



To: House Insurance Committee

From: Jerry Slaughter
Executive Director

Date: February 20, 2013

Subject: HB 2107; the Electronic Notice and Document Act

The Kansas Medical Society appreciates the opportunity to submit the following comments on HB 2107, which deals with the use and transmission of electronic notices and transactions. We do not have a position on the bill itself, but would like to offer an amendment to clarify that it would not apply to certain licensed insurers.

As background, the Kansas Medical Society is a statewide association which represents nearly 4600 physicians [medical doctors (MDs) or osteopathic doctors (DOs)] in all medical specialties. KMS is organized as a 501(c)(6) nonprofit under the US Internal Revenue Code [26 U.S.C. § 501(c)].

Since 1976, in order to practice their profession, physicians and other health care providers in Kansas have been required by law to obtain medical malpractice insurance coverage. In 1989, in response to a severe medical liability crisis which had caused most of the insurance companies insuring physicians to quit doing business in our state, KMS formed an insurance company to ensure that the required liability insurance would always be available to our member doctors and other health care providers affiliated with them. The company we started, the Kansas Medical Mutual Insurance Company, or KaMMCO, as it is commonly known, is organized and operating under Article 12a of Chapter 40, and I believe it is still the only company operating under that particular section of the insurance laws.

HB 2107 creates new law governing the use and transmission of certain electronic notices and documents by the insurance industry. Our understanding is that it is needed by larger out-of-state companies who do business in many states, and therefore understandably would like consistent rules governing the use and transmission of electronic documents. Our company's situation is quite a bit different however, since it operates almost exclusively within the state of Kansas. For the electronic transmission of documents and transactions our company complies with the Kansas Uniform Electronic Transactions Act, at KSA 16-1601 *et seq.* We would like to continue operating pursuant to the provisions of UETA, which meets our needs adequately, and will be less costly and complicated to comply with. To that end we have suggested an amendment (which is attached to this testimony) which simply exempts companies organized under our unique statute from the provisions of HB 2107.

We would ask the committee to amend HB 2107 as we have proposed. Thank you for the opportunity to offer these comments.

1 (D) The legal effectiveness, validity, or enforceability of any contract
2 or policy of insurance executed by a party may not be denied solely
3 because of the failure to obtain electronic consent or confirmation of
4 consent of the party in accordance with subsection (c)(3).

5 (E) A withdrawal of consent by a party does not affect the legal
6 effectiveness, validity, or enforceability of a notice or document delivered
7 by electronic means to the party before the withdrawal of consent is
8 effective. A withdrawal of consent by a party is effective within a
9 reasonable period of time after receipt of the withdrawal by the insurer.
10 Failure by an insurer to comply with subsection (c)(4) may be treated, at
11 the election of the party, as a withdrawal of consent for purposes of this
12 section.

13 (H) This section does not apply to a notice or document delivered by
14 an insurer in an electronic form before the effective date of this act to a
15 party who, before that date, has consented to receive a notice or document
16 in an electronic form otherwise allowed by law.

17 (I) If the consent of a party to receive certain notices or documents in
18 an electronic form is on file with an insurer before the effective date of this
19 act, and pursuant to this section, an insurer intends to deliver additional
20 notices or documents to such party in an electronic form, then prior to
21 delivering such additional notices or documents electronically, the insurer
22 shall notify the party of the notices or documents that may be delivered by
23 electronic means under this section that were not previously delivered
24 electronically and the party's right to withdraw consent to have notices or
25 documents delivered by electronic means.

26 (J) Except as otherwise provided by law, if an oral communication or
27 a recording of an oral communication from a party can be reliably stored
28 and reproduced by an insurer, the oral communication or recording may
29 qualify as a notice or document delivered by electronic means for purposes
30 of this section. If a provision of this title or applicable law requires a
31 signature or notice or document to be notarized, acknowledged, verified or
32 made under oath, the requirement is satisfied if the electronic signature of
33 the person authorized to perform those acts, together with all other
34 information required to be included by the provision, is attached to or
35 logically associated with the signature, notice or document.

36 (K) This section shall not be construed to modify, limit or supersede
37 the provisions of the federal electronic signatures in global and national
38 commerce act, public law 106-229.

39 Sec. 5. This act shall take effect and be in force from and after its
40 publication in the statute book.

KMS amendment
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(I) The provisions of this act shall not apply to any mutual insurance company organized pursuant to article 12a of chapter 40 of the Kansas statutes annotated.