

SENATE BILL REPORT

ESB 5471

As Amended by House, April 8, 2015

Title: An act relating to electronic notices and document delivery of insurance products.

Brief Description: Addressing electronic notices and document delivery of insurance products.

Sponsors: Senators Angel, Mullet, Litzow and Hobbs.

Brief History:

Committee Activity: Financial Institutions & Insurance: 2/05/15, 2/18/15 [DP].

Passed Senate: 3/06/15, 48-1.

Passed House: 4/08/15, 97-0.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: Do pass.

Signed by Senators Benton, Chair; Angel, Vice Chair; Mullet, Ranking Minority Member; Darneille, Fain, Hobbs, Pedersen and Roach.

Staff: Susan Jones (786-7404)

Background: The Office of the Insurance Commissioner regulates insurance in the state. This includes the oversight of insurance companies and insurance holding companies. There are various statutory provisions requiring that notices and other documents be provided to policyholders.

Electronic signatures and authentication are governed by federal and state law.

Summary of Engrossed Bill: Electronic Delivery of Insurance Notices and Other Documents Allowed. Any notice or any other document required under applicable law in an insurance transaction or that must serve as evidence of insurance coverage may be delivered, stored, and presented by electronic means so long as it meets the requirements of the Washington Electronic Authentication Act. The delivery may be made to a party who is any required recipient of the notices or documents. The party may include an applicant, an insured, a policyholder, or an annuity contract holder.

Delivery by electronic means is delivery to (1) an email address at which the party consented to receive the notices or documents or (2) posting on a website and sending a notice of the

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posting by email. Delivery by electronic means is equivalent to any other required delivery methods, such as first-class or certified mail.

Requirements for Electronic Delivery. A notice or document may be delivered by electronic means if the party consented to electronic delivery and has not withdrawn the consent. In addition, before giving the consent, the party must be provided with a statement informing the party of the following:

- the right to withdraw the consent and any conditions, or consequences imposed by the withdrawal;
- the types of notices or documents to which the consent would apply;
- the right to have a notice or document;
- how to withdraw the consent and update the email address; and
- the hardware and software requirements needed for electronic delivery.

The party must consent electronically or confirm consent electronically showing that the party can access the electronic information.

Notice must be provided to the party of changes in the hardware or software requirements and of the right to withdraw the consent. Failing to provide notice of changes in hardware or software requirements and the right to withdraw may be treated as withdrawal of consent.

When verification or acknowledgement of receipt is required under law, the notice or document may only be electronically delivered only if the delivery method provides for verification or acknowledgement of receipt.

An insurer must deliver a notice or document by other than electronic means if the insurer: (1) attempts electronic delivery and reasonable believes the notice or document has not been received; or (2) becomes aware that the email address is no longer valid.

No Producer Liability. A producer may not be held liable for harm resulting from a party's election for electronic delivery or by an insurer's failure to deliver a notice or document by electronic means.

Withdrawal and Preexisting Consent. Withdrawal of consent is effective within a reasonable period of time, not to exceed 30 days, after receipt by the insurer. Certain provisions apply if a party gave consent before the effective date of the act.

Website Posting of Standard Policies. Standard property and casualty insurance policies and endorsements without personally identifiable information may be mailed, delivered, or may be posted on the insurer's website provided it is (1) accessible to the insured and the producer of record while the policy is in force; (2) archived for six years after expiration; and (3) available upon request. The posted policies must allow for printing and saving by the insured and the producer of record. The insurer must provide information about obtaining the policy with the initial policy and any renewals.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: All 50 states have adopted the uniform electronic transaction act or similar laws, allowing consumers to receive documents electronically. Because of ambiguities in these laws, 17 states have enacted legislation or provided regulations that clarify that insurers may deliver documents electronically. The bill makes it clear that it is the policyholder's choice to receive documents electronically. The bill provides consumer convenience and helps companies manage costs. The bill is a work in progress. E-commerce is terrific but if a notice doesn't go through, a policy could be cancelled. The independent agents want to make sure they are included in certain notices because they have relationships with customers and want to make sure their customers are protected.

Persons Testifying: PRO: Senator Angel, prime sponsor; Nathan Fitzgerald, Property Casualty Insurer Assn., American Council of Life Insurers; Carrie Tellefson, Progressive Insurance, United States Automobile Assn.; Bill Stauffacher, Independent Insurance Agents & Brokers of WA.

House Amendment(s): Before giving consent to electronic delivery of notices and documents, a statement must be provided which includes the right to have a notice or document; the amendment clarifies that the right is to have the notice or document in paper form. The amendment also provides that if an insurer elects to post policy forms and endorsements on its website, the information the insurer must provide includes that the insurer, upon request and without charge, mails a paper copy of the insured's policy and endorsements to the insured.