

# FINAL BILL REPORT

## SHB 1845

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Synopsis as Enacted

**Brief Description:** Concerning the delivery of insurance notices and documents by electronic means.

**Sponsors:** House Committee on Business & Financial Services (originally sponsored by Representatives Vick, Kirby and Haler).

**House Committee on Business & Financial Services**  
**Senate Committee on Financial Institutions & Insurance**

### **Background:**

#### Electronic Delivery of Insurance-Related Notices or Documents.

A 2015 law established that any notice to a party or any other document required applicable law in an insurance transaction or that is to serve as evidence of insurance coverage may be delivered, stored, and presented by electronic means so long as it meets the requirements of the Washington Electronic Authentication Act (WEAA). Pursuant to the 2015 law, and separate from any requirements under the WEAA, various requirements must be met before an insurer may deliver notices and documents electronically to a party, including through electronic mail (e-mail).

The party to receive electronic notices or documents must affirmatively consent to that method of delivery. Consent may later be withdrawn. Before giving consent, the party must be provided with a clear and conspicuous statement informing the party of procedures to withdraw consent, consequences of withdrawing consent, and other information.

Additionally, before giving consent, the party must be provided with a statement of the hardware and software needed to access and retain any electronic notices or documents. And the party must consent electronically, or confirm consent electronically, in a manner that reasonably demonstrates that the party can access information in the electronic form that will be used for notices or documents if consent is given. After consent is given, a change in hardware or software requirements necessary to access or retain an electronic notice or document may require an insurer to provide the party with information about the hardware or software changes, the party's right to withdraw consent, and other disclosures.

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*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.*

An insurer must deliver a notice or document by another delivery method permitted by law, other than electronically, if the insurer attempts to deliver the notice or document by electronic means and has a reasonable basis for believing that the notice or document has not been received by the party, or the insurer becomes aware that the e-mail address provided by the party is no longer valid.

#### Washington Electronic Authentication Act.

The WEAA, enacted in 1996, is separate from the Insurance Code. The WEAA allows the use of digital signature technology in electronic transactions and creates a process for the voluntary licensing of certification authorities. The Office of the Secretary of State is responsible for implementing and administering the WEAA. The focus of the WEAA is digital signatures, which are different than electronic signatures. Although not all electronic signatures are digital signatures, all digital signatures are electronic signatures.

The WEAA defines an electronic signature as a signature in electronic form attached to or logically associated with an electronic record, including but not limited to a digital signature. A digital signature is an electronic signature that is a transformation of a message using an algorithm that provides a secure key pair such that a person having the initial message and the signer's public key can accurately determine the following:

- whether the transformation was created using the private key that corresponds to the signer's public key; and
- whether the message has been altered since the transformation was made.

Under the WEAA, certification authorities may become licensed by the Secretary of State to issue certificates to subscribers. A subscriber is listed in a certificate, and holds a private key that corresponds with a public key. The subscriber may use the private key to affix a digital signature to a document, which another party can verify the validity of using the public key of the subscriber. The WEAA imposes duties on certification authorities as well as on subscribers of certification authorities.

Where a law requires a signature, or provides certain consequences in the absence of a signature, the WEAA establishes that the law is satisfied by a digital signature if the following conditions are met:

- the digital signature must be verified by reference to the public key listed in a valid certificate issued by a licensed certification authority;
- the digital signature must have been affixed by the signer with the intention of signing the message; and
- the recipient has no knowledge or notice that the signer either breached a duty as a subscriber or does not rightfully hold the private key used to affix the digital signature.

However, the WEAA also provides that it does not preclude a mark from being valid as a signature under other applicable law.

#### **Summary:**

#### Electronic Delivery of Insurance-Related Notices or Documents.

In any notice to a party or any other document required under applicable law in an insurance transaction or that is to serve as evidence of insurance coverage that is delivered, stored, or presented by electronic means, an electronic signature is the equivalent of a digital signature for purposes of satisfying the requirements of the Washington Electronic Authentication Act.

**Votes on Final Passage:**

House	98	0	
Senate	48	0	(Senate amended)
House	96	0	(House concurred)

**Effective:** July 23, 2017