

# HOUSE BILL 763

C4

11r1772  
CF SB 571

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By: **Delegate Feldman**

Introduced and read first time: February 10, 2011

Assigned to: Economic Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 23, 2011

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Insurance – Delivery of Notices by Electronic Means – Authorized**

3 FOR the purpose of authorizing any notice to an applicant, insured, or policyholder  
4 required to be given by an insurer under certain provisions of law governing  
5 insurance policy cancellations, nonrenewals, premium increases, and reductions  
6 of coverage to be delivered by certain electronic means under certain  
7 circumstances; providing that delivery of a notice by electronic means shall be  
8 considered equivalent to the delivery method required under certain provisions  
9 of law; ~~requiring this Act to be construed in a manner consistent with a certain~~  
10 ~~federal law;~~ establishing certain requirements, procedures, and conditions for  
11 the delivery of a notice by electronic means; requiring an insurer to give certain  
12 notices to a party under certain circumstances; providing that an oral  
13 communication or a recording of an oral communication may qualify as a notice  
14 delivered by electronic means under certain circumstances; specifying the  
15 manner in which certain requirements relating to a signature or record may be  
16 satisfied; providing for the effect, construction, and application of this Act;  
17 defining ~~a certain term~~ certain terms; and generally relating to delivery of  
18 notices to applicants, insureds, and policyholders.

19 BY adding to

20 Article – Insurance

21 Section 27–601.2

22 Annotated Code of Maryland

23 (2006 Replacement Volume and 2010 Supplement)

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

3 **Article – Insurance**

4 **27-601.2.**

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

7 (2) ~~“DELIVERED~~ DELIVERED BY ELECTRONIC MEANS” INCLUDES:

8 ~~(1)~~ (1) DELIVERY TO AN ELECTRONIC MAIL ADDRESS AT WHICH  
9 ~~AN INSURED OR A POLICYHOLDER~~ A PARTY HAS CONSENTED TO RECEIVE  
10 NOTICE; AND

11 ~~(2)~~ (II) POSTING ON AN ELECTRONIC NETWORK, TOGETHER  
12 WITH SEPARATE NOTICE TO ~~AN INSURED OR A POLICYHOLDER~~ A PARTY  
13 DIRECTED TO THE ELECTRONIC MAIL ADDRESS AT WHICH THE ~~INSURED OR~~  
14 ~~POLICYHOLDER~~ PARTY HAS CONSENTED TO RECEIVE NOTICE OF THE POSTING.

15 (3) “PARTY” MEANS AN APPLICANT, AN INSURED, OR A  
16 POLICYHOLDER.

17 (B) SUBJECT TO SUBSECTION (D) OF THIS SECTION, ANY NOTICE TO ~~AN~~  
18 ~~INSURED OR POLICYHOLDER~~ A PARTY REQUIRED UNDER THIS SUBTITLE MAY BE  
19 DELIVERED BY ELECTRONIC MEANS PROVIDED THE PROCESS USED TO OBTAIN  
20 CONSENT OF THE ~~INSURED OR POLICYHOLDER~~ PARTY TO HAVE NOTICE  
21 DELIVERED BY ELECTRONIC MEANS MEETS THE REQUIREMENTS OF TITLE 21,  
22 SUBTITLE 1 OF THE COMMERCIAL LAW ARTICLE.

23 (C) DELIVERY OF A NOTICE IN ACCORDANCE WITH SUBSECTION (B) OF  
24 THIS SECTION SHALL BE CONSIDERED EQUIVALENT TO ANY DELIVERY METHOD  
25 REQUIRED UNDER THIS SUBTITLE, INCLUDING DELIVERY BY FIRST-CLASS MAIL,  
26 CERTIFIED MAIL, CERTIFICATE OF MAIL, OR CERTIFICATE OF MAILING.

27 (D) ~~THIS SECTION SHALL BE CONSTRUED IN A MANNER CONSISTENT~~  
28 ~~WITH THE FEDERAL ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL~~  
29 ~~COMMERCE ACT~~ A NOTICE MAY BE DELIVERED BY ELECTRONIC MEANS BY AN  
30 INSURER TO A PARTY UNDER THIS SECTION IF:

31 (1) THE PARTY HAS AFFIRMATIVELY CONSENTED TO THAT  
32 METHOD OF DELIVERY AND HAS NOT WITHDRAWN THE CONSENT;

1           **(2) THE PARTY, BEFORE GIVING CONSENT, IS PROVIDED WITH A**  
2 **CLEAR AND CONSPICUOUS STATEMENT:**

3           **(I) INFORMING THE PARTY OF:**

4                   **1. ANY RIGHT OR OPTION OF THE PARTY TO HAVE**  
5 **THE NOTICE PROVIDED OR MADE AVAILABLE IN PAPER OR ANOTHER**  
6 **NONELECTRONIC FORM;**

7                   **2. THE RIGHT OF THE PARTY TO WITHDRAW**  
8 **CONSENT TO HAVE NOTICE DELIVERED BY ELECTRONIC MEANS AND ANY FEES,**  
9 **CONDITIONS, OR CONSEQUENCES IMPOSED IN THE EVENT CONSENT IS**  
10 **WITHDRAWN;**

11                   **3. WHETHER THE PARTY'S CONSENT APPLIES:**

12                           **A. ONLY TO THE PARTICULAR TRANSACTION AS TO**  
13 **WHICH THE NOTICE MUST BE GIVEN; OR**

14                           **B. TO IDENTIFIED CATEGORIES OF NOTICES THAT**  
15 **MAY BE DELIVERED BY ELECTRONIC MEANS DURING THE COURSE OF THE**  
16 **PARTIES' RELATIONSHIP;**

17                           **4. A. HOW, AFTER CONSENT IS GIVEN, THE PARTY**  
18 **MAY OBTAIN A PAPER COPY OF A NOTICE DELIVERED BY ELECTRONIC MEANS;**  
19 **AND**

20                           **B. THE FEE, IF ANY, FOR THE PAPER COPY; AND**

21                   **5. THE PROCEDURES THE PARTY MUST USE TO**  
22 **WITHDRAW CONSENT TO HAVE NOTICE DELIVERED BY ELECTRONIC MEANS AND**  
23 **TO UPDATE INFORMATION NEEDED TO CONTACT THE PARTY ELECTRONICALLY;**

24           **(3) THE PARTY:**

25                   **(I) BEFORE GIVING CONSENT, IS PROVIDED WITH A**  
26 **STATEMENT OF THE HARDWARE AND SOFTWARE REQUIREMENTS FOR ACCESS**  
27 **TO AND RETENTION OF A NOTICE DELIVERED BY ELECTRONIC MEANS; AND**

28                   **(II) CONSENTS ELECTRONICALLY, OR CONFIRMS CONSENT**  
29 **ELECTRONICALLY, IN A MANNER THAT REASONABLY DEMONSTRATES THAT THE**  
30 **PARTY CAN ACCESS INFORMATION IN THE ELECTRONIC FORM THAT WILL BE**  
31 **USED FOR NOTICES DELIVERED BY ELECTRONIC MEANS AS TO WHICH THE**  
32 **PARTY HAS GIVEN CONSENT; AND**

1           **(4) AFTER CONSENT OF THE PARTY IS GIVEN, THE INSURER, IN**  
2 **THE EVENT A CHANGE IN THE HARDWARE OR SOFTWARE REQUIREMENTS**  
3 **NEEDED TO ACCESS OR RETAIN A NOTICE DELIVERED BY ELECTRONIC MEANS**  
4 **CREATES A MATERIAL RISK THAT THE PARTY WILL NOT BE ABLE TO ACCESS OR**  
5 **RETAIN A SUBSEQUENT NOTICE TO WHICH THE CONSENT APPLIES:**

6           **(I) PROVIDES THE PARTY WITH A STATEMENT OF:**

7                   **1. THE REVISED HARDWARE AND SOFTWARE**  
8 **REQUIREMENTS FOR ACCESS TO AND RETENTION OF A NOTICE DELIVERED BY**  
9 **ELECTRONIC MEANS; AND**

10                   **2. THE RIGHT OF THE PARTY TO WITHDRAW**  
11 **CONSENT WITHOUT THE IMPOSITION OF ANY FEE, CONDITION, OR**  
12 **CONSEQUENCE THAT WAS NOT DISCLOSED UNDER ITEM (2)(I)2 OF THIS**  
13 **SUBSECTION; AND**

14           **(II) COMPLIES WITH ITEM (2) OF THIS SUBSECTION.**

15           **(E) THIS SECTION DOES NOT AFFECT THE CONTENT OR TIMING OF ANY**  
16 **NOTICE REQUIRED UNDER THIS SUBTITLE.**

17           **(F) IF A PROVISION OF THIS SUBTITLE REQUIRING NOTICE TO BE**  
18 **PROVIDED TO A PARTY EXPRESSLY REQUIRES VERIFICATION OR**  
19 **ACKNOWLEDGMENT OF RECEIPT OF THE NOTICE, THE NOTICE MAY BE**  
20 **DELIVERED BY ELECTRONIC MEANS ONLY IF THE METHOD USED PROVIDES FOR**  
21 **VERIFICATION OR ACKNOWLEDGMENT OF RECEIPT.**

22           **(G) THE LEGAL EFFECTIVENESS, VALIDITY, OR ENFORCEABILITY OF**  
23 **ANY CONTRACT OR POLICY OF INSURANCE EXECUTED BY A PARTY MAY NOT BE**  
24 **DENIED SOLELY BECAUSE OF THE FAILURE TO OBTAIN ELECTRONIC CONSENT**  
25 **OR CONFIRMATION OF CONSENT OF THE PARTY IN ACCORDANCE WITH**  
26 **SUBSECTION (D)(3)(II) OF THIS SECTION.**

27           **(H) (1) A WITHDRAWAL OF CONSENT BY A PARTY DOES NOT AFFECT**  
28 **THE LEGAL EFFECTIVENESS, VALIDITY, OR ENFORCEABILITY OF A NOTICE**  
29 **DELIVERED BY ELECTRONIC MEANS TO THE PARTY BEFORE THE WITHDRAWAL**  
30 **OF CONSENT IS EFFECTIVE.**

31                   **(2) A WITHDRAWAL OF CONSENT BY A PARTY IS EFFECTIVE**  
32 **WITHIN A REASONABLE PERIOD OF TIME AFTER RECEIPT OF THE WITHDRAWAL**  
33 **BY THE INSURER.**

1           **(3) FAILURE TO COMPLY WITH SUBSECTION (D)(4) OF THIS**  
2 **SECTION MAY BE TREATED, AT THE ELECTION OF THE PARTY, AS A**  
3 **WITHDRAWAL OF CONSENT FOR PURPOSES OF THIS SECTION.**

4           **(I) THIS SECTION DOES NOT APPLY TO A NOTICE DELIVERED BY AN**  
5 **INSURER IN AN ELECTRONIC FORM BEFORE OCTOBER 1, 2011, TO A PARTY**  
6 **WHO, BEFORE OCTOBER 1, 2011, HAS CONSENTED TO RECEIVE NOTICE IN AN**  
7 **ELECTRONIC FORM OTHERWISE ALLOWED BY LAW.**

8           **(J) IF THE CONSENT OF A PARTY TO RECEIVE NOTICE IN AN**  
9 **ELECTRONIC FORM IS ON FILE WITH AN INSURER BEFORE OCTOBER 1, 2011,**  
10 **THE INSURER SHALL NOTIFY THE PARTY OF:**

11           **(1) THE NOTICES THAT MAY BE DELIVERED BY ELECTRONIC**  
12 **MEANS UNDER THIS SECTION; AND**

13           **(2) THE PARTY'S RIGHT TO WITHDRAW CONSENT TO HAVE**  
14 **NOTICES DELIVERED BY ELECTRONIC MEANS.**

15           **(K) (1) EXCEPT AS OTHERWISE PROVIDED BY LAW, IF AN ORAL**  
16 **COMMUNICATION OR A RECORDING OF AN ORAL COMMUNICATION CAN BE**  
17 **RELIABLY STORED AND REPRODUCED BY AN INSURER, THE ORAL**  
18 **COMMUNICATION OR RECORDING MAY QUALIFY AS A NOTICE DELIVERED BY**  
19 **ELECTRONIC MEANS FOR PURPOSES OF THIS SECTION.**

20           **(2) IF A PROVISION OF THIS SUBTITLE REQUIRES A SIGNATURE**  
21 **OR RECORD TO BE NOTARIZED, ACKNOWLEDGED, VERIFIED, OR MADE UNDER**  
22 **OATH, THE REQUIREMENT IS SATISFIED IF THE ELECTRONIC SIGNATURE OF**  
23 **THE PERSON AUTHORIZED TO PERFORM THOSE ACTS, TOGETHER WITH ALL**  
24 **OTHER INFORMATION REQUIRED TO BE INCLUDED BY THE PROVISION, IS**  
25 **ATTACHED TO OR LOGICALLY ASSOCIATED WITH THE SIGNATURE OR RECORD.**

26           **(L) THIS SECTION MAY NOT BE CONSTRUED TO MODIFY, LIMIT, OR**  
27 **SUPERSEDE THE PROVISIONS OF THE FEDERAL ELECTRONIC SIGNATURES IN**  
28 **GLOBAL AND NATIONAL COMMERCE ACT RELATING TO THE USE OF AN**  
29 **ELECTRONIC RECORD TO PROVIDE OR MAKE AVAILABLE INFORMATION THAT IS**  
30 **REQUIRED TO BE PROVIDED OR MADE AVAILABLE IN WRITING TO A PARTY.**

31           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
32 October 1, 2011.