

**Department of Legislative Services**  
Maryland General Assembly  
2012 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 700  
Economic Matters

(Delegate Feldman)

Finance

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**Commercial Law - Uniform Commercial Code - Revisions to Title 1**

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This bill revises, updates, reorganizes, and clarifies Title I of the Maryland Uniform Commercial Code (MUCC) relating to general provisions applicable to MUCC. The bill clarifies the transactions to which Title I of MUCC applies, as well as specifies the effect of Title I of MUCC on the federal Electronic Signatures in Global and National Commerce Act. In addition, the bill authorizes the subordination of an obligation or a right to performance and specifies that subordination does not create a security interest against either the common debtor or a subordinated creditor.

The bill takes effect June 1, 2012.

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**Fiscal Summary**

**State Effect:** The bill does not directly affect governmental operations or finances.

**Local Effect:** The bill does not directly affect local governmental operations or finances.

**Small Business Effect:** Minimal.

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**Analysis**

**Bill Summary:** The bill alters the definition of “good faith” to mean honesty in fact in the conduct or transaction concerned.

The bill authorizes evidence of “course of performance” to be used to interpret a contract. Under the bill, course of performance is defined as a sequence of conduct between the parties to a particular transaction that exists if (1) the agreement of the parties with

respect to the transaction involves repeated occasions for performance by a party; and (2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

If the express terms of an agreement contradict course of dealing, usage of trade, and course of performance, the express terms control course of performance, course of dealing, and usage of trade. However, if course of performance contradicts course of dealing and usage of trade, course of performance prevails.

In addition, the bill specifies that – with two exceptions – Title I of MUCC modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act. Under the bill, nothing in Title I modifies, limits, or supersedes § 7001(c) of the Act or authorizes electronic delivery of any of the notices described in § 7003(b) of the Act.

### **Current Law:**

*Good Faith:* “Good faith” is defined as honesty in fact in the conduct or transaction concerned. Every contract or duty within MUCC imposes an obligation of good faith in its performance or enforcement.

*Course of Dealing and Usage of Trade:* A “course of dealing” is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

A “usage of trade” is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question.

Course of dealing and usage trade should be considered when interpreting the terms of an agreement. If the express terms of an agreement contradict course of dealing and usage of trade, the express terms control course of dealing and usage of trade. If course of dealing contradicts usage of trade, course of dealing controls usage of trade.

*Maryland Uniform Electronic Act:* The Maryland Uniform Electronic Act provides that a record or signature may not be denied legal effect or enforceability solely because it is in electronic form. An “electronic record” is defined as “a record created, generated, sent, communicated, received, or stored by electronic means.” An “electronic signature” is defined as “an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.” The Act applies only to transactions in which each party has agreed to conduct

transactions by electronic means. An agreement to conduct a transaction electronically may not be inferred solely from the fact that a party has used electronic means to pay an account or register a purchase warranty.

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the electronic signature of a person authorized to perform those acts for electronic signatures or records is recognized.

A law requiring that a record be retained is satisfied by retaining an electronic record that accurately reflects the information in the record and remains accessible for later reference. Record retention in this manner would satisfy a law requiring a record to be presented or retained in its original form.

The Act excludes transactions covered by parts of the Maryland Uniform Commercial Code; laws governing the execution of wills; and laws or regulations governing notice concerning the cancellation of utility services, rental or mortgage agreements for a primary residence, or the cancellation of health or life insurance.

**Background:** As of February 2012, 40 states and the U.S. Virgin Islands have enacted identical provisions to Title 1. Three states and the District of Columbia currently have amendments pending in the jurisdiction's legislature.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 747 (Senator Middleton) - Finance.

**Information Source(s):** State Department of Assessments and Taxation; Office of the Attorney General; State Board of Contract Appeals; Maryland Insurance Administration; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Uniform Law Commission; Department of Legislative Services

**Fiscal Note History:** First Reader - February 19, 2012  
mc/ljm Revised - House Third Reader - March 22, 2012

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