National Conference of Commissioners on Uniform State Laws

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July 24, 2007

The Honorable Joseph R. Biden, Jr.
United States Senator
Senate Judiciary Committee
221 Russell Senate Office Building
Washington, DC 20510

Re: House Bill 1979, Interstate Recognition of Notarizations Act of 2007

Dear Senator Biden:

On behalf of the National Conference of Commissioners on Uniform State Laws (NCCUSL), I write to express deep reservations about House Bill 1979. H.R. 1979 would enact the Interstate Recognition of Notarizations Act of 2007. The legislation passed the House of Representatives recently under suspended rules, and has been referred to the Senate Judiciary Committee. NCCUSL feels that H.R. 1979, if enacted as currently drafted, may have an unintended yet highly damaging effect with respect to existing federal and state laws governing electronic commercial and real estate transactions.

The existing Electronic Signatures in Global and National Commerce Act (E-SIGN), 15 U.S.C. § 7001 – 7006, 15 U.S.C. § 7006(5), defines an "electronic signature" to mean "an electronic sound, symbol, or process, attached to or *logically associated* with a contract or other record and executed or adopted by a person with the intent to sign the record." The phrase "logically associated with" is not otherwise defined.

Two major uniform state laws (the Uniform Electronic Transactions Act, adopted in 48 states, and the Uniform Real Property Electronic Recording Act, adopted in 14 states) validate electronic notarizations as if they were traditionally, manually signed, as long as the information that should accompany the electronic signature (as required by other law) is "attached to or logically associated with the signature or record." These existing state laws are consistent with E-SIGN.

As currently used in all three acts, the phrase is intended to refer to the ways in which data are stored in electronic records and how that data relates to the technologies involved in electronic records. It was deliberately left undefined in those acts because definitions related to technology are rapidly rendered irrelevant by technological advancements. Once obsolete, these definitions can go beyond irrelevance to become burdensome, restrictive, or harmful to the original intent of the law.

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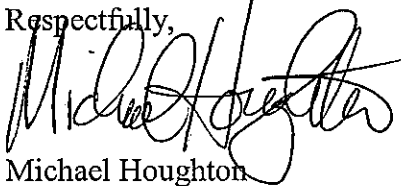
H.R. 1979 states that electronically signed and notarized documents will be recognized by federal courts where "the seal information is securely attached to, or logically associated with, the electronic record so as to render the record tamper-resistant." However, the act then uses a definition of "logically associated with" to specify that the required information is "logically associated with" the electronic document, signature, or record when "...the seal information is securely bound to the electronic record in such a manner as to make it impracticable to falsify or alter, without detection, either the record or the seal information."

While this sort of security can serve an important purpose, this definition is unrelated to the concepts which underlie the use of the phrase "logically associated with" as used in E-SIGN, UETA, and URPERA. This represents an extreme departure from the carefully considered policy articulated in those three acts. It would codify an unnecessary and potentially damaging restriction on the operation of electronic transactions which would force parties to provide additional, difficult, and costly proofs for the validity of a very simple concept.

Moreover this change is unnecessary, given that the three existing acts, combined with state notary laws, the Federal Rules of Evidence, and the Full Faith and Credit Clause (Article IV, Section 1, U.S. Constitution), already address these issues. Further, H.R. 1979's definition could have significant negative consequences for the operation, efficacy, and enforceability of **all** electronic commercial transactions if the meaning of the phrase in H.R. 1979 is construed by courts to apply to the term as used in those broader acts and bodies of law.

NCCUSL urges you to give careful consideration to the provisions of H.R. 1979 and the effects the legislation will have on existing and beneficial state and federal laws. At the very least, we respectfully request the removal of the definition of "logically associated with" from the bill. We sincerely appreciate your consideration, and look forward to working with you on H.R. 1979.

Respectfully,



Michael Houghton
Vice President
National Conference of Commissioners on Uniform State Laws

cc: Howard J. Swibel, President, NCCUSL
John Sebert, Executive Director, NCCUSL

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