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2001 Regular Session
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## (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

3	FOR	the purpose	of pro	oviding t	that if an e	lectronic record	l is usec	l to provide	or make
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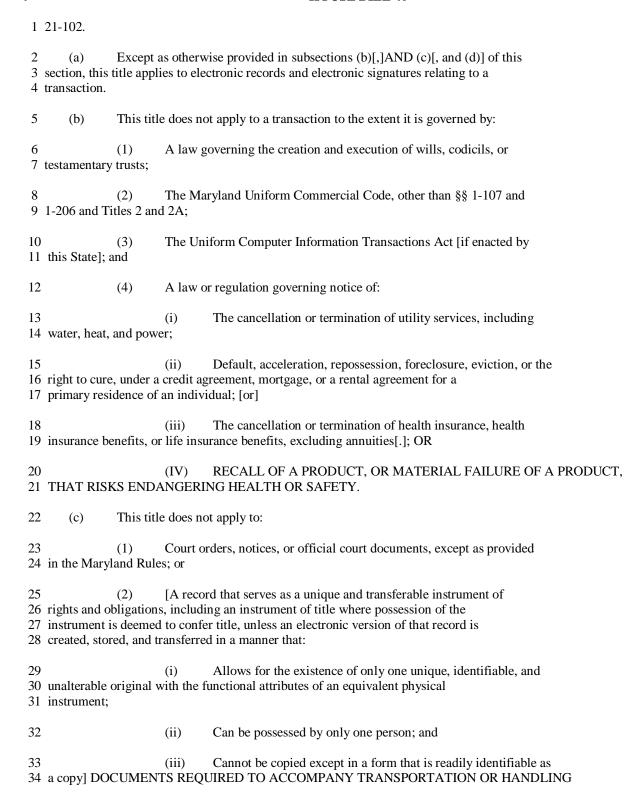
- 4 available certain information that is required to be provided or made available
- 5 to a consumer in writing, the affirmative consent of the consumer is required
- 6 and certain statements must be provided to the consumer prior to the
- 7 consumer's consent; specifying the contents of the statements that must be
- 8 provided to the consumer; providing that a consumer consent or confirm consent
- to use of electronic records in a certain manner; providing that if changes occur
- in the hardware or software requirements necessary to access or retain certain
- electronic records after the consent of a consumer to a person's use of electronic
- records, the person must provide a certain statement to the consumer and
- obtain the consumer's consent in a certain manner; exempting certain notices of
- product recall or material failure of a product and certain documents that
- 15 accompany toxic or dangerous materials from the Maryland Uniform Electronic
- 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;
- 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
- 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

2 HOUSE BILL 40

1	(2000 Replacement Volume and 2000 Supplement)										
2	SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF 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 8	(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.										
9	(B) "CONSUMER" HAS THE MEANING STATED IN § 13-101 OF THIS ARTICLE.										
10 11	(C) "ELECTRONIC RECORD" HAS THE MEANING STATED IN § 21-101 OF THIS ARTICLE.										
12	14-2902.										
	AN ELECTRONIC RECORD MAY BE USED TO PROVIDE OR MAKE AVAILABLE INFORMATION REQUIRED BY A STATUTE, REGULATION, OR RULE OF LAW, TO BE PROVIDED OR MADE AVAILABLE TO A CONSUMER IN WRITING IF:										
16 17	(1) THE CONSUMER HAS CONSENTED AFFIRMATIVELY TO THE USE OF ELECTRONIC RECORDS AND HAS NOT WITHDRAWN CONSENT;										
18 19	(2) PRIOR TO CONSENT, THE CONSUMER IS PROVIDED WITH A CLEAR AND CONSPICUOUS STATEMENT:										
20	(I) INFORMING THE CONSUMER OF:										
21 22	1. ANY RIGHT OR OPTION OF THE CONSUMER TO HAVE THE RECORD PROVIDED OR MADE AVAILABLE ON PAPER OR IN NONELECTRONIC FORM;										
	2. THE RIGHT OF THE CONSUMER TO WITHDRAW CONSENT TO HAVE THE RECORD PROVIDED OR MADE AVAILABLE IN AN ELECTRONIC FORM; AND										
28	3. ANY CONDITIONS, CONSEQUENCES, INCLUDING TERMINATION OF THE PARTIES' RELATIONSHIP, OR FEES APPLICABLE IN THE EVENT OF WITHDRAWAL OF CONSENT TO HAVE THE RECORD PROVIDED OR MADE AVAILABLE IN AN ELECTRONIC FORM;										
30 31	(II) INFORMING THE CONSUMER OF WHETHER THE CONSENT APPLIES:										
32 33	1. ONLY TO THE PARTICULAR TRANSACTION THAT GAVE RISE TO THE OBLIGATION TO PROVIDE THE RECORD; OR										

3 HOUSE BILL 40

	PROVIDED OR MAI RELATIONSHIP;	DE AVA	2. ILABLE	TO IDENTIFIED CATEGORIES OF RECORDS THAT MAY BE DURING THE COURSE OF THE PARTIES'
			PROVID	IBING THE PROCEDURES THE CONSUMER MUST USE TO DED IN ITEM (2)(I) OF THIS SECTION AND TO UPDATE ONTACT THE CONSUMER ELECTRONICALLY; AND
7		(IV)	INFORM	MING THE CONSUMER OF:
8 9	MAY OBTAIN A PA	PER CO		HOW, AFTER CONSENT, THE CONSUMER, ON REQUEST, IN ELECTRONIC RECORD; AND
10			2.	WHETHER A FEE WILL BE CHARGED FOR THE COPY;
11	(3)	THE CO	ONSUME	ER:
		(I) IREMEN		VIDED WITH A STATEMENT OF THE HARDWARE AND ACCESS TO AND RETENTION OF THE ELECTRONIC
17 18	CONFIRMS CONSE DEMONSTRATES T	THAT TI M THAT	CTRONI HE CONS WILL B	TO CONSENT, CONSENTS ELECTRONICALLY, OR CALLY, IN A MANNER THAT REASONABLY SUMER CAN ACCESS INFORMATION IN THE BE USED TO PROVIDE THE INFORMATION THAT IS AND
22 23	REQUIREMENTS N A MATERIAL RISK	ECESSA THAT T CTRON	ARY TO . THE CON IC RECO	NT, IF A CHANGE IN THE HARDWARE OR SOFTWARE ACCESS OR RETAIN ELECTRONIC RECORDS CREATES NSUMER WILL NOT BE ABLE TO ACCESS OR RETAIN A DRD THAT WAS THE SUBJECT OF THE CONSENT, THE CONIC RECORD:
25		(I)	PROVII	DES THE CONSUMER WITH A STATEMENT OF:
		OR ACC	1. CESS TO	THE REVISED HARDWARE AND SOFTWARE AND RETENTION OF THE ELECTRONIC RECORDS;
31		ON OR C		THE RIGHT TO WITHDRAW CONSENT WITHOUT THE HE WITHDRAWAL AND WITHOUT THE IMPOSITION JENCE THAT WAS NOT DISCLOSED UNDER ITEM (2)(I)
33 34	(3)(II) OF THIS SEC	(II) TION.	OBTAIN	NS THE CONSUMER'S CONSENT AS PROVIDED IN ITEM



35 agreement.

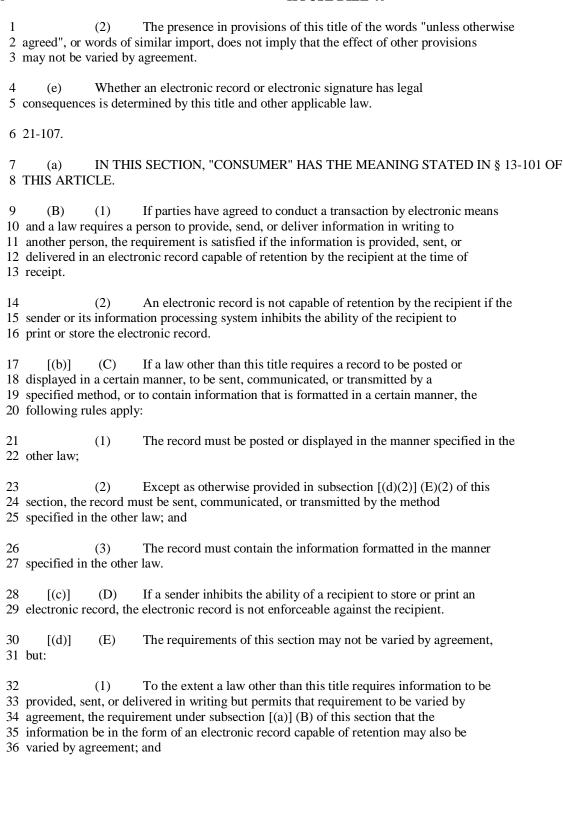
(d)

37 provisions may be varied by agreement.

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 This title does not require a record or signature to be created, generated, (a) 16 sent, communicated, received, stored, or otherwise processed or used by electronic 17 means or in electronic form. 18 This title applies only to transactions between parties, each of which 19 has agreed to conduct transactions by electronic means. [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 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 unless that provision is conspicuously displayed and separately consented to. 28 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 This subsection may not be varied by agreement. (5) 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 The right granted by this subsection may not be waived by (2)

Except as otherwise provided in this title, the effect of any of its

## **HOUSE BILL 40**



- 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.