

HOUSE BILL REPORT

ESB 5471

As Reported by House Committee On:
Business & Financial Services

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:

Business & Financial Services: 3/17/15, 3/18/15 [DPA].

Brief Summary of Engrossed Bill
(As Amended by Committee)

- Permits insurers to provide electronic notifications and documents to applicants, policyholders, and other recipients.
- Permits insurers to electronically post standard property and casualty insurance policies.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: Do pass as amended. Signed by 10 members: Representatives Kirby, Chair; Ryu, Vice Chair; Vick, Ranking Minority Member; Blake, G. Hunt, Hurst, Kochmar, McCabe, Santos and Stanford.

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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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that such information be provided in writing, if the consumer has affirmatively consented to such use and has not withdrawn such consent.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 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.

Summary of Amended 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 Electronic Authentication Act. Delivery by electronic means is defined as electronic mail (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.

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.

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:

- the party's option to receive paper notices and documents;
- the right to withdraw consent for electronic delivery and any associated fees or consequences;
- the types of documents to which the consent applies; and
- the procedure a party must follow to withdraw consent to electronic delivery and to update e-mail addresses.

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;
- informs the party of his or her right to withdraw consent without any conditions or consequences not disclosed at the time of initial consent; and
- provides a new disclosure statement, as described above.

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, as 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.

If the insurer fails to comply with the disclosure and consent requirements above, the failure may be treated as a withdrawal of consent, if the party so chooses. 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. If the party affirmatively withdraws consent, the withdrawal becomes effective not more than 30 days after the party's notice to the insurer.

If the insurer has reason to believe that electronic delivery has failed or the recipient's e-mail address is no longer valid, it must deliver the notice or document by any other method permitted by law.

Insurance Producers.

Electronic notice and delivery provisions in the act do not apply to termination of a business relationship between an insurer and an insurance producer (commonly known as "insurance agent").

An insurance agent has no civil liability for harm resulting from a party's election to receive electronic notices or an insurer's failure to deliver an electronic notice.

Posting of Standard Insurance Documents.

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

- The policy form must remain accessible for as long as it is in force.

- After the expiration, the insurer must archive the policy for six years.
- The insured and insurance agent must be able to print and save the policy using widely available software.
- The insurer must provide the insured with a description of the exact policy and endorsement forms purchased, notice of the insured's right to obtain paper copies without charge, and the website address where the policy and endorsements are posted.
- The insurer must notify the insured of any changes to forms and endorsements and the insured's right to receive paper copies.

Amended Bill Compared to Engrossed Bill:

The amended bill provides that when disclosing a party's rights relating to electronic notices and document delivery, an insurer must notify the party of the party's right to receive notices and documents in paper form. Additionally, it provides that when posting standard policy forms and endorsements, the insurer must, simultaneous with issuing the declarations page, mail paper copies of the policy and endorsement to the insured upon request.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Times are changing and insurance law needs to keep up, which this bill does while maintaining consumer protection and consumers' rights to receive paper copies. A similar bill was introduced last year, but it needed more work, which was finally reached this year in an agreement between the Office of the Insurance Commissioner, insurance companies, and the national trade associations. The bill reflects the national model that has been configured to Washington law. A similar law has been passed in 17 other states. This bill had overwhelming bipartisan support in the Senate.

Insurance agents are most concerned about protecting consumers and the role of agents themselves. This bill protects consumers with special provisions for termination of coverage documents. It also protects agents by both requiring paper copies of the termination of a business relationship and insulating agents from liability in the event electronic documents lead to a conflict between the insurer and insured.

Staff has identified two scrivener's errors that require an amendment to restore the bill to its intended form.

(Opposed) None.

Persons Testifying: Senator Angel, prime sponsor; Mel Sorensen, Property Casualty Insurance Association and American Council of Life Insurance; Carrie Tellefson, Progressive and United Services Automobile Association; and Bill Stauffacher, Independent Insurance Agents and Brokers of Washington.

Persons Signed In To Testify But Not Testifying: None.