it is an electronic record or not signed if it is signed or affirmed by an electronic signature.

BACKGROUND AND NEED FOR LEGISLATION

The creation and growth of the Internet has been one of the most important developments of the second half of the 20th century. The Internet has evolved from its origins as an academic research tool in the late 1960s to a global communications, information, entertainment, and commercial medium. The widespread availability of inexpensive yet powerful personal computers has made the Internet accessible to hundreds of millions of people around the world.

Increasingly, the Internet is being used to conduct commercial activities, not only among businesses, but between businesses and consumers. The use of the Internet to conduct commercial activities is often referred to as "electronic commerce." A wide range of telecommunications networks can be used to conduct electronic commerce. However, the Internet is the most commonly cited network used to conduct electronic commerce. The growth of electronic commerce has been stunning. In 1996, consumers spent just $2.6 billion in online transactions, while in 1998, consumers spent over $32 billion in online transactions, with over $3 billion in consumer sales occurring during the December holiday shopping season alone. In its infancy, electronic commerce was mostly limited to small purchase items, such as books, music CDs, and airplane tickets. Recently, however, online transactions are growing larger and more complex. Individuals can now manage their retirement portfolios, purchase an automobile or life insurance, or search for a home mortgage online among other major transactions.

Electronic commerce transactions raise a number of new issues. First, how does one authenticate the parties to a transaction and then ensure that the transaction takes place in a secure environment? Second, what is the legal status of an online transaction?

The first issue involves determining the identity of the parties to a transaction so that the parties are certain that they are dealing with the correct individuals. Today, a large percentage of electronic commerce retail transactions are between parties that do not have

a pre-existing business relationship and do not meet face-to-face. Thus, traditional methods of identifying a party and conducting a legally binding transaction can be completely absent. Once the identity of the parties has been established, it is important that the online transaction take place in a secure environment to ensure the authenticity and integrity of the transmission and that a record of the transmission is retained should any dispute arise in the future. Technology, such as electronic signatures, is providing a solution and resolving many of the complex issues involved in online commercial transactions.

In discussing the greater security that electronic signatures provides to online transactions, the General Counsel of Charles Schwab & Co., Inc., testified that "[o]ur belief is that electronic signature technology is actually more secure against forgery than pen and ink signatures." (Testimony of W. Hardy Callcott, Senior Vice President and General Counsel, Charles Schwab & Co., Inc., at the June 24, 1999, hearing before the Subcommittee on Finance and Hazardous Materials, Serial No. 106–33, p. 33.)

An electronic signature is the digital equivalent of a handwritten signature. It is a generic term that describes a variety of methods by which an individual can sign an electronic record. Electronic signatures can range from simply typing a name at the end of an e-mail message, to a digital signature to a unique biometric identifier such as a fingerprint or iris scan.[1] An electronic signature, like a written signature, is a symbol that signifies intent—intent that varies depending on context, such as a signature on a contract shows intent that the parties agree to be bound by the terms of that contract. At present, no technology or model for electronic signatures has established itself as the market leader. Accordingly, the Committee believes it is important that the legislation, and any State legislation as well, not favor one technology or model over another.

The issues the bill primarily addresses are whether an electronic signature has the same legal effect as a written signature and whether an electronic record satisfies the legal requirement that communications be in writing. Today, the legal effect of an electronic record or an electronic signature is uncertain due to the lack of specific affirmative statutes recognizing the equivalency of electronic signatures and records to written signatures and records. Moreover, some courts have not recognized this equivalency. See *Georgia Department of Transportation* v. *Norris*, 222 Ga.App. 361, 474 S.E.2d (1996) and *Roos* v. *Aloi*, 127 Misc. 2d 864, 487 N.Y.S.2d 637 (Sup. Ct. 1985).

To address the legal uncertainty of an electronic signature and an electronic record, over the past four years, States have enacted statutes that provide for the use and acceptance of electronic signatures in certain transactions. To date, forty-four States have enacted some sort of electronic signature legislation. No two States have enacted identical legislation, however, leading to a patchwork of inconsistent and conflicting State laws governing electronic signatures and records.

[1] The term digital signature, while often used interchangeably with electronic signature, technically refers to a specific type of electronic signature that involves the use of public-key/private-key encryption technology.

These State laws vary in a number of ways. Some State statutes, such as those in Utah and Washington, provide legal validity only to electronic documents that were signed using digital signature technology, while other State statutes, such as that in Virginia, provide legal validity to an electronic document that was signed using any type of electronic signature technology. Other States, such as Maryland and Indiana, only permit the use and acceptance of electronic signatures and records between government agencies or between an individual and a government agency.

In an attempt to bring uniformity to the legal status of electronic signatures and records, in late July 1999, the National Conference of Commissioners on Uniform State Laws (NCCUSL) adopted the Uniform Electronic Transactions Act (UETA). The purpose of this model legislation is to provide for a uniform, nationwide standard for the use and acceptance of electronic records and electronic signatures. Efforts will now be made to have State legislatures adopt UETA.

Past efforts to enact uniform laws have yielded uneven results. The Uniform Partnership Act, adopted in 1996, has been enacted by just nineteen States. Only four States have enacted the Uniform Limited Liability Company Act, adopted in 1995. In contrast, the Uniform Limited Partnership Act, adopted in 1976, has been enacted by all but one State.

The Committee commends NCCUSL's work on the UETA. Both UETA and H.R. 1714 share many of the same basic principles. The Committee remains concerned, however, about the prospects for adoption of UETA by the States. Failure to adopt UETA by a substantial majority of the States in a short time period will perpetuate the patchwork of inconsistent and conflicting State laws. Further, some States will inevitably choose not to follow the work of NCCUSL on electronic signatures and will develop their own standards, which may or may not be compatible with UETA or may even be harmful to the development of electronic signatures if designed or implemented incorrectly.

There is, therefore, a clear need for a uniform, nationwide legal standard to be in place until States have the opportunity to enact their own laws or to ensure that there is a nationwide legal standard in case States fail to or refuse to enact their own electronic signature legislation. H.R. 1714 fills this need. By removing the uncertainty over the legal effect, validity, or enforceability of electronic signatures and records, electronic commerce will have the opportunity to reach its full potential. By adding greater legal certainty and predictability to electronic transactions, consumers' understanding and confidence in and use of those transactions will grow. Further, companies now developing electronic signatures and structures for their use will have the necessary legal framework in place to focus their attention on proving their technology in the marketplace.

In stressing the importance of uniformity, the General Counsel of Charles Schwab & Co., Inc., testified that "[t]oday's securities markets are national in scope and involve transactions that are entirely interstate in nature. * * * For that reason consistent uniform Federal standards are really imperative if brokers and others in the securities industry are going to be able to engage in elec-

tronic commerce with certainty or liability." (Testimony of W. Hardy Callcott, Senior Vice President and General Counsel, Charles Schwab & Co., Inc., at the June 24, 1999, hearing before the Subcommittee on Finance and Hazardous Materials, Serial No. 106–33, p. 9.)

The legal uncertainty regarding electronic records and signatures is significant in the securities industry today as investors turn increasingly to the Internet to conduct their financial transactions. As online securities transactions are almost exclusively interstate in nature, the need for uniformity in electronic signature laws becomes clear. Title III of the bill addresses these issues. Recent statistics have shown that online trading now accounts for nearly one of every seven equity trades (about 14 percent) and is growing rapidly, with an increase of over 34 percent in online activity in the last quarter over the previous quarter. Market participants such as brokers and investors would like to eliminate the need for any paper documents to complete their electronic transactions in order to improve the efficiency and convenience of online securities investing. Under current law, the Federal Arbitration Act generally requires that arbitration agreements need to be in writing to be enforceable. This requirement means that, when trying to set up an account at an electronic broker, the online broker has to mail or fax the account agreement (which usually contains an arbitration agreement) to the customer for physical signature. H.R. 1714 eliminates the need for such a physical signature by making it possible to execute a valid account agreement electronically. Customers who wish to do business electronically would also like certainty that State law will recognize the validity of electronic contracts, agreements, or records (and signatures thereon) in connection with securities activities such as opening a brokerage account. H.R. 1714 provides that legal certainty in the context of securities transactions by providing a uniform Federal law governing the use of electronic contracts, agreements, and records, and signatures thereon, preempting contrary State law.

Increasingly, online transactions are not just interstate but international in nature. The Committee recognizes the need for international recognition of electronic signatures and records that will not create barriers to international trade. Unfortunately, international developments on recognizing electronic signatures are troubling. The German Digital Signature Law of July 1997 runs counter to many of the widely accepted principles of electronic signature law in the United States. For example, the German law provides legal recognition only to signatures generated using digital signature technology, establishes licensing for certificate authorities, and sets a substantial role for the government in establishing technical standards. Further, a position paper on international recognition of electronic signatures released by the German government (International Legal Recognition of Digital Signatures, August 28, 1998) seeks to apply these principles internationally. This policy statement reemphasizes the principle that uniform security standards are necessary for all uses of digital signatures regardless of their use, supports mutual recognition of digital signatures only to those nations which have a similar regulatory structure for certification authority, and fails to provide legal effect to electronic

signatures generated by other technologies. In addition, the Committee is concerned that the European Union's draft Electronic Signature Directive, while not as narrowly drawn as the German legislation, still favors digital signature technology and provides a regulatory framework for the licensing of certification authorities.

HEARINGS

The Subcommittee on Telecommunications, Trade and Consumer Protection held a hearing on H.R. 1714 on June 9, 1999. The Subcommittee received testimony from the following witnesses: Mr. Andrew J. Pincus, General Counsel, United States Department of Commerce; The Honorable Donald W. Upson, Secretary of Technology, Commonwealth of Virginia; Mr. Jeffery Skogen, Internet Market Manager, Ford Motor Credit Company; Mr. Daniel J. Greenwood, Esq., Deputy General Counsel, Information Technology Division, Commonwealth of Massachusetts; Mr. Ari Engelberg, Vice President, Stamps.com, Inc.; Mr. John E. Siedlarz, President and CEO, IriScan, Inc., testifying on behalf of the International Biometric Industry Association; and Mr. Christopher T. Curtis, Associate General Counsel, Capital One Financial Corporation.

The Subcommittee on Finance and Hazardous Materials held a hearing on H.R. 1714 on June 24, 1999. The Subcommittee received testimony from the following witnesses: Mr. W. Hardy Callcott, Senior Vice President and General Counsel, Charles Schwab & Co., Inc.; Mr. Michael J. Hogan, Senior Vice President and General Counsel, DLJ*direct* Inc.; and Mr. Thomas C. Quick, President and Chief Operating Officer, Quick & Reilly/Fleet Securities, Inc..

COMMITTEE CONSIDERATION

On July 21, 1999, the Subcommittee on Finance and Hazardous Materials met in open markup session and approved H.R. 1714, the Electronic Signatures in Global and National Commerce Act, for Full Committee consideration, amended, by a voice vote. On July 29, 1999, the Subcommittee on Telecommunications, Trade, and Consumer Protection met in open markup session and approved H.R. 1714, the Electronic Signatures in Global and National Commerce Act, for Full Committee consideration, amended, by a voice vote.

On August 5, 1999, the Full Committee met in open markup session and ordered H.R. 1714 reported to the House, amended, by a voice vote, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 1714 reported. An Amendment in the Nature of a Substitute offered by Mr. Bliley, No. 1, to: (1) clarify the party autonomy provision so that a contract or agreement by parties is provided legal effect, validity and enforceability; (2) further clarify the definition of an electronic signature; (3) include the concept of electronic agents in the definition of electronic signa-

ture; and (4) expand the principles for international negotiations contained in Title II to include (a) removal of paper-based obstacles to electronic transactions and (b) a provision that parties should have the opportunity to prove in court that their authentication methods and transactions are valid, was agreed to by a voice vote. A motion by Mr. Bliley to order H.R. 1714 reported to the House, amended, was agreed to by a voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held two legislative hearings and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM OVERSIGHT FINDINGS

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 1714, the Electronic Signatures in Global and National Commerce Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 20, 1999.

Hon. TOM BLILEY,
Chairman, Committee on Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1714, the Electronic Signatures of Global and National Commerce Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Shelley Finlayson (for the state and local impact), and Mark Hadley (for federal costs).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 1714—Electronic Signatures in Global and National Commerce Act

H.R. 1714 would preempt state laws that regulate interstate commercial transactions conducted via electronic means (such as contracts with electronic signatures), unless states enact uniform standards equivalent to those specified in the bill. Such a preemption constitutes an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the costs would not be significant and would not exceed the threshold established by the act ($50 million in 1996, adjusted annually for inflation). The bill contains no new private-sector mandates as defined in UMRA.

The bill also would require the Department of Commerce to submit an annual report detailing foreign and domestic impediments to commerce in products using electronic signatures. The bill would direct the department to promote the international acceptance and use of electronic signatures, and to submit a report within three years regarding actions by states to allow electronic signatures in commerce. Finally, H.R. 1714 would amend the Securities and Exchange Act of 1934 to address the use of electronic signatures under federal securities law.

Based on information from the Department of Commerce and the Securities and Exchange Commission, CBO estimates implementing the bill would cost about $1 million a year, subject to the availability of appropriated funds. H.R. 1714 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

On June 30, 1999, CBO transmitted a cost estimate for S. 761, the Third Millennium Digital Commerce Act, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on June 23, 1999. CBO estimated that implementing S. 761 would cost about $500,000 a year. The lower cost is largely a result of the difference in the scope and length of the study that the Department of Commerce would be required to prepare and submit to the Congress.

The CBO staff contacts are Shelley Finlayson (for the state and local impact), and Mark Hadley (for federal costs). This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

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

TITLE I—VALIDITY OF ELECTRONIC RECORDS AND SIGNATURES FOR COMMERCE

Section 101. General rule of validity

Section 101(a) 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 if the contract or agreement is an electronic record; and (2) the contract or agreement is not signed or affirmed by a written signature if the contract or agreement is signed or affirmed by an electronic signature.

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.

The Committee intends that section 101(b) cover a broad range of interstate commercial transactions and that Federal agencies cooperate in that effort. It is the Committee's intent that, under section 101(b), a Federal agency not enforce or adopt a regulation that denies legal effect to a contract or agreement between private parties in a regulated industry or an industry that benefits from Federal support on the ground that the contract or agreement is an electronic record or is signed by an electronic signature. Similarly, a Federal agency should not require the use of a particular technology or provider for electronic records or electronic signatures on documents between private parties in a regulated industry or an industry that benefits from Federal support. In general, however, the Committee does intend for section 101(b) to have an impact on

legitimate regulatory recordkeeping requirements of Federal agencies, such as ensuring the accuracy of, and access to, electronic records.

One example of a transaction that is covered under section 101(b) is the use of the Internet by individuals to change their pre-subscribed telecommunications carrier. The Federal Communications Commission should consider allowing the use of electronic signatures as an additional method of verifying a Primary Interexchange Carrier (PIC) change. Use of electronic signatures to presubscribe voluntarily to basic telecommunications services can benefit both consumers and telecommunications providers.

In addition, the Committee intends that the parties may enter into a contract or agreement to receive any records related to such contract or agreement, including but not limited to notices, disclosures, booklets, or other information required under applicable Federal or State law.

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. Many individuals do not have Internet access or do not understand or choose to use electronic authentication technologies with which they are unfamiliar. Nothing in H.R. 1714 should be interpreted as requiring parties to consent to or use electronic signatures or electronic records if they choose not to.

Section 102. Authority to alter or supersede general rule

Section 102(a) 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) is enacted by a State within four years after the date of enactment of H.R. 1714; and (3) makes specific reference to the provisions of section 101.

The Committee believes that the four year time frame will provide States with the opportunity and the incentive to adopt UETA or another legal framework in a timely manner for the acceptance of electronic signatures. The forty-three State legislatures that meet annually will have four sessions to enact UETA while the remaining seven State legislatures that meet biennially will have two sessions to enact UETA.

Section 102(b) provides that no State statute, regulation, or 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 against a specific technology, method, or technique; (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 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 provi-

sions of section 101. Subsection (b)(3) requires States to provide specific, unambiguous, and transparent requirements for the use and acceptance of electronic signatures. Further, the Committee intends that subsection (b)(4) be read with a degree of reason. This provision is intended to prevent a State from enacting a statute that violates section 101, such as denying legal validity for electronic signatures, but does not limit the ability of States to modify or supersede section 101.

Section 102(c) provides the Secretary of Commerce (the Secretary) the authority to bring an action to enjoin the enforcement of a State statute, regulation, or rule that was enacted in violation of section 102(b). The Committee expects the Secretary to use this authority as necessary, especially in instances where smaller companies are unable to legally challenge a poorly tailored or potentially harmful State law. The Secretary's failure to use such authority in a particular instance should not be construed as validating a State statute, regulation, or rule of law being challenged on the grounds that it violates section 102. The Secretary's lack of action may be due to many reasons that should not prejudice a case for or against the validity of a particular State statute, regulation, or other rule of law.

The Committee wishes to emphasize that nothing in section 102 preempts any State consumer protection law or in any way inhibits or prevents a State from taking action to protect consumers against fraud, forgery, or any unfair or deceptive practices.

Section 103. Specific exclusions

Section 103 excludes from the application of section 101 any statute, regulation, or other rule of law governing: (1) the creation and execution of wills, codicils, or testamentary trusts; or (2) adoption, divorce, or other matters of family law.

Section 104. Definitions

Section 104 defines the following terms: "electronic record", "electronic signature", "electronic" and "electronic agent". The Committee intends that the definition of electronic signature cover a broad range of electronic signature technologies that can be used to sign an electronic record. This includes, but is not limited to, digital signature technology, a personal identification number (PIN), biometric technologies (such as fingerprints, iris scans, or signature dynamics), and any new electronic signature technologies that may be developed or used in the future.

The definition of electronic signature clarifies that a contract or agreement signed or affirmed by an electronic signature will be afforded the same legal recognition whether signed by a person or electronic agent. A contract or agreement electronically signed by an electronic agent may not be denied legal effect because it was formed by the interaction of electronic agents of the parties, or by the interaction of an electronic agent of a party and an individual acting on the individual's own behalf, or on behalf of another person who is party to the transaction. The Committee believes that by ensuring that contracts and agreements formed through the use of electronic agents are not denied legal effect, section 104(2) seeks to facilitate the growth and development of electronic commerce.

TITLE II—DEVELOPMENT AND ADOPTION OF ELECTRONIC SIGNATURE PRODUCTS AND SERVICES

Section 201. Treatment of electronic signatures in interstate and foreign commerce

Section 201(a) directs the Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, 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) constraints imposed by foreign nations or international organizations that constitute barriers to providers of electronic signature products and services; and (3) the degree 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 of each inquiry 90 days after completion of such inquiry.

Section 201(b) directs the Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, to promote the acceptance and use of electronic signatures on an international basis in accordance with section 101 of the bill and with the principles listed below. In addition, the Secretary of Commerce is directed to take all actions to eliminate or reduce impediments to commerce in electronic signatures, including those resulting from the inquiries required pursuant to subsection (a).

The principles are as follows:

1. Free-markets and self-regulation, rather than government standard-setting or rules, should govern the development and use of electronic signatures and electronic records.
2. Neutrality and nondiscrimination should be observed among providers of and technologies for electronic records and electronic signatures.
3. Parties to a transaction should be allowed to establish requirements regarding the use of electronic records and electronic signatures acceptable to the parties.
4. Parties to a transaction should be permitted to determine the appropriate authentication technologies and implementation for their transactions with the assurance that the technology and implementation will be recognized and enforced. Further, the parties should have the opportunity to prove in court that their authentication approaches and transactions are valid.
5. 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.
6. De jure or de facto imposition of electronic signature and electronic record standards on the private sector through foreign adoption of regulations or policies should be avoided.
7. Paper-based obstacles to electronic transactions should be removed.

In light of the consideration and adoption by foreign governments of electronic signature legislation which runs contrary to the principles of electronic signatures widely accepted in the United States, the Committee believes that it is critically important for the United

States to promote American principles on electronic signatures internationally. A highly regulatory structure for electronic signatures, or the refusal to provide mutual recognition of alternate electronic signature regimes, will hinder the development of global electronic commerce. The Committee is also concerned that such laws will create barriers to American companies providing electronic signature technologies or services in foreign countries.

Section 201(c) directs the Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, to submit a report to Congress, within five years after the date of enactment of the bill, regarding any State statute, regulation, or rule of law enacted or adopted after enactment on the extent to which such statute, regulation, or rule of law complies with section 102(b). Subsection (c) also requires the Secretary to include in the report the actions taken pursuant to section 102(c) and subsection (b).

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

Section 201(f) provides that the definitions in section 104 apply to this title.

TITLE III—USE OF ELECTRONIC RECORDS AND SIGNATURES UNDER FEDERAL SECURITIES LAW

Section 301. General validity of electronic records and signatures

Title III of the bill amends section 3 of the Securities Exchange Act of 1934 (the Exchange Act) to add a new subsection (h), "References to Written Records and Signatures." In general, subsection (h) provides that a contract, agreement, or record that is required by the Federal securities laws, and is required by any other Federal or State provision to be in writing or to be signed, shall not be denied legal effect, validity, or enforceability on the ground that it is not in writing if it is an electronic record or on the ground that it is not signed or affirmed by a signature if it is signed or affirmed by an electronic signature. The Committee intends that this subsection preempt State law to the contrary. The Committee notes that the purpose of this bill is to facilitate commerce in the "information age," and not to interfere with legitimate regulatory requirements. Title III is not intended to affect the Securities and Exchange Commission's (the Commission's) regulatory recordkeeping requirements, such as ensuring the accuracy of, and access to, electronic records of securities firms. This legislation does not change any existing Federal or State statute or rule requiring the production of records to regulators.

Paragraph (1) provides for general rules of validity for electronic records and signatures in the securities context. Subparagraphs (A) and (B) apply to documents required under the Federal securities laws. Specifically, if a contract, agreement, or record (as defined by section 3(a)(37) of the Exchange Act) that is required by the securities laws is also required by other Federal or State statute, regula-

tion, or other rule of law to be in writing or to be signed, the legal effect, validity, or enforceability of such contract, agreement, or record shall not be denied on the ground that the contract, agreement, or record is an electronic record or is signed or affirmed by an electronic signature.

Subparagraph (C) relates to other documents that may be used in securities transactions but arise out of commercial practice or custom rather than a Federal securities law requirement. Specifically, if a broker, dealer, transfer agent, investment adviser, or investment company enters into a contract or agreement with, or accepts a record from, a customer or other counterparty, such broker, dealer, transfer agent, investment adviser, or investment company may accept and rely upon an electronic signature on such contract, agreement, or record, and such electronic signature shall not be denied legal effect, validity, or enforceability because it is an electronic signature.

Paragraph (2) provides for the implementation of the law. The paragraph gives the Commission authority to prescribe rules, if necessary, to effect this subsection, consistent with the public interest and the protection of investors. The Committee notes that this paragraph authorizes, but does not require, the Commission to prescribe regulations in this area. Paragraph (2) further defines the parameters for any rulemaking the Commission should undertake pursuant to this subsection. It requires that such rules must not discriminate in favor of or against (1) a specific technology, method, or technique of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures; or (2) a specific type or size of entity engaged in the business of facilitating the use of electronic records or electronic signatures. These parameters are subject, however, to the exceptions of paragraph (3).

Paragraph (3) provides for certain exceptions. The first exception, in subparagraph (A), permits the Commission, appropriate regulatory agencies, and self-regulatory organizations (SROs) to require that records that are to be submitted to the Commission, a regulatory agency, or an SRO be filed in a specified electronic format. The exception provided in subparagraph (A) is designed to preserve the existing ability of these entities to "discriminate," notwithstanding the prohibition of paragraph (2) against discrimination, by requiring particular software or other electronic formats for documents that are submitted to them for filing. The term "electronic format" is not defined in the statute; the Committee intends this term to be interpreted flexibly to maximize the ability of the Commission and SROs to specify the technical formatting and similar requirements for materials that are filed with them. The Committee expects that the SEC will use this exception consistent with the legislation's general goal to promote and facilitate the use of electronic, rather than written, mechanisms of commerce.

For example, under this provision, the Commission or SROs could: (1) continue to maintain filing requirements that specify particular software formats, such as the formats required under the EDGAR system or the central registration depository for broker-dealers, without change; (2) specify certain types of security features (such as access codes, passwords, back-up paper copies or dig-

ital signatures) that must be incorporated into filings; (3) include "tagging" requirements to facilitate automated processing of filings; (4) limit the permitted types of formats acceptable for filing, in order to facilitate making information available to the public; or (5) require or prohibit the use of other technological filing means, such as electronic transmission, magnetic tape, diskettes, CD–ROMs, video cassette, streamed video, and graphics. This list is meant to be illustrative, rather than exhaustive; the Committee provides this list of examples of the discretion retained by the Commission and SROs under the legislation only to illustrate the broad range of authority the provision is designed to preserve for the Commission and SROs for materials that are submitted to them for filing.

Subparagraph (B) of paragraph (3) preserves the authority of the Commission to require manual signatures for contracts, agreements, or records relating to purchases and sales, or establishing accounts for conducting purchases and sales, of penny stocks or similar securities, if the Commission determines that those securities are susceptible to fraud and that such fraud would be deterred or prevented by requiring manual signatures. Thus, the Commission's existing rules requiring manual signatures in connection with certain of its penny stock rules continue unchanged after enactment of this bill. See SEC Release No. 33–7288, n.50 (May 9, 1996).

Paragraph (4) establishes the relationship between title I and title III of the bill. To avoid overlap, the bill provides that contracts, agreements, or records required by the securities laws are governed exclusively by the provisions of title III. This paragraph ensures that any State statute, regulation, or other rule of law enacted or adopted after the date of enactment of this bill (including the UETA) will not modify, limit, or supersede the provisions of title III for contracts, agreements, or records required by the securities laws.

Paragraph (5) provides the definitions for certain terms that are not otherwise defined in the Exchange Act. These definitions are for purposes of section 3(h) only and are not generally applicable to the Exchange Act or other Federal securities laws or the rules promulgated thereunder.

The term "electronic record" is defined to mean a writing, document, or other record created, stored, generated, received, or communicated by electronic means.

The term "electronic signature" is defined to mean information or data in electronic form, attached to or logically associated with an electronic record, that is intended by a party to signify agreement to a contract or agreement.

Finally, the term "electronic" is defined to mean of or relating to technology having electrical, digital, magnetic, optical, electromagnetic, or similar capabilities regardless of medium.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 3 OF THE SECURITIES EXCHANGE ACT OF 1934

DEFINITIONS AND APPLICATION OF TITLE

SEC. 3. (a) * * *

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(h) REFERENCES TO WRITTEN RECORDS AND SIGNATURES.—

(1) GENERAL VALIDITY OF ELECTRONIC RECORDS AND SIGNATURES.—Except as otherwise provided in this subsection—

(A) if a contract, agreement, or record (as defined in subsection (a)(37)) is required by the securities laws or any rule or regulation thereunder (including a rule or regulation of a self-regulatory organization), and is required by other Federal or State statute, regulation, or other rule of law to be in writing, the legal effect, validity, or enforceability of such contract, agreement, or record shall not be denied on the ground that the contract, agreement, or record is not in writing if the contract, agreement, or record is an electronic record;

(B) if a contract, agreement, or record is required by the securities laws or any rule or regulation thereunder (including a rule or regulation of a self-regulatory organization), and is required by other Federal or State statute, regulation, or other rule of law to be signed, the legal effect, validity, or enforceability of such contract, agreement, or record shall not be denied on the ground that such contract, agreement, or record is not signed or is not affirmed by a signature if the contract, agreement, or record is signed or affirmed by an electronic signature; and

(C) if a broker, dealer, transfer agent, investment adviser, or investment company enters into a contract or agreement with, or accepts a record from, a customer or other counterparty, such broker, dealer, transfer agent, investment adviser, or investment company may accept and rely upon an electronic signature on such contract, agreement, or record, and such electronic signature shall not be denied legal effect, validity, or enforceability because it is an electronic signature.

(2) IMPLEMENTATION.—

(A) REGULATIONS.—The Commission may prescribe such regulations as may be necessary to carry out this subsection consistent with the public interest and the protection of investors.

(B) NONDISCRIMINATION.—The regulations prescribed by the Commission under subparagraph (A) shall not—

(i) discriminate in favor of or against a specific technology, method, or technique of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures; or

(ii) discriminate in favor of or against a specific type or size of entity engaged in the business of facilitating the use of electronic records or electronic signatures.

(3) EXCEPTIONS.—Notwithstanding any other provision of this subsection—

(A) the Commission, an appropriate regulatory agency, or a self-regulatory organization may require that records be filed in a specified electronic format or formats if the records are required to be submitted to the Commission, an appropriate regulatory agency, or a self-regulatory organization, respectively; and

(B) the Commission may require that contracts, agreements, or records relating to purchases and sales, or establishing accounts for conducting purchases and sales, of penny stocks be manually signed, and may require such manual signatures with respect to transactions in similar securities if the Commission determines that such securities are susceptible to fraud and that such fraud would be deterred or prevented by requiring manual signatures.

(4) RELATION TO OTHER LAW.—The provisions of this subsection apply in lieu of the provisions of title I of the Electronic Signatures in Global and National Commerce Act to a contract, agreement, or record (as defined in subsection (a)(37)) that is required by the securities laws.

(5) DEFINITIONS.—As used in this subsection:

(A) ELECTRONIC RECORD.—The term "electronic record" means a writing, document, or other record created, stored, generated, received, or communicated by electronic means.

(B) ELECTRONIC SIGNATURE.—The term "electronic signature" means information or data in electronic form, attached to or logically associated with an electronic record, that is intended by a party to signify agreement to a contract or agreement.

(C) ELECTRONIC.—The term "electronic" means of or relating to technology having electrical, digital, magnetic, optical, electromagnetic, or similar capabilities regardless of medium.

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