

HOUSE BILL 18

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2000 Regular Session
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(PRE-FILED)

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

Requested: November 15, 1999
Introduced and read first time: January 12, 2000
Assigned to: Economic Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: February 29, 2000

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 from the application
5 of this Act; limiting the application of this Act to certain transactions where the
6 parties have agreed to conduct transactions electronically; providing that an
7 agreement to conduct a transaction electronically may not be contained in a
8 standard form contract under certain circumstances; providing that an
9 agreement to conduct a transaction electronically may not be inferred solely
10 from certain facts; providing that a record or signature may not be denied legal
11 effect or enforceability solely because it is in electronic form; providing that a
12 contract may not be denied legal effect or enforceability solely because an
13 electronic record was used in its formation; providing that the requirements of
14 certain laws that specify a record or signature be in written form are met by an
15 electronic record or electronic signature under certain circumstances;
16 authorizing certain provisions of this Act to be varied by agreement; prohibiting
17 certain provisions of this Act to be from being varied by agreement; providing
18 that the requirements of certain laws that specify that a person provide, send, or
19 deliver information in writing are met by the providing, sending, or delivering of
20 an electronic record under certain circumstances; specifying that certain
21 electronic records or electronic signatures may be attributed to a person under

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

24 BY adding to

25 Article - Commercial Law

26 Section 21-101 through 21-120, inclusive, to be under the new title "Title 21.

27 The Maryland Uniform Electronic Transactions Act"

28 Annotated Code of Maryland

29 (1990 Replacement Volume and 1999 Supplement)

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

32 **Article - Commercial Law**

33 **TITLE 21. THE MARYLAND UNIFORM ELECTRONIC TRANSACTIONS ACT.**

34 21-101. DEFINITIONS.

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

36 (B) "AGREEMENT" MEANS THE BARGAIN OF THE PARTIES IN FACT, AS FOUND
37 IN THEIR LANGUAGE OR INFERRED FROM OTHER CIRCUMSTANCES AND FROM
38 RULES, REGULATIONS, AND PROCEDURES GIVEN THE EFFECT OF AGREEMENTS
39 UNDER LAWS OTHERWISE APPLICABLE TO A PARTICULAR TRANSACTION.

1 (C) "AUTOMATED TRANSACTION" MEANS A TRANSACTION CONDUCTED OR
2 PERFORMED, IN WHOLE OR IN PART, BY ELECTRONIC MEANS OR ELECTRONIC
3 RECORDS, IN WHICH THE ACTS OR RECORDS OF ONE OR BOTH PARTIES ARE NOT
4 REVIEWED BY AN INDIVIDUAL IN THE ORDINARY COURSE OF FORMING A CONTRACT,
5 PERFORMING UNDER AN EXISTING CONTRACT, OR FULFILLING AN OBLIGATION
6 REQUIRED BY THE TRANSACTION.

7 (D) "COMPUTER PROGRAM" MEANS A SET OF STATEMENTS OR INSTRUCTIONS
8 TO BE USED DIRECTLY OR INDIRECTLY IN AN INFORMATION PROCESSING SYSTEM IN
9 ORDER TO BRING ABOUT A CERTAIN RESULT.

10 (E) "CONTRACT" MEANS THE TOTAL LEGAL OBLIGATION RESULTING FROM
11 THE PARTIES' AGREEMENT AS AFFECTED BY THIS TITLE AND OTHER APPLICABLE
12 LAW.

13 (F) "ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING ELECTRICAL,
14 DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR
15 CAPABILITIES.

16 (G) "ELECTRONIC AGENT" MEANS A COMPUTER PROGRAM OR AN ELECTRONIC
17 OR OTHER AUTOMATED MEANS USED INDEPENDENTLY TO INITIATE AN ACTION OR
18 RESPOND TO ELECTRONIC RECORDS OR PERFORMANCES IN WHOLE OR IN PART,
19 WITHOUT REVIEW OR ACTION BY AN INDIVIDUAL.

20 (H) "ELECTRONIC RECORD" MEANS A RECORD CREATED, GENERATED, SENT,
21 COMMUNICATED, RECEIVED, OR STORED BY ELECTRONIC MEANS.

22 (I) "ELECTRONIC SIGNATURE" MEANS AN ELECTRONIC SOUND, SYMBOL, OR
23 PROCESS ATTACHED TO OR LOGICALLY ASSOCIATED WITH A RECORD AND
24 EXECUTED OR ADOPTED BY A PERSON WITH THE INTENT TO SIGN THE RECORD.

25 (J) "GOVERNMENTAL AGENCY" MEANS AN EXECUTIVE, LEGISLATIVE, OR
26 JUDICIAL AGENCY, DEPARTMENT, BOARD, COMMISSION, AUTHORITY, INSTITUTION,
27 UNIT, OR INSTRUMENTALITY OF THE FEDERAL GOVERNMENT OR OF A STATE OR OF
28 A COUNTY, MUNICIPALITY, OR OTHER POLITICAL SUBDIVISION OF A STATE.

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

31 (L) "INFORMATION PROCESSING SYSTEM" MEANS AN ELECTRONIC SYSTEM
32 FOR CREATING, GENERATING, SENDING, RECEIVING, STORING, DISPLAYING, OR
33 PROCESSING INFORMATION.

34 (M) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, BUSINESS TRUST,
35 ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, JOINT
36 VENTURE, GOVERNMENTAL AGENCY, PUBLIC CORPORATION, OR ANY OTHER LEGAL
37 OR COMMERCIAL ENTITY.

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

4 (O) "SECURITY PROCEDURE" MEANS A PROCEDURE EMPLOYED FOR THE
5 PURPOSE OF VERIFYING THAT AN ELECTRONIC SIGNATURE, RECORD, OR
6 PERFORMANCE IS THAT OF A SPECIFIC PERSON OR FOR DETECTING CHANGES OR
7 ERRORS IN THE INFORMATION IN AN ELECTRONIC RECORD. THE TERM INCLUDES A
8 PROCEDURE THAT REQUIRES THE USE OF ALGORITHMS OR OTHER CODES,
9 IDENTIFYING WORDS OR NUMBERS, ENCRYPTION, OR CALLBACK OR OTHER
10 ACKNOWLEDGMENT PROCEDURES.

11 (P) "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT OF
12 COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS, OR ANY TERRITORY
13 OR INSULAR POSSESSION SUBJECT TO THE JURISDICTION OF THE UNITED STATES.
14 THE TERM INCLUDES AN INDIAN TRIBE OR BAND, OR ALASKAN NATIVE VILLAGE,
15 WHICH IS RECOGNIZED BY FEDERAL LAW OR FORMALLY ACKNOWLEDGED BY A
16 STATE.

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

20 21-102. SCOPE.

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

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

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

28 (2) THE MARYLAND UNIFORM COMMERCIAL CODE, OTHER THAN §§
29 1-107 AND 1-206 AND TITLES 2 AND 2A;

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

32 (4) A LAW OR REGULATION GOVERNING NOTICE CONCERNING:

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

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

1 (III) THE CANCELLATION OR TERMINATION OF HEALTH
2 INSURANCE, HEALTH INSURANCE BENEFITS, OR LIFE INSURANCE BENEFITS,
3 EXCLUDING ANNUITIES.

4 (C) THIS TITLE DOES NOT APPLY TO:

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

7 (2) A RECORD THAT SERVES AS A UNIQUE AND TRANSFERABLE
8 INSTRUMENT OF RIGHTS AND OBLIGATIONS, INCLUDING AN INSTRUMENT OF TITLE
9 WHERE POSSESSION OF THE INSTRUMENT IS DEEMED TO CONFER TITLE, UNLESS AN
10 ELECTRONIC VERSION OF THAT RECORD IS CREATED, STORED, AND TRANSFERRED
11 IN A MANNER THAT:

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

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

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

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

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

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

29 21-103. PROSPECTIVE APPLICATION.

30 THIS TITLE APPLIES TO ANY ELECTRONIC RECORD OR ELECTRONIC SIGNATURE
31 CREATED, GENERATED, SENT, COMMUNICATED, RECEIVED, OR STORED ON OR
32 AFTER THE EFFECTIVE DATE OF THIS TITLE.

33 21-104. USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES; VARIATION
34 BY AGREEMENT.

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

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

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

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

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

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

15 (C) (1) A PARTY THAT AGREES TO CONDUCT A TRANSACTION BY
16 ELECTRONIC MEANS MAY REFUSE TO CONDUCT OTHER TRANSACTIONS BY
17 ELECTRONIC MEANS.

18 (2) THE RIGHT GRANTED BY THIS SUBSECTION MAY NOT BE WAIVED BY
19 AGREEMENT.

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

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

25 (E) WHETHER AN ELECTRONIC RECORD OR ELECTRONIC SIGNATURE HAS
26 LEGAL CONSEQUENCES IS DETERMINED BY THIS TITLE AND OTHER APPLICABLE
27 LAW.

28 21-105. CONSTRUCTION AND APPLICATION.

29 THIS TITLE MUST BE CONSTRUED AND APPLIED:

30 (1) TO FACILITATE ELECTRONIC TRANSACTIONS CONSISTENT WITH
31 OTHER APPLICABLE LAW;

32 (2) TO BE CONSISTENT WITH REASONABLE PRACTICES CONCERNING
33 ELECTRONIC TRANSACTIONS AND WITH THE CONTINUED EXPANSION OF THOSE
34 PRACTICES; AND

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

1 21-106. LEGAL RECOGNITION OF ELECTRONIC RECORDS, ELECTRONIC SIGNATURES,
2 AND ELECTRONIC CONTRACTS.

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

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

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

9 (D) IF A LAW REQUIRES A SIGNATURE, AN ELECTRONIC SIGNATURE
10 SATISFIES THE LAW.

11 21-107. PROVISION OF INFORMATION IN WRITING; PRESENTATION OF RECORDS.

12 (A) (1) IF PARTIES HAVE AGREED TO CONDUCT A TRANSACTION BY
13 ELECTRONIC MEANS AND A LAW REQUIRES A PERSON TO PROVIDE, SEND, OR
14 DELIVER INFORMATION IN WRITING TO ANOTHER PERSON, THE REQUIREMENT IS
15 SATISFIED IF THE INFORMATION IS PROVIDED, SENT, OR DELIVERED IN AN
16 ELECTRONIC RECORD CAPABLE OF RETENTION BY THE RECIPIENT AT THE TIME OF
17 RECEIPT.

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

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

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

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

30 (3) THE RECORD MUST CONTAIN THE INFORMATION FORMATTED IN
31 THE MANNER SPECIFIED IN THE OTHER LAW.

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

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

1 (1) TO THE EXTENT A LAW OTHER THAN THIS TITLE REQUIRES
2 INFORMATION TO BE PROVIDED, SENT, OR DELIVERED IN WRITING BUT PERMITS
3 THAT REQUIREMENT TO BE VARIED BY AGREEMENT, THE REQUIREMENT UNDER
4 SUBSECTION (A) OF THIS SECTION THAT THE INFORMATION BE IN THE FORM OF AN
5 ELECTRONIC RECORD CAPABLE OF RETENTION MAY ALSO BE VARIED BY
6 AGREEMENT; AND

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

11 21-108. ATTRIBUTION AND EFFECT OF ELECTRONIC RECORD AND ELECTRONIC
12 SIGNATURE.

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

15 (2) THE ACT OF THE PERSON MAY BE SHOWN IN ANY MANNER,
16 INCLUDING A SHOWING OF THE EFFICACY OF ANY SECURITY PROCEDURE APPLIED
17 TO DETERMINE THE PERSON TO WHICH THE ELECTRONIC RECORD OR ELECTRONIC
18 SIGNATURE WAS ATTRIBUTABLE.

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

24 21-109. EFFECT OF CHANGE OR ERROR.

25 IF A CHANGE OR ERROR IN AN ELECTRONIC RECORD OCCURS IN A
26 TRANSMISSION BETWEEN PARTIES TO A TRANSACTION, THE FOLLOWING RULES
27 APPLY:

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

34 (2) IN AN AUTOMATED TRANSACTION INVOLVING AN INDIVIDUAL, THE
35 INDIVIDUAL MAY AVOID THE EFFECT OF AN ELECTRONIC RECORD THAT RESULTED
36 FROM AN ERROR MADE BY THE INDIVIDUAL IN DEALING WITH THE ELECTRONIC
37 AGENT OF ANOTHER PERSON IF THE ELECTRONIC AGENT DID NOT PROVIDE AN
38 OPPORTUNITY FOR THE PREVENTION OR CORRECTION OF THE ERROR AND, AT THE
39 TIME THE INDIVIDUAL LEARNS OF THE ERROR, THE INDIVIDUAL:

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

4 (II) TAKES REASONABLE STEPS, INCLUDING STEPS THAT CONFORM
5 TO THE OTHER PERSON'S REASONABLE INSTRUCTIONS, TO RETURN TO THE OTHER
6 PERSON OR, IF INSTRUCTED BY THE OTHER PERSON, TO DESTROY THE
7 CONSIDERATION RECEIVED, IF ANY, AS A RESULT OF THE ERRONEOUS ELECTRONIC
8 RECORD; AND

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

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

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

16 21-110. NOTARIZATION AND ACKNOWLEDGMENT.

17 IF A LAW REQUIRES A SIGNATURE OR RECORD TO BE NOTARIZED,
18 ACKNOWLEDGED, VERIFIED, OR MADE UNDER OATH, THE REQUIREMENT IS
19 SATISFIED IF THE ELECTRONIC SIGNATURE OF THE PERSON AUTHORIZED TO
20 PERFORM THOSE ACTS, TOGETHER WITH ALL OTHER INFORMATION REQUIRED TO
21 BE INCLUDED BY OTHER APPLICABLE LAW, IS ATTACHED TO OR LOGICALLY
22 ASSOCIATED WITH THE SIGNATURE OR RECORD.

23 21-111. RETENTION OF ELECTRONIC RECORDS; ORIGINALS.

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

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

30 (2) REMAINS ACCESSIBLE FOR LATER REFERENCE.

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

35 (C) A PERSON MAY SATISFY SUBSECTION (A) OF THIS SECTION BY USING THE
36 SERVICES OF ANOTHER PERSON IF THE REQUIREMENTS OF THAT SUBSECTION ARE
37 SATISFIED.

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

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

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

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

17 21-112. ADMISSIBILITY IN EVIDENCE.

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

20 21-113. AUTOMATED TRANSACTION.

21 IN AN AUTOMATED TRANSACTION, THE FOLLOWING RULES APPLY:

22 (1) A CONTRACT MAY BE FORMED BY THE INTERACTION OF
23 ELECTRONIC AGENTS OF THE PARTIES, EVEN IF NO INDIVIDUAL WAS AWARE OF OR
24 REVIEWED THE ELECTRONIC AGENTS' ACTIONS OR THE RESULTING TERMS AND
25 AGREEMENTS;

26 (2) A CONTRACT MAY BE FORMED BY THE INTERACTION OF AN
27 ELECTRONIC AGENT AND AN INDIVIDUAL, ACTING ON THE INDIVIDUAL'S OWN
28 BEHALF OR FOR ANOTHER PERSON, INCLUDING BY AN INTERACTION IN WHICH THE
29 INDIVIDUAL PERFORMS ACTIONS THAT THE INDIVIDUAL IS FREE TO REFUSE TO
30 PERFORM AND WHICH THE INDIVIDUAL KNOWS OR HAS REASON TO KNOW WILL
31 CAUSE THE ELECTRONIC AGENT TO COMPLETE THE TRANSACTION OR
32 PERFORMANCE; AND

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

35 21-114. TIME AND PLACE OF SENDING AND RECEIPT.

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

1 (1) IS ADDRESSED PROPERLY OR OTHERWISE DIRECTED PROPERLY TO
2 AN INFORMATION PROCESSING SYSTEM THAT THE RECIPIENT HAS DESIGNATED OR
3 USES FOR THE PURPOSE OF RECEIVING ELECTRONIC RECORDS OR INFORMATION OF
4 THE TYPE SENT AND FROM WHICH THE RECIPIENT IS ABLE TO RETRIEVE THE
5 ELECTRONIC RECORD;

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

7 (3) ENTERS AN INFORMATION PROCESSING SYSTEM OUTSIDE THE
8 CONTROL OF THE SENDER OR OF A PERSON THAT SENT THE ELECTRONIC RECORD
9 ON BEHALF OF THE SENDER OR ENTERS A REGION OF THE INFORMATION
10 PROCESSING SYSTEM DESIGNATED OR USED BY THE RECIPIENT WHICH IS UNDER
11 THE CONTROL OF THE RECIPIENT.

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

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

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

19 (C) SUBSECTION (B) OF THIS SECTION APPLIES EVEN IF THE PLACE WHERE
20 THE INFORMATION PROCESSING SYSTEM IS LOCATED IS DIFFERENT FROM THE
21 PLACE WHERE THE ELECTRONIC RECORD IS DEEMED TO BE RECEIVED UNDER
22 SUBSECTION (D) OF THIS SECTION.

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

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

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

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

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

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

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

8 21-115. TRANSFERABLE RECORDS.

9 (A) IN THIS SECTION, "TRANSFERABLE RECORD" MEANS AN ELECTRONIC
10 RECORD THAT:

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

14 (2) THE ISSUER OF THE ELECTRONIC RECORD EXPRESSLY HAS AGREED
15 IS A TRANSFERABLE RECORD.

16 (B) A PERSON HAS CONTROL OF A TRANSFERABLE RECORD IF A SYSTEM
17 EMPLOYED FOR EVIDENCING THE TRANSFER OF INTERESTS IN THE TRANSFERABLE
18 RECORD RELIABLY ESTABLISHES THAT PERSON AS THE PERSON TO WHICH THE
19 TRANSFERABLE RECORD WAS ISSUED OR TRANSFERRED.

20 (C) A SYSTEM EMPLOYED FOR EVIDENCING THE TRANSFER OF INTERESTS IN
21 THE TRANSFERABLE RECORD SATISFIES SUBSECTION (B) OF THIS SECTION, AND A
22 PERSON IS DEEMED TO HAVE CONTROL OF A TRANSFERABLE RECORD, IF THE
23 TRANSFERABLE RECORD IS CREATED, STORED, AND ASSIGNED IN SUCH A MANNER
24 THAT:

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

28 (2) THE AUTHORITATIVE COPY IDENTIFIES THE PERSON ASSERTING
29 CONTROL AS:

30 (I) THE PERSON TO WHICH THE TRANSFERABLE RECORD WAS
31 ISSUED; OR

32 (II) IF THE AUTHORITATIVE COPY INDICATES THAT THE
33 TRANSFERABLE RECORD HAS BEEN TRANSFERRED, THE PERSON TO WHICH THE
34 TRANSFERABLE RECORD WAS MOST RECENTLY TRANSFERRED;

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

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

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

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

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

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

19 (E) EXCEPT AS OTHERWISE AGREED, AN OBLIGOR UNDER A TRANSFERABLE
20 RECORD HAS THE SAME RIGHTS AND DEFENSES AS AN EQUIVALENT OBLIGOR
21 UNDER EQUIVALENT RECORDS OR WRITINGS UNDER THE MARYLAND UNIFORM
22 COMMERCIAL CODE.

23 (F) (1) IF REQUESTED BY A PERSON AGAINST WHICH ENFORCEMENT IS
24 SOUGHT, THE PERSON SEEKING TO ENFORCE THE TRANSFERABLE RECORD SHALL
25 PROVIDE REASONABLE PROOF THAT THE PERSON IS IN CONTROL OF THE
26 TRANSFERABLE RECORD.

27 (2) PROOF MAY INCLUDE ACCESS TO THE AUTHORITATIVE COPY OF THE
28 TRANSFERABLE RECORD AND RELATED BUSINESS RECORDS SUFFICIENT TO REVIEW
29 THE TERMS OF THE TRANSFERABLE RECORD AND TO ESTABLISH THE IDENTITY OF
30 THE PERSON HAVING CONTROL OF THE TRANSFERABLE RECORD.

31 21-116. CREATION AND RETENTION OF ELECTRONIC RECORDS AND CONVERSION OF
32 WRITTEN RECORDS BY GOVERNMENTAL AGENCIES.

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

36 21-117. ACCEPTANCE AND DISTRIBUTION OF ELECTRONIC RECORDS BY
37 GOVERNMENTAL AGENCIES.

38 (A) EXCEPT AS OTHERWISE PROVIDED IN § 21-111(F) OF THIS TITLE, EACH
39 GOVERNMENTAL AGENCY SHALL DETERMINE WHETHER, AND THE EXTENT TO

1 WHICH, IT WILL SEND AND ACCEPT ELECTRONIC RECORDS AND ELECTRONIC
2 SIGNATURES TO AND FROM OTHER PERSONS AND OTHERWISE CREATE, GENERATE,
3 COMMUNICATE, STORE, PROCESS, USE, AND RELY UPON ELECTRONIC RECORDS AND
4 ELECTRONIC SIGNATURES.

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

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

11 (2) THE ELECTRONIC RECORDS MUST BE SIGNED BY ELECTRONIC
12 MEANS, THE TYPE OF ELECTRONIC SIGNATURE REQUIRED, THE MANNER AND
13 FORMAT IN WHICH THE ELECTRONIC SIGNATURE MUST BE AFFIXED TO THE
14 ELECTRONIC RECORD, AND THE IDENTITY OF, OR CRITERIA THAT MUST BE MET BY,
15 ANY THIRD PARTY USED BY A PERSON FILING A DOCUMENT TO FACILITATE THE
16 PROCESS;

17 (3) CONTROL PROCESSES AND PROCEDURES AS APPROPRIATE TO
18 ENSURE ADEQUATE PRESERVATION, DISPOSITION, INTEGRITY, SECURITY,
19 CONFIDENTIALITY, AND AUDITABILITY OF ELECTRONIC RECORDS; AND

20 (4) ANY OTHER REQUIRED ATTRIBUTES FOR ELECTRONIC RECORDS
21 WHICH ARE SPECIFIED FOR CORRESPONDING NONELECTRONIC RECORDS OR
22 REASONABLY NECESSARY UNDER THE CIRCUMSTANCES.

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

26 21-118. INTEROPERABILITY.

27 (A) A GOVERNMENTAL AGENCY OF THIS STATE THAT ADOPTS STANDARDS IN
28 ACCORDANCE WITH § 21-117 OF THIS TITLE MAY ENCOURAGE AND PROMOTE
29 CONSISTENCY AND INTEROPERABILITY WITH SIMILAR REQUIREMENTS ADOPTED BY
30 OTHER GOVERNMENTAL AGENCIES OF THIS STATE, OTHER STATES, THE FEDERAL
31 GOVERNMENT, AND NONGOVERNMENTAL PERSONS INTERACTING WITH
32 GOVERNMENTAL AGENCIES OF THIS STATE.

33 (B) IF APPROPRIATE, THOSE STANDARDS MAY SPECIFY DIFFERING LEVELS OF
34 STANDARDS FROM WHICH GOVERNMENTAL AGENCIES OF THIS STATE MAY CHOOSE
35 IN IMPLEMENTING THE MOST APPROPRIATE STANDARD FOR A PARTICULAR
36 APPLICATION.

37 (C) STANDARDS ADOPTED BY UNITS OF STATE GOVERNMENT SHALL BE
38 CONSISTENT WITH THOSE SPECIFIED IN THE STATE INFORMATION TECHNOLOGY
39 MASTER PLAN.

1 21-119. SEVERABILITY CLAUSE.

2 IF ANY PROVISION OF THIS TITLE OR ITS APPLICATION TO ANY PERSON OR
3 CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER
4 PROVISIONS OR APPLICATIONS OF THIS TITLE WHICH CAN BE GIVEN EFFECT
5 WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE
6 PROVISIONS OF THIS TITLE ARE SEVERABLE.

7 21-120. SHORT TITLE.

8 THIS TITLE MAY BE CITED AS THE MARYLAND UNIFORM ELECTRONIC
9 TRANSACTIONS ACT.

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

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

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