

HOUSE BILL REPORT

SHB 1266

As Passed House:

February 28, 2023

Title: An act relating to the use of email by the office of the insurance commissioner when communicating with licensees.

Brief Description: Concerning email communication by the office of the insurance commissioner.

Sponsors: House Committee on Consumer Protection & Business (originally sponsored by Representatives Santos, Corry and Reeves).

Brief History:

Committee Activity:

Consumer Protection & Business: 1/20/23, 2/1/23 [DPS].

Floor Activity:

Passed House: 2/28/23, 97-0.

Brief Summary of Substitute Bill

- Establishes new procedures the Office of the Insurance Commissioner must follow to communicate with licensees by email.
- Creates a process by which licensees may obtain a refund of fines incurred for prior failures to respond to an email from the Office of the Insurance Commissioner.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Walen, Chair; Reeves, Vice Chair; Corry, Ranking Minority Member; McClintock, Assistant Ranking Minority Member; Chapman, Cheney, Connors, Donaghy, Hackney, Ryu, Sandlin, Santos and Volz.

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

Staff: Michelle Rusk (786-7153).

Background:

Communications with Licensees.

The Office of the Insurance Commissioner (Commissioner) oversees licensing for professions including insurance producers, title insurance agents, adjusters, and surplus line brokers. Licensees must maintain a place of business where they principally conduct transactions, and are required to provide a mailing address to the Commissioner and notify the Commissioner of any address changes within 30 days. Any notice or written communication from the Commissioner to a licensee that directly affects the person's license must be sent by mail to the licensee's last address of record.

Licensees must promptly reply in writing to an inquiry from the Commissioner, and a response is considered timely if received by the Commissioner within 15 business days from the licensee's receipt of the inquiry. A licensee's failure to timely respond violates the Insurance Code, and may subject the licensee to adverse action against their license and fines.

Summary of Substitute Bill:

Email Communications with Licensees.

Insurance producers, title insurance agents, adjusters, and surplus line producers are statutorily required to provide an email address to the Commissioner, and must inform the Commissioner of any change within 30 days. The Commissioner may send written communications to a licensee by email if:

- the communication is not statutorily required to be sent by mail;
- the person has affirmatively consented to receive emails from the Commissioner; and
- the email does not require a response; and if an email requires a response, the Commissioner must follow additional procedural email requirements.

The following are communications that directly affect a person's license and must be sent by mail:

- a notification of investigation;
- a notification of audit, and findings resulting from such audit; and
- a final written communication the Commissioner must send under the Commissioner's new procedural email requirements.

Commissioner's Procedural Email Requirements.

When an email from the Commissioner requires a response, the Commissioner must:

- send no fewer than two emails with the subject line: "Response Required"; and
- prominently display in every email, in large font, a disclosure stating that failure to timely respond violates statute and subjects a person to fines and license revocation, and describing the requirements of a timely response.

Licensees must "timely respond" to an email from the Commissioner, and a response is considered timely if received by the Commissioner within 15 business days from the licensee's receipt of the inquiry. If the Commissioner follows required email procedures, and a licensee fails to respond in a timely manner, the licensee may be subject to fines or adverse action against their license only if:

- the Commissioner complied with all procedural email requirements;
- the Commissioner sent a third and final written inquiry by certified mail to a person's last mailing address on file with the Commissioner following the requirements above; and
- the Commissioner failed to receive a response within 15 business days of the licensee's receipt of the written inquiry.

If the Commissioner sends a licensee an email and is notified the email is undeliverable, the Commissioner must resend the notice once by mail to a person's last known address on record with the Commissioner.

The following communications from the Commissioner are not subject to procedural email requirements: (1) emails sent to an applicant prior to the issuance of a license, and (2) auto-generated system emails regarding a license application or license renewal processes.

Remedy Established.

A remedy is established for affected licensees to seek a refund of fines they incurred for email-based violations occurring before July 1, 2023. The following definitions are established:

- "Affected licensee" means any licensee who, prior to July 1, 2023, was penalized by the Commissioner for failure to provide a timely response to an inquiry of the Commissioner that was only sent to the licensee by email.
- "Email-based violation" means a violation of a licensee's obligation to timely respond to an inquiry from the Commissioner, as this requirement existed prior to July 1, 2023, resulting from an affected licensee's failure to provide a timely response to an inquiry of the Commissioner where such inquiry was only sent to the affected licensee by email. A violation for failure to respond to an email from the Commissioner that is connected to a different violation of any insurance laws or rules is not an email-based violation.

The Commissioner must develop and implement a process for affected licensees to petition the Commissioner for the removal of related disciplinary investigations and orders from the affected licensee's public disciplinary records as a result of an email-based violation. A licensee petitioning the Commissioner for removal must provide documentation demonstrating that disciplinary investigations and orders on the licensee's records were the result of a violation occurring prior to July 1, 2023.

Upon receipt of a petition, the Commissioner must immediately:

- remove any related disciplinary investigations and orders from the licensee's public disciplinary record;
- send a notice to the National Insurance Producer Registry (NIPR) stating the Commissioner took erroneous administrative action against the licensee and request that NIPR expunge its records of the administrative action for the affected licensee; and
- send the affected licensee a copy of the Commissioner's notice to NIPR.

The Commissioner must identify the amount of money collected as fines from affected licensees for email-based violations and refund the money to each affected licensee from the Commissioner's existing operating budget.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2023

Staff Summary of Public Testimony:

(In support) Insurance producers can be valued partners in insurance transactions. As a result of errors by the Commissioner, licensees have experienced financial consequences and had their insurance producer licenses jeopardized. It is difficult to invest the time and money to challenge a regulator like the Commissioner. Here in particular, the Commissioner took enforcement action against a licensee who did not receive the email the Commissioner said it sent, and the licensee had their license suspended. Evidence in an insurance producer's file of a suspended license can be devastating. Insurance companies may not renew your appointment, new companies may not appoint you, and other agents may use this in competition. Clients can look this up and question a licensee's integrity.

As background and context for this policy, under current law, insurance producers are allowed to charge a fee as part of insurance transactions. The Commissioner undertook a survey one to two years ago of licensed producers, about whether or not they charged a fee and how they disclosed that fee. Nothing in the survey indicated that a response was required to the Commissioner, and nothing in the survey indicated that if a response did not occur, disciplinary action could result from that failure to respond. Over the last 1-1/2 years, more than 100 agencies were fined with a failure to respond to the survey. It shouldn't happen that way. This policy starts the process for better communication that agencies and producers deserve from their regulator. It starts the process for those who were unfairly fined and unfairly dinged with a failure to respond when no response was required. The industry seeks a good relationship with the regulator, but in the end we have to find a way to get things right.

The Commissioner's process of using email and issuing insurance code violations to people

for not responding is difficult to understand and challenging to navigate. In the present day, people use notifications like "read receipt" to confirm if someone receives an email. The Commissioner should make their email subject lines more clear and send a registered letter before taking action against a licensee. It should also refund people fined under the old email procedures.

(Opposed) None.

Persons Testifying: Representative Sharon Tomiko Santos, prime sponsor; Bill Stauffacher, Independent Insurance Agents and Brokers of Washington; and Karl Robinson, Robinson Insurance Group.

Persons Signed In To Testify But Not Testifying: None.