

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

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 1, 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 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
12 because it is in electronic form; providing that a contract may not be denied legal
13 effect or enforceability solely because an electronic record was used in its
14 formation; providing that the requirements of certain laws that specify a record
15 or signature be in written form are met by an electronic record or electronic
16 signature under certain circumstances; authorizing certain provisions of this Act
17 to be varied by agreement; prohibiting certain provisions of this Act ~~to be~~ from
18 being varied by agreement; providing that the requirements of certain laws that
19 specify that a person provide, send, or deliver information in writing are met by
20 the providing, sending, or delivering of an electronic record under certain
21 circumstances; specifying that certain electronic records or electronic signatures
22 may be attributed to a person under certain circumstances; specifying the legal
23 effect of certain changes or errors; providing that an authorized individual may
24 meet the requirements of certain laws through the use of an electronic signature
25 under certain circumstances; providing that the requirements of certain laws
26 that specify certain records be retained are met by retention of an electronic
27 record under certain circumstances; providing that signatures and records may

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

18 BY adding to
19 Article - Commercial Law
20 Section 21-101 through 21-120, inclusive, to be under the new title "Title 21.
21 The Maryland Uniform Electronic Transactions Act"
22 Annotated Code of Maryland
23 (1990 Replacement Volume and 1999 Supplement)

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

26 **Article - Commercial Law**

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

28 21-101. DEFINITIONS.

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

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

34 (C) "AUTOMATED TRANSACTION" MEANS A TRANSACTION CONDUCTED OR
35 PERFORMED, IN WHOLE OR IN PART, BY ELECTRONIC MEANS OR ELECTRONIC
36 RECORDS, IN WHICH THE ACTS OR RECORDS OF ONE OR BOTH PARTIES ARE NOT
37 REVIEWED BY AN INDIVIDUAL IN THE ORDINARY COURSE OF FORMING A CONTRACT,
38 PERFORMING UNDER AN EXISTING CONTRACT, OR FULFILLING AN OBLIGATION
39 REQUIRED BY THE TRANSACTION.

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

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

7 (F) "ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING ELECTRICAL,
8 DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR
9 CAPABILITIES.

10 (G) "ELECTRONIC AGENT" MEANS A COMPUTER PROGRAM OR AN ELECTRONIC
11 OR OTHER AUTOMATED MEANS USED INDEPENDENTLY TO INITIATE AN ACTION OR
12 RESPOND TO ELECTRONIC RECORDS OR PERFORMANCES IN WHOLE OR IN PART,
13 WITHOUT REVIEW OR ACTION BY AN INDIVIDUAL.

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

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

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

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

25 (L) "INFORMATION PROCESSING SYSTEM" MEANS AN ELECTRONIC SYSTEM
26 FOR CREATING, GENERATING, SENDING, RECEIVING, STORING, DISPLAYING, OR
27 PROCESSING INFORMATION.

28 (M) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, BUSINESS TRUST,
29 ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, JOINT
30 VENTURE, GOVERNMENTAL AGENCY, PUBLIC CORPORATION, OR ANY OTHER LEGAL
31 OR COMMERCIAL ENTITY.

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

35 (O) "SECURITY PROCEDURE" MEANS A PROCEDURE EMPLOYED FOR THE
36 PURPOSE OF VERIFYING THAT AN ELECTRONIC SIGNATURE, RECORD, OR
37 PERFORMANCE IS THAT OF A SPECIFIC PERSON OR FOR DETECTING CHANGES OR
38 ERRORS IN THE INFORMATION IN AN ELECTRONIC RECORD. THE TERM INCLUDES A
39 PROCEDURE THAT REQUIRES THE USE OF ALGORITHMS OR OTHER CODES,

1 IDENTIFYING WORDS OR NUMBERS, ENCRYPTION, OR CALLBACK OR OTHER
2 ACKNOWLEDGMENT PROCEDURES.

3 (P) "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT OF
4 COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS, OR ANY TERRITORY
5 OR INSULAR POSSESSION SUBJECT TO THE JURISDICTION OF THE UNITED STATES.
6 THE TERM INCLUDES AN INDIAN TRIBE OR BAND, OR ALASKAN NATIVE VILLAGE,
7 WHICH IS RECOGNIZED BY FEDERAL LAW OR FORMALLY ACKNOWLEDGED BY A
8 STATE.

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

12 21-102. SCOPE.

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

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

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

20 (2) THE MARYLAND UNIFORM COMMERCIAL CODE, OTHER THAN §§
21 1-107 AND 1-206 AND TITLES 2 AND 2A;

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

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

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

27 (II) DEFAULT, ACCELERATION, REPOSSESSION, FORECLOSURE,
28 EVICTION, OR THE RIGHT TO CURE, UNDER A CREDIT AGREEMENT, MORTGAGE, OR A
29 RENTAL AGREEMENT FOR A PRIMARY RESIDENCE OF AN INDIVIDUAL; ~~OR,~~

30 ~~(III) THE CANCELLATION OR TERMINATION OF HEALTH
31 INSURANCE, HEALTH INSURANCE BENEFITS, OR LIFE INSURANCE BENEFITS,
32 EXCLUDING ANNUITIES.~~

33 (C) THIS TITLE DOES NOT APPLY TO:

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

1 (2) A RECORD THAT SERVES AS A UNIQUE AND TRANSFERABLE
2 INSTRUMENT OF RIGHTS AND OBLIGATIONS, INCLUDING AN INSTRUMENT OF TITLE
3 WHERE POSSESSION OF THE INSTRUMENT IS DEEMED TO CONFER TITLE, UNLESS AN
4 ELECTRONIC VERSION OF THAT RECORD IS CREATED, STORED, AND TRANSFERRED
5 IN A MANNER THAT:

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

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

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

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

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

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

23 21-103. PROSPECTIVE APPLICATION.

24 THIS TITLE APPLIES TO ANY ELECTRONIC RECORD OR ELECTRONIC SIGNATURE
25 CREATED, GENERATED, SENT, COMMUNICATED, RECEIVED, OR STORED ON OR
26 AFTER THE EFFECTIVE DATE OF THIS TITLE.

27 21-104. USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES; VARIATION
28 BY AGREEMENT.

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

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

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

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

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

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

10 (C) (1) A PARTY THAT AGREES TO CONDUCT A TRANSACTION BY
11 ELECTRONIC MEANS MAY REFUSE TO CONDUCT OTHER TRANSACTIONS BY
12 ELECTRONIC MEANS.

13 (2) THE RIGHT GRANTED BY THIS SUBSECTION MAY NOT BE WAIVED BY
14 AGREEMENT.

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

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

20 (E) WHETHER AN ELECTRONIC RECORD OR ELECTRONIC SIGNATURE HAS
21 LEGAL CONSEQUENCES IS DETERMINED BY THIS TITLE AND OTHER APPLICABLE
22 LAW.

23 21-105. CONSTRUCTION AND APPLICATION.

24 THIS TITLE MUST BE CONSTRUED AND APPLIED:

25 (1) TO FACILITATE ELECTRONIC TRANSACTIONS CONSISTENT WITH
26 OTHER APPLICABLE LAW;

27 (2) TO BE CONSISTENT WITH REASONABLE PRACTICES CONCERNING
28 ELECTRONIC TRANSACTIONS AND WITH THE CONTINUED EXPANSION OF THOSE
29 PRACTICES; AND

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

32 21-106. LEGAL RECOGNITION OF ELECTRONIC RECORDS, ELECTRONIC SIGNATURES,
33 AND ELECTRONIC CONTRACTS.

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

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

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

5 (D) IF A LAW REQUIRES A SIGNATURE, AN ELECTRONIC SIGNATURE
6 SATISFIES THE LAW.

7 21-107. PROVISION OF INFORMATION IN WRITING; PRESENTATION OF RECORDS.

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

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

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

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

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

26 (3) THE RECORD MUST CONTAIN THE INFORMATION FORMATTED IN
27 THE MANNER SPECIFIED IN THE OTHER LAW.

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

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

33 (1) TO THE EXTENT A LAW OTHER THAN THIS TITLE REQUIRES
34 INFORMATION TO BE PROVIDED, SENT, OR DELIVERED IN WRITING BUT PERMITS
35 THAT REQUIREMENT TO BE VARIED BY AGREEMENT, THE REQUIREMENT UNDER
36 SUBSECTION (A) OF THIS SECTION THAT THE INFORMATION BE IN THE FORM OF AN
37 ELECTRONIC RECORD CAPABLE OF RETENTION MAY ALSO BE VARIED BY
38 AGREEMENT; AND

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

5 21-108. ATTRIBUTION AND EFFECT OF ELECTRONIC RECORD AND ELECTRONIC
6 SIGNATURE.

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

9 (2) THE ACT OF THE PERSON MAY BE SHOWN IN ANY MANNER,
10 INCLUDING A SHOWING OF THE EFFICACY OF ANY SECURITY PROCEDURE APPLIED
11 TO DETERMINE THE PERSON TO WHICH THE ELECTRONIC RECORD OR ELECTRONIC
12 SIGNATURE WAS ATTRIBUTABLE.

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

18 21-109. EFFECT OF CHANGE OR ERROR.

19 IF A CHANGE OR ERROR IN AN ELECTRONIC RECORD OCCURS IN A
20 TRANSMISSION BETWEEN PARTIES TO A TRANSACTION, THE FOLLOWING RULES
21 APPLY:

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

28 (2) IN AN AUTOMATED TRANSACTION INVOLVING AN INDIVIDUAL, THE
29 INDIVIDUAL MAY AVOID THE EFFECT OF AN ELECTRONIC RECORD THAT RESULTED
30 FROM AN ERROR MADE BY THE INDIVIDUAL IN DEALING WITH THE ELECTRONIC
31 AGENT OF ANOTHER PERSON IF THE ELECTRONIC AGENT DID NOT PROVIDE AN
32 OPPORTUNITY FOR THE PREVENTION OR CORRECTION OF THE ERROR AND, AT THE
33 TIME THE INDIVIDUAL LEARNS OF THE ERROR, THE INDIVIDUAL:

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

37 (II) TAKES REASONABLE STEPS, INCLUDING STEPS THAT CONFORM
38 TO THE OTHER PERSON'S REASONABLE INSTRUCTIONS, TO RETURN TO THE OTHER
39 PERSON OR, IF INSTRUCTED BY THE OTHER PERSON, TO DESTROY THE

1 CONSIDERATION RECEIVED, IF ANY, AS A RESULT OF THE ERRONEOUS ELECTRONIC
2 RECORD; AND

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

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

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

10 21-110. NOTARIZATION AND ACKNOWLEDGMENT.

11 IF A LAW REQUIRES A SIGNATURE OR RECORD TO BE NOTARIZED,
12 ACKNOWLEDGED, VERIFIED, OR MADE UNDER OATH, THE REQUIREMENT IS
13 SATISFIED IF THE ELECTRONIC SIGNATURE OF THE PERSON AUTHORIZED TO
14 PERFORM THOSE ACTS, TOGETHER WITH ALL OTHER INFORMATION REQUIRED TO
15 BE INCLUDED BY OTHER APPLICABLE LAW, IS ATTACHED TO OR LOGICALLY
16 ASSOCIATED WITH THE SIGNATURE OR RECORD.

17 21-111. RETENTION OF ELECTRONIC RECORDS; ORIGINALS.

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

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

24 (2) REMAINS ACCESSIBLE FOR LATER REFERENCE.

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

29 (C) A PERSON MAY SATISFY SUBSECTION (A) OF THIS SECTION BY USING THE
30 SERVICES OF ANOTHER PERSON IF THE REQUIREMENTS OF THAT SUBSECTION ARE
31 SATISFIED.

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

36 (E) IF A LAW REQUIRES RETENTION OF A CHECK, THAT REQUIREMENT IS
37 SATISFIED BY RETENTION OF AN ELECTRONIC RECORD OF THE INFORMATION ON

1 THE FRONT AND BACK OF THE CHECK IN ACCORDANCE WITH SUBSECTION (A) OF
2 THIS SECTION.

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

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

11 21-112. ADMISSIBILITY IN EVIDENCE.

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

14 21-113. AUTOMATED TRANSACTION.

15 IN AN AUTOMATED TRANSACTION, THE FOLLOWING RULES APPLY:

16 (1) A CONTRACT MAY BE FORMED BY THE INTERACTION OF
17 ELECTRONIC AGENTS OF THE PARTIES, EVEN IF NO INDIVIDUAL WAS AWARE OF OR
18 REVIEWED THE ELECTRONIC AGENTS' ACTIONS OR THE RESULTING TERMS AND
19 AGREEMENTS;

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

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

29 21-114. TIME AND PLACE OF SENDING AND RECEIPT.

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

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

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

1 (3) ENTERS AN INFORMATION PROCESSING SYSTEM OUTSIDE THE
2 CONTROL OF THE SENDER OR OF A PERSON THAT SENT THE ELECTRONIC RECORD
3 ON BEHALF OF THE SENDER OR ENTERS A REGION OF THE INFORMATION
4 PROCESSING SYSTEM DESIGNATED OR USED BY THE RECIPIENT WHICH IS UNDER
5 THE CONTROL OF THE RECIPIENT.

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

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

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

13 (C) SUBSECTION (B) OF THIS SECTION APPLIES EVEN IF THE PLACE WHERE
14 THE INFORMATION PROCESSING SYSTEM IS LOCATED IS DIFFERENT FROM THE
15 PLACE WHERE THE ELECTRONIC RECORD IS DEEMED TO BE RECEIVED UNDER
16 SUBSECTION (D) OF THIS SECTION.

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

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

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

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

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

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

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

3 21-115. TRANSFERABLE RECORDS.

4 (A) IN THIS SECTION, "TRANSFERABLE RECORD" MEANS AN ELECTRONIC
5 RECORD THAT:

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

9 (2) THE ISSUER OF THE ELECTRONIC RECORD EXPRESSLY HAS AGREED
10 IS A TRANSFERABLE RECORD.

11 (B) A PERSON HAS CONTROL OF A TRANSFERABLE RECORD IF A SYSTEM
12 EMPLOYED FOR EVIDENCING THE TRANSFER OF INTERESTS IN THE TRANSFERABLE
13 RECORD RELIABLY ESTABLISHES THAT PERSON AS THE PERSON TO WHICH THE
14 TRANSFERABLE RECORD WAS ISSUED OR TRANSFERRED.

15 (C) A SYSTEM EMPLOYED FOR EVIDENCING THE TRANSFER OF INTERESTS IN
16 THE TRANSFERABLE RECORD SATISFIES SUBSECTION (B) OF THIS SECTION, AND A
17 PERSON IS DEEMED TO HAVE CONTROL OF A TRANSFERABLE RECORD, IF THE
18 TRANSFERABLE RECORD IS CREATED, STORED, AND ASSIGNED IN SUCH A MANNER
19 THAT:

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

23 (2) THE AUTHORITATIVE COPY IDENTIFIES THE PERSON ASSERTING
24 CONTROL AS:

25 (I) THE PERSON TO WHICH THE TRANSFERABLE RECORD WAS
26 ISSUED; OR

27 (II) IF THE AUTHORITATIVE COPY INDICATES THAT THE
28 TRANSFERABLE RECORD HAS BEEN TRANSFERRED, THE PERSON TO WHICH THE
29 TRANSFERABLE RECORD WAS MOST RECENTLY TRANSFERRED;

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

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

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

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

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

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

14 (E) EXCEPT AS OTHERWISE AGREED, AN OBLIGOR UNDER A TRANSFERABLE
15 RECORD HAS THE SAME RIGHTS AND DEFENSES AS AN EQUIVALENT OBLIGOR
16 UNDER EQUIVALENT RECORDS OR WRITINGS UNDER THE MARYLAND UNIFORM
17 COMMERCIAL CODE.

18 (F) (1) IF REQUESTED BY A PERSON AGAINST WHICH ENFORCEMENT IS
19 SOUGHT, THE PERSON SEEKING TO ENFORCE THE TRANSFERABLE RECORD SHALL
20 PROVIDE REASONABLE PROOF THAT THE PERSON IS IN CONTROL OF THE
21 TRANSFERABLE RECORD.

22 (2) PROOF MAY INCLUDE ACCESS TO THE AUTHORITATIVE COPY OF THE
23 TRANSFERABLE RECORD AND RELATED BUSINESS RECORDS SUFFICIENT TO REVIEW
24 THE TERMS OF THE TRANSFERABLE RECORD AND TO ESTABLISH THE IDENTITY OF
25 THE PERSON HAVING CONTROL OF THE TRANSFERABLE RECORD.

26 21-116. CREATION AND RETENTION OF ELECTRONIC RECORDS AND CONVERSION OF
27 WRITTEN RECORDS BY GOVERNMENTAL AGENCIES.

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

31 21-117. ACCEPTANCE AND DISTRIBUTION OF ELECTRONIC RECORDS BY
32 GOVERNMENTAL AGENCIES.

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

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

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

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

13 (3) CONTROL PROCESSES AND PROCEDURES AS APPROPRIATE TO
14 ENSURE ADEQUATE PRESERVATION, DISPOSITION, INTEGRITY, SECURITY,
15 CONFIDENTIALITY, AND AUDITABILITY OF ELECTRONIC RECORDS; AND

16 (4) ANY OTHER REQUIRED ATTRIBUTES FOR ELECTRONIC RECORDS
17 WHICH ARE SPECIFIED FOR CORRESPONDING NONELECTRONIC RECORDS OR
18 REASONABLY NECESSARY UNDER THE CIRCUMSTANCES.

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

22 21-118. INTEROPERABILITY.

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

29 (B) IF APPROPRIATE, THOSE STANDARDS MAY SPECIFY DIFFERING LEVELS OF
30 STANDARDS FROM WHICH GOVERNMENTAL AGENCIES OF THIS STATE MAY CHOOSE
31 IN IMPLEMENTING THE MOST APPROPRIATE STANDARD FOR A PARTICULAR
32 APPLICATION.

33 (C) STANDARDS ADOPTED BY UNITS OF STATE GOVERNMENT SHALL BE
34 CONSISTENT WITH THOSE SPECIFIED IN THE STATE INFORMATION TECHNOLOGY
35 MASTER PLAN.

36 21-119. SEVERABILITY CLAUSE.

37 IF ANY PROVISION OF THIS TITLE OR ITS APPLICATION TO ANY PERSON OR
38 CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER
39 PROVISIONS OR APPLICATIONS OF THIS TITLE WHICH CAN BE GIVEN EFFECT

1 WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE
2 PROVISIONS OF THIS TITLE ARE SEVERABLE.

3 21-120. SHORT TITLE.

4 THIS TITLE MAY BE CITED AS THE MARYLAND UNIFORM ELECTRONIC
5 TRANSACTIONS ACT.

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

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

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