

HOUSE BILL No. 2107

By Committee on Insurance

1-28

Proposed amendment by Bill Sneed
2/13/13
House Committee on Insurance
Prepared by David Wiese
Office of Revisor of Statutes

1 AN ACT concerning insurance; relating to the transmission of electronic
2 notices and other documents; enacting the electronic notice and
3 document act.

4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. The provisions of sections 1 through 4, and amendments
6 thereto, shall be known and may be cited as the electronic notice and
7 document act.

8 Sec. 2. This act allows the use of electronic notices and documents in
9 lieu of any other provision of law for the sending of insurance notices and
10 documents. In order to send electronic notices and documents to another
11 party the insurer must obtain the consent of the other party as provided in
12 this act.

13 Sec. 3. For the purposes of this act:

14 (a) "Delivered by electronic means" includes:

15 (1) Delivery to an electronic mail address at which a party has
16 consented to receive notices or documents; or

17 (2) posting on an electronic network or site accessible via the internet,
18 mobile application, computer, mobile device, tablet or any other electronic
19 device, together with separate notice to a party directed to the electronic
20 mail address at which the party has consented to receive notice of the
21 posting;

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

25 Sec. 4. (a) Subject to subsection (c), any notice to a party or any other
26 document required under applicable law in an insurance transaction or that
27 is to serve as evidence of insurance coverage may be delivered, stored and
28 presented by electronic means so long as it meets the requirements of this
29 act.

30 (b) Delivery of a notice or document in accordance with this section
31 shall be considered equivalent to any delivery method required under
32 applicable law, including delivery by first class mail, first class mail,
33 postage prepaid, certified mail, certificate of mail, or certificate of mailing.
34 (c) A notice or document may be delivered by electronic means by an
35 insurer to a party under this section if:
36

of the posting, which shall be provided by
to the

or by any other delivery method that has been
consented to by the party

1 (1) The party has affirmatively consented to that method of delivery
2 and has not withdrawn the consent;
3 (2) the party, before giving consent, is provided with a clear and
4 conspicuous statement informing the party of:
5 (A) Any right or option of the party to have the notice or document
6 provided or made available in paper or another non-electronic form;
7 (B) the right of the party to withdraw consent to have a notice or
8 document delivered by electronic means and any fees, conditions or
9 consequences imposed in the event consent is withdrawn;
10 (C) whether the party's consent applies: (i) Only to the particular
11 transaction as to which the notice or document must be given; or (ii) to
12 identified categories of notices or documents that may be delivered by
13 electronic means during the course of the parties' relationship;
14 (D) (i) the means, after consent is given, by which a party may obtain
15 a paper copy of a notice or document delivered by electronic means; and
16 (ii) the fee, if any, for the paper copy; and
17 (E) the procedure a party must follow to withdraw consent to have a
18 notice or document delivered by electronic means and to update
19 information needed to contact the party electronically;
20 (3) the party, before giving consent, is provided with a statement of
21 the hardware and software requirements for access to and retention of a
22 notice or document delivered by electronic means; and consents
23 electronically, or confirms consent electronically, in a manner that
24 reasonably demonstrates that the party can access information in the
25 electronic form that will be used for notices or documents delivered by
26 electronic means as to which the party has given consent; and
27 (4) after consent of the party is given, the insurer, in the event a
28 change in the hardware or software requirements needed to access or retain
29 a notice or document delivered by electronic means creates a material risk
30 that the party will not be able to access or retain a subsequent notice or
31 document to which the consent applies, provides the party with a statement
32 of: (A) The revised hardware and software requirements for access to and
33 retention of a notice or document delivered by electronic means; and (B)
34 the right of the party to withdraw consent without the imposition of any
35 fee, condition, or consequence that was not disclosed under subsection (c)
36 (2).
37 (d) This act does not affect requirements related to content or timing
38 of any notice or document required under applicable law.
39 (e) If a provision of this act or applicable law requiring a notice or
40 document to be provided to a party expressly requires verification or
41 acknowledgment of receipt of the notice or document, the notice or
42 document may be delivered by electronic means only if the method used
43 provides for verification or acknowledgment of receipt.

1 (f) 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 (g) 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 ~~(k)~~ 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 ~~(l)~~ 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.

(j) Notwithstanding any other provisions of this section, insurance policies and endorsements that do not contain personally identifiable information may be mailed, delivered or posted on the insurer's website. If the insurer elects to post insurance policies and endorsements on its website in lieu of mailing or delivering such policies and endorsements to the insured, such insurer shall comply with all of the following conditions:

(1) The policy and endorsements shall be easily accessible and remain that way for as long as the policy is in force;
(2) After the expiration of the policy, the insurer shall archive its expired policies and endorsements and make them available upon request;

(3) The policies and endorsements shall be posted in a manner that enables the insured to print and save the policy and endorsements using programs or applications that are widely available on the internet and free to use;

(4) The insurer shall provide notice, at the time of issuance of the initial policy forms and any renewal forms, of a method by which insureds may obtain, upon request and without charge, a paper or electronic copy of their policy or endorsements;

(5) on each declarations page issued to an insured, the insurer shall clearly identify the exact policy and endorsement forms purchased by the insured; and

(6) the insurer shall provide notice of any changes to the forms or endorsements, and of the insured's right to obtain, upon request and without charge, a paper or electronic copy of such forms or endorsements.

, or the provisions of the uniform electronic transactions act, K.S.A. 16-1601 et seq., and amendments thereto