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Chairman Roger Wicker
Ranking Member Maria Cantwell
Commerce, Science, and Transportation Committee
United States Senate
512 Dirksen Senate Building
Washington DC, 20510

July 29, 2020

Ladies and Gentlemen:

RE: Support for the ESIGN Modernization Act

The Electronic Signature & Records Association (ESRA) is the premier association representing organizations that adopt or provide electronic signature and document technology. Founded in 2006, ESRA's mission is to further public policy and educate its members and the public on legal, regulatory, and operational issues regarding the use of electronic signatures and records.

ESRA has long recognized the positive impact the Electronic Signature in Global and National Commerce Act (ESIGN) has had on digital commerce since it was signed into law in 2000. For over two decades, it has provided a reliable framework for using electronic signatures and exchanging legally recognized electronic records. ESIGN allowed for the interpretation of writing and signature requirements of existing laws to be expanded to include electronic versions.

The law remains a clear and powerful force in enabling digital transformation and driving innovation. Currently, ESIGN includes a provision requiring the affirmative consent of a consumer when entering into an electronic transaction, such as receiving a required disclosure or signing an online agreement. In the early days of the internet when the law was being drafted, there were legitimate concerns that many consumers did not understand electronic transactions and did not have the hardware, software, or general technical acumen to know what they were being asked to do. But in response to this concern, the statute went much further to require that consumers express consent in a "manner that reasonably demonstrates" their capacity to conduct business electronically. This one provision has created significant friction for consumer transactions, because the consumer will not be able to participate in the transaction unless they can prove they are capable of, for example, opening or saving a PDF file.

Online transactions and digital authentication have become mainstream methods of conducting commercial and personal business. It is time to recognize that some of the legitimate fears expressed by stakeholders in the 1990s are less relevant today while retaining the requirement that consumers consent to transact digitally.

ESRA supports the ESIGN Modernization Act introduced in the United States Senate on July 2, 2020. This proposed legislation would preserve all the essential components of ESIGN while streamlining how consumers consent to receive electronic documents like bank statements, account information, and contracts.

The bill preserves all the major pillars of the original law

ESIGN made it clear that electronic signatures and records are accorded the same force and effect as their paper counterparts, provided proper steps have been taken to ensure attribution of the signatories and integrity of the records. Among the attributes that have made the law a lasting success are:

- **Technology neutrality.** The drafters of ESIGN recognized that technology-specific legislation will

eventually become outdated. With rapid advances in digital transaction technology, laws relating to electronic signatures and records should address desired outcomes rather than the technical means by which they are achieved. The bill does not affect this core principle of ESIGN.

- **Non-discrimination.** Whereas the electronic nature of documents and signatures affords participants with additional tools to verify the authenticity of any aspect of a digital transaction, it should not be necessary to impose more stringent requirements for electronically executed documents when compared to the requirements for non-electronic media.
- **Consumer empowerment.** Electronic signatures and records benefit consumers by giving them choices. A flexible framework for receiving and signing documents allows consumers to carry out more of their business electronically in a fair and informed manner. Electronic signatures and records also allow people with disabilities to complete transactions independently.

The bill is surgical in its focus on removing barriers to adoption

The bill is carefully designed to extract the “reasonable demonstration” requirement while maintaining all the other aspects of consumer protection. Thus, it empowers consumers by providing more opportunities to participate in a digital economy for all.

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ESRA applauds the efforts in the Senate to update a historically significant law to keep pace with the times. We support legislation, including S.4159, that comports with the principles outlined above. More information on ESRA’s policies and outreach efforts is available at www.esignrecords.org.

Sincerely,



Ken Moyle
Public Policy Director
The Electronic Signature & Records Association

CC:

Sen. John Thune	Sen. Amy Klobuchar
Sen. Roy Blunt	Sen. Richard Blumenthal
Sen. Ted Cruz	Sen. Brian Schatz
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