

RECORD OF THE SENATE

MONDAY, MARCH 27, 2000

NATIONAL ANTHEM

OPENING OF THE SESSION

At 3:35 p.m., the session was called to order with the Hon. Vicente C. Sotto III presiding.

The Presiding Officer [Sen. Sotto]. The 77th session of the Senate in the Second Regular Session of the Eleventh Congress is hereby called to order.

Let us all stand for the opening prayer to be led by Senate President Blas F. Ople.

After the prayer, the Koro Hagonoyeno will lead us in the singing of the national anthem. Thereafter, the Choir will render another song, entitled *Lambingan*.

Everybody rose for the prayer.

PRAYER

Senator Ople.

Jesus Christ, Lord of heaven and earth, we joyfully and gratefully welcome the Great Jubilee of Your mission of salvation as we close the second millennium and open the third millennium of Christianity in the life of mankind.

Lord, in choosing to plant the first seed of Your church in Asia in this humble corner of the world, the Philippines, 500 years ago, You have given our people a covenant as You did to the people of Israel at an earlier time.

The covenant bids us, the Filipino nation, to live faithful Christian lives and to preach your message of salvation to all corners of the earth thus making us a Holy nation.

Bless us, O Lord, so that the Senate of the Philippines will become an even greater institution sanctified by the selfless commitment of its members in the Year of the Great Jubilee.

Bless us, Lord, so that we may conquer mere vanity and insist on meeting the highest standards of truth and the public service based on the authentic teachings of Jesus Christ our Lord and Savior.

Everybody remained standing for the singing of the national anthem.

SUSPENSION OF SESSION

The Presiding Officer [Sen. Sotto]. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 3:42 p.m.

RESUMPTION OF SESSION

At 3:43 p.m., the session was resumed with the Honorable Senate President Blas F. Ople presiding.

The President. The session is resumed.

ROLL CALL

The Secretary will please call the roll.

The Secretary, *reading:*

Senator Teresa Aquino-Oreta	Present
Senator Robert Z. Barbers	Present
Senator Rodolfo G. Biazon	*
Senator Renato L. Compañero Cayetano ...	Present
Senator Anna Dominique M.L. Coseteng ...	Present
Senator Miriam Defensor Santiago	Present
Senator Franklin M. Drilon	Present
Senator Juan Ponce Enrile	Present
Senator Juan M. Flavie	Present
Senator Teofisto T. Guingona Jr.	Present
Senator Gregorio B. Honasan	Present
Senator Robert S. Jaworski	Present
Senator Loren B. Legarda-Leviste	Present
Senator Ramon B. Magsaysay Jr.	Present
Senator John Henry R. Osmeña	Present
Senator Sergio R. Osmeña III	Present
Senator Aquilino Q. Pimentel Jr.	Present
Senator Ramon B. Revilla	Present
Senator Raul S. Roco	Present
Senator Vicente C. Sotto III	Present
Senator Francisco S. Tatad	Present
The President	Present

The President. With 21 senators present, there is a quorum.

* On official mission

environment, and urban designs, site planning, outdoor space planning, landscape architectural detailing..."

Now we will go to line 20, "landscape architectural lighting, laying out of associated"—this is the one I would like to be clarified on—"laying out of associated mechanical, electrical, sanitary, plumbing and other utility systems" as part of the scope of landscape architect. I was wondering if this is not encroaching on the other disciplines like mechanical, electrical, sanitary, and plumbing.

Senator Coseteng. This is limited actually to the aesthetics aspect or layout of what has been described in Item No. 9. However, the technical specifications are left to the professionals of their specific fields of specialization.

Senator Magsaysay. What the lady senator is saying is that these are just for aesthetics?

Senator Coseteng. Yes, Mr. President. In other words, the lampposts, whether these are going to be five meters high, whether these are going to be made out of BI pipe or concrete or whatever, would now depend on the landscape architect to ensure that these blend well with the entire landscaping. However, the number of, maybe, watts or the other technical specifications, whether they are going to use mercury lamps or flood lights or the wiring, whatever gauge this wiring will be, will be dependent on the electrical engineer, and so on and so forth as far as plumbing is concerned and so with the sanitary and other utility systems.

Senator Magsaysay. I understand, Mr. President. So, with this clarification, I am satisfied.

Thank you, Mr. President.

Senator Coseteng. I would like to thank the gentleman for his interpellation.

At this juncture, Sen. Vicente C. Sotto III relinquished the Chair to Sen. Juan M. Flavie.

Senator Drilon. Mr. President, that terminates the period of interpellations on Senate Bill No. 1355 as reported out under Committee Report No. 12. I therefore move that we close the period of debates.

The Presiding Officer [Sen. Flavie]. Is there any objection? *[Silence]* There being none, the motion is approved.

SUSPENSION OF CONSIDERATION OF S. NO. 1355

Senator Drilon. Mr. President, I move that we suspend consideration of Senate Bill No. 1355.

The Presiding Officer [Sen. Flavie]. Is there any objection? *[Silence]* There being none, the motion is approved.

SUSPENSION OF SESSION

Senator Drilon. I move that we suspend the session for one minute.

The President. Is there any objection? *[Silence]* There being none, the session is suspended for one minute.

It was 4:45 p.m.

RESUMPTION OF SESSION

At 4:46 p.m., the session was resumed.

The Presiding Officer [Sen. Flavie]. The session is resumed.

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

Senator Drilon. Mr. President, I move that we resume consideration of Senate Bill No. 1902 under Committee Report No. 179.

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

Senator Drilon. Mr. President, we are now in the period of amendments. May I ask the Chair to recognize Sen. Ramon B. Magsaysay Jr., the principal sponsor of the measure.

The Presiding Officer [Sen. Flavie]. Senator Magsaysay is recognized.

Senator Magsaysay. Thank you, Mr. President.

We are now on page 5, Section 12.

Senator Santiago. Mr. President, please.

The Presiding Officer [Sen. Flavie]. Sen. Miriam Defensor Santiago is recognized.

Senator Santiago. May I please beg permission to go back to page 4, specifically to Section 8.

I have only just studied Section 8 and the succeeding sections in this chapter. Chapter II is entitled: "Legal Recognition of Data Messages".

In Philippine legal terminology, we would say that this is the chapter which affects our Rules of Court, particularly our Rules of Evidence. So, it needed technical study and this is the reason why I beg for permission to go back from page 5 to page 4 since I had the occasion to study this only just recently.

Senator Magsaysay. I have no objection, Mr. President. We may return to page 4, Chapter II.

Senator Santiago. I thank the gentleman. At the outset, please let me explain that I agree completely that we must have an e-commerce law in our country. Our existing Rules of Evidence is inadequate or outdated because our Rules of Court never contemplated the use of electronic commerce. That is why the people who wrote our Rules of Court implied restrictions on the use of modern means of communication.

For example, the Supreme Court justices who promulgated the Rules of Evidence prescribed the use of written, signed, or original documents. For many, many years in our country, as in the United States where we copied the practice, the Rules of Evidence have always been based on a written documentation or on a signed documentation or on an original documentation. But now, it is time to change our Rules of Evidence because of electronic commerce which involves the use of alternatives to paper-based methods of communication and storage of information.

So, our old paradigm of the written, signed and authenticated document needs a paradigm shift to an e-commerce paradigm which is no longer paper-based. This is the reason why I will propose certain amendments in the sections under Chapter II.

SANTIAGO AMENDMENTS

My first proposed amendment will refer to Section 8 itself. Section 8 consists of only one paragraph. My proposed amendment is to add one more paragraph to Section 8 consisting of a sentence that will state: **THIS ACT DOES NOT MODIFY ANY STATUTORY RULE RELATING TO THE ADMISSIBILITY OF RECORDS, EXCEPT THE RULES RELATING TO AUTHENTICATION AND BEST EVIDENCE.**

I would like to explain why I am proposing this amendment

by addition. Under the Rules of Evidence, the admission of a record may depend on hearsay rules, that is to say, the rules may say or might state that only original documents, only written documents, and only witnesses who have firsthand knowledge of such documents can be admitted in evidence. Our present Act will not change those rules. In the same way, recorded evidence may be subject to many other rules, for example, the rules on privileged communication, the rules on competency to enter into written documentation, the rules on notice, the rules about documents found in the possession of an accused person. There are many, many other rules. But these rules will not be changed by our present Act. Our Act is intended only and therefore should state that it will affect only the rules relating to authentication and to best evidence.

That is why I am proposing that in Section 8, we shall add as an additional paragraph this sentence: **THIS ACT DOES NOT MODIFY ANY STATUTORY RULE RELATING TO THE ADMISSIBILITY OF RECORDS, EXCEPT THE RULES RELATING TO AUTHENTICATION AND BEST EVIDENCE.**

In other words, our bill will change our existing rules on authentication and our existing best evidence rule. Only these two rules will be affected by this bill. The rest of the rules in our Rules of Evidence will not be affected and will remain as they are. This amendment is proposed to remove any doubt in the minds of judges and trial practitioners.

The Presiding Officer [Sen. Flavie]. What does the sponsor say?

SUSPENSION OF SESSION

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

The Presiding Officer [Sen. Flavie]. Is there any objection? *[Silence]* There being none, the session is suspended for one minute.

It was 4:52 p.m.

RESUMPTION OF SESSION

At 4:57 p.m., the session was resumed.

The Presiding Officer [Sen. Flavie]. The session is resumed. Senator Magsaysay is recognized.

Senator Magsaysay. I think the amendment of the lady senator from Iloilo is, in effect, amending the already amended Section 8, as amended by Senator Roco earlier last week.

For record purposes, may we ask how the lady senator's amendment will affect the statute of frauds?

Senator Santiago. Yes. It will not affect the statute of frauds. I will repeat the proposed amendment: THIS ACT DOES NOT MODIFY ANY STATUTORY RULE RELATING TO THE ADMISSIBILITY OF RECORDS, EXCEPT THE RULES RELATING TO AUTHENTICATION AND BEST EVIDENCE.

Since this Act will not modify any other rule of evidence, then that means that it will not modify the statute of frauds. We are aware that the statute of frauds provides that any agreement involving the sum of P500 or more shall be in writing. That is not affected because this bill provides that electronic writing shall be considered as writing in the legal sense. This is the purport of the provision in Section 8, which states: "FOR ALL LEGAL PURPOSES, A DATA MESSAGE OR ELECTRONIC WRITING AS REFERRED TO UNDER THIS ACT SHALL BE THE FUNCTIONAL EQUIVALENT OF A WRITING OR A WRITTEN DOCUMENT UNDER EXISTING LAWS."

This means therefore that the present amendment will not affect the statute of frauds because the statute of frauds requires a writing. And under Section 8 already, as we approved it last time, an electronic signature or any other form of electronic writing is considered as the functional equivalent of a legal writing, as we understand it today.

Senator Magsaysay. I understand, Mr. President. Therefore, in the statute of frauds, the documents will now also mean electronic documents.

Senator Santiago. That is right, Mr. President.

Senator Magsaysay. And the signature will also include electronic signature.

Senator Santiago. That is right.

Senator Magsaysay. The amendment of the lady senator is accepted, Mr. President.

Senator Santiago. Thank you, Mr. President.

Senator Magsaysay. This will, in effect, be the third sentence.

Senator Santiago. That is correct. And it will be a separate paragraph for Section 8.

Senator Magsaysay. Yes.

The Presiding Officer [Sen. Flavie]. Is there any objection to that amendment which in effect adds a new second paragraph to Section 8? *[Silence]* There being none, the amendment is approved.

Please proceed.

Senator Santiago. My next amendment will be on page 5, Section 12. I would like to add a provision but it will be part of Section 12 which begins on page 5 and ends on page 5A. My amendment will actually appear, if accepted, as additional paragraph on page 5A.

At present, page 5A ends with this line: "OR APPOINTED CERTIFICATION AUTHORITIES." After this line, I propose this amendment by addition. I propose to add a provision on the presumption of the integrity of electronic documents.

Senator Magsaysay. May I be clarified. Is this line 15qq of page 5A?

Senator Santiago. That is right. I am referring to line 15qq. I am proposing an additional line and subsequent lines after line 15qq.

Senator Magsaysay. Please go ahead.

Senator Santiago. It will read as follows: 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.

As I said, it is a presumption of integrity in favor of the electronic document. 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. And then it is followed by an enumeration.

Senator Magsaysay. If the lady senator does not mind, can she repeat the amendment?

Senator Santiago. Yes. It will be an additional paragraph after page 5A, line 15qq. I am referring to Section 12 which is subtitled "AUTHENTICATION OF DATA MESSAGES." After the end of this section, as it now appears, I propose to amend by adding this paragraph: 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. That is what it will say and then it will be followed by three paragraphs—subparagraphs (a), (b), and (c).

Senator Magsaysay. It is accepted, Mr. President.

The Presiding Officer [Sen. Flavier]. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Santiago. We have just approved in principle the presumption of integrity. Now, I would like to add three subparagraphs which explain this presumption. The first is subparagraph (a). Thus, the amendment will read:

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 THAT AT ALL MATERIAL TIMES THE COMPUTER SYSTEM OR OTHER SIMILAR DEVICE WAS OPERATING PROPERLY OR, IF IT WAS NOT, THE FACT OF ITS NOT OPERATING PROPERLY DID NOT AFFECT THE INTEGRITY OF THE ELECTRONIC RECORD, AND THERE ARE NO OTHER REASONABLE GROUNDS TO DOUBT THE INTEGRITY OF THE ELECTRONIC RECORD SYSTEM;

I would like to explain subparagraph (a). This first presumption is based on evidence that includes both the computer system that produced the record and the record-keeping system in which it operates. Both are needed to show reliability. This does not mean that a simple computer record needs the support of a sophisticated record-keeping system in order to be admissible.

For example, a small business may have a computer with off-the-shelf software and no records management manual. The record-keeping system is implied in the operation of the computer. It should be recognized, however, that the integrity of records in such a system may be exposed to more successful attack in court.

What I intend by this amendment subparagraph (A) is a fairly simple test of integrity.

The integrity of most electronic records is not disputed. They are admitted in evidence routinely. I would like for this Act not to intend to make the process more difficult or to provide grounds for frivolous but possibly expensive attacks on otherwise acceptable records. This Act should intend to point out the basic criteria on which integrity of an electronic record can be judged.

I think it would be best if we went individually by these subparagraphs. So I will it read again—it supports the presumption of integrity.

The main intent of this amendment by addition is to add in our law a legal presumption of integrity in favor of the electronic documents. That is to say that if there is no evidence presented by either side, or if evidence on either side more or less balances each other, then the presumption should be in favor of the authenticity of the record. That is the meaning of presumption of integrity.

Actually, the amendment is meant to fortify the evidentiary weight or probative value of the e-document or the electronic document.

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 THAT AT ALL MATERIAL TIMES THE COMPUTER SYSTEM OR OTHER SIMILAR DEVICE WAS OPERATING PROPERLY OR, IF IT WAS NOT, THE FACT OF ITS NOT OPERATING PROPERLY DID NOT AFFECT THE INTEGRITY OF THE ELECTRONIC RECORD AND THERE ARE NO OTHER REASONABLE GROUNDS TO DOUBT THE INTEGRITY OF THE ELECTRONIC RECORD SYSTEM.

Senator Magsaysay. It is accepted, Mr. President.

Senator Santiago. Thank you, Mr. President. I will move on to subparagraph (B).

The Presiding Officer [Sen. Flavier]. Shall we accept also subparagraph by subparagraph?

Senator Santiago. Yes, Mr. President, because it is easier for me to...

The Presiding Officer [Sen. Flavier]. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Santiago. Here is the second instance where the presumption of integrity will come into play.

(B) IF IT IS ESTABLISHED THAT THE ELECTRONIC RECORD WAS RECORDED OR STORED BY A PARTY TO THE PROCEEDINGS WHO IS ADVERSE IN INTEREST TO THE PARTY SEEKING TO INTRODUCE IT; OR

And then will follow subparagraph (C). But for our purposes at present, this will be the only amendment to be discussed—subparagraph (B). In effect, the contemplation is the integrity of the electronic record will be presumed.

(B) IF IT IS ESTABLISHED THAT THE ELECTRONIC RECORD WAS RECORDED OR STORED BY A PARTY TO THE PROCEEDINGS WHO IS ADVERSE IN INTEREST TO THE PARTY SEEKING TO INTRODUCE IT; OR

This is actually a copy of our present Rules of Court. If one is introducing a document which was written by an opponent, then automatically the judge presumes that the document is authentic because it was written or produced by his opponent and he is the person introducing it, not his opponent.

Senator Magsaysay. Subparagraph (B) is accepted, Mr. President.

The Presiding Officer [Sen. Flavie]. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Santiago. And finally, subparagraph (C):

(C) IF IT IS ESTABLISHED THAT THE ELECTRONIC RECORD WAS RECORDED OR STORED IN THE USUAL AND ORDINARY COURSE OF BUSINESS BY A PERSON WHO IS NOT A PARTY TO THE PROCEEDINGS AND WHO DID NOT RECORD OR STORE IT UNDER THE CONTROL OF THE PARTY SEEKING TO INTRODUCE THE RECORD.

In other words, what I am trying to say is, the law will presume that the electronic record is authentic if it was manufactured or written by a third party who has no interest in the litigation. So we have to presume that it was done in good faith because there is no specific interest involved among the litigators. It was written or produced by a third party.

Senator Magsaysay. It is accepted, Mr. President.

The Presiding Officer [Sen. Flavie]. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Santiago. I would like to continue. I will have to backtrack a little bit. I am still in Section 12 on page 5A, but I will be referring only to subsection (B) that is on page 5A. So I am on page 5A, subsection (B). It begins with line 15v which reads: "(B) THE ELECTRONIC DATA MESSAGE OR..."

After subparagraph (B), I would like to add subparagraph (C). This is the application of the best evidence rule.

The Presiding Officer [Sen. Flavie]. Where will that appear please? In what line then?

Senator Santiago. After line 15hh.

Senator Magsaysay. It is a new subparagraph, Mr. President.

The Presiding Officer [Sen. Flavie]. All right, line 15hh. Is it a new paragraph on (B) which will appear after line 15hh?

Senator Santiago. I am sorry, Mr. President. It should appear as paragraph (C). After paragraph (B), it should therefore be paragraph (C).

I am only going to insert what will become paragraph (C) so that we can have a provision on the application of the best evidence rule.

The best evidence rule is very simple. The best evidence rule states that the original copy of the document is the best evidence. As long as it is available, no copy shall be admitted in evidence. The best evidence is the original. So the copy will not be allowed by the judge. That is the best evidence rule.

Since our bill will actually affect only authentication and best evidence, we need a provision on the best evidence rule, just as I will later on propose an amendment with respect to authentication so that we would have covered authentication and best evidence.

This is what on page 5A paragraph (C) will read:

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

I would like to repeat that. As I said, I will introduce this amendment by saying that it seeks to apply the best evidence rule. So it will read like this: IN ANY LEGAL PROCEEDING WHERE THE BEST EVIDENCE RULE IS APPLICABLE IN RESPECT OF AN ELECTRONIC RECORD, IT IS SATISFIED ON PROOF OF THE INTEGRITY OF THE ELECTRONIC RECORD SYSTEM IN OR BY WHICH THE DATA WAS RECORDED OR STORED.

Actually, this means that: Under our present Rules of Court, we have a best evidence rule, which is very simple. It states that the original can be found, then present the original. Do not present a copy because the court will not accept it.

Our question now is: What is the effect of our bill on the best evidence rule? This amendment will answer that question. It will say, "The best evidence rule remains." But the question now is: What is the best evidence? In other words, what is the original copy of an electronic record? It is answered by the amendment which will state: IN ANY LEGAL PROCEEDING WHERE THE BEST EVIDENCE RULE IS APPLICABLE IN RESPECT OF AN ELECTRONIC RECORD, IT IS SATISFIED ON PROOF OF THE INTEGRITY OF THE ELECTRONIC RECORD SYSTEM IN OR BY WHICH THE DATA WAS RECORDED OR STORED.

In other words, any electronic record will already be the best evidence or will already be considered as the original copy as long as there is proof of the integrity of the electronic records system.

Senator Magsaysay. The sponsor accepts the amendment, Mr. President.

The Presiding Officer [Sen. Flavie]. There is a proposed amendment to add a new item (C) as accepted by the sponsor.

Senator Drilon. Mr. President.

The Presiding Officer [Sen. Flavie]. Senator Drilon is recognized before we act.

Senator Drilon. I have just one query, Mr. President. How do we prove the integrity of the electronic document as proposed by the sponsor of the amendment?

Senator Santiago. I will answer that in a subsequent section when I propose the amendment.

First, I will propose an amendment where we will presume the integrity of the electronic record and then the amendment will go on to provide the methods by which that integrity may be proved.

Senator Drilon. Then I will wait for that amendment.

The Presiding Officer [Sen. Flavie]. Meanwhile, there is an accepted amendment to add a new item (C) which will appear after line 15hh on page 5A as manifested by the lady senator.

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

Senator Santiago. Still on page 5A, Section 12, after paragraph (B), we have already added a paragraph (C) and now I would like to propose a paragraph (D). This is going to be Section 12, paragraph (D) and it will read:

(D) IN ANY LEGAL PROCEEDING, AN ELECTRONIC RECORD IN THE FORM OF A PRINTOUT 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.

I will repeat.

(D) IN ANY LEGAL PROCEEDING, AN ELECTRONIC RECORD IN THE FORM OF A PRINTOUT 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.

That is the proposed amendment. The explanation is actually very simple. We know that under our present rules of evidence, the best evidence is the original copy. We have a problem with computers, with using the Internet and other forms of electronic commerce because we do not know what is the original. So we are trying to work out new rules about what shall be considered the original. Paragraph (C) is one way of finding out what is the original copy and this paragraph (D) that I am proposing is proposing another method of finding out what is the original copy.

The situation is like this. There has been a printout and this printout has been used by the parties who are now litigating each other in court. They have been using it for certain purposes, and therefore that printout shall now be considered the best evidence of that transaction since they have been using it anyway.

Senator Magsaysay. May we know what the lady senator means by "manifestly acted upon"?

Senator Santiago. "Manifestly", that is to say there is a printout and in subsequent communications between the two parties involved, normally the buyer and the seller, they have always been referring to this printout or they have been using its language or they have in other ways shown that they are acting on the basis of the printout as an integral document, that is to say as a document of integrity. That is to say they have always treated the printout as a reliable source of information for the action of both the buyer and the seller. That is how they would manifest.

Senator Magsaysay. Is this a new paragraph (D)?

Senator Santiago. That is right.

Senator Magsaysay. It is accepted, Mr. President.

The Presiding Officer [Sen. Flavier]. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Santiago. Mr. President, my next amendment will be on Section 13, page 5B. Section 13 is entitled Admissibility and Evidential Weight of Data Messages. Please forgive me if I presume too much but maybe some might want to know what is "admissibility". "Admissibility" is the quality of a document or of testimonial evidence which allows the judge to consider it when he writes his decision. If the judge rules that a document or a testimony is inadmissible, what this simply means is that he cannot base his judgment or his final decision on that document or that testimony. And then there is a term "Evidential Weight" in Section 13. The meaning of "evidential weight" is, suppose that the document has been admitted by the judge, but the other party also has his own equivalent document. Which of these two documents should now be believed by the judge? That is a question that will refer to evidential weight.

In other words, on which document should the judge rely, the document presented by the plaintiff or the document presented by the defendant? That is a question of evidential weight.

For example, if the document of plaintiff is signed and the document of respondent is unsigned, then the judge will give more weight to the signed document. That is the meaning of "evidential weight".

The amendments that I would like to propose have to do with admissibility and evidential weight.

In Section 13, I will refer to paragraph (2). That is still on page 5B, Section 13, paragraph (2). "Information in the form of a data message shall be given due evidential weight..." That is a paragraph.

I would like to amend this subparagraph (2) by adding this paragraph. In other words, this will be the second paragraph of paragraph (2).

The Presiding Officer [Sen. Flavier]. Meaning, after line 29.

Senator Santiago. Yes, please.

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.

I am sure that this is extremely difficult. Even lawyers will have difficulty understanding this, but it is actually very simple. So, I will explain. The proposed amendment will read:

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.

This is really just legal double-talk. It actually just means that when the person has introduced an electronic record, then the judge must accept it. It is actually a duplication or a reflection of our present law on authentication in the Rules of Court.

Our present law on authentication concerns only paper records. What we are trying to do with our present bill is to craft or to write a new law on authentication which will appear to nonpaper-based records.

What this amendment means is that the person who is presenting the electronic record, whom we shall call the "proponent", the person who is using the printout, for example, or the data message, needs only to bring evidence that the record is what he claims it is.

Suppose the proponent claims, "This record is an invoice." Maybe he pulls it from the Internet and then he presents it to court and he says, "This record that I am presenting to you is an invoice."

This evidence is usually given orally and is therefore subject to attack by the other party. The act does not open an electronic record to attacks on its integrity or reliability at this stage.

In other words, when the litigant says, "This record is an invoice," one cannot attack what he is saying.

The question of integrity or reliability is closed at this stage. That question is reserved for the new best evidence rule.

Logically, the question of integrity could be included in authentication. But I feel, as a former RTC judge, that the question should be dealt with only once. It is only when we are dealing with the best evidence rule, not when we are dealing with authentication.

Actually, what this simply means is, when the lawyer of either party to the case identifies the document, then we have to presume that it is what it is. That it is authentic, unless we can overthrow it as the best evidence—impugn it as the best evidence.

Senator Pimentel. Mr. President.

The Presiding Officer [Sen. Flavier]. Sen. Aquilino Q. Pimentel Jr. would like to manifest.

Senator Pimentel. Mr. President, there is a character in *Alice in Wonderland* which is quoted as having said:

“The words mean what I mean them to be.”

It sounds as if the proposed amendment would leave too much the matter of authenticity on the proponent. I wonder if that would be a safe rule to follow. I am not quite sure it is. Probably, we should subject this amendment to a more thorough study before it is even accepted by the sponsor.

Senator Santiago. That is right, Mr. President.

I have a long list of proposed amendments and all of them are based on the Law on Evidence in Canada concerning electronic records.

What I could offer to do is to put all of these proposed amendments in writing and indicate what they mean to amend or what they mean to be added so that our colleagues can study them at length. I would prefer the chair of the committee to introduce them as his committee amendments, if he wishes, and I will be willing to defend them. But I think it is best if our colleagues had more time to study these amendments. I will undertake to provide our colleagues with printed copies of my amendments, the reasons why I proposed them, and the sections of the present bill to which these refer.

The Presiding Officer [Sen. Flavier]. Would the sponsor be amenable to that alternative?

Senator Santiago. Because these amendments are very technical, Mr. President.

Senator Magsaysay. I think it is only proper that the senator from Iloilo will give us her amendments. It is welcome. So that the rest of our colleagues will be able to appreciate the amendments.

Senator Santiago. I will submit it in the form of a letter to the Chair and then I will furnish a copy to all the senators.

The Presiding Officer [Sen. Flavier]. With that understanding, the Majority Leader is recognized.

Senator Drilon. Just a query as a procedural matter, Mr. President.

Therefore, these amendments are not yet introduced into the *Record*?

Senator Santiago. We have already approved some of the amendments.

Senator Drilon. No. The others that the distinguished senator will be submitting.

Senator Santiago. Yes, that is right. These amendments are just my proposals.

The Presiding Officer [Sen. Flavier]. The Majority Leader is recognized.

Senator Drilon. Yes, Mr. President. I think that is a proposal that would be received well by the Chamber considering the complexity and the length of the amendments. We will just await the written proposals of the distinguished lady senator from Iloilo. We would direct the Secretariat to reproduce copies for each member of the Chamber so that these can be properly studied.

Senator Guingona. Mr. President.

The Presiding Officer [Sen. Flavier]. Sen. Teofisto T. Guingona Jr. is recognized.

Senator Guingona. Mr. President, I recognize the dedication of the distinguished sponsor and the efforts he has given which are very commendable for the passage of this bill. However, I sincerely entertain some reservations considering that the fast pace upon which this proposed measure is based has already been overtaken by more improvements in technology. If we pass this measure now, by the time it gets enacted into law, there may have been other more substantial developments.

The important consideration here is, for example, the issue of venue. When the question of certain differences arise, where will it be settled? In the country selling? In the country buying? In the country from where the goods come from because these do not necessarily have to come from the country of the seller? In the country of the service provider?

Aside from that, the taxes issue, Mr. President. If it is sold from the United States to here, there is the VAT. If it is to the nation where it is purchased, there is the sales tax. We do not know what these complications would entail.

With due respect to the distinguished sponsor's dedicated efforts—and I commend him for this—I was wondering if the gentleman would consider through an enabling act, for the Department of Trade and Industry to make the proactive rules and regulations concerning this. So that it can make the basic laws that will eventually be needed and make the adjustments that have

already been outdated in the UNCITRAL. We enable, we authorize the DTI to make the necessary basic rules and regulations.

Senator Magsaysay. Mr. President, first of all to answer the Minority Leader. The bill is technology neutral. We are not touching on how technology will develop and change.

The most important part of this bill that we are crafting is that we are trying to make admissible in court the electronic documents. We have to have this bill into a law so that what was earlier mentioned as the functional equivalence of written documents will be attributed also to electronic documents. So, the technology will not matter as long as the e-documents will be made admissible in court.

On the proposal of enabling the DTI to assume the responsibility so that it can be more proactive in the formulation of implementing rules and regulations, I doubt if the DTI can make the e-documents admissible in court. This is the crux of the matter, and this is already a practice all over the world.

We know that things are changing, things are developing fast, but we are merely saying that we need this so that e-documents will be made admissible in court. We are not trying to change so many things here. In fact, we do not want to even touch on source of purchase whether it is the main headquarters or through cross-borders. These are not mentioned to simplify the approach. Even taxes are not mentioned here. Whatever taxes there are will be paid in the existing laws.

I feel that if we do not adjust now, then we will of course lose that message to the rest of the world that we are at par with Singapore, which has already its own law. We are at par with Thailand, which is finishing its own e-commerce law. In fact, the Thai Constitution has the universal access in anticipating the e-commerce business, the global economy.

So, this is very important to be passed now, Mr. President. I do not mind that the Majority Leader, and maybe Senators Roco, Pimentel, Santiago and myself can sit down and thresh out in a special meeting or a couple of meetings the other provisions of the bill so that we can pursue with wise haste the passage of the law.

Senator Guingona. I respect the stand of the committee chairman, Mr. President.

Senator Drilon. Mr. President, with that manifestation of Sen. Miriam Defensor Santiago, we would have to suspend once more consideration of this measure.

Before we do that, may I ask the Chair to direct the Secretary

to prepare a clean copy of the bill for the next deliberation for easy reference where all the amendments are already incorporated, the amendments which were accepted by the sponsor and approved by the Chamber.

The Presiding Officer [Sen. Flavio]. The Secretary is so requested.

SUSPENSION OF CONSIDERATION OF S. NO. 1902

Senator Drilon. With that, Mr. President, I move that we suspend consideration of Senate Bill No. 1902 as reported out under Committee Report No. 179.

The Presiding Officer [Sen. Flavio]. Is there any objection? *[Silence]* There being none, the motion is approved.

BILL ON SECOND READING S. No. 1942--Power Sector Liquidation Trust Law of 1999 (Continuation)

Senator Drilon. Mr. President, in accordance with my previous announcement, with the permission of the Chamber, may I now move that we resume consideration of Senate Bill No. 1942 as reported out under Committee Report No. 195.

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

SUSPENSION OF SESSION

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

The Presiding Officer [Sen. Flavio]. Is there any objection? *[Silence]* There being none, the session is suspended for one minute.

It was 5:37 p.m.

RESUMPTION OF SESSION

At 5:38 p.m., the session was resumed.

The Presiding Officer [Sen. Flavio]. The session is resumed. The Majority Leader is recognized.

Senator Drilon. Mr. President, may I ask the Chair to recognize the principal sponsor, Sen. John H. Osmeña. We are in the period of interpellations.