

ESB 5471 - H COMM AMD

By Committee on Business & Financial Services

ADOPTED 4/8/2015

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

3 "NEW SECTION. **Sec. 1.** The definitions in this subsection apply  
4 throughout this chapter unless the context clearly requires  
5 otherwise.

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

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

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

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

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

22 (2) Subject to the requirements of this section, any notice to a  
23 party or any other document required under applicable law in an  
24 insurance transaction or that is to serve as evidence of insurance  
25 coverage may be delivered, stored, and presented by electronic means  
26 so long as it meets the requirements of the Washington electronic  
27 authentication act (chapter 19.34 RCW).

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

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

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2 delivery and has not withdrawn the consent;

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

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

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

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

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

15 (c) The party:

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

19 (ii) Consents electronically, or confirms consent electronically,  
20 in a manner that reasonably demonstrates that the party can access  
21 information in the electronic form that will be used for notices or  
22 documents delivered by electronic means as to which the party has  
23 given consent; and

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

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

30 (A) The revised hardware and software requirements for access to  
31 and retention of a notice or document delivered by electronic means;  
32 and

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

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

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

39 (6) If this title or applicable law requiring a notice or  
40 document to be provided to a party expressly requires verification or

1 acknowledgment of receipt of the notice or document, the notice or  
2 document may be delivered by electronic means only if the method used  
3 provides for verification or acknowledgment of receipt.

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

9 (8)(a) A withdrawal of consent by a party does not affect the  
10 legal effectiveness, validity, or enforceability of a notice or  
11 document delivered by electronic means to the party before the  
12 withdrawal of consent is effective.

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

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

19 (9) This section does not apply to a notice or document delivered  
20 by an insurer in an electronic form before the effective date of this  
21 section to a party who, before that date, has consented to receive a  
22 notice or document in an electronic form otherwise allowed by law.

23 (10) If the consent of a party to receive certain notices or  
24 documents in an electronic form is on file with an insurer before the  
25 effective date of this section, and pursuant to this section, an  
26 insurer intends to deliver additional notices or documents to such  
27 party in an electronic form, then prior to delivering such additional  
28 notices or documents electronically, the insurer shall:

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

30 (i) The notices or documents that shall be delivered by  
31 electronic means under this section that were not previously  
32 delivered electronically; and

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

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

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

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

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

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

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

13 NEW SECTION. **Sec. 2.** (1) Notwithstanding any other provisions  
14 of this chapter, standard property and casualty insurance policy  
15 forms and endorsements that do not contain personally identifiable  
16 information may be mailed, delivered, or posted on the insurer's web  
17 site. If the insurer elects to post insurance policy forms and  
18 endorsements on its web site in lieu of mailing or delivering them to  
19 the insured, it must comply with all of the following conditions:

20 (a) The policy forms and endorsements must be accessible to the  
21 insured and the producer of record and remain that way for as long as  
22 the policy is in force;

23 (b) After the expiration of the policy, the insurer must archive  
24 its expired policy forms and endorsements for a period of six years  
25 or other period required by law, and make them available upon  
26 request;

27 (c) The policy forms and endorsements must be posted in a manner  
28 that enables the insured and producer of record to print and save the  
29 policy form and endorsements using programs or applications that are  
30 widely available on the internet and free to use;

31 (d) The insurer must provide the following information in, or  
32 simultaneous with, each declarations page provided at the time of  
33 issuance of the initial policy and any renewals of that policy:

34 (i) A description of the exact policy and endorsement forms  
35 purchased by the insured;

36 (ii) A description of the insured's right to receive, upon  
37 request and without charge, a paper copy of the policy and  
38 endorsements by mail;

1 (iii) The internet address where their policy and endorsements  
2 are posted;

3 (iv) The insurer, upon request and without charge, mails a paper  
4 copy of the insured's policy and endorsements to the insured; and

5 (v) Notice, in the manner in which the insurer customarily  
6 communicates with the insured, of any changes to the forms or  
7 endorsements, the insured's right to obtain, upon request and without  
8 charge, a paper copy of such forms or endorsements, and the internet  
9 address where such forms or endorsements are posted.

10 (2) Nothing in this section affects the timing or content of any  
11 disclosure or other document required to be provided or made  
12 available to any insured under applicable law.

13 NEW SECTION. **Sec. 3.** If any provision of this act or its  
14 application to any person or circumstance is held invalid, the  
15 remainder of the act or the application of the provision to other  
16 persons or circumstances is not affected.

17 NEW SECTION. **Sec. 4.** Sections 1 and 2 of this act constitute a  
18 new chapter in Title 48 RCW."

19 Correct the title.

EFFECT: Provides that when disclosing a party's rights relating  
to electronic notices and documents delivery, an insurer must notify  
the party of the party's right to receive notices and documents in  
paper form. 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.

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