

As Amended by House Committee

Session of 2013

HOUSE BILL No. 2107

By Committee on Insurance

1-28

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

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

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

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

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

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

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

18 (2) posting on an electronic network or site accessible via the internet,
19 mobile application, computer, mobile device, tablet or any other electronic
20 device, together with separate notice ~~to a party directed to the~~ **of the**
21 **posting, which shall be provided by** electronic mail **to the** address at
22 which the party has consented to receive notice ~~of the posting~~ **or by any**
23 **other delivery method that has been consented to by the party.**

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

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

32 (b) Delivery of a notice or document in accordance with this section
33 shall be considered equivalent to any delivery method required under
34 applicable law, including delivery by first class mail; first class mail,
35 postage prepaid; certified mail; certificate of mail; or certificate of mailing.

36 (c) A notice or document may be delivered by electronic means by an

1 insurer to a party under this section if:

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

4 (2) the party, before giving consent, is provided with a clear and
5 conspicuous statement informing the party of:

6 (A) Any right or option of the party to have the notice or document
7 provided or made available in paper or another non-electronic form;

8 (B) the right of the party to withdraw consent to have a notice or
9 document delivered by electronic means and any fees, conditions or
10 consequences imposed in the event consent is withdrawn;

11 (C) whether the party's consent applies: (i) Only to the particular
12 transaction as to which the notice or document must be given; or (ii) to
13 identified categories of notices or documents that may be delivered by
14 electronic means during the course of the parties' relationship;

15 (D) (i) the means, after consent is given, by which a party may obtain
16 a paper copy of a notice or document delivered by electronic means; and
17 (ii) the fee, if any, for the paper copy; and

18 (E) the procedure a party must follow to withdraw consent to have a
19 notice or document delivered by electronic means and to update
20 information needed to contact the party electronically;

21 (3) the party, before giving consent, is provided with a statement of
22 the hardware and software requirements for access to and retention of a
23 notice or document delivered by electronic means; and consents
24 electronically, or confirms consent electronically, in a manner that
25 reasonably demonstrates that the party can access information in the
26 electronic form that will be used for notices or documents delivered by
27 electronic means as to which the party has given consent; and

28 (4) after consent of the party is given, the insurer, in the event a
29 change in the hardware or software requirements needed to access or retain
30 a notice or document delivered by electronic means creates a material risk
31 that the party will not be able to access or retain a subsequent notice or
32 document to which the consent applies, provides the party with a statement
33 of: (A) The revised hardware and software requirements for access to and
34 retention of a notice or document delivered by electronic means; and (B)
35 the right of the party to withdraw consent without the imposition of any
36 fee, condition, or consequence that was not disclosed under subsection (c)
37 (2).

38 (d) This act does not affect requirements related to content or timing
39 of any notice or document required under applicable law.

40 (e) If a provision of this act or applicable law requiring a notice or
41 document to be provided to a party expressly requires verification or
42 acknowledgment of receipt of the notice or document, the notice or
43 document may be delivered by electronic means only if the method used

1 provides for verification or acknowledgment of receipt.

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

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

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

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

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

34 (1) The policy and endorsements shall be easily accessible and
35 remain that way for as long as the policy is in force;

36 (2) after the expiration of the policy, the insurer shall archive its
37 expired policies and endorsements for seven years and make them
38 available upon request;

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

43 (4) the insurer shall provide notice, at the time of issuance of the

1 initial policy forms and any renewal forms, of a method by which
2 insureds may obtain, upon request and without charge, a paper or
3 electronic copy of their policy or endorsements;

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

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

11 ~~(j)~~(k) Except as otherwise provided by law, if an oral communication
12 or a recording of an oral communication from a party can be reliably
13 stored and reproduced by an insurer, the oral communication or recording
14 may qualify as a notice or document delivered by electronic means for
15 purposes of this section. If a provision of this title or applicable law
16 requires a signature or notice or document to be notarized, acknowledged,
17 verified or made under oath, the requirement is satisfied if the electronic
18 signature of the person authorized to perform those acts, together with all
19 other information required to be included by the provision, is attached to
20 or logically associated with the signature, notice or document.

21 (l) This section shall not affect any obligation of the insurer to
22 provide notice to any person other than the insured of any notice
23 provided to the insured.

24 ~~(k)~~(m) This section shall not be construed to modify, limit or
25 supersede the provisions of the federal electronic signatures in global and
26 national commerce act, public law 106-229, or the provisions of the
27 uniform electronic transactions act, K.S.A. 16-1601 et seq., and
28 amendments thereto.

29 (n) The provisions of this act shall not apply to any mutual
30 insurance company organized pursuant to article 12a of chapter 40 of
31 the Kansas Statutes Annotated, and amendments thereto.

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