

MONDAY, APRIL 10, 2000 P.M.

TABLE OF CONTENTS

REFERENCE OF BUSINESS.....	3-8
BILLS ON FIRST READING (S. Nos. 1982-1983).....	3-4
RESOLUTIONS (S. Res. Nos. 745-746).....	4-7
COMMUNICATIONS.....	7-8
COMMITTEE REPORTS (C. R. Nos. 216-217).....	
ADDITIONAL REFERENCE OF BUSINESS.....	8-9
RESOLUTIONS (S. Res. Nos. 747-749).....	8-9
BILL ON THIRD READING.....	9-15
(S. No. 1902 - Electronic Commerce Law)	
BILL ON SECOND READING (<i>Continuation</i>).....	15-21
(S. No. 1438 - Kinder Plus: The Early Years Act)	
Sponsor - Senator Oreta	
Amendments by Senator Santiago	
(Consideration Suspended)	
BILL ON SECOND READING (<i>Continuation</i>).....	21-61
(S. No. 1862 - Tax Amnesty Act of 1999)	
Sponsor - Senator Enrile	
Interpellation by Senator Osmeña (S)	
(Consideration Suspended)	
BILL ON SECOND READING (<i>Continuation</i>).....	61-67
(S. No. 1943 - Energy Regulatory Authority)	
Sponsor - Senator Osmeña (J)	
Interpellation by Senator Guingona	
(Consideration Suspended)	
CONSIDERATION OF P. S. RES. NO. 701	67-68
(Commending the Manila Bulletin on Its 100th Anniversary)	
(Adopted)	
MOTION OF SENATOR DRILON.....	68
(All Senators Present as Coauthors of P. S. Res. No. 701)	

MUTUAL FORGIVENESS, AND A NEW BEGINNING FOR
ALL FILIPINOS

Introduced by Senator Tatad

The President. Referred to the Committee on Rules.

The Majority Leader is recognized.

BILL ON THIRD READING
S. No. 1902--E-Commerce Law

Senator Drilon. Mr. President, with the permission of the Chamber, I move that we vote on Third Reading on Senate Bill No. 1902. Copies of the bill were distributed to the members on April 6, 2000.

The President. Is there any objection? [Silence]
There being none, voting on Third Reading on Senate Bill No. 1902 is now in order.

The Secretary will read only the title of the bill.

The Secretary. Senate Bill No. 1902, entitled

AN ACT PROVIDING FOR AN ELECTRONIC COMMERCE LAW
AND FOR OTHER PURPOSES

The President. We shall now vote on the bill and the Secretary will call the roll.

The Secretary. Senators

Aquino-Oreta.....	Yes
Barbers.....	
Biazon.....	Yes
Defensor Santiago.....	Yes
Cayetano.....	Yes
Drilon.....	Yes
Enrile.....	Yes
Flavier.....	Yes
Guingona.....	Yes
Jaworski.....	Yes
Legarda-Leviste.....	Yes
Magsaysay Jr.....	Yes*
Osmena (J).....	Yes
Osmena (S).....	Yes
Pimentel Jr.....	Yes
Revilla.....	Yes
Roco.....	Yes
Senator Tatad.....	Abstain*

The President.....Yes

Senator Tatad. Mr. President.

The President. Sen. Francisco S. Tatad is recognized.

EXPLANATION OF VOTE OF SENATOR TATAD

Senator Tatad. Mr. President, may I explain my vote.

We have said from the very beginning that having entered the knowledge of economy, it would be good for us to be ahead of the others in putting in place the legal infrastructure for electronic commerce. This, I believe, is what the Committee on Trade and Industry has tried to do, with this bill.

It is a first step but it needs to be a sure step as well. As of now, only a small percentage of total world transactions is carried out through e-commerce, but that small percentage accounts for a sizable portion of total volume and profits. From hereon we can expect it to move forward at a pace none of us can accurately predict. There is no turning back. For this reason, I believe the commendations to the committee are well-earned.

But as a matter of principle, we need a good law, not just any law, if it is to serve the purpose for which the law has been enacted. The philosophy and policy it seeks to implement must be clear and fully consistent with what we seek to implement everywhere else. The law must be readable to everyone who reads it so that one does not have to commission legal experts to decipher arcane words and concepts.

Accordingly, Mr. President, I have tried to read as many virtues into this particular measure. Still I am nowhere near understanding it. If I am alone in this difficulty, then the problem is entirely mine rather than that of the law. But if I am not alone in this difficulty, then the problem lies with the law. And I am not sure that I am alone in this difficulty, Mr. President.

The clear intent of the bill is to give full legal effect to data messages generated and transmitted electronically. While much of the same could have been achieved through time with the application of existing rules of evidence to e-commerce transactions, by judicial interpretation that is, the bill decided to formulate rules specifically applicable to these transactions, reducing in the process the uncertainty and ambiguity about their legal effectivity.

We ask: Does the bill provide an appropriate legal framework for the development of e-commerce? More specifically, are the rules or concepts in the law favorable to judicial recognition and enforcement of e-commerce transactions? The answer to that is yes, Mr. President, except for one critical provision in Section 13, paragraph (c) relating to the best evidence rule, which we shall discuss presently.

Question: Does it create an understandable, comprehensible and accessible rule base to guide public behavior on and judicial interpretation of electronic transactions? The answer is yes, except for some provisions that are laborious and definitely need cleaning up before the measure becomes law.

As a first note, some provisions are overwrought; some others could need a good rewrite. This makes a cogent and direct analysis of the bill too difficult, considering that it occurs in the more important provisions as we shall see later.

Let us look at Section 2, *Declaration of Policy*. From this Declaration of Policy flows the rationale of the law. This reads as follows: The State shall promote Philippine products in domestic and foreign markets through electronic commerce. For that purpose, the State shall supplement traditional means of trade and adopt the necessary and appropriate legal, financial diplomatic and technical framework, system and facilities.

This sounds harmless enough, Mr. President. But does it correspond to existing or evolving policy? To the best of my understanding, we are today a market economy. The proposed law is being enacted for a market economy. The role of the state is rather circumscribed in such an economy. It steers the ship rather than row. It is not expected to do what the private sector or private enterprise is or should be doing as a matter of policy. All that it is supposed to do is to provide the rules of the game and the appropriate environment so that market forces can play fairly and squarely. This is not simply a principle of the market economy. It is also a principle of subsidiarity.

As written, the Declaration of Policy reads as if the Philippine government should start e-mailing people about our goods and services. It is as though the State has been transformed into or is to be transformed into a trading agency. The proper formulation probably should have been related to the State's recognition of the increasing importance of electronic transactions, and consequently, the necessity for formulating the appropriate legal framework to recognize and give validity to such transactions for the purpose of accelerating their use.

Now the sentence construction, which makes the evaluation of the bill's provisions difficult and, unless corrected, could create further difficulty in its judicial interpretation seems to abound.

For instance Section 5(b) on the definition of "Computers". It is much too wordy still;

Section 10, paragraph (1), page 6, lines 2 to 13 on the Legal Recognition of Electronic Signatures;

Section 11, paragraph (1), page 6, lines 17 to 22 on Original Documents;

Section 12 (a) and (b), page 7, line 12 to page 8, line 7 on the Authentication of Data Messages.

We also find certain apparently irrelevant provisions. Section 11, paragraph (3)(b) talks about the "standard of reliability" for Section 11, paragraph (1)(a). But there is no such mention of a required "standard of reliability" in this section referred to.

I now go to Section 13, which relates to the best evidence rule.

Sec. 13, paragraph C, relates the fulfillment of the best evidence rule by presenting the data and proving the integrity of the electronic data message system where the data was recorded or stored. The draft bill specifically states that this provision is meant to modify the best evidence rule.

Mr. President, the place where the data is recorded or stored may be the most open, the most corruptible computer system in the world. But if a message was cryptographically encoded using, for example, 10-24 bits, then it would still be a secure message because any alteration in the message by a person not possessing the private key would be detectable. Therefore, the integrity of the system where the message is recorded or stored becomes an important consideration only when the data message is not securely encoded. But where it is sealed with cryptography at a high level, then the reliability of the storage area is not relevant because one can always verify the integrity of the data using the verification procedures of the encryption system. In essence, the integrity of the encrypted data can be verified independent of the integrity of the system where it was created, recorded or stored. This is an area of concern because we can shoot down an electronic data message for noncompliance with the best evidence rule if we are able to prove that at certain times, the system where the data was stored or recorded was compromised, even if the data message

was not compromised, or even if we can prove that the data message is subject to a high-level encryption system.

Mr. President, the rule focuses on the integrity of the system where it was recorded or stored and not on the integrity of the data itself and we believe this is a major fault which could reap disastrous consequences.

Of course, the courts can interpret Section 12, paragraph 4A, page 8, line 21: to interpret encryption system as being a computer process whereby the integrity of the data message was not affected. But if my reading of this provision is correct, there is uncertainty as to its application, and this is precisely what the bill was supposed to prevent.

For these reasons, among others, Mr. President, I regret that I have to abstain.

Thank you very much.

The President. The Majority Leader is recognized.

Senator Drilon. Mr. President, Sen. Ramon B. Magsaysay Jr. wishes also to explain his vote.

The President. Sen. Ramon B. Magsaysay Jr. is recognized.

EXPLANATION OF VOTE OF SENATOR MAGSAYSAY

Senator Magsaysay. Mr. President, this is a very brief explanation.

It took us almost two years since 1978 to discuss the e-commerce bill in three public hearings, and more than six formal technical working group meetings, and other informal discussions conducted in my office by the TWG, up to its approval today on Third Reading.

The passage in this august Chamber of the e-commerce bill, Senate Bill No. 1902, has been awaited by all sectors which actively participated and worked hand in hand with the Committees on Trade and Commerce; and Science and Technology.

Mr. President, at this point, let me give due recognition to the following people and entities to which we are very grateful and are happy to share this development:

First, the members of the Technical Working Group who worked closely with our Committee Technical Staff led by Atty. Sofronio Larcia and Atty. Rodolfo Noel Quimbo of the Office of Sen. Juan M. Flavio; Mrs. Janette Toral of the

Philippine Internet Commerce Society and its members; Mr. Gamaliel Pascual of the E-Commerce Promotion Council; Mr. Paul Brown of the US Embassy; Mr. Albert dela Cruz, Director General Ike Seneres of the National Computer Center; and the Department of Trade and Industry.

Second, the entities both public and private that provided us valuable inputs to improve the bill: the Bangko Sentral ng Pilipinas, the Bureau of Internal Revenue, the Bureau of Customs, the National Information Technology Council (NITC), the Philippine Chamber of Commerce and Industry (PCCI), the National Statistics Office, the Philippine Exporters Confederation, Inc., Mr. William Torres of the Philippine Internet Society and MOSCOM.COM, the National Telecommunications Commission (NTC), the Bayan Tel Inc., the Philippine Long Distance Telephone Company, the Philippine Global Communications, and the AGILE.

Mr. President, I would like to thank our Secretariat who worked with us all the way, especially the members of our committee secretariat led by Mr. Joey Tunac, Deputy Secretary for Legislation Emma Lirio Reyes, Atty. Aluino Tolentino and their staff. The staff of the Bills and Index led by Atty. Roberto Jurado, and the committee stenographers who have to write and summarize 548 pages of stenographic notes.

Finally, Mr. President, let me thank our colleagues who have shown great interest and deliberated with me for about 20 hours in this Plenary Chamber to finish this timely and landmark legislation. I vote a strong yes.

Thank you, Mr. President.

May I manifest that among the coauthors of this e-commerce bill, mentioning the original coauthors: Senators Juan M. Flavies, Blas F. Ople, and Vicente T. Sotto III; and those who participated very substantially during the deliberations, Senators Raul S. Roco, Miriam Defensor Santiago, Franklin M. Drilon, Juan Ponce Enrile, Gregorio B. Honasan, Renato L. Compañero Cayetano, Teofisto T. Guingona Jr., Ramon B. Revilla, Aquilino Q. Pimentel Jr., and Teresa Aquino-Oreta, we are including as coauthors Senators Robert S. Jaworski, Rodolfo G. Biazon, and Loren B. Legarda-Leviste.

Thank you, Mr. President.

The President. May I announce the result of the vote.

APPROVAL OF S. NO. 1902 ON THIRD READING

With 16 affirmative votes, no negative vote, and one abstention, Senate Bill No. 1902 is approved on Third Reading.

The Majority Leader is recognized.

BILL ON SECOND READING

S. No. 1438 -- Kinder Plus: The Early Years Act
(Continuation)

Senator Drilon. Mr. President, I move that we resume consideration of Senate Bill No. 1438 as reported out under Committee Report No. 22.

The President. Is there any objection? [Silence]
There being none, resumption of consideration of Senate Bill No. 1438 is now in order.

Senator Drilon. We are still in the period of committee amendments. May I ask the Chair to recognize the principal sponsor, Sen. Teresa Aquino-Oreta.

The President. Sen. Teresa Aquino-Oreta is recognized.

COMMITTEE AMENDMENTS

Senator Oreta. Thank you, Mr. President. We have already submitted the committee amendments.

Senator Drilon. Before we proceed with the individual amendments, Mr. President, with the indulgence of our colleagues, may we just go through the motion of formally approving the committee amendments and closing the period of committee amendments.

The President. Is there any objection? [Silence]
There being none, the motion is approved.

Senator Drilon. Mr. President, as the record will indicate, Sen. Juan Ponce Enrile reserved his right to raise questions on the proposed committee amendments. Upon conference with Senator Enrile, he said he is satisfied with the documents presented to him by the sponsor, Sen. Teresa Aquino-Oreta, and is therefore terminating his questions on the amendments.

In view of that, Mr. President, and before we proceed with the individual amendments, may I formally move that we approve the committee amendments as found in the draft dated February 28, 2000.

The President. Is there any objection? [Silence]
There being none, the motion is approved.