

**Department of Legislative Services**  
Maryland General Assembly  
2020 Session

**FISCAL AND POLICY NOTE**

**Third Reader - Revised**

Senate Bill 83

(Chair, Education, Health, and Environmental Affairs  
Committee)(By Request - Departmental - Information  
Technology)

Education, Health, and Environmental Affairs

Health and Government Operations

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

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This departmental bill authorizes a unit of State government to deliver a notice or communication to an individual by electronic means instead of by first-class mail if the unit has obtained the individual's consent. The bill specifies requirements, procedures, and conditions for the delivery of a notice or communication by electronic means instead of by first-class mail. A notice or communication delivered electronically in accordance with the bill is considered equivalent to delivery by first-class mail. The bill applies only to a notice or communication that is required to be delivered by first-class mail and does not apply to any notice or communication (1) from a unit in the Judicial Branch; (2) regarding eligibility, benefits, or services for specified medical assistance programs; or (3) that is required to be delivered by certified or registered mail.

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**Fiscal Summary**

**State Effect:** None. The bill is authorizing in nature. To the extent that agencies voluntarily adopt electronic delivery methods under the bill, they may incur initial start-up costs and/or experience minimal annual cost savings.

**Local Effect:** None.

**Small Business Effect:** The Department of Information Technology (DoIT) has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

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## Analysis

### Bill Summary:

#### *Definitions*

“Unit” means an executive branch agency, a department, a board, a commission, or any other instrumentality of the State. “Delivery by electronic means” means the delivery of a notice or communication by a unit to an email address at which an individual has consented to receive notices or communications from the unit.

#### *Delivery of Notices or Communications by Electronic Means*

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 the federal 21st Century Communications and Video Accessibility Act (CVAA) and the requirements of the Maryland Uniform Electronic Transactions Act (MUETA) in obtaining the individual’s consent. A unit may deliver a notice or communication under the bill only if the individual has affirmatively consented to delivery by electronic means instead of by first-class mail and has not withdrawn the consent.

The bill’s provisions may not be construed 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 under any other provision of State law.

#### *Verification or Acknowledgement*

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.

#### *Obtaining Consent*

*Required Statement:* Before an individual consents to receive notices or communications from a unit by electronic means instead of by first-class mail, the unit must provide a clear and conspicuous statement informing the individual of specified rights and other information pertaining to the scope of the individual’s consent. The statement must include, among other things, (1) any right or option to receive notices or communications in nonelectronic form; (2) the individual’s right to withdraw consent; (3) information on how

the individual may withdraw consent; (4) any conditions or consequences imposed if the individual withdraws consent; and (5) the hardware and software requirements for access to and retention of a notice or communication delivered by electronic means.

*Electronic Confirmation:* When an individual gives a unit consent to deliver notices and communications by electronic means instead of by first-class mail, the individual must 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.

#### *Notice of Change in Hardware or Software Requirements*

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 must provide (1) a statement setting forth the revised hardware and software requirements for access to and retention of an electronic notice or communication and (2) a copy of the statement, described above, notifying the individual of specified rights and other information pertaining to the scope of the individual's consent. Failure to provide these statements may be treated as a withdrawal of consent.

#### *Withdrawal of Consent*

Withdrawal of consent must be effective within a reasonable period of time after the unit receives the notice of withdrawal of consent and does not affect the legal effectiveness, validity, or enforceability of a notice or communication delivered by electronic means before withdrawal of consent is effective.

A unit that provides delivery of notices or communications by electronic means under the bill must establish a process for a court-appointed guardian of the person of a disabled person to withdraw the disabled person's consent to have notices or communications from the unit delivered by electronic means and request that notices and communications regarding the disabled person be delivered to the guardian of the person. A unit must provide notice of the process on the unit's website.

### **Current Law:**

#### *Maryland Uniform Electronic Transactions Act*

MUETA 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 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.

### *21st Century Communications and Video Accessibility Act*

According to the Federal Communications Commission, CVAA, signed into law in 2010, requires advanced communications services and equipment to be accessible to people with disabilities. Advanced communications services subject to the law include electronic messaging services.

**Background:** DoIT advises that the bill is intended to improve agency customer service while providing cost savings to the State.

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## **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Department of Information Technology; Department of Commerce; Comptroller's Office; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; University System of Maryland; Maryland Department of Agriculture; Maryland Department of Disabilities; Maryland Department of the Environment; Maryland Department of Health; Department of Housing and Community Development; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Veterans Affairs; Office of Administrative Hearings; State Department of Assessments and Taxation; Maryland State Board of Elections; State Ethics Commission; Maryland Insurance Administration; Military Department; State Retirement Agency; Federal Communications Commission; Department of Legislative Services

**Fiscal Note History:** First Reader - January 17, 2020  
rh/mcr Third Reader - March 14, 2020  
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## ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL:     **Electronic Communications – Notices and Communications –  
Communications by Electronic Means Authorized**

BILL NUMBER:     SB 83

PREPARED BY:     Andi Morony

### PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL  
BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL  
BUSINESSES

### PART B. ECONOMIC IMPACT ANALYSIS

The opt in ability to use email instead of First Class mail may have some impact on small businesses, assuming that the business has a decrease in stamps, envelopes, paper, and trips to the mailbox, all of which take time and limited costs.