

SHB 1845 - S COMM AMD

By Committee on Financial Institutions & Insurance

ADOPTED 04/05/2017

1 Strike everything after the enacting clause and insert the
2 following:

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

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

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

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

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

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

19 (b) "Party" means any recipient of any notice or document
20 required as part of an insurance transaction, including but not
21 limited to an applicant, an insured, a policyholder, or an annuity
22 contract holder.

23 (2) Subject to the requirements of this section, any notice to a
24 party or any other document required under applicable law in an
25 insurance transaction or that is to serve as evidence of insurance
26 coverage may be delivered, stored, and presented by electronic means
27 so long as it meets the requirements of the Washington electronic
28 authentication act (chapter 19.34 RCW). An electronic signature is
29 the equivalent of a digital signature, as those terms are defined in
30 chapter 19.34 RCW, for the purposes of satisfying the requirements of
31 chapter 19.34 RCW under this chapter.

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

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

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8 delivery and has not withdrawn the consent;

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

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

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

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

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

21 (c) The party:

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

25 (ii) Consents electronically, or confirms consent electronically,
26 in a manner that reasonably demonstrates that the party can access
27 information in the electronic form that will be used for notices or
28 documents delivered by electronic means as to which the party has
29 given consent; and

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

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

36 (A) The revised hardware and software requirements for access to
37 and retention of a notice or document delivered by electronic means;
38 and

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

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

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

7 (6) If this title or applicable law requiring a notice or
8 document to be provided to a party expressly requires verification or
9 acknowledgment of receipt of the notice or document, the notice or
10 document may be delivered by electronic means only if the method used
11 provides for verification or acknowledgment of receipt.

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

17 (8)(a) A withdrawal of consent by a party does not affect the
18 legal effectiveness, validity, or enforceability of a notice or
19 document delivered by electronic means to the party before the
20 withdrawal of consent is effective.

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

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

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

31 (10) If the consent of a party to receive certain notices or
32 documents in an electronic form is on file with an insurer before
33 July 24, 2015, and pursuant to this section, an insurer intends to
34 deliver additional notices or documents to such party in an
35 electronic form, then prior to delivering such additional notices or
36 documents electronically, the insurer shall:

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

38 (i) The notices or documents that shall be delivered by
39 electronic means under this section that were not previously
40 delivered electronically; and

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

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

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

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

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

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

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

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20 On page 1, line 2 of the title, after "means;" strike the
21 remainder of the title and insert "and amending RCW 48.185.005."

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