

## Chapter 518

**(Senate Bill 83)**

AN ACT concerning

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

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

BY adding to

Article – General Provisions

Section 1-404

Annotated Code of Maryland  
(2019 Replacement Volume)

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

**Article – General Provisions****1-404.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Enacted under Article II, § 17(c) of the Maryland Constitution, May 8, 2020.