

(PRE-FILED)

By: **Delegate Brown**
Requested: October 16, 2000
Introduced and read first time: January 10, 2001
Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law - Consumer Consent to Use of Electronic Records**

3 FOR the purpose of providing that if an electronic record is used to provide or make
4 available certain information that is required to be provided or made available
5 to a consumer in writing, the affirmative consent of the consumer is required
6 and certain statements must be provided to the consumer prior to the
7 consumer's consent; specifying the contents of the statements that must be
8 provided to the consumer; providing that a consumer consent or confirm consent
9 to use of electronic records in a certain manner; providing that if changes occur
10 in the hardware or software requirements necessary to access or retain certain
11 electronic records after the consent of a consumer to a person's use of electronic
12 records, the person must provide a certain statement to the consumer and
13 obtain the consumer's consent in a certain manner; exempting certain notices of
14 product recall or material failure of a product and certain documents that
15 accompany toxic or dangerous materials from the Maryland Uniform Electronic
16 Transactions Act; repealing provisions of the Maryland Uniform Electronic
17 Transactions Act that exempt certain records from the scope of the Act and allow
18 governmental agencies to adopt certain regulations; defining certain terms;
19 specifying that this Act is intended to supplement a certain federal act; and
20 generally relating to electronic records and consumer consent to the use of
21 electronic records.

22 BY adding to
23 Article - Commercial Law
24 Section 14-2901 and 14-2902 to be under the new subtitle "Subtitle 29.
25 Consumer Consent to Use of Electronic Records"
26 Annotated Code of Maryland
27 (2000 Replacement Volume and 2000 Supplement)

28 BY repealing and reenacting, with amendments,
29 Article - Commercial Law
30 Section 21-102, 21-104, and 21-107
31 Annotated Code of Maryland

1 (2000 Replacement Volume and 2000 Supplement)

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

4 **Article - Commercial Law**

5 SUBTITLE 29. CONSUMER CONSENT TO USE OF ELECTRONIC RECORDS.

6 14-2901.

7 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
8 INDICATED.

9 (B) "CONSUMER" HAS THE MEANING STATED IN § 13-101 OF THIS ARTICLE.

10 (C) "ELECTRONIC RECORD" HAS THE MEANING STATED IN § 21-101 OF THIS
11 ARTICLE.

12 14-2902.

13 AN ELECTRONIC RECORD MAY BE USED TO PROVIDE OR MAKE AVAILABLE
14 INFORMATION REQUIRED BY A STATUTE, REGULATION, OR RULE OF LAW, TO BE
15 PROVIDED OR MADE AVAILABLE TO A CONSUMER IN WRITING IF:

16 (1) THE CONSUMER HAS CONSENTED AFFIRMATIVELY TO THE USE OF
17 ELECTRONIC RECORDS AND HAS NOT WITHDRAWN CONSENT;

18 (2) PRIOR TO CONSENT, THE CONSUMER IS PROVIDED WITH A CLEAR
19 AND CONSPICUOUS STATEMENT:

20 (I) INFORMING THE CONSUMER OF:

21 1. ANY RIGHT OR OPTION OF THE CONSUMER TO HAVE THE
22 RECORD PROVIDED OR MADE AVAILABLE ON PAPER OR IN NONELECTRONIC FORM;

23 2. THE RIGHT OF THE CONSUMER TO WITHDRAW CONSENT
24 TO HAVE THE RECORD PROVIDED OR MADE AVAILABLE IN AN ELECTRONIC FORM;
25 AND

26 3. ANY CONDITIONS, CONSEQUENCES, INCLUDING
27 TERMINATION OF THE PARTIES' RELATIONSHIP, OR FEES APPLICABLE IN THE EVENT
28 OF WITHDRAWAL OF CONSENT TO HAVE THE RECORD PROVIDED OR MADE
29 AVAILABLE IN AN ELECTRONIC FORM;

30 (II) INFORMING THE CONSUMER OF WHETHER THE CONSENT
31 APPLIES:

32 1. ONLY TO THE PARTICULAR TRANSACTION THAT GAVE
33 RISE TO THE OBLIGATION TO PROVIDE THE RECORD; OR

1 21-102.

2 (a) Except as otherwise provided in subsections (b)[,]AND (c)[, and (d)] of this
3 section, this title applies to electronic records and electronic signatures relating to a
4 transaction.

5 (b) This title does not apply to a transaction to the extent it is governed by:

6 (1) A law governing the creation and execution of wills, codicils, or
7 testamentary trusts;

8 (2) The Maryland Uniform Commercial Code, other than §§ 1-107 and
9 1-206 and Titles 2 and 2A;

10 (3) The Uniform Computer Information Transactions Act [if enacted by
11 this State]; and

12 (4) A law or regulation governing notice of:

13 (i) The cancellation or termination of utility services, including
14 water, heat, and power;

15 (ii) Default, acceleration, repossession, foreclosure, eviction, or the
16 right to cure, under a credit agreement, mortgage, or a rental agreement for a
17 primary residence of an individual; [or]

18 (iii) The cancellation or termination of health insurance, health
19 insurance benefits, or life insurance benefits, excluding annuities[.]; OR

20 (IV) RECALL OF A PRODUCT, OR MATERIAL FAILURE OF A PRODUCT,
21 THAT RISKS ENDANGERING HEALTH OR SAFETY.

22 (c) This title does not apply to:

23 (1) Court orders, notices, or official court documents, except as provided
24 in the Maryland Rules; or

25 (2) [A record that serves as a unique and transferable instrument of
26 rights and obligations, including an instrument of title where possession of the
27 instrument is deemed to confer title, unless an electronic version of that record is
28 created, stored, and transferred in a manner that:

29 (i) Allows for the existence of only one unique, identifiable, and
30 unalterable original with the functional attributes of an equivalent physical
31 instrument;

32 (ii) Can be possessed by only one person; and

33 (iii) Cannot be copied except in a form that is readily identifiable as
34 a copy] DOCUMENTS REQUIRED TO ACCOMPANY TRANSPORTATION OR HANDLING

1 OF HAZARDOUS MATERIALS, PESTICIDES, OR OTHER TOXIC OR DANGEROUS
2 MATERIALS.

3 (d) [Notwithstanding the provisions of this section, a governmental agency
4 may adopt regulations that require specific notices within the regulatory authority of
5 the agency to be provided or made available in writing upon the agency's
6 determination that it is necessary for the protection, public health, or safety of
7 consumers.

8 (e) This title applies to an electronic record or electronic signature otherwise
9 excluded from the application of this title under subsection (b) of this section to the
10 extent it is governed by a law other than those specified in subsection (b) of this
11 section.

12 [(f)] (E) A transaction subject to this title is also subject to other applicable
13 substantive law.

14 21-104.

15 (a) This title does not require a record or signature to be created, generated,
16 sent, communicated, received, stored, or otherwise processed or used by electronic
17 means or in electronic form.

18 (b) (1) This title applies only to transactions between parties, each of which
19 has agreed to conduct transactions by electronic means.

20 (2) [Whether] EXCEPT AS PROVIDED IN TITLE 14, SUBTITLE 29 OF THIS
21 ARTICLE, WHETHER the parties have agreed to conduct a transaction by electronic
22 means is determined from the context and surrounding circumstances, including the
23 parties' conduct.

24 (3) Except for a separate and optional agreement the primary purpose of
25 which is to authorize a transaction to be conducted by electronic means, a provision to
26 conduct a transaction electronically may not be contained in a standard form contract
27 unless that provision is conspicuously displayed and separately consented to.

28 (4) An agreement to conduct a transaction electronically may not be
29 inferred solely from the fact that a party has used electronic means to pay an account
30 or register a purchase warranty.

31 (5) This subsection may not be varied by agreement.

32 (c) (1) A party that agrees to conduct a transaction by electronic means may
33 refuse to conduct other transactions by electronic means.

34 (2) The right granted by this subsection may not be waived by
35 agreement.

36 (d) (1) Except as otherwise provided in this title, the effect of any of its
37 provisions may be varied by agreement.

1 (2) The presence in provisions of this title of the words "unless otherwise
2 agreed", or words of similar import, does not imply that the effect of other provisions
3 may not be varied by agreement.

4 (e) Whether an electronic record or electronic signature has legal
5 consequences is determined by this title and other applicable law.

6 21-107.

7 (a) IN THIS SECTION, "CONSUMER" HAS THE MEANING STATED IN § 13-101 OF
8 THIS ARTICLE.

9 (B) (1) If parties have agreed to conduct a transaction by electronic means
10 and a law requires a person to provide, send, or deliver information in writing to
11 another person, the requirement is satisfied if the information is provided, sent, or
12 delivered in an 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 recipient if the
15 sender or its information processing system inhibits the ability of the recipient to
16 print or store the electronic record.

17 [(b)] (C) 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 by a
19 specified method, or to contain information that is formatted in a certain manner, the
20 following rules apply:

21 (1) The record must be posted or displayed in the manner specified in the
22 other law;

23 (2) Except as otherwise provided in subsection [(d)(2)] (E)(2) of this
24 section, the record must be sent, communicated, or transmitted by the method
25 specified in the other law; and

26 (3) The record must contain the information formatted in the manner
27 specified in the other law.

28 [(c)] (D) If a sender inhibits the ability of a recipient to store or print an
29 electronic record, the electronic record is not enforceable against the recipient.

30 [(d)] (E) The requirements of this section may not be varied by agreement,
31 but:

32 (1) To the extent a law other than this title requires information to be
33 provided, sent, or delivered in writing but permits that requirement to be varied by
34 agreement, the requirement under subsection [(a)] (B) of this section that the
35 information be in the form of an electronic record capable of retention may also be
36 varied by 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, postage prepaid, or
3 by regular mail, may be varied by agreement to the extent permitted by the other law.

4 (F) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, USE OF AN
5 ELECTRONIC RECORD TO MEET THE REQUIREMENTS OF A STATUTE, REGULATION,
6 OR RULE OF LAW THAT REQUIRES INFORMATION BE PROVIDED OR MADE AVAILABLE
7 TO A CONSUMER IN WRITING SHALL BE CONSISTENT WITH TITLE 14, SUBTITLE 29 OF
8 THIS ARTICLE.

9 SECTION 2. AND BE IT FURTHER ENACTED, That the requirements of this
10 Act are intended to supplement and not to modify, limit, or supersede the provisions
11 of the federal Electronic Signatures in Global and National Commerce Act.

12 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 June 1, 2001.