

MONDAY, APRIL 3, 2000

TABLE OF CONTENTS

|   |       |
|---|-------|
| REFERENCE OF BUSINESS.....  | 4-6   |
| BILL ON FIRST READING (S. No. 1971).....  | 6     |
| RESOLUTIONS (S. Res. Nos. 732-734).....   | 4-6   |
| COMMITTEE REPORTS (C. R. No. 213).....  | 6     |
| ADDITIONAL REFERENCE OF BUSINESS.....   | 6-9   |
| RESOLUTIONS (S. Res. Nos. 735-741).....   | 6-9   |
| QUESTION OF PRIVILEGE OF SENATOR TATAD.....   | 10-15 |
| (Something Sick About the Society)  |       |
| Interpellation by Senator Guingona  |       |
| BILL ON SECOND READING ( <i>Continuation</i> ).....   | 16-48 |
| (S. No. 1902 - Electronic Commerce Law)   |       |
| Sponsor - Senator Magsaysay   |       |
| Amendments/Interpellations by Senators Santiago,<br>Guingona, and Roco<br>(Consideration Suspended) |       |
| BILL ON SECOND READING ( <i>Continuation</i> ).....   | 48-80 |
| (S. No. 1942 - Power Sector Liquidation Trust<br>Law of 1999)                                       |       |
| Sponsor - Senator Osmeña (J)  |       |
| Interpellations by Senators Guingona, Roco, and Biazon<br>(Consideration Suspended).                |       |
| MANIFESTATION OF SENATOR GUINGONA.....  | 80    |
| (Submission of His Letter as Written Privilege Speech)  |       |
| PRIVILEGE SPEECH OF SENATOR GUINGONA.....   | 80-84 |
| SECOND ADDITIONAL REFERENCE OF BUSINESS.....  | 81-85 |
| RESOLUTIONS (S. Res. Nos. 742-744).....   | 84-85 |

BILL ON SECOND READING  
S. No. 1902--E-Commerce Law  
(Continuation)

With the permission of the Chamber, I move that we resume consideration of Senate Bill No. 1902. This is the proposed Electronic Commerce Law.

The President. Is there any objection? [Silence]  
There being none, resumption of consideration of Senate Bill No. 1902 is now in order.

Senator Drilon. We are still in the period of amendments. For this purpose, may I ask our colleagues to refer to an amended copy as of March 27 of the year 2000 as the reference copy for purposes of the debate.

I ask that the Chair recognize the principal sponsor, Sen. Ramon B. Magsaysay Jr.

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

Senator Magsaysay. Thank you, Mr. President.

We are now on page 6, and the Senator from Iloilo is continuing with her own individual amendments.

Senator Santiago. May I have the permission now of the distinguished gentleman to continue to occupy the Floor so that I can finish my interpellation?

Senator Magsaysay. Certainly, Mr. President.

The President. Sen. Miriam Defensor Santiago is recognized.

Senator Santiago. May I also please request the Secretariat for a copy of the bill dated March 27 since what I am using is March 21. Thank you.

Mr. President, at the last relevant session, there was a consensus in this Chamber for me to put down in writing all my amendments since these are so highly technical in nature, including an explanation that would support the amendment, and I have complied with that obligation. I hope our colleagues have each a copy. The document is entitled "Proposed Amendments to Electronic Commerce Act by Senator Miriam Defensor Santiago." And each of these proposed amendments has a heading that indicates what is the subject matter of the amendment. For example, 1. Application; 2. Presumption of integrity, et cetera.

With the distinguished gentleman's permission, I would like to go sequentially through the provisions of our bill vis-a-vis which I am proposing these amendments so that the Secretariat can be clear about where in the bill my amendments....

The President. The Chair has no copy of the amendments. Will the Secretariat please furnish the Chair with a copy? Thank you.

Senator Santiago may proceed.

Senator Santiago. Thank you.

So I shall read out the sections in their sequential order and then I shall indicate what my amendments should be. This is simply to enter into the *Record* where and in what particular line of the bill the amendment should be inserted. I would like to begin now.

My first amendment concerns Section 8 which is headed *Legal Recognition of Data Messages*. Under this section, I have two amendments, one is entitled "Application" and the other is entitled "Presumption of Integrity."

If the distinguished gentleman will consult the documents that I presented to the Floor, these have already been accepted by the sponsor. I just want to verify that this is where these should be positioned. The amendments entitled "Application" and entitled "Presumption of Integrity" will fall under Section 8.

Then I will go to Section 12. Section 12 is headed *AUTHENTICATION OF DATA MESSAGES*. Under this Section 12 will fall my proposed amendment on the topic of "Authentication." In fact, this is where we begin this afternoon. So let me put that formally.

I would like to propose that under Section 12 headed *AUTHENTICATION OF DATA MESSAGES*, we insert my proposed amendment in the paper that I have circulated to our colleagues, entitled "Authentication." But I will read it for clarity. It is No. 4 in my paper that I circulated since I numbered the topics--1. Application; 2. Presumption of integrity; 3. Application of the best evidence rule; and 4. Authentication.

#### SANTIAGO AMENDMENTS

Since we are now in Section 12, I am proposing to insert this provision on Authentication:

THE PERSON SEEKING TO INTRODUCE AN ELECTRONIC RECORD IN ANY LEGAL PROCEEDING HAS THE BURDEN OF PROVING ITS AUTHENTICITY BY EVIDENCE CAPABLE OF SUPPORTING A FINDING THAT THE ELECTRONIC RECORD IS WHAT THE PERSON CLAIMS IT TO BE.

The explanation for this proposed amendment is as follows:

This section codifies the law on authentication, which applies equally to paper records. The proponent needs only to bring evidence that the record is what the proponent claims it is. For example, proponent would

say, "This record is an invoice." This evidence is usually given orally and is subject to attack, like any other.

Our bill does not open an electronic record to attacks on its integrity or reliability at this stage. That question is reserved for the new "best evidence" rule. Logically, the question of integrity could be included in authentication, but it is more practical that the question should be dealt with only once.

In brief, my proposed amendment on authentication simply places the burden of proof on the person seeking to introduce the electronic record. We are not changing anything in present procedure in our courtrooms. This is as it is already. We are just applying the rule to electronic communication.

Therefore, Mr. President, I respectfully propose this amendment and will wait on the distinguished gentleman's action on whether he will accept it.

Senator Magsaysay. Yes, Mr. President. That is Section 12, page 5(A).

May I request that instead of the term "ELECTRONIC RECORD", we use DATA MESSAGE. Because these are basically the same and this is defined on page 2(A).

Senator Santiago. Data message.

Senator Magsaysay. Yes. This is for consistency. The Senator from Camarines Sur is using the UNCITRAL term.

Senator Santiago. Mr. President, I have no objection for this particular provision and for the rest of the bill. Therefore, I would gladly amend my proposed amendment so that it will read: THE PERSON SEEKING TO INTRODUCE AN ELECTRONIC DATA MESSAGE IN ANY LEGAL PROCEEDING, et cetera.

Senator Magsaysay. The amendment is accepted, Mr. President.

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

Senator Santiago. I would like to request permission from the Chair to finish all my amendments, although they may refer to different sections. Our common practice is for the Senator to stand for every section, but since I am already standing here, may I just finish them because they are related to each other.

The President. Yes. The Chair believes there is no obstacle to that. The Lady Senator may proceed.

Senator Santiago. Thank you.

I would like to go to Section 13. Section 13 of our bill is headed *Admissibility and Evidential Weight of Data Messages*.

Under this Section 13, I would like to propose--

Senator Magsaysay. This is page 5C.

Senator Santiago. This is page 5C. I cannot refer to the page or line number since I am not familiar with the March 27 version, but that should be correct.

Section 13, page 5C, I would like to insert my proposed amendment headed in my paper: "Application of the best evidence rule," and also another amendment headed "Standards."

So, I will now proceed to read them into the *Record*.

My proposed amendment on the "Application of the best evidence rule" reads as follows:

It would add paragraph (C) and (D).

(C) IN ANY LEGAL PROCEEDING, SUBJECT TO SUBPARAGRAPH (D), WHERE THE BEST EVIDENCE RULE IS APPLICABLE IN RESPECT OF AN ELECTRONIC RECORD, IT IS SATISFIED ON PROOF OF THE INTEGRITY OF THE ELECTRONIC RECORDS SYSTEM IN OR BY WHICH THE DATA WAS RECORDED OR STORED.

(D) IN ANY LEGAL PROCEEDING, AN ELECTRONIC RECORD IN THE FORM OF A PRINT-OUT THAT HAS BEEN MANIFESTLY OR CONSISTENTLY ACTED ON, RELIED UPON, OR USED AS THE RECORD OF THE INFORMATION RECORDED OR STORED ON THE PRINTOUT, IS THE RECORD FOR THE PURPOSES OF THE BEST EVIDENCE RULE.

We are not really changing the best evidence rule as we practice it in court today.

Best evidence rule simply means that if there is an original copy and then there are carbon or other reproduced copies, the best evidence is always the original copy.

We have to introduce this amendment concerning best evidence rule, because when we use the Internet or the computer, we no longer know what is the original copy.

So, I would like to introduce paragraph (C) where, in effect, we are saying that the best evidence rule has been complied with once the person presenting the electronic data message or the electronic record has submitted proof of the integrity of the electronic records system. The explanation is as follows:

The best evidence rule generally requires that the proponent of a record should produce the original record or the closest thing available to an original. However, the notion of "original" is not easily applicable to many electronic records. The bill, therefore, dispenses with the need for an original by substituting another way of serving the purpose of the rule.

The purpose of the best evidence rule is to help ensure the integrity of the record, since alterations are more likely to be detectable on the original. The bill provides a different way to test the integrity of the

record: evidence of the reliability of the system that produced the record.

Because of the very nature of Internet commerce or electronic commerce, we cannot possibly apply the present form of the best evidence rule which requires that the original must be presented for the simple reason that there is no such thing as an original in e-commerce. Instead of asking for the original, we now ask in a litigation that what should be produced is proof of the integrity of the electronic records system.

It will often be impossible to provide direct evidence of the integrity of the individual record to be admitted. System reliability is a substitute for record reliability.

The bill does not say expressly that the proponent of an electronic record does not have to produce an original, but the displacement of the usual best evidence rule will have that effect. Neither the production of an original record nor the production of evidence of system reliability guarantees the integrity of the record, but it supports its integrity to the degree that courts have been willing to admit the record, subject to argument about its weight.

I would like to underscore that when we apply the best evidence rule, we are simply saying that the court may admit the evidence. We are not dictating to the court how much weight it should give to the evidence.

Even if there is an original of an electronic record, as in the case of an electronic image of a paper document, the proposed amendment does not require the production of the paper. Nor does it require that the original should have been destroyed before the electronic image becomes admissible. The proposed amendment sets up a rule for admitting electronic records. Records retention policies, for paper or electronic records, are beyond its scope, and should not be determined by the law of evidence in any event. Someone who destroys paper originals in the ordinary course of business, ideally in



accordance with a rational schedule, should not be prejudiced in using reliable electronic versions of those records. Someone who keeps some paper originals, say, for archival purposes, should be able to produce the electronic versions in evidence if the requirements of my proposed amendments about integrity can be satisfied.

So this is the explanation why I would like to introduce a new paragraph (c).

Senator Magsaysay. Actually, Mr. President, the paragraphs were already accepted and approved last March 27, and these are embodied in the March 27 update on page 5(a).

If the lady Senator from Iloilo would wish to put it on page 5(c) under Admissibility and Evidential Weight, we have no objection.

Senator Santiago. Yes, please.

Senator Guingona. Mr. President.

The President. Is the Minority Leader seeking recognition?

Senator Guingona. Yes, Mr. President.

The President. Sen. Teofisto T. Guingona is recognized.

Senator Guingona. Mr. President, with the permission of the gentleman and the lady Senator on the Floor, may I be permitted to ask some clarificatory questions of the distinguished proponent of the amendment?

Senator Santiago. Certainly, Mr. President.

Senator Guingona. Mr. President, the third line of the proposed amendment says, "IT IS SATISFIED ON PROOF OF THE INTEGRITY OF THE ELECTRONIC RECORDS SYSTEM." May we know what is this "proof of the integrity?" Is it going to be spelled out or is there already a set standard for establishing or proving the integrity of the electronic records system?

Senator Santiago. Mr. President, the answer is as follows: The proposed amendment, meaning to say paragraph (c), provides for a different way to test the integrity of the record. We no longer ask for the original of the record because there is no such thing as an original, so we will ask for evidence of the reliability of the system that produced the record. The question is: What kind of evidence of system reliability should be presented?

It will often be impossible to provide direct evidence on the integrity of the individual record to be admitted. Therefore, system reliability is a substitute for record reliability. What we mean by evidence of system reliability here is the literature from the company that manufactured either the hardware or the program being followed that produced the electronic data record.

Senator Guingona. So the act sets up a rule for admitting electronic records. Should it not be spelled out in the amendment?

Senator Santiago. If there is a need to spell it out, I would certainly be happy to accept any amendment. But normally that kind of evidence would consist of either testimonial or documentary evidence on the integrity of the system so we could produce, for example, the manual and other documents that accompanied the machine or the system, whatever it might be, the hard disk or the diskette on which the program is recorded which describes the system.

Senator Guingona. I hope the distinguished sponsor will bear with me. If, for example, in the past there has been proven that the system has had a hacking

incident. Would the ordinary proofs still be valid as far as the integrity of that system is concerned?

Senator Santiago. In that case, if there is proof that there has been a successful attack on the system, then obviously there is no more satisfaction on proof of the integrity of the system. Pursuant to this so-called best evidence rule for e-commerce, then the court will not accept that in evidence.

Senator Guingona. I see. I would like to thank the sponsor, although I was hoping that we could make further clarifications on the proof, the manner and the amount of proof that is necessary to establish the integrity of the system.

Senator Santiago. We could present, for example, an executive, perhaps the VP for operations of the company, whether it is a computer company or a computer program company, then he could explain in technical terms what safeguards have been introduced within the system to preserve its integrity. As I said, we could either have documentary or testimonial evidence.

Senator Magsaysay. Mr. President.

The President. Senator Magsaysay is recognized.

Senator Magsaysay. May I interject that there is a section in the bill, Section 14, *Retention of Data Messages*, which might be able to clarify the questions of the Minority Leader about the integrity of the document. It states:

Where the law requires that certain documents, records or information be retained, that requirement is met by retaining date messages: *Provided*, That the following conditions are satisfied:

(a) the information contained therein is accessible so as to be usable for subsequent reference; and

(b) the data message is retained in the format in which it was generated, sent or received, or in the format which can be demonstrated to represent accurately the information generated, sent or received; and

(c) such information, if any, is retained as it enables the identification of the original and destination of a data message and the time when it was sent or received."

Senator Guingona. Thank you, Mr. President.

Senator Magsaysay. Thank you, Mr. President.

Senator Santiago. Mr. President, may I proceed to Sections 15 and 16. Our bill only ends at Section 14 for this particular part of the bill.

I would like to add Sections 15 and 16.

Section 15 will be my proposed amendment, entitled *Proof by Affidavit*, in the document I circulated to our colleagues.

I shall now proceed to read it.

Senator Magsaysay. Please go ahead.

Senator Santiago. SECTION 15. PROOF BY AFFIDAVIT ■ THE MATTERS REFERRED TO IN SECTION 12, PARAGRAPH (D), ON THE USE OF THE RECORD, SECTION 12, ON THE PRESUMPTION OF INTEGRITY, AND SECTION 13, PARAGRAPH (3) ON THE STANDARDS, MAY BE ESTABLISHED BY AN AFFIDAVIT GIVEN TO THE BEST OF THE DEPONENT'S KNOWLEDGE OR BELIEF.

This is also partly an answer to the question of the Minority Leader. The explanation for this amendment follows:

This section allows affidavit evidence instead of oral evidence to support the use of the record under

Section 12, paragraph (d), the presumptions in Section 12, and the compliance with standards under Section 13, paragraph (3).

All of these particular provisions I have already proposed as amendments and have already been adopted. So, *Proof by Affidavit*, Section 15, is a section that is meant to support my prior amendments.

The person making the affidavit may not know personally every aspect of the record-keeping system. But if the person informs himself or herself of the relevant information, then the affidavit will be acceptable. Cross-examination on the affidavit may expose relevant gaps in the information, of course. If doubt is cast on the reliability of the affidavit, then the person presenting the electronic record may have to provide more detailed support of the record-keeping system.

The proposed amendment does not say who should give the affidavit. The party seeking to introduce the evidence will have to decide who its most persuasive witness will be.

#### SUSPENSION OF SESSION

Senator Magsaysay. Mr. President, may I ask for a one-minute suspension of the session.

The President. The session is suspended for one minute, if there is no objection. [*There was none.*]

*It was 4:22 p.m.*

#### RESUMPTION OF SESSION

*At 4:23 p.m., the session was resumed.*

The President. The session is resumed.

Senator Santiago. On the direction of the sponsor, I would like to clarify for the Secretariat, for the record, that my proposed Section 15 will be inserted in page 6, after line 19. Line 19 is the end of Section 14 and I am proposing to insert Section 15.

I have already read out my proposed amendment and given the explanation. So, I would like to inquire of the sponsor if he accepts the amendment.

Senator Magsaysay. The new Section 15 is titled, « Proof by Affidavit » to be inserted after line 19. It is accepted, Mr. President.

So, after Section 14, Section 15 is what was stated by the proponent of the amendment.

The President. The sponsor has accepted the amendment. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Santiago. Now, I would like to go on to Section 18. It will actually be a new Section 18. That should be on page 8, after line 11.

Senator Magsaysay. Please go ahead.

Senator Santiago. On page 8, after line 11, a new Section 16 will be inserted. In the documents that I circulated to our colleagues, it is entitled « Cross-Examination ».

Senator Magsaysay. Before the Senator continues, maybe we can renumber the sections. May we propose that after Section 15 on page 6, the present Section 15 on line 23 becomes Section 16 and subsequently renumber to Section 17 what is now Section 16, so on and so forth. We are now on page 8.

Unless the proponent would like to include « Cross-examination », Section 16, her new Section 15, and the « Cross-examination » to follow as Section 16.

Senator Santiago. Yes, Mr. President, then I will stand corrected. That is correct, Mr. President.

Senator Magsaysay. I would like to thank the lady Senator for that.

Senator Santiago. My original Section 16 should be on page 6, after line 19. It would be Section 15. We have already accepted that. Therefore, the proposed Section 16 should be located immediately after Section 15 which we have just approved.

Senator Magsaysay. That is correct, Mr. President.

Senator Santiago. This is the proposed Section 16.

SEC. 16. CROSS-EXAMINATION ■ (1) A DEPONENT OF AN AFFIDAVIT REFERRED TO IN SECTION 15 THAT HAS BEEN INTRODUCED IN EVIDENCE MAY BE CROSS-EXAMINED AS OF RIGHT BY A PARTY TO THE PROCEEDINGS WHO IS ADVERSE IN INTEREST TO THE PARTY WHO HAS INTRODUCED THE AFFIDAVIT OR HAS CAUSED THE AFFIDAVIT TO BE INTRODUCED.

(2) ANY PARTY TO THE PROCEEDINGS MAY, WITH LEAVE OF THE COURT, CROSS-EXAMINE A PERSON REFERRED TO IN SECTION 12, THIRD PARAGRAPH, SUBPARAGRAPH (c).

The explanation for this proposed Section 16 is as follows:

On paragraph (1): The right to cross-examine on the affidavits provided by our bill may not be clear in every jurisdiction. Here, we have made it express.

For paragraph (2): The record-keeping practices of the nonparty referred to in Section 12, third paragraph, subparagraph (c) may be relevant to admissibility in some cases. That person will not usually be the deponent of the affidavit in support of admitting the record. This subsection gives the opponent of the evidence the opportunity to cross-examine the record-keeper, if the

court agrees. A court would want to be sure that the person is not being disturbed frivolously.

Section 16 is actually necessary because of Section 15. Since we have already approved Section 15, I hope the distinguished sponsor will accept Section 16, as well.

Senator Magsaysay. Section 16 is accepted, Mr. President.

The President. Is there any objection to this amendment? *[Silence]* There being none, the amendment is approved.

Senator Santiago. Since the Chair has given me the permission to present all my amendments, I may as well proceed to Section 18.

Senator Magsaysay. For that matter, Mr. President, the present Section 15 on page 6 now becomes Section 17. The rest of the sections will be moved upward accordingly. We are now in Section 18, page 8.

Senator Santiago. No, this is no longer the correct section number. In this chapter on Communication of Data Messages, I would like to propose this amendment as the last section of this chapter, whatever its number might be. This should be on page 10, after line 13.

Page 10, after line 13, I would like to amend by addition, by adding a new section, whatever its number might be. The new section will read:

SECTION \_\_\_\_\_. EFFECT OF ERROR OR CHANGE. IF AN ERROR OR CHANGE IN AN ELECTRONIC DOCUMENT OCCURS IN A TRANSMISSION BETWEEN PARTIES TO A TRANSACTION, THE FOLLOWING RULES APPLY:

(1) IF THE PARTIES HAVE AGREED TO USE A SECURITY PROCEDURE TO DETECT CHANGES OR ERRORS AND ONE PARTY HAS CONFORMED TO THE PROCEDURE, BUT THE OTHER PARTY HAS NOT, AND THE NONCONFORMING PARTY WOULD HAVE DETECTED THE



CHANGE OR ERROR HAD THAT PARTY ALSO CONFORMED, THE CONFORMING PARTY MAY AVOID THE EFFECT OF THE ERRONEOUS OR CHANGED ELECTRONIC DOCUMENT.

(2) IN AN AUTOMATED TRANSACTION INVOLVING AN INDIVIDUAL, THE INDIVIDUAL MAY AVOID THE EFFECT OF AN ELECTRONIC DOCUMENT THAT RESULTED FROM AN ERROR MADE BY THE INDIVIDUAL IN DEALING WITH THE ELECTRONIC AGENT OF ANOTHER PERSON. IF THE ELECTRONIC AGENT DID NOT PROVIDE AN OPPORTUNITY FOR THE PREVENTION OR CORRECTION OF THE ERROR AND, AT THE TIME THE INDIVIDUAL LEARNS OF THE ERROR, THE INDIVIDUAL:

(A) PROMPTLY NOTIFIES THE OTHER PERSON OF THE ERROR AND THAT THE INDIVIDUAL DID NOT INTEND TO BE BOUND BY THE ELECTRONIC DOCUMENT RECEIVED BY THE OTHER PERSON; AND

(B) TAKES REASONABLE STEPS INCLUDING STEPS THAT CONFORM TO THE OTHER PERSON'S REASONABLE INSTRUCTIONS TO RETURN TO THE OTHER PERSON OR, IF INSTRUCTED BY THE OTHER PERSON, TO DESTROY THE CONSIDERATION RECEIVED, IF ANY, AS A RESULT OF THE ERRONEOUS ELECTRONIC DOCUMENTS; AND

(C) HAS NOT USED OR RECEIVED ANY BENEFIT OR VALUE FROM THE CONSIDERATION, IF ANY, RECEIVED FROM THE OTHER PERSON.

(3) IF NEITHER PARAGRAPH 1 OR PARAGRAPH 2 APPLIES, THE ERROR OR CHANGE HAS THE EFFECT PROVIDED BY OTHER LAW, AND THE PARTIES CONTRACT IF ANY.

(4) PARAGRAPHS 2 AND 3 MAY NOT BE VARIED BY AGREEMENT.

These paragraphs are based on the Massachusetts draft of the Uniform Electronic Transactions Act as proposed by the National Conference for Commissioners for Uniform State Law, dated 23 December 1999.

I am proposing this because, the prior section, the Section just before this section that I am introducing,

particularly paragraphs 4 and 5 provide the instances when the addressee regards a data message as not being that of the originator, with the transmission resulting in an error in the data message as received. However, that section does not provide for the effects of such error or change. That is why I am proposing that a new provision should be inserted after that section on the effect of error or change.

If this will need time for study by the technical working group, we can suspend consideration only of this particular section and we can bring it up again at the next session because it is rather...

Senator Magsaysay. We appreciate the time that the technical working group will devote to this very detailed new provision, and inasmuch as it is not in the proposed amendments given by the lady Senator, we would appreciate if she can give us a copy and my group will have a study on this.

Senator Santiago. Yes, Mr. President. I will furnish a copy together with the explanation of this proposed amendment.

And then finally, before I leave the Floor, may I please be allowed to go back to Section 5; the Definition of Terms. In light of the acceptance by the good Senator of my proposed amendments, it will then become necessary to add certain terms in our list of terms to be defined. I would like to add a definition on what is "data", what is "electronic record" and what is an "electronic record system".

If the gentleman will give me permission, I will proceed with the proposed amendment on Definition of Terms, Section 5.

Senator Magsaysay. Please go ahead, Senator Santiago.

Senator Santiago. We are in Part 1, short title on the Declaration of Policy, Section 5, Definition of Terms.

At the appropriate places in the listing of these terms that have to be defined since these are arranged alphabetically, Mr. President, I would like to insert the term DATA and its definition. So, the amendment will read: "DATA" MEANS REPRESENTATION, IN ANY FORM, OF INFORMATION OR CONCEPTS.

The explanation is this: This definition of "data" or "data" as it is now fashionably pronounced in America--the definition of "data" ensures that our bill applies to any form of information in an electronic record, whether these are figures, facts or ideas.

So again, the proposed amendment is this: "DATA" MEANS REPRESENTATIONS, IN ANY FORM, OF INFORMATION OR CONCEPTS.

Senator Magsaysay. May I know how will this affect the definition of "Data Message" which encompasses electronic records, electronic writings and electronic documents?

Senator Santiago. These are completely congruent with each other. These are compatible. When we define "data", we are simply reinforcing the definition of what is a data message.

Senator Magsaysay. It is accepted, Mr. President.

Senator Santiago. Thank you. The next term is "ELECTRONIC RECORD." The proposed amendment is as follows:

"ELECTRONIC RECORD" MEANS DATA THAT IS RECORDED OR STORED ON ANY MEDIUM IN OR BY A COMPUTER SYSTEM OR OTHER SIMILAR DEVICE, THAT CAN BE READ OR PERCEIVED BY A PERSON OR A COMPUTER SYSTEM OR OTHER SIMILAR DEVICE. IT

INCLUDES A DISPLAY, PRINTOUT OR OTHER OUTPUT OF THAT DATA.

The explanation for this term and its definition is as follows: The term "ELECTRONIC RECORD" fixes the scope of our bill. The record is the data. The record may be on any medium. It is electronic because it is recorded or stored in or by a computer system or a similar device.

The amendment is intended to apply, for example, to data on magnetic strips on cards or in Smart cards. As drafted, it would not apply to telexes or faxes, except computer-generated faxes, unlike the United Nations model law on electronic commerce. It would also not apply to regular digital telephone conversations since the information is not recorded. It would apply to voice mail since the information has been recorded in or by a device similar to a computer. Likewise, video records are not covered. Though when the video is transferred to a website, it would be covered because of the involvement of the computer. Music recorded by a computer system on a compact disc would be covered.

In short, not all data recorded or stored in digital form is covered. A computer or a similar device has to be involved in its creation or storage. The term "similar device" does not extend to all devices that create or store data in digital form. Although things that are not recorded or preserved by or in a computer system are omitted from this bill, these may well be admissible under other rules of law. This provision focuses on replacing the search for originality proving the reliability of systems instead of that of individual records and using standards to show systems reliability.

Paper records that are produced directly by a computer system such as printouts are themselves electronic records being just the means of intelligible display of the contents of the record. Photocopies of the printout would be paper record subject to the usual rules about copies, but the original printout would be subject to the rules of admissibility of this bill. 34

However, printouts that are used only as paper records and whose computer origin is never again called on are treated as paper records. In that case, the reliability of the computer system that produces the record is irrelevant to its reliability.

Senator Magsaysay. Mr. President, if my memory does not fail me, earlier, the lady Senator accepted that we use the term "Data Message" rather than "ELECTRONIC RECORD" in being consistent with the UNCITRAL term of "Data Message." So with the new amendment of defining "ELECTRONIC RECORD," will this affect her accepting of the use of "Data Message" instead of "ELECTRONIC RECORD"?

Senator Santiago. No, it will not. Thank you for reminding me. The term I would like to insert is ELECTRONIC DATA MESSAGE in lieu of "ELECTRONIC RECORD".

Senator Magsaysay. Then we are, in effect, amending the term of the definition of "Data Message" on page 2A, line 31, to which we have no objection:

Senator Santiago. Thank you, Mr. President.

Finally. My final insertion in the list of terms that are defined is the proposed term "ELECTRONIC RECORDS SYSTEM" or we could use instead "DATA MESSAGE SYSTEM."

Senator Magsaysay. Yes, Mr. President.

Senator Santiago. I would like to correct myself. I would like to insert the term "DATA MESSAGE SYSTEM." The definition will be: DATA MESSAGE SYSTEM INCLUDES THE COMPUTER SYSTEM OR OTHER SIMILAR DEVICE BY OR IN WHICH DATA IS RECORDED OR STORED AND ANY PROCEDURES RELATED TO THE RECORDING AND STORAGE OF ELECTRONIC RECORDS.

The explanation for this proposed definition is as follows: The system that produced an electronic record or a data message will often include procedures for how

all records or data messages are to be created and stored, including physical and electronic access controls, security features, verification rules and retention or destruction schedules. My proposed amendment makes the reliability of the record-keeping system relevant to proving the integrity of a particular record. An electronic record or a data message is not part of the system that produced it.

In a separate section, I have already introduced an amendment that has already been accepted providing for proving the integrity of our record by proving the integrity of the system that produced it. If the system included the record itself, then that section would not work.

Senator Magsaysay. Mr. President, the proposal is appreciated. If we could, however, go to page 3A, line 11, on the definition of "Information System," we can align the definition of the Electronic Data Message System with this "Information System." If we put them together with the lady Senator's new definition of "Electronic Data Message System," it will be accepted by the Chairman.

Senator Santiago. Yes, please. That will be an improvement. So I propose the amendment adopting the amendment to the amendment by the distinguished sponsor.

Senator Magsaysay. Thank you, Mr. President.

The President. Is the amendment accepted by the sponsor?

Senator Magsaysay. Yes, Mr. President. It is accepted.

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

Senator Santiago. Mr. President, I have proposed all the amendments that I desire to, including the amendment

on the effect of error or change. I will provide the language of the amendment together with the explanation supporting that amendment to the distinguished sponsor and then he can feel free to take it up in any session without my further intervention.

Senator Magsaysay. Before we end, Mr. President, I understand from the proponent of these amendments that these are based on the Canadian E-commerce Law of 1998. Is that not right?

Senator Santiago. That is correct.

Senator Magsaysay. There is also a provision that we will now study by the TWG of one based on the Massachusetts State law on e-commerce.

Senator Santiago. The only relevant provision there that we have not yet adopted in our own version is the section on effect of error or change, which I am now submitting for the sponsor's consideration.

Senator Magsaysay. That is correct.

Thank you very much, Mr. President.

Senator Santiago. Thank you, Mr. President.

Senator Drilon. Mr. President.

The President. The Majority Leader is recognized.

Senator Drilon. Just for the record, may we inquire whether all the amendments proposed by Sen. Miriam Defensor Santiago which were accepted by the sponsor were formally approved by the Body?

The President. Yes, I think so. These were formally approved.

Senator Magsaysay. All the amendments of the good senator from Iloilo have been accepted by the Body except the one on "error."

Senator Drilon. Have these been approved by the Chamber?

Senator Magsaysay. Yes, Mr. President.

Senator Drilon. Thank you, Mr. President.

Senator Roco. Mr. President.

Senator Drilon. May we ask the Chair to recognize Sen. Raul S. Roco.

The President. What is the pleasure of the gentleman from Bicol? Senator Roco is recognized.

Senator Roco. Because of the procedure we have adopted for this particular bill, Mr. President, I will beg leave to call attention that we go back to the prior pages. I guess we will go back to the pages. I really have very few amendments to propose.

Just for the sake of lawyers in the future. On page 3, on "ELECTRONIC CONTRACT", it gives a wide liberal interpretation to the term "COMMERCIAL".

May we ask the sponsor whether these actions described under the term "COMMERCIAL" will constitute doing business in the Philippines. That may be very important later on to the businessmen.

Senator Magsaysay. Yes, Mr. President. I would think that these actions would be doing business in the Philippines, although we know that the e-commerce and the Internet are global in nature. But we are defining the law that will be implemented within our shores.

Senator Roco. If these actions are doing business, may we suggest that the technical working group reexamine



them. Because if these will be considered doing business, then they may not be able to sue without having secured a license and yet that is not the intention, I am sure, of the sponsor.

So if this definition can just be revisited in view of the questions of whether these activities are doing business, whether they are isolated, whether they need license to do business, or whether we review altogether now the concept of doing business in the Philippines because of the nature of the e-commerce, I will just suggest these for focus on the TWG.

The second aspect may be as regards professions because the consulting, engineering, and similar activities are also covered by the wide latitude given to the term "commercial." But the Constitution does restrict profession to Filipino citizens.

How should we read these definitions? Obviously, with regard to consulting.... How are we to understand these definitions in terms of the constitutional prohibition against foreigners practicing a profession in the Philippines?

Senator Magsaysay. That is an issue in itself, Mr. President. This is exactly what the good Senator from Cebu took up earlier, whether this covers the Retail Trade Law that we have just passed.

On the issue of the practice of one's profession, of course, we have the constitutional provision that this is prohibited. But in the actual situation, there are certain regional or global treaties that are now looking at trades and services. Meaning, services including also the practice of one's profession which are being encompassed in global trade of goods and services.

So we will just mention that in doing business, we will be forced to leave this to future legislation and limit ourselves to the objective. That is the legal recognition of electronic documents.

Senator Roco. We may have no choice only because of the way we are given wide interpretation or very fairly liberal interpretation of the term "commercial." "Trade transactions for the supply or exchange of goods or services." They are, in fact, doing business in the Philippines.

But one of the effects will be, if one is doing business here without license to do business, it is all right so long as he does not later on decide to sue because then he will be in the soup. He may not be allowed to sue. So he impinges on the intention of the e-commerce law.

I would really suggest that the technical committee look at other models on how they treated this as regards the professions. Because even in the TRIPS Agreement of the GATT-WTO, "professions" is about the only protected activity now that we are still entitled to. Not that I mind personally, but since it is the only protected activity left for Filipinos, the gentleman may want to, at least, not allow them to just come in merrily unless there is a reciprocity provision.

Senator Magsaysay. That is a fact, Mr. President. Because in the amendments of several professional laws, disciplines, the PRC, there are provisions that make mention of reciprocal allowance of practice of one's profession.

Senator Roco. So may we expect some inputs from the technical working group.

Senator Magsaysay. Yes, Mr. President. We will have the technical working group to work on the term "commercial," on its wide interpretation.

Senator Roco. Yes, as regards only to its effect on the concept of doing business in the Philippines and as regards its effects on professions, Mr. President.

I really have not formed my own preferences. But may I now come in with a suggested reciprocity provision. 40

In part V....

#### SUSPENSION OF SESSION

May I move that we suspend the session for one minute, Mr. President.

The President. The session is suspended for one minute, if there is no objection. *[There was none.]*

*It was 4:51 p.m.*

#### RESUMPTION OF SESSION

*At 4:53 p.m., the session was resumed.*

The President. The session is resumed. Senator Roco is recognized.

Senator Roco. Mr. President, while the technical working group is crafting the appropriate words to clarify the intention of the definition, after discussing with the Majority Leader and the sponsor, we thought it should be put on record for purposes of lawyers researching in the future that at this time, there is no intention to alter the concept of "what is doing business in the Philippines" and when it is an isolated transaction.

The technical staff, however, should nonetheless dwell on the problem that is precisely being created by e-commerce. Wherever we are, I can have a multiplicity

of communications going on with Liberia, Panama, Mexico, San Francisco, California, and I am, by normal concepts, doing business in all those places. And they may be all doing business in the Philippines. So some way of treating them must be defined.

That is all we are saying, and we are just not ready right now without technical inputs or comparison with the other jurisdictions.

The President. What does the sponsor say?

Senator Magsaysay. The statement of the gentleman is received well.

Actually, this is an amendment of Senator Santiago. The original measure did not have this term on « commercial » to keep it as flexible as possible but we will accept the statement of the Senator from Bicol.

Senator Roco. Yes. I think there is nothing wrong, Mr. President, with the effort to make it liberal. It does impinge on a concept that e-commerce in the shrinking globe is forcing upon all of us. If the world has shrunk and the distinguished gentleman is in Beijing and everything he does in Beijing is implemented in the Philippines for whatever reason, whether it is service, whether it is production of goods or whatever, where in heaven's name is he doing business in Beijing?

The President. The language of this proposal will be submitted as an input later on?

Senator Roco. Yes, Mr. President.

Senator Magsaysay. Yes, Mr. President.

Senator Roco. Now, there is a small item, Mr. President, that maybe should be clarified on page 5B, lines 15rr to 15vv.

Senator Magsaysay. Yes.

Senator Roco. It says: "IN THE ABSENCE OF EVIDENCE TO THE CONTRARY, THE INTEGRITY OF THE ELECTRONIC RECORD SYSTEM IN WHICH AN ELECTRONIC RECORD IS RECORDED OR STORED IS PRESUMED IN ANY LEGAL PROCEEDING -

(A) BY EVIDENCE THAT SUPPORTS A FINDING....."

I am wondering if "PRESUMED" is the correct term. Because we say it is presumed but established by evidence and then it is established by electronic record, was recorded, et cetera. So I cannot quite follow what we mean when integrity is "presumed" but evidence must be adduced to sustain the integrity.

Senator Magsaysay. We are open to substituting a more appropriate word for the term "PRESUMED".

Senator Roco. Maybe we just say IS RECORDED OR STORED MAY BE ESTABLISHED OR CAN BE ESTABLISHED IN ANY LEGAL PROCEEDING -

(A) BY EVIDENCE THAT SUPPORTS A FINDING, et cetera, or.....

Senator Magsaysay. MAY BE ESTABLISHED.

Senator Roco. Yes. We should not create a presumption. We should create a mode of recognizing when the record has integrity sufficient to be admissible in court. I think that is what is intended here.

Senator Magsaysay. Can the author give us the way how it should be worded, Mr. President?

ROCO AMENDMENTS

Senator Roco. INTEGRITY OF THE ELECTRONIC RECORD SYSTEM IN WHICH AN ELECTRONIC RECORD IS RECORDED OR STORED MAY BE ESTABLISHED IN ANY LEGAL PROCEEDING -

(A) BY EVIDENCE THAT SUPPORTS, et cetera;

(B) BY SHOWING--just so we do not use "established" again--THAT THE ELECTRONIC RECORD WAS RECORDED OR STORED.

So what we are suggesting, Mr. President, is, instead of a presumption, we show how it can be proven in court. Because in any event, that seems to be the sense in the whole section.

Senator Magsaysay. It is accepted, Mr. President, subject to style.

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

Senator Roco. Now, I have three or four more amendments, Mr. President, and while they are small, they may have significant effects.

On page 14.... After page 12A, I have page 14. I do not know. We lost page 13 or I am just missing page 13?

Senator Magsaysay. There is a page 13.

Senator Roco. Can I ask the staff to give me page 13? I have 12A and then 14.

All right, Mr. President. In any event, I really have a proposed amendment on page 14. On page 14, we say, "within sixty (60) days after the effectivity of this Act, promulgate rules and regulations and perform such other functions as are necessary and advisable for the implementation of this act in the area of electronic commerce."

May we suggest, Mr. President, that in view of the lessons we have learned from the Securities Law.... The Securities Law requires implementation in a number of the sections, but for some reason the Securities and Exchange Commission forgot to issue the rules.

So there is a question of whether the law has been violated, because there are no executory rules or regulations. And yet this e-commerce law is crafted, Mr. President, in such a manner that almost all the sections are self-executory.

Because of that, Mr. President, may we suggest an additional phrase to the end of this subparagraph (D), on page 14, lines 4 to 8: THAT FAILURE TO ISSUE RULES AND REGULATIONS SHALL NOT IN ANY MANNER AFFECT THE EXECUTORY NATURE OF THE PROVISIONS.

Senator Magsaysay. That is very welcome, Mr. President. The amendment is accepted, subject to style.

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

Senator Roco. In the final provisions, Mr. President, a new section before *Penalties*, which should be entitled *RECIPROCITY PROVISIONS*.

Again, Mr. President, we will have to craft the language and style. The concept is that all the benefits, interpretations, advantages, or statutory guides established by this law shall be enjoyed by any foreigner or by any person suing in the Philippines or doing business in the Philippines, provided that the similar benefits or privileges are enjoyed by a Filipino similarly situated in his country of origin.

So if Panama does not have an e-commerce law, it cannot enjoy the benefits of the e-commerce law, if it sues. I mean, I am giving outlandish example because it may never happen.

The President. Senator Roco is referring to lines...

Senator Roco. A new section, Mr. President, as the first section of the final provisions on page 14.

The President. Line 10, page 14.

Senator Roco. Between lines 9 and 10, a new section that shall be called the RECIPROCITY PROVISION to the effect that all the benefits and advantages here can be enjoyed only when the other country grants the same benefits and privileges to a Filipino.

The President. What does the sponsor say?

Senator Magsaysay. It is accepted, Mr. President, subject to style. This is a welcome provision.

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

Senator Roco. A final thing, Mr. President. I just could not find where to put it.

In the earlier interpellation, we had occasion to mention, Mr. President, that the e-commerce, the Internet, the cyberspace has many advantages in terms of access to information and data. But like the speech of our distinguished friend from Catanduanes, it now can be used, especially with the new technologies, to promote disinformation instead of promoting truth. It is now being used to promote disinformation. It is being used to promote black propaganda.

So, Mr. President, I suggested during the interpellation--and I was hoping it would be picked up by the staff--that there must always be an origin. We must put in this proposed law that the origin, the originating telephone number or whatever, must always be identified before it can enjoy any probative value or before it can enjoy the protection of this proposed law.



Senator Magsaysay. We are open to this proposal that there must be an origin on statements.

Senator Roco. Both the origin and the receiver should be identified. After all, if it is in the nature of a letter, Mr. President, then it must show.

In the case of the telephones, it is automatically identified.

So that under the *Penalty* provisions, in the absence of origin or receiver, address or whatever, an appropriate penalty or an appropriate provision can be put: THIS WILL HAVE NO VALUE WHATSOEVER.

Senator Magsaysay. The committee accepts the amendment, again, subject to style, on origination.

The President. Yes, and subject to the appropriate place in the bill itself.

Senator Magsaysay. Appropriate place in the measure.

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

Senator Roco. Thank you, Mr. President, and I thank also the distinguished sponsor.

Mr. President, I think the other sections will have to wait for a cleaner copy. I would also suggest to the technical staff that in a number of sections, we repeat the rule that unless it was intended or unless there was no origin, there may be a way of shortening it. I leave it totally to the discretion of the sponsor of combining some of the sections.

Thank you, Mr. President.

Senator Magsaysay. I thank the distinguished gentleman for that, Mr. President.

The President. The Majority Leader is recognized.

Senator Drilon. Mr. President, may we therefore suggest that a new version of Senate Bill No. 1902, incorporating the amendments accepted by the sponsor and approved by the Chamber, be drafted so that the next time we consider this bill, it will now indicate these latest amendments.

#### SUSPENSION OF CONSIDERATION OF S. NO. 1902

With that, Mr. President, I move that we suspend consideration of Senate Bill No. 1902.

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

The Secretariat is directed to prepare a new draft of the bill based on the new amendments that have been adopted.

#### BILL ON SECOND READING

S. No. 1942 - Power Sector Liquidation  
Trust Law of 1999  
*(Continuation)*

Senator Drilon. Mr. President, I move that we resume consideration of Senate Bill No. 1942 as reported out under Committee Report No. 195

The President. Is there any objection? *[Silence]*  
There being none, resumption of consideration of Senate Bill No. 1942 is now in order.