

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

SECOND REGULAR SESSION-2000

Legislative Document

No. 2557

S.P. 995

In Senate, February 15, 2000

**An Act to Implement the Recommendations of the Blue Ribbon
Commission to Establish a Comprehensive Internet Policy.**

Reported by Senator KONTOS of Cumberland for the Joint Standing Committee on Business and Economic Development pursuant to Resolve 1999, chapter 89.

Reference to the Committee on Business and Economic Development suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 5 MRSA §1509-A**, as amended by PL 1999, c. 401, Pt. E,
§1, is further amended to read:

6 **§1509-A. Payment by credit card**

8 State departments and agencies ~~may shall~~ implement, with the
10 approval of the State Controller ~~and the State Treasurer~~,
procedures for accepting payment for goods, services, fines,
12 forfeitures or any other fees by major credit cards or other
electronic means. Unless otherwise provided for in law as of the
14 effective date of this section, any administrative expenses or
credit card fees incurred in connection with this method of
16 receiving funds must be absorbed within the existing budget of
the department or agency as authorized by the Legislature.

18 **Sec. 2. 10 MRSA Pt. 13** is enacted to read:

20 **PART 13**

22 **ELECTRONIC COMMERCE**

24 **CHAPTER 1051**

26 **UNIFORM ELECTRONIC TRANSACTIONS ACT**

28 **§9401. Short title**

30 This chapter may be known and cited as the "Uniform
Electronic Transactions Act."

32 **§9402. Definitions**

34 As used in this chapter, unless the context otherwise
36 indicates, the following terms have the following meanings.

38 1. Agreement. "Agreement" means the bargain of the parties
in fact, as found in their language or inferred from other
40 circumstances and from rules, regulations and procedures given
the effect of agreements under laws otherwise applicable to a
42 particular transaction.

44 2. Automated transaction. "Automated transaction" means a
transaction conducted or performed, in whole or in part, by
46 electronic means or electronic records in which the acts or
records of one or both parties are not reviewed by an individual
48 in the ordinary course of forming a contract, performing under an
existing contract or fulfilling an obligation required by the
50 transaction.

- 2 **3. Computer program.** "Computer program" means a set of
statements or instructions to be used directly or indirectly in
4 an information processing system in order to bring about a
certain result.
- 6 **4. Contract.** "Contract" means the total legal obligation
8 resulting from the parties' agreement as affected by this chapter
and other applicable law.
- 10 **5. Electronic.** "Electronic" means relating to technology
12 having electrical, digital, magnetic, wireless, optical,
electromagnetic or similar capabilities.
- 14 **6. Electronic agent.** "Electronic agent" means a computer
16 program or an electronic or other automated means used
independently to initiate an action or respond to electronic
18 records or performances, in whole or in part, without review or
action by an individual.
- 20 **7. Electronic record.** "Electronic record" means a record
22 created, generated, sent, communicated, received or stored by
electronic means.
- 24 **8. Electronic signature.** "Electronic signature" means an
26 electronic sound, symbol or process attached to or logically
associated with a record and executed or adopted by a person with
28 the intent to sign the record.
- 30 **9. Governmental agency.** "Governmental agency" means an
executive, legislative or judicial agency, department, board,
32 commission, authority, institution or instrumentality of the
Federal Government or of a state or of a county, municipality or
34 other political subdivision of a state.
- 36 **10. Information.** "Information" means data, text, images,
sounds, codes, computer programs, software, databases or the like.
- 38 **11. Information processing system.** "Information processing
40 system" means an electronic system for creating, generating,
sending, receiving, storing, displaying or processing information.
- 42 **12. Person.** "Person" means an individual, corporation,
44 business trust, estate, trust, partnership, limited liability
company, association, joint venture, governmental agency, public
46 corporation or any other legal or commercial entity.
- 48 **13. Record.** "Record" means information that is inscribed
on a tangible medium or that is stored in an electronic or other
50 medium and is retrievable in perceivable form.

2 **14. Security procedure.** "Security procedure" means a
3 procedure employed for the purpose of verifying that an
4 electronic signature, record or performance is that of a specific
5 person or for detecting changes or errors in the information in
6 an electronic record. "Security procedure" includes a procedure
7 that requires the use of algorithms or other codes, identifying
8 words or numbers, encryption or callback or other acknowledgment
9 procedures.

10 **15. State.** "State" means a state of the United States, the
11 District of Columbia, Puerto Rico, the United States Virgin
12 Islands or any territory or insular possession subject to the
13 jurisdiction of the United States. "State" includes an Indian
14 tribe or band or Alaskan native village that is recognized by
15 federal law or formally acknowledged by a state.

16 **16. Transaction.** "Transaction" means an action or set of
17 actions occurring between 2 or more persons relating to the
18 conduct of business, commercial or governmental affairs.

19 **§9403. Scope**

20 **1. General rule.** Except as otherwise provided in
21 subsection 2, this chapter applies to electronic records and
22 electronic signatures relating to a transaction.

23 **2. Exceptions.** This chapter does not apply to a
24 transaction to the extent it is governed by:

25 **A.** A law governing the creation and execution of wills,
26 codicils or testamentary trusts; and

27 **B.** The Uniform Commercial Code other than Title 11,
28 sections 1-107 and 1-206 and Articles 2 and 2A.

29 **3. Limitation of exception.** This chapter applies to an
30 electronic record or electronic signature otherwise excluded from
31 the application of this chapter under subsection 2 to the extent
32 it is governed by a law other than those specified in subsection
33 2.

34 **4. Other law.** A transaction subject to this chapter is
35 also subject to other applicable substantive law.

36 **§9404. Prospective application**

37 This chapter applies to any electronic record or electronic
38 signature created, generated, sent, communicated, received or
39 stored on or after the effective date of this chapter.

2 **§9405. Use of electronic records and electronic signatures:**
3 **variation by agreement**

4
5 **1. Electronic means or form not required.** This chapter
6 does not require a record or signature to be created, generated,
7 sent, communicated, received, stored or otherwise processed or
8 used by electronic means or in electronic form.

10 **2. Consent.** This chapter applies only to transactions
11 between parties, each of which has agreed to conduct transactions
12 by electronic means. Whether the parties agree to conduct a
13 transaction by electronic means is determined from the context
14 and surrounding circumstances, including the parties' conduct.

16 **3. Other transactions.** A party that agrees to conduct a
17 transaction by electronic means may refuse to conduct other
18 transactions by electronic means. The right granted by this
19 subsection may not be waived by agreement.

20 **4. Variance by agreement.** Except as otherwise provided in
21 this chapter, the effect of any of the provisions of this chapter
22 may be varied by agreement. The presence in certain provisions
23 of this chapter of the words "unless otherwise agreed," or words
24 of similar import, does not imply that the effect of other
25 provisions may not be varied by agreement.

28 **5. Conclusions of law.** Whether an electronic record or
29 electronic signature has legal consequences is determined by this
30 chapter and other applicable law.

32 **§9406. Construction and application**

34 This chapter must be construed and applied:

36 **1. Facilitation.** To facilitate electronic transactions
37 consistent with other applicable law;

38 **2. Reasonable practices.** To be consistent with reasonable
39 practices concerning electronic transactions and with the
40 continued expansion of those practices; and

42 **3. General purpose.** To effectuate its general purpose to
43 make uniform the law with respect to the subject of this chapter
44 among states enacting it.

46 **§9407. Legal recognition of electronic records, electronic**
48 **signatures and electronic contracts**

2 1. Form. An electronic record or electronic signature may
not be denied legal effect or enforceability solely because it is
in electronic form.

4
6 2. Formation. A contract may not be denied legal effect or
enforceability solely because an electronic record was used in
its formation.

8
10 3. Writing. If a law requires a record to be in writing,
an electronic record satisfies the law.

12 4. Signature. If a law requires a signature, an electronic
signature satisfies the law.

14 **§9408. Provision of information in writing; presentation of**
16 **records**

18 1. Writing. If parties have agreed to conduct a
transaction by electronic means and a law requires a person to
20 provide, send or deliver information in writing to another
person, the requirement is satisfied if the information is
22 provided, sent or delivered, as the case may be, in an electronic
record capable of retention by the recipient at the time of
24 receipt. An electronic record is not capable of retention by the
recipient if the sender or its information processing system
26 inhibits the ability of the recipient to print or store the
electronic record.

28 2. Records. If a law other than this chapter requires a
record to be posted or displayed in a certain manner; to be sent,
30 communicated or transmitted by a specified method; or to contain
information that is formatted in a certain manner, the following
32 rules apply:

34 A. The record must be posted or displayed in the manner
36 specified in the other law;

38 B. Except as otherwise provided in subsection 4, paragraph
B, the record must be sent, communicated or transmitted by
40 the method specified in the other law; and

42 C. The record must contain the information formatted in the
44 manner specified in the other law.

46 3. Unenforceable. If a sender inhibits the ability of a
recipient to store or print an electronic record, the electronic
48 record is not enforceable against the recipient.

50 4. Variance by agreement. The requirements of this section
may not be varied by agreement, but:

2 A. To the extent a law other than this chapter requires
4 information to be provided, sent or delivered in writing but
6 permits that requirement to be varied by agreement, the
 requirement under subsection 1 that the information be in
 the form of an electronic record capable of retention may
 also be varied by agreement; and

8 B. A requirement under a law other than this chapter to
10 send, communicate or transmit a record by certified mail,
12 return receipt requested; first-class mail, postage prepaid;
 or regular United States mail may be varied by agreement to
 the extent permitted by the other law.

14 **§9409. Attribution and effect of electronic record and**
16 **electronic signature**

18 1. Attributable to person. An electronic record or
20 electronic signature is attributable to a person if it was the
22 act of the person. The act of the person may be shown in any
 manner, including a showing of the efficacy of any security
 procedure applied to determine the person to which the electronic
 record or electronic signature was attributable.

24 2. Effect of attribution to person. The effect of an
26 electronic record or electronic signature attributed to a person
28 under subsection 1 is determined from the context and surrounding
 circumstances at the time of its creation, execution or adoption,
30 including the parties' agreement, if any, and otherwise as
 provided by law.

32 **§9410. Effect of change or error**

34 If a change or error in an electronic record occurs in a
36 transmission between parties to a transaction, the following
 rules apply.

38 1. Security procedure used. If the parties have agreed to
40 use a security procedure to detect changes or errors and one
42 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 changed or erroneous electronic record.

44 2. Electronic agent. In an automated transaction involving
46 an individual, the individual may avoid the effect of an
48 electronic record that resulted from an error made by the
 individual in dealing with the electronic agent of a person if
 the electronic agent did not provide an opportunity for the

2 prevention or correction of the error and, at the time the
3 individual learns of the error, the individual:

4 A. Promptly notifies the other person of the error and that
5 the individual did not intend to be bound by the electronic
6 record received by the other person;

7 B. Takes reasonable steps, including steps that conform to
8 the other person's reasonable instructions, to return to the
9 other person or, if instructed by the other person, to
10 destroy the consideration received, if any, as a result of
11 the erroneous electronic record; and

12 C. Has not used or received any benefit or value from the
13 consideration, if any, received from the other person.

14 3. Other law. If neither subsection 1 nor subsection 2 is
15 applicable, the change or error has the effect provided by other
16 law, including the law governing mistake, and the parties'
17 contract, if any.

18 4. Variance by agreement. Subsections 2 and 3 may not be
19 varied by agreement.

20 **§9411. Notarization and acknowledgment**

21 If a law requires a signature or record to be notarized,
22 acknowledged, verified or made under oath, the requirement is
23 satisfied if the electronic signature of the person authorized to
24 perform those acts, together with all other information required
25 to be included by other applicable law, is attached to or
26 logically associated with the signature or record.

27 **§9412. Retention of electronic records; originals**

28 1. Requirement. If a law requires that a record be
29 retained, the requirement is satisfied by retaining an electronic
30 record of the information in the record that:

31 A. Accurately reflects the information set forth in the
32 record after it was first generated in its final form as an
33 electronic record or otherwise; and

34 B. Remains accessible for later reference.

35 2. Transmission information. A requirement to retain a
36 record in accordance with subsection 1 does not apply to any
37 information whose sole purpose is to enable the record to be
38 sent, communicated or received.

39

2 3. Agents. A person may satisfy subsection 1 by using the
services of another person if the requirements of that subsection
are satisfied.

4
6 4. Originals. If a law requires a record to be presented
or retained in its original form or provides consequences if the
record is not presented or retained in its original form, that
8 law is satisfied by an electronic record retained in accordance
with subsection 1.

10
12 5. Checks. If a law requires retention of a check, that
requirement is satisfied by retention of an electronic record of
the information on the front and back of the check in accordance
14 with subsection 1.

16 6. Evidence; audits. A record retained as an electronic
record in accordance with subsection 1 satisfies a law requiring
18 a person to retain a record for evidentiary, audit or like
purposes, unless a law enacted after the effective date of this
20 chapter specifically prohibits the use of an electronic record
for the specified purpose.

22
24 7. Governmental agencies. This section does not preclude a
governmental agency of the State from specifying additional
26 requirements for the retention of a record subject to the
agency's jurisdiction.

28 **§9413. Admissibility in evidence**

30 In a proceeding, evidence of a record or signature may not
be excluded solely because it is in electronic form.

32 **§9414. Automated transaction**

34 In an automated transaction, the following rules apply.

36
38 1. Interaction of electronic agents. A contract may be
formed by the interaction of electronic agents of the parties,
even if no individual was aware of or reviewed the electronic
40 agents' actions or the resulting terms and agreements.

42 2. Interaction of electronic agent and individual. A
contract may be formed by the interaction of an electronic agent
44 and an individual, acting on the individual's own behalf or for
another person, including an interaction in which the individual
46 performs actions that the individual is free to refuse to perform
and that the individual knows or has reason to know will cause
48 the electronic agent to complete the transaction or performance.

2 3. Substantive law. The terms of a contract are determined
by the substantive law applicable to it.

4 §9415. Time and place of sending and receipt

6 1. Sending. Unless otherwise agreed between the sender and
the recipient, an electronic record is sent when it:

8
10 A. Is addressed properly or otherwise directed properly to
an information processing system that the recipient has
designated or uses for the purpose of receiving electronic
records or information of the type sent and from which the
recipient is able to retrieve the electronic record;

12
14
16 B. Is in a form capable of being processed by that
information processing system; and

18 C. Enters an information processing system outside the
control of the sender or of a person that sent the
electronic record on behalf of the sender or enters a region
of the information processing system designated or used by
the recipient that is under the control of the recipient.

20
22
24 2. Receipt. Unless otherwise agreed between a sender and
the recipient, an electronic record is received when it:

26
28 A. Enters an information processing system that the
recipient has designated or uses for the purpose of
receiving electronic records or information of the type sent
and from which the recipient is able to retrieve the
electronic record; and

30
32
34 B. Is in a form capable of being processed by that
information processing system.

36 3. Physical location. Subsection 2 applies even if the
place the information processing system is located is different
38 from the place the electronic record is deemed to be received
under subsection 4.

40
42 4. Place of business. Unless otherwise expressly provided
in the electronic record or agreed between the sender and the
44 recipient, an electronic record is deemed to be sent from the
sender's place of business and to be received at the recipient's
46 place of business. For purposes of this subsection, the
following rules apply.

48 A. If the sender or recipient has more than one place of
business, the place of business of that person is the place

2 having the closest relationship to the underlying
transaction.

4 B. If the sender or the recipient does not have a place of
business, the place of business is the sender's or
6 recipient's residence, as the case may be.

8 5. Actual receipt. An electronic record is received under
subsection 2 even if no individual is aware of its receipt.

10 6. Contents. Receipt of an electronic acknowledgment from
an information processing system described in subsection 2
12 establishes that a record was received but, by itself, does not
14 establish that the content sent corresponds to the content
received.

16 7. Legal effect. If a person is aware that an electronic
18 record purportedly sent under subsection 1, or purportedly
received under subsection 2, was not actually sent or received,
20 the legal effect of the sending or receipt is determined by other
applicable law. Except to the extent permitted by the other law,
22 the requirements of this subsection may not be varied by
agreement.

24 **§9416. Transferable records**

26 1. Definition. In this section, "transferable record"
28 means an electronic record that:

30 A. Would be a note under Title 11, Article 3-A or a
document under Title 11, Article 7 if the electronic record
32 were in writing; and

34 B. The issuer of the electronic record expressly has agreed
is a transferable record.

36 2. Control. A person has control of a transferable record
38 if an information processing system employed for evidencing the
transfer of interests in the transferable record reliably
40 establishes that person as the person to which the transferable
record was issued or transferred.

42 3. Compliance. An information processing system satisfies
44 subsection 2, and a person is deemed to have control of a
transferable record, if the transferable record is created,
46 stored and assigned in such a manner that:

48 A. A single authoritative copy of the transferable record
exists that is unique, identifiable and, except as otherwise
50 provided in paragraphs D, E and F, unalterable;

2 B. The authoritative copy identifies the person asserting
3 control as:

4 (1) The person to which the transferable record was
5 issued; or

6 (2) If the authoritative copy indicates that the
7 transferable record has been transferred, the person to
8 which the transferable record was most recently
9 transferred;

10 C. The authoritative copy is communicated to and maintained
11 by the person asserting control or its designated custodian;

12 D. Copies or revisions that add or change an identified
13 assignee of the authoritative copy can be made only with the
14 consent of the person asserting control;

15 E. Each copy of the authoritative copy and any copy of a
16 copy is readily identifiable as a copy that is not the
17 authoritative copy; and

18 F. Any revision of the authoritative copy is readily
19 identifiable as authorized or unauthorized.

20 4. Holders. Except as otherwise agreed, a person having
21 control of a transferable record is the holder, as defined in
22 Title 11, section 1-201, subsection (20), of the transferable
23 record and has the same rights and defenses as a holder of an
24 equivalent record or writing under the Uniform Commercial Code,
25 including, if the applicable statutory requirements under Title
26 11, section 3-1302, subsection (1); Title 11, section 7-501; or
27 Title 11, section 9-308 are satisfied, the rights and defenses
28 of a holder in due course, a holder to which a negotiable
29 document of title has been duly negotiated or a purchaser,
30 respectively. Delivery, possession and indorsement are not
31 required to obtain or exercise any of the rights under this
32 subsection.

33 5. Obligors. Except as otherwise agreed, an obligor under
34 a transferable record has the same rights and defenses as an
35 equivalent obligor under equivalent records or writings under the
36 Uniform Commercial Code.

37 6. Proof. If requested by a person against which
38 enforcement is sought, the person seeking to enforce the
39 transferable record shall provide reasonable proof that the
40 person seeking to enforce the transferable record is in control
41 of the transferable record. Proof includes access to the
42 authoritative copy of the transferable record and related

2 business records sufficient to review the terms of the
3 transferable record and to establish the identity of the person
4 having control of the transferable record.

6 **§9417. Creation and retention of electronic records and**
7 **conversion of written records by governmental agencies**

8 Each governmental agency of the State shall determine
9 whether, and the extent to which, it will create and retain
10 electronic records and convert written records to electronic
11 records.

12 **§9418. Acceptance and distribution of electronic records by**
13 **governmental agencies**

14 **1. Option.** Except as otherwise provided in section 9412,
15 subsection 6, each governmental agency of the State shall
16 determine whether, and the extent to which, it will send and
17 accept electronic records and electronic signatures to and from
18 other persons and otherwise create, generate, communicate, store,
19 process, use and rely upon electronic records and electronic
20 signatures.

21 **2. Specifics.** To the extent that a governmental agency
22 uses electronic records and electronic signatures under
23 subsection 1, the governmental agency, giving due consideration
24 to security, may specify:

25 **A.** The manner and format in which the electronic records
26 must be created, generated, sent, communicated, received and
27 stored and the systems established for those purposes;

28 **B.** If electronic records must be signed by electronic
29 means, the type of electronic signature required, the manner
30 and format in which the electronic signature must be affixed
31 to the electronic record and the identity of, or criteria
32 that must be met by, any 3rd party used by a person filing a
33 document to facilitate the process;

34 **C.** Control processes and procedures as appropriate to
35 ensure adequate preservation, disposition, integrity,
36 security, confidentiality and ability to be audited of
37 electronic records; and

38 **D.** Any other required attributes for electronic records
39 that are specified for corresponding nonelectronic records
40 or reasonably necessary under the circumstances.

41 **3. Not mandatory.** Except as otherwise provided in section
42 9412, subsection 6, this chapter does not require a governmental
43 agency to create, generate, communicate, store, process, use and
44 rely upon electronic records and electronic signatures.

2 agency of the State to use or permit the use of electronic
3 records or electronic signatures.

4 **§9419. Interoperability**

6 A governmental agency of the State that adopts standards
7 pursuant to section 9418 may encourage and promote consistency
8 and interoperability with similar requirements adopted by other
9 governmental agencies of this State and other states and the
10 Federal Government and nongovernmental persons interacting with
11 governmental agencies of the State. If appropriate, those
12 standards may specify differing levels of standards from which
13 governmental agencies of the State may choose in implementing the
14 most appropriate standard for a particular application.

16
17
18 **CHAPTER 1053**

19
20 **MAINE DIGITAL SIGNATURE ACT**

21
22 **§9501. Short title**

23 This chapter may be known and cited as the "Maine Digital
24 Signature Act."

25
26 **§9502. Definitions**

27 As used in this chapter, unless the context otherwise
28 indicates, the following terms have the following meanings.

29
30
31 **1. Digital signature.** "Digital signature" means a
32 computer-created electronic signature that:

33
34
35 **A.** Is intended by the person using it to have the same
36 force and effect as the use of a manual signature;

37
38 **B.** Is unique to the person using it;

39
40 **C.** Is capable of verification;

41
42 **D.** Is under the sole control of the person using it; and

43
44 **E.** Is linked to data in such a manner that it is
45 invalidated if the data are changed.

46
47 **2. Electronic signature.** "Electronic signature" has the
48 same meaning as used in chapter 1051.

49
50 **§9503. Rules adopted by Secretary of State**

2 When a digital signature is used in a transaction involving
4 a state department, agency, office, board, commission,
6 quasi-independent agency, authority or institution, it must
8 conform to rules adopted by the Secretary of State. Rules
 adopted pursuant to this section are routine technical rules as
 defined in Title 5, chapter 375, subchapter II-A.

10 **§9504. Effect of use of digital signature**

12 A digital signature may be accepted as a substitute for,
14 and, if accepted, has the same force and effect as the use of, a
 manual signature.

16 **§9505. Use of digital signature**

18 The use or acceptance of a digital signature is at the
20 option of the parties. Nothing in this chapter requires a public
 entity to use or permit the use of a digital signature.

22 **§9506. Construction**

24 Except as otherwise specifically provided, nothing in this
26 chapter may be construed to preempt, replace or otherwise negate
 the requirements of chapter 1051.

28 **Sec. 3. Resolve 1999, c. 89, §7** is amended to read:

30 **Sec. 7. Report. Resolved:** That no later than December 1,
32 1999, the commission shall submit its initial report, together
34 with any necessary implementing legislation, to the Joint
36 Standing Committee on Business and Economic Development 119th
 Legislature and the Executive Director of the Legislative
 Council. The Joint Standing Committee on Business and Economic
 Development is authorized to report out a bill during the Second
 Regular Session of the 119th Legislature concerning the findings
 and recommendations of the commission.

38 The commission is authorized to meet following the
40 conclusion of the Second Regular Session of the 119th Legislature
42 to continue its work. The commission shall end its work by
44 November 15, 2000. The commission shall submit its 2nd report,
 together with any necessary implementing legislation, to the
 First Regular Session of the 120th Legislature.

46 If the commission requires an extension, it may apply to the
48 Legislative Council, which may grant the extension; and be it
 further

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SUMMARY

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This bill implements recommendations of the Blue Ribbon Commission to Establish a Comprehensive Internet Policy. It requires state departments and agencies to implement procedures for accepting payment by major credit cards or other electronic means. It enacts the Uniform Electronic Transactions Act, enabling businesses and residents of the State to conduct business and transactions electronically by affording such transactions the same legal status as traditional paper transactions. It enacts the Maine Digital Signature Act. Finally, it authorizes the Blue Ribbon Commission to Establish a Comprehensive Internet Policy to meet to conclude its work following the conclusion of the Second Regular Session of the 119th Legislature.