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**SUBSTITUTE SENATE BILL 5655**

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**State of Washington**

**65th Legislature**

**2017 Regular Session**

**By** Senate Financial Institutions & Insurance (originally sponsored by Senators Angel and Mullet)

READ FIRST TIME 02/16/17.

1 AN ACT Relating to the delivery of insurance notices and  
2 documents by electronic means; and amending RCW 48.185.005.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 48.185.005 and 2015 c 263 s 1 are each amended to  
5 read as follows:

6 The definitions in this subsection apply throughout this chapter  
7 unless the context clearly requires otherwise.

8 (1)(a)(i) "Delivered by electronic means" includes:

9 (A) Delivery to an electronic mail address at which a party has  
10 consented to receive notices or documents; or

11 (B) Posting on an electronic network or site accessible via the  
12 internet, mobile application, computer, mobile device, tablet, or any  
13 other electronic device, together with separate notice of the posting  
14 which shall be provided by electronic mail to the address at which  
15 the party has consented to receive notice or by any other delivery  
16 method that has been consented to by the party.

17 (ii) "Delivered by electronic means" does not include any  
18 communication between an insurer and an insurance producer relating  
19 to RCW 48.17.591 and 48.17.595.

20 (b) "Party" means any recipient of any notice or document  
21 required as part of an insurance transaction, including but not

1 limited to an applicant, an insured, a policyholder, or an annuity  
2 contract holder.

3 (2) Subject to the requirements of this section, any notice to a  
4 party or any other document required under applicable law in an  
5 insurance transaction or that is to serve as evidence of insurance  
6 coverage may be delivered, stored, and presented by electronic means  
7 so long as it meets the requirements of the Washington electronic  
8 authentication act (chapter 19.34 RCW). An electronic signature is  
9 the equivalent of a digital signature, as those terms are defined in  
10 chapter 19.34 RCW, for the purposes of satisfying the requirements of  
11 chapter 19.34 RCW under this chapter.

12 (3) Delivery of a notice or document in accordance with this  
13 section is the equivalent to any delivery method required under  
14 applicable law, including delivery by first-class mail; first-class  
15 mail, postage prepaid; certified mail; or registered mail.

16 (4) A notice or document may be delivered by an insurer to a  
17 party by electronic means under this section only if:

18 (a) The party has affirmatively consented to that method of  
19 delivery and has not withdrawn the consent;

20 (b) The party, before giving consent, has been provided with a  
21 clear and conspicuous statement informing the party of:

22 (i) The right the party has to withdraw consent to have a notice  
23 or document delivered by electronic means at any time, and any  
24 conditions or consequences imposed in the event consent is withdrawn;

25 (ii) The types of notices and documents to which the party's  
26 consent would apply;

27 (iii) The right of a party to have a notice or document in paper  
28 form; and

29 (iv) The procedures a party must follow to withdraw consent to  
30 have a notice or document delivered by electronic means and to update  
31 the party's electronic mail address;

32 (c) The party:

33 (i) Before giving consent, has been provided with a statement of  
34 the hardware and software requirements for access to and retention of  
35 notices or documents delivered by electronic means; and

36 (ii) Consents electronically, or confirms consent electronically,  
37 in a manner that reasonably demonstrates that the party can access  
38 information in the electronic form that will be used for notices or  
39 documents delivered by electronic means as to which the party has  
40 given consent; and

1 (d) After consent of the party is given, the insurer, in the  
2 event a change in the hardware or software requirements needed to  
3 access or retain a notice or document delivered by electronic means  
4 creates a material risk that the party will not be able to access or  
5 retain a subsequent notice or document to which the consent applies:

6 (i) Shall provide the party with a statement that describes:

7 (A) The revised hardware and software requirements for access to  
8 and retention of a notice or document delivered by electronic means;  
9 and

10 (B) The right of the party to withdraw consent without the  
11 imposition of any fee, condition, or consequence that was not  
12 disclosed at the time of initial consent; and

13 (ii) Complies with (b) of this subsection.

14 (5) This section does not affect requirements related to content  
15 or timing of any notice or document required under applicable law.

16 (6) If this title or applicable law requiring a notice or  
17 document to be provided to a party expressly requires verification or  
18 acknowledgment of receipt of the notice or document, the notice or  
19 document may be delivered by electronic means only if the method used  
20 provides for verification or acknowledgment of receipt.

21 (7) The legal effectiveness, validity, or enforceability of any  
22 contract or policy of insurance executed by a party may not be denied  
23 solely because of the failure to obtain electronic consent or  
24 confirmation of consent of the party in accordance with subsection  
25 (4)(c)(ii) of this section.

26 (8)(a) A withdrawal of consent by a party does not affect the  
27 legal effectiveness, validity, or enforceability of a notice or  
28 document delivered by electronic means to the party before the  
29 withdrawal of consent is effective.

30 (b) A withdrawal of consent by a party is effective within a  
31 reasonable period of time, not to exceed thirty days, after receipt  
32 of the withdrawal by the insurer.

33 (c) Failure by an insurer to comply with subsections (4)(d) and  
34 (10) of this section may be treated, at the election of the party, as  
35 a withdrawal of consent for purposes of this section.

36 (9) This section does not apply to a notice or document delivered  
37 by an insurer in an electronic form before July 24, 2015, to a party  
38 who, before that date, has consented to receive a notice or document  
39 in an electronic form otherwise allowed by law.

1 (10) If the consent of a party to receive certain notices or  
2 documents in an electronic form is on file with an insurer before  
3 July 24, 2015, and pursuant to this section, an insurer intends to  
4 deliver additional notices or documents to such party in an  
5 electronic form, then prior to delivering such additional notices or  
6 documents electronically, the insurer shall:

7 (a) Provide the party with a statement that describes:

8 (i) The notices or documents that shall be delivered by  
9 electronic means under this section that were not previously  
10 delivered electronically; and

11 (ii) The party's right to withdraw consent to have notices or  
12 documents delivered by electronic means, without the imposition of  
13 any condition or consequence that was not disclosed at the time of  
14 initial consent; and

15 (b) Comply with subsection (4)(b) of this section.

16 (11) An insurer shall deliver a notice or document by any other  
17 delivery method permitted by law other than electronic means if:

18 (a) The insurer attempts to deliver the notice or document by  
19 electronic means and has a reasonable basis for believing that the  
20 notice or document has not been received by the party; or

21 (b) The insurer becomes aware that the electronic mail address  
22 provided by the party is no longer valid.

23 (12) A producer shall not be subject to civil liability for any  
24 harm or injury that occurs as a result of a party's election to  
25 receive any notice or document by electronic means or by an insurer's  
26 failure to deliver a notice or document by electronic means.

27 (13) This section does not modify, limit, or supersede the  
28 provisions of the federal electronic signatures in global and  
29 national commerce act (E-SIGN), P.L. 106-229, as amended.

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