

same legal force as written signatures and contracts.

In concept, this change has broad support on both sides of the aisle and on both ends of Pennsylvania Avenue. This positive development would encourage electronic commercial activity and benefit both business and consumers.

Unfortunately, this bill goes beyond electronic signatures and contracts. It contains controversial provisions preempting State laws that require maintaining certain written records. It contains provisions opposed by consumer groups that would permit electronic notices and disclosures to be substituted for written notices. For these reasons, the bill failed to achieve the necessary two-thirds vote when it was considered earlier this month under suspension of the rules.

This restrictive rule we are now considering does make in order an amendment offered by the gentleman from Michigan (Mr. DINGELL), the gentleman from Michigan (Mr. CONYERS), the gentleman from New York (Mr. LAFALCE), and the gentleman from Missouri (Mr. GEPHARDT), which will remove the controversial provisions of the bill and leave much needed language dealing with electronic signatures and contracts.

The rule also makes in order a bipartisan amendment that contains a number of consumer protections. The House is not served by rules which restrict the amendment process on legislation so important to the Nation's commerce. However, the two amendments which are made in order will give Members the opportunities to make meaningful changes to the bill.

Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. LOFGREN).

(Ms. LOFGREN asked and was given permission to revise and extend his remarks.)

Ms. LOFGREN. Mr. Speaker, I am very pleased that the rule makes in order the amendment offered by the gentleman from Washington (Mr. INSLEE), along with the gentlewoman from California (Ms. ESHOO), myself, and several other individuals, which strengthens and I believe solves the consumer protection issues that were of concern to some Members.

Specifically, on the third page of the amendment, and I will quote, the amendment would provide that "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." I think that is about as broad as we can get in terms of making sure that consumer protection statutes are undisturbed by this electronic signature act.

It is my understanding that the chairman of the Committee on Commerce is disposed to favor this amendment, and I think that shows the bipartisan effort that has been underway to make sure that this electronic signa-

ture act does become law. The other important provision of the bill guarantees the consumers the right to opt into electronic records, and really an astoundingly broad provision that allows the consumer to withdraw his or her consent at any time.

So I think this is a light touch in terms of regulation, but there is a need for consistency and a general scheme for electronic commerce, as we all know.

I am hopeful that Members will read the language of the Inslee amendment, along with the underlying bill, so they can assure themselves, as I have been assured, that this is a fair measure that will promote e-commerce and will do no harm to other important issues. Please do read the amendment, instead of just listening to the arguments.

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

Mr. HASTINGS of Washington. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I just wanted to say very briefly that this is a bill that clearly moves us forward and recognizes e-trade and so forth. With that, I would urge the Members to support the rule and the underlying legislation.

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

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

#### GENERAL LEAVE

Mr. BLILEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous matter on H.R. 1714.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

#### ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

The SPEAKER pro tempore. Pursuant to House Resolution 366 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 1714.

The Chair designates the gentleman from Texas (Mr. BONILLA) as Chairman of the Committee of the Whole, and requests the gentleman from Washington (Mr. HASTINGS) to assume the chair temporarily.

□ 1226

#### IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1714) to facilitate the use of electronic records

and signatures in interstate or foreign commerce, with Mr. HASTINGS of Washington (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Virginia (Mr. BLILEY) and the gentleman from Michigan (Mr. DINGELL) each will control 30 minutes.

The Chair recognizes the gentleman from Virginia (Mr. BLILEY).

Mr. BLILEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, last Monday the Committee on Commerce brought H.R. 1714, the Electronic Signatures in Global and National Commerce Act, to the floor under suspension of the rules.

Unfortunately, H.R. 1714 fell just four short votes of passage. The Clinton administration and minority leadership of this body mounted an intense lobbying campaign against the bill. We were proud of the number of votes that we were able to achieve in support of the bill, and we return to the House floor this week with the identical bill that was considered last Monday.

We remain confident that H.R. 1714 is strong legislation that helps to facilitate e-commerce in the new economy. This bill is perhaps the most important pro-technology vote that this Congress will take. It should not fall prey to partisan battles.

The Committee on Commerce unanimously, Mr. Chairman, unanimously voted this bill out of the committee this summer with support from both sides of the aisle. Since that time, we have worked closely with the minority leadership of the committee to craft the additional consumer protection provisions that appear in the bill considered last week and remain in the bill today.

We believe those negotiations to be fair and worthwhile, and were disappointed to learn for the first time on the floor last week that the minority did not feel the same. These important new provisions offer consumers strong protection in the electronic world. They require consumers to opt in if they wish to receive their documents in electronic form.

Let me repeat, nothing, nothing in this bill requires consumers to receive documents electronically against their wishes. Further, the bill requires that all consumers must receive important notices that may affect health or safety in the traditional paper form. This includes notices of such as the termination of utility service, cancellation of health benefits or life insurance, and foreclosure or eviction from a residence.

I would like to take this opportunity to rebut some of the charges and unfounded attacks that were made by my colleagues across the aisle when this bill was brought to the floor last week.

We heard that under H.R. 1714, consumers would be forced to accept electronic documents, even if the consumer

did not have a computer or an e-mail account.

□ 1230

We also heard that 1714 will sweep away Federal and State consumer protection laws. These claims, Mr. Chairman, are completely false.

As I have said many times previously, consumers must have safety, security, and privacy on line or they will not accept this new technology. H.R. 1714 provides on-line consumers with a confident assurance that their on-line transactions will be secure and that they will continue to receive the same consumer protections as consumers purchasing a product at a local shopping mall.

We also heard, much to my surprise, claims that the process for considering H.R. 1714 was unfair. First, it was claimed that the bill had been substantially changed since the minority had last seen it. In fact, it was even charged that the consumer protections in the bill had been removed. This is simply untrue.

We provided the minority with a copy of the text of H.R. 1714 before it came to the floor, and with minor exceptions that strengthen consumer protections, it was identical to the bill that they had agreed to just days before. The only real change was that the minority leadership had called a meeting with a number of Committee on Commerce Democrats in which they were told to stop cooperating with the majority, so we had the instance of politics overriding substance.

Mr. Chairman, there were also charges that the bill was brought to the floor too quickly. Again, such a claim is false. H.R. 1714 was approved by the Committee on Commerce unanimously by voice vote on August 5. We filed our report on September 27. The bill was originally scheduled to come to the floor on October 18, but I asked it to be withdrawn so that we could continue to negotiate with the minority.

The bill brought to the floor on November 1 was the product of 2 weeks of negotiations with the minority. This can hardly be considered rushing legislation to the floor. Some have said that all that was needed was one more day of negotiations. To that I say we have given the minority 14 days of negotiations.

Any charges that the majority acted in bad faith are simply incorrect. I gave the minority every opportunity to provide input from before the bill was introduced to right up until the bill came to the floor. I think our negotiations were very successful. In fact, key consumer protections in the bill, Mr. Chairman, were the result of our negotiations with the minority.

Unfortunately, at the last minute the minority leadership decided they had to block this legislation. They had to keep Republicans from passing an important pro-technology bill that enjoys unanimous support, unanimous support in the technology community.

I would also like to touch on one more important consumer issue that has been little discussed until now. Electronic signature technologies provide consumers with much more assurance that their transactions and communications will take place in a safe, secure and private environment. The encryption capabilities that are used to protect such valuable signatures offer much greater protection than ever possible in the traditional paper world.

Electronic signatures provide a level of authentication that far surpasses the ink signature that has come to be the accepted standard. Moreover, H.R. 1714 makes it possible to have seamless and efficient processing of electronic signatures records. Electronic transactions have much less chance of human error, and provide for more reliable retention after the initial transaction takes place.

Critics have argued that this bill should not apply to records. In fact, they want to severely narrow the bill's scope to delete records. This would be a shame and I could not support it. Records are an important component in electronic commerce transactions. Consumers will benefit from the use of electronic records and we should provide the legal framework to allow their use and acceptance.

The world is moving towards a paperless society and we cannot sit back and ignore reality as some would like us to do. A proper course of action is to address records by adding appropriate consumer protections like we have done in H.R. 1714.

Mr. Chairman, the 105th Congress was credited with passing monumental legislation to help facilitate E-commerce. This vote is perhaps the most critical one that the 106th Congress will consider to continue the growth and success of the digital economy. If Members support the U.S. high-tech industry, they will vote "yes" on this bill. A vote in support of H.R. 1714 is a vote to support providing consumers with greater security in on-line transactions. It is a vote in support of allowing business to provide new and innovative services on line.

Mr. Chairman, I understand that an amendment will be offered today by a number of my colleagues, including the gentleman from Washington (Mr. INSLEE), the gentlewoman from California (Ms. ESHOO), the gentleman from Virginia (Mr. MORAN) and the gentlewoman from California (Ms. LOFGREN). This amendment further clarifies the important consumer protections that are included in this bill. I thank the gentleman from Washington (Mr. INSLEE) and his colleagues for their constructive work on this amendment and recognize that he and several other Members of his party have made valuable contributions to this process, instead of trying to undermine it.

Mr. Chairman, I will support this amendment and I ask that all Members of the House do the same. I urge my colleagues to rise above partisan politics and support H.R. 1714.

Mr. Chairman, in September, the Banking Committee raised with the Commerce Committee the need to make clear that the "the autonomy of parties" provision of the reported version of H.R. 1714 was not intended to limit the authority of the Federal banking agencies to impose and enforce minimum safety and soundness standards for the use of electronic signatures and records by entities they regulate. I want to assure the Banking Committee today that the language in Section 103(a)(4) of the modified text before us this afternoon was drafted so as to accommodate those concerns. Nothing in this bill should be interpreted to interfere with the authority of federal banking agencies to impose and enforce minimum safety and soundness standards for the use of electronic signatures and records by entities they regulate.

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

Mr. DINGELL. Mr. Chairman, I yield myself 6 minutes.

Mr. Chairman, I want to express considerable affection and respect for the gentleman from Virginia (Mr. BLILEY), my good friend and the chairman of the committee. But I want to observe that he is in error on a number of important points.

First of all, we did have 2 weeks of negotiation and we were making good progress. Second of all, the gentleman from Virginia terminated the discussions and brought the bill to the floor without completing the negotiations. I would observe we were making good progress. I would observe we could have made further good progress and we could have a bill which could pass unanimously. Regrettably, we do not because there are important consumer protections which are missing from this bill.

The haste is charged up to partisanship. Well, that might perhaps tell more about the author of that statement than it does about anybody else. In point in fact, our concern here is protecting consumers and I will address that question as I go forward in my statement.

Mr. Chairman, I also would observe something else and that is that there is no magic to completing this legislation now, nor is there magic in completing it within 14 days. Completing legislation well in a fashion which serves the interests of all parties, those who would engage in electronic commerce and those who would be consumers and customers of those who engage in electronic commerce, is in the best traditions of this institution.

Now, Mr. Chairman, I would observe something else. The future of the American economy depends upon our making this new form of conducting business a success, one which can be accepted by all and which can be regarded as being fair indeed to all. Unfortunately, the bill before us contains major flaws that harm consumers, and I regret that the gentleman from Virginia did not give us more time in which to complete those matters.

Regrettably, I therefore must oppose the bill in its current form. The gentleman from Virginia (Mr. BLILEY) did

work closely with the minority to correct some of the deficiencies. I regret, however, that gaps remain, some of which are indeed serious.

It is interesting to note that many of the companies recommending and representing the high-tech community do not oppose the consumer protections which we think should be included. Regrettably, a small but nevertheless important minority of business interests continues to oppose consumer protections in any form. Those are not, regrettably, people in the electronic commerce business. Those are simply people in the financial interests of this country which want to have it all their way, and I can sympathize with my friend from Virginia in dealing with such an obdurate lot.

An amendment today which will be offered will seek to improve the legislation, and I commend the authors of the legislation, the gentlewoman from California (Ms. ESHOO), the gentleman from Washington (Mr. INSLEE), and others. Unfortunately, the amendment would improve certain aspects of the bill but, unfortunately, it still falls short.

The Bliley bill, even with the Inslee amendment, would harm consumers in several ways. First, it would not require any notice, conspicuous or otherwise, that consumers are entitled to receive certain records in writing under existing law. Before choosing to receive these documents electronically, I believe consumers should be given specific notice as to what existing rights they are giving up. Regrettably, the Bliley bill leaves consumers in the dark on this matter.

Secondly, the opt-in provision as currently structured in the bill before us would allow all sorts of dissimilar records to be bundled together giving, at best, confusion to the consumers and would require them to essentially take an all-or-nothing approach in which records they agree to receive electronically.

Clearly, there are records and records, and clearly they should and can be easily treated differently by the consumers and the purchasers.

In effect, an on-line merchant could require consumers to take it or leave it, thereby defeating the will of the parties, and especially the consumers, to receive some records electronically, but not others that they would prefer to receive in a traditional form.

Finally, the bill would allow merchants to vitiate contracts entirely if consumers do not agree to opt in to receiving records electronically. That is not an option. In the law it is called a "contract of adhesion" and in a word it is a contract which is not equal and in which the parties are not equal parties to a contract.

Clearly, if we are seeking to improve the attitude of consumers and to earn their trust, this is not the way that the matter should be handled. The administration shares these concerns and strongly supports the substitute which

I will offer today with the gentleman from Missouri (Mr. GEPHARDT), the gentleman from Michigan (Mr. CONYERS) and the gentleman from New York (Mr. LAFALCE).

The administration has additional concerns, as do I, concerning the effect of this bill in on-line transactions. For these reasons I urge a "no" vote on H.R. 1714 and urge my colleagues to support the substitute which has been made in order by the Committee on Rules.

The substitute would take an important first step, fully recognizing the validity of electronic signatures in contract law. That is good. The legislation will give Congress the additional time to explore the effect on consumers of the new electronic contract laws to the myriad of important records and documents that accompany these agreements. It also would avoid stamping on the actions of legislatures in having created and in addressing contract problems, as they have traditionally done under the historic laws of the United States, wherein the matters of ordinary commerce are dealt with by the several States and dealt with well, indeed, under things like the Uniform Commercial Code.

Mr. Chairman, I see no reason for supplanting the knowledge, reason, and expertise and the traditions which have vested in the legislatures the ability to address these questions by adding a whole new array of changes which may or may not be in the consumers' interest and may not be in the interest of business in the United States and which clearly are opposed by consumer groups and by the administration.

Mr. Chairman, I ask unanimous consent to yield 15 minutes of my time to the distinguished gentleman from Michigan (Mr. CONYERS) to control as he sees fit.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. DINGELL. Mr. Chairman, I reserve the balance of my time.

Mr. BLILEY. Mr. Chairman, I yield 3½ minutes to the gentleman from Louisiana (Mr. TAUZIN).

Mr. TAUZIN. Mr. Chairman, I thank the gentleman from Virginia (Mr. BLILEY), chairman of the Committee on Commerce, for yielding me this time. I particularly want to commend him for this legislative effort and, like him, I want to thank particularly the gentlewoman from California (Ms. ESHOO) of our committee who has done such great work over the years in helping to develop an electronic signature bill for the E-commerce age, and the gentleman from Washington (Mr. INSLEE) and others for working with the chairman of the committee in offering a very helpful amendment that we are going to hear about later today.

Mr. Chairman, let me first say that this bill obviously has the support of an incredible array of business groups, including the United States Chamber,

which is going to score this as one of our major votes this year because business sees this, of course, as a major step forward in the development of electronic commerce for our country and our country's economy.

But I want to speak more importantly about the impact of this E-SIGN bill on consumers. I think we all agree that consumers are the backbone of the electronic commerce model. If consumers do not feel comfortable, if they do not feel at ease with this new technology, then they are going to lose confidence in the growing electronic commerce of our country and the world, and that is certainly a result no one wants.

I understand, Mr. Chairman, that over 10 million Americans are going to join in the electronic commerce revolution this Christmas and make purchases for their Christmas gifts over the Internet.

□ 1245

But as more and more consumers come to use the Internet and the electronic commerce, this E-SIGN bill is going to become more and more important. This bill strikes, I think, the right balance. It recognizes that we are moving toward electronic transactions and then allows many types of transactions to take place over the Internet while, at the same time, it continues to provide the protections that consumers have been accustomed to in the world of paper and written checks and contracts, and in the analog world itself.

H.R. 1714, which I was very pleased to join the gentleman from Virginia (Chairman BLILEY) in sponsoring in its onset, recognizes that there are important State and Federal laws that protect consumers today such as the requirement that consumers be provided copies of important documents such as warrants, notices, and disclosures.

This bill recognizes and retains these important consumer protection laws and develops a system whereby consumers can choose to accept electronic versions of the documents and then receive them electronically. Understand, consumers choose to do so.

It furthermore provides that consumers must separately and affirmatively opt in and consent to receiving important documents electronically and then must be assured that those documents can be retained for future use. That is why this bill has the right balance, good for business, good for consumers.

Let me say a word in opposition to the substitute that we will see. The substitute would apply only to contracts.

Let me give an example of what the substitute will miss. Today we spend almost \$4 billion handling paper checks with an electronic commerce world; \$4 billion could be saved for consumers if, in fact, we could literally bank electronically without the necessity of all this paper. Imagine all the weight this paper has in the transport industries as

cargo on planes. If one eliminates all that paper in our lives and in the shipment and cargoes and transportation, those kind of savings are ours if we reject the substitute and stick with the main bill.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would like to begin by thanking the gentleman from Michigan (Mr. DINGELL), dean of the House and the ranking member of the Committee on Commerce, for sharing the time in general debate with the Committee on the Judiciary that I represent on this side.

Now, Mr. Chairman, we all know there are millions of Internet users and millions of consumers, and that this number increases daily. It has been said here earlier, electronic commerce is the future of our economy. As more and more people buy and sell merchandise on-line, we find that e-commerce has made life easier for people as well as improved our overall economy by making shopping and other commercial transactions far more convenient.

I want to enact Federal legislation that would facilitate electronic signatures and make e-commerce more robust. We need to ensure that contracts are not denied validity that they otherwise would have simply because they are in electronic form or signed electronically.

Now, if the measure before us did this without doing violence to our most cherished and long-fought consumer protections, I would be supporting it without reservation. Now, especially with the recent decision in the Microsoft case, which suggests that a high-tech giant may not always be friendly to consumers, it makes it even more important than ever that consumers have confidence in the Internet and that they believe it is friendly and a friendly place to do business. This is critical to the future of this whole industry.

It is only when consumers have confidence in on-line transactions that it will become the vibrant marketplace that it can be. The high-tech community should not let itself be hijacked by security firms or banks or the insurance industry whose history with respect to consumers has not always been what we would wish it to be. The on-line community should be in the forefront of consumer protection. Instead, they are being dragged backwards by special interests.

That is where I hope that I may be able to be of some small help in this debate, because this measure, as it is written, goes far beyond the needs of the vast majority of on-line businesses. H.R. 1714 has become an 11th hour grab bag for our special interests to hurt consumers by undermining critical laws that require notice of rights and that prevent unscrupulous business people, of which, unfortunately, there are some, from cheating unsuspecting customers.

Because of the special interests overreaching, what started as an

uncontroversial bill to validate electronic signatures and contracts has turned into a battle over the electronic records of every type imaginable. Let us try to rescue this measure from that kind of a result.

So for this reason, instead of considering a bill that should be a win-win situation, both for consumers and e-commerce, we are now being pressured into voting on a bill that pits the opportunities of one against the rights of the other.

It is, therefore, no surprise that the bill is opposed by our administration. It is opposed by consumer groups. It is opposed by the National Conference of State Legislatures and the United Automobile Workers and many others.

So what we have here is, unfortunately, a very good idea that has attached to it provisions that undermine consumer protection laws that would require notice, warranties, and disclosures to be in writing because it permits consumers to unwittingly click away many of these rights.

For example, critical notices regarding the cancellation or change in terms of insurance agreements or a change in the interest rate or the service or the change of a servicer of a mortgage, of recall notices, and other warranty information could be sent electronically or posted on a Web site regardless of whether the person owns a computer, which it may not come as news to you, many people do not, or whether the consumer has an e-mail account, which they may not, or whether they know how to navigate the World Wide Web even if they have the technology, some of which do not.

Furthermore, this measure stands for the proposition that the States somehow do not have the ability to enact their own electronic commerce laws or to reinstate many additional consumer protections.

So rather than respecting the tradition in our country of hundreds of years that reserves contract law to the States, the bill says that the States, that they may only reenact supplemental consumer legislation if it fits into a narrowly described category.

So far, thus, even if a State wanted to maintain its protections against fraudulent or deceptive practices and automobile sales, for example, the Federal Government would in effect tell the State that it cannot do so.

So for these and other reasons, we have created, along with the gentleman from Michigan (Mr. DINGELL) and the other Members, a substitute that represents the bipartisan language agreed on by Members of the other body, Members, Senator ABRAHAM and Senator LEAHY, that satisfies the needs of the high-tech community which we laud without sacrificing consumers in the process.

So I urge that my colleagues reserve their support for this substitute.

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

Mr. DINGELL. Mr. Chairman, I reserve the balance of my time.

Mr. BLILEY. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia (Mr. DAVIS) in strong support of this legislation.

(Mr. DAVIS of Virginia asked and was given permission to revise and extend his remarks.)

Mr. DAVIS of Virginia. Mr. Chairman, I am proud to be an original cosponsor of this legislation and also familiar with the need to provide legal certainty to electronic signatures and electronic records. That is why I eagerly cosponsored this legislation, because I think it is time for Congress to take positive, not regulatory, steps to help promote growth and development of electronic commerce.

Late last week, we were surprised by the minority leadership. They must have decided that appearing to oppose high-technology legislation was not the political stance, so they decided to introduce their own electronic signature bill, H.R. 3220, which we will be considering later today as a substitute amendment.

Unfortunately, that legislation falls way short of what is needed. The appearance of supporting technology legislation is not enough. There has to be substance behind that appearance. I believe that H.R. 3220 falls short.

Last week on the floor, I spoke at length about the important consumer protections contained in this legislation, H.R. 1714, and tried to rebut some of the claims that this was bad for consumers. I would like to briefly touch on some of those points.

First, consumers are absolutely free to choose or not to choose to enter into an electronic transaction. Nothing requires any party to use or accept electronic records or electronic signatures. The bill simply offers consumers the option to engage in electronic transactions. If a consumer does choose to conduct an on-line transaction, that consumer is protected by the underlying Federal or State laws governing that transaction.

If a law requires that a notice or a disclosure be made available in writing to a consumer, then those traditional writings must continue to be delivered to the consumer. Nothing in this bill, nothing, will nullify such existing State consumer protection laws.

Let me reiterate. Under H.R. 1714, consumers must be provided with important notices, disclosures, or other documents as they are entitled to receive under the current law.

Before a consumer can receive an electronic copy of an important document, such as a warranty or a disclosure, a consumer must separately and affirmatively consent to receive such a document electronically. That is, a consumer must specifically approve of receiving electronic documents and that portion of a contractor agreement telling a consumer what documents he or she will receive electronically.

I urge my colleagues to support this legislation. The companies and manufacturers that use electronic technology, along with on-line users, need this legislation.

Mr. DINGELL. Mr. Chairman, may I inquire of the time remaining.

The CHAIRMAN. The gentleman from Virginia (Mr. BLILEY) has 15½ minutes remaining. The gentleman from Michigan (Mr. CONYERS) has 7½ minutes remaining. The gentleman from Michigan (Mr. DINGELL) has 9 minutes remaining.

Mr. DINGELL. Mr. Chairman, I yield 2 minutes to the distinguished gentlewoman from California (Ms. ESHOO).

Ms. ESHOO. Mr. Chairman, I thank the gentleman from Michigan, the distinguished ranking member of the House Committee on Commerce, for granting me the 2 minutes, especially since we hold opposing views on this. But I sincerely appreciate it.

Mr. Chairman, I rise in support of H.R. 1714, and I urge my colleagues to do support its passage.

I would like to thank the gentleman from Virginia (Mr. BLILEY), the distinguished chairman of the full committee, for his work on the legislation and for all of my colleagues for their interest in this very important public policy area.

As many of my colleagues know, I have a legislative history on the issue of electronic signatures in the Congress, having introduced the first piece of legislation addressing this issue in the last Congress and succeeding in passing it into law. That bill required Federal agencies to make government forms available on-line and accept a person's electronic signature on these forms.

In this Congress, I introduced a bill to expand the legality of electronic signatures to the private sector. Today, we are going to discuss a very important amendment to the bill of the gentleman from Virginia (Mr. BLILEY), which I believe improves the bill as it relates to consumer protections.

The bill includes technical neutrality, and it grants to States who have not yet adopted legislation in this area this piece of legislation; and if they so wish to come up with more stringent legislation in a given period of time, they then can do so.

□ 1300

I believe that the Congress must ensure that no roadblocks exist which would stymie the growth of e-commerce. So I think the Congress must act to bridge the gap between now and the time when every State has passed an updated form of the Uniform State Law Code. The projections for the growth of e-commerce and its effect on our economy are just simply too overwhelming. Business to business e-commerce was nearly five times greater than e-commerce in the consumer market, reaching \$43 billion just last year.

This bill ensures that our laws do not impede this staggering growth, and

with the adoption of the amendment that we are going to discuss, and which I am proud to offer with my colleague, the gentleman from Washington (Mr. INSLEE), and several other Democrats, the bill takes a major step in guaranteeing that strong consumer protections can coexist with transactions in cyberspace. I think that we can do both, Mr. Chairman, and I am proud to support this bill, H.R. 1714, and urge all of my colleagues to support it.

Mr. BLILEY. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio (Mr. OXLEY).

(Mr. OXLEY asked and was given permission to revise and extend his remarks.)

Mr. OXLEY. Mr. Chairman, I rise in strong support of H.R. 1714.

Last Thursday, Mr. Chairman, the House passed legislation to modernize the laws that govern our financial services industry. The laws we changed were more than 60 years old and had been bypassed in recent years by the marketplace. Congress was in many ways just trying to catch up with what had already happened. The lessons we learned in that debate I think are quite clear. If Congress cannot respond quickly to the changes in the marketplace and update the applicable laws, the inevitable result will be more harm than good. The longer we wait to act, the more entrenched the various factions will become, making it more difficult for legislation with each passing day.

We do not need another web of inconsistent State laws and Federal regulations that will leave consumers and businesses guessing whether their contract is valid or not just because it was conducted on line. Let us understand that the world is changing and the Congress needs to change the laws to reflect those inevitable changes. Electronic commerce is growing exponentially and will continue to change the way we conduct our business. Given the opportunity before us to enhance electronic commerce in the same manner the marketplace has, it would be foolish to a large extent not to provide the legal certainty that will benefit consumers and facilitate commerce. Our laws need to keep up with the significant technological developments.

This bill, sponsored by the chairman of the Committee on Commerce, the gentleman from Virginia (Mr. BLILEY), is designed to bring legal certainty to electronic transactions. Legal certainty. The parties need to understand that when they sign that contract there is a legal binding obligation on both of them, and the handwritten signature more and more becomes less and less significant.

Mr. Chairman, this is another essential step necessary for our economy to take advantage of the efficiencies of electronic commerce. This is the same exact legislation most of us supported just last week. I will also be supporting the amendment by our friend, the gentleman from Washington (Mr. INSLEE),

who will be offering that recordkeeping provision and clarifying the record-keeping provisions of the bill.

Mr. Chairman, this legislation is good public policy and it continues a strong tradition by the Committee on Commerce of enacting legislation that keeps up with the electronic marketplace that is changing so dramatically. I urge strong support of this legislation.

Mr. CONYERS. Mr. Chairman, I yield 2 minutes to the gentlewoman from California (Ms. LOFGREN), a member of the Committee on the Judiciary.

Ms. LOFGREN. Mr. Chairman, I am pleased to appear today in favor of 1714, especially after the Inslee amendment is adopted. I would like to say that some of the tinge of rhetoric that approaches partisanship, I think, is unfortunate.

I am privileged to serve with the gentleman from Michigan (Mr. CONYERS), the ranking member, who really has played such a leadership role in so many high-tech issues this year, including the patent reform bill and the Y2K reform bill. I mean we are here because we are dealing with difficult times, a transition from the analog world to the digital world, and I think that as we do that, we have to create a transition rule for the parts of the country that are not where Silicon Valley is yet.

In doing so, I think it is important that we establish some principles. I heard the distinguished Member from Michigan mention contracts of adhesion, and clearly contracts of adhesion violate contract law. I think it needs to be emphasized that nothing in this bill amends contract law other than the means of transmission. The medium for transmission does not change the substance of the law. A contract is a contract is a contract.

We recognize that because we are in a transition area there are certain things that are too high risk to have fully in electronic commerce in this transition period, including foreclosures of real property and the like, that are outlined in the bill of the gentleman from Virginia (Mr. BLILEY), but it is important that we take a step forward to promote electronic commerce.

How do I do it? We bought our last car on line. And when I get the notices, I just click and file those notices under my commercial receipts file in my e-mail account. When I go to amazon.com, and they send me the notices of where my books are on the way, I file those in a pending file. Some day, all of us will do that.

For now, this bill, with the amendment, will allow all of America to move forward.

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

Mr. FOSSELLA. Mr. Chairman, I thank the chairman of the Committee on Commerce, the gentleman from Virginia (Mr. BLILEY), for yielding me this

time, and I compliment him for his efforts and his leadership.

The American people want action, they just do not want words. And when we add this to the Telecommunications Act of 1996, and as was mentioned earlier the Financial Modernization Act that was passed overwhelmingly by the House and Senate last week, I think the gentleman from Virginia (Mr. BLILEY) deserves a lot of credit from this Congress because, ultimately, it means good things for the American consumers, more jobs, and coming out on the side of growth, such as the case with the Electronic Signatures in Global and National Commerce Act.

I rise today in support of H.R. 1714, the Electronic Signatures in Global and National Commerce Act. As of today, the success of electronic commerce has led 44 States to enact laws to provide recognition for electronic signatures and records. However, all 44 statutes are different and many only recognize the use of electronic signatures and records in governmental transactions. In today's global economy, a certain level of uniformity is necessary in order to conduct the business over State and international borders. That is common sense.

While electronic commerce, in theory, represents the perfect model of interstate commerce, these many conflicting standards lead to legal uncertainty, to the point where it becomes impossible to effectively use electronic signatures in the digital arena.

H.R. 1714 creates a uniform nationwide legal standard for the use and acceptance of electronic signatures and electronic records in interstate commerce. It allows parties the freedom to set their own rules for using electronic signatures and electronic records in interstate commerce. Any contracts or agreements developed electronically by the agreeing parties have full legal effect.

H.R. 1714 furthermore recognizes the progress that States have already made in the area of electronic signatures and allows them to pass any statute that complies with the basic principles of this Federal bill.

Mr. Chairman, I urge my colleagues to join me in supporting this important bill. It is common sense and it puts Congress on the side of facilitating and encouraging economic growth instead of standing in its way.

Mr. CONYERS. Mr. Chairman, I yield 4 minutes to the gentleman from California (Mr. BERMAN).

Mr. BERMAN. Mr. Chairman, I think the entire body wholly supports and we want to use this opportunity to encourage the growth of the Internet and e-commerce, but moving to a digital world, moving to the world of the Internet, it does not follow that every principle of Federalism and every principle of consumer protection should be wiped out, obviated and extinguished in the name of advancing e-commerce and e-contracts and e-signatures.

Eliminating hard fought laws, both State and Federal, that make sure that

a consumer has the information that they need to make informed decisions takes us back to the age of scams and frauds, but this time in the on-line environment. We have been so successful in developing a legal environment that gives consumers' rights and assures that outlaw merchants are dealt with, it is not necessary and it benefits no one for the Internet to become the place for unscrupulous businesses to flourish. My fear is that H.R. 1714, the underlying bill sponsored by the gentleman from Virginia (Mr. BLILEY), would lead us down that path.

The high-tech industries are seeking an immediate Federal law validating electronic contract formation to help pave the way for the growth of electronic commerce until States can adopt a recently promulgated Uniform Electronic Transaction Act. We need to provide that help, but H.R. 1714 goes way, way beyond this need. It satisfies a much broader, much more controversial, long-range desire of financial services and insurance industries to accomplish the goal of the financial services.

H.R. 1714 seriously undercuts hard fought consumer protections as well as both Federal and State regulatory requirements. The bill threatens a State's ability to adopt a uniform State law with a permanent preemption provision.

The National Conference of State Legislatures, in their letter of November 1, opposes H.R. 1714, stating that the legislation will eviscerate consumer protections and impede the States' insurance securities and banking agencies in their regulatory oversight of the financial services industry. This from the State legislatures.

In a letter we received today, the National Consumers Law Center, the United Auto Workers, and the Consumers Union expressed their opposition for the underlying bill, and even with the Inslee amendment, and their support for the Dingell-Conyers-LaFalce-Gephardt substitute.

States and the Federal Government should have the opportunity to review their writing requirements and determine which can be done away with and which standards should apply in each specific situation where electronic records may be substituted. A reckless uninformed broad-brush approach, such as we see in H.R. 1714, is offensive to this notion. We cannot blindly wipe away State and Federal writing requirements and then provide a narrow patchwork of exceptions and opportunities for only States, not the Federal Government, not Federal regulatory agencies, to reestablish requirements where needed after some disastrous systemic failure.

The substitute amendment offered by the ranking member, the gentleman from Michigan (Mr. DINGELL) and his colleagues, provides the needed uniformity as to contract formation. It gives the boost that is needed for e-commerce without interfering with existing laws that address writing re-

quirements for important notices, disclosures, or retained records necessary for regulatory or supervisory government activities.

This amendment, the Dingell amendment, is the very same language as the bipartisan compromise reached by Mr. ABRAHAM and Mr. LEAHY in the Senate. If H.R. 1714 were to pass the House, it would never see the light of the day in the Senate, it would be vetoed by the administration, and it would mark us as supporting an anti-consumer bill.

I urge opposition to the bill and support for the Dingell-Conyers amendment.

Mr. BLILEY. Mr. Chairman, I yield 3 minutes to the gentleman from Roanoke, Virginia (Mr. GOODLATTE).

Mr. GOODLATTE. Mr. Chairman, I want to thank the gentleman for yielding me this time, and I especially want to thank the gentleman from Virginia, the chairman of the Committee on Commerce, for his leadership on this issue. He has been at the forefront of this issue throughout this Congress, and this is vitally important legislation that I urge my colleagues to support and to oppose any substitutes or any alternatives.

The previous gentleman made reference to protecting consumers. In my opinion, this legislation does more to help consumers in the transactions that they participate in than anything that we could do with relation to making sure that they get prompt and adequate disclosure about contracts they sign.

□ 1315

None of the current Federal or State laws are abrogated in terms of notices that go to consumers regarding particular transactions that they participate in. They simply will be allowed to receive those notices electronically now. And that has a number of very positive benefits.

First, it is faster. If there is a change in circumstances, if there is a problem with a product, a defect, they are going to get that notice much more quickly electronically than they will get it through the mail.

Secondly, it is cheaper. Some types of financial transactions are 100 times more costly to conduct in person than they are if they can conduct the transaction electronically. And if they are dealing with somebody on the other side of the country, the delay in being able to participate in that and close that contract, because we do not have a nationally recognized standard for accepting digital signatures, is very costly to consumers as well as to other people. Business people engage in business-to-business transactions, as well.

But probably the most important reason why this is more helpful to consumers than current law is that the information they get will be better; it will be more comprehensive.

If they have a notice about a particular disclosure that is required under the law for a real estate closing

or a bank loan, whatever the case might be, and they do not understand a particular word in that notice, under electronically transmitted information, the bank or the other company providing the information can put a whole host of other information online. They can click on a particular word in that notice and get an explanation of it, a definition of the word, if they do not understand what it means in that particular context.

So from the standpoint of the consumer, this is vitally important.

Secondly, from the standpoint of uniformity, of having one national area of commerce to be able to conduct business across State lines without the difficulties that come from a morass of, a variety of different laws from different States, that is vitally important.

Now, instead of being only able to buy from people nearby them all governed by the same State law, people are now empowered to buy things by auction or other ways on-line from a whole host of different ways.

I urge Members to reach across the line. We have had some differences on this bill. Let us have a strong bipartisan vote. It had almost a two-thirds vote when it came up under suspension. Let us give it a majority here today.

Mr. DINGELL. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Washington State (Mr. INSLEE).

Mr. INSLEE. Mr. Chairman, I rise in support of H.R. 1714 after completion of our amendment.

I want to thank the gentleman from Michigan (Mr. DINGELL), the gentleman from Michigan (Mr. CONYERS), and the gentleman from New York (Mr. LA-FALCE) for their guidance and long-time leadership on consumers issues. They have helped me craft this amendment in a way that I think will help consumers.

I want to thank the gentleman from Virginia (Chairman BLILEY) for his courtesy in trying to put this together.

Mr. Chairman, I want to tell my colleagues that I believe we have a product, after completion of our amendment, that is pro-consumer. I will tell my colleagues two reasons. Number one, this is a consumer freedom bill. It gives consumers a new freedom and the freedom to be allowed to receive information and complete transactions electronically, a right, a freedom that will remain theirs and theirs alone. Only consumers will have the prerogative to decide whether or not transactions are electronic.

Secondly, Mr. Chairman, I want to make abundantly clear throughout this debate, nothing in my amendment or the bill, nothing, not one word, will remove one single consumer protection to receive a notice of any law in this country State, Federal, or municipal. Look at page 3 of our amendment. Nothing will remove the right to get this notice.

All it does is it changes from papyrus or lambskin to electronic at the consumer's request.

Mr. BLILEY. Mr. Chairman, how much time do we have remaining?

The CHAIRMAN pro tempore (Mr. MILLER of Florida). The gentleman from Virginia (Mr. BLILEY) has 8 minutes remaining. The gentleman from Michigan (Mr. CONYERS) has 1½ minutes remaining. The gentleman from Michigan (Mr. DINGELL) has 6 minutes remaining.

Mr. BLILEY. Mr. Chairman, I reserve the balance of my time.

Mr. DINGELL. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Minnesota (Mr. VENTO).

Mr. VENTO. Mr. Chairman, I thank the distinguished gentleman from Michigan (Mr. DINGELL) for yielding me the time.

Mr. Chairman, I rise in opposition to this bill. I would have opposed the rule had I been here and requested a rollcall vote. The fact of the matter is, late in the session, first this is attempted to be passed on suspension of the rules. It has been a moving target for the last 3 weeks in terms of how this bill can be sold to the Members of this body.

I think any discussion or evaluation of this measure yields more and more problems that are inherent in the bill. The fundamental bill in terms of electronic signatures, as has been pointed out by some of my other colleagues, probably could have been passed with near unanimous support in this body.

The fact is that this bill does not just deal with electronic signature but goes on to invade a plethora of both State and national laws which are at the heart, basically, of financial transactions and consumer protection, which have received the deliberate judgment of this Congress for decades and, I trust, that of legislatures across this country.

It fundamentally invalidates any State law and a host of Federal laws that are inconsistent with the provisions of this bill. It permits consumers simply on the assumption that they understand what is in the disclosure documents and records to dispense with them and to receive them electronically.

I would just suggest that the efforts to date to try and repair this by virtue of accepting something like the Inslee amendment simply sugarcoats the end result. The end result will be the same.

I appreciate the effort of the gentleman to try and protect consumers. But, in the end, I think that that proposal may make something more palatable that is indigestible in terms of what goes down.

This bill fundamentally is an over-reach. It sunsets all of these State laws with the right for States to come back and reenact them.

Well, we all know the host of special interest groups that are going to be there waiting to oppose that both at the Federal and State level such enactment. It just is breathtaking. And it is dumping and reneging on consumer laws that exist and protect individuals.

Mr. Chairman, I rise today in support of the amendment, and against the underlying legis-

lation. While I favor an implementation of the use of electronic signatures, this measure sets a policy path of electronic commerce and computer dependence, and strips key federal and consumer safeguards and protections from transactions.

I have deep reservations about this legislation for reasons which I brought forth on the floor last week. One specific concern which I raised at that time was that H.R. 1714 completely undermines protections afforded by laws and regulations such as the Consumer Credit Protection Act, Truth in Saving, the Real Estate Settlement Procedures Act and other key consumer laws such as the Magnuson Moss Act, which is the federal law requiring basic information about the extent and limitations of warranties to consumers.

I requested to offer an amendment last night at rules which would add these protections to the provisions excluded in the bill, so that these laws would not be overridden. Unfortunately, this amendment was not made in order by the Rules Committee. By preserving, not preempting the requirements of these laws that afford consumers key information at the right time before, during and after transactions are consummated, the Vento amendment would have assured that essential information required by federal laws and regulations would not be made electronically when a consumer might not have a computer, might have a broken computer or printer, might acquire a new e-mail address or service provider, or might not clearly understand the importance of notifications or disclosures that they assent to obtaining electronic electronically, never to read or know if they missed it. Without these protections, populations like our seniors who are already at a technological disadvantage will be rendered even more vulnerable.

I also offered an amendment which would have added a new section providing privacy protections to this legislation. This too was rejected by the Rules Committee. Digital signatures will make it easier for consumers to buy goods and services directly from the comfort of their own homes, and allows businesses an unprecedented opportunity to reach more customers. This expansion of e-Commerce, however, should not come at the expense of allowing for the misuse or exploitation of a wide range of consumer data. This amendment would have allowed consumers to regain some control over their own personal information without unnecessarily hindering Internet services which collect information for legitimate purposes, and replace the self regulated environment that is being promoted today—without standards or compliance and no enforcement. It is unworkable and unacceptable.

Specifically, my amendment would have disallowed any Internet service from passing on information to a third party unless clear and conspicuous notice is provided and consumers are allowed an opportunity to direct that the information not be shared. In addition, consumers would be able to require a copy of the information compiled about them at no charge, and allowed to review, verify or correct such data. Internet services would still be able to share information with their affiliates, allowing them to perform necessary transactional services and functions. Most importantly, this amendment would have ensured that those businesses which offer services or products over the Internet take affirmative responsibility to maintain the integrity of the information being accumulated.



Recently, the House included privacy provisions into the Financial Services Modernization legislation. This was a step forward in the arena of providing safeguards for consumer data. However, we are all well aware that concerns regarding the protection of consumer data go far beyond the realm of the financial world. It is important that we in Congress support a clear and consistent message when dealing with the issue of information collection and use. This amendment would expand privacy regulations to ensure that consumers as well as businesses are able to utilize technology to its fullest potential without infringing on the basic right to privacy.

Some of my other concerns have been addressed by the Dingell/Conyers/LaFalce/Gephardt amendment, which I have cosponsored. This substitute amendment recognizes that in order to be successful, e-Commerce can not pit high-tech business against consumers. Additionally, it deals with another problem which I raised last week, by not undermining State rights and judgment in dealing with issues such as what records must be retained in paper forms and when and how consumers must be notified about changing circumstances or enforcement of key contract terms. Additionally, it provides that a contract may not be denied legal effect or enforceability solely because an electronic signature or electronic record was used in its formation. These are common sense measures which ensure that consumers are not the unsuspecting victims in the excitement to embrace technological advances in commercial dealings.

In conclusion, I feel that the House should address the issue of electronic signatures in its totality, and H.R. 1714 fails to address several areas which should be further improved. The consequences of moving too quickly on the implementation of legislation which will expand e-Commerce can not be underestimated. The law of unintended consequences should be avoided by not over reaching with the underlying measure. With the vast potential that the Internet promises, it is vital that we consider the interests and needs of businesses, the industry and consumers equally, so that everyone can benefit from this venture.

Mr. BLILEY. Mr. Chairman, I yield 3 minutes to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Mr. Chairman, we have heard a lot about the digital divide. And certainly one exists between those school systems and communities who can afford to be wired and those who cannot.

But there is also a digital divide in the Congress. It is between those who understand the new economy and what constructive role we can play in it and those who are afraid of it and feel the need to protect us from it.

The people who are using the Internet with their computers around the country tend to be more confident of themselves than we are of them and their ability to use the New Economy to their advantage. They, in many ways, are more knowledgeable than we are about the role that computers can play in making their lives easier and more productive. They certainly want to be empowered to have the choice of whether or not they will use their com-

puter to maximum advantage because they are far more interested in opportunity than in security.

In fact, when they were recently asked in a survey what was more important to them, opportunity or security, they saw opportunity overwhelmingly as more important to them. They wanted to be able to protect themselves, certainly, but they feel empowered to do that on their own.

The fact is that the consumers that will be affected by this bill will be empowered, will be advantaged by this legislation. It is not just companies who will be able to operate more efficiently. It is consumers who want the ability to use their computers, to use the Internet in the most efficient and effective and legal, manner possible.

The fact is that in this bill consumers who will be using e-commerce, digitized signatures, have the opportunity to affirmatively and separately consent prior to receiving their notices electronically. It ensures that existing consumer protection laws that are in place today are maintained. The fact is that we build upon the laws that exist today.

This is going to come. It can either come with the support, the encouragement, the empowerment by the Congress, or it can come despite the Congress. We ought to work for and with the new economy, not in opposition to its culture and its opportunities.

My comments are really directed to my own party because I know that the opposition is well intentioned; and it is thoughtful and it is knowledgeable. But it is wrong and shortsighted. The reality is that what we are debating is already happening today.

Digitized signatures work. People find them to be not only easier to use but, in fact, entirely consistent with the economy in which they are operating. This will show that the Congress can be ahead of the curve, that Congress can play a constructive role, that the Congress can be leading instead of impeding. Instead of always trying to play catch-up like we had to do with the Financial Services Modernization Act.

Look to the consumers who are using the Internet. They are asking for this ability to use digitized signatures. This is what the new economy is all about. This is why we are so prosperous. We ought to be part of this progress by contributing to it and certainly not oppose thoughtful legislation like this.

Mr. DINGELL. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Massachusetts (Mr. DELAHUNT).

Mr. CONYERS. Mr. Chairman, I yield 1½ minutes to the gentleman from Massachusetts (Mr. DELAHUNT), my colleague on the Committee on the Judiciary.

The CHAIRMAN pro tempore. The gentleman from Massachusetts (Mr. DELAHUNT) is recognized for 2½ minutes.

Mr. DELAHUNT. Mr. Chairman, I thank both gentlemen for yielding me the time.

Mr. Chairman, at our hearings on the Committee on the Judiciary, we were told that legislation was needed to ensure the validity of electronic agreements entered into by private parties until the States are able to adopt the uniform electronic transactions act. In other words, it was needed to fill the gap until the States could act.

That made sense. But then the bill was hijacked. Instead of filling the gap, it preempted the field; it prohibits the States from enacting the uniform law, as California has just recently already done, in a way that preserves consumer protections. It even prohibit the States from reenacting those protections to the extent that we supersede them.

Now, how do people who only yesterday were waving the banner of States' rights and espousing federalism defend a bill that sets aside the will of the States in such a cavalier fashion?

Well, we hear the term "uniformity." Yet, if uniformity were all they were after, they would have been satisfied to let the bill sunset as the uniform act is adopted by each of the States over the coming months. And they did not. It is not in the bill.

What the proponents of the bill really want is to arrest the process, to prevent the States from preserving consumer protection laws, which they want to do away with. It is that simple. It is one thing to try to ensure the validity of electronic signatures. I support that effort, and I am sure if that was the import of the legislation it would pass unanimously in this body. But it is another attempt to use this legislation as an end run around State consumer protection legislation. That is what this bill is all about.

I urge adoption of the substitute and defeat of the bill.

Mr. Chairman, I rise in opposition to this bill and in support of the Dingell-Conyers-LaFalce-Gephardt substitute.

What we have here, Mr. Chairman, is a case of legislative hijacking. A bill intended to enhance the ease and security of electronic transactions has been commandeered. By a financial services industry that sees an opportunity to sweep aside a generation of state laws. Laws that enshrine such familiar and fundamental concepts as proper notice. Full disclosure. Informed consent. Truth in lending. Fair credit practices.

These laws have helped ensure that the ordinary citizen will not be taken advantage of by powerful commercial interests who have all the leverage. Who hold all the cards. And in so doing, these laws have helped maintain a thriving economy that depends on consumer confidence.

That is supposedly what this bill is about. Consumer confidence in electronic transactions. Yet ironically, by undermining state protections, this bill will erode consumer confidence. Not enhance it. If this bill becomes law, consumers will have fewer rights. And they will be less certain what rights they retain. Hardly a recipe for consumer confidence.

At our hearings, we were told that federal legislation was needed to ensure the validity of electronic agreements entered into by private parties until the states are able to adopt,



the Uniform Electronic Transactions Act. In other words, it was needed to fill the gap until the states could act.

But then the bill was hijacked. Instead of filling the gap, it preempts the field. It prohibits the states from enacting the uniform law—as California has recently done—in a way that preserves consumer protections. It even prohibits the states from RE-enacting those protections to the extent we supersede them.

How do people who only yesterday were waving the banner of “states rights” defend a bill that sets aside the will of the states in so cavalier a fashion?

They do so in the name of “uniformity.” yet it uniformity were all they were after, they would have been satisfied to let this bill sunset as the Uniform Act is adopted by each of the states over the coming months.

What the proponents of the bill really want is to arrest that process. To prevent the states from preserving consumer protection laws which they want to do away with. It is one thing to try to ensure the viability of electronic signatures, and I support that effort. But it is another to use this legislation as an “end run” around state consumer protection laws.

Apart from the policy considerations, it raises serious constitutional questions. Given the recent holdings of the Supreme Court regarding the limits of congressional power, I have serious doubts that we have the authority to preclude the states from re-enacting laws in an area of commercial activity that lies so squarely within their traditional sphere of competence.

We should do all we can to embrace and encourage the development of electronic commerce. But if that brave new digital world is to provide hospitable to human habitation, we must take with us the great advances in the law that have made this world habitable.

I am ready and willing to support a bill that does this, Mr. Chairman, but the current proposal falls too far short of the mark. That is why it is opposed by the Administration, and by every major consumer organization in the country.

I urge my colleagues to oppose the bill and support the substitute.

Mr. BLILEY. Mr. Chairman, how much time do I have remaining?

The CHAIRMAN pro tempore. The gentleman from Virginia (Mr. BLILEY) has 5 minutes remaining. The gentleman from Michigan (Mr. DINGELL) has 3 minutes remaining.

Mr. BLILEY. Mr. Chairman, I yield 2 minutes to the gentlewoman from New Jersey (Mrs. ROUKEMA).

□ 1330

Mrs. ROUKEMA. Mr. Chairman, I thank the gentleman for yielding me this time. I will not take the entire 2 minutes. I had not anticipated speaking on behalf of the general debate, but I certainly do rise in strong support of this proposal.

I want to make it clear here that this is not anti-consumer, it is both pro-business and pro-consumer, it really does not denigrate or eliminate any consumer protections that are currently in law, and it goes beyond that. I particularly am a strong supporter of the Inslee amendment and would like to speak on that at the appropriate time.

I want to congratulate the chairman of the Committee on Commerce for his leadership here. This is excellent legislation. As a member of the Committee on Banking and Financial Services, I will look forward to continuing to work in the future on other aspects of e-commerce as it relates to more specific banking legislation.

I rise today in strong support of H.R. 1714, the Electronic Signatures in Global and National Commerce Act.

The bill accomplishes the two major, and often conflicting, goals of being both Pro Business and Pro Consumer. As we have heard, millions of Americans are shopping via the Internet everyday. The growth in e-commerce is expected to explode in the next 2 years with U.S. Consumers spending billions on line by the year 2001. E-commerce is happening as we speak. We here in Congress should do everything we can to promote e-commerce. I believe H.R. 1714 strikes the right balance between encouraging the growth of e-commerce while including common sense consumer protections.

The bill is Pro Business because it ensures that Internet transactions have the same legal effect and recognition as paper transactions. This is accomplished by establishment of a federal law which recognizes e-signatures as having the same force and effect as an ink signature. In addition, required records and disclosures may be delivered electronically IF the Consumer “opts in”.

The bill is Pro Consumer because it encourages the growth of e-commerce—which has led to lower prices, greater choice and round the clock availability. These developments are all Pro Consumer.

Later on we are going to consider the Inslee/Eshoo/Dooley/Moan/Roukema Amendment. This Amendment includes several provisions from H.R. 2626, the Electronic Disclosures Delivery Act of 1999, which I introduced on September 1st along with Mr. INSLEE and Mr. LAZIO. The Amendment is pro consumer because it provides the additional consumer protections such as (1) Customer “opt in” for electronic delivery specifically required, (2) clear requirements on review, retention and printing of documents and disclosures, (3) the ability of a Customer to “opt out” of electronic delivery at any time.

I thought these were good provisions when I introduced H.R. 2626. I thought they were good provisions when proposed before the Rules Committee, and that is why I cosponsored the Inslee Amendment. It clearly improves the Bill and we should approve the Inslee Amendment later on when we have the opportunity.

Mr. Chairman, this bill is an extremely good bill. I urge strong support for H.R. 1714.

Mr. DINGELL. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, the issue here is a very simple one. It is not about whether the contract may be signed electronically. Everyone here is in agreement that that is a good thing. It is about the notices which follow after that, notices of waste on a real estate contract, notice of failure to comply with requirements for insurance, failures of the electronic media to deliver.

An interesting thing to note would be that this proposal is going to come just

in time, if it is signed into law, for the year 2K bug to bite. The question that has to be asked is what happens if the Internet provider is down and the individual does not get the notice. What happens if on that particular day there is a virus that contaminates the operation of the recipient or the sender, so the recipient never gets it. Look at the wide array of notices which are extremely important and which are protected in a wide array of State laws, notices of nonpayment of taxes, notices which would vitiate a mortgage, entitle the mortgagor to cancel or to foreclose. Those are things which would hurt the mortgagee.

I would ask my colleagues to understand that what we are trying to do here is not to stop electronic commerce or the signing of contracts electronically but, rather, to assure that a wider array of judgments are available to the purchaser and that he may then insist that he get, for very good reason, certain kinds of notices which he might view as being important. The mortgagor or the seller or the vendor under the contract has every right to ask that individual if he will then change the contract to waive those rights. But we are trying to protect historic rights that have always belonged to purchasers under written contracts under the law of the several States.

I would give Members just one last quote. Under Statement of Administration Policy, the administration makes this statement, and Members should be aware that they are probably looking at a veto here:

“The administration believes that en bloc amendments fall short of eliminating serious defects in H.R. 1714. The Secretaries of Commerce, Housing and Urban Development, and the Treasury will recommend the President veto H.R. 1714 with the en bloc amendments. For the reasons explained below and in the enclosed Statement of Administration Policy, the administration would support adoption of the Gephardt-Dingell-LaFalce-Conyers substitute.”

Let us try to pass something which will make progress, something which will protect consumers, something which will move forward electronic commerce but not something which affords enormous operation to hurt innocent purchasers around this country.

Mr. BLILEY. Mr. Chairman, I yield myself the balance of my time.

This has been an interesting debate. First of all let me say that this bill came out of the Committee on Commerce unanimously August 5. We have worked with the minority. It was originally scheduled for October 18 on the floor. They asked for further consideration. We pulled it. And we worked. Everything was all in agreement. And then last Friday, the White House comes down here and gets a meeting with the Democrat leadership and all of a sudden this becomes a terrible bill. Nothing could be further from the truth. This is a thing to prevent this

legislation being adopted on Republicans' watch.

Let me give Members a list of the people who support this legislation:

IBM, Information Technology Association of America, Information Technology Industry Council, Microsoft, American Insurance Association, Alliance of American Insurers, American Council of Life Insurance, Council of Insurance Agents and Brokers, National Association of Mutual Insurance Companies, National Association of Surety Bond Producers, Reinsurance Association of America, Securities Industry Association, America Online, America Electronics Association, GTE, MCI WorldCom, Cable and Wireless, DLJ Direct, PanAm Sat, Telecommunications Industry Association, National Retail Federation, Charles Schwab, Fidelity, Ford Motor Credit, National Association of Manufacturers, AT&T, U.S. Chamber of Commerce, and the Chamber will score this bill; Investment Company Institute, Yahoo, Equifax, International Biometric Industry Association, Consumer Mortgage Coalition, Financial Services Roundtable, Sallie Mae, Apple Computer, Hewlett-Packard, American Bankers Association, Consumer Bankers Association, the New York Stock Exchange, Business Software Alliance.

This is a good bill. Nobody in this legislation is coerced to do anything. They have to agree. And, working with the minority, we say that if there is anything to do with eviction, foreclosure, that this is exempted, it is carved out of here, you cannot do it this way.

Mr. Chairman, this is a good bill. We had a great vote a week ago. Let us not go back on that. Let us move the legislation forward, go to conference with the Senate, and then send legislation to the President.

Mrs. MINK of Hawaii. Mr. Speaker, I rise today in opposition to H.R. 1714, the Electronic Signatures in Global and National Commerce Act.

No one can deny what an amazing effect the Internet and electronic commerce has had on national and global commerce. The Internet has allowed some businesses to flourish in a global marketplace in a way not possible by traditional means.

The remarkable opportunities which the Internet and electronic commerce provides needs to be protected by ensuring that electronic signatures and contracts are held as legally valid and binding. H.R. 1714, however, is not the best bill to accomplish this because it achieves the goal of validating electronic signatures and contracts at the expense of American consumers.

If H.R. 1714 becomes law, we can expect that many of our Nation's consumers will unknowingly "click away" their rights because this bill does not ensure that any and all notices to consumers about their rights and the consequences of electronically signing their names be either clear or conspicuous. This is fundamentally unfair to consumers, especially those who may not yet be familiar with the concepts of the Internet and electronic commerce.

I urge my colleagues to protect consumers and reject H.R. 1714.

The CHAIRMAN pro tempore (Mr. MILLER of Florida). All time for general debate has expired.

In lieu of the amendments recommended by the Committees on Commerce and the Judiciary now printed in the bill, it shall be in order to consider as an original bill for the purpose of amendment under the 5-minute rule an amendment in the nature of a substitute printed in the CONGRESSIONAL RECORD and numbered 1. That amendment shall be considered read.

The text of the amendment in the nature of a substitute is as follows:

H.R. 1714

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### 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, agreement, or record entered into or provided 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, agreement, or record shall not be denied—

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

(2) on the ground that the 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.

##### (b) AUTONOMY OF PARTIES IN COMMERCE.—

(1) IN GENERAL.—With respect to any contract, agreement, or record entered into or provided in, or affecting, interstate or foreign commerce—

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

(B) the legal effect, validity, or enforceability of such contract, agreement, or record 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; and

(C) nothing in this section requires any party to use or accept electronic records or electronic signatures.

(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 separately and affirmatively consented to the provision or availability of such record, or identified groups of records that include such record, as an electronic record; and

(ii) has not withdrawn such consent; and

(B) 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).

(c) RETENTION OF CONTRACTS, AGREEMENTS, AND RECORDS.—

(1) ACCURACY AND ACCESSIBILITY.—If a statute, regulation, or other rule of law requires that a contract, agreement, or record be in writing or be retained, that requirement is met by retaining an electronic record of the information in the contract, agreement, or record that—

(A) accurately reflects the information set forth in the contract, agreement, or record after it was first generated in its final form as an electronic record; and

(B) remains accessible, for the period required by such statute, regulation, or rule of law, for later reference, transmission, and printing.

(2) EXCEPTION.—A requirement to retain a contract, agreement, or record in accordance with paragraph (1) does not apply to any information whose sole purpose is to enable the contract, agreement, or record to be sent, communicated, or received.

(3) ORIGINALS.—If a statute, regulation, or other rule of law requires a contract, agreement, or record to be provided, available, or retained in its original form, or provides consequences if the contract, agreement, or record is not provided, available, or retained in its original form, that statute, regulation, or rule of law is satisfied by an electronic record that complies with paragraph (1).

(4) CHECKS.—If a statute, regulation, or other rule of law requires the retention of a check, that requirement is satisfied by retention of an electronic record of all the information on the front and back of the check in accordance with paragraph (1).

##### 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 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 (or both) of electronic records or electronic signatures to establish the legal effect, validity, or enforceability of contracts, agreements, or records; and

(2) if enacted or adopted after the date of enactment of this Act, makes specific reference to this Act.

(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, process, 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 this title.

(c) EXCEPTION.—Notwithstanding subsection (b), a State may, by statute, regulation, or rule of law enacted or adopted after the date of enactment of this Act, require

specific notices to be provided or made available in writing if such notices are necessary for the protection of the safety or health of an individual consumer. A consumer may not, pursuant to section 101(b)(2), consent to the provision or availability of such notice solely as an electronic record.

#### SEC. 103. SPECIFIC EXCLUSIONS.

(a) EXCEPTED REQUIREMENTS.—The provisions of section 101 shall not apply to a contract, agreement, or record to the extent it is governed by—

(1) a statute, regulation, or other 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, divorce, or other matters of family law;

(3) the Uniform Commercial Code, as in effect in any State, other than sections 1-107 and 1-206 and Articles 2 and 2A;

(4) any requirement by a Federal regulatory agency or self-regulatory organization that records be filed or maintained in a specified standard or standards (including a specified format or formats), except that nothing in this paragraph relieves any Federal regulatory agency of its obligations 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.

(b) ADDITIONAL EXCEPTIONS.—The provisions of section 101 shall not apply to—

(1) any contract, agreement, or record entered into 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 (including water, heat, and power);

(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

(C) the cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities).

#### SEC. 104. STUDY.

(a) 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).

(b) REPORT.—The Secretary shall submit a report to the Congress regarding the results of such inquiry by the conclusion of such 5-year period.

#### SEC. 105. 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, and executed or adopted by a person or an electronic agent of a person, with the intent to sign a contract, agreement, or record.

(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.

(5) 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.

(6) FEDERAL REGULATORY AGENCY.—The term “Federal regulatory agency” means an agency, as that term is defined in section 552(f) of title 5, United States Code, that is authorized by Federal law to impose requirements by rule, regulation, order, or other legal instrument.

(7) SELF-REGULATORY ORGANIZATION.—The term “self-regulatory organization” means an organization or entity that is not a Federal regulatory agency or a State, but that is under the supervision of a Federal regulatory agency and is authorized under Federal law to adopt and administer rules applicable to its members that are enforced by such organization or entity, by a Federal regulatory agency, or by another self-regulatory organization.

### 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 180 days after the date of the enactment of this Act, and biennially 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. Such report shall include a description of the actions taken by the Secretary pursuant to subsection (b) of this section.

(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) 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.

(d) 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.

(e) 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 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 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 or maintained in a specified standard or standards (including a specified format or formats) if the records are required to be submitted to the Commission, an appropriate regulatory agency, or a self-regulatory organization, respectively, or are required by the Commission, an appropriate regulatory agency, or a self-regulatory organization to be retained; 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) SAVINGS PROVISION.—Nothing in this subsection applies to any rule or regulation under the securities laws (including a rule or regulation of a self-regulatory organization) that is in effect on the date of enactment of the Electronic Signatures in Global and National Commerce Act and that requires a contract, agreement, or record to be in writing, to be submitted or retained in original form, or to be in a specified standard or standards (including a specified format or formats).

“(6) 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, and executed or adopted by a person or an electronic agent of a person, with the intent to sign a contract, agreement, or record.

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

The CHAIRMAN pro tempore. No amendment to that amendment shall be in order except those printed in House Report 106-462. Each amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered read, debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of the question.

The Chairman of the Committee of the Whole may postpone a request for a recorded vote on any amendment and may reduce to a minimum of 5 minutes the time for voting on any postponed question that immediately follows another vote, provided that the time for voting on the first question shall be a minimum of 15 minutes.

It is now in order to consider amendment No. 1 printed in House Report 106-462.

AMENDMENT NO. 1 OFFERED BY MR. INSLEE

Mr. INSLEE. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. INSLEE:

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 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.

The CHAIRMAN pro tempore. Pursuant to House Resolution 366, the gentleman from Washington (Mr. INSLEE) and the gentleman from Michigan (Mr. CONYERS) each will control 15 minutes.

The Chair recognizes the gentleman from Washington (Mr. INSLEE).

Mr. INSLEE. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, I would like to tell Members what our goal was in drafting this amendment. Our goal basically is to assure an American's right to make the decision by themselves based on the information they have to receive information electronically and to form contracts electronically.

Our goal is based on the proposition something like this: If you read the Declaration of Independence, it reads just as well electronically as it does on a piece of paper. And when you receive information in an on-line transaction, if you want to purchase insurance, a car, a book, the information you are going to receive reads just as well electronically. Therefore, we have crafted an amendment that would assure that every consumer has a new right, and that is, the right to decide they want to receive information electronically.

I want to point out several things about it. Number one, it makes sure that this is a decision made and has to

be made affirmatively by an American. They have to affirmatively take an action to disclose they want to do business electronically. Number two, and very importantly, this makes very clear that any requirement of any government in America to give any notice will still exist after the passage of this bill if this amendment prevails.

I want to read the applicable section. It reads:

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.

I read this because I have heard many other Members suggest that somehow consumers will lose the right to receive notifications. This is inaccurate. This amendment will assure that every notification a person is entitled to receive, they will still be entitled to receive.

Third, it makes abundantly clear, we added a provision that consumers have to be notified what hardware and software they need to receive this information so that they are not acting blindly. We have heard suggestions that somehow electronic commerce is inefficient, ineffective. I think we have to realize sometimes the mail gets eaten by the dog as well, or misplaced, and, in fact, if consumers want to do business electronically, they should be entitled to do so.

We have also, fifth, provided that the credit card rules, the limitations of liability, still apply in this context, if somebody steals your identity essentially.

And, sixth, we provide, and I think this is very important because I have heard some misinformation on the floor already in this regard. Where the law requires provision of a notice, where a business has to provide notice to a consumer, they will still be required to provide notice, not simply post it on a website.

Mr. Chairman, I yield 1 minute to the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Chairman, when do you have information? Ten years ago, I was in local government and we organized our court files electronically and allowed the sheriff to access those court files for jail management. I remember going over to talk to the then sheriff who had deputies handwriting the information down on pieces of paper off the screen.

I asked, "Why are you doing this?" He said, "So we'll really have the information."

Do you have the information when it is on the screen, on your hard drive, in your head, or when it is on a piece of paper? The answer is, in all of those cases. We are not changing any consumer law at all with this bill and with this amendment. What we are doing is allowing for the free flow of information on the Internet, so that we can have electronic commerce, so that information in the Information Age can flow.

I have heard many expressions really of anxiety by Members about the Information Age and the concept that you have information when it is electronic. Let me assure my colleagues that you do and consumers will be fully protected under the amendment.

Mr. CONYERS. Mr. Chairman, I yield myself 3 minutes.

I want to start off by commending my friends that are with the gentleman from Washington (Mr. INSLEE) on his amendment. This is an important step forward. The problem is, it is still a half a loaf, and I appreciate the Democrats that are trying to improve it.

This amendment makes minor improvements in the underlying bill but, indeed, it makes it worse in several respects. That is why it is quite clear why financial services, industries and banks are supporting it and consumer groups are opposing it.

Here is why it is a backward step. It leaves to the courts to determine who bears the burden when an electronic disclosure notice is not received.

□ 1345

The bill does that. The Inslee amendment puts the burden squarely on the consumer's shoulders.

Mr. Chairman, H.R. 1714, the Bliley bill leaves it to the courts; the Inslee amendment leaves it to the consumer the responsibility of creating an affirmative obligation to notify a provider of a change of e-mail address.

Now, in addition, this will not be corrected by the Inslee amendment. No requirement that the consumer be told what legal rights he is waiving or to what types of records that is the notices, disclosures and statements, that the waiver applies to. Because both the bill and the amendment permit a consumer to waive writing requirements for groups, "groups of records," and there is no requirement that the record be similar or relate to the same transaction. The consumer can, without any prior knowledge, waive all the future notices with one click.

This, I say to my colleagues, is the substance of what leads me to regretfully not be able to support the Inslee amendment. It does help in some respects, but in other respects, it is worse. For that reason I would urge that we think very carefully about this so-called improvement.

The amendment improves the opt-in by requiring it to be conspicuous and visually separate. But there is still no requirement that the consumer be told what legal rights he or she is waiving or what types of notices and disclosures the waiver applies to.

The Inslee amendment narrows the States' ability to reenact supplemental protective legislation for their citizens. This is not good. For that reason I ask that my colleagues critically evaluate this supposed improvement in the bill.

While I appreciate the efforts of my fellow Democrats to improve H.R. 1714, this amendment is merely an industry-drafted cosmetic fix that makes only minor improvements to the

underlying bill, and indeed, makes it worse in several respects. Furthermore, it leaves unaddressed many fundamental problems of H.R. 1714.

It is therefore no surprise—and is quite telling, in fact—that this amendment is supported by the banks and financial services industries, but is opposed by the consumer groups.

The Inslee amendment is a step backwards for consumers in many ways. Unlike H.R. 1714, which leaves it to the courts to determine who bears the burden when an electronic disclosure or notice is not received, the Inslee amendment puts the burden squarely on consumers' shoulders by creating an affirmative obligation for consumers to notify a provider of a change of email address. The U.S. Postal Service has standardized procedures for address changes, forwarding mail, and returning mail to the sender that currently are not present in the on-line world. Without these real-world "back-up" mechanisms, this amendment simply creates a defense for merchant in cyberspace that it would not have in the physical world.

The Inslee amendment also is a step backward from H.R. 1714 because it takes away the requirement that when a contract is required by law to be in writing, the electronic record of the contract must: (1) accurately set forth the information in contract after it was first generated, and (2) remain accessible for later reference, transmission and printing. Under the amendment, these standards apply only where a law requires a record to be retained. This significantly undercuts the reach of H.R. 1714.

In addition, the Inslee amendment narrows the states' ability to reenact supplemental protective legislation for their citizens. Instead of allowing the states to enact laws for the safety or health of an individual consumer, the amendment permits the states to legislate only where it is necessary for the protection of "public health or safety of consumers." Thus, if certain notices and disclosures are not for the benefit of the public health or safety and only benefit individual consumers—such as notices to individuals about changes in their insurance policies, or a specific consumer's late payment on his utilities—the state cannot enact or reenact supplemental laws for this purpose.

Furthermore, the Inslee amendment leaves in place many of the most troubling aspects of H.R. 1714. For instance, although the amendment improves the opt-in by making requiring it to be "conspicuous" and "visually separate," there is still no requirement that the consumer be told what legal rights she is waiving or what types of notices and disclosures the waiver applies to. In addition, the consumer can still waive "groups of records" with one click, regardless of whether or not they are related to each other or if they are similar in nature.

The Inslee amendment also maintains the bill's broad preemption of state laws. In order for a state to avoid preemption by the federal statute, the Uniform Electronic Transactions Act, or UETA, must be consistent with the electronic contracts and records provisions of this bill. This does not give the states sufficient flexibility to exempt necessary state writing requirements. Ironically, even if a state adopted UETA without excepting any of its laws. The state would still be preempted by the federal law, because UETA does not provide for an

opt-in, and that would make the state law inconsistent with—and therefore preempted by—the federal law.

Another flaw with the Inslee amendment is that it does not address the regulatory and supervisory problems with H.R. 1714. Under this amendment, regulated industries such as the banking and insurance industries would still be relieved from their legal requirements to maintain paper records. How can a state insurance regulator determine if an insurance company is properly capitalized, or if it has the proper reinsurance it cannot access the company's electronic records, or if the regulator can not require that the company keep its records in a tamper-proof format?

I understand my colleagues' desire to improve H.R. 1714—because it needs much improvement. But the Inslee amendment just scratches the surface of what's needed to make the necessary improvements in H.R. 1714. Indeed, the amendment makes the bill worse in several respects.

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

Mr. INSLEE. Mr. Chairman, I would note that that click will waive no rights; it will simply indicate that notifications will be coming electronically rather than writing them in. A click will waive no rights under this amendment.

Mr. Chairman, I yield 1 minute and 40 seconds to the gentlewoman from California (Ms. ESHOO).

Ms. ESHOO. Mr. Chairman, I thank the gentleman from Washington (Mr. INSLEE) for yielding me this time.

I am very proud to be offering this amendment with him and several of my Democratic colleagues as well as the gentlewoman from New Jersey (Mrs. ROUKEMA).

First, let me just stipulate that there is not any mandate in this amendment that says to the consumers of America that they have to go on-line and use digital signatures. There is not a mandate. This is all about choices, but it does add the protections to the consumer if they so choose to exercise this.

This amendment that we bring before my colleagues today I believe cures some of the criticisms, many of the criticisms of the underlying bill. Quite simply, it ensures that consumers who choose to receive electronic records from their banks, their mortgage companies, or their on-line trading brokers will make this decision knowingly. The amendment gives consumers the ability to opt in to receive electronic records and requires that the consent be conspicuous and visually separate from other terms. In other words, consumers must agree to a statement that they will accept the records electronically. This statement cannot be buried in a morass of terms and conditions. It must be clear and separate.

Additionally and importantly, this amendment requires that prior to consenting, consumers must be provided with an explanation of how to access and retain electronic records. This is important because if a consumer cannot review, retain, and print an elec-

tronic record, that record is not considered valid.

I am very proud of this amendment. I believe that it makes the bill totally acceptable. This should not be a partisan issue. We should come together from both sides of the aisle, because it protects consumers and it allows electronic commerce to go forward. I urge support of this amendment.

Mr. CONYERS. Mr. Chairman, I yield 2 minutes to the gentleman from New York (Mr. LAFALCE), the distinguished ranking member of the Committee on Banking and Financial Services.

(Mr. LAFALCE asked and was given permission to revise and extend his remarks.)

Mr. LAFALCE. Mr. Chairman, I think that almost everyone would favor the purposes of the primary bill before us today, and it is possible to achieve a good bill and a bipartisan bill. And, on the Senate side, Senator ABRAHAM, a Republican, Senator WYDEN, a Democrat, Senator LEAHY, a Democrat, and the administration have gotten together and basically they have come together in support of a good bill, and that is what the gentleman from Michigan (Mr. DINGELL) and the gentleman from Michigan (Mr. CONYERS) and I are going to offer as a substitute.

The gentleman from Washington (Mr. INSLEE) and the gentlewoman from California (Ms. ESHOO) are attempting to deal with the Bliley bill, which the administration strongly opposes and said they would veto with an amendment. I know they are good faith, but I point out that the National Consumer Law Center, the Consumer Federation of America, the United Auto Workers, the Consumers Union, the U.S. Public Interest Research Groups, and the National Consumers League have drafted a letter today which they have sent out to each of us which says, "The Inslee-Eshoo amendment is a cosmetic attempt to make a dangerous bill appear more palatable. Further, this amendment will make it more difficult for consumers to assert their rights under existing consumer protection laws."

So this is cosmetically attractive, but dangerous because of that very fact.

Mr. INSLEE. Mr. Chairman, I yield 30 seconds to the gentleman from California (Mr. DOOLEY).

(Mr. DOOLEY of California asked and was given permission to revise and extend his remarks.)

Mr. DOOLEY of California. Mr. Chairman, I rise in support of the underlying bill and also in strong support of the amendment offered by the gentleman from Washington (Mr. INSLEE), myself and a number of our colleagues.

This legislation is a step forward to trying to ensure that consumers and businesses have a better ability to conduct commerce over the Internet. This amendment that we are supporting today provides for added consumer protections. It ensures that every consumer will have to opt in in order to participate. It ensures that consumers

will have to acknowledge the conditions of a contract. It also provides assurances that a consumer will have to acknowledge that they will have to notify the business or the entity that they might be doing business with if they change their e-mail.

This is not any different than what one would have to do with one's address at one's home if one is going to relocate.

Now, if we want to have people to have the benefits that the Internet can provide and e-commerce can provide, we have to understand that we are dealing with a different medium, and this amendment goes a long way to ensuring that consumers will have those protections, that they will have the notifications that are important for them to understand their responsibilities and obligations.

Mr. Chairman, I heard some folks earlier today talking in opposition to the underlying bill, but there are a lot of people out there that do not have a computer; there are a lot of people out there that do not have an e-mail address; there are a lot of people out there that do not know how to navigate the Web. Well, if we use that as a standard to preclude us from moving forward with digital signature, we are never going to get there. But we also have assured that any consumer that might not have a computer, that does not have e-mail, that they do not have to opt in to participate in a digital signature. We provide the consumer protections. This amendment is a good amendment; the underlying bill deserves passage.

Mr. CONYERS. Mr. Chairman, I yield 2½ minutes to the gentleman from California (Mr. BERMAN), a distinguished member of the Committee on the Judiciary.

Mr. BERMAN. Mr. Chairman, I rise in opposition to the amendment. While it makes some improvements in some parts of the base bill, it also in some areas actually goes backward. But I think the broader point is the point I would like to speak to.

We seem to be talking just totally by each other. No one here is opposed to the concept that we need to legislate a digital signature law so that people in places where there is now an obligation to enter into a writing-in contract can enter into a contract electronically and bind themselves to that through digital signatures along the standards of the bill. There is no dispute about that.

I hear my friend from Virginia speak in exciting and provocative terms about the new economy, the new elite, people who want the opportunity, they are governed by potentials and not their fears, and I say yes. But it is not a requirement to be an advocate of the new economy or to be a new Democrat to think that there are some people who will be caught in the transition and that maybe, where the Comptroller of the Currency decides that a particular bank should have a backup set



of records in writing because that might be the only place they can go to determine whether reserves are being kept adequately, or whether in a particular situation involving changes in an insurance policy, let us just validate that for this particular type of consumer whose, perhaps, adult children signed them on to the insurance policy electronically, we should validate it by the written contract, that we are going to just trample over these people in the name of doing something new and exciting.

Mr. Chairman, I do not have the arrogance to say that every single law that says that without regard to whom the consumer is, what the State of their mentality is, that we are going to wipe out some considered judgment by a regulator or by a State legislator, by a Federal legislator that in all circumstances, that is preempted.

The gentleman from Washington says his amendment waives no rights, but it does waive one right. By conscious decision, hopefully of a sophisticated and educated consumer, it waives the right to have the disclosures, the changes, the notices in writing. That is indisputable. His amendment waives that right. In most cases, that will be great. There might be a few cases where it is not great, and it is in those cases that I say let us be a little careful about just wiping out all of these laws.

Mr. INSLEE. Mr. Chairman, I yield 10 seconds to the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Chairman, I think it is important to point out that there is no waiver of notice in writing. All we are talking about is transmission of that writing and whether the writing is received electronically or on a piece of paper, it is in writing in both cases.

Mr. INSLEE. Mr. Chairman, I yield 1½ minutes to the gentleman from Washington (Mr. SMITH).

Mr. SMITH of Washington. Mr. Chairman, I rise in support of the Inslee amendment and in support of the underlying bill.

Everyone says we all agree, we are going to have digital signature, it is just a matter of the details. Unfortunately, the details that are being presented by the opponents of the Inslee amendment and of the Dingell amendment are such that one would, in practical effect, not be able to do digital signature. If, first of all, one does not have uniformity and one is doing something across State lines and one has 50 or maybe even 100 different rules and regulations for how it is going to be done, it makes it very, very difficult to do business in the electronic commerce world. That is what the Dingell amendment would do. That creates a huge problem for the bill.

Second of all, it requires that paper be done in addition to the digital signature. Well, if we are going to have to do a paper contract, what is the advantage of doing a digital contract? One merely has to duplicate oneself. Those

two provisions basically mean that what the opponents of the Inslee amendment are doing is creating a situation where digital signature will not be a choice that any logical businessman will make. That is why we have to oppose it.

Two final points. Consumer protection is clearly protected in this bill. The sentence says this law changes in no way one's contractual protections under consumer protection laws. We are simply doing it digitally instead of by paper. We have the same protections.

Lastly, this well, if one goes on a computer it could get lost, the computer could blow up; paper notices get lost all of the time. If one moves and the notice is required to go by mail, many times these notices do not arrive. Whether it is paper or digital, there are challenges in making sure that all of the notices get there. I strongly submit that those challenges are no greater with digital signature than they are with paper, and we are stuck in a lost mindset here thinking that somehow, if it is not paper, it is not real. If we do not do this right, we will not have digital signature. The Inslee amendment does it right. Support it.

□ 1400

Mr. CONYERS. Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from Minnesota (Mr. VENTO).

Mr. VENTO. Mr. Chairman, I thank the gentleman for yielding time to me. I rise in opposition to the amendment, Mr. Chairman. I recognize that there is an effort here to make this, as I said, palatable, but it remains indigestible. What we are doing here is we are force-feeding the States, force-feeding consumers this particular format in terms of how transactions and record will be eliminated.

Someone says, the electronic signatures, we are all for it, we can permit that, but we need this because we need to eliminate or give the possibility for people to accept notices and disclosures electronically, that is the only thing. But the heart and soul of most consumer laws are the absolute disclosure provisions. So once we go down this path, we have, for all intents and purposes, circumvented many of the consumer laws of the Federal and many at the State level.

This is not transactions initiated over the Internet, this could be someone at the door that we open the possibility of fraud and abuse to here, because someone at the door, when we get a cooling off period for not purchasing, we would sign it away. There is no assurance that they have Internet; electronic computer equipment or service. It is only one-third of the homes in this Nation have Internet, so these are not even just transactions. We open up that possibility.

We have tried mightily in terms of this particular provision, but we have gone one step forward and two back.

The rule of holes is that when you are in a hole and you want to get out, quit digging, but this amendment digs in more. It tries to legitimize what is inappropriate in this bill.

The fact of the matter is, look at where the consumer is. They are buying a home, they are buying a car. They are blinded by the fact of that new shiny Chevrolet or that wonderful new home that they are going to get. They are signing a whole bundle of papers. In the process of doing it, they sign the copy, disclosure and notification away with no assurance, and all the responsibility put back on the individual consumer on something that may be the most important transaction they make.

This vitiates the truth-in-lending, the real estate State Sales Practices Act. The Federal regulators are already working on the issue of electronic commerce and attempting to interface the rules and e-commerce. Instead of doing something for the consumer, they are taking away the options they have today.

Members are saying that the price of being active in this electronic signature bill and this electronic Internet world is that we are going to deny some of the rights people have today. We basically say, we will let you give up your rights. We should not do that, and we should know that individuals do not have fully informed consent, the mechanics, workers, blue collar workers or others getting minimum wage. They are not sitting in the halls of this Congress, they are not out there walking around in the lobbies, they need our help. Ironically this legislation protects the sophisticated financial institutions and Federal regulators.

We ought to be doing something for the consumer, like providing favorable options for them on privacy in the Internet. We are not doing for them what we did in the Financial Modernization Act. We are doing more harm in this act, with this particular provision and certainly the underlying measure.

When we talk about the provision in the financial modernization, we had balance in that bill. There is no balance in this bill. This policy in this bill is not necessary. These provisions on records are not necessary to make the electronic signature legitimate. We are undercutting consumer law. There is a bandwagon effect here in terms of the special interests that have annealed themselves to this popular electronic signature legislation in order to circumvent the very real decades of consumer law that have protected and serve the consumers and the people we represent. Vote "no" on this bill.

Mr. INSLEE. Mr. Chairman, I yield 1½ minutes to the gentlewoman from the Garden State, New Jersey (Mrs. ROUKEMA).

(Mrs. ROUKEMA asked and was given permission to revise and extend her remarks.)



Mrs. ROUKEMA. Mr. Chairman, I have to say, as a member of the Committee on Banking and Financial Services, I rise in strong support of the amendment offered by the gentleman from Washington (Mr. INSLEE). I would like to identify myself as a cosponsor of that amendment.

I would also like to take exception to some of the loose rhetoric that I have heard on the floor today, and would like to speak to the specifics.

It seems to me that Congress and the regulators are overdue in playing a leadership role in updating many of the consumer protection laws to reflect the new technologies in electronic commerce that we see out there. This bill and this amendment takes a giant step toward that protection. It does not diminish in any way, as far as I can tell, the protections that consumers already have.

I want to be specific. The amendment is pro-consumer because it provides the additional consumer protections such as a clear, number one, customer opt-in for electronic delivery specifically is required, an opt-in. There are clear requirements on review, retention, and printing of documents and disclosures. Three, the ability of a customer to opt out is there for any customer at any time for the electronic delivery system.

I think that this is, as I said, not only a giant step, but it is also clearly defined, and I dismiss any of the loose rhetoric that acts as though we are taking something away. We are really building not only a firm foundation, but a giant step for consumers in this new electronic age.

Mr. Chairman, as a cosponsor, I rise today in strong support of the Inslee/Eshoo/Dooley/Moran/Roukema amendment. It is both Pro Business and Pro Consumer. It is common sense and will improve the bill.

Millions of consumers today routinely conduct business over the Internet, buying and selling a myriad of products and services from companies large and small, near and far. Many of these consumers engage in financial transactions—investing in stocks and bonds, checking account balances, transferring funds, applying for credit cards, and paying bills without leaving their homes. This explosion of on-line financial services offers great benefits. Nonetheless, the ability to offer many financial services, particularly loans and mortgages, would be enhanced if the banking laws were amended to clarify the rules governing the electronic delivery of financial services.

H.R. 1714 and the Inslee Amendment will clarify that electronic delivery of required consumer disclosures over the Internet is permissible as long as there are certain safeguards for consumers. This bill does not lessen the rights of consumers to receive required disclosures. In addition, it does not affect the content of any disclosure, including the timing, format and information to be provided. Furthermore, consumers would control which information could be sent to them electronically.

This legislation will assist the growth of on-line financial transactions and at the same time provide consumer protections. Online disclosures will provide consumers with a number of benefits:

Convenience and time-saving—Consumers can conduct transactions virtually anywhere and at any time, 7-days-a-week, 24-hours-a-day.

User friendly information—Legalistic jargon in on-line disclosure forms can be linked to plain-English definitions, making them much more readable and understandable. Consumers can electronically search documents rather than reading through reams of paper.

Enhanced services for under-served communities—Rural and urban communities will have enhanced access to financial services, even where brick and mortar branches are not available. In areas where residents cannot afford computers, libraries and schools provide on-line access.

Reduced cost—Electronic delivery of disclosures will cost less than providing the same information on paper or paying employees to handle face-to-face disclosures. Competition should encourage business to pass on those savings to consumers.

E-commerce is here. U.S. citizens are spending billions of dollars each year on-line. Congress and the regulators must play a leadership role in updating many of the consumer protection laws to reflect new technologies and establish a coherent legislative framework for the delivery of financial services through electronic commerce. This bill and this amendment takes a giant step toward that protection.

The Inslee/Eshoo/Dooley/Moran/Roukema Amendment includes several provisions from H.R. 2626, the Electronic Disclosures Delivery Act of 1999, which I introduced on September 1st along with Mr. INSLEE and Mr. LAZIO. The Amendment is pro consumer because it provides the additional consumer protections such as clear (1) Customer "opt in" for electronic delivery specifically required, (2) clear requirements on review, retention and printing of documents and disclosures, (3) the ability of a Customer to "opt out" of electronic delivery at any time.

I thought these were good provisions when I introduced H.R. 2626 with Mr. LAZIO and Mr. INSLEE. I thought they were good provisions when proposed before the Rules Committee, and that is why I cosponsored the Inslee Amendment. I believe the Inslee/Roukema Amendment protects consumers in a rational clearly defined common sense manner. It clearly improves the bill.

We should approve the Amendment and we should approve H.R. 1714.

Mr. CONYERS. Mr. Chairman, I yield 30 second to the gentleman from New York (Mr. LAFALCE).

Mr. LAFALCE. Mr. Chairman, I wonder if the gentlewoman from New Jersey would answer why the chairperson of the Subcommittee on Financial Institutions has had no hearings on the bill that she introduced, and dealing with the impact of this bill and her bill on the consumer protection laws?

Mrs. ROUKEMA. Mr. Chairman, will the gentleman yield?

Mr. LAFALCE. I yield to the gentleman from New Jersey.

Mrs. ROUKEMA. Mr. Chairman, I will tell the gentleman exactly why; we got a little directed and focused on financial modernization.

Mr. LAFALCE. The gentlewoman was too busy to have hearings on these consumer protections.

Mrs. ROUKEMA. I was the author of the financial privacy and financial modernization. I find this completely consistent.

Mr. INSLEE. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Mr. Chairman, I thank the gentleman from Washington (Mr. INSLEE) for yielding time to me.

Mr. Chairman, I am also an original sponsor of this amendment because it clarifies the consumer protections in H.R. 1714. I have been wanting to respond to my friend, the gentleman from California, not because I take issue with his characterization of my remarks as New Democrat in nature, but because he said that I am supporting this bill because it is new and exciting.

That is not why I am supporting this bill. It is because it is responsible and needed. The fact is that this bill provides a consistent and predictable national framework of rules governing the use of electronic signatures. This bill is needed. This bill was and is bipartisan. When the final vote is taken, it will be apparent that it is bipartisan. In fact the vote will be lopsided because it provides consumers and companies doing business on the Internet the legal certainty they need for electronic signatures, until all 50 States pass their own legislation on the legality of electronic signatures.

This amendment is important because it clarifies the consumer protections that were originally included in this bill. It makes it clear, as the prior speakers have said, that consumers are not required to use or accept electronic records or electronic signatures. There has to be mutual consent, and it expands the bill's requirement that consumers be able to receive and retain electronic records.

Mr. Chairman, this amendment is important because it says that opportunity for consent must be conspicuous and visually separate from all the other terms.

In addition, the consumer must be provided with an explanation of how to access and retain electronic records. Records will be received, retained, and printed. The fact is that consumers are going to be protected, but most importantly, they are going to have a choice. Today they do not have that uniformity, that predictability that comes with uniform national standards.

The Internet is national in nature. Our constituents need this legislation. Make it bipartisan and make it an expression of our unequivocal support for this productive, prosperous new economy.

Mr. CONYERS. Mr. Chairman, I yield 2 minutes to the gentleman from Michigan (Mr. DINGELL), the dean of the House and the ranking member of the Committee on Commerce.

Mr. DINGELL. Mr. Chairman, I thank my good friend for yielding time to me.

Mr. Chairman, I want to try and make clear what is at stake here.

There is no objection, I think, on the floor on the part of anyone, my good friend, the gentleman from Michigan, myself, or anybody else, to whether or not the contract is signed electronically. The question relates to notice of later events under that contract which can severely impact the purchaser, such as things which would trigger foreclosure of a mortgage on a house or an automobile, failure to keep up insurance, failure to prevent waste, failure to make payments.

It could happen for many reasons, such as year 2K. It could happen because of the situation which might occur, a hard drive might crash, or there might be any one of a number of other events, including a failure of the Internet provider or something of that sort, or the matter would just get lost in cyberspace.

There is nothing in anything that we are talking about here that would preclude an individual from giving up some right and waiving his right to that notice. But as an attorney of long-standing and as one who has dealt with foreclosures and the hardship that those kinds of events trigger, I think it is important to see to it that some who might not be as smart as some of the Internet whizzes and the computer whizzes and jocks that we have has the capability of protecting himself, because we are talking about things such as the purchase of stock, mortgages on homes, automobile purchases, major purchases of equipment, and things of that kind which could incur enormous obligations on the part of the purchaser.

I propose to support the amendment. It improves the bill. It does not improve the bill by addressing the fundamental, basic question of whether the consumer gets the necessary notices that are required by a long history of State law to apprise him that he is in danger under the contract of losing money or rights.

Mr. INSLEE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would just like to specifically note that the underlying bill excludes from its ambit notices of foreclosure, of acceleration of default on the home. Those are specifically excepted and should not be an issue.

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

Mr. INSLEE. I yield to the gentleman from Michigan.

Mr. DINGELL. I thank the gentleman for yielding.

Mr. Chairman, I am not talking about notices of foreclosure, I am talking about notices that would trigger foreclosure, notice that the insurance has not been paid, that damage was being committed on the property, that a public nuisance is being committed on the property, or even a notice that the individual has failed to make a payment, which will trigger foreclosure.

Those are the kinds of notices that I am talking about, and they can severely, adversely impact the party.

Mr. INSLEE. Reclaiming my time, those will be given. Those notices will be given. In every case, the consumers electronically, if they want it electronically, and on paper if they want it on paper, those notices shall be given.

Mr. Chairman, I yield 1 minute to the gentleman from Virginia (Mr. BLILEY).

Mr. BLILEY. Mr. Chairman, I appreciate the gentleman yielding time to me.

Mr. Chairman, I think the gentleman's amendment improves the bill. I support it.

I would also like to point out, as was mentioned in the earlier debate, that what happens if the Y2K problem happens or the computer breaks down, the bill requires that a record sent be able to be retainable, printable, and transferrable. If the Internet is down this standard is not met, and thus, a consumer would not be liable.

I fully support this amendment. I urge its adoption, and I urge adoption of the underlying bill.

Mr. CONYERS. Mr. Chairman, I yield the balance of my time to the gentleman from Texas (Ms. JACKSON-LEE), a distinguished member of the Committee on the Judiciary.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the distinguished ranking member of the Committee on the Judiciary for yielding time to me.

I thank the Members for their good intentions behind this effort. I happen to be a supporter of electronic commerce. I wish we could have done this in a bipartisan way.

Mr. Chairman, I do rise to support the incremental change that the Inslee amendment makes. It does not answer my concerns, however. I do believe that it is important for the consumers to conspicuously be able to opt in to give consent to know whether or not their business is going to be done in an electronic form, but I think what my good friends are missing and the reason I support the substitute is they are missing the fact that although we can lay out the long list of supporters of this bill, the responsibility of this Congress is to ensure that those voices which cannot be heard, those people needing to have information about the drugs they get out of the Food and Drug Administration, those young couples who are buying homes, still need to have the ability to understand the documents that they are utilizing.

Under the underlying bill, creditors could condition credit on a consumer's consent to receive all disclosures electronically. I do want us to all be hooked up to the Internet, but unfortunately, even as we go into the 21st century, all Americans are not. Can Members imagine being denied credit because they refuse or do not understand

that they need to be hooked up to the Internet? Even in credit transactions involving the mortgage, people would have that problem.

Consider the FDA's responsibility to provide people with information about drugs, and those drugs that would conflict with others. Now we have the obligation of written information. Just imagine that that information will now be on the web page, and they leave people to their own devices, and they say, forget about the written materials, just go to the web page that most of those who are in certain levels in our country do not have.

□ 1415

The substitute, however, would sunset when a state enacted a uniform electronic transactions act which would provide for protections for our consumers.

The substitute also does not affect Federal laws or regulations, but instead gives Federal agencies 6 months to conduct a careful study of barriers to electronic transactions under Federal laws or regulations. The substitute also represents the E-commerce bill that is the most likely to be enacted into law, because it is a combination of Democrats and Republicans, House Members and Senate Members, who have come together.

Mr. Chairman, we are not against electronic commerce. I think that is the point that should be made. I have friends on the other side that I agree with, and friends over here that I agree with. But what my voice must be for are those individuals who do not know the Internet, who do not have access to computers, who are intimidated by some large business telling them they can not get credit or that home that they have been dreaming of because they will not consent to have their business done in an electronic process.

Mr. Chairman, let us make it a bipartisan bill and support the substitute and do the right thing for the American people.

Mr. INSLEE. Mr. Chairman, I yield 15 seconds to the gentleman from Ohio (Mr. KASICH).

Mr. KASICH. Mr. Chairman, I would like to compliment the gentleman from Washington (Mr. INSLEE) for his amendment in terms of clarifying. But one thing we should not be confused about, this Congress nor government should stand in the way of what has been remarkable progress here at end of the 20th century moving into the 21st century. It has done an enormous amount of good for families, not just in America but across the globe. Let us clarify this but not hesitate to invest and have confidence in those people who are really moving us forward and empowering people.

The CHAIRMAN pro tempore (Mr. MILLER of Florida). The question is on the amendment offered by the gentleman from Washington (Mr. INSLEE).

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

## RECORDED VOTE

Mr. INSLEE. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 418, noes 2, not voting 13, as follows:

[Roll No. 577]

## AYES—418

Abercrombie	Davis (IL)	Horn
Ackerman	Davis (VA)	Hostettler
Aderholt	Deal	Houghton
Allen	DeFazio	Hoyer
Andrews	DeGette	Hulshof
Archer	Delahunt	Hunter
Armey	DeLauro	Hyde
Bachus	DeLay	Inslee
Baird	DeMint	Isakson
Baker	Deutsch	Istook
Baldacci	Diaz-Balart	Jackson (IL)
Baldwin	Dicks	Jackson-Lee
Ballenger	Dingell	(TX)
Barcia	Dixon	Jefferson
Barr	Doggett	Jenkins
Barrett (NE)	Dooley	John
Barrett (WI)	Doolittle	Johnson (CT)
Bartlett	Doyle	Johnson, E. B.
Barton	Dreier	Johnson, Sam
Bass	Duncan	Jones (NC)
Bateman	Dunn	Jones (OH)
Becerra	Edwards	Kanjorski
Bentsen	Ehlers	Kaptur
Bereuter	Ehrlich	Kasich
Berkley	Emerson	Kelly
Berman	Engel	Kennedy
Berry	English	Kildee
Biggert	Eshoo	Kilpatrick
Billray	Etheridge	Kind (WI)
Bilirakis	Evans	King (NY)
Bishop	Everett	Kingston
Blagojevich	Ewing	Klecza
Bliley	Farr	Klink
Blumenauer	Fattah	Knollenberg
Blunt	Filner	Kolbe
Boehrlert	Fletcher	Kucinich
Boehner	Foley	Kuykendall
Bonilla	Forbes	LaFalce
Bonior	Ford	LaHood
Bono	Fossella	Lampson
Borski	Fowler	Lantos
Boswell	Frank (MA)	Larson
Boucher	Franks (NJ)	Latham
Boyd	Frelinghuysen	LaTourette
Brady (PA)	Frost	Lazio
Brady (TX)	Gallegly	Leach
Brown (FL)	Ganske	Lee
Brown (OH)	Gejdenson	Levin
Bryant	Gekas	Lewis (CA)
Burr	Gibbons	Lewis (GA)
Burton	Gilchrest	Lewis (KY)
Buyer	Gillmor	Linder
Callahan	Gilman	Lipinski
Calvert	Gonzalez	LoBiondo
Camp	Goode	Lofgren
Campbell	Goodlatte	Lowe
Canady	Goodling	Lucas (KY)
Cannon	Gordon	Lucas (OK)
Capps	Goss	Luther
Capuano	Graham	Maloney (CT)
Cardin	Granger	Maloney (NY)
Carson	Green (TX)	Manzullo
Castle	Green (WI)	Markey
Chabot	Greenwood	Martinez
Chambliss	Gutierrez	Mascara
Chenoweth-Hage	Gutknecht	McCarthy (MO)
Clay	Hall (OH)	McCarthy (NY)
Clayton	Hall (TX)	McCollum
Clement	Hansen	McCrery
Clyburn	Hastings (FL)	McDermott
Coble	Hastings (WA)	McGovern
Collins	Hayes	McHugh
Combust	Hayworth	McInnis
Conyers	Hefley	McIntosh
Cook	Herger	McIntyre
Cooksey	Hill (IN)	McKeon
Costello	Hill (MT)	McKinney
Cox	Hilleary	McNulty
Coyne	Hilliard	Meehan
Cramer	Hinche	Meeks (NY)
Crane	Hinojosa	Menendez
Crowley	Hobson	Metcalf
Cubin	Hoeffel	Mica
Cummings	Hoekstra	Millender-
Cunningham	Holden	McDonald
Danner	Holt	Miller (FL)
Davis (FL)	Hooley	Miller, Gary

Miller, George	Riley	Stump
Minge	Rivers	Stupak
Mink	Rodriguez	Sununu
Moakley	Roemer	Sweeney
Mollohan	Rogan	Talent
Moore	Rogers	Tancredo
Moran (KS)	Rohrabacher	Tanner
Moran (VA)	Ros-Lehtinen	Tauscher
Morella	Rothman	Tauzin
Murtha	Roukema	Taylor (MS)
Myrick	Roybal-Allard	Taylor (NC)
Nadler	Royce	Terry
Napolitano	Rush	Thomas
Neal	Ryan (WI)	Thompson (CA)
Nethercutt	Ryun (KS)	Thompson (MS)
Ney	Sabo	Thornberry
Northup	Salmon	Thune
Norwood	Sanchez	Thurman
Nussle	Sanders	Tierney
Oberstar	Sandlin	Toomey
Obey	Sanford	Towns
Oliver	Sawyer	Trafigant
Ortiz	Saxton	Turner
Ose	Schaffer	Udall (CO)
Owens	Schakowsky	Udall (NM)
Oxley	Scott	Upton
Packard	Sensenbrenner	Velazquez
Pallone	Serrano	Visclosky
Pastor	Sessions	Vitter
Payne	Shadegg	Walden
Pease	Shaw	Walsh
Pelosi	Shays	Wamp
Peterson (MN)	Sherman	Waters
Peterson (PA)	Sherwood	Watkins
Petri	Shimkus	Watt (NC)
Phelps	Shows	Watts (OK)
Pickering	Shuster	Waxman
Pickett	Simpson	Weiner
Pitts	Sisisky	Weldon (FL)
Pombo	Skeen	Weldon (PA)
Pomeroy	Skelton	Weller
Porter	Slaughter	Wexler
Portman	Smith (MI)	Weygand
Price (NC)	Smith (NJ)	Whitfield
Pryce (OH)	Smith (WA)	Wicker
Quinn	Snyder	Wilson
Radanovich	Souder	Wise
Rahall	Spratt	Wolf
Ramstad	Stabenow	Woolsey
Rangel	Stark	Wu
Regula	Stearns	Wynn
Reyes	Stenholm	Young (AK)
Reynolds	Strickland	Young (FL)

## NOES—2

Paul Vento

## NOT VOTING—13

Coburn	Largent	Smith (TX)
Condit	Matsui	Spence
Dickey	Meek (FL)	Tiahrt
Gephardt	Pascrell	
Hutchinson	Scarborough	

□ 1439

Mr. KUCINICH and Mr. WATT of North Carolina changed their vote from "no" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Stated against:

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Chairman, on rollcall No. 577, I was unavoidably detained. Had I been present, I would have voted "no."

The CHAIRMAN pro tempore (Mr. MILLER of Florida). It is now in order to consider amendment No. 2 printed in House Report 106-462.

AMENDMENT NO. 2 IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. DINGELL

Mr. DINGELL. Mr. Chairman, I offer an amendment in the nature of a substitute.

The CHAIRMAN pro tempore. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment No. 2 in the nature of a substitute offered by Mr. DINGELL:

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.

The CHAIRMAN pro tempore. Pursuant to House Resolution 366, the gentleman from Michigan (Mr. DINGELL) and a Member opposed each will control 15 minutes.

The Chair recognizes the gentleman from Michigan (Mr. DINGELL).

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

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Mr. Chairman, my old dad taught me to measure twice and cut once. He said that that was better carpentry, and he was right.

□ 1445

This amendment is essentially a bipartisan agreement reached in the Senate between Senators ABRAHAM and LEAHY. It is supported by the administration and it does not bear with it the threat of veto of the legislation without this amendment. It recognizes the validity of electronic signatures and contracts. It stays out of the more complicated questions and controversy associated with electronic records attendant on those contracts. It also avoids the problem of telling the contracting parties exactly what they do.

Here is what the substitute does do. It says a contract may not be denied legal effect or enforceability solely because of electronic signature or an electronic record was used in the formation. It allows parties to the transaction to determine appropriate electronic signature technologies for their transaction. It protects parties by requiring that the electronic record be delivered in the form that can be retained by the parties for later reference, and it can be used to prove the terms of the agreement. It sets forth principles to guide the Federal Government in expanding the use of electronic signatures in international transactions. It requires the Federal Government to study legal and regulatory barriers to electronic contracts.

Now, here is what it does not do. It does not hurt the ability of States to establish safeguards, such as consumer protection laws for electronic commerce. It does not wipe out the ability

of Federal regulators to eliminate abuses that may occur when electronic records are used. It does not wipe out State laws and regulations on the maintenance of records critical to protection of individual rights and claims. It does not preempt State and Federal records signature requirements, including those in tax laws and regulatory statutes.

We do not need to sacrifice consumer protections to facilitate electronic commerce. The concerns that I pointed out earlier are avoided. Electronic commerce will go forward, the parties will define the terms under which they will function, State laws will be protected, consumers will be protected, and entrepreneurs on the Internet will also be protected. And consumers will know that they have the means to protect themselves on terms of contracts in which they enter.

Mr. Chairman, may I inquire as to how much time I have consumed?

The CHAIRMAN pro tempore (Mr. MILLER of Florida). The gentleman from Michigan (Mr. DINGELL) has used 2½ minutes and will have 12½ minutes remaining.

Mr. DINGELL. Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN pro tempore. Does the gentleman from Virginia (Mr. BLILEY) seek the time in opposition?

Mr. BLILEY. I do, Mr. Chairman.

The CHAIRMAN pro tempore. The gentleman from Virginia is recognized for 15 minutes.

Mr. BLILEY. Mr. Chairman, I yield myself 5½ minutes, and I rise in opposition to the substitute offered by the gentleman from Missouri (Mr. GEPHARDT), the gentleman from Michigan (Mr. DINGELL), the gentleman from Michigan (Mr. CONYERS), and the gentleman from New York (Mr. LAFALCE).

Just last week the House leadership and the administration pulled out all the stops to defeat H.R. 1714 when it was considered under suspension. In spite of their opposition, we fell just a few votes shy of a two-thirds majority. Just this past week an amazing conversion has taken place. Not only has the majority leadership stopped opposing electronic signature legislation, but it now supports the concept of providing legal validity to electronic signatures, and even went so far as to introduce a bill, H.R. 3220.

I commend my colleagues for their conversion and for recognizing the importance of this Congress approving electronic signature legislation. Unfortunately, their amendment, as the old saying goes, is a day late and a dollar short. The amendment only provides for electronic signatures on contracts and is, thus, substantially narrower than 1714. The amendment does not provide for the use or acceptance of electronic records, such as warranties, notices of or disclosures in electronic form.

The offerers of this amendment have leveled charges that the inclusion of records in H.R. 1714 would bring harm

to consumers. Such a charge is completely false. H.R. 1714 contains important provisions protecting consumers who choose to accept an electronic document. This makes H.R. 1714 a broader bill, covering a wide range of electronic commerce transactions. Indeed, we just passed an amendment to improve this bill dealing with records by a vote of 418 to 2. Why would we want to strike the provision now?

Coupled with the records provision in H.R. 1714 are key consumer protections. In short, the key consumer protections are an opt-in system for consumers who want to accept electronic documents; standards to ensure that electronic documents are accurate and can be printed for use for future reference, and a requirement that key notices, such as termination of a utility service, cancellation of health insurance or life insurance, and foreclosure or eviction must still be delivered in writing.

The amendment before us also fails to address the need for uniformity in electronic signature laws. Currently, Mr. Chairman, 44 States have enacted some sort of electronic signature law. However, all 44 are different and many are inconsistent. With such a patchwork of differing laws, electronic commerce is nearly impossible. This amendment will only perpetuate that patchwork of laws by allowing States to enact any law, any law, regulating electronic signatures, no matter how nonuniform or how inconsistent with the laws of other States.

In contrast, H.R. 1714 allows States to enact a uniform electronic signature law provided that it meets minimum standards consistent with promoting electronic commerce. Two of the key principles are that State laws must be technology neutral and that States cannot limit the offering of electronic signature services to specific types of businesses. H.R. 1714 will encourage States to enact uniform laws while ensuring that States do not inhibit interstate commerce.

In addition, the amendment does not fully address the concerns I have about the use and acceptance of electronic signatures internationally. As other speakers have pointed out, some nations have enacted or are proposing electronic signature legislation that would be harmful to American interests. Title II of H.R. 1714 provides guidance to the Secretary of Commerce to work against any barriers to promote American principles in this area.

I would also like to point out that H.R. 1714 has been the subject of long and substantial negotiations with the minority. Prior to its consideration at the subcommittee and full committee level, we engaged in lengthy negotiations with the minority. The substitute amendments offered in committee by the gentleman from Ohio (Mr. OXLEY), the gentleman from Louisiana (Mr. TAUZIN), and myself contain important provisions that enjoyed bipartisan support. In fact, H.R. 1714 was approved

through two subcommittees and the full committee by a voice vote.

We are also hearing that we should support this amendment because it is identical to the compromise legislation that has been agreed to in the other body. First, if such a compromise has been reached, it certainly has not been cleared for floor consideration. I think it is premature to refer to this as the so-called compromise until it is voted on and approved by the full committee of the other body.

Second, I am surprised to hear my colleagues say that we should merely accept the work of the other body without thoroughly considering this issue in the House. We should not blindly accept any legislation merely because the other body has supposedly reached a compromise on the text of a bill.

I am pleased to see that many of my colleagues from across the aisle have seen the light and decided to support rather than oppose electronic signature legislation. Unfortunately, their amendment falls far short of what is needed to promote electronic commerce.

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

Mr. DINGELL. Mr. Chairman, I yield 2 minutes to the gentleman from New York (Mr. LAFALCE).

(Mr. LAFALCE asked and was given permission to revise and extend his remarks.)

Mr. LAFALCE. Mr. Chairman, I do not believe there is a representative in this body who does not favor electronic signatures. That is not the issue before us. The issue before us is should we pass Federal legislation that, A, preempts consumer rights; and, B, preempts States rights. I think the answer to that is no.

So there is another question. Why not this substitute? Why not this substitute that the administration favors, that is the agreed-upon compromise at least between Senator ABRAHAM, the chairman of the relevant Judiciary Subcommittee in the Senate, and Senator WYDEN and Senator LEAHY?

With respect to consumer rights, every consumer group believes that we must pass this substitute in order to keep the consumer protections that are presently in existing law. Industry, the Microsofts, the Yahoos of this world, would embrace the substitute if it were to be before the President for his signature. It is just that if they can get a better bill that preempts consumer rights, why not?

I remember when I first studied law, the Uniform Commercial Code was to be adopted by the States. Nobody suggested that because contracts are interstate in nature there should be a Federal law preempting the ability of States to adopt the Uniform Commercial Code sometime, with a little change here or a little change there, and that is how it has evolved.

The present bill that is before us would preempt any State law unless it

is fully consistent with the Federal bill. In other words, it preempts it totally. The substitute would pass this legislation, protect the consumer, but also protect the abilities to enact consumer protections that might be even greater. I think that is something we want to preserve.

We will get the signature of the President on the substitute. It is probably going to be the virtual identical bill that passes the Senate. Why not vote for this substitute, get a law, and get the law passed immediately?

Mr. OXLEY. Mr. Chairman, I yield 2 minutes to the gentleman from Utah (Mr. CANNON).

Mr. CANNON. Mr. Chairman, I rise in opposition to the substitute. I do not support the substitute because it fails to simplify, clarify, and modernize the law governing electronic commerce. It fails to promote uniformity of law among the States, and it fails to advance American interests worldwide by promoting a uniform legal regime addressing the use of electronic and similar technological means of effecting and performing commercial and governmental transactions.

The substitute will not accomplish what should be the basic objective of any legislation on this subject; that is, bringing legal certainty to electronic transactions in commerce. The substitute fails in this regard because, instead of promoting uniformity of law among the States, it will lead to the balkanization of applicable law. This will lead to greater uncertainty.

Balkanization will occur because, even with its most narrow scope, the substitute does not apply to States where the Uniform Electronic Transactions Act, UETA, is adopted in whole or any substantially similar variation. Between Section 3(b)(5) of UETA, which permits a State to exclude any of its laws from the application of UETA, and the substitute's substantially similar variation language, a State is completely free to institute its own electronic commerce laws regardless of such laws' effect on interstate commerce.

That is exactly what happened in California, the first State to adopt UETA. Relying on Section 3(b)(5) of the UETA, better known in some circles UETA's black hole, California excluded many laws from the application of UETA's principles. Those laws include most sections of the following California codes: Uniform Commercial Code, the Business and Professions Code, the Civil Code, the Financial Code, the Insurance Code, Public Utilities Code, and the Vehicle Code.

If every State was to take California's approach, the effect would be to further remove legal certainty. Rather, 50 separate legal regimes may arise governing electronic transactions in commerce. This outcome is counterproductive and unacceptable. I therefore urge my colleagues on both sides of the aisle to vote "no" on the substitute.

Mr. CONYERS. Mr. Chairman, I yield myself 2 minutes.

My colleagues, this substitute is just what we need. It has come not a moment too soon, because I think we can now bring a marriage to the rights of consumers and the high-tech necessities of e-signature. It satisfies the need of the high-tech community by recognizing the validity of the electronic signatures in contracts, but it does not go as far as the base bill in getting into the controversial issue of other electronic records that might arise from electronic contract formation.

□ 1500

In other words, this steers a mid-course. It has a counterpart in the United States Senate. And it also has the assurance that the President will sign it into law.

So I am asking my colleagues, please, if we are supporting e-signatures and want to move high tech forward, here is the substitute that we can do this by.

The substitute deals only with the formation of electronic contracts and not other types of records. It does not undermine the important consumer protection laws. For example, regulations implementing the Truth in Lending Act require creditors to provide consumers with periodic statements that include information essential to a consumer in managing a credit card account.

Now, this cannot be accomplished unless we have the substitute. Creditors could request on a consumer's consent to receive all disclosures electronically under H.R. 1714. That is exactly what we are trying to make the distinction between the substitute and the base bill. Please support this substitute.

Mr. BLILEY. Mr. Chairman, I yield 2 minutes to the gentleman from Louisiana (Mr. TAUZIN).

Mr. TAUZIN. Mr. Chairman, I thank the gentleman for yielding me the time. I rise in opposition to this substitute.

Mr. Chairman, members of the committee, the substitute, if adopted, will rob this body of one of its rare opportunities to do good not only by our generation of Americans but by generations yet unborn.

We are about to enter a new millennium that, in large measure, is going to be governed by the enormous possibilities of not only the current Internet as we know it but as broadband, high-speed, always-on, always-available, supercontent-rich, broadband Internet services that are going to merge with television and provide us with new means of communicating and entertaining ourselves and indeed conducting electronic commerce across the span of the globe. It is going to make a smaller world and make possible enormous opportunity for citizens of this country and citizens of the world.

But in order for that to flourish, the legal rules that are to govern elec-

tronic commerce ought to be made clear. The bill does that.

The problem with the substitute is that it limits the bill only to those matters dealing with the formation of an electronic contract.

Now, in the earlier discussions, I tried to point out to my colleagues that many things that happen in electronic commerce do not involve the formation of a contract. The best example is when we write a check and that check has to be physically delivered by the bank to the bank of the recipient to whom we are sending the money. Just the physical transfer of all those checks, all that paperwork, costs consumers in America \$4 billion a year just moving that paper around.

The substitute would do nothing to provide for digital signature in the electronic commerce of transferring money around in the form of payments and checks.

I urge that this substitute be defeated and we stick with the main body of the bill.

Mr. DINGELL. Mr. Chairman, I yield 1 minute to the distinguished gentleman from New York (Mr. WEINER), a member of the Committee on the Judiciary.

Mr. WEINER. Mr. Chairman, I rise in support of the amendment and the substitute being offered by the gentleman from Michigan (Mr. DINGELL) and the gentleman from Michigan (Mr. CONYERS) and others. I would appeal to my colleagues on perhaps a different level than this issue has been debated for some time.

We still have relatively small numbers of American citizens participating in Internet commerce, but that number continues to rise almost exponentially each year. And the reason for that rise in participation in the Internet commerce world is people are developing more confidence. Each time they go make a purchase and they get their product and their credit card number is not stolen and their information not shopped around, people are more likely to come back in future years to partake in that activity again.

That is why it is so absolutely important during this period when Internet commerce is growing that we do everything we can to reassure consumers and reassure those in the States that when they pass laws that they are going to be protected. The substitute adheres to the most stringent consumer protection while still allowing digital signatures.

For those of my colleagues who are like me who on some level do believe that the banking community and the insurance and financial services community should have easier access to this world, I believe we have to do this in a thoughtful way while preserving consumers' rights and, of course, while preserving the rights of States and localities to do what they need to do to reassure those who do partake in the Internet commerce that they will be safe in doing so.

The substitute does that. It does not jeopardize the basic things that the sponsor of the bill would like to do. I urge a yes vote on the substitute.

Mr. BLILEY. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio (Mr. OXLEY).

(Mr. OXLEY asked and was given permission to revise and extend his remarks.)

Mr. OXLEY. Mr. Chairman, I rise in opposition to the substitute offered by my good friend, the gentleman from Michigan (Mr. DINGELL).

As I said in my statement in supporting the underlying bill, we will do irreparable harm to the future of electronic commerce if we are unable to provide the basis for uniformity and legal certainty. And, indeed, that is really what this legislation is all about.

Those of us who study law understood that the Uniform Commercial Code really for the first time turned loose this great engine of economic opportunity and contracts throughout our 50 States when we had some degree of certainty when we are dealing with the Uniform Commercial Code.

In many ways, this legislation sponsored by our good friend, the chairman of the Committee on Commerce, is a natural consequence of following along with the Uniform Commercial Code, but we are doing it as it relates to electronic commerce. Electronic commerce is that natural consequence of what we are doing. So, essentially, that is really what this bill is all about.

The substitute amendment only provides legal certainty if the transaction was conducted as a result of a contract. And indeed, a lot of commerce takes place without formal contracts. And that is what really this legislation is all about.

This substitute, I would tell my good friend from Michigan, is over regulatory, it is industrial policy legislation that is contrary to what electronic commerce is really all about.

Mr. Chairman, the substitute amendment is simply a failure in regards to trusting people who are becoming more and more sophisticated in dealing with electronic commerce and more and more feeling comfortable with what is happening out there in the marketplace. This would be a huge step backwards in the name of consumer protection, when in fact it is quite the opposite and trusts government and trusts regulations and trusts bureaucrats far more than we trust the consumer in making these very important decisions in the marketplace.

So, for that reason, I would ask the substitute be defeated.

Mr. DINGELL. Mr. Chairman, I yield 1 minute to the distinguished gentleman from New York (Mr. LAFALCE).

Mr. LAFALCE. Mr. Chairman, the gentleman from Ohio (Mr. OXLEY) made reference to the Uniform Commercial Code bringing uniformity. I point out that it was not by Federal legislation; it was by the adoption of

the individual States. We retain States' rights.

There is such a thing as the Uniform Electronic Transactions Act. The National Conference of State Legislators wants the individual States to adopt that.

Now the issue is not whether we should adopt UETA on a Federal level, because we are not doing that. We are adopting it with some changes here, some changes there. What changes are we making? Those that don't benefit the consumers.

We are also saying to the States that they can pass whatever law they want, but it cannot in any way be inconsistent with what we pass, which is not the UETA.

Support the substitute. Defeat the main bill. Because if it goes before the President for his signature as it is before the House right now, it will be vetoed. The substitute will be signed.

Mr. BLILEY. Mr. Chairman, I reserve the balance of my time.

Mr. DINGELL. Mr. Chairman, I yield myself 4 minutes.

Mr. Chairman, this bill in its original form passed from the Committee on Commerce unanimously. Now, what happened between now and then is really very interesting. The bill has been changed. The Members on the minority side consulted extensively with our good friend, the chairman of the committee, and we were negotiating with him; and there were a number of agreements made to change the bill to make it still more acceptable and more workable.

But then something funny happened on the way to the floor. The distinguished gentleman from Virginia, or somebody else, all of a sudden decided they are going to put the bill on the floor, and they decided they were going to terminate the negotiations without any notice to the minority.

They then took the step of making some significant changes in the bill. It is not the bill that came out of the Committee on Commerce to which the minority objects. We will be happy to vote for that right this minute. But what we are confronted with here is the unfortunate situation where our dear friends on the majority side have changed the bill with no notice, and it is quite different than the original bill.

Now, what is the basic objection to the bill? Let us try and understand to what does the minority really object.

The minority objects not to the idea that we should authorize under law a uniform system of recognizing the electronic signature of contracts. What is objected to here is something quite different, and that is that all of the matters which are associated with the contract and with contracting are with one swoop of the pen or one click of the computer changed so that they immediately go into force and that no right on the part of the individual who contracts remains intact after the original electronic signature has taken place.

Now, what can happen? A number of matters of notice come electronically.

They are not in hard copy and in writing. The right of the contracting parties to say but certain other things have to be under signature and on paper in the conventional fashion as required by existing State law and by even things going back to common law and ordinary business practices and transactions are no longer permitted. Those are done once they have made the initial electronic contracts by a further electronic transaction.

Now, what is wrong with that? First of all, the hard drive may crash. Second of all, the Y2K bug may strike. Third of all, these notices may get lost in cyberspace. The individual may do a bad job of notifying the other party of an address change. Or the computer may crash. Or any of many things may transpire. The parties cannot even agree to these questions amongst themselves. That is wrong.

If we want to go forward, let us proceed and go forward on the bill that was adopted by the Committee on Commerce. Let us adopt this, which allows everything that the original legislation would have done and which was supported by both sides, majority and minority. Let us proceed in that fashion.

I see no benefit to moving forward with a bill which is so strongly objected to, which is not in the Senate language, and which is threatened with a veto by the President.

All I am suggesting is that they listen to the words of my old dad. When we are going to make this size of massive change, do it sensibly. Know what we are accomplishing. As my dad used to warn me when I was doing carpentry, he would say, "Measure twice. Cut once. Be careful."

That is what I am suggesting to this body. Measure twice. Cut once. Adopt the amendment. Get the bill signed. And then let us proceed forward to such other matters as may be required.

Mr. BLILEY. Mr. Chairman, how much time do I have remaining?

The CHAIRMAN pro tempore (Mr. MILLER of Florida). The gentleman from Virginia (Mr. BLILEY) has 3½ minutes remaining, and the gentleman from Michigan (Mr. DINGELL) has 2½ minutes remaining.

Mr. BLILEY. Mr. Chairman, I yield 2 minutes to the gentleman from Mississippi (Mr. PICKERING).

Mr. PICKERING. Mr. Chairman, I rise in opposition to the substitute. Again, with great respect to the ranking member from the other side, I rise in opposition.

I do so because the substitute fails in its own objective of eliminating barriers to electronic commerce by recognizing the validity of electronic signatures and contracts.

The fact is that the substitute does very little to remove barriers that result from the legal uncertainty associated with electronic signatures and contracts.

Actually, the substitute further exacerbates the uncertainty associated with the legal effect and enforceability



of electronic mediums such as electronic contracts, agreements, signatures, and records.

□ 1515

Under the substitute, electronic signatures and records will enjoy legal effect and enforceability only if they are used in the formation of an electronic contract. Thus, an electronic signature or record is not accorded legal validity unless used in the context of contract formation. The net positive effect of the substitute on e-commerce is minimal at best. Moreover, as the substitute enables a State to exclude any of its laws from the application of the substitute's rule, even that minimal positive effect is at risk of further diminishment. Still another disconcerting fact is that permitting a State to exclude any or all of its laws, the substitute actually undermines the growth of electronic commerce by exacerbating uncertainty by codifying that uncertainty in Federal law.

The simple fact is that the substitute fails to facilitate and promote electronic commerce by validating and authorizing the use of electronic contracts, agreements, records and signatures. And resultantly, it fails to promote public confidence in the validity, integrity and reliability of electronic commerce. H.R. 3220 may actually hinder the development of legal and business infrastructure necessary to implement electronic commerce and therefore retard growth in e-commerce.

Mr. Chairman, I rise in support of the underlying bill and in opposition to the substitute.

Mr. DINGELL. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, I have here a Floor Alert from the National Conference of State Legislatures, Office of State-Federal Relations, in which they point out that the substitute offered by my friends and colleagues and me will accomplish the purposes of ensuring the proper recognition of electronic signatures without trampling on the rights of consumers and without engaging in the completion of legislation which will be opposed and vetoed by the administration.

Our proposal here is fair. There is no significant trampling on State laws. There is a piece of legislation which will be accepted by the administration and which will protect the rights of consumers. Messages which would be transported in cyberspace and perhaps lost to the detriment of consumers who might find as a result of that foreclosures of mortgages and other hurtful actions by the seller will not be occurring.

I think this is a sensible way to proceed. Let us know what we are doing. We embarked upon this process in the idea that we would have a bill which would approve electronic signatures. The original committee bill did that. Declarations were festooned upon the committee bill. This amendment gives all of the rights to the parties that

they want. An individual to that contract may waive contract rights to carry the matter more far and further forward, but this proposal that we confront and seek to amend will impose upon innocent persons conditions which will only be understood by lawyers and experts in electronic matters.

Be fair to your constituents and to the people. Allow them to proceed slowly into the time of cyberspace. Do not put them at risk because all of a sudden they are going to find to their vast surprise, somewhere hidden in a contract which they had signed electronically are a waiver of a whole plethora of rights that are very important to them.

Accept the amendment. Vote for it. And in failing that, reject the bill. It is not in the interests of your constituents.

Mr. BLILEY. Mr. Chairman, I yield myself the balance of my time.

I again rise in opposition to this amendment. Records are important to add to this, it is voluntary, and we have been into that over and over.

In addition to that, what this amendment would do would be to allow States to enact any kind of legislation they want on this subject, and 44 States have already acted. There is a wide variety of difference between the 44 States. The one thing about electronic commerce, it is certainly interstate commerce and that has always been reserved to the Congress.

I would hope that we would reject this amendment and adopt the underlying bill. I would like to point out that the gentleman from Michigan (Mr. CONYERS) is a cosponsor of H.R. 2626, a bill that allows electronic delivery of consumer disclosures under a variety of banking laws, including the Truth-in-Lending Act, the Equal Credit Opportunity Act, the Fair Credit Reporting Act, the Real Estate Settlement Act, and yet we have the gentleman opposing the inclusion of records in H.R. 1714. Passing strange.

I urge the defeat of this amendment and the adoption of the underlying bill.

The CHAIRMAN pro tempore (Mr. LATOURETTE). The question is on the amendment in the nature of a substitute offered by the gentleman from Michigan (Mr. DINGELL).

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

#### RECORDED VOTE

Mr. DINGELL. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 126, noes 278, not voting 29, as follows:

[Roll No. 578]

AYES—126

Abercrombie	Becerra	Capps
Ackerman	Berman	Capuano
Allen	Blagojevich	Cardin
Andrews	Bonior	Clayton
Baldacci	Borski	Clyburn
Baldwin	Brady (PA)	Conyers
Barrett (WI)	Brown (OH)	Costello

Coyne	Klink	Phelps
Danner	Kucinich	Pomeroy
DeFazio	LaFalce	Rahall
DeGette	Lampson	Rangel
Delahunt	Lantos	Reyes
DeLauro	Lee	Rivers
Dicks	Levin	Rothman
Dingell	Lewis (GA)	Roybal-Allard
Dixon	Lipinski	Rush
Doyle	Lowe	Sabo
Duncan	Luther	Sanders
Edwards	Maloney (NY)	Sawyer
Engel	Markey	Schakowsky
Eshoo	Martinez	Scott
Evans	Mascara	Serrano
Farr	McCarthy (MO)	Slaughter
Fattah	McDermott	Smith (MI)
Filner	McGovern	Spratt
Frank (MA)	McKinney	Stark
Green (TX)	McNulty	Strickland
Gutierrez	Meehan	Stupak
Hall (OH)	Menendez	Tierney
Hastings (FL)	Miller, George	Towns
Hilliard	Mink	Turner
Hinchey	Moakley	Velazquez
Hinojosa	Mollohan	Vento
Hoefel	Nadler	Visclosky
Hoyer	Neal	Waters
Jackson (IL)	Oberstar	Watt (NC)
Kanjorski	Obey	Waxman
Kaptur	Olver	Weiner
Kennedy	Ortiz	Wexler
Kildee	Pallone	Wise
Kilpatrick	Pastor	Woolsey
Kleccka	Paul	Wynn

#### NOES—278

Aderholt	Deal	Houghton
Archer	DeLay	Hulshof
Armey	DeMint	Hunter
Bachus	Deutsch	Hyde
Baird	Diaz-Balart	Inslee
Baker	Doggett	Isakson
Ballenger	Dooley	Istook
Barcia	Doolittle	Jenkins
Barr	Dreier	John
Barrett (NE)	Dunn	Johnson (CT)
Bartlett	Ehlers	Johnson, Sam
Barton	Ehrlich	Jones (NC)
Bass	Emerson	Kasich
Bateman	English	Kelly
Bentsen	Etheridge	Kind (WI)
Bereuter	Everett	Kingston
Berkley	Ewing	Knollenberg
Biggert	Fletcher	Kolbe
Bilbray	Foley	Kuykendall
Bilirakis	Forbes	LaHood
Bishop	Ford	Larson
Bliley	Fossella	Latham
Blumenauer	Fowler	LaTourette
Blunt	Franks (NJ)	Lazio
Boehlert	Frelinghuysen	Leach
Boehner	Frost	Lewis (CA)
Bonilla	Galleghy	Lewis (KY)
Bono	Ganske	Linder
Boswell	Gejdenson	LoBiondo
Boucher	Gekas	Lofgren
Boyd	Gibbons	Lucas (KY)
Brady (TX)	Gilchrest	Lucas (OK)
Brown (FL)	Gillmor	Maloney (CT)
Bryant	Gilman	Manzullo
Burr	Gonzalez	McCarthy (NY)
Burton	Goode	McCollum
Buyer	Goodlatte	McCrery
Callahan	Goodling	McHugh
Calvert	Gordon	McInnis
Camp	Goss	McIntosh
Campbell	Graham	McIntyre
Canady	Granger	McKeon
Cannon	Green (WI)	Metcalfe
Castle	Greenwood	Mica
Chabot	Gutknecht	Miller (FL)
Chambliss	Hall (TX)	Miller, Gary
Chenoweth-Hage	Hansen	Minge
Clement	Hastings (WA)	Moore
Coble	Hayes	Moran (KS)
Collins	Hayworth	Moran (VA)
Combest	Hefley	Murtha
Condit	Herger	Myrick
Cook	Hill (IN)	Napolitano
Cooksey	Hill (MT)	Nethercutt
Cox	Hilleary	Ney
Cramer	Hobson	Northup
Crane	Hoekstra	Norwood
Crowley	Holden	Nussle
Cubin	Holt	Ose
Cunningham	Hoolley	Oxley
Davis (FL)	Horn	Packard
Davis (VA)	Hostettler	Pease

Pelosi	Schaffer	Taylor (NC)
Peterson (MN)	Sensenbrenner	Terry
Peterson (PA)	Sessions	Thomas
Petri	Shadegg	Thompson (CA)
Pickering	Shaw	Thornberry
Pickett	Shays	Thune
Pitts	Sherman	Thurman
Pombo	Sherwood	Tiahrt
Porter	Shinkus	Toomey
Portman	Shows	Trafigant
Price (NC)	Shuster	Udall (CO)
Pryce (OH)	Simpson	Udall (NM)
Quinn	Sisisky	Upton
Radanovich	Skeen	Vitter
Ramstad	Skelton	Walden
Regula	Smith (NJ)	Walsh
Reynolds	Smith (WA)	Wamp
Riley	Souder	Watkins
Roemer	Spence	Watts (OK)
Rogers	Stabenow	Weldon (FL)
Rohrabacher	Stearns	Weldon (PA)
Ros-Lehtinen	Stenholm	Weller
Roukema	Stump	Weygand
Royce	Sununu	Whitfield
Ryan (WI)	Sweeney	Wicker
Ryun (KS)	Talent	Wilson
Salmon	Tancredo	Wolf
Sanchez	Tanner	Wu
Sandlin	Tauscher	Young (AK)
Sanford	Tauzin	Young (FL)
Saxton	Taylor (MS)	

## NOT VOTING—29

Berry	Jefferson	Owens
Carson	Johnson, E. B.	Pascrell
Clay	Jones (OH)	Payne
Coburn	King (NY)	Rodriguez
Cummings	Largent	Rogan
Davis (IL)	Matsui	Scarborough
Dickey	Meek (FL)	Smith (TX)
Gephardt	Meeks (NY)	Snyder
Hutchinson	Millender	Thompson (MS)
Jackson-Lee	McDonald	
(TX)	Morella	

□ 1547

Messrs. REGULA, WEYGAND, GEJDENSON, SCHAFFER, SHOWS, and HEFLEY, Mrs. CHENOWETH-HAGE, and Mrs. THURMAN changed their vote from "aye" to "no."

Mr. WEXLER and Mr. SPRATT changed their vote from "no" to "aye."

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

Stated for:

Mr. BERRY. Mr. Speaker, I was unavoidably detained for rollcall vote 578. Had I been present, I would have voted "yes" on rollcall vote number 578.

Stated against:

Mr. ROGAN. Mr. Chairman, on rollcall No. 578, I was attending the Little Rock Nine Congressional Medal of Honor Ceremony at the White House. Had I been present, I would have voted "no."

The CHAIRMAN pro tempore. The question is on the amendment in the nature of a substitute, as amended.

The amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN pro tempore. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. LAHOOD) having assumed the chair, Mr. LATOURETTE, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1714) to facilitate the use of electronic records and signatures in interstate or foreign commerce, pursuant to House Resolution 366, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on the amendment to the amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment in the nature of a substitute.

The amendment in the nature of a substitute was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

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

Mr. LAFALCE. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on passage of the bill are postponed until later today.

#### CONFERENCE REPORT ON H.R. 1555, INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2000

Mr. GOSS. Mr. Speaker, pursuant to the unanimous consent agreement of earlier today, I call up the conference report on the House bill (H.R. 1555) to authorize appropriations for fiscal year 2000 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. LATOURETTE). Pursuant to the order of the House of today, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of Friday, November 5, 1999, at page H. 11630).

The SPEAKER pro tempore. The gentleman from Florida (Mr. GOSS) and the gentleman from California (Mr. DIXON) each will control 30 minutes.

The Chair recognizes the gentleman from Florida (Mr. GOSS).

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

Mr. Speaker, I obviously rise in strong support of the conference report to accompany H.R. 1555, the Intelligence Authorization Act for Fiscal Year 2000.

Mr. Speaker, in H.R. 1555 we begin the funding for the intelligence community of the next millennium. That, Mr. Speaker, is a most useful perspective for what we have tried to do in our conference report. How can we adapt the tools and skills of the Cold War to meet the challenges of the 21st century? These are new times. We need new ways to approach them.

Underlying that question is how, and in some cases whether, we plan to meet those challenges. How we define our interests, Mr. Speaker, will depend on how we define ourselves. What kind of country will we be in the next century? In 2020, when my grandchildren are grown, what will the American flag mean to them and to people around the world?

In the classified schedule of authorizations in our conference report, we frame a preliminary answer to these questions. In that report, Mr. Speaker, we bring forward the basic tools and skills of the Cold War to bear on the new threats of the next century: the international drug cartels that bring poison into our cities, the elusive conspiracies that put the pieces of nuclear weapons into the hands of rogue leaders, and the shadowy networks that want to bomb our buildings overseas and here at home.

We will also need to use these tools and skills to meet new and unanticipated challenges that will arise in the coming years. Synthetic pharmaceuticals, genetic terrorists? I cannot know what threats will face my grandchildren in the year 2020 as Americans, but I can tell the Members what intelligence tools and skills will be necessary to meet those threats.

That is our job. We may not know the who, In other words, but we clearly know the how. We have learned that, and now we have to provide for it. In our conference report, Mr. Speaker, we continue to focus on this, how we will meet the threats and the challenges of the future, which is indeed upon us.

We will need more human intelligence or HUMINT, as we call it. Over the past year we have had to understand and to act upon crises in Belgrade, Nairobi, Dar es Salaam, East Timor, southern Colombia, and a whole host of other hard-to-pronounce places. In each case, policymakers need more HUMINT on the plans and the intentions of the rogue leaders, dissidents, terrorists, guerillas, and traffickers involved in these crises.

Where will the crises of the year 2000 arise, Kabul, Kinshasa, Lagos? I do not know, but they will be out there, and wherever they do arise our policymakers will need intelligence officers on the ground to collect HUMINT on the plans and intentions of those involved.

For that reason, Mr. Speaker, our conference report continues the rebuilding of our HUMINT capabilities around the world. No surprises is the right way to go.

We will continue to need signals intelligence, or SIGINT, as it is called. As in the past, our ability to collect SIGINT has helped to protect our shores from cocaine and our citizens from terrorists. That ability, however, is threatened in a fundamental way by digital technologies.

□ 1600

For that reason, Mr. Speaker, our conference report continues the recapitalization of our SIGINT capability.