

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 763  
Economic Matters

(Delegate Feldman)

Finance

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**Insurance - Delivery of Notices by Electronic Means - Authorized**

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This bill authorizes an insurer to deliver by electronic means any notice to a party (an applicant, insured, or policyholder) related to cancellations, nonrenewals, premium increases, or reductions in coverage if the notice meets specified consent requirements.

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**Fiscal Summary**

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

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** “Delivered by electronic means” includes (1) delivery to an electronic mail address at which a party has consented to receive notice; and (2) posting on an electronic network, together with separate notice to a party directed to the electronic mail address at which the party has consented to receive notice of the posting.

A notice may be delivered by electronic means to a party if the party has affirmatively consented to that method of delivery and has not withdrawn the consent. The party must also be provided, prior to giving consent, with a clear and conspicuous statement informing the party of specified rights and other information pertaining to the scope of the party’s consent. The process used to obtain consent must meet the requirements of the Maryland Uniform Electronic Transactions Act.

A withdrawal of consent is effective within a reasonable period of time after the insurer receives the withdrawal and does not affect the legal effectiveness, validity, or enforceability of an electronic notice provided to the party before the withdrawal of consent is effective.

Additionally, if, after the party gives consent, the party is unable to access or retain the electronic notice due to a change in hardware or software requirements, the insurer must provide the party with a statement detailing the change in the hardware or software requirements and the right of the party to withdraw consent without the imposition of an undisclosed fee, condition, or other consequence. The failure of the insurer to provide this statement may be treated as a withdrawal of consent.

Delivery of a notice in accordance with the bill's provisions must be considered equivalent to any delivery method required elsewhere in Subtitle 6 (*Cancellations, Nonrenewals, Premium Increases, and Reductions in Coverage*) of Title 27 (*Unfair Trade Practices and Other Prohibited Practices*) of the Insurance Article.

A contract or policy of insurance's legal effectiveness, validity, or enforceability may not be denied solely because of the failure to obtain the party's appropriate electronic consent or confirmation of consent.

The bill does not apply to an electronic notice delivered before October 1, 2011, to a party who has given consent to receive notice in an electronic form before October 1, 2011. If the party's consent is on file with the insurer before October 1, 2011, the insurer must notify the party of the notices that may be electronically delivered under the bill and the party's right to withdraw the consent to receive electronic notice.

If an oral communication or a recording of an oral communication can be reliably stored and reproduced by an insurer, the oral communication or recording may qualify as an electronic notice for purposes of the bill.

If Subtitle 6 of Title 27 expressly requires the verification or acknowledgement of receipt of the notice, the notice may be delivered electronically only if the method allows for the verification or acknowledgment of receipt. Further, if Subtitle 6 of Title 27 requires a signature or record to be notarized, acknowledged, verified, or made under oath by an authorized person, the requirement is satisfied if the electronic signature of that person, along with any required documents, is attached to or logically associated with the signature or record.

The bill's provisions may not be construed to modify, limit, or supersede the provisions of the federal Electronic Signatures in Global and National Commerce Act, relating to the

use of an electronic record to provide or make available information that is required to be provided or made available in writing to a party.

**Current Law/Background:** Generally, the Insurance Article does not state that insurers may electronically deliver a required notice. However, when an insurer of a commercial policy or worker's compensation policy increases premiums by 20% or greater, the insurer must send notice to the named insured and insurance producer, if any, not less than 45 days prior to the renewal date of policy. Such notice may be sent through postal or electronic mail or through the insurer's online electronic system.

The Maryland Uniform Electronic Transactions Act states that a record or signature may not be denied legal effect or enforceability solely because it is in electronic form. The Act only applies to transactions between parties which have each agreed to conduct transactions by electronic means. Whether the parties have consented to conduct transactions electronically is determined from the context and surrounding circumstances, including the parties' conduct. Except for a separate and optional agreement, the primary purpose of which is to authorize a transaction to be conducted by electronic means, a provision to conduct a transaction electronically may not be contained in a standard form unless that provision is conspicuously displayed and separately consented to.

In 2000, the U.S. Congress enacted the federal Electronic Signatures in Global and National Commerce Act. The Act was intended to encourage the use of electronic records and signatures by ensuring the legal validity of electronic contracts. It requires that a consumer affirmatively consent to receive information electronically. A business must clearly and conspicuously disclose specified information before obtaining the consumer's consent. Furthermore, a consumer's consent to receive electronic records is valid only if the consumer "consents electronically or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent."

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 571 (Senator Pugh) - Finance.

**Information Source(s):** Maryland Insurance Administration, Federal Trade Commission, U.S. Department of Commerce, Department of Legislative Services

**Fiscal Note History:** First Reader - February 25, 2011  
ncs/ljm Revised - House Third Reader - March 30, 2011

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