
Business & Financial Services Committee

HB 1329

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

Sponsors: Representatives Stanford and Vick.

Brief Summary of Bill

- Permits insurers to provide electronic notifications and documents to applicants, policyholders, and other recipients.
- Provides that signatures and notarization may be done electronically for any insurance document.
- Permits insurers to electronically post standard property and casualty insurance policies.

Hearing Date: 1/28/15

Staff: David Rubenstein (786-7153).

Background:

Insurers are extensively regulated under Washington law. In many statutory provisions, insurers are required to give notice to policyholders and provide copies of policies, forms, endorsements, and contracts. Provisions requiring such notice are scattered throughout the code, and many of them specify the mode by which notice must be made. Additionally, policy documents, such as the policy itself and any endorsements, are usually mailed to consumers regardless of how the consumer entered into the agreement with the insurer.

Electronic Records.

Under federal law, the Electronic Signatures in Global and National Commerce Act (E-Sign Act), allows the use of electronic records and signatures to satisfy any statutes, regulations, or rules of law requiring that such information be provided in writing, if the consumer has affirmatively consented to such use and has not withdrawn such consent. Before obtaining a consumer's

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consent, the entity requiring electronic records must disclose the consumer's right to use paper documents and the process for obtaining them, whether the consent applies only to the particular transaction or to an entire category of documents, and the procedures for withdrawing consent.

Electronic Signatures.

Electronic signatures and authentication are governed by both state and federal law. Under state law, the Office of the Secretary of State (OSOS) administers the Electronic Authentication Act, which governs the use of digital signature technology in electronic transactions and creates a process for the OSOS to license entities that verify the authenticity of digital signatures. These entities are referred to as certification authorities.

Digital signature technology is an encryption system used to protect the confidentiality of an electronic document and authenticate its source. Digital signature technology allows a person receiving an electronic document, such as a contract, to know that the signature on the document is authentic (meaning, from the person sending the document) and that the document has not been altered by anyone else since it was signed.

The technology operates on the basis of two digital keys, or codes, created by the person wanting to send encrypted messages. One key is the private key, which is known only to the signer of the electronic message, and the other is the signer's public key, which is given to the recipient of the electronic message. A message encrypted by the private key is digitally signed by the sender and the message then can be read only by the person using the corresponding public key.

To ensure these keys really do belong to the people to whom they appear to belong, each public key is provided with a computer-based certificate of authenticity. These certificates are created by the certification authorities, which verify that the public keys they certify belong to the people possessing the corresponding private keys.

The Uniform Electronic Transactions Act (UETA) governs electronic signatures and records in many states, but it has not been adopted in Washington.

The federal E-Sign Act also provides that signatures and contracts may not be denied legal effect or enforceability solely because they are in electronic form or are used for electronic records. An electronic signature is defined to mean an electronic sound, symbol, or process logically associated with a document and adopted by a person with the intent to sign the record.

Summary of Bill:

Electronic Notice.

Any notice or document required by law in an insurance transaction or any document that serves as evidence of insurance coverage may be delivered by electronic means, provided it meets the requirements of the UETA. Delivery by electronic means is defined as e-mail to an e-mail address provided by the recipient or posting to a website or other electronic space accessible to the recipient. If the document is posted to an electronic space, the recipient must receive separate notice of the posting. Any notice or document provided electronically has the same effect as any other method required by law, including mailing.

Oral communications can constitute electronic delivery, provided the communication can be recorded and reproduced by the insurer.

If the law requires a party to verify or acknowledge receipt of a particular document, it may be delivered electronically only if the method allows the party to verify or acknowledge it.

Electronic Signature.

For any document that must be signed or notarized under insurance laws, the requirement is satisfied with the electronic signature of the person authorized to sign or notarize, together with other necessary information.

Disclosure and Consent.

Notice or documents may be delivered electronically to a party, meaning an applicant, insured, policyholder, annuity contract holder, or other recipient in an insurance transaction, only if the party affirmatively consented to electronic delivery.

Additionally, the party must be given a clear and conspicuous statement of:

1. the party's option to receive paper notices and documents;
2. the right to withdraw consent for electronic delivery and any associated fees or consequences;
3. whether the consent applies to only a particular transaction or identified categories of notices;
4. the means by which the party can obtain a paper copy and any associated fees; and
5. the procedure a party must follow to withdraw consent to electronic delivery.

Hardware and Software Requirements.

Before giving consent, the party must be provided with a statement of hardware and software requirements for access to electronically delivered documents. Then, the party must consent or confirm consent electronically in such a way that demonstrates that the party can access the electronically delivered documents, but failure to comply with this requirement will not invalidate a policy or contract.

If hardware or software requirements change significantly, the insurer must inform the party of the change and the party's right to withdraw consent without any new fees or consequences and provide a new disclosure statement, outlined above. If the insurer did not properly notify the party after such a change, it may be treated as a withdrawal of consent by the party.

Withdrawal of consent, either affirmatively or by operation of law, does not affect the legal effectiveness of any notice or document delivered electronically before the withdrawal.

Preexisting Consent and Delivery.

Any document or notice delivered before this act becomes effective retains its validity, provided the recipient consented to electronic delivery. The insurer may continue to electronically deliver

documents under that preexisting consent if it notifies the party of any new documents that will be delivered electronically and the party's right to withdraw consent.

Posting of Standard Insurance Documents.

Regardless of the electronic delivery provisions, an insurer may post standard property and casualty insurance policies and endorsements to its website in lieu of mailing. In order to do so, the insurer must comply with the following:

- the policy must remain accessible for as long as it is in force;
- after the expiration, the insurer must archive the policy for five years;
- the insured must be able to print and save the policy using widely available software;
- the insurer must provide the insurer with a description of the exact policy and endorsement forms purchased, a method by which the insured may obtain a paper copy without charge, and the website address where the policy and endorsements are posted; and
- the insurer must notify the insured of any changes to forms and endorsements and the insured's right to receive paper copies.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.