

SENATE BILL 137

P3
SB 611/15 – JPR

7lr1617
CF 7lr1207

By: **Senators Lee, Feldman, and Smith**

Introduced and read first time: January 16, 2017

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **State Government – Maryland Uniform Electronic Legal Materials Act**

3 FOR the purpose of requiring an official publisher that publishes legal material in an
4 electronic record to designate the electronic record as official, under certain
5 circumstances, and authenticate the electronic record in a certain manner; providing
6 that certain legal material in an electronic record is presumed to be an accurate copy
7 of the legal material; providing that certain legal material of another state in an
8 electronic record is presumed to be an accurate copy of the legal material under
9 certain circumstances; providing that a party contesting the authenticity of certain
10 legal material in an electronic record has a certain burden of proof; requiring an
11 official publisher of certain legal material in an electronic record to provide for the
12 preservation and security of the record, take certain actions regarding an electronic
13 record preserved under a certain provision of this Act, and ensure that the legal
14 material is reasonably available for use by the public on a permanent basis; requiring
15 an official publisher to consider certain factors in implementing this Act; requiring
16 that certain factors be considered in applying and construing this Act; providing that
17 this Act modifies, limits, and supersedes a certain federal law except as provided in
18 a certain provision of this Act; establishing a certain short title; providing for the
19 application of this Act; defining certain terms; and generally relating to the
20 Maryland Uniform Electronic Legal Materials Act.

21 BY adding to
22 Article – State Government
23 Section 10–1601 through 10–1611 to be under the new subtitle “Subtitle 16.
24 Maryland Uniform Electronic Legal Materials Act”
25 Annotated Code of Maryland
26 (2014 Replacement Volume and 2016 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – State Government

SUBTITLE 16. MARYLAND UNIFORM ELECTRONIC LEGAL MATERIALS ACT.

10–1601.

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

(B) “ELECTRONIC” MEANS RELATING TO TECHNOLOGY HAVING ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

(C) “LEGAL MATERIAL” MEANS, WHETHER OR NOT IN EFFECT, THE FOLLOWING:

(1) THE MARYLAND CONSTITUTION;

(2) THE SESSION LAWS;

(3) THE CODE OF MARYLAND;

(4) THE MARYLAND RULES;

(5) THE JOURNAL OF THE SENATE OF MARYLAND;

(6) THE JOURNAL OF THE HOUSE OF DELEGATES OF MARYLAND;

(7) A REPORTED DECISION OF:

(I) THE COURT OF APPEALS; OR

(II) THE COURT OF SPECIAL APPEALS;

(8) AN OPINION ISSUED BY THE OFFICE OF THE ATTORNEY GENERAL;

(9) THE CODE OF MARYLAND REGULATIONS;

(10) A FINAL DECISION IN A CONTESTED CASE ISSUED BY A UNIT OF STATE GOVERNMENT UNDER THE ADMINISTRATIVE PROCEDURE ACT; OR

(11) THE MARYLAND REGISTER.

(D) “OFFICIAL PUBLISHER” MEANS:

1 (1) FOR THE MARYLAND CONSTITUTION, THE DEPARTMENT OF
2 LEGISLATIVE SERVICES;

3 (2) FOR THE SESSION LAWS, THE DEPARTMENT OF LEGISLATIVE
4 SERVICES;

5 (3) FOR THE CODE OF MARYLAND, THE DEPARTMENT OF
6 LEGISLATIVE SERVICES;

7 (4) FOR THE MARYLAND RULES, THE COURT OF APPEALS;

8 (5) FOR THE JOURNAL OF THE SENATE OF MARYLAND, THE
9 DEPARTMENT OF LEGISLATIVE SERVICES;

10 (6) FOR THE JOURNAL OF THE HOUSE OF DELEGATES OF
11 MARYLAND, THE DEPARTMENT OF LEGISLATIVE SERVICES;

12 (7) FOR A REPORTED DECISION OF A COURT LISTED IN SUBSECTION
13 (C)(7) OF THIS SECTION, THE COURT OF APPEALS;

14 (8) FOR AN OPINION ISSUED BY THE OFFICE OF THE ATTORNEY
15 GENERAL, THE OFFICE OF THE ATTORNEY GENERAL;

16 (9) FOR THE CODE OF MARYLAND REGULATIONS, THE DIVISION OF
17 STATE DOCUMENTS;

18 (10) FOR A FINAL DECISION IN A CONTESTED CASE, THE UNIT OF STATE
19 GOVERNMENT THAT ISSUED THE DECISION; OR

20 (11) FOR THE MARYLAND REGISTER, THE DIVISION OF STATE
21 DOCUMENTS.

22 (E) "PUBLISH" MEANS TO DISPLAY, PRESENT, OR RELEASE TO THE PUBLIC,
23 OR CAUSE TO BE DISPLAYED, PRESENTED, OR RELEASED TO THE PUBLIC, BY THE
24 OFFICIAL PUBLISHER.

25 (F) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE
26 MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS
27 RETRIEVABLE IN PERCEIVABLE FORM.

28 (G) "UNIT" MEANS AN EXECUTIVE AGENCY, A DEPARTMENT, A BOARD, A
29 COMMISSION, OR ANY OTHER INSTRUMENTALITY OF THE STATE.

1 **10-1602.**

2 **THIS SUBTITLE APPLIES TO ALL LEGAL MATERIAL IN AN ELECTRONIC RECORD**
3 **THAT IS:**

4 **(1) DESIGNATED AS OFFICIAL UNDER § 10-1603 OF THIS SUBTITLE;**
5 **AND**

6 **(2) FIRST PUBLISHED ELECTRONICALLY ON OR AFTER OCTOBER 1,**
7 **2017.**

8 **10-1603.**

9 **(A) IF AN OFFICIAL PUBLISHER PUBLISHES LEGAL MATERIAL ONLY IN AN**
10 **ELECTRONIC RECORD, THE OFFICIAL PUBLISHER SHALL:**

11 **(1) DESIGNATE THE ELECTRONIC RECORD AS OFFICIAL; AND**

12 **(2) COMPLY WITH §§ 10-1604, 10-1606, AND 10-1607 OF THIS**
13 **SUBTITLE.**

14 **(B) AN OFFICIAL PUBLISHER THAT PUBLISHES LEGAL MATERIAL IN AN**
15 **ELECTRONIC RECORD AND IN A RECORD OTHER THAN AN ELECTRONIC RECORD MAY**
16 **DESIGNATE THE ELECTRONIC RECORD AS OFFICIAL IF THE PUBLISHER COMPLIES**
17 **WITH §§ 10-1604, 10-1606, AND 10-1607 OF THIS SUBTITLE.**

18 **10-1604.**

19 **(A) AN OFFICIAL PUBLISHER OF LEGAL MATERIAL IN AN ELECTRONIC**
20 **RECORD THAT IS DESIGNATED AS OFFICIAL UNDER § 10-1603 OF THIS SUBTITLE**
21 **SHALL AUTHENTICATE THE ELECTRONIC RECORD.**

22 **(B) TO AUTHENTICATE AN ELECTRONIC RECORD UNDER SUBSECTION (A)**
23 **OF THIS SECTION, THE OFFICIAL PUBLISHER SHALL PROVIDE A METHOD FOR A USER**
24 **TO DETERMINE THAT THE ELECTRONIC RECORD RECEIVED BY THE USER FROM THE**
25 **OFFICIAL PUBLISHER IS UNALTERED FROM THE OFFICIAL ELECTRONIC RECORD**
26 **PUBLISHED BY THE OFFICIAL PUBLISHER.**

27 **10-1605.**

(A) LEGAL MATERIAL IN AN ELECTRONIC RECORD THAT IS AUTHENTICATED UNDER § 10-1604 OF THIS SUBTITLE IS PRESUMED TO BE AN ACCURATE COPY OF THE LEGAL MATERIAL.

(B) IF ANOTHER STATE HAS ADOPTED A LAW SUBSTANTIALLY SIMILAR TO THIS SUBTITLE, LEGAL MATERIAL IN AN ELECTRONIC RECORD THAT IS DESIGNATED AS OFFICIAL AND AUTHENTICATED BY THE OFFICIAL PUBLISHER IN THAT STATE IS PRESUMED TO BE AN ACCURATE COPY OF THE LEGAL MATERIAL.

(C) A PARTY CONTESTING THE AUTHENTICATION OF LEGAL MATERIAL IN AN ELECTRONIC RECORD AUTHENTICATED UNDER § 10-1604 OF THIS SUBTITLE HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT THE RECORD IS NOT AUTHENTIC.

10-1606.

(A) AN OFFICIAL PUBLISHER OF LEGAL MATERIAL IN AN ELECTRONIC RECORD THAT IS OR WAS DESIGNATED AS OFFICIAL UNDER § 10-1603 OF THIS SUBTITLE SHALL PROVIDE FOR THE PRESERVATION AND SECURITY OF THE RECORD IN AN ELECTRONIC FORM OR A FORM THAT IS NOT ELECTRONIC.

(B) IF LEGAL MATERIAL IS PRESERVED UNDER SUBSECTION (A) OF THIS SECTION IN AN ELECTRONIC RECORD, THE OFFICIAL PUBLISHER SHALL:

(1) ENSURE THE INTEGRITY OF THE RECORD;

(2) PROVIDE FOR BACKUP AND DISASTER RECOVERY OF THE RECORD;

(3) ENSURE THE CONTINUING USABILITY OF THE MATERIAL; AND

(4) DELIVER A COPY TO THE STATE ARCHIVES.

10-1607.

AN OFFICIAL PUBLISHER OF LEGAL MATERIAL IN AN ELECTRONIC RECORD THAT IS OR WAS DESIGNATED AS OFFICIAL UNDER § 10-1603 OF THIS SUBTITLE SHALL ENSURE THAT THE LEGAL MATERIAL IS REASONABLY AVAILABLE FOR USE BY THE PUBLIC ON A PERMANENT BASIS.

10-1608.

1 IN IMPLEMENTING THIS SUBTITLE, AN OFFICIAL PUBLISHER OF LEGAL
2 MATERIAL IN AN ELECTRONIC RECORD SHALL CONSIDER:

3 (1) STANDARDS AND PRACTICES OF OTHER JURISDICTIONS;

4 (2) THE MOST RECENT STANDARDS REGARDING THE
5 AUTHENTICATION OF, PRESERVATION AND SECURITY OF, AND PUBLIC ACCESS TO
6 LEGAL MATERIAL IN AN ELECTRONIC RECORD AND OTHER ELECTRONIC RECORDS,
7 AS ADOPTED BY NATIONAL STANDARD-SETTING BODIES;

8 (3) THE NEEDS OF USERS OF LEGAL MATERIAL IN AN ELECTRONIC
9 RECORD;

10 (4) THE VIEW OF GOVERNMENTAL OFFICIALS AND ENTITIES AND
11 OTHER INTERESTED PERSONS; AND

12 (5) TO THE EXTENT PRACTICABLE, METHODS AND TECHNOLOGIES
13 FOR THE AUTHENTICATION OF, PRESERVATION AND SECURITY OF, AND PUBLIC
14 ACCESS TO LEGAL MATERIAL THAT ARE COMPATIBLE WITH METHODS AND
15 TECHNOLOGIES USED BY OTHER OFFICIAL PUBLISHERS IN THE STATE AND IN
16 OTHER STATES THAT HAVE ADOPTED A LAW SUBSTANTIALLY SIMILAR TO THIS
17 SUBTITLE.

18 10-1609.

19 IN APPLYING AND CONSTRUING THIS SUBTITLE, CONSIDERATION SHALL BE
20 GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT TO ITS
21 SUBJECT MATTER AMONG STATES THAT ENACT LAWS SUBSTANTIALLY SIMILAR TO
22 THIS SUBTITLE.

23 10-1610.

24 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THIS
25 SUBTITLE MODIFIES, LIMITS, AND SUPERSEDES THE FEDERAL ELECTRONIC
26 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

27 (B) THIS SUBTITLE DOES NOT:

28 (1) MODIFY, LIMIT, OR SUPERSEDE 15 U.S.C. § 7001(C); OR

29 (2) AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES
30 DESCRIBED IN 15 U.S.C. § 7003(B).

1 **10-1611.**

2 **THIS SUBTITLE MAY BE CITED AS THE MARYLAND UNIFORM ELECTRONIC**
3 **LEGAL MATERIALS ACT.**

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2017.