

PROVIDING FOR THE CONSIDERATION OF H.R. 1714, ELEC-
TRONIC SIGNATURES IN GLOBAL AND NATIONAL COM-
MERCE ACT

NOVEMBER 8, 1999.—Referred to the House Calendar and ordered to be printed

Mr. DREIER, from the Committee on Rules,
submitted the following

REPORT

[To accompany H. Res. 366]

The Committee on Rules, having had under consideration House Resolution 366, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF RESOLUTION

The resolution provides for the consideration of H.R. 1714, the Electronic Signatures in Global and National Commerce Act, under a structured rule. The rule provides one hour of general debate divided equally between the chairman and ranking minority member of the Committee on Commerce.

The rule makes in order as an original bill for the purpose of amendment the amendment in the nature of a substitute printed in the Congressional Record of November 8 and numbered 1. The rule provides for consideration of only the amendments printed in this report. The rule further provides that the amendments may be offered only in the order listed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall not be subject to a demand for a division of the question, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent and shall not be subject to amendment. The rule also allows the Chairman of the Committee of the Whole to postpone votes during consideration of the bill, and to reduce voting time to five minutes on a postponed question if the vote follows a fifteen minute vote. Finally, the rule provides one motion to recommit with or without instructions.

SUMMARY OF AMENDMENTS MADE IN ORDER UNDER THE RULE FOR
H.R. 1714, THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL
COMMERCE ACT

1. Inslee/Eshoo/Smith (WA)/Dooley/Moran (VA)/Roukema: Expands the bill's requirements that consumers affirmatively consent to receive electronic records by requiring that the consent be conspicuous and visually separate from other terms; provides that, prior to consenting, the consumer must be provided with an explanation of how to access and retain electronic records; requires providers of electronic records to explain any requirements to access and receive electronic records; requires the consumer to affirmatively acknowledge, with the acknowledgement being conspicuous and visually separate from other terms, as part of the consumer's consent, that (1) the consumer has the obligation to notify the electronic records provider of any change in the consumer's email address to which records are intended to be sent, and (2) if the consumer withdraws his or her consent, the consumer must notify the provider of electronic records of the mailing address to which future records are to be provided; requires that consumers be able to review, retain and print electronic records that they have consented to receive; provides consumer with the ability to withdraw his or her consent to receive the document electronically; clarifies that all federal and state consumer protection laws are unchanged by this act; preserves responsibility of disclosures; clarifies that consumers are not required to use or accept electronic records or electronic signatures; clarifies that states will have a continuing ability to require notices in connection with public health and safety be given in paper form; and promotes uniform treatment of electronic signatures and records; requires the Secretary of Commerce to study the effectiveness of the delivery of electronic records to consumers using electronic mail compared with the delivery of records via the U.S. Postal Service or private express mail services. (30 minutes)

2. Dingell/Conyers/LaFalce/Gephardt: Amendment in the nature of a substitute—Promotes the growth of electronic commerce by recognizing the validity of electronic signatures and contracts; provides that in any commercial transaction affecting interstate commerce, a contract may not be denied legal effect or enforceability solely because an electronic signature or electronic record was used in its formation; and permits parties to a transaction to determine the appropriate electronic signature technologies for their transaction, and the means of implementing such technologies. (30 minutes)

Text of the Amendments made in Order under the rule:

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE INSLEE OF WASHINGTON, OR REPRESENTATIVE ESHOO OF CALIFORNIA, OR A DESIGNEE, DEBATABLE FOR 30 MINUTES.

In section 101(b), strike paragraph (2) and insert the following:

(2) CONSENT TO ELECTRONIC RECORDS.—Notwithstanding subsection (a) and paragraph (1) of this subsection—

(A) if a statute, regulation, or other rule of law requires that a record be provided or made available to a consumer

in writing, that requirement shall be satisfied by an electronic record if—

(i) the consumer has affirmatively consented, by means of a consent that is conspicuous and visually separate from other terms, to the provision or availability (whichever is required) of such record (or identified groups of records that include such record) as an electronic record, and has not withdrawn such consent;

(ii) prior to consenting, the consumer is provided with a statement of the hardware and software requirements for access to and retention of electronic records; and

(iii) the consumer affirmatively acknowledges, by means of an acknowledgement that is conspicuous and visually separate from other terms, that—

(I) the consumer has an obligation to notify the provider of electronic records of any change in the consumer's electronic mail address or other location to which the electronic records may be provided; and

(II) if the consumer withdraws consent, the consumer has the obligation to notify the provider to notify the provider of electronic records of the electronic mail address or other location to which the records may be provided; and

(B) the record is capable of review, retention, and printing by the recipient if accessed using the hardware and software specified in the statement under subparagraph (A)(ii) at the time of the consumer's consent; and

(C) if such statute, regulation, or other rule of law requires that a record be retained, that requirement shall be satisfied if such record complies with the requirements of subparagraphs (A) and (B) of subsection (c)(1).

At the end of section 101, add the following new subsections:

(d) **ABILITY TO CONTEST SIGNATURES AND CHARGES.**—Nothing in this section shall be construed to limit or otherwise affect the rights of any person to assert that an electronic signature is a forgery, is used without authority, or otherwise is invalid for reasons that would invalidate the effect of a signature in written form. The use or acceptance of an electronic record or electronic signature by a consumer shall not constitute a waiver of any substantive protections afforded consumers under the Consumer Credit Protection Act.

(e) **SCOPE.**—This Act is intended to clarify the legal status of electronic records and electronic signatures in the context of writing and signing requirements imposed by law. Nothing in this Act affects the content or timing of any disclosure required to be provided to any consumer under any statute, regulation, or other rule of law.

In section 102(c), strike “safety or health of an individual consumer” and insert “public health or safety of consumers”.

In section 104, add at the end the following new subsection:

(c) **ADDITIONAL STUDY OF DELIVERY.**—Within 18 months after the date of enactment of this Act, the Secretary of Commerce shall conduct an inquiry regarding the effectiveness of the delivery of electronic records to consumers using electronic mail as compared with delivery of written records via the United States Postal Service and private express mail services. The Secretary shall submit a report to the Congress regarding the results of such inquiry by the conclusion of such 18-month period.

2. **AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE DINGELL OF MICHIGAN, OR REPRESENTATIVE CONYERS OF MICHIGAN, OR A DESIGNEE, DEBATABLE FOR 30 MINUTES**

Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Millennium Digital Commerce Act”.

SEC. 2. FINDINGS.

The Congress makes the following findings:

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

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

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

(4) The Nation and the world stand at the beginning of a large scale transition to an information society which will require innovative legal and policy approaches, and therefore, States can serve the national interest by continuing their proven role as laboratories of innovation for quickly evolving areas of public policy, provided that States also adopt a consistent, reasonable national baseline to eliminate obsolete barriers to electronic commerce such as undue paper and pen requirements, and further, that any such innovation should not unduly burden inter-jurisdictional commerce.

(5) To the extent State laws or regulations do not provide a consistent, reasonable national baseline or in fact create an undue burden to interstate commerce in the important burgeoning area of electronic commerce, the national interest is best served by Federal preemption to the extent necessary to provide such consistent, reasonable national baseline or eliminate said burden, but that absent such lack of a consistent, reasonable national baseline or such undue burdens, the best legal system for electronic commerce will result from continuing experimentation by individual jurisdictions.

(6) With due regard to the fundamental need for a consistent national baseline, each jurisdiction that enacts such laws

should have the right to determine the need for any exceptions to protect consumers and maintain consistency with existing related bodies of law within a particular jurisdiction.

(7) Industry has developed several electronic signature technologies for use in electronic transactions, and the public policies of the United States should serve to promote a dynamic marketplace within which these technologies can compete. Consistent with this Act, States should permit the use and development of any authentication technologies that are appropriate as practicable as between private parties and in use with State agencies.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to permit and encourage the continued expansion of electronic commerce through the operation of free market forces rather than proscriptive governmental mandates and regulations;

(2) to promote public confidence in the validity, integrity and reliability of electronic commerce and online government under Federal law;

(3) to facilitate and promote electronic commerce by clarifying the legal status of electronic records and electronic signatures in the context of contract formation;

(4) to facilitate the ability of private parties engaged in interstate transactions to agree among themselves on the appropriate electronic signature technologies for their transactions; and

(5) to promote the development of a consistent national legal infrastructure necessary to support of electronic commerce at the Federal and State levels within areas of jurisdiction.

SEC. 4. DEFINITIONS.

In this Act:

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

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

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

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

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

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

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

(8) **UNIFORM ELECTRONIC TRANSACTIONS ACT.**—The term “Uniform Electronic Transactions Act” means the Uniform Electronic Transactions Act as provided to State legislatures by the National Conference of Commissioners on Uniform State Law in the form or any substantially similar variation.

SEC. 5. INTERSTATE CONTRACT CERTAINTY.

(a) **IN GENERAL.**—In any commercial transaction affecting interstate commerce, a contract may not be denied legal effect or enforceability solely because an electronic signature or electronic record was used in its formation.

(b) **METHODS.**—Parties to a transaction are permitted to determine the appropriate electronic signature technologies for their transaction, and the means of implementing such technologies.

(c) **PRESENTATION OF CONTRACTS.**—Notwithstanding subsection (a), if a law requires that a contract be in writing, the legal effect or enforceability of an electronic record of such contract shall be denied under such law, unless it is delivered to all parties to such contract in a form that—

- (1) can be retained by the parties for later reference; and
- (2) can be used to prove the terms of the agreement.

(d) **SPECIFIC EXCLUSIONS.**—The provisions of this section shall not apply to a statute, regulation, or other rule of law governing any of the following:

- (1) The Uniform Commercial Code, as in effect in a State, other than section 1–107 and 1–206, article 2, and article 2A.
- (2) Premarital agreements, marriage, adoption, divorce or other matters of family law.
- (3) Documents of title which are filed of record with a governmental unit until such time that a State or subdivision thereof chooses to accept filings electronically.
- (4) Residential landlord-tenant relationships.
- (5) The Uniform Health-Care Decisions Act as in effect in a State.

(e) **ELECTRONIC AGENTS.**—A contract relating to a commercial transaction affecting interstate commerce may not be denied legal effect or enforceability solely because its formation involved—

- (1) the interaction of electronic agents of the parties; or
- (2) the interaction of an electronic agent of a party and an individual who acts on that individual’s own behalf or as an agent, for another person.

(f) **INSURANCE.**—It is the specific intent of the Congress that this section apply to the business of insurance.

(g) **APPLICATION IN UETA STATES.**—This section does not apply in any State in which the Uniform Electronic Transactions Act is in effect.

SEC. 6. PRINCIPLES GOVERNING THE USE OF ELECTRONIC SIGNATURES IN INTERNATIONAL TRANSACTIONS.

To the extent practicable, the Federal Government shall observe the following principles in an international context to enable commercial electronic transaction:

- (1) Remove paper-based obstacles to electronic transactions by adopting relevant principles from the Model Law on Electronic Commerce adopted in 1996 by the United Nations Commission on International Trade Law (UNCITRAL).
- (2) Permit parties to a transaction 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.
- (3) Permit parties to a transaction to have the opportunity to prove in court or other proceedings that their authentication approaches and their transactions are valid.
- (4) Take a nondiscriminatory approach to electronic signatures and authentication methods from other jurisdictions.

SEC. 7. STUDY OF LEGAL AND REGULATORY BARRIERS TO ELECTRONIC COMMERCE.

(a) **BARRIERS.**—Each Federal agency shall, not later than 6 months after the date of enactment of this Act, 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. Such barriers include, but are not limited to, 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.

(b) **REPORT TO CONGRESS.**—The Secretary of Commerce, in consultation with the Director of the Office of Management and Budget, shall, 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.

(c) **CONSULTATION.**—In preparing the report required by this section, 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.

(d) INCLUDE FINDINGS IF NO RECOMMENDATIONS.—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, it shall include a finding or findings, including substantial reasons therefore, that such removal is impracticable or would be inconsistent with the implementation or enforcement of applicable laws.

