SPONSOR: Rep. Roy & Sen. McBride

HOUSE OF REPRESENTATIVES

142nd GENERAL ASSEMBLY

HOUSE BILL NO. 217

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO THE CHOICE OF LAW AND FORUM FOR COMPUTER INFORMATION AGREEMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1   Section 1. Amend Title 6, Delaware Code by adding a new Chapter to read as follows:

2   "CHAPTER 50B. COMPUTER INFORMATION AGREEMENTS.

3   § 5001B. Definitions. As used in this Act:

4   (1) 'Computer information agreement' means a contract or agreement that falls within the scope of

5   the Uniform Computer Information Transactions Act, whether or not that act actually applies;

6   (2) 'Uniform Computer Information Transactions Act' means the Uniform Computer Information

7   Transactions Act as approved by the National Conference of Commissioners on Uniform State

8   Laws and enacted in any jurisdiction, or any substantially similar law enacted in any jurisdiction;

9   and

10   (3) 'Party' means a party to a computer information agreement, and 'Delaware party' means a party

11   that is a resident of this State or has its principal place of business in this State.

12   § 5002B. Choice of law or forum – Voidable.

13   A provision in a computer information agreement that would result in application of the Uniform

14   Computer Information Transactions Act to all or part of that agreement is voidable by any party unless

15   the Uniform Computer Information Transactions Act is subsequently enacted in this State. If the

16   provision is so voided, the agreement will be governed by the laws of this State if at least one party is a

17   Delaware party. In an action based on a computer information agreement that does not contain a choice

18   of law provision, any party may object to the application of the Uniform Computer Information

19   Transactions Act to the agreement. If such an objection is made, the agreement will be governed by the

20 laws of this State if at least one party is a Delaware party. A provision in a computer information

21 agreement which specifies that litigation or another dispute resolution process is to occur in a state other

22 than this State is voidable by any party, and the dispute resolution process will take place in this State if

23 at least one party is a Delaware party.

24 § 5003B. Fundamental policy.

25 The provisions of this Act reflect the fundamental policy of the State of Delaware, and may not be varied by

26 agreement of the parties.".

SYNOPSIS

 Several states have adopted the Uniform Computer Information Transactions Act "UCITA" to standardize the rules for licensing all types of software transactions. The UCITA is a controversial proposal that favors the needs of software licensors and on-line access providers to the detriment of most end-users.

 This Bill is defensive legislation to protect Delaware citizens from the UCITA enacted in other states. By voiding a choice of law or forum provision Delaware citizens will not be governed by the UCITA enacted in another state but will be subject to Delaware law. This law is sometimes referred to as a "bomb shelter" protecting a state's citizens from laws of another state. Iowa, North Carolina and West Virginia have enacted a similar "bomb shelter".