

SENATE BILL 83

P1

0lr0127

(PRE-FILED)

By: **Chair, Education, Health, and Environmental Affairs Committee (By Request
– Departmental – Information Technology)**

Requested: September 25, 2019

Introduced and read first time: January 8, 2020

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Committee amendments withdrawn, February 21, 2020

Senate action: Adopted with substitute committee amendments, February 21, 2020

Read second time: February 21, 2020

CHAPTER _____

1 AN ACT concerning

2 **State Government – Delivery of Notices and Communications by Electronic**
3 **Means – Authorized**

4 FOR the purpose of authorizing a unit of State government to deliver certain notices and
5 communications to a certain individual by electronic means instead of by first-class
6 mail under certain circumstances; providing that delivery of a certain notice or
7 communication in a certain manner shall be considered equivalent to delivery by
8 first-class mail; establishing certain requirements, procedures, and conditions for
9 the delivery of a notice or communication by electronic means instead of by
10 first-class mail; establishing the manner in which an individual may affirmatively
11 consent to or withdraw consent for the delivery of certain notices and
12 communications by electronic means instead of by first-class mail; requiring a unit
13 of State government to provide to an individual a certain statement under certain
14 circumstances; providing that a withdrawal of consent does not affect the legal
15 effectiveness, validity, or enforceability of a certain notice or communication;
16 requiring a unit to establish a certain process and provide notice of the process on
17 the unit's website; providing for the interpretation of this Act; providing for the
18 application of this Act; defining certain terms; and generally relating to the delivery
19 of notices and communications by a unit of State government to an individual.

20 BY adding to
21 Article – General Provisions

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Section 1-404
2 Annotated Code of Maryland
3 (2019 Replacement Volume)

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

6 **Article – General Provisions**

7 **1-404.**

8 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
9 INDICATED.

10 (2) ~~“DELIVERED~~ DELIVERY BY ELECTRONIC MEANS” MEANS THE
11 DELIVERY OF A NOTICE OR COMMUNICATION BY A UNIT TO AN E-MAIL ADDRESS AT
12 WHICH AN INDIVIDUAL HAS CONSENTED TO RECEIVE NOTICES OR
13 COMMUNICATIONS FROM THE UNIT.

14 (3) “DISABLED PERSON” HAS THE MEANING STATED IN § 13-101 OF
15 THE ESTATES AND TRUSTS ARTICLE.

16 (4) “GUARDIAN OF THE PERSON” MEANS A GUARDIAN OF THE
17 PERSON OF A DISABLED PERSON APPOINTED UNDER TITLE 13, SUBTITLE 7, PART
18 II OF THE ESTATES AND TRUSTS ARTICLE.

19 ~~(3)~~ (5) “UNIT” MEANS AN EXECUTIVE AGENCY, A DEPARTMENT, A
20 BOARD, A COMMISSION, OR ANY OTHER INSTRUMENTALITY OF THE STATE.

21 (B) (1) THIS SECTION APPLIES ONLY TO A NOTICE OR COMMUNICATION
22 THAT IS REQUIRED TO BE DELIVERED BY FIRST-CLASS MAIL.

23 (2) THIS SECTION DOES NOT APPLY TO ANY NOTICE OR
24 COMMUNICATION ~~FROM A UNIT:~~

25 (I) FROM A UNIT IN THE JUDICIAL BRANCH OF STATE
26 GOVERNMENT;

27 (II) REGARDING ELIGIBILITY, BENEFITS, OR SERVICES FOR A
28 MEDICAL ASSISTANCE PROGRAM ESTABLISHED UNDER TITLES 7, 10, 14, OR 15 OF
29 THE HEALTH – GENERAL ARTICLE; OR

30 (III) THAT IS REQUIRED TO BE DELIVERED BY CERTIFIED OR
31 REGISTERED MAIL.

1 (C) SUBJECT TO SUBSECTION (E) OF THIS SECTION, A UNIT MAY DELIVER BY
2 ELECTRONIC MEANS INSTEAD OF BY FIRST-CLASS MAIL A NOTICE OR
3 COMMUNICATION TO AN INDIVIDUAL IF THE UNIT MEETS THE REQUIREMENTS OF:

4 (1) THE FEDERAL 21ST CENTURY COMMUNICATIONS AND VIDEO
5 ACCESSIBILITY ACT; AND

6 (2) TITLE 21, SUBTITLE 1 OF THE COMMERCIAL LAW ARTICLE IN
7 OBTAINING THE INDIVIDUAL'S CONSENT TO HAVE NOTICES OR COMMUNICATIONS
8 SENT TO THAT INDIVIDUAL BY ELECTRONIC MEANS.

9 (D) A NOTICE OR COMMUNICATION DELIVERED IN ACCORDANCE WITH
10 SUBSECTION (C) OF THIS SECTION SHALL BE CONSIDERED EQUIVALENT TO
11 DELIVERY BY FIRST-CLASS MAIL.

12 (E) (1) A UNIT MAY DELIVER A NOTICE OR COMMUNICATION TO AN
13 INDIVIDUAL BY ELECTRONIC MEANS UNDER THIS SECTION ONLY IF THE INDIVIDUAL
14 HAS AFFIRMATIVELY CONSENTED TO DELIVERY BY ELECTRONIC MEANS INSTEAD OF
15 BY FIRST-CLASS MAIL AND HAS NOT WITHDRAWN THE CONSENT.

16 (2) IF A PROVISION REQUIRING A UNIT TO DELIVER NOTICE OR
17 COMMUNICATION TO AN INDIVIDUAL EXPRESSLY REQUIRES THE RECIPIENT TO
18 VERIFY OR ACKNOWLEDGE RECEIPT OF THE NOTICE OR COMMUNICATION, THE UNIT
19 MAY DELIVER THE NOTICE OR COMMUNICATION BY ELECTRONIC MEANS ONLY IF
20 THE METHOD USED PROVIDES A MEANS FOR THE INDIVIDUAL TO ELECTRONICALLY
21 VERIFY OR ACKNOWLEDGE RECEIPT OF THE NOTICE OR COMMUNICATION.

22 (F) (1) BEFORE AN INDIVIDUAL CONSENTS TO RECEIVE NOTICES OR
23 COMMUNICATIONS FROM A UNIT BY ELECTRONIC MEANS INSTEAD OF BY
24 FIRST-CLASS MAIL, THE UNIT SHALL PROVIDE TO THE INDIVIDUAL A CLEAR AND
25 CONSPICUOUS STATEMENT INFORMING THE INDIVIDUAL OF:

26 (I) ANY RIGHT OR OPTION OF THE INDIVIDUAL TO HAVE THE
27 NOTICES OR COMMUNICATIONS PROVIDED OR MADE AVAILABLE BY THE UNIT IN
28 PAPER OR ANOTHER NONELECTRONIC FORM;

29 (II) THE INDIVIDUAL'S RIGHT TO WITHDRAW CONSENT TO HAVE
30 NOTICES OR COMMUNICATIONS FROM THE UNIT DELIVERED BY ELECTRONIC
31 MEANS, INCLUDING INFORMATION ON HOW THE INDIVIDUAL MAY WITHDRAW
32 CONSENT;

33 (III) ANY CONDITIONS OR CONSEQUENCES IMPOSED ON THE
34 INDIVIDUAL IF THE INDIVIDUAL WITHDRAWS CONSENT;

1 (IV) WHETHER THE INDIVIDUAL'S CONSENT APPLIES:

2 1. ONLY TO NOTICES OR COMMUNICATIONS RELATED TO
3 A PARTICULAR TRANSACTION; OR

4 2. TO IDENTIFIED CATEGORIES OF NOTICE OR
5 COMMUNICATIONS FROM THE UNIT THAT MAY BE DELIVERED BY ELECTRONIC
6 MEANS;

7 (V) HOW AN INDIVIDUAL WHO CONSENTS TO DELIVERY OF A
8 NOTICE OR COMMUNICATION BY ELECTRONIC MEANS MAY OBTAIN A PAPER COPY OF
9 THE NOTICE OR COMMUNICATION;

10 (VI) HOW THE INDIVIDUAL CAN UPDATE THEIR CONTACT
11 INFORMATION; AND

12 (VII) THE HARDWARE AND SOFTWARE REQUIREMENTS FOR
13 ACCESS TO AND RETENTION OF A NOTICE OR COMMUNICATION DELIVERED BY
14 ELECTRONIC MEANS.

15 (2) WHEN AN INDIVIDUAL GIVES A UNIT CONSENT TO DELIVER
16 NOTICES AND COMMUNICATIONS BY ELECTRONIC MEANS INSTEAD OF BY
17 FIRST-CLASS MAIL THE INDIVIDUAL SHALL CONFIRM THE CONSENT
18 ELECTRONICALLY, IN A MANNER THAT REASONABLY DEMONSTRATES THAT THE
19 INDIVIDUAL CAN ACCESS THE INFORMATION IN THE ELECTRONIC FORM THAT THE
20 UNIT USES TO GIVE NOTICES OR COMMUNICATIONS.

21 (3) IF THE HARDWARE OR SOFTWARE REQUIREMENTS NEEDED TO
22 ACCESS OR RETAIN A NOTICE OR COMMUNICATION DELIVERED BY ELECTRONIC
23 MEANS CHANGE IN A WAY THAT CREATES A MATERIAL RISK THAT AN INDIVIDUAL
24 WILL NOT BE ABLE TO ACCESS OR RETAIN A SUBSEQUENT NOTICE OR
25 COMMUNICATION TO WHICH THE CONSENT APPLIES, THE UNIT SHALL PROVIDE TO
26 THE INDIVIDUAL:

27 (I) A STATEMENT SETTING FORTH THE REVISED HARDWARE
28 AND SOFTWARE REQUIREMENTS FOR ACCESS TO AND RETENTION OF A NOTICE OR
29 COMMUNICATION DELIVERED BY ELECTRONIC MEANS; AND

30 (II) A COPY OF THE STATEMENT REQUIRED UNDER PARAGRAPH
31 (1) OF THIS SUBSECTION.

32 (G) (1) A WITHDRAWAL OF CONSENT BY AN INDIVIDUAL UNDER THIS
33 SECTION:

1 **(I) SHALL BE EFFECTIVE WITHIN A REASONABLE PERIOD OF**
2 **TIME AFTER THE UNIT RECEIVES THE NOTICE OF THE WITHDRAWAL OF CONSENT**
3 **FROM THE INDIVIDUAL; AND**

4 **(II) DOES NOT AFFECT THE LEGAL EFFECTIVENESS, VALIDITY,**
5 **OR ENFORCEABILITY OF A NOTICE OR COMMUNICATION DELIVERED BY**
6 **ELECTRONIC MEANS TO THE INDIVIDUAL BEFORE THE WITHDRAWAL OF CONSENT IS**
7 **EFFECTIVE.**

8 **(2) FAILURE TO COMPLY WITH SUBSECTION (F)(3) OF THIS SECTION**
9 **MAY BE TREATED, AT THE ELECTION OF THE INDIVIDUAL, AS A WITHDRAWAL OF**
10 **CONSENT FOR PURPOSES OF THIS SECTION.**

11 **(H) A UNIT THAT PROVIDES DELIVERY OF NOTICES OR COMMUNICATIONS**
12 **BY ELECTRONIC MEANS UNDER THIS SECTION SHALL:**

13 **(1) ESTABLISH A PROCESS FOR A GUARDIAN OF THE PERSON OF A**
14 **DISABLED PERSON TO:**

15 **(I) WITHDRAW THE DISABLED PERSON'S CONSENT TO HAVE**
16 **NOTICES OR COMMUNICATIONS FROM THE UNIT DELIVERED BY ELECTRONIC**
17 **MEANS; AND**

18 **(II) REQUEST THAT NOTICES AND COMMUNICATIONS**
19 **REGARDING THE DISABLED PERSON BE DELIVERED TO THE GUARDIAN OF THE**
20 **PERSON; AND**

21 **(2) PROVIDE NOTICE OF THE PROCESS ON THE UNIT'S WEBSITE.**

22 **(I) NOTHING IN THIS SECTION MAY BE INTERPRETED TO:**

23 **(1) REQUIRE A UNIT TO DELIVER NOTICES OR COMMUNICATIONS BY**
24 **ELECTRONIC MEANS INSTEAD OF BY FIRST-CLASS MAIL; OR**

25 **(2) AFFECT POLICIES, PROCEDURES, SYSTEMS, OR PROTOCOLS FOR**
26 **THE DELIVERY OF NOTICES OR COMMUNICATIONS BY ELECTRONIC MEANS**
27 **IMPLEMENTED BY A UNIT UNDER ANY OTHER PROVISION OF LAW.**

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 2020.