

SENATE BILL 3

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2000 Regular Session
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(PRE-FILED)

By: **Senator Miller**

Requested: November 15, 1999

Introduced and read first time: January 12, 2000

Assigned to: Finance

A BILL ENTITLED

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 a
7 record or signature may not be denied legal effect or enforceability solely
8 because it is in electronic form; providing that a contract may not be denied legal
9 effect or enforceability solely because an electronic record was used in its
10 formation; providing that the requirements of certain laws that specify a record
11 or signature be in written form are met by an electronic record or electronic
12 signature under certain circumstances; authorizing certain provisions of this Act
13 to be varied by agreement; prohibiting certain provisions of this Act to be varied
14 by agreement; providing that the requirements of certain laws that specify that
15 a person provide, send, or deliver information in writing are met by the
16 providing, sending, or delivering of an electronic record under certain
17 circumstances; specifying that certain electronic records or electronic signatures
18 may be attributed to a person under certain circumstances; specifying the legal
19 effect of certain changes or errors; providing that an authorized individual may
20 meet the requirements of certain laws through the use of an electronic signature
21 under certain circumstances; providing that the requirements of certain laws
22 that specify certain records be retained are met by retention of an electronic
23 record under certain circumstances; providing that signatures and records may
24 not be excluded as evidence in a proceeding solely because they are in electronic
25 form; establishing rules for the formation of a contract in an automated
26 transaction; establishing rules for determining the time and place of sending of
27 electronic records and time and place of receipt of electronic records;
28 establishing rules for certain electronic records to be transferable records that
29 transfer certain interests under certain circumstances; establishing rules
30 governing the enforceability of transferable records and the rights and defenses
31 available to certain persons under certain circumstances; requiring
32 governmental agencies to make certain determinations about use of electronic
33 records and electronic signatures; authorizing governmental agencies that use
34 electronic records and electronic signatures to establish certain standards and

1 encourage certain acts; providing for the construction, effect, and application of
2 this Act; defining certain terms; making provisions of this Act severable; and
3 generally relating to electronic records, electronic signatures, and the adoption
4 of the Maryland Uniform Electronic Transactions Act.

5 BY adding to

6 Article - Commercial Law

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

8 The Maryland Uniform Electronic Transactions Act"

9 Annotated Code of Maryland

10 (1990 Replacement Volume and 1999 Supplement)

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

13 **Article - Commercial Law**

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

15 **21-101. DEFINITIONS.**

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

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

21 (C) "AUTOMATED TRANSACTION" MEANS A TRANSACTION CONDUCTED OR
22 PERFORMED, IN WHOLE OR IN PART, BY ELECTRONIC MEANS OR ELECTRONIC
23 RECORDS, IN WHICH THE ACTS OR RECORDS OF ONE OR BOTH PARTIES ARE NOT
24 REVIEWED BY AN INDIVIDUAL IN THE ORDINARY COURSE OF FORMING A CONTRACT,
25 PERFORMING UNDER AN EXISTING CONTRACT, OR FULFILLING AN OBLIGATION
26 REQUIRED BY THE TRANSACTION.

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

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

33 (F) "ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING ELECTRICAL,
34 DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR
35 CAPABILITIES.

36 (G) "ELECTRONIC AGENT" MEANS A COMPUTER PROGRAM OR AN ELECTRONIC
37 OR OTHER AUTOMATED MEANS USED INDEPENDENTLY TO INITIATE AN ACTION OR

1 RESPOND TO ELECTRONIC RECORDS OR PERFORMANCES IN WHOLE OR IN PART,
2 WITHOUT REVIEW OR ACTION BY AN INDIVIDUAL.

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

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

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

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

14 (L) "INFORMATION PROCESSING SYSTEM" MEANS AN ELECTRONIC SYSTEM
15 FOR CREATING, GENERATING, SENDING, RECEIVING, STORING, DISPLAYING, OR
16 PROCESSING INFORMATION.

17 (M) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, BUSINESS TRUST,
18 ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, JOINT
19 VENTURE, GOVERNMENTAL AGENCY, PUBLIC CORPORATION, OR ANY OTHER LEGAL
20 OR COMMERCIAL ENTITY.

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

24 (O) "SECURITY PROCEDURE" MEANS A PROCEDURE EMPLOYED FOR THE
25 PURPOSE OF VERIFYING THAT AN ELECTRONIC SIGNATURE, RECORD, OR
26 PERFORMANCE IS THAT OF A SPECIFIC PERSON OR FOR DETECTING CHANGES OR
27 ERRORS IN THE INFORMATION IN AN ELECTRONIC RECORD. THE TERM INCLUDES A
28 PROCEDURE THAT REQUIRES THE USE OF ALGORITHMS OR OTHER CODES,
29 IDENTIFYING WORDS OR NUMBERS, ENCRYPTION, OR CALLBACK OR OTHER
30 ACKNOWLEDGMENT PROCEDURES.

31 (P) "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT OF
32 COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS, OR ANY TERRITORY
33 OR INSULAR POSSESSION SUBJECT TO THE JURISDICTION OF THE UNITED STATES.
34 THE TERM INCLUDES AN INDIAN TRIBE OR BAND, OR ALASKAN NATIVE VILLAGE,
35 WHICH IS RECOGNIZED BY FEDERAL LAW OR FORMALLY ACKNOWLEDGED BY A
36 STATE.

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

1 21-102. SCOPE.

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

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

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

9 (2) THE MARYLAND UNIFORM COMMERCIAL CODE, OTHER THAN §§
10 1-107 AND 1-206 AND TITLES 2 AND 2A;

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

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

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

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

19 (III) THE CANCELLATION OR TERMINATION OF HEALTH
20 INSURANCE, HEALTH INSURANCE BENEFITS, OR LIFE INSURANCE BENEFITS,
21 EXCLUDING ANNUITIES.

22 (C) THIS TITLE DOES NOT APPLY TO:

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

25 (2) A RECORD THAT SERVES AS A UNIQUE AND TRANSFERABLE
26 INSTRUMENT OF RIGHTS AND OBLIGATIONS, INCLUDING AN INSTRUMENT OF TITLE
27 WHERE POSSESSION OF THE INSTRUMENT IS DEEMED TO CONFER TITLE, UNLESS AN
28 ELECTRONIC VERSION OF THAT RECORD IS CREATED, STORED, AND TRANSFERRED
29 IN A MANNER THAT:

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

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

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

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

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

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

12 21-103. PROSPECTIVE APPLICATION.

13 THIS TITLE APPLIES TO ANY ELECTRONIC RECORD OR ELECTRONIC SIGNATURE
14 CREATED, GENERATED, SENT, COMMUNICATED, RECEIVED, OR STORED ON OR
15 AFTER THE EFFECTIVE DATE OF THIS TITLE.

16 21-104. USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES; VARIATION
17 BY AGREEMENT.

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

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

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

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

29 (2) THE RIGHT GRANTED BY THIS SUBSECTION MAY NOT BE WAIVED BY
30 AGREEMENT.

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

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

1 (E) WHETHER AN ELECTRONIC RECORD OR ELECTRONIC SIGNATURE HAS
2 LEGAL CONSEQUENCES IS DETERMINED BY THIS TITLE AND OTHER APPLICABLE
3 LAW.

4 21-105. CONSTRUCTION AND APPLICATION.

5 THIS TITLE MUST BE CONSTRUED AND APPLIED:

6 (1) TO FACILITATE ELECTRONIC TRANSACTIONS CONSISTENT WITH
7 OTHER APPLICABLE LAW;

8 (2) TO BE CONSISTENT WITH REASONABLE PRACTICES CONCERNING
9 ELECTRONIC TRANSACTIONS AND WITH THE CONTINUED EXPANSION OF THOSE
10 PRACTICES; AND

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

13 21-106. LEGAL RECOGNITION OF ELECTRONIC RECORDS, ELECTRONIC SIGNATURES,
14 AND ELECTRONIC CONTRACTS.

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

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

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

21 (D) IF A LAW REQUIRES A SIGNATURE, AN ELECTRONIC SIGNATURE
22 SATISFIES THE LAW.

23 21-107. PROVISION OF INFORMATION IN WRITING; PRESENTATION OF RECORDS.

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

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

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

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

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

6 (3) THE RECORD MUST CONTAIN THE INFORMATION FORMATTED IN
7 THE MANNER SPECIFIED IN THE OTHER LAW.

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

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

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

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

23 21-108. ATTRIBUTION AND EFFECT OF ELECTRONIC RECORD AND ELECTRONIC
24 SIGNATURE.

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

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

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

1 21-109. EFFECT OF CHANGE OR ERROR.

2 IF A CHANGE OR ERROR IN AN ELECTRONIC RECORD OCCURS IN A
3 TRANSMISSION BETWEEN PARTIES TO A TRANSACTION, THE FOLLOWING RULES
4 APPLY:

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

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

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

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

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

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

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

32 21-110. NOTARIZATION AND ACKNOWLEDGMENT.

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

1 21-111. RETENTION OF ELECTRONIC RECORDS; ORIGINALS.

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

5 (1) ACCURATELY REFLECTS THE INFORMATION SET FORTH IN THE
6 RECORD AFTER IT WAS FIRST GENERATED IN ITS FINAL FORM AS AN ELECTRONIC
7 RECORD OR OTHERWISE; AND

8 (2) REMAINS ACCESSIBLE FOR LATER REFERENCE.

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

13 (C) A PERSON MAY SATISFY SUBSECTION (A) OF THIS SECTION BY USING THE
14 SERVICES OF ANOTHER PERSON IF THE REQUIREMENTS OF THAT SUBSECTION ARE
15 SATISFIED.

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

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

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

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

32 21-112. ADMISSIBILITY IN EVIDENCE.

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

1 21-113. AUTOMATED TRANSACTION.

2 IN AN AUTOMATED TRANSACTION, THE FOLLOWING RULES APPLY:

3 (1) A CONTRACT MAY BE FORMED BY THE INTERACTION OF
4 ELECTRONIC AGENTS OF THE PARTIES, EVEN IF NO INDIVIDUAL WAS AWARE OF OR
5 REVIEWED THE ELECTRONIC AGENTS' ACTIONS OR THE RESULTING TERMS AND
6 AGREEMENTS;

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

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

16 21-114. TIME AND PLACE OF SENDING AND RECEIPT.

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

19 (1) IS ADDRESSED PROPERLY OR OTHERWISE DIRECTED PROPERLY TO
20 AN INFORMATION PROCESSING SYSTEM THAT THE RECIPIENT HAS DESIGNATED OR
21 USES FOR THE PURPOSE OF RECEIVING ELECTRONIC RECORDS OR INFORMATION OF
22 THE TYPE SENT AND FROM WHICH THE RECIPIENT IS ABLE TO RETRIEVE THE
23 ELECTRONIC RECORD;

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

25 (3) ENTERS AN INFORMATION PROCESSING SYSTEM OUTSIDE THE
26 CONTROL OF THE SENDER OR OF A PERSON THAT SENT THE ELECTRONIC RECORD
27 ON BEHALF OF THE SENDER OR ENTERS A REGION OF THE INFORMATION
28 PROCESSING SYSTEM DESIGNATED OR USED BY THE RECIPIENT WHICH IS UNDER
29 THE CONTROL OF THE RECIPIENT.

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

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

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

1 (C) SUBSECTION (B) OF THIS SECTION APPLIES EVEN IF THE PLACE WHERE
2 THE INFORMATION PROCESSING SYSTEM IS LOCATED IS DIFFERENT FROM THE
3 PLACE WHERE THE ELECTRONIC RECORD IS DEEMED TO BE RECEIVED UNDER
4 SUBSECTION (D) OF THIS SECTION.

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

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

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

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

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

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

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

29 21-115. TRANSFERABLE RECORDS.

30 (A) IN THIS SECTION, "TRANSFERABLE RECORD" MEANS AN ELECTRONIC
31 RECORD THAT:

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

35 (2) THE ISSUER OF THE ELECTRONIC RECORD EXPRESSLY HAS AGREED
36 IS A TRANSFERABLE RECORD.

37 (B) A PERSON HAS CONTROL OF A TRANSFERABLE RECORD IF A SYSTEM
38 EMPLOYED FOR EVIDENCING THE TRANSFER OF INTERESTS IN THE TRANSFERABLE

1 RECORD RELIABLY ESTABLISHES THAT PERSON AS THE PERSON TO WHICH THE
2 TRANSFERABLE RECORD WAS ISSUED OR TRANSFERRED.

3 (C) A SYSTEM EMPLOYED FOR EVIDENCING THE TRANSFER OF INTERESTS IN
4 THE TRANSFERABLE RECORD SATISFIES SUBSECTION (B) OF THIS SECTION, AND A
5 PERSON IS DEEMED TO HAVE CONTROL OF A TRANSFERABLE RECORD, IF THE
6 TRANSFERABLE RECORD IS CREATED, STORED, AND ASSIGNED IN SUCH A MANNER
7 THAT:

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

11 (2) THE AUTHORITATIVE COPY IDENTIFIES THE PERSON ASSERTING
12 CONTROL AS:

13 (I) THE PERSON TO WHICH THE TRANSFERABLE RECORD WAS
14 ISSUED; OR

15 (II) IF THE AUTHORITATIVE COPY INDICATES THAT THE
16 TRANSFERABLE RECORD HAS BEEN TRANSFERRED, THE PERSON TO WHICH THE
17 TRANSFERABLE RECORD WAS MOST RECENTLY TRANSFERRED;

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

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

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

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

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

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

1 (E) EXCEPT AS OTHERWISE AGREED, AN OBLIGOR UNDER A TRANSFERABLE
2 RECORD HAS THE SAME RIGHTS AND DEFENSES AS AN EQUIVALENT OBLIGOR
3 UNDER EQUIVALENT RECORDS OR WRITINGS UNDER THE MARYLAND UNIFORM
4 COMMERCIAL CODE.

5 (F) (1) IF REQUESTED BY A PERSON AGAINST WHICH ENFORCEMENT IS
6 SOUGHT, THE PERSON SEEKING TO ENFORCE THE TRANSFERABLE RECORD SHALL
7 PROVIDE REASONABLE PROOF THAT THE PERSON IS IN CONTROL OF THE
8 TRANSFERABLE RECORD.

9 (2) PROOF MAY INCLUDE ACCESS TO THE AUTHORITATIVE COPY OF THE
10 TRANSFERABLE RECORD AND RELATED BUSINESS RECORDS SUFFICIENT TO REVIEW
11 THE TERMS OF THE TRANSFERABLE RECORD AND TO ESTABLISH THE IDENTITY OF
12 THE PERSON HAVING CONTROL OF THE TRANSFERABLE RECORD.

13 21-116. CREATION AND RETENTION OF ELECTRONIC RECORDS AND CONVERSION OF
14 WRITTEN RECORDS BY GOVERNMENTAL AGENCIES.

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

18 21-117. ACCEPTANCE AND DISTRIBUTION OF ELECTRONIC RECORDS BY
19 GOVERNMENTAL AGENCIES.

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

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

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

32 (2) THE ELECTRONIC RECORDS MUST BE SIGNED BY ELECTRONIC
33 MEANS, THE TYPE OF ELECTRONIC SIGNATURE REQUIRED, THE MANNER AND
34 FORMAT IN WHICH THE ELECTRONIC SIGNATURE MUST BE AFFIXED TO THE
35 ELECTRONIC RECORD, AND THE IDENTITY OF, OR CRITERIA THAT MUST BE MET BY,
36 ANY THIRD PARTY USED BY A PERSON FILING A DOCUMENT TO FACILITATE THE
37 PROCESS;

38 (3) CONTROL PROCESSES AND PROCEDURES AS APPROPRIATE TO
39 ENSURE ADEQUATE PRESERVATION, DISPOSITION, INTEGRITY, SECURITY,
40 CONFIDENTIALITY, AND AUDITABILITY OF ELECTRONIC RECORDS; AND

1 (4) ANY OTHER REQUIRED ATTRIBUTES FOR ELECTRONIC RECORDS
2 WHICH ARE SPECIFIED FOR CORRESPONDING NONELECTRONIC RECORDS OR
3 REASONABLY NECESSARY UNDER THE CIRCUMSTANCES.

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

7 21-118. INTEROPERABILITY.

8 (A) A GOVERNMENTAL AGENCY OF THIS STATE THAT ADOPTS STANDARDS IN
9 ACCORDANCE WITH § 21-117 OF THIS TITLE MAY ENCOURAGE AND PROMOTE
10 CONSISTENCY AND INTEROPERABILITY WITH SIMILAR REQUIREMENTS ADOPTED BY
11 OTHER GOVERNMENTAL AGENCIES OF THIS STATE, OTHER STATES, THE FEDERAL
12 GOVERNMENT, AND NONGOVERNMENTAL PERSONS INTERACTING WITH
13 GOVERNMENTAL AGENCIES OF THIS STATE.

14 (B) IF APPROPRIATE, THOSE STANDARDS MAY SPECIFY DIFFERING LEVELS OF
15 STANDARDS FROM WHICH GOVERNMENTAL AGENCIES OF THIS STATE MAY CHOOSE
16 IN IMPLEMENTING THE MOST APPROPRIATE STANDARD FOR A PARTICULAR
17 APPLICATION.

18 21-119. SEVERABILITY CLAUSE.

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

24 21-120. SHORT TITLE.

25 THIS TITLE MAY BE CITED AS THE MARYLAND UNIFORM ELECTRONIC
26 TRANSACTIONS ACT.

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

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

34 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
35 October 1, 2000.