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By: **Senator Giannetti**

Introduced and read first time: February 4, 2005

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Notaries Public - Electronic Notarization**

3 FOR the purpose of establishing a system of electronic notarization for certain  
4 electronic documents; requiring the Secretary of State to implement a  
5 registration system for electronic notaries; specifying the circumstances under  
6 which a notary public may register as an electronic notary; specifying certain  
7 requirements for electronic notarization; providing certain penalties; and  
8 generally relating to the notarization of electronic documents.

9 BY adding to

10 Article - State Government

11 New subtitle designation "Subtitle 1. Generally" to immediately precede

12 Section 18-101; and Section 18-201 through 18-215, inclusive, to be under

13 the new subtitle "Subtitle 2. Electronic Notarization"

14 Annotated Code of Maryland

15 (2004 Replacement Volume)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
17 MARYLAND, That the new subtitle designation "Subtitle 1. Generally" of the State  
18 Government Article of the Annotated Code of Maryland be added to immediately  
19 precede Section 18-101.

20 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
21 read as follows:

22 **Article - State Government**

23 **SUBTITLE 2. ELECTRONIC NOTARIZATION.**

24 18-201.

25 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
26 INDICATED.

1 (B) "ELECTRONIC" MEANS TECHNOLOGY HAVING ELECTRICAL, DIGITAL,  
2 MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

3 (C) "ELECTRONIC DOCUMENT" MEANS INFORMATION THAT IS CREATED,  
4 GENERATED, SENT, COMMUNICATED, RECEIVED, OR STORED BY ELECTRONIC  
5 MEANS.

6 (D) "ELECTRONIC JOURNAL" MEANS AN ELECTRONIC DEVICE FOR CREATING  
7 AND PRESERVING A CHRONOLOGICAL RECORD OF ELECTRONIC NOTARIZATIONS  
8 PERFORMED BY A NOTARY, THAT:

9 (1) SECURES ENTRIES USING INDUSTRY-STANDARD ENCRYPTION AND  
10 ACCESS TO WHICH IS CONTROLLED EXCLUSIVELY BY THE NOTARY;

11 (2) DOES NOT ALLOW A JOURNAL ENTRY TO BE ALTERED IN CONTENT  
12 OR SEQUENCE BY THE NOTARY OR ANY OTHER PERSON AFTER A RECORD OF THE  
13 NOTARIZATION IS ENTERED AND STORED;

14 (3) ALLOWS ENTRIES TO BE VIEWED, PRINTED OUT, AND COPIED  
15 ELECTRONICALLY BY ANY PERSON USING A PASSWORD CREATED BY AND UNDER  
16 THE CONTROL OF THE NOTARY;

17 (4) HAS A BACKUP SYSTEM IN PLACE TO PROVIDE A DUPLICATE RECORD  
18 IN THE EVENT OF LOSS OF THE ORIGINAL RECORD;

19 (5) HAS THE CAPABILITY OF CAPTURING AND STORING THE IMAGES OF  
20 A HANDWRITTEN SIGNATURE AND A THUMBPRINT AS THEY ARE MADE, OR OF  
21 CAPTURING AND STORING IN RETRIEVABLE FORM, IN LIEU OF A THUMBPRINT,  
22 ANOTHER RECOGNIZED BIOMETRIC IDENTIFIER; AND

23 (6) HAS THE CAPABILITY OF PRINTING OUT ON PAPER AND OF  
24 PROVIDING ELECTRONIC COPIES OF ANY ENTRY, ANY COMBINATION OF ENTRIES, OR  
25 ALL ENTRIES, INCLUDING THE IMAGES OF RELATED HANDWRITTEN SIGNATURES  
26 AND THUMBPRINTS, PROVIDING THAT IF ANOTHER TYPE OF BIOMETRIC IDENTIFIER  
27 IS USED IN LIEU OF THUMBPRINTS, THESE IDENTIFIERS WILL BE INCLUDED IN ANY  
28 ELECTRONIC COPY.

29 (E) "ELECTRONIC NOTARIZATION" MEANS AN OFFICIAL ACT BY ANY  
30 ELECTRONIC NOTARY THAT INVOLVES AN ELECTRONIC DOCUMENT.

31 (F) "ELECTRONIC NOTARY" MEANS A NOTARY PUBLIC, APPOINTED IN  
32 ACCORDANCE WITH SUBTITLE 1 OF THIS TITLE, WHO HAS BEEN REGISTERED BY THE  
33 SECRETARY OF STATE AS HAVING THE CAPABILITY OF PERFORMING ELECTRONIC  
34 NOTARIAL ACTS.

35 (G) "ELECTRONIC NOTARY SEAL" MEANS INFORMATION WITHIN A NOTARIZED  
36 ELECTRONIC DOCUMENT THAT:

37 (1) INCLUDES THE ELECTRONIC NOTARY'S NAME, COUNTY, AND  
38 COMMISSION EXPIRATION DATE; AND

1 (2) GENERALLY CORRESPONDS TO INFORMATION IN NOTARIAL SEALS  
2 USED ON PAPER DOCUMENTS.

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

7 18-202.

8 (A) BEFORE PERFORMING ELECTRONIC NOTARIZATIONS, A NOTARY PUBLIC  
9 SHALL REGISTER WITH THE SECRETARY OF STATE THE CAPABILITY OF NOTARIZING  
10 ELECTRONICALLY.

11 (B) AFTER RENEWING A NOTARY PUBLIC COMMISSION, AND BEFORE  
12 PERFORMING ELECTRONIC NOTARIZATIONS DURING THE NEW TERM, AN  
13 ELECTRONIC NOTARY MUST RE-REGISTER WITH THE SECRETARY OF STATE THE  
14 CAPABILITY OF NOTARIZING ELECTRONICALLY.

15 18-203.

16 (A) THE SECRETARY OF STATE SHALL DEVELOP AN ELECTRONIC  
17 REGISTRATION FORM TO BE USED TO REGISTER ELECTRONIC NOTARIES.

18 (B) THE ELECTRONIC REGISTRATION FORM SHALL REQUIRE THE  
19 REGISTRANT TO PROVIDE THE FOLLOWING INFORMATION:

20 (1) A DESCRIPTION OF THE TECHNOLOGY THE REGISTRANT WILL USE  
21 TO CREATE AN ELECTRONIC SIGNATURE IN PERFORMING OFFICIAL ACTS;

22 (2) IF THE DEVICE USED TO CREATE THE REGISTRANT'S ELECTRONIC  
23 SIGNATURE WAS ISSUED OR REGISTERED THROUGH A LICENSED AUTHORITY:

24 (I) THE NAME OF THAT AUTHORITY;

25 (II) THE SOURCE OF THE LICENSE;

26 (III) THE STARTING AND EXPIRATION DATES OF THE DEVICE'S TERM  
27 OF REGISTRATION; AND

28 (IV) ANY REVOCATIONS, ANNULMENTS, OR OTHER PREMATURE  
29 TERMINATIONS OF ANY REGISTERED DEVICE OF THE REGISTRANT THAT WAS DUE  
30 TO MISUSE OR COMPROMISE OF THE DEVICE, WITH THE DATE, CAUSE, AND NATURE  
31 OF EACH TERMINATION EXPLAINED IN DETAIL; AND

32 (3) THE ELECTRONIC MAIL ADDRESS OF THE REGISTRANT.

33 (C) THE ELECTRONIC REGISTRATION FORM SHALL:

34 (1) BE SIGNED BY THE REGISTRANT USING THE ELECTRONIC  
35 SIGNATURE DESCRIBED IN THE FORM;

1 (2) INCLUDE ANY DECRYPTING INSTRUCTIONS, CODES, KEYS, OR  
2 SOFTWARE THAT ALLOW THE REGISTRATION TO BE READ; AND

3 (3) BE TRANSMITTED ELECTRONICALLY TO THE SECRETARY OF STATE.

4 18-204.

5 INFORMATION ON THE REGISTRATION FORM OF AN ELECTRONIC NOTARY  
6 PERTAINING TO DECRYPTING INSTRUCTIONS, CODES, KEYS, OR SOFTWARE MAY BE  
7 USED BY THE SECRETARY OF STATE, AND EMPLOYEES DESIGNATED BY THE  
8 SECRETARY, ONLY FOR THE PURPOSE OF PERFORMING OFFICIAL DUTIES UNDER  
9 THIS SUBTITLE. THE INFORMATION MAY NOT BE DISCLOSED TO ANY PERSON OTHER  
10 THAN:

11 (1) A GOVERNMENT AGENT ACTING IN AN OFFICIAL CAPACITY AND  
12 DULY AUTHORIZED TO OBTAIN THAT INFORMATION;

13 (2) A PERSON AUTHORIZED BY COURT ORDER; OR

14 (3) THE REGISTRANT OR THE REGISTRANT'S DULY AUTHORIZED AGENT.  
15 18-205.

16 THE FOLLOWING TYPES OF NOTARIAL ACTS MAY BE PERFORMED  
17 ELECTRONICALLY:

18 (1) ACKNOWLEDGMENT; AND

19 (2) JURAT.

20 18-206.

21 WHEN NOTARIZING AN ELECTRONIC SIGNATURE, AN ELECTRONIC NOTARY  
22 SHALL TAKE REASONABLE STEPS TO ENSURE THAT ANY REGISTERED DEVICE USED  
23 TO CREATE THE ELECTRONIC SIGNATURE IS CURRENT AND HAS NOT BEEN REVOKED  
24 OR TERMINATED BY ITS ISSUING OR REGISTERING AUTHORITY.

25 18-207.

26 AN ELECTRONIC NOTARY MAY NOT PERFORM AN ELECTRONIC NOTARIZATION  
27 IF THE SIGNER OF THE ELECTRONIC DOCUMENT:

28 (1) IS NOT IN THE PRESENCE OF THE ELECTRONIC NOTARY AT THE  
29 TIME OF NOTARIZATION;

30 (2) IS NOT PERSONALLY KNOWN TO THE NOTARY OR IDENTIFIED BY  
31 THE NOTARY THROUGH SATISFACTORY EVIDENCE;

32 (3) SHOWS A Demeanor THAT CAUSES THE NOTARY TO HAVE A  
33 COMPELLING DOUBT ABOUT WHETHER THE SIGNER KNOWS THE CONSEQUENCES  
34 OF THE TRANSACTION REQUIRING A NOTARIAL ACT; OR

1 (4) IN THE NOTARY'S JUDGMENT, IS NOT ACTING OF THE SIGNER'S OWN  
2 FREE WILL.

3 18-208.

4 ELECTRONIC NOTARIZATION SHALL BE SUBJECT TO THE RULES APPLICABLE  
5 TO NONELECTRONIC NOTARIAL ACTS WITH REGARD TO:

- 6 (1) DISQUALIFICATIONS;
- 7 (2) REFUSAL TO NOTARIZE;
- 8 (3) AVOIDANCE OF INFLUENCE;
- 9 (4) FALSE CERTIFICATES;
- 10 (5) IMPROPER DOCUMENTS;
- 11 (6) INTENT TO DECEIVE;
- 12 (7) TESTIMONIALS; AND
- 13 (8) UNAUTHORIZED PRACTICE OF LAW.

14 18-209.

15 AN ELECTRONIC NOTARY SHALL KEEP, MAINTAIN, PROTECT, AND PROVIDE FOR  
16 LAWFUL INSPECTION A CHRONOLOGICAL OFFICIAL JOURNAL OF ELECTRONIC  
17 NOTARIZATIONS THAT IS EITHER A PERMANENTLY BOUND BOOK WITH NUMBERED  
18 PAGES OR AN ELECTRONIC JOURNAL.

19 18-210.

20 IN PERFORMING AN ELECTRONIC NOTARIZATION OF AN ELECTRONIC  
21 DOCUMENT, AN ELECTRONIC NOTARY MUST ATTACH TO THE DOCUMENT, OR  
22 LOGICALLY ASSOCIATE WITH THE DOCUMENT, THE FOLLOWING COMPONENTS:

- 23 (1) THE OFFICIAL ELECTRONIC SIGNATURE OF THE ELECTRONIC  
24 NOTARY;
- 25 (2) THE ELECTRONIC NOTARY'S ELECTRONIC SEAL, WHICH COMPRISES:
  - 26 (I) THE ELECTRONIC NOTARY'S NAME EXACTLY AS STATED ON  
27 THE COMMISSION ISSUED IN ACCORDANCE WITH SUBTITLE 1 OF THIS TITLE;
  - 28 (II) THE COMMISSION SERIAL NUMBER;
  - 29 (III) THE WORDS "ELECTRONIC NOTARY PUBLIC";
  - 30 (IV) THE WORDS "STATE OF MARYLAND";

1 (V) THE EXPIRATION DATE OF THE COMMISSION;

2 (VI) THE EXPIRATION DATE OF ANY REGISTERED ELECTRONIC  
3 DEVICE USED TO CREATE THE ELECTRONIC NOTARY'S ELECTRONIC SIGNATURE;

4 (VII) THE ELECTRONIC NOTARY'S ELECTRONIC MAIL ADDRESS; AND

5 (VIII) THE ADDRESS OF THE ELECTRONIC NOTARY'S PRINCIPAL  
6 PLACE OF WORK OR BUSINESS; AND

7 (3) THE COMPLETED WORDING OF ONE OF THE FOLLOWING NOTARIAL  
8 CERTIFICATES:

9 (I) GENERAL ACKNOWLEDGMENT; OR

10 (II) JURAT.

11 18-211.

12 AN ELECTRONIC NOTARY'S ELECTRONIC SIGNATURE AND SEAL MAY BE USED  
13 ONLY FOR THE PURPOSE OF PERFORMING ELECTRONIC NOTARIZATION.

14 18-212.

15 WITHIN 5 DAYS AFTER A CHANGE OF AN ELECTRONIC NOTARY'S ELECTRONIC  
16 MAIL ADDRESS, THE NOTARY SHALL ELECTRONICALLY TRANSMIT TO THE  
17 SECRETARY OF STATE A NOTICE OF THE CHANGE, SIGNED WITH THE NOTARY'S  
18 OFFICIAL ELECTRONIC SIGNATURE.

19 18-213.

20 IF THE REGISTRATION OF THE DEVICE USED TO CREATE ELECTRONIC  
21 SIGNATURES EITHER EXPIRES OR IS CHANGED DURING THE ELECTRONIC NOTARY'S  
22 TERM OF OFFICE, THE NOTARY SHALL CEASE PERFORMING ELECTRONIC  
23 NOTARIZATIONS UNTIL:

24 (1) A NEW DEVICE IS DULY ISSUED OR REGISTERED TO THE NOTARY;  
25 AND

26 (2) THE NOTARY SENDS TO THE SECRETARY OF STATE AN  
27 ELECTRONICALLY SIGNED NOTICE THAT INCLUDES THE STARTING AND EXPIRATION  
28 DATES OF ANY NEW REGISTRATION TERM AND ANY OTHER NEW INFORMATION AT  
29 VARIANCE WITH INFORMATION IN THE ORIGINAL ELECTRONIC REGISTRATION  
30 FORM.

31 18-214.

32 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, WHEN AN  
33 ELECTRONIC NOTARY'S COMMISSION EXPIRES OR IS RESIGNED OR REVOKED, OR  
34 WHEN AN ELECTRONIC NOTARY DIES, THE NOTARY OR THE NOTARY'S DULY  
35 AUTHORIZED REPRESENTATIVE SHALL ERASE, DELETE, OR DESTROY THE CODING,

1 DISK, CERTIFICATE, CARD, SOFTWARE, OR PROGRAM THAT ENABLES ELECTRONIC  
2 AFFIXATION OF THE NOTARY'S OFFICIAL ELECTRONIC SIGNATURE.

3 (B) A FORMER ELECTRONIC NOTARY WHOSE PREVIOUS COMMISSION OR  
4 APPLICATION WAS NOT REVOKED OR DENIED BY THE STATE NEED NOT ERASE,  
5 DELETE, OR DESTROY THE CODING, DISK, CERTIFICATE, CARD, SOFTWARE, OR  
6 PROGRAM ENABLING ELECTRONIC AFFIXATION OF THE OFFICIAL ELECTRONIC  
7 SIGNATURE IF THE FORMER ELECTRONIC NOTARY IS RECOMMISSIONED AND  
8 REGISTERED AS AN ELECTRONIC NOTARY USING THE SAME ELECTRONIC  
9 SIGNATURE WITHIN 3 MONTHS AFTER COMMISSION EXPIRATION.

10 18-215.

11 (A) THE LIABILITY, SANCTIONS, AND REMEDIES FOR THE IMPROPER  
12 PERFORMANCE OF ELECTRONIC NOTARIZATIONS ARE THE SAME AS PROVIDED FOR  
13 IMPROPER PERFORMANCE OF NONELECTRONIC NOTARIAL ACTS.

14 (B) THE CRIMINAL SANCTIONS FOR IMPERSONATING AN ELECTRONIC  
15 NOTARY AND FOR SOLICITING, COERCING, OR INFLUENCING AN ELECTRONIC  
16 NOTARY TO COMMIT OFFICIAL MISCONDUCT IN PERFORMING ELECTRONIC  
17 NOTARIAL ACTS ARE THE SAME AS PROVIDED IN REGARD TO IMPERSONATION AND  
18 IMPROPER INFLUENCE IN PERFORMING NONELECTRONIC NOTARIAL ACTS.

19 (C) A PERSON WHO KNOWINGLY OBTAINS, CONCEALS, DAMAGES, OR  
20 DESTROYS THE CERTIFICATE, DISK, CODING, CARD, PROGRAM, SOFTWARE, OR  
21 HARDWARE ENABLING AN ELECTRONIC NOTARY TO AFFIX AN OFFICIAL  
22 ELECTRONIC SIGNATURE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS  
23 SUBJECT TO IMPRISONMENT NOT EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING  
24 \$2,500 OR BOTH.

25 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take  
26 effect October 1, 2005.