

SESSION OF 2013

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2107

As Amended by Senate Committee on Financial
Institutions and Insurance

Brief*

HB 2107, as amended, would create the Electronic Notice and Document Act and also would amend a provision in the Insurance Code requiring notification to policyholders of adverse underwriting decisions and refunds.

Electronic Notice and Document Act

The bill would establish the Electronic Notice and Document Act, which would allow the use of electronic notices and documents for sending insurance notices and documents. In order to send electronic notices and documents to another party, the bill would require the insurer to obtain the consent of the other party, as provided in the Act.

Definitions

The bill would define “delivered by electronic means” to include:

- Delivery to an electronic mail address at which a party has consented to receive notices or documents; or
- Posting on an electronic network or site accessible to the internet, mobile application, computer, mobile device, tablet, or any other electronic

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

device, together with a separate notice of the posting, which would be required to be provided by e-mail to the address at which the party has consented to receive notice or by any other delivery method that has been consented to by the party.

In addition, the bill would define “party” as any recipient of any notice or document required as part of an insurance transaction, including, but not limited to, an applicant, an insured, a policyholder, or an annuity contract holder.

Electronic Delivery

A notice or document could be delivered by electronic means by an insurer to a party if:

- The party has affirmatively consented to the method of delivery and has not withdrawn consent;
- The party, before giving consent, is provided with a clear and conspicuous statement informing the party of:
 - Any right or option to have the notice or document provided in paper or other non-electronic form;
 - The right to withdraw consent to have a notice or document delivered by electronic means and any fees, conditions, or consequences imposed if consent is withdrawn;
 - Whether the party’s consent applies only to a particular transaction or to identified categories of notices or documents;
 - How a paper copy of a notice or document delivered electronically may be obtained and the fee, if any, for the paper copy; and

- The procedure to withdraw consent and to update information needed to contact the party electronically;
- The party, before giving consent, is provided with the hardware and software requirements to access and retain the notice or document and to provide electronic consent that shows the party can access the information electronically; and
- After consent is given, the insurer provides a statement to the party if the hardware and software requirements for access and retaining notice or documents has changed, and the right of party to withdraw consent without fees, conditions, or consequences.

Any notice or other document in an insurance transaction or that serves as evidence of insurance coverage would be allowed to be delivered, stored, and presented by electronic means, so long as it meets the requirements of the Act.

Delivery of a notice or other document would be considered equivalent to any delivery method required under applicable law, including delivery by first class mail; first class mail, postage prepaid; certified mail; certificate of mail; or certificate of mailing.

Posting Online and Delivery

The bill would allow insurance policies and endorsements that do not contain personally identifiable information to be mailed, delivered, or posted on the insurer's website. If the insurer would elect to post policies and endorsements on its website instead of mailing or delivering to the insured, the insurer would be required to comply with all of the following conditions:

- The policy and endorsements must be easily accessible and remain that way for as long as the policy is in force;
- After expiration of the policy, the insurer must archive its expired policies and endorsements for five years, making them available upon request;
- Policies and endorsements must be posted in a way that enables the insured to print and save the documents using programs or applications that are widely available and free to use;
- The insurer must provide notice of the method by which the insured may obtain a paper or electronic copy of their policy or endorsements upon request and free of charge;
- The insurer must clearly identify the exact policy and endorsements forms purchased by the insured on each declarations page issued; and
- The insurer must provide notice of any changes to the forms or endorsements and of the insured's right to obtain a paper or electronic copy upon request and without charge.

Consent and Applicability

The bill would not affect requirements related to content or timing of any notice or document required under applicable law. In addition, the bill would allow electronic delivery of a notice or document requiring verification or acknowledgment only if the delivery method used provides for verification or acknowledgment of receipt.

The bill would not allow denial of legal effectiveness, validity, or enforceability of any contract or policy of insurance solely due to the failure to obtain electronic consent or confirmation of consent by a party. A withdrawal of consent by

a party would be effective within a reasonable period of time after receipt of the withdrawal by the insurer. Failure by the insurer to comply with providing revised hardware and software requirements and allowing withdrawal of consent without a fee, conditions, or consequences, would constitute, at the election of the party, a withdrawal of consent.

In addition, the bill would not apply to a notice or document delivered electronically by an insurer before the effective date of the Act to a party who has consented to receive the notice or document electronically. However, after the effective date of the Act, the insurer would be required to notify the party of the notices or documents that could be delivered electronically under the Act, that were not previously delivered electronically. The party would have the right to withdraw consent.

The bill also would allow an oral communication or recording that could be reliably stored and reproduced by the insurer to qualify as a notice or document delivered electronically. The bill would allow electronic signatures that are attached to or logically associated with the signature, notice, or document to satisfy a requirement for a notice or document to be notarized, acknowledged, verified, or made under oath.

The bill would not affect any obligation of the insurer to provide notice to any person other than the insured of any notice provided to the insured. The bill also would not apply to any mutual insurance company organized pursuant to Kansas law, and the bill would not be construed to modify, limit, or supersede the provisions of the Federal Electronic Signature in Global and National Commerce Act (PL 106-229) or the Uniform Electronic Transactions Act (KSA 16-1601 *et seq.*).

Notification Requirements, Adverse Underwriting Decisions

The bill also would amend existing law relating to notice to policyholders of adverse underwriting decisions and refunds.

Current law provides that refunds to the applicant or individual proposed for coverage of the difference between the payment and earned premium, if any, in the event of a declination of insurance coverage, termination, or any other adverse underwriting decision must accompany the notice of the decision.

The bill would allow for applicants, policyholders, or individuals proposed for coverage, both with coverage in effect or not in effect, to receive refunds along with the notice of the adverse underwriting decision, or allow the refund and notice to be provided separately, so long as the refund is provided within ten days from the date of the notice.

The requirement would not apply to life insurance that is in effect, if the company or health maintenance organization includes with the notice of the adverse underwriting decision an offer of coverage to an applicant for life insurance under a different policy or at an increased premium.

Background

The bill was introduced by the House Committee on Insurance at the request of a representative of State Farm Insurance Companies.

At the House Committee hearing on the bill, proponents included America's Health Insurance Plans (AHIP), Kansas Association of Property & Casualty Insurance Companies (KAPCIC), Property Casualty Insurers Association of America (PCI), and State Farm Insurance Companies.

Proponents testified customers increasingly are showing preferences for electronic access to their records rather than receiving paper mailings. Additionally, proponents stated it is important that consumers have a choice to receive electronic delivery. The KAPCIC representative stated the Association's members support the bill, but requested amendments to the bill regarding the time limits companies have to keep expired policy information and how many times a company may provide one free printed copy of a policy.

The Kansas Medical Society provided neutral testimony on the bill, stating the association has no position on the bill, but requested that mutual insurance companies be exempted from the Act.

The House Committee amended the bill by clarifying the definition of "delivered by electronic means." In addition, the Committee adopted amendments regarding insurers posting policies and endorsements on its website and retaining expired policies and endorsements for seven years. The Committee also added language that the Act shall not modify, limit, or supersede the provisions of the Uniform Electronic Transactions Act, as provided in statute. The Committee added an exemption for mutual insurance companies and added language that states the bill shall not affect any obligation of the insurer to provide notice to any person other than the insured of any notice provided to the insured.

The Senate Committee on Financial Institutions and Insurance amended the bill to change the time frame required for archival of expired policies and to insert provisions relating to notification of policyholders of adverse underwriting decisions and refunds (HB 2339, as introduced).

The fiscal notes provided by the Division of the Budget on the original version of the bill and HB 2339 states passage of the bills would have no fiscal effect on Kansas Insurance Department operations.