

Ms. COLLINS. Mr. President, I ask unanimous consent that the amendment be agreed to, the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 2786) was agreed to.

The bill (H. R. 3111), as amended, was read the third time and passed.

THIRD MILLENNIUM ELECTRONIC COMMERCE ACT

Ms. COLLINS. Mr. President, I now ask unanimous consent that the Senate proceed to the consideration of Calendar No. 243, S. 761.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 761) to regulate interstate commerce by electronic means by permitting and encouraging the continued expansion of electronic commerce through the operation of free market forces, and other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Third 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, non-regulatory, 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 eliminate said burden, but that absent such lack of 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 jurisdic-

tion 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 prescriptive 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 writing and signing requirements imposed by law;

(4) to facilitate the ability of private parties engaged in interstate transactions to agree among themselves on the terms and conditions on which they use and accept electronic signatures and electronic records; 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 existing areas of jurisdiction.

SEC. 4. DEFINITIONS.

In this Act:

(1) ELECTRONIC.—The term "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electro-magnetic, 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 an electronic record and executed or adopted by a person with the intent to sign the electronic record.

(5) GOVERNMENTAL AGENCY.—The term "governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality 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, institution, or instrumentality 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 reported to State legislatures by the National Conference of Commissioners on

Uniform State Law in the form or any variation thereof that is authorized or provided for in such report.

SEC. 5. 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 non-discriminatory approach to electronic signatures and authentication methods from other jurisdictions.

SEC. 6. INTERSTATE CONTRACT CERTAINTY.

(a) IN GENERAL.—The following rules apply to any commercial transaction affecting interstate commerce:

(1) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(2) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(3) If a law requires a record to be in writing, or provides consequences if it is not, an electronic record satisfies the law.

(4) If a law requires a signature, or provides consequences in the absence of a signature, the law is satisfied with respect to an electronic record if the electronic record includes an electronic signature.

(b) METHODS.—The parties to a contract may agree on the terms and conditions on which they will use and accept electronic signatures and electronic records, including the methods therefor, in commercial transactions affecting interstate commerce. Nothing in this subsection requires that any party enter into such a contract.

(c) INTENT.—The following rules apply to any commercial transaction affecting interstate commerce:

(1) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be established in any manner, including a showing of the efficacy of any security procedures applied to determine the person to which the electronic record or electronic signature was attributable.

(2) The effect of an electronic record or electronic signature attributed to a person under paragraph (1) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

(d) FORMATION OF CONTRACT.—A contract relating to a commercial transaction affecting interstate commerce may not be denied legal effect 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 for another person.

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

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 therefor, that such removal is impracticable or would be inconsistent with the implementation or enforcement of applicable laws.

AMENDMENT NO. 2787

Ms. COLLINS. Mr. President, Senators ABRAHAM, WYDEN, and LEAHY have an amendment at the desk, and I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Ms. COLLINS] for Mr. ABRAHAM, for himself, Mr. WYDEN, and Mr. LEAHY, proposes an amendment numbered 2787.

The amendment is as follows:

The amendment is printed in today's RECORD under "Amendments Submitted."

Ms. COLLINS. I ask unanimous consent that the amendment be agreed to.

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

The amendment (No. 2787) was agreed to.

Ms. COLLINS. It is my understanding the Senator from Michigan, Senator ABRAHAM, has a statement to make on this important legislation.

I yield to the Senator from Michigan.

Mr. ABRAHAM. Mr. President, I will briefly comment on this legislation. First, I thank the cosponsors of this legislation, the Millennium Digital

Commerce Act, and Senator WYDEN, the lead cosponsor of the legislation, and Senators MCCAIN, BURNS, and LOTT, who joined as cosponsors. I also thank Senator LEAHY, Senator SAR-BANES, Senator HOLLINGS, Senator MCCAIN and others who have worked with Senator WYDEN and me in moving this through the legislative process. I express my appreciation to all my colleagues.

As we move into the era of e-commerce it is important that people who wish to engage in commercial transactions online over the Internet be able to do so as effectively and efficiently as possible. Part of the challenge we confront is when people are entering into contracts in this nonwritten context, the potential exists for questions to be raised as to the validity of the contractual arrangements. Without getting into all the details, the goal of the Millennium Digital Commerce Act is to address this issue. Approximately 42 States have already passed what in effect are digital signature authentication laws which address contracts entered into online or which address the validity of contracts entered into through the web. The problem is those 42 bills are all different. It is possible for people to argue that a contract is valid in one State and not valid in the State of the other contracting party and, thus, is an invalid document.

The purpose of our legislation is to try to make all such agreements valid if they fit or meet some parameters, identical to the ones the States are moving toward; a uniform system. In short, we believe this will be an interim approach until the States have passed a model uniform act. If we don't do this, impediments will exist between parties who wish to contract via the Internet and through electronic commerce. We believe the passage of this bill will relieve those impediments and allow for e-commerce to continue to expand and grow and strengthen our economy.

I am very pleased at the passage of the bill today, and look forward to working with our counterparts in the House, they have passed a slightly different bill, to pound out a final consensus through the conferencing process and bring back to the Senate the output of that process. I hope to do this very early in the next session, so we can enact this legislation and move it to the President for his signature, and, as I said at the outset, improve the efficiency with which we engage in an expanded e-commerce universe.

I yield the floor.

Mr. LOTT. Mr. President, I want to acknowledge the significant efforts of Senator ABRAHAM to author and pass legislation aimed at facilitating the growth of electronic commerce. Commerce that everyone agrees is a significant driving force behind our nation's robust and expanding economy.

Today, the Senate passed by unanimous consent an Abraham substitute for S. 761, the Millennium Digital Com-

merce Act. This measure is important because it would ensure the legal certainty of electronic signatures in interstate commerce.

Mr. President, right now, there are over forty different state electronic authentication regimes in play. This patchwork of inconsistent and often conflicting state laws makes it difficult to conduct business-to-business and business-to-consumer transactions over the Internet. Those involved in electronic transactions want assurance that their contractual arrangements are legally binding.

Senator ABRAHAM took the lead on this issue and crafted a bill to ensure that a national framework would govern the use of electronic signatures. It is a rational, coherent, and minimalist approach. An approach supported by America Online, American Bankers Association, American Council of Life Insurance, the American Electronics Association, American Financial Services Association, American Insurance Association, Apple, Business Software Alliance, Charles Schwab, the Coalition for Electronic Authentication, Consumer Mortgage Coalition, DLJ Direct, the Electronic Industry Alliance, FORD, Gateway2000, General Electric Company, GTE, Hewlett-Packard, IBM, Intel, Intuit, the Information Technology Association of America, the Information Technology Industry Council, Microsoft, NCR, the National Association of Manufacturers, National Retail Federation, and the U.S. Chamber of Commerce, among others.

Mr. President, in drafting his legislation, Senator ABRAHAM included key concepts and provisions developed by the National Conference of Commissioners on Uniform State Law (NCCUSL). A NCCUSL working group, which included legal scholars, experts on electronic commerce, state officials and other interested stakeholders, spent the better part of two years drafting the Uniform Electronic Transactions Act (UETA). This model legislation was formally approved in August and is expected to be enacted on a state-by-state basis, much like the process followed in approving the Uniform Commercial Code, over the next three to five years.

Senator ABRAHAM's electronic signatures measure is timely in that it serves as an interim solution needed to fill the void until states approve the model UETA package.

I applaud the junior Senator from Michigan for his continuing leadership on technology issues and commend the Senate's action today. This is definitely a significant step in the right direction.

Mr. President, Senator ABRAHAM, my colleagues on this side of the aisle, and I agree that the measure passed today, while a significant accomplishment, only gets consumers to the 50-yard line when it comes to e-commerce. In order to get to the end-zone, Congress still needs to address the issue of electronic records.

The Millennium Digital Commerce Act that was unanimously approved by the Senate Commerce Committee in July would have also provided legal certainty to electronic records. However, eleventh hour objections from the minority, some of which were completely unrelated to this bill, thwarted repeated efforts to bring this crucial measure to the floor.

Mr. President, I would point out that the reported bill, with its electronic records provisions, had bipartisan support and was strongly endorsed by the Administration, not once, but twice. In fact the Office of Management and Budget's Statement of Administration Policy noted "the Administration supports the passage of S. 761 . . . [Its] provisions strike the appropriate balance between the needs of each State to develop its own laws in relation to commercial transactions and the needs of the Federal government to ensure that electronic commerce will not be impeded by the lack of consistency in the treatment of electronic authentication."

The Commerce Committee reported measure did not, as some contend, alter federal or state consumer protection laws. Instead, Senator ABRAHAM's bill simply held that records could not be denied legal effect solely, and the key word is "solely," because such records were in electronic form.

Mr. President, consumers stand the most to gain from electronic records and the most to lose if such records are not clearly granted legal effect, validity, and enforceability. In order to further assuage concerns, Senator ABRAHAM, in earnest, offered a substitute version that largely incorporated key provisions of UETA, verbatim. Even so, and as perplexing as it would seem, his UETA substitute was opposed by the minority. Remember, these are the words developed and agreed to by an esteemed panel of national and state legal experts, and these are the same words that will go into effect as states adopt UETA during the next few years.

I would point out that the Department of Commerce, in its June 22, 1999 position letter supporting the Abraham substitute bill that passed the Commerce Committee, noted that "In the view of the Administration, the current UETA draft adheres to the minimalist 'enabling' framework advocated by the Administration, and we believe that UETA will provide an excellent domestic legal model for electronic transactions, as well as a strong model for the rest of the world."

With these glowing endorsements of both the Commerce Committee reported measure and UETA, both of which provide legal certainty to electronic records, I was surprised and dismayed that the Administration flip-flopped on the records issue at the last moment. One has to wonder what motivated this 180-degree change in position and why the Administration went to great lengths to stall and eventually oppose electronic transactions legislation that included digital records.

Consumers want and need electronic records, not only because digitized records are the equivalent of paper-notices, records, and disclosures, but also because such information is often easier to access, read, store and maintain. Electronic records will save consumers time, money, and the hassle of waiting for paper notices and disclosures. Used in conjunction with an electronic signature, electronic records, with appropriate and effective electronic disclosures, allow anyone, with a hook-up to the borderless World Wide Web, to transact business at any time and at any place.

Mr. President, it is the seamless nature of the Internet that makes it such a phenomenal communications and business medium. To ensure that no one is left out of this new millennium paradigm, the legal certainty of electronic records must be codified in federal statute—at least until UETA is adopted nationally. It is my sincere hope that Congress will address the legality of electronic records in the near term so consumers will experience the full benefits and to reap the rewards of the Internet.

Again, I want to applaud the efforts of the Senate in passing S. 761, Senator ABRAHAM's electronic signatures bill. This action is good for America's consumers, good for America's businesses, and good for our nation's economy and prosperity.

Mr. President, Senator ABRAHAM has once again proven that he is a champion of technology, a guardian of the consumer, and an extremely effective legislator.

Mr. LEAHY. Mr. President, I am pleased that the Senate today is passing the Abraham-Leahy substitute amendment to S.761, the Millennium Digital Commerce Act. This bill seeks to permit and encourage the continued expansion of electronic commerce, and to promote public confidence in its integrity and reliability. These are worthy goals—goals that I have long sought to advance. In the last Congress, many of us worked together to pass the Government Paperwork Elimination Act, which established a framework for the federal government's use of electronic forms and electronic signatures. Today's legislation is part of our continuing efforts to ease the burdens of conducting business electronically.

This is an important bill on an issue of paramount concern to American businesses that engage in electronic commerce. It has had a long journey since it was reported by the Commerce Committee in June. As reported, the bill took a sweeping approach, preempting untold numbers of federal, state and local laws that require contracts, records and signatures to be in traditional written form. I was concerned that such a sweeping approach would radically undermine legislation that is currently in place to protect consumers.

For example, the Committee-passed bill would have enabled businesses to

use their superior bargaining power to compel or confuse consumers into waiving their rights to insist on paper disclosures and communications, even when they do not have the technological capacity to receive, retain, and print electronic records. Could a borrower be compelled to receive delinquency or foreclosure notices by electronic mail, even if she did not have a computer, or her computer could not read the notices in the electronic format in which they were sent? Would she be entitled to revert to paper communications if her computer broke or became obsolete? Could a company require customers to check its Web site for important safety information regarding its products, or for recall notices?

Under S.761 as reported, the company would not have been required to provide any information on paper, even if a state consumer protection law so required. Crucial information about the consumer's rights and obligations would not be received. It was federal preemption beyond need, to the detriment of American consumers.

The problem did not stop there. When information is provided electronically, for it to be useful at a later time to prove its contents, the electronic file must be tamperproof. Otherwise, a consumer could inadvertently change a single byte on the file and thus make it technically different from the original, and useless to prove its contents. The consumer would be left without any means of proving critical terms of the contract, including the terms of the warranty.

I have been working with Senator ABRAHAM and others since August to address these and other concerns I had with the bill. We crafted a bipartisan compromise several weeks ago, but it fell apart after certain industry representatives complained that it did not go far enough to relieve them of federal and state regulatory authority. Fortunately, other industry representatives recognized that this was not the primary or even an intended purpose of this legislation, and worked to get the legislative process back on track. I am pleased that we were able to do this and that we were able to reach agreement, for the second time, on an Abraham-Leahy substitute that encourages the continued expansion of electronic commerce, while leaving in place essential safeguards protecting the nation's consumers.

In a letter dated November 5, 1999, the National Conference of State Legislatures identified what it believed were four essential criteria for any federal legislation related to electronic signatures:

(1) Any preemption of state law and authority must be limited in duration. The idea should be to ensure the validity of most electronic signatures for a period of time, thus giving the states time to act. (2) States

must be allowed to adopt the Uniform Electronic Transactions Act or some similar legislation. (3) Essential state consumer protections must be preserved, along with the capacity of states to enact consumer protection measures in the future. (4) Any federal legislation must be limited to the topic of electronic signatures. It must not embrace any preemption of state regulatory and record keeping authority.

The Abraham-Leahy substitute meets these criteria.

Most importantly, the scope of the bill has been limited to address the principal concern of industry. When Senator ABRAHAM introduced S.761 earlier this year, he said it was designed to eliminate uncertainty about the legality of electronic contracts signed with electronic signatures. Consistent with this design, the Abraham-Leahy substitute ensures that contracts will not be denied legal effect that they otherwise have under state law solely because they are in electronic form or because they were signed electronically. However, as section 4(4) of the bill makes clear, an electronic signature is valid only if executed by a person who intended to sign the contract.

The purpose of this legislation is to facilitate electronic commerce over the Internet. It is not intended that this legislation be the basis for unfair or deceptive attempts by some to avoid providing mandated information, disclosures, notices or content. For example, when the parties have conducted a transaction entirely in person, the fine print of a formal contract cannot include an agreement that the contract can be provided electronically rather than on paper. The basic rules of good faith and fair dealing apply to electronic commerce, and this legislation is not intended to be a basis upon which consumers can be asked to agree to terms and conditions for using electronic signatures and electronic records which are unreasonable based on the circumstances surrounding the transaction.

Further, accurate copies of contracts must be delivered to consumers. The Abraham-Leahy substitute amendment therefore provides that if a law requires a contract to be in writing, an electronic record of the contract will not satisfy such law unless it is delivered to all parties in a form that can be retained for later reference and used to prove the terms of the agreement. This important provision is intended to protect consumers who execute contracts online, by ensuring that contracts are provided in a tamperproof, or "read-only" format. The delivery of any other type of electronic record would make it useless to prove its terms in court.

The new legislation also improves on the Committee-passed version by eliminating its "intent" section, which established interpretive rules regarding the intent of the parties to an electronic transaction. These rules inappropriately allowed businesses to put the risk of forgery, unauthorized use, and identity theft on consumers, by

making it easier for the proponent of an electronic record or electronic signature to prove its authenticity. By eliminating these rules, we have ensured that current contract and evidence laws remain in place. A person is always entitled to assert that an electronic signature is a forgery, was used without authority, or otherwise is invalid for reasons that would invalidate the effect of a signature in written form.

Having just last year worked with Senator KYL on passage of the Kyl-Leahy substitute to S.512, the Identity Theft and Assumption Deterrence Act, to combat identity theft, we should be careful to avoid taking actions that could have the unintended consequence of making such crimes easier to commit.

In his introductory floor statement, Senator ABRAHAM stressed that S.761 was an interim measure, which would provide a national baseline for the use of electronic signatures only until the states enacted their own e-signature legislation. To ensure the temporary nature of the federal preemption, the Abraham-Leahy substitute which passes the Senate today includes a significant change from earlier versions of S.761, including the version reported by the Commerce Committee. The Committee bill preempted a state's laws until the state enacted the Uniform Electronic Transactions Act ("UETA") as reported by the National Conference of Commissioners on Uniform State Law, or any variation that was "authorized or provided for in such report." The full Senate votes today on language that gives states more leeway on the version of the UETA that they choose to pass—including more leeway to adopt strong consumer protections. The revised definition is meant to cover the electronic transactions legislation passed earlier this year by the State of California, and will preserve the capacity of states to perform their traditional role in protecting the health and safety of their citizens.

Nothing in this bill would allow any of the notices that may accompany an electronic contract to be provided electronically. This is especially important to ensure that consumers are apprised of all their rights under federal and state laws. It was the records language of S.761 that held the greatest potential to harm consumers, with its across-the-board invalidation of hard-won consumer protections embodied in such laws as the Truth in Lending Act, the Fair Credit Reporting Act, the Real Estate Settlement Procedures Act, and others. I am pleased that the sponsors of this legislation agreed to remove the electronic records language so that we can allow the critical provisions regarding contracts and signatures to move forward. There will be time in the coming months to revisit the broader issue of electronic records, and to craft legislation that will not place consumers at risk.

In the meantime, contrary to some of the rhetoric that has been heard of

late, nothing prevents companies from providing notices and disclosures to consumers electronically, so long as they also provide paper notices and disclosures in the limited set of circumstances in which a law so requires. Requirements that certain information be provided in a particular format, or by a particular method of delivery, are often adopted to serve consumers' interests by providing them with information critical to making informed choices in the marketplace, understanding their rights and obligations during commercial transactions, and enforcing their rights when transactions go sour. Such laws should not be swept away without adequate assurance that consumers will be able to receive and retain the information electronically.

The AARP made this point in a letter to all Senators dated November 15, 1999, with respect to the more sweepingly preemptive H.R. 1714: "The time to investigate the implications of such a pivotal change in established consumer protections . . . is before, not after, legislation is enacted. Measures to take advantage of electronic market efficiencies must be tempered by a concern for legal and technological responsibilities that are being shifted to the consumer."

The benefits of electronic commerce should not, and need not, come at the expense of increased risk to consumers. I commend the Department of Commerce for its help in crafting a substitute amendment that is more carefully tailored to protect the interests of America's consumers. I also thank Senators SARBANES, who shared many of my concerns about the original bill's impact on consumers, and Senators ABRAHAM and WYDEN, for agreeing to address our concerns.

This bill shows what can be achieved by bipartisan cooperation and compromise. It enjoys broad support from the Administration, the states, consumer representatives, and responsible companies and trade associations that care about their customers. I urge its speedy enactment into law.

I ask unanimous consent to include in the RECORD a Statement of Administration Policy dated November 8, 1999, in support of the Abraham-Leahy substitute amendment; a letter dated November 8, 1999, from the National Automobile Dealers Association, and a letter dated November 5, 1999, from the National Conference of State Legislatures.

STATEMENT OF ADMINISTRATION POLICY,
NOVEMBER 8, 1999 (SENATE)

(This statement has been coordinated by OMB with the concerned agencies.)

S. 761—MILLENNIUM DIGITAL COMMERCE ACT
(ABRAHAM (R) MICHIGAN AND 11 COSPONSORS)

Electronic commerce can provide consumers and businesses with significant benefits in terms of costs, choice, and convenience. The Administration strongly supports the development of this marketplace and supports legislation that will advance that development, while providing appropriate consumer protection. Many businesses and

consumers are still wary of conducting extensive business over the Internet because of the lack of a predictable legal environment governing transactions. Both the Congress and the Administration have been working to address this important potential impediment to commerce.

S. 761 addresses important concerns associated with electronic commerce and the rise of the Internet as a worldwide commercial forum and marketplace. The Administration supports Senate passage of the amendment in the nature of a substitute to S. 761 expected to be offered by Senator Abraham, based on an agreement with Senators Leahy and Wyden. The Administration supports this version of S. 761 because the bill, as proposed to be amended, would: Ensure the legal validity of contracts between private parties that are made and signed electronically; preserve the ability of States to establish safeguards, such as consumer protection laws, to promote the public interest in electronic commerce among private parties just as they can now establish safeguards for paper-based commerce; cover only commercial transactions between private parties that affect interstate commerce; not affect Federal laws or regulations, but instead would give Federal agencies six months to conduct a careful study of barriers to electronic transactions under Federal laws or regulations and to develop plans to remove such barriers, where appropriate; and sunset completely as to the law of any State that enacts the Uniform Electronic Transactions Act.

NATIONAL AUTOMOBILE DEALERS ASSOCIATION, OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, November 8, 1999.
Hon. PATRICK J. LEAHY,
*Ranking Member, Committee on the Judiciary,
Dirksen Senate Office Building, Washington, DC.*

DEAR SENATOR LEAHY: On behalf of the National Automobile Dealers Association (NADA), I am writing to express our views on S. 761, the Millennium Digital Commerce Act.

Like many entrepreneurs throughout the country, America's new car and truck dealers are using today's technological advances to better serve customers, and at NADA we understand the desire to accelerate the role of electronic commerce. Even so, we share your desire to preserve the state's role in this process.

The automobile is one of the single biggest purchases that a consumer makes. As a result, state legislatures throughout the country have enacted various requirements and disclosures governing the purchase and sale of motor vehicles. In light of this extensive body of existing state law, an overly preemptive federal statute would deny the states the ability to protect their citizens in the manner they deem appropriate in these types of transactions.

NADA does not oppose a temporary federal rule to ensure that contracts can not be invalidated solely because they are in electronic form or because they are signed electronically. We believe, however, that any federal legislation should only be an interim measure to provide stability while the states consider the Uniform Electronic Transactions Act (UETA). Once a state adopts the UETA, the temporary federal rule should sunset.

We understand that some drafts of the legislation that have been put forward would allow the federal rule to preempt the UETA in effect in a state, thus denying the states the opportunity to be more protective of consumers should they so desire. If that provision is retained, we believe that motor vehicle transactions should not be covered by

the federal rule. This exception would be necessary to ensure that the states could still perform their traditional role of establishing the legal framework for major purchases.

We appreciate the opportunity to bring our concerns to your attention, and we appreciate all your efforts in addressing these matters before the legislation moves forward in the Senate.

Sincerely,

H. THOMAS GREENE,
Chief Operating Officer, Legislative Affairs.

NATIONAL CONFERENCE OF
STATE LEGISLATURES,
Washington, DC, November 5, 1999.

Hon. PATRICK J. LEAHY
*Russell Senate Office Building,
Washington, DC.*

DEAR SENATOR LEAHY: The National Conference of State Legislatures understands the need to revise federal and state laws as a means of encouraging electronic commerce. In particular, NCSL understands that legislation is needed to allow the more widespread use of electronic signatures as a means of encouraging such commerce.

Over 40 state legislatures have addressed various state law issues related to the validity of electronic signatures. Nevertheless, NCSL has in principle no objection to federal legislation on this same topic, provided that it is tightly focused on removing barriers to legitimate electronic commerce and does not broadly preempt essential elements of state consumer protection and contract law.

NCSL believes that federal legislation related to electronic signatures must meet four criteria: (1) Any preemption of state law and authority must be limited in duration. The idea should be to ensure the validity of most electronic signatures for a period of time, thus giving the states time to act. (2) States must be allowed to adopt the Uniform Electronic Transactions Act or some similar legislation. (3) Essential state consumer protections must be preserved, along with the capacity of states to enact consumer protection measures in the future. (4) Any federal legislation must be limited to the topic of electronic signatures. It must not embrace any preemption of state regulatory and record keeping authority.

The version of S. 761 that is now being presented comes closer to meeting NCSL's criteria than earlier versions of the bill. In general, this "compromise" version is taking the right approach to the issue. NCSL looks forward to working with the sponsors and others to resolve any remaining issues of preemption and consumer protection. NCSL much prefers the new compromise to other earlier versions of electronic signatures legislation which we vigorously opposed because of its unnecessary preemption of state consumer protection and contract law.

For additional information about NCSL's position, please call Neal Osten (202-624-8660) or Michael Bird (202-624-8686).

Sincerely,

Joanne G. Emmons, *Michigan State Senate, Chair, NCSL Commerce and Communications Committee.*

Mr. ABRAHAM. Mr. President, the Senate is soon expected to pass the Millennium Digital Commerce Act—a bill introduced by Senators WYDEN, MCCAIN, BURNS, LOTT and myself which is designed to promote electronic commerce. I rise today to speak in support of this legislation and to thank the co-sponsors for their tireless efforts to pass this legislation. I believe it will have a profound impact on the way commerce is conducted on the Internet.

By now, all of us have heard the prophetic pronouncements: "The Internet will change of all of our lives." "The Computer Age is reshaping the world." And so on. These words are true, and a review of the indicators which document the Internet's extraordinary growth bear this out. In 1993 about 90,000 Americans had access to these on-line resources. By early 1999 that number had grown to about 81 million, an increase of about 900 percent. The Computer Industry Almanac predicts 320 million Internet users world-wide by the end of the year 2000.

And now the figures are coming in on how electronic commerce is transforming the way we do business. They are equally impressive. E-commerce between businesses has grown to an estimate \$64.8 billion for 1999. 10 million customers shopped for some product using the Internet in 1998 alone. And 5.3 million households had access to financial transactions like electronic banking and stock trading by the end of 1999.

While the Internet has experienced almost exponential growth since its inception, there is still room to expand. Today, new technologies enable the Internet to serve as an efficient new tool for companies to transact business as never before. This capability is provided by the development of secure electronic authentication methods. These technologies permit an individual to positively identify the person with whom they are transacting business and to ensure that information being shared by the parties has not been tampered with or modified without the knowledge of both parties. While such technologies are seeing limited use today, the growth of this application has out-paced government's ability to appropriately modify the legal framework governing the use of electronic signatures and other authentication methods.

The growth of electronic signature technologies will increasingly allow organizations to enter into contractual arrangements without ever having to drive across town or fly thousands of miles to personally meet with a client or potential business partner. The Internet is prepared to go far beyond the ability to buy a book or order apparel on-line. It is ready to lead a revolution in the execution of business transactions which may involve thousands or millions of dollars in products or services; transactions so important they require that both parties enter into a legally binding contract.

Mr. President, the Millennium Digital Commerce Act is designed to promote the use of electronic signatures in business transactions and contracts. At present, the greatest barrier to such transactions is the lack of a consistent and predictable national framework of rules governing the use of electronic signatures. Over forty States have enacted electronic authentication laws, and no two laws are the same. This inconsistency deters businesses from

fully utilizing electronic signature technologies for contracts and other business transactions. The differences in our State laws create uncertainty about the effectiveness or legality of an electronic contract signed with an electronic signature. This legal uncertainty limits the potential of electronic commerce, and, thus, our nation's economic growth.

Fortunately, the need for uniformity in electronic authentication rules was recognized early by the States. For the past two years, the National Conference of Commissioners on Uniform State Law, an organization comprised of e-commerce experts from the States, has been working to develop a uniform system for the use of electronic signatures for all fifty States. Their product, the Uniform Electronic Transactions Act, or UETA, was finished in July. As was expected, the UETA is an excellent piece of work and I look forward to the day when this model legislation is enacted by each of the 50 states.

But agreement on the final language of the UETA proposal is not the same as enactment, and despite the hard work of the Commissioners, uniformity will not occur until all fifty States actually enact the UETA. That will likely take some time. Because some State legislatures are not in session next year and other States have more pressing legislative items, it could take three to four years for forty-five or fifty States to enact the UETA. When you consider the changes that have taken place in just the last two years, it is obvious that in the high-technology sector four years is an eternity.

The Digital Millennium Commerce Act is therefore designed as an interim measure to provide relief until the States adopt the provisions of the UETA. It will provide companies the federal framework they need until a national baseline governing the use of electronic authentication exists at the State level. Once States enact the UETA, the Federal preemption is lifted.

To be specific, this legislation promotes electronic commerce in the following manner. First and foremost, the legislation provides that the electronic signatures used to agree to a contract shall not be denied effect solely because they are electronic in nature. This provision assures that a company will be able to rely on an electronic contract and that another party will not be able to escape such certainty. This bill will reduce the likelihood of dissatisfied parties attempting to escape electronic contractual agreements and transactions.

To ensure a level playing field for all types of authentication, the bill grants parties to a transaction the freedom to determine the technologies to be used in the execution of an electronic contract. In essence, this assures technology neutrality because businesses and consumers, not government, will make the decisions as to what type of

electronic signatures and authentication technologies will be used in transactions.

Since the Internet is inherently an international medium, consideration must also be given to the manner in which the U.S. conducts business with overseas governments and businesses. This legislation therefore sets forth a series of principles for the international use of electronic signatures. In the last year, U.S. negotiators have been meeting with the European Commissioners to discuss electronic signatures in international commerce. In these negotiations, the U.S. Department of Commerce and the State Department have worked in support of an open system governing the use of authentication technologies. Some European nations oppose this concept, however. For example, Germany insists that electronic transactions involving a German company must utilize a German electronic signature application. I applaud the Administration for their steadfast opposition to that approach. This bill will bolster and strengthen the U.S. position in these international negotiations by establishing the following principles as the will of the Congress:

One, paper-based obstacles to electronic transactions must be eliminated.

Two, parties to an electronic transaction should choose the electronic authentication technology.

Third, parties to a transaction should have the opportunity to prove in court that their authentication approach and transactions are valid.

Fourth, the international approach to electronic signatures should take a non-discriminatory approach to electronic signature. This will allow the fees market—not a government—to determine the type of authentication technologies used in international commerce.

Mr. President, it is my hope that adoption of these principles will increase the likelihood of an open, market-based international framework for electronic commerce.

Finally, the bill directs the Department of Commerce and Office of Management and Budget to report on Federal laws and regulations that might pose barriers to e-commerce and report back to Congress on the impact of such provisions and provide suggestions for reform. Such a report will serve as the basis for Congressional action, or inaction, in the future.

Mr. President, Senator WYDEN, Senator McCAIN, Senator BURNS, the Majority Leader and I worked very hard to address the multiple of issues and concerns raised by those most affected by this legislation, namely the high-tech industry, the states and the consumer. I also want to recognize the considerable time and effort dedicated to this legislation by Senator LEAHY, Senator HOLLINGS and Senator SAR-BANES. Senators LEAHY and SAR-BANES worked diligently with the sponsors of

this bill to address protection issues. In particular, my colleagues were concerned about the effects of this legislation on the notification and disclosure requirements required by law. I understand very well the concerns my colleagues raised and I agree with many, but not all, of their conclusions.

I believe the use of electronic records in electronic transactions is crucial to real growth in electronic commerce. And if e-commerce is to truly expand the opportunities for individuals, businesses and consumers must have the freedom to agree to the types of documents and information they receive electronically. This right to choose to receive records electronically must be provided by Congress. The best way to do that is to pass laws which establish legal certainties for the sending, receipt and storage for the broad range of electronic records, and in particular, for records associated with loans and mortgages. Today, a vacuum exists with respect to these records. Aggressive businesses and small banks are filling this vacuum by providing loans and mortgages electronically even though there is question as to whether such transactions are protected under law. The increasing demand for such services demonstrates the popularity for electronic loans. By making applications easier and reducing associated consumer costs, these businesses are providing a service which is becoming increasingly popular with the American public. Rather than ignore this new market, or worse, condemn it, Congress should work with the industry and the proper regulatory agencies to ensure that these increased consumer opportunities are maintained and that relevant consumer protection provisions are modernized. I believe my proposal to permit individuals to opt-in to the receipt of records and to opt-out of receipt at any time represented reasonable middle ground on this issue, and am disappointed that my colleagues and I could not agree on a framework for records based on this model.

I intend to continue working toward a resolution which will permit individuals to have access to electronic records. It is simply in the long-term best interest of both consumers and the economy. And I am sure I will not labor on this effort alone. I am pleased to note that, among parties familiar with this debate, there is growing support for legislation to quickly address this important issue.

Mr. President, despite our philosophical differences, it was clear from the beginning that everyone involved was interested in working cooperatively to enact good legislation. And while I wish this bill could go further, I am nevertheless pleased with the product that we have passed today. So I want to thank Senator LEAHY and Senator SAR-BANES for their cooperation and hard work. I also want to recognize the efforts of the Ranking Member of the Commerce Committee, Senator HOLLINGS. Senator HOLLINGS made

it clear very early that he had concerns surrounding the issue of preemption. His staff and mine worked quickly and effectively to find common ground on this legislation and his spirit of compromise allowed us to move forward on a bill that I do not doubt he would have written differently. I want to thank him for his contribution.

Finally, I wish to express my thanks to the Technology Division of the State of Massachusetts. Governor Paul Cellucci's staff provided indispensable counsel on existing State law governing the use of electronic signatures and the manner in which Federal law can bolster or hamstring State contract law. I value the Governor's input and will continue to work with him to address the extent to which the States are impacted by this legislation as it advances. Of course, the business and technology sectors have also been crucial in helping to craft this bill. Representatives from the Information Technology Association of America, Ford, the Coalition for Electronic Authentication, the Information Technology Industry Council, Apple, the American Electronics Association, NCR, America Online, the Electronic Industry Alliance, Microsoft, Hewlett-Packard, IBM and the National Association of Manufacturers have each lent their time and expertise to this effort. I appreciate their contributions and look forward to continuing this effort to ensure that we develop the best approach possible to promote use of electronic signatures in business transactions.

Mr. President, despite the great work that has taken place here in the Senate, there is more work to do on this legislation. The House is currently working on a companion bill and I look forward to working with the Chairman of the Commerce Committee and other Representatives to ensure that the legislation sent to the President for his signature is the best and most effective approach to expanding electronic commerce possible.

Mr. SARBAKES. Mr. President, I rise today to discuss S. 761, the Third Millennium Digital Commerce Act. This is an important bill at a pivotal time in our nation's history. The rapid growth of the Internet, and its transformation from an academic research tool to a truly global communications network, is exerting its influence in more and more areas of our daily lives.

One of enormous change is the way in which Americans buy, sell, and trade products and services. Just as the general store gave way to the shopping mall and mail order catalogues, these now "traditional" forms of retailing are being supplanted by electronic commerce over the Internet. Electronic retailers are providing consumers with a broad range of new choices in goods and services.

Electronic transactions are also becoming an integral part of business-to-business relationships. Ordering, billing, and a host of other activities are

now being handled by electronic means, cutting both costs and transaction times. These techniques will make our overall economy more efficient, and the benefits should eventually be passed on to consumers.

The world of electronic commerce is not without its problems, however. One of the largest of these is the lack of coherent legal framework for the conduct of electronic transactions. The commercial world is governed by a patchwork of Federal, state, and local laws. Because electronic commerce is such a recent phenomenon, it can be difficult to apply existing commercial codes and statutes to these new kinds of transactions. Often the laws are simply silent on electronic issues, leading to uncertainty for businesses and consumers alike.

One such area is electronic signatures. Technology now exists that can replace written signatures on paper documents with computer code that performs the same functions. However, many states have not yet enacted laws to ensure that digital signature technologies, when used in a reasonable and appropriate manner, will be considered valid. According to business groups, this uncertainty has had a dampening effect on the growth of electronic commerce.

Many state legislatures are hard at work to devise a workable, consistent legal framework for electronic records and signatures. Until their efforts are complete, however, S. 761, the bill introduced by Senator ABRAHAM, will serve as a stop-gap measure. It will provide a measure of legal certainty, while protecting the rights of consumers under existing laws governing many types of transactions.

I am pleased to have worked closely with Senator ABRAHAM, Senator LEAHY, Senator WYDEN, members of the Commerce Committee, industry, and consumer groups to craft a bill that answers the legal need, yet provides for continued consumer protections. I would like briefly to describe some of these critical consumer protection aspects of the bill.

While electronic commerce can provide consumers with enormous benefits, a sad stream of news articles over the past few years show clearly that there are unscrupulous operators on the Internet. The passage of this Act is intended to serve as a means of protecting consumers from deceptive practices.

To provide businesses with greater legal certainty, the bill stipulates that contracts cannot be deemed unenforceable solely because they involved the use of an electronic signature. Under this bill, companies and consumers should only be able to agree to reasonable and appropriate electronic signature technologies that provide adequate security to both parties. However, as the definition of the electronic signature makes clear, the electronic signature is only valid under this Act if the person intended to sign the contract.

The basic rules of good faith and fair dealing apply to electronic commerce, and this Act should not be the basis upon which parties to a contract can be asked to agree to terms and conditions for using electronic signatures and electronic contracts which are unreasonable based on the circumstances surrounding the transaction. For example, when the parties have conducted a transaction entirely in person, the fine print of a form contract should not include an agreement that the contract can be provided electronically rather than on paper. In addition, companies must deliver to consumers electronic records of the contract in a form they can receive, retain, and use to prove the terms of an agreement. Such an electronic record would have to be provided in a "locked," or tamper proof, format.

Regarding new laws on electronic transactions, the states have been engaged for some time, through the National Conference of Commissioners on Uniform State Laws, in the formulation of a model Uniform Electronic Transactions Act (UETA). Versions of the UETA will be enacted by the individual states. The bill we are considering today includes a revised definition of UETA, changed from the bill reported by the Commerce Committee, that gives states more flexibility to pass versions of UETA that best meet the needs of their citizens. It is intended that California's recently passed version of UETA, for example, meet this test.

I would like once again to thank my colleagues, Senator ABRAHAM, Senator LEAHY, and Senator WYDEN for their hard work on this issue. I believe that we have reached an accommodation on this legislation that provides industry with the provisional legal certainty they seek, while ensuring that existing consumer laws are not diluted by the increasing use of electronic commerce. This is an important step toward making our commercial laws ready for the twenty-first century.

Mr. LIEBERMAN. Mr. President, I rise today to express my support for the Millennium Digital Commerce Act of 1999. I thank Senators ABRAHAM, LEAHY, and WYDEN for their leadership on this important issue. As a cosponsor of this legislation, I am proud of the steps it takes to support an important and still emerging technology and industry. The Millennium Digital Commerce Act will facilitate the continued growth of the Internet and of electronic commerce. With this legislation, the Senate recognizes the significant transformations taking place in our economy and how we do business today and into the future.

I think we all recognize that we are witnessing an electronic revolution. There is no shortage of statistics to prove what we are seeing all around us. According to a recent U.S. Department of Commerce report, approximately one third of the U.S. economic growth

in the past few years has come from information technologies (over \$1.1 trillion). Just this year, venture capitalists have invested more than \$8 billion in Internet companies—twice the rate of last year.

According to a University of Texas report, e-commerce is growing at a much faster rate than many had expected. The digital economy generated more than \$300 billion in revenue in 1998 and was responsible for 1.2 million jobs. Many e-commerce companies in my State of Connecticut, like Micro-Warehouse in Norwalk, Coastal Tool & Supply in West Hartford, and Sagemaker Inc. of Fairfield, are leading the way in the digital economy.

In the Senate, I have worked to support the growth of e-commerce by cosponsoring the Internet Tax Freedom Act which places a three year moratorium on new state and local taxes on the Internet in order to give the digital economy some breathing room to evolve.

This legislation takes further steps to continue the growth of e-commerce and is a powerful follow-on to the Internet Tax Freedom Act. With this legislation we will eliminate a major barrier to e-commerce by providing for the legal recognition of electronic signatures in contracting and by creating a consistent, but temporary, national electronic signatures law to preempt a multitude of sometimes inconsistent state laws. This bill is technology neutral, allowing contracting parties to determine the appropriate electronic signature technology for their transaction. Importantly, this legislation is the result of thoughtful compromise. It gives electronic signatures more legal certainty but also provides for consumer protection. It deals with electronic signatures only in creating contracts. It preempts state law only until the states enact their own statutes and standards as provided for by the Uniform Electronic Transactions Act (UETA).

Mr. President, I would like to thank those who have worked so diligently to create this Act. Through the considerate and collaborative approach of several of my colleagues, including Senators ABRAHAM, LEAHY, and WYDEN, we now have legislation with language that achieves a broad public purpose. We are now able to continue supporting the growth and evolution of electronic commerce and technologies that will effectively bring us into the next century.

Mr. WYDEN. Mr. President, for the past several years, Congress has been working in a bipartisan way to write the rules of the digital economy. We have made significant progress on Internet taxes, privacy, encryption and the Y2K problem. Now is the time to move forward on rules for electronic signatures.

The bill before us today, S. 761, is based on the premise that it's better to be online than waiting in line. A growing number of Americans who now

have to wait in line for things like a driver's license or construction permit, could see their business expedited by a few clicks of their mouse.

We live in an increasingly mobile society, where young people get recruited for jobs clear across the country. They may need to move in a hurry but don't have the time, for example, to pack up a home in Virginia and look for another one in Portland, Oregon. With the Internet, they can shop for a house in another town. With this electronic signatures bill, they can pretty much conclude the whole transaction of purchasing the house online.

The legislation puts electronic and paper contracts and agreements on equal footing legally. Like the Internet Tax Freedom Act, the bill would establish technological neutrality between electronic and paper contracts and agreements. This means consumers will enjoy the same legal protections when purchasing a car or home online as when they walk into an auto dealership or real estate office and sign all the documents in person. We worked long and hard to make sure that the system established here benefits consumers who wish to receive information electronically without treating those without computers as second class citizens.

This legislation does not address the issue of electronic records because this matter deserves more thorough study and discussion. I intend to work with all interested parties on this—from consumer groups to financial services firms—over the course of the coming months to craft legislation that will extend the benefits of this measure to electronic records in a way that continues consumer protections.

Commercial transactions have traditionally been governed by State laws which are modeled on the Uniform Commercial Code. Forty-two states have some law in place relating to digital authentication. But differences between and among these laws can create confusion for e-entrepreneurs. The unstoppable growth of electronic commerce has led the States recently to develop a Uniform Electronic Transactions Act, or UETA (as part of the Uniform Commercial Code), to serve as a model for each State legislature in developing further its own electronic signatures law. However, only one State—California—has enacted a UETA. The purpose of this legislation is to provide interim Federal legal validity for electronic contracts and agreements until each state enacts its own UETA. This means e-commerce will not be hamstrung by the lack of legal standing.

I would like to take a minute to run through the highlights of S. 761:

Technological neutrality: It allows electronic signatures to replace written signatures. In interstate commerce a contract cannot be denied legal effect solely because of an electronic signature, electronic record or an electronic agent was used in its formation.

Choice of technology: It does not dictate the type of electronic signature technology to be used; it allows the parties to a transaction to choose their own authentication technology.

Consumer protections: It protects consumer rights under State laws; it does not preempt State consumer protection laws. It assures that consumers without a computer are not treated as second class citizens. If a consumer buys a car online, the consumer cannot be forced to use the computer to receive important recall or safety notices but retains the option to continue to get such notices through the mail.

No State preemption: Its provisions sunset when a State enacts UETA.

Excludes matters of family law: It specifically excludes agreements relating to marriage, adoption, premarital agreements, divorce, residential landlord-tenant matters because these are not commercial transactions.

Report on Federal statutory barriers to electronic transactions: It requires OMB to report to Congress 18 months after enactment identifying statutory barriers to electronic transactions and recommending legislation to remove such barriers.

In conclusion, Mr. President, I wish to acknowledge the leadership of Sen. ABRAHAM in moving this legislation forward. He and I have teamed up successfully on other legislation, and it was a pleasure to work with him and his tireless staff on this bill. I also want to recognize the contribution of Senator LEAHY, particularly with regard to the consumer protection provisions, as well as the effort of Senator HOLLINGS. It took a bipartisan team to get this bill through the Senate today, and I look forward to continuing to work with this team as we go to conference with the House on S. 761.

I ask unanimous consent that my statement be printed in the record following Senator ABRAHAM's statement on the passage of S. 761.

Mr. LIEBERMAN. Mr. President, I rise today to express my support for the Millennium Digital Commerce Act of 1999. I thank Senators ABRAHAM, LEAHY, and WYDEN for their leadership on this important issue. As a cosponsor of this legislation, I am proud of the steps it takes to support an important and still emerging technology and industry. The Millennium Digital Commerce Act will facilitate the continued growth of the Internet and of electronic commerce. With this legislation, the Senate recognizes the significant transformations taking place in our economy and how we do business today and into the future.

I think we all recognize that we are witnessing an electronic revolution. There is no shortage of statistics to prove what we are seeing all around us. According to a recent U.S. Department of Commerce report, approximately one third of the U.S. economic growth in the past few years has come from information technologies (over \$1.1 trillion). Just this year, venture capitalists have invested more than \$8 billion

in Internet companies—twice the rate of last year.

According to a University of Texas report, e-commerce is growing at a much faster rate than many had expected. The digital economy generated more than \$300 billion in revenue in 1998 and was responsible for 1.2 million jobs. Many e-commerce companies in my State of Connecticut, like Micro-Warehouse in Norwalk, Coastal Tool & Supply in West Hartford, and Sagemaker Inc. of Fairfield, are leading the way in the digital economy.

In the Senate, I have worked to support the growth of e-commerce by co-sponsoring the Internet Tax Freedom Act which places a three year moratorium on new state and local taxes on the Internet in order to give the digital economy some breathing room to evolve.

This legislation takes further steps to continue the growth of e-commerce and is a powerful follow-on to the Internet Tax Freedom Act. With this legislation we will eliminate a major barrier to e-commerce by providing for the legal recognition of electronic signatures in contracting and by creating a consistent, but temporary, national electronic signatures law to preempt a multitude of sometimes inconsistent state laws. This bill is technology neutral, allowing contracting parties to determine the appropriate electronic signature technology for their transaction. Importantly, this legislation is the result of thoughtful compromise. It gives electronic signatures more legal certainty but also provides for consumer protection. It deals with electronic signatures only in creating contracts. It preempts state law only until the states enact their own statutes and standards as provided for by the Uniform Electronic Transactions Act (UETA).

Mr. President, I thank those who have worked so diligently to create this Act. Through the considerate and collaborative approach of several of my colleagues, including Senators ABRAHAM, LEAHY, and WYDEN, we now have legislation with language that achieves a broad public purpose. We are now able to continue supporting the growth and evolution of electronic commerce and technologies that will effectively bring us into the next century.

Ms. COLLINS. Mr. President, I ask unanimous consent the committee amendment in the nature of a substitute be agreed to as amended, the bill be read the third time and passed, the motion to reconsider laid upon the table, and any statements be printed in the RECORD.

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

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

The bill (S. 761), as amended, was read the third time and passed, as follows:

[The bill was not available for printing. It will appear in a future edition of the RECORD.]

UNANIMOUS-CONSENT AGREEMENT

Ms. COLLINS. Mr. President, I ask unanimous consent at 4 p.m. the Senate proceed to the Work Incentives conference report, and that there be 120 minutes equally divided in the usual form, with an additional 10 minutes under the control of Senator LOTT. I further ask consent that following the use or yielding back of time, the vote on the adoption of the conference report occur immediately following the vote on adoption of the conference report to accompany H.R. 3195.

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

Ms. COLLINS. I further ask consent immediately following the vote on the adoption of the conference report, H. Con. Res. 236 be agreed to, and the motion to reconsider be laid upon the table.

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

CHURCH PLAN PARITY AND ENTANGLEMENT PREVENTION ACT OF 1999

Ms. COLLINS. Mr. President, I ask unanimous consent the health committee be discharged from further consideration of S. 1309 and that the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1309) to amend title I of the Employee Retirement Income Security Act of 1974 to provide for the preemption of State law in certain cases relating to certain church plans.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 2788

(Purpose: To provide for a complete substitute)

Ms. COLLINS. Mr. President, there is a substitute amendment at the desk submitted by Senators SESSIONS and JEFFORDS. I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Ms. COLLINS] for Mr. SESSIONS, for himself, and Mr. JEFFORDS, proposes an amendment numbered 2788.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. PURPOSE.

The purpose of this Act is only to clarify the application to a church plan that is a welfare plan of State insurance laws that require or solely relate to licensing, solvency, insolvency, or the status of such plan as a single employer plan.

SEC. 2. CLARIFICATION OF CHURCH WELFARE PLAN STATUS UNDER STATE INSURANCE LAW.

(a) IN GENERAL.—For purposes of determining the status of a church plan that is a welfare plan under provisions of a State insurance law described in subsection (b), such a church plan (and any trust under such plan) shall be deemed to be a plan sponsored by a single employer that reimburses costs

from general church assets, or purchases insurance coverage with general church assets, or both.

(b) STATE INSURANCE LAW.—A State insurance law described in this subsection is a law that—

(1) requires a church plan, or an organization described in section 414(e)(3)(A) of the Internal Revenue Code of 1986 and section 3(33)(C)(i) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(33)(C)(i)) to the extent that it is administering or funding such a plan, to be licensed; or

(2) relates solely to the solvency or insolvency of a church plan (including participation in State guaranty funds and associations).

(c) DEFINITIONS.—For purposes of this section:

(1) CHURCH PLAN.—The term “church plan” has the meaning given such term by section 414(e) of the Internal Revenue Code of 1986 and section 3(33) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(33)).

(2) REIMBURSES COSTS FROM GENERAL CHURCH ASSETS.—The term “reimburses costs from general church assets” means engaging in an activity that is not the spreading of risk solely for the purposes of the provisions of State insurance laws described in subsection (b).

(3) WELFARE PLAN.—The term “welfare plan”—

(A) means any church plan to the extent that such plan provides medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services; and

(B) does not include any entity, such as a health insurance issuer described in section 9832(b)(2) of the Internal Revenue Code of 1986 or a health maintenance organization described in section 9832(b)(3) of such Code, or any other organization that does business with the church plan or organization sponsoring or maintaining such a plan.

(d) ENFORCEMENT AUTHORITY.—Notwithstanding any other provision of this section, for purposes of enforcing provisions of State insurance laws that apply to a church plan that is a welfare plan, the church plan shall be subject to State enforcement as if the church plan were an insurer licensed by the State.

(e) APPLICATION OF SECTION.—Except as provided in subsection (d), the application of this section is limited to determining the status of a church plan that is a welfare plan under the provisions of State insurance laws described in subsection (b). This section shall not otherwise be construed to recharacterize the status, or modify or affect the rights, of any plan participant or beneficiary, including participants or beneficiaries who make plan contributions.

Ms. COLLINS. I ask unanimous consent that the amendment be agreed to.

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

The amendment (No. 2788) was agreed to.

Ms. COLLINS. Mr. President, I ask unanimous consent the bill be read the third time and passed, as amended, the motion to reconsider be laid upon the table and any statements be printed in the RECORD.

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

The bill (S. 1309), as amended, was read the third time and passed, as follows: