

HOUSE BILL 18

Unofficial Copy
14

2000 Regular Session
(0lr1053)

ENROLLED BILL
-- Economic Matters/Finance --

Introduced by **Delegates Taylor, Barve, Hurson, Busch, Dewberry, Guns, Hixson, Howard, Kopp, Menes, Montague, Owings, Rawlings, Rosenberg, and Vallario Vallario, W. Baker, Bobo, Brown, Conway, D'Amato, DeCarlo, Doory, Finifter, Franchot, Giannetti, Goldwater, Griffith, Hammen, Hecht, Hubers, James, V. Jones, Klausmeier, Love, Mandel, Mitchell, Moe, Pendergrass, Petzold, Pitkin, Rosso, Sophocleus, Stern, Turner, and Weir**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Commercial Law - The Maryland Uniform Electronic Transactions Act**

3 FOR the purpose of adopting the Maryland Uniform Electronic Transactions Act;
4 exempting transactions that are governed by certain laws *and regulations* from
5 the application of this Act; limiting the application of this Act to certain
6 transactions where the parties have agreed to conduct transactions
7 electronically; providing that an agreement to conduct a transaction
8 electronically may not be contained in a standard form contract under certain
9 circumstances; providing that an agreement to conduct a transaction
10 electronically may not be inferred solely from certain facts; providing that a
11 record or signature may not be denied legal effect or enforceability solely

1 because it is in electronic form; providing that a contract may not be denied legal
2 effect or enforceability solely because an electronic record was used in its
3 formation; providing that the requirements of certain laws that specify a record
4 or signature be in written form are met by an electronic record or electronic
5 signature under certain circumstances; authorizing certain provisions of this Act
6 to be varied by agreement; prohibiting certain provisions of this Act ~~to be~~ from
7 being varied by agreement; providing that the requirements of certain laws that
8 specify that a person provide, send, or deliver information in writing are met by
9 the providing, sending, or delivering of an electronic record under certain
10 circumstances; specifying that certain electronic records or electronic signatures
11 may be attributed to a person under certain circumstances; specifying the legal
12 effect of certain changes or errors; providing that an authorized individual may
13 meet the requirements of certain laws through the use of an electronic signature
14 under certain circumstances; providing that the requirements of certain laws
15 that specify certain records be retained are met by retention of an electronic
16 record under certain circumstances; providing that signatures and records may
17 not be excluded as evidence in a proceeding solely because they are in electronic
18 form; establishing rules for the formation of a contract in an automated
19 transaction; establishing rules for determining the time and place of sending of
20 electronic records and time and place of receipt of electronic records;
21 establishing rules for certain electronic records to be transferable records that
22 transfer certain interests under certain circumstances; establishing rules
23 governing the enforceability of transferable records and the rights and defenses
24 available to certain persons under certain circumstances; requiring
25 governmental agencies to make certain determinations about use of electronic
26 records and electronic signatures; authorizing governmental agencies that use
27 electronic records and electronic signatures to establish certain standards and
28 encourage certain acts; requiring that certain standards adopted by units of
29 State government be consistent with those specified in the State Information
30 Technology Master Plan; providing for the construction, effect, and application
31 of this Act; defining certain terms; making provisions of this Act severable; and
32 generally relating to electronic records, electronic signatures, and the adoption
33 of the Maryland Uniform Electronic Transactions Act.

34 BY adding to
35 Article - Commercial Law
36 Section 21-101 through 21-120, inclusive, to be under the new title "Title 21.
37 The Maryland Uniform Electronic Transactions Act"
38 Annotated Code of Maryland
39 (1990 Replacement Volume and 1999 Supplement)

40 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
41 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Commercial Law**

2 TITLE 21. THE MARYLAND UNIFORM ELECTRONIC TRANSACTIONS ACT.

3 21-101. DEFINITIONS.

4 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

5 (B) "AGREEMENT" MEANS THE BARGAIN OF THE PARTIES IN FACT, AS FOUND
6 IN THEIR LANGUAGE OR INFERRED FROM OTHER CIRCUMSTANCES AND FROM
7 RULES, REGULATIONS, AND PROCEDURES GIVEN THE EFFECT OF AGREEMENTS
8 UNDER LAWS OTHERWISE APPLICABLE TO A PARTICULAR TRANSACTION.9 (C) "AUTOMATED TRANSACTION" MEANS A TRANSACTION CONDUCTED OR
10 PERFORMED, IN WHOLE OR IN PART, BY ELECTRONIC MEANS OR ELECTRONIC
11 RECORDS, IN WHICH THE ACTS OR RECORDS OF ONE OR BOTH PARTIES ARE NOT
12 REVIEWED BY AN INDIVIDUAL IN THE ORDINARY COURSE OF FORMING A CONTRACT,
13 PERFORMING UNDER AN EXISTING CONTRACT, OR FULFILLING AN OBLIGATION
14 REQUIRED BY THE TRANSACTION.15 (D) "COMPUTER PROGRAM" MEANS A SET OF STATEMENTS OR INSTRUCTIONS
16 TO BE USED DIRECTLY OR INDIRECTLY IN AN INFORMATION PROCESSING SYSTEM IN
17 ORDER TO BRING ABOUT A CERTAIN RESULT.18 (E) "CONTRACT" MEANS THE TOTAL LEGAL OBLIGATION RESULTING FROM
19 THE PARTIES' AGREEMENT AS AFFECTED BY THIS TITLE AND OTHER APPLICABLE
20 LAW.21 (F) "ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING ELECTRICAL,
22 DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR
23 CAPABILITIES.24 (G) "ELECTRONIC AGENT" MEANS A COMPUTER PROGRAM OR AN ELECTRONIC
25 OR OTHER AUTOMATED MEANS USED INDEPENDENTLY TO INITIATE AN ACTION OR
26 RESPOND TO ELECTRONIC RECORDS OR PERFORMANCES IN WHOLE OR IN PART,
27 WITHOUT REVIEW OR ACTION BY AN INDIVIDUAL.28 (H) "ELECTRONIC RECORD" MEANS A RECORD CREATED, GENERATED, SENT,
29 COMMUNICATED, RECEIVED, OR STORED BY ELECTRONIC MEANS.30 (I) "ELECTRONIC SIGNATURE" MEANS AN ELECTRONIC SOUND, SYMBOL, OR
31 PROCESS ATTACHED TO OR LOGICALLY ASSOCIATED WITH A RECORD AND
32 EXECUTED OR ADOPTED BY A PERSON WITH THE INTENT TO SIGN THE RECORD.33 (J) "GOVERNMENTAL AGENCY" MEANS AN EXECUTIVE, LEGISLATIVE, OR
34 JUDICIAL AGENCY, DEPARTMENT, BOARD, COMMISSION, AUTHORITY, INSTITUTION,
35 UNIT, OR INSTRUMENTALITY OF THE FEDERAL GOVERNMENT OR OF A STATE OR OF
36 A COUNTY, MUNICIPALITY, OR OTHER POLITICAL SUBDIVISION OF A STATE.

1 (K) "INFORMATION" INCLUDES DATA, TEXT, IMAGES, SOUNDS, CODES,
2 COMPUTER PROGRAMS, SOFTWARE, AND DATABASES.

3 (L) "INFORMATION PROCESSING SYSTEM" MEANS AN ELECTRONIC SYSTEM
4 FOR CREATING, GENERATING, SENDING, RECEIVING, STORING, DISPLAYING, OR
5 PROCESSING INFORMATION.

6 (M) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, BUSINESS TRUST,
7 ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, JOINT
8 VENTURE, GOVERNMENTAL AGENCY, PUBLIC CORPORATION, OR ANY OTHER LEGAL
9 OR COMMERCIAL ENTITY.

10 (N) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE
11 MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS
12 RETRIEVABLE IN PERCEIVABLE FORM.

13 (O) "SECURITY PROCEDURE" MEANS A PROCEDURE EMPLOYED FOR THE
14 PURPOSE OF VERIFYING THAT AN ELECTRONIC SIGNATURE, RECORD, OR
15 PERFORMANCE IS THAT OF A SPECIFIC PERSON OR FOR DETECTING CHANGES OR
16 ERRORS IN THE INFORMATION IN AN ELECTRONIC RECORD. THE TERM INCLUDES A
17 PROCEDURE THAT REQUIRES THE USE OF ALGORITHMS OR OTHER CODES,
18 IDENTIFYING WORDS OR NUMBERS, ENCRYPTION, OR CALLBACK OR OTHER
19 ACKNOWLEDGMENT PROCEDURES.

20 (P) "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT OF
21 COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS, OR ANY TERRITORY
22 OR INSULAR POSSESSION SUBJECT TO THE JURISDICTION OF THE UNITED STATES.
23 THE TERM INCLUDES AN INDIAN TRIBE OR BAND, OR ALASKAN NATIVE VILLAGE,
24 WHICH IS RECOGNIZED BY FEDERAL LAW OR FORMALLY ACKNOWLEDGED BY A
25 STATE.

26 (Q) "TRANSACTION" MEANS AN ACTION OR SET OF ACTIONS OCCURRING
27 BETWEEN TWO OR MORE PERSONS RELATING TO THE CONDUCT OF BUSINESS,
28 COMMERCIAL, OR GOVERNMENTAL AFFAIRS.

29 21-102. SCOPE.

30 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (B), (C), AND (D) OF
31 THIS SECTION, THIS TITLE APPLIES TO ELECTRONIC RECORDS AND ELECTRONIC
32 SIGNATURES RELATING TO A TRANSACTION.

33 (B) THIS TITLE DOES NOT APPLY TO A TRANSACTION TO THE EXTENT IT IS
34 GOVERNED BY:

35 (1) A LAW GOVERNING THE CREATION AND EXECUTION OF WILLS,
36 CODICILS, OR TESTAMENTARY TRUSTS;

37 (2) THE MARYLAND UNIFORM COMMERCIAL CODE, OTHER THAN §§
38 1-107 AND 1-206 AND TITLES 2 AND 2A;

1 (3) THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT IF
2 ENACTED BY THIS STATE; AND

3 (4) A LAW OR REGULATION GOVERNING NOTICE ~~CONCERNING~~ OF:

4 (I) THE CANCELLATION OR TERMINATION OF UTILITY SERVICES,
5 INCLUDING WATER, HEAT, AND POWER;

6 (II) DEFAULT, ACCELERATION, REPOSSESSION, FORECLOSURE,
7 EVICTION, OR THE RIGHT TO CURE, UNDER A CREDIT AGREEMENT, MORTGAGE, OR A
8 RENTAL AGREEMENT FOR A PRIMARY RESIDENCE OF AN INDIVIDUAL; OR

9 (III) THE CANCELLATION OR TERMINATION OF HEALTH
10 INSURANCE, HEALTH INSURANCE BENEFITS, OR LIFE INSURANCE BENEFITS,
11 EXCLUDING ANNUITIES.

12 (C) THIS TITLE DOES NOT APPLY TO:

13 (1) COURT ORDERS, NOTICES, OR OFFICIAL COURT DOCUMENTS,
14 EXCEPT AS PROVIDED IN THE MARYLAND RULES; OR

15 (2) A RECORD THAT SERVES AS A UNIQUE AND TRANSFERABLE
16 INSTRUMENT OF RIGHTS AND OBLIGATIONS, INCLUDING AN INSTRUMENT OF TITLE
17 WHERE POSSESSION OF THE INSTRUMENT IS DEEMED TO CONFER TITLE, UNLESS AN
18 ELECTRONIC VERSION OF THAT RECORD IS CREATED, STORED, AND TRANSFERRED
19 IN A MANNER THAT:

20 (I) ALLOWS FOR THE EXISTENCE OF ONLY ONE UNIQUE,
21 IDENTIFIABLE, AND UNALTERABLE ORIGINAL WITH THE FUNCTIONAL ATTRIBUTES
22 OF AN EQUIVALENT PHYSICAL INSTRUMENT;

23 (II) CAN BE POSSESSED BY ONLY ONE PERSON; AND

24 (III) CANNOT BE COPIED EXCEPT IN A FORM THAT IS READILY
25 IDENTIFIABLE AS A COPY.

26 (D) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, A
27 GOVERNMENTAL AGENCY MAY ADOPT REGULATIONS THAT REQUIRE SPECIFIC
28 NOTICES WITHIN THE REGULATORY AUTHORITY OF THE AGENCY TO BE PROVIDED
29 OR MADE AVAILABLE IN WRITING UPON THE AGENCY'S DETERMINATION THAT IT IS
30 NECESSARY FOR THE PROTECTION, PUBLIC HEALTH, OR SAFETY OF CONSUMERS.

31 (E) THIS TITLE APPLIES TO AN ELECTRONIC RECORD OR ELECTRONIC
32 SIGNATURE OTHERWISE EXCLUDED FROM THE APPLICATION OF THIS TITLE UNDER
33 SUBSECTION (B) OF THIS SECTION TO THE EXTENT IT IS GOVERNED BY A LAW OTHER
34 THAN THOSE SPECIFIED IN SUBSECTION (B) OF THIS SECTION.

35 (F) A TRANSACTION SUBJECT TO THIS TITLE IS ALSO SUBJECT TO OTHER
36 APPLICABLE SUBSTANTIVE LAW.

1 21-103. PROSPECTIVE APPLICATION.

2 THIS TITLE APPLIES TO ANY ELECTRONIC RECORD OR ELECTRONIC SIGNATURE
3 CREATED, GENERATED, SENT, COMMUNICATED, RECEIVED, OR STORED ON OR
4 AFTER THE EFFECTIVE DATE OF THIS TITLE.

5 21-104. USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES; VARIATION
6 BY AGREEMENT.

7 (A) THIS TITLE DOES NOT REQUIRE A RECORD OR SIGNATURE TO BE
8 CREATED, GENERATED, SENT, COMMUNICATED, RECEIVED, STORED, OR OTHERWISE
9 PROCESSED OR USED BY ELECTRONIC MEANS OR IN ELECTRONIC FORM.

10 (B) (1) THIS TITLE APPLIES ONLY TO TRANSACTIONS BETWEEN PARTIES,
11 EACH OF WHICH HAS AGREED TO CONDUCT TRANSACTIONS BY ELECTRONIC MEANS.

12 (2) WHETHER THE PARTIES HAVE AGREED TO CONDUCT A
13 TRANSACTION BY ELECTRONIC MEANS IS DETERMINED FROM THE CONTEXT AND
14 SURROUNDING CIRCUMSTANCES, INCLUDING THE PARTIES' CONDUCT.

15 (3) EXCEPT FOR A SEPARATE AND OPTIONAL AGREEMENT THE PRIMARY
16 PURPOSE OF WHICH IS TO AUTHORIZE A TRANSACTION TO BE CONDUCTED BY
17 ELECTRONIC MEANS, A PROVISION TO CONDUCT A TRANSACTION ELECTRONICALLY
18 MAY NOT BE CONTAINED IN A STANDARD FORM CONTRACT UNLESS THAT PROVISION
19 IS CONSPICUOUSLY DISPLAYED AND SEPARATELY CONSENTED TO.

20 (4) AN AGREEMENT TO CONDUCT A TRANSACTION ELECTRONICALLY
21 MAY NOT BE INFERRED SOLELY FROM THE FACT THAT A PARTY HAS USED
22 ELECTRONIC MEANS TO PAY AN ACCOUNT OR REGISTER A PURCHASE WARRANTY.

23 (5) THIS SUBSECTION MAY NOT BE VARIED BY AGREEMENT.

24 (C) (1) A PARTY THAT AGREES TO CONDUCT A TRANSACTION BY
25 ELECTRONIC MEANS MAY REFUSE TO CONDUCT OTHER TRANSACTIONS BY
26 ELECTRONIC MEANS.

27 (2) THE RIGHT GRANTED BY THIS SUBSECTION MAY NOT BE WAIVED BY
28 AGREEMENT.

29 (D) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, THE EFFECT OF
30 ANY OF ITS PROVISIONS MAY BE VARIED BY AGREEMENT.

31 (2) THE PRESENCE IN PROVISIONS OF THIS TITLE OF THE WORDS
32 "UNLESS OTHERWISE AGREED", OR WORDS OF SIMILAR IMPORT, DOES NOT IMPLY
33 THAT THE EFFECT OF OTHER PROVISIONS MAY NOT BE VARIED BY AGREEMENT.

34 (E) WHETHER AN ELECTRONIC RECORD OR ELECTRONIC SIGNATURE HAS
35 LEGAL CONSEQUENCES IS DETERMINED BY THIS TITLE AND OTHER APPLICABLE
36 LAW.

1 21-105. CONSTRUCTION AND APPLICATION.

2 THIS TITLE MUST BE CONSTRUED AND APPLIED:

3 (1) TO FACILITATE ELECTRONIC TRANSACTIONS CONSISTENT WITH
4 OTHER APPLICABLE LAW;

5 (2) TO BE CONSISTENT WITH REASONABLE PRACTICES CONCERNING
6 ELECTRONIC TRANSACTIONS AND WITH THE CONTINUED EXPANSION OF THOSE
7 PRACTICES; AND

8 (3) TO EFFECTUATE ITS GENERAL PURPOSE TO MAKE UNIFORM THE
9 LAW WITH RESPECT TO THE SUBJECT OF THIS TITLE AMONG STATES ENACTING IT.

10 21-106. LEGAL RECOGNITION OF ELECTRONIC RECORDS, ELECTRONIC SIGNATURES,
11 AND ELECTRONIC CONTRACTS.

12 (A) A RECORD OR SIGNATURE MAY NOT BE DENIED LEGAL EFFECT OR
13 ENFORCEABILITY SOLELY BECAUSE IT IS IN ELECTRONIC FORM.

14 (B) A CONTRACT MAY NOT BE DENIED LEGAL EFFECT OR ENFORCEABILITY
15 SOLELY BECAUSE AN ELECTRONIC RECORD WAS USED IN ITS FORMATION.

16 (C) IF A LAW REQUIRES A RECORD TO BE IN WRITING, AN ELECTRONIC
17 RECORD SATISFIES THE LAW.

18 (D) IF A LAW REQUIRES A SIGNATURE, AN ELECTRONIC SIGNATURE
19 SATISFIES THE LAW.

20 21-107. PROVISION OF INFORMATION IN WRITING; PRESENTATION OF RECORDS.

21 (A) (1) IF PARTIES HAVE AGREED TO CONDUCT A TRANSACTION BY
22 ELECTRONIC MEANS AND A LAW REQUIRES A PERSON TO PROVIDE, SEND, OR
23 DELIVER INFORMATION IN WRITING TO ANOTHER PERSON, THE REQUIREMENT IS
24 SATISFIED IF THE INFORMATION IS PROVIDED, SENT, OR DELIVERED IN AN
25 ELECTRONIC RECORD CAPABLE OF RETENTION BY THE RECIPIENT AT THE TIME OF
26 RECEIPT.

27 (2) AN ELECTRONIC RECORD IS NOT CAPABLE OF RETENTION BY THE
28 RECIPIENT IF THE SENDER OR ITS INFORMATION PROCESSING SYSTEM INHIBITS
29 THE ABILITY OF THE RECIPIENT TO PRINT OR STORE THE ELECTRONIC RECORD.

30 (B) IF A LAW OTHER THAN THIS TITLE REQUIRES A RECORD TO BE POSTED OR
31 DISPLAYED IN A CERTAIN MANNER, TO BE SENT, COMMUNICATED, OR TRANSMITTED
32 BY A SPECIFIED METHOD, OR TO CONTAIN INFORMATION THAT IS FORMATTED IN A
33 CERTAIN MANNER, THE FOLLOWING RULES APPLY:

34 (1) THE RECORD MUST BE POSTED OR DISPLAYED IN THE MANNER
35 SPECIFIED IN THE OTHER LAW;

1 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (D)(2) OF THIS
2 SECTION, THE RECORD MUST BE SENT, COMMUNICATED, OR TRANSMITTED BY THE
3 METHOD SPECIFIED IN THE OTHER LAW; AND

4 (3) THE RECORD MUST CONTAIN THE INFORMATION FORMATTED IN
5 THE MANNER SPECIFIED IN THE OTHER LAW.

6 (C) IF A SENDER INHIBITS THE ABILITY OF A RECIPIENT TO STORE OR PRINT
7 AN ELECTRONIC RECORD, THE ELECTRONIC RECORD IS NOT ENFORCEABLE AGAINST
8 THE RECIPIENT.

9 (D) THE REQUIREMENTS OF THIS SECTION MAY NOT BE VARIED BY
10 AGREEMENT, BUT:

11 (1) TO THE EXTENT A LAW OTHER THAN THIS TITLE REQUIRES
12 INFORMATION TO BE PROVIDED, SENT, OR DELIVERED IN WRITING BUT PERMITS
13 THAT REQUIREMENT TO BE VARIED BY AGREEMENT, THE REQUIREMENT UNDER
14 SUBSECTION (A) OF THIS SECTION THAT THE INFORMATION BE IN THE FORM OF AN
15 ELECTRONIC RECORD CAPABLE OF RETENTION MAY ALSO BE VARIED BY
16 AGREEMENT; AND

17 (2) A REQUIREMENT UNDER A LAW OTHER THAN THIS TITLE TO SEND,
18 COMMUNICATE, OR TRANSMIT A RECORD BY REGISTERED OR CERTIFIED MAIL,
19 POSTAGE PREPAID, OR BY REGULAR MAIL, MAY BE VARIED BY AGREEMENT TO THE
20 EXTENT PERMITTED BY THE OTHER LAW.

21 21-108. ATTRIBUTION AND EFFECT OF ELECTRONIC RECORD AND ELECTRONIC
22 SIGNATURE.

23 (A) (1) AN ELECTRONIC RECORD OR ELECTRONIC SIGNATURE IS
24 ATTRIBUTABLE TO A PERSON IF IT WAS THE ACT OF THE PERSON.

25 (2) THE ACT OF THE PERSON MAY BE SHOWN IN ANY MANNER,
26 INCLUDING A SHOWING OF THE EFFICACY OF ANY SECURITY PROCEDURE APPLIED
27 TO DETERMINE THE PERSON TO WHICH THE ELECTRONIC RECORD OR ELECTRONIC
28 SIGNATURE WAS ATTRIBUTABLE.

29 (B) THE EFFECT OF AN ELECTRONIC RECORD OR ELECTRONIC SIGNATURE
30 ATTRIBUTED TO A PERSON UNDER SUBSECTION (A) OF THIS SECTION IS
31 DETERMINED FROM THE CONTEXT AND SURROUNDING CIRCUMSTANCES AT THE
32 TIME OF ITS CREATION, EXECUTION, OR ADOPTION, INCLUDING THE PARTIES'
33 AGREEMENT, IF ANY, AND OTHERWISE AS PROVIDED BY LAW.

34 21-109. EFFECT OF CHANGE OR ERROR.

35 IF A CHANGE OR ERROR IN AN ELECTRONIC RECORD OCCURS IN A
36 TRANSMISSION BETWEEN PARTIES TO A TRANSACTION, THE FOLLOWING RULES
37 APPLY:

1 (1) IF THE PARTIES HAVE AGREED TO USE A SECURITY PROCEDURE TO
2 DETECT CHANGES OR ERRORS AND ONE PARTY HAS CONFORMED TO THE
3 PROCEDURE, BUT THE OTHER PARTY HAS NOT, AND THE NONCONFORMING PARTY
4 WOULD HAVE DETECTED THE CHANGE OR ERROR HAD THAT PARTY ALSO
5 CONFORMED, THE CONFORMING PARTY MAY AVOID THE EFFECT OF THE CHANGED
6 OR ERRONEOUS ELECTRONIC RECORD;

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

13 (I) PROMPTLY NOTIFIES THE OTHER PERSON OF THE ERROR AND
14 THAT THE INDIVIDUAL DID NOT INTEND TO BE BOUND BY THE ELECTRONIC RECORD
15 RECEIVED BY THE OTHER PERSON;

16 (II) TAKES REASONABLE STEPS, INCLUDING STEPS THAT CONFORM
17 TO THE OTHER PERSON'S REASONABLE INSTRUCTIONS, TO RETURN TO THE OTHER
18 PERSON OR, IF INSTRUCTED BY THE OTHER PERSON, TO DESTROY THE
19 CONSIDERATION RECEIVED, IF ANY, AS A RESULT OF THE ERRONEOUS ELECTRONIC
20 RECORD; AND

21 (III) HAS NOT USED OR RECEIVED ANY BENEFIT OR VALUE FROM
22 THE CONSIDERATION, IF ANY, RECEIVED FROM THE OTHER PERSON;

23 (3) IF NEITHER ITEM (1) NOR ITEM (2) OF THIS SECTION APPLIES, THE
24 CHANGE OR ERROR HAS THE EFFECT PROVIDED BY OTHER LAW, INCLUDING THE
25 LAW OF MISTAKE, AND THE PARTIES' CONTRACT, IF ANY; AND

26 (4) ITEMS (2) AND (3) OF THIS SECTION MAY NOT BE VARIED BY
27 AGREEMENT.

28 21-110. NOTARIZATION AND ACKNOWLEDGMENT.

29 IF A LAW REQUIRES A SIGNATURE OR RECORD TO BE NOTARIZED,
30 ACKNOWLEDGED, VERIFIED, OR MADE UNDER OATH, THE REQUIREMENT IS
31 SATISFIED IF THE ELECTRONIC SIGNATURE OF THE PERSON AUTHORIZED TO
32 PERFORM THOSE ACTS, TOGETHER WITH ALL OTHER INFORMATION REQUIRED TO
33 BE INCLUDED BY OTHER APPLICABLE LAW, IS ATTACHED TO OR LOGICALLY
34 ASSOCIATED WITH THE SIGNATURE OR RECORD.

35 21-111. RETENTION OF ELECTRONIC RECORDS; ORIGINALS.

36 (A) IF A LAW REQUIRES THAT A RECORD BE RETAINED, THE REQUIREMENT IS
37 SATISFIED BY RETAINING AN ELECTRONIC RECORD OF THE INFORMATION IN THE
38 RECORD WHICH:

1 (1) ACCURATELY REFLECTS THE INFORMATION SET FORTH IN THE
2 RECORD ~~AFTER~~ AT THE TIME IT WAS FIRST GENERATED IN ITS FINAL FORM AS AN
3 ELECTRONIC RECORD OR OTHERWISE; AND

4 (2) REMAINS ACCESSIBLE FOR LATER REFERENCE.

5 (B) A REQUIREMENT TO RETAIN A RECORD IN ACCORDANCE WITH
6 SUBSECTION (A) OF THIS SECTION DOES NOT APPLY TO ANY INFORMATION THE SOLE
7 PURPOSE OF WHICH IS TO ENABLE THE RECORD TO BE SENT, COMMUNICATED, OR
8 RECEIVED.

9 (C) A PERSON MAY SATISFY SUBSECTION (A) OF THIS SECTION BY USING THE
10 SERVICES OF ANOTHER PERSON IF THE REQUIREMENTS OF THAT SUBSECTION ARE
11 SATISFIED.

12 (D) IF A LAW REQUIRES A RECORD TO BE PRESENTED OR RETAINED IN ITS
13 ORIGINAL FORM, OR PROVIDES CONSEQUENCES IF THE RECORD IS NOT PRESENTED
14 OR RETAINED IN ITS ORIGINAL FORM, THAT LAW IS SATISFIED BY AN ELECTRONIC
15 RECORD RETAINED IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION.

16 (E) IF A LAW REQUIRES RETENTION OF A CHECK, THAT REQUIREMENT IS
17 SATISFIED BY RETENTION OF AN ELECTRONIC RECORD OF THE INFORMATION ON
18 THE FRONT AND BACK OF THE CHECK IN ACCORDANCE WITH SUBSECTION (A) OF
19 THIS SECTION.

20 (F) A RECORD RETAINED AS AN ELECTRONIC RECORD IN ACCORDANCE WITH
21 SUBSECTION (A) OF THIS SECTION SATISFIES A LAW REQUIRING A PERSON TO
22 RETAIN A RECORD FOR EVIDENTIARY, AUDIT, OR SIMILAR PURPOSES, UNLESS A LAW
23 ENACTED AFTER THE EFFECTIVE DATE OF THIS TITLE SPECIFICALLY PROHIBITS
24 THE USE OF AN ELECTRONIC RECORD FOR THE SPECIFIED PURPOSE.

25 (G) THIS SECTION DOES NOT PRECLUDE A GOVERNMENTAL AGENCY OF THIS
26 STATE FROM SPECIFYING ADDITIONAL REQUIREMENTS FOR THE RETENTION OF A
27 RECORD SUBJECT TO THE AGENCY'S JURISDICTION.

28 21-112. ADMISSIBILITY IN EVIDENCE.

29 IN A PROCEEDING, EVIDENCE OF A RECORD OR SIGNATURE MAY NOT BE
30 EXCLUDED SOLELY BECAUSE IT IS IN ELECTRONIC FORM.

31 21-113. AUTOMATED TRANSACTION.

32 IN AN AUTOMATED TRANSACTION, THE FOLLOWING RULES APPLY:

33 (1) A CONTRACT MAY BE FORMED BY THE INTERACTION OF
34 ELECTRONIC AGENTS OF THE PARTIES, EVEN IF NO INDIVIDUAL WAS AWARE OF OR
35 REVIEWED THE ELECTRONIC AGENTS' ACTIONS OR THE RESULTING TERMS AND
36 AGREEMENTS;

1 (2) A CONTRACT MAY BE FORMED BY THE INTERACTION OF AN
2 ELECTRONIC AGENT AND AN INDIVIDUAL, ACTING ON THE INDIVIDUAL'S OWN
3 BEHALF OR FOR ANOTHER PERSON, INCLUDING BY AN INTERACTION IN WHICH THE
4 INDIVIDUAL PERFORMS ACTIONS THAT THE INDIVIDUAL IS FREE TO REFUSE TO
5 PERFORM AND WHICH THE INDIVIDUAL KNOWS OR HAS REASON TO KNOW WILL
6 CAUSE THE ELECTRONIC AGENT TO COMPLETE THE TRANSACTION OR
7 PERFORMANCE; AND

8 (3) THE TERMS OF THE CONTRACT ARE DETERMINED BY THE
9 SUBSTANTIVE LAW APPLICABLE TO IT.

10 21-114. TIME AND PLACE OF SENDING AND RECEIPT.

11 (A) UNLESS OTHERWISE AGREED BETWEEN THE SENDER AND THE
12 RECIPIENT, AN ELECTRONIC RECORD IS SENT WHEN IT:

13 (1) IS ADDRESSED PROPERLY OR OTHERWISE DIRECTED PROPERLY TO
14 AN INFORMATION PROCESSING SYSTEM THAT THE RECIPIENT HAS DESIGNATED OR
15 USES FOR THE PURPOSE OF RECEIVING ELECTRONIC RECORDS OR INFORMATION OF
16 THE TYPE SENT AND FROM WHICH THE RECIPIENT IS ABLE TO RETRIEVE THE
17 ELECTRONIC RECORD;

18 (2) IS IN A FORM CAPABLE OF BEING PROCESSED BY THAT SYSTEM; AND

19 (3) ENTERS AN INFORMATION PROCESSING SYSTEM OUTSIDE THE
20 CONTROL OF THE SENDER OR OF A PERSON THAT SENT THE ELECTRONIC RECORD
21 ON BEHALF OF THE SENDER OR ENTERS A REGION OF THE INFORMATION
22 PROCESSING SYSTEM DESIGNATED OR USED BY THE RECIPIENT WHICH IS UNDER
23 THE CONTROL OF THE RECIPIENT.

24 (B) UNLESS OTHERWISE AGREED BETWEEN THE SENDER AND THE
25 RECIPIENT, AN ELECTRONIC RECORD IS RECEIVED WHEN:

26 (1) IT ENTERS AN INFORMATION PROCESSING SYSTEM THAT THE
27 RECIPIENT HAS DESIGNATED OR USES FOR THE PURPOSE OF RECEIVING
28 ELECTRONIC RECORDS OR INFORMATION OF THE TYPE SENT AND FROM WHICH THE
29 RECIPIENT IS ABLE TO RETRIEVE THE ELECTRONIC RECORD; AND

30 (2) IT IS IN A FORM CAPABLE OF BEING PROCESSED BY THAT SYSTEM.

31 (C) SUBSECTION (B) OF THIS SECTION APPLIES EVEN IF THE PLACE WHERE
32 THE INFORMATION PROCESSING SYSTEM IS LOCATED IS DIFFERENT FROM THE
33 PLACE WHERE THE ELECTRONIC RECORD IS DEEMED TO BE RECEIVED UNDER
34 SUBSECTION (D) OF THIS SECTION.

35 (D) UNLESS OTHERWISE EXPRESSLY PROVIDED IN THE ELECTRONIC RECORD
36 OR AGREED BETWEEN THE SENDER AND THE RECIPIENT, AN ELECTRONIC RECORD
37 IS DEEMED TO BE SENT FROM THE SENDER'S PLACE OF BUSINESS AND TO BE
38 RECEIVED AT THE RECIPIENT'S PLACE OF BUSINESS. FOR PURPOSES OF THIS
39 SUBSECTION, THE FOLLOWING RULES APPLY:

1 (1) IF THE SENDER OR RECIPIENT HAS MORE THAN ONE PLACE OF
2 BUSINESS, THE PLACE OF BUSINESS OF THAT PERSON IS THE PLACE HAVING THE
3 CLOSEST RELATIONSHIP TO THE UNDERLYING TRANSACTION; AND

4 (2) IF THE SENDER OR THE RECIPIENT DOES NOT HAVE A PLACE OF
5 BUSINESS, THE PLACE OF BUSINESS IS THE SENDER'S OR RECIPIENT'S RESIDENCE,
6 AS THE CASE MAY BE.

7 (E) AN ELECTRONIC RECORD IS RECEIVED UNDER SUBSECTION (B) OF THIS
8 SECTION EVEN IF NO INDIVIDUAL IS AWARE OF ITS RECEIPT.

9 (F) RECEIPT OF AN ELECTRONIC ACKNOWLEDGMENT FROM AN
10 INFORMATION PROCESSING SYSTEM DESCRIBED IN SUBSECTION (B) OF THIS
11 SECTION ESTABLISHES THAT A RECORD WAS RECEIVED BUT, BY ITSELF, DOES NOT
12 ESTABLISH THAT THE CONTENT SENT CORRESPONDS TO THE CONTENT RECEIVED.

13 (G) (1) IF A PERSON IS AWARE THAT AN ELECTRONIC RECORD
14 PURPORTEDLY SENT UNDER SUBSECTION (A) OF THIS SECTION, OR PURPORTEDLY
15 RECEIVED UNDER SUBSECTION (B) OF THIS SECTION, WAS NOT ACTUALLY SENT OR
16 RECEIVED, THE LEGAL EFFECT OF THE SENDING OR RECEIPT IS DETERMINED BY
17 OTHER APPLICABLE LAW.

18 (2) EXCEPT TO THE EXTENT ALLOWED BY THE OTHER LAW, THE
19 REQUIREMENTS OF THIS SUBSECTION MAY NOT BE VARIED BY AGREEMENT.

20 21-115. TRANSFERABLE RECORDS.

21 (A) IN THIS SECTION, "TRANSFERABLE RECORD" MEANS AN ELECTRONIC
22 RECORD THAT:

23 (1) WOULD BE A NOTE UNDER TITLE 3 OF THIS ARTICLE OR A
24 DOCUMENT UNDER TITLE 7 OF THIS ARTICLE IF THE ELECTRONIC RECORD WERE IN
25 WRITING; AND

26 (2) THE ISSUER OF THE ELECTRONIC RECORD EXPRESSLY HAS AGREED
27 IS A TRANSFERABLE RECORD.

28 (B) A PERSON HAS CONTROL OF A TRANSFERABLE RECORD IF A SYSTEM
29 EMPLOYED FOR EVIDENCING THE TRANSFER OF INTERESTS IN THE TRANSFERABLE
30 RECORD RELIABLY ESTABLISHES THAT PERSON AS THE PERSON TO WHICH THE
31 TRANSFERABLE RECORD WAS ISSUED OR TRANSFERRED.

32 (C) A SYSTEM EMPLOYED FOR EVIDENCING THE TRANSFER OF INTERESTS IN
33 THE TRANSFERABLE RECORD SATISFIES SUBSECTION (B) OF THIS SECTION, AND A
34 PERSON IS DEEMED TO HAVE CONTROL OF A TRANSFERABLE RECORD, IF THE
35 TRANSFERABLE RECORD IS CREATED, STORED, AND ASSIGNED IN SUCH A MANNER
36 THAT:

1 (1) A SINGLE AUTHORITATIVE COPY OF THE TRANSFERABLE RECORD
2 EXISTS THAT IS UNIQUE, IDENTIFIABLE, AND, EXCEPT AS OTHERWISE PROVIDED IN
3 ITEMS (4), (5), AND (6) OF THIS SUBSECTION, UNALTERABLE;

4 (2) THE AUTHORITATIVE COPY IDENTIFIES THE PERSON ASSERTING
5 CONTROL AS:

6 (I) THE PERSON TO WHICH THE TRANSFERABLE RECORD WAS
7 ISSUED; OR

8 (II) IF THE AUTHORITATIVE COPY INDICATES THAT THE
9 TRANSFERABLE RECORD HAS BEEN TRANSFERRED, THE PERSON TO WHICH THE
10 TRANSFERABLE RECORD WAS MOST RECENTLY TRANSFERRED;

11 (3) THE AUTHORITATIVE COPY IS COMMUNICATED TO AND MAINTAINED
12 BY THE PERSON ASSERTING CONTROL OR ITS DESIGNATED CUSTODIAN;

13 (4) COPIES OR REVISIONS THAT ADD OR CHANGE AN IDENTIFIED
14 ASSIGNEE OF THE AUTHORITATIVE COPY CAN BE MADE ONLY WITH THE CONSENT
15 OF THE PERSON ASSERTING CONTROL;

16 (5) EACH COPY OF THE AUTHORITATIVE COPY AND ANY COPY OF A COPY
17 IS READILY IDENTIFIABLE AS A COPY THAT IS NOT THE AUTHORITATIVE COPY; AND

18 (6) ANY REVISION OF THE AUTHORITATIVE COPY IS READILY
19 IDENTIFIABLE AS AUTHORIZED OR UNAUTHORIZED.

20 (D) (1) EXCEPT AS OTHERWISE AGREED, A PERSON HAVING CONTROL OF A
21 TRANSFERABLE RECORD IS THE HOLDER, AS DEFINED IN § 1-201(20) OF THIS
22 ARTICLE, OF THE TRANSFERABLE RECORD AND HAS THE SAME RIGHTS AND
23 DEFENSES AS A HOLDER OF AN EQUIVALENT RECORD OR WRITING UNDER THE
24 MARYLAND UNIFORM COMMERCIAL CODE, INCLUDING, IF THE APPLICABLE
25 STATUTORY REQUIREMENTS UNDER § 3-302(A), § 7-501, OR § 9-308 OF THIS ARTICLE
26 ARE SATISFIED, THE RIGHTS AND DEFENSES OF A HOLDER IN DUE COURSE, A
27 HOLDER TO WHICH A NEGOTIABLE DOCUMENT OF TITLE HAS BEEN DULY
28 NEGOTIATED, OR A PURCHASER, RESPECTIVELY.

29 (2) DELIVERY, POSSESSION, AND ENDORSEMENT ARE NOT REQUIRED TO
30 OBTAIN OR EXERCISE ANY OF THE RIGHTS UNDER THIS SUBSECTION.

31 (E) EXCEPT AS OTHERWISE AGREED, AN OBLIGOR UNDER A TRANSFERABLE
32 RECORD HAS THE SAME RIGHTS AND DEFENSES AS AN EQUIVALENT OBLIGOR
33 UNDER EQUIVALENT RECORDS OR WRITINGS UNDER THE MARYLAND UNIFORM
34 COMMERCIAL CODE.

35 (F) (1) IF REQUESTED BY A PERSON AGAINST WHICH ENFORCEMENT IS
36 SOUGHT, THE PERSON SEEKING TO ENFORCE THE TRANSFERABLE RECORD SHALL
37 PROVIDE REASONABLE PROOF THAT THE PERSON IS IN CONTROL OF THE
38 TRANSFERABLE RECORD.

1 (2) PROOF MAY INCLUDE ACCESS TO THE AUTHORITATIVE COPY OF THE
2 TRANSFERABLE RECORD AND RELATED BUSINESS RECORDS SUFFICIENT TO REVIEW
3 THE TERMS OF THE TRANSFERABLE RECORD AND TO ESTABLISH THE IDENTITY OF
4 THE PERSON HAVING CONTROL OF THE TRANSFERABLE RECORD.

5 21-116. CREATION AND RETENTION OF ELECTRONIC RECORDS AND CONVERSION OF
6 WRITTEN RECORDS BY GOVERNMENTAL AGENCIES.

7 EACH GOVERNMENTAL AGENCY OF THIS STATE SHALL DETERMINE WHETHER,
8 AND THE EXTENT TO WHICH, IT WILL CREATE AND RETAIN ELECTRONIC RECORDS
9 AND CONVERT WRITTEN RECORDS TO ELECTRONIC RECORDS.

10 21-117. ACCEPTANCE AND DISTRIBUTION OF ELECTRONIC RECORDS BY
11 GOVERNMENTAL AGENCIES.

12 (A) EXCEPT AS OTHERWISE PROVIDED IN § 21-111(F) OF THIS TITLE, EACH
13 GOVERNMENTAL AGENCY SHALL DETERMINE WHETHER, AND THE EXTENT TO
14 WHICH, IT WILL SEND AND ACCEPT ELECTRONIC RECORDS AND ELECTRONIC
15 SIGNATURES TO AND FROM OTHER PERSONS AND OTHERWISE CREATE, GENERATE,
16 COMMUNICATE, STORE, PROCESS, USE, AND RELY UPON ELECTRONIC RECORDS AND
17 ELECTRONIC SIGNATURES.

18 (B) TO THE EXTENT A GOVERNMENTAL AGENCY USES ELECTRONIC RECORDS
19 AND ELECTRONIC SIGNATURES UNDER SUBSECTION (A) OF THIS SECTION, THE
20 GOVERNMENTAL AGENCY, GIVING DUE CONSIDERATION TO SECURITY, MAY SPECIFY:

21 (1) THE MANNER AND FORMAT IN WHICH THE ELECTRONIC RECORDS
22 MUST BE CREATED, GENERATED, SENT, COMMUNICATED, RECEIVED, AND STORED
23 AND THE SYSTEMS ESTABLISHED FOR THOSE PURPOSES;

24 (2) THE ELECTRONIC RECORDS MUST BE SIGNED BY ELECTRONIC
25 MEANS, THE TYPE OF ELECTRONIC SIGNATURE REQUIRED, THE MANNER AND
26 FORMAT IN WHICH THE ELECTRONIC SIGNATURE MUST BE AFFIXED TO THE
27 ELECTRONIC RECORD, AND THE IDENTITY OF, OR CRITERIA THAT MUST BE MET BY,
28 ANY THIRD PARTY USED BY A PERSON FILING A DOCUMENT TO FACILITATE THE
29 PROCESS;

30 (3) CONTROL PROCESSES AND PROCEDURES AS APPROPRIATE TO
31 ENSURE ADEQUATE PRESERVATION, DISPOSITION, INTEGRITY, SECURITY,
32 CONFIDENTIALITY, AND AUDITABILITY OF ELECTRONIC RECORDS; AND

33 (4) ANY OTHER REQUIRED ATTRIBUTES FOR ELECTRONIC RECORDS
34 WHICH ARE SPECIFIED FOR CORRESPONDING NONELECTRONIC RECORDS OR
35 REASONABLY NECESSARY UNDER THE CIRCUMSTANCES.

36 (C) EXCEPT AS OTHERWISE PROVIDED IN ~~§ 21-112(F)~~ § 21-111(F) OF THIS TITLE,
37 THIS TITLE DOES NOT REQUIRE A GOVERNMENTAL AGENCY OF THIS STATE TO USE
38 OR PERMIT THE USE OF ELECTRONIC RECORDS OR ELECTRONIC SIGNATURES.

1 21-118. INTEROPERABILITY.

2 (A) A GOVERNMENTAL AGENCY OF THIS STATE THAT ADOPTS STANDARDS IN
3 ACCORDANCE WITH § 21-117 OF THIS TITLE MAY ENCOURAGE AND PROMOTE
4 CONSISTENCY AND INTEROPERABILITY WITH SIMILAR REQUIREMENTS ADOPTED BY
5 OTHER GOVERNMENTAL AGENCIES OF THIS STATE, OTHER STATES, THE FEDERAL
6 GOVERNMENT, AND NONGOVERNMENTAL PERSONS INTERACTING WITH
7 GOVERNMENTAL AGENCIES OF THIS STATE.

8 (B) IF APPROPRIATE, THOSE STANDARDS MAY SPECIFY DIFFERING LEVELS OF
9 STANDARDS FROM WHICH GOVERNMENTAL AGENCIES OF THIS STATE MAY CHOOSE
10 IN IMPLEMENTING THE MOST APPROPRIATE STANDARD FOR A PARTICULAR
11 APPLICATION.

12 (C) STANDARDS ADOPTED BY UNITS OF STATE GOVERNMENT SHALL BE
13 CONSISTENT WITH THOSE SPECIFIED IN THE STATE INFORMATION TECHNOLOGY
14 MASTER PLAN.

15 21-119. SEVERABILITY CLAUSE.

16 IF ANY PROVISION OF THIS TITLE OR ITS APPLICATION TO ANY PERSON OR
17 CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER
18 PROVISIONS OR APPLICATIONS OF THIS TITLE WHICH CAN BE GIVEN EFFECT
19 WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE
20 PROVISIONS OF THIS TITLE ARE SEVERABLE.

21 21-120. SHORT TITLE.

22 THIS TITLE MAY BE CITED AS THE MARYLAND UNIFORM ELECTRONIC
23 TRANSACTIONS ACT.

24 SECTION 2. AND BE IT FURTHER ENACTED, That the catchlines
25 contained in this Act are not law and may not be considered to have been enacted as
26 part of this Act.

27 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be
28 construed only prospectively and may not be applied or interpreted to have any effect
29 on or application to any electronic record or electronic signature created, sent,
30 communicated, received, or stored before the effective date of this Act.

31 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 ~~October~~ June 1, 2000.

