

2013 DRAFTING REQUEST

Bill

Received: 2/22/2013 Received By: pkahler
Wanted: As time permits Same as LRB: -2574
For: Chad Weininger (608) 266-5840 By/Representing: Kirsten Seeman
May Contact: Drafter: pkahler
Subject: Insurance - miscellaneous Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: Rep.Weininger@legis.wisconsin.gov
Carbon copy (CC) to: Tamara.Dodge@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Allowing e-delivery of insurance notices and documents

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 2/27/2013	jdyer 3/15/2013	jfrantze 3/15/2013	_____			
/P1	pkahler 4/3/2013			_____	sbasford 3/15/2013		
/P2	pkahler 4/11/2013	jdyer 4/4/2013	jfrantze 4/4/2013	_____	sbasford 4/4/2013		
/P3	pkahler	jdyer	jmurphy	_____	srose		

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/P5	pkahler 6/11/2013	jdyer 6/7/2013	jfrantze 6/7/2013	_____	mbarman 6/7/2013		
/1	pkahler 6/24/2013	jdyer 6/13/2013	jmurphy 6/13/2013	_____	srose 6/13/2013		
/2		jdyer 6/24/2013	jmurphy 6/24/2013	_____	lparisi 6/24/2013	lparisi 8/23/2013	

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*not
needed*

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/?	pkahler	PI 3/14 jld	JH 2/25	KM 2/25			
			J 3/15				

FE Sent For:

<END>

Kahler, Pam

From: Gary, Aaron
Sent: Thursday, February 21, 2013 4:17 PM
To: Kahler, Pam
Cc: Hurley, Peggy; Kuczenski, Tracy
Subject: FW: Legislation draft
Attachments: E-Delivery for Insurance.pdf

Hi Pam,

Do you think this draft would be yours? Or do you think it is UETA (ch. 137, subch. II)?

Thanks. Aaron

From: Seeman, Kirsten
Sent: Thursday, February 21, 2013 4:04 PM
To: Gary, Aaron
Subject: Legislation draft

Hi, Aaron:

I'm looking to have legislation drafted on e-delivery. I've attached model legislation we'd like it to look like.

Please let me know if there's questions or concerns. Thanks!

Kirsten Seeman
Research Assistant
Office of Representative Chad Weininger
4th Assembly District
125 West, State Capitol
608-266-1184 / kirsten.seeman@legis.wi.gov

SECTION # . CR; 600.20

E-DELIVERY OF P&C or LIFE NOTICES OR DOCUMENTS

AN ACT TO ALLOW THE TRANSMISSION OF ELECTRONIC NOTICES OR DOCUMENTS RELATED TO INSURANCE AND INSURANCE POLICIES UNDER CERTAIN CIRCUMSTANCES.

BE IT ENACTED:

Section 1. Amend XXXX of the XXXX Code by adding a new section thereto as follows:

§XXX. Electronic Notices and Documents.

600.20 Electronic Notices and Documents.

(1) ~~(a)~~ In this section, the following words shall have the following meanings:

(a) ~~(1)~~ "Delivered by electronic means" includes:

1. ~~(1)~~ Delivery to an electronic mail address at which a party has consented to receive notices or documents; or
2. ~~(2)~~ Posting on an electronic network or site accessible via the internet, mobile application, computer, mobile device, tablet, or any other electronic device, together with separate notice to a party directed to the electronic mail address at which the party has consented to receive notice of the posting.

(b) ~~(2)~~ "Party" means 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.

(2) ~~(a)~~ ^a(b) Subject to subsection (d) of this section, 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 may be delivered, stored, and presented by electronic means so long as it meets the requirements of the Uniform Electronic Transactions Act [CITATION].

^{b/c}(c) Delivery of a notice or document in accordance with this section shall 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.

(3) ~~(a)~~ A notice or document may be delivered by electronic means by an insurer to a party under this section if:

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

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

1. ~~(1)~~ Any right or option of the party to have the notice or document provided or made available in paper or another non-electronic form.

2. ~~4~~ The right of the party to withdraw consent to have a notice or document delivered by electronic means and any fees, conditions, or consequences imposed in the event consent is withdrawn;
3. ~~5~~ Whether the party's consent applies:
 - a. ~~1~~ Only to the particular transaction as to which the notice or document must be given; or
 - b. ~~2~~ To identified categories of notices or documents that may be delivered by electronic means during the course of the parties' relationship;
4. ~~6~~ ~~(1)~~ a. The means, after consent is given, by which a party may obtain a paper copy of a notice or document delivered by electronic means; and ~~(2)~~ b. The fee, if any, for the paper copy; and
5. ~~7~~ The procedure a party must follow to withdraw consent to have a notice or document delivered by electronic means and to update information needed to contact the party electronically;

(c) ~~3~~ The party:

- a. Before giving consent, is provided with a statement of the hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and
- b. Consents electronically, or confirms 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 delivered by electronic means as to which the party has given consent; and

(d) ~~4~~ After consent of the party is given, the insurer, in the event a change in the hardware or software requirements needed to access or retain a notice or document delivered by electronic means creates a material risk that the party will not be able to access or retain a subsequent notice or document to which the consent applies:

1. ~~a~~ Provides the party with a statement of:
 - a. ~~1~~ The revised hardware and software requirements for access to and retention of a notice or document delivered by electronic means;
 - b. ~~2~~ The right of the party to withdraw consent without the imposition of any fee, condition, or consequence that was not disclosed under (2)b. of this subsection; and
2. ~~3~~ Complies with paragraph (2) of this subsection.

- (4) ^a (a) This section does not affect requirements related to content or timing of any notice or document required under applicable law.
- ^b (b) If a provision of this title or applicable law requiring a notice or document to be provided to a party expressly requires verification or acknowledgment of receipt of the notice or document, the notice or document may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt.
- ^c (c) The legal effectiveness, validity, or enforceability of any contract or policy of insurance executed by a party may not be denied solely because of the failure to obtain electronic

d consent or confirmation of consent of the party in accordance with subparagraph (d)(3)b. of this section.

(b) ~~(1)~~. A withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a notice or document delivered by electronic means to the party before the withdrawal of consent is effective. ⁽⁴⁾⁽²⁾ A withdrawal of consent by a party is effective within a reasonable period of time after receipt of the withdrawal by the insurer. ~~(3)~~ Failure by an insurer to comply with subsection (d)(4) of this section may be treated, at the election of the party, as a withdrawal of consent for purposes of this section.

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

f If the consent of a party to receive certain notices or documents in an electronic form is on file with an insurer before the effective date of this act, and pursuant to this section, an insurer intends to deliver additional notices or documents to such party in an electronic form, then prior to delivering such additional notices or documents electronically, the insurer shall notify the party of:

1. ~~(1)~~ The notices or documents that may be delivered by electronic means under this section that were not previously delivered electronically; and
2. ~~(2)~~ The party's right to withdraw consent to have notices or documents delivered by electronic means.

g ~~(k)~~ ⁽¹⁾ Except as otherwise provided by law, if an oral communication or a recording of an oral communication from a party can be reliably stored and reproduced by an insurer, the oral communication or recording may qualify as a notice or document delivered by electronic means for purposes of this section. ⁽⁴⁾⁽²⁾ If a provision of this title or applicable law requires a signature or notice or document to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by the provision, is attached to or logically associated with the signature, notice or document.

h ~~(l)~~ This section may not be construed to modify, limit, or supersede the provisions of the federal Electronic Signatures in Global and National Commerce Act, Public Law 106-229, as amended.

SYNOPSIS

This Act allows the use of electronic notices and documents in lieu of current requirements for the sending of insurance notices and documents. In order to send electronic notices and documents to another party the insurer must obtain the consent of the other party as provided in this Act and as otherwise currently provided under XXX state and federal laws. The Act also provides for the withdrawal of consent by the other party to receive notices or documents by electronic means.

(end)

1 SECTION 1. 600.20 of the statutes is created to read:

2 **600.20 Electronic notices and documents.**

3 (1) In this section, the following words shall have the following meanings:

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

- 5 1. Delivery to an electronic mail address at which a party has consented to
6 receive notices or documents; or *house*
7 2. Posting on an electronic network or site accessible via the internet, mobile
8 application, computer, mobile device, tablet, or any other electronic device, *that is*
9 *with* separate notice *of the posting* to a party directed to the electronic mail address at which the
10 party has consented to receive notice of the posting. *by using a clear box to get a thumb*
and sending together

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

14 (2) (a) Subject to subsection (3) of this section, any notice to a party or any other
15 document required under applicable law in an insurance transaction or that is to
16 serve as evidence of insurance coverage may be delivered, stored, and presented by
17 electronic means so long as it meets the requirements of the Uniform Electronic
18 Transactions Act (CITATION).

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



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1709/2
PJK:.....

F. Conk

FPI
JLD
rm not run

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*Draft
(in 2-27)*

4

you cut

1 **AN ACT**; relating to: electronic delivery by insurers of notices and documents. ✓

✓ **Analysis by the Legislative Reference Bureau**

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 **SECTION 1.** 610.60 of the statutes is created to read: ✓

3 **610.60 Electronic delivery of notices and documents.** ✓

NO 4

4 (1) **DEFINITIONS.** In this section: ✓

NO 4

5 (a) "Deliver by electronic means" includes any of the following: ✓

6 1. Delivery to an electronic mail address at which a party has consented to
7 receive notices or documents. ✓

8 2. Posting on an electronic network or site that is accessible via the Internet ✓
9 by using a mobile application, computer, mobile device, tablet, or any other electronic

1 device and sending separate notice of the posting to a party, directed to the electronic
2 mail address at which the party has consented to receive notice of the posting. ✓

3 (b) "Party" ✓ means a recipient of a notice or document required as part of an
4 insurance transaction, including an applicant, an insured, a policyholder, or an
5 annuity contract holder. ✓

6 (2) ELECTRONIC DELIVERY PERMITTED; EQUIVALENT TO OTHER METHODS. ✓ (a) Subject
7 to par. (c) ✓ ^{stet} sub. (3) ✓ ^{stet} and s. 137.12 (2r) (c) ✓, notice to a party, or any other document that
8 is required under applicable law in an insurance transaction or that serves as
9 evidence of insurance coverage, may be stored, presented, and delivered by electronic
10 means, as long as the notice or other document meets the requirements of ✓ subch. II
11 of ch. 137. ✓

12 (b) Delivery of a notice or document in accordance with this ✓ section shall be
13 considered equivalent to any delivery method required under applicable law,
14 including delivery by 1st class mail; ✓ 1st class mail, postage prepaid; ✓ certified mail;
15 or registered mail. ✓

16 (c) If a provision of chs. 600 to 655 ✓ that requires a notice or document to be
17 provided to a party expressly requires verification or acknowledgment of receipt of
18 the notice or document, the notice or document may be delivered by electronic means
19 only if the method used provides for verification or acknowledgment of receipt. ✓

20 (3) CONDITIONS PRECEDENT FOR ELECTRONIC DELIVERY. ✓ An insurer may deliver a
21 notice or document to a party by electronic means under this section ✓ if all of the
22 following are satisfied: ✓

23 (a) The party affirmatively consented to that method of delivery and has not
24 withdrawn the consent. ✓

1 (b) Before the party gave consent, the insurer provided the party with a
2 statement of the hardware and software requirements for access to and retention of
3 a notice or document delivered by electronic means. ✓

4 (c) The party consented electronically, ✓ or confirmed consent electronically, in
5 a manner that reasonably demonstrates that the party is able to access information
6 in the electronic form that will be used for notices or documents delivered by
7 electronic means as to which the party gave consent. ✓

8 (d) Before the party gave consent, the insurer provided the party with a clear
9 and conspicuous statement informing the party of all of the following: ✓

10 1. Any right or option of the party to have the notice or document provided or
11 made available in paper or another nonelectronic form. ✓

***NOTE: The subdivision above seems to be inconsistent with subd. 4. ✓ below. This
subdivision seems to contemplate that a party may not be able to get a paper copy of a
notice or document, while ✓ subd. 4. below requires the insurer to inform the party of the
means by which the party may get a paper copy of a notice or document. ✓

12 2. The right of the party to withdraw consent to have a notice or document
13 delivered by electronic means and any fees, conditions, or consequences that are
14 imposed if consent is withdrawn. ✓

15 3. Whether the party's consent applies only to the particular transaction as to
16 which the notice or document must be given or applies to identified categories of
17 notices or documents that may be delivered by electronic means during the course
18 of the relationship between the party and the insurer. ✓

***NOTE: Do you want to add a third option: ✓ that the consent applies to *all* notices
and documents that must be given by the insurer?

19 4. The means, after consent is given, by which a party may obtain a paper copy
20 of a notice or document delivered by electronic means and the fee, if any, for the paper
21 copy.

1 5. The procedure a party must follow to withdraw consent to have a notice or
2 document delivered by electronic means and to update information needed to contact
3 the party electronically.✓

4 (4) INSURER RESPONSIBILITY IN CASE OF HARDWARE OR SOFTWARE CHANGE. (a) If, ✓
5 after a party has given consent to delivery of a notice or document by electronic
6 means, there is a change in the hardware or software requirements needed to access
7 or retain a notice or document delivered by electronic means that creates a material
8 risk that the party will not be able to access or retain a subsequent notice or document
9 to which the consent applies, the insurer shall do all of the following: ✓

10 1. Provide the party with a statement of the revised hardware and software
11 requirements for access to and retention of a notice or document delivered by
12 electronic means. ✓

13 2. Inform the party of his or her right to withdraw consent without the
14 imposition of any fee, condition, or consequence that was not disclosed in the
15 statement under sub. (3) (d) 2. ✓

16 3. Comply with sub. (3) (d). ✓

 ***NOTE: Subdivision 3. ✓ above is confusing to me. Is the insurer supposed to
provide the party with the statement described in sub. (3) (d) ✓ again, part of which is the
same as subd. 2. ✓ above?

17 (5) MISCELLANEOUS RELATED PROVISIONS. ✓ (a) This section ✓ does not affect any
18 requirement related to the content or timing of a notice or document required under
19 applicable law. ✓

20 (b) The legal effectiveness, validity, or enforceability of any contract or policy
21 of insurance executed by a party may not be denied solely because of the failure to
22 obtain electronic consent or confirmation of consent of the party in accordance with
23 sub. (3) (c). ✓

1 (c) 1. A withdrawal of consent by a party does not affect the legal effectiveness,
2 validity, or enforceability of a notice or document delivered by electronic means to the
3 party before the withdrawal of consent is effective. ✓

4 2. A withdrawal of consent by a party is effective within a reasonable time after
5 the insurer receives the withdrawal. ✓

****NOTE: How long is a "reasonable time"? ✓ Shouldn't the withdrawal of consent
be effective as soon as the insurer gets it? If it's not effective immediately, the insurer
could continue to send notices and documents electronically when the party does not want
to receive them electronically for any number of reasons.

6 3. Failure by an insurer to comply with sub. (4) ✓ may be treated, at the option
7 of the party, as a withdrawal of consent for purposes of this section. ✓

8 (d) Except as otherwise provided by law, if an oral communication or a
9 recording of an oral communication from a party can be reliably stored and
10 reproduced by an insurer, the oral communication or recording may qualify as a
11 notice or document delivered by electronic means for purposes of this section. ✓

****NOTE: This bill gives insurers the right to deliver notices and documents
electronically. ✓ However, the paragraph above seems to be saying that an oral
communication *from a party* may qualify as a notice or document if it can be stored and
reproduced. It seems to me that this provision doesn't fit in the bill.

12 (e) If a provision of chs. 600 ✓ to 655 ✓ requires a signature or a notice or document ✓
13 to be notarized, acknowledged, verified, or made under oath, the requirement is
14 satisfied if the electronic signature of the person authorized to perform those acts,
15 together with all other information required to be included by the provision, is
16 attached to or logically associated with the signature, notice, or document. ✓

17 (f) This section ✓ may not be construed to modify, limit, or supersede the ✓
18 provisions of the federal ✓ Electronic Signatures in Global and National Commerce
19 Act, 15 USC 7001 et seq., as amended.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

date

LRB-1709/dn
PJK.....

PI
jld
r h no 2 num

I have not left out any provision from the model legislation, but have reorganized the provisions slightly so that provisions that seem to be related to each other are grouped together. ✓

I have included a number of embedded notes with questions and comments. ✓

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1709/P1dn
PJK:jld:jf

March 15, 2013

I have not left out any provision from the model legislation, but have reorganized the provisions slightly so that provisions that seem to be related to each other are grouped together.

I have included a number of embedded notes with questions and comments.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

Kahler, Pam

From: Seeman, Kirsten
Sent: Monday, April 01, 2013 12:50 PM
To: Kahler, Pam
Subject: LRB-1709/P1

Hi, Pam:

I have some changes to be made to LRB-1709/P1, the E-delivery bill, and I believe they address quite a few of the notes you had made in the draft.

✓ On page 3, what we would like the legislation to depict is that if a consumer chooses to opt-in, and have their documents delivered to them electronically, all documents to the consumer must be delivered electronically. If the consumer chooses to opt-out of electronic delivery, all of their documents must then be delivered as a paper copy. The goal is to not have the consumer pick and choose which they would like delivered by paper or which electronically. Of course, we would still like the legislation to say that should the consumer like to receive things by paper, they of course, may opt-out.

✓ On page 4, we would like to get rid of lines 4 – 16.

✓ On page 5, we would like to change "reasonable time" to 30 days.

✓ Also, on page 5, we would like to keep (d) (lines 8 – 11), because some companies do keep recordings of phone conversations, and would use them as records, similar to email or paper copy.

✓ On page 6, if possible, we would like effective date to be upon enactment, or signing into Act. *it is*

Also on page 6, as an explanation, there are some companies who may have on file individuals who would like to receive things via email, but because of state law, are not able to do so. This language would allow them to contact the individual to see if they would still like to receive emails.

Please let me know if you have further questions/concerns!

Thanks,

Kirsten Seeman
Research Assistant
Office of Representative Chad Weininger
4th Assembly District
125 West, State Capitol
608-266-1184 / kirsten.seeman@legis.wisconsin.gov



rmis run

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-Intro
(24-3)

4

Regen

1 AN ACT *to create* 610.60 of the statutes; **relating to:** electronic delivery by
2 insurers of notices and documents. ✓

Analysis by the Legislative Reference Bureau

✓ This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 610.60[✓] of the statutes is created to read:
4 **610.60 Electronic delivery of notices and documents. (1) DEFINITIONS.**

5 In this section:

6 (a) "Deliver by electronic means" includes any of the following:

7 1. Delivery to an electronic mail address at which a party has consented to
8 receive notices or documents.

9 2. Posting on an electronic network or site that is accessible via the Internet
10 by using a mobile application, computer, mobile device, tablet, or any other electronic

1 device and sending separate notice of the posting to a party, directed to the electronic
2 mail address at which the party has consented to receive notice of the posting.

3 (b) "Party" means a recipient of a notice or document required as part of an
4 insurance transaction, including an applicant, an insured, a policyholder, or an
5 annuity contract holder.

6 (2) ELECTRONIC DELIVERY PERMITTED; EQUIVALENT TO OTHER METHODS. (a) Subject
7 to par. (c), sub. (3),[✓] and s. 137.12 (2r) (c), notice to a party,[✓] ~~or~~^{g → and} any other document that
8 is required under applicable law in an insurance transaction or that serves as
9 evidence of insurance coverage, may be stored, presented, and delivered by electronic
10 means, as long as the notice or other document[✓] meets the requirements of subch. II
11 of ch. 137.

12 (b) Delivery of a notice or document[✓] in accordance with this section shall be
13 considered equivalent to any delivery method required under applicable law,
14 including delivery by 1st class mail; 1st class mail, postage prepaid; certified mail;
15 or registered mail.

16 (c) If a provision of chs. 600 to 655 that requires a notice or document to be
17 provided to a party expressly requires verification or acknowledgment of receipt of
18 the notice or document,[✓] the notice or document may be delivered by electronic means
19 only if the method used provides for verification or acknowledgment of receipt.

20 (3) CONDITIONS PRECEDENT FOR ELECTRONIC DELIVERY. An insurer may deliver[✓]
21 notice^g ~~or~~^{g → and} document^g to a party by electronic means[✓] under this section if all of the
22 following are satisfied:

23 (a) The party affirmatively consented to that method of delivery and has not
24 withdrawn the consent.

1 (b) Before the party gave consent, the insurer provided the party with a
2 statement of the hardware and software requirements for access to and retention of
3 a notice ^{or} document ^{and} delivered by electronic means. ✓

4 (c) The party consented electronically, or confirmed consent electronically, in
5 a manner that reasonably demonstrates that the party is able to access information
6 in the electronic form that will be used for notices ^{or} documents ^{and} delivered by
7 electronic means as to which the party gave consent.

8 (d) Before the party gave consent, the insurer provided the party with a clear
9 and conspicuous statement informing the party of all of the following:

- 10 1. ~~Any~~ right or option of the party to have ^{all} the notice ^{or} document ^{and} provided or
11 made available in paper or another nonelectronic form ^{instead}

***NOTE: The subdivision above seems to be inconsistent with subd. 4. below. This subdivision seems to contemplate that a party may not be able to get a paper copy of a notice or document, while subd. 4. below requires the insurer to inform the party of the means by which the party may get a paper copy of a notice or document.

- 12 2. The right of the party to withdraw consent to have ^{or} a notice ^{or} document ^{and}
13 delivered by electronic means and any fees, conditions, or consequences that are
14 imposed if consent is withdrawn.

- 15 3. ~~Whether~~ ^{that} the party's consent applies only to the particular transaction as to
16 which the notice or document must be given or applies to identified categories of
17 ^{all} notices ^{or} documents that may be delivered by electronic means during the course
18 of the relationship between the party and the insurer. ✓

***NOTE: Do you want to add a third option: that the consent applies to all notices and documents that must be given by the insurer?

- 19 4. The means, after consent is given, by which a party may obtain a paper copy
20 of a notice or document delivered by electronic means and the fee, if any, for the paper
21 copy.

→ the means, if any, ✓

and ✓

1

5. The procedure a party must follow to withdraw consent to have notice of

2

document delivered by electronic means and to update information needed to contact

3

the party electronically. ✓

4

(4) INSURER RESPONSIBILITY IN CASE OF HARDWARE OR SOFTWARE CHANGE. (a) If,

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after a party has given consent to delivery of a notice or document by electronic

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means, there is a change in the hardware or software requirements needed to access

7

or retain a notice or document delivered by electronic means that creates a material

8

risk that the party will not be able to access or retain a subsequent notice or document

9

to which the consent applies, the insurer shall do all of the following:

10

1. Provide the party with a statement of the revised hardware and software

11

requirements for access to and retention of a notice or document delivered by

12

electronic means.

13

2. Inform the party of his or her right to withdraw consent without the

14

imposition of any fee, condition, or consequence that was not disclosed in the

15

statement under sub. (3) (d) 2.

16

3. Comply with sub. (3) (d).

***NOTE: Subdivision 3. above is confusing to me. Is the insurer supposed to provide the party with the statement described in sub. (3) (d) again, part of which is the same as subd. 2. above?

17

4 ← (3) ✓

MISCELLANEOUS RELATED PROVISIONS. (a) This section does not affect any

18

requirement related to the content or timing of a notice or document required under

19

applicable law.

20

(b) The legal effectiveness, validity, or enforceability of any contract or policy

21

of insurance executed by a party may not be denied solely because of the failure to

22

obtain electronic consent or confirmation of consent of the party in accordance with

23

sub. (3) (c). ✓

1 (c) 1. A withdrawal of consent by a party does not affect the legal effectiveness,
2 validity, or enforceability of a notice or document delivered by electronic means to the
3 party before the withdrawal of consent ^{becomes} effective.

4 2. A withdrawal of consent by a party ^{becomes} effective ^{30 days} within a reasonable time after
5 the insurer receives the withdrawal.

****NOTE: How long is a "reasonable time"? Shouldn't the withdrawal of consent be effective as soon as the insurer gets it? If it's not effective immediately, the insurer could continue to send notices and documents electronically when the party does not want to receive them electronically for any number of reasons.

6 3. Failure by an insurer to comply with sub. (4) may be treated, at the option
7 of the party, as a withdrawal of consent for purposes of this section.

8 (d) Except as otherwise provided by law, if an oral communication or a
9 recording of an oral communication from a party can be reliably stored and
10 reproduced by an insurer, the oral communication or recording may qualify as a
11 notice or document delivered by electronic means for purposes of this section.

****NOTE: This bill gives insurers the right to deliver notices and documents electronically. However, the paragraph above seems to be saying that an oral communication from a party may qualify as a notice or document if it can be stored and reproduced. It seems to me that this provision doesn't fit in the bill.

12 (e) If a provision of chs. 600 to 655 requires a signature or a notice or document
13 to be notarized, acknowledged, verified, or made under oath, the requirement is
14 satisfied if the electronic signature of the person authorized to perform those acts,
15 together with all other information required to be included by the provision, is
16 attached to or logically associated with the signature, notice, or document.

17 (f) This section may not be construed to modify, limit, or supersede the
18 provisions of the federal Electronic Signatures in Global and National Commerce
19 Act, 15 USC 7001 et seq., as amended.

1 ^① EFFECT ON EARLIER ELECTRONIC DELIVERY. (a) This section does not apply to
 2 a notice or document delivered by an insurer in an electronic form before the effective
 3 date of this paragraph [LRB inserts date], to a party who, before that date,
 4 consented to receive a notice or document in electronic form otherwise allowed by
 5 law.

6 (b) If the consent of a party to receive certain notices[✓] or documents in an
 7 electronic form is on file with an insurer before the effective date of this paragraph
 8 [LRB inserts date], and, in accordance with this section, the insurer intends to
 9 deliver additional notices ^{all} or ^{and} documents[✓] to the party in electronic form, before
 10 delivering any[✓] additional notices or[✓] documents electronically, the insurer shall notify
 11 the party of all of the following:

12 1. The notices or[✓] documents that may be delivered by electronic means under
 13 this section that were not previously delivered electronically.

14 2. The party's right to withdraw consent to have[✓] ^{any} notices or documents[✓] delivered
 15 by electronic means.

***NOTE: I'm not sure what the paragraph above is saying. It's not clear. Is it that, if a consent was on file before the effective date of the act, to deliver future notices and documents electronically the insurer only has to comply with subs. 1. and 2. above and doesn't have to follow the requirements under sub. (3)? If so, why are "in accordance with this section" and "under this section" mentioned?

16 (END)

△ - note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1709/P2dn

PJK: f:....

LD
r m is run

date

I have modified the draft so that the language comports with your explanation of what you want the draft to do, i.e., require that all notices and documents, or none, be delivered electronically. ✓ I have retained the possibility, however, for a party to obtain a paper copy of a notice or document in a particular instance after having received the notice or document electronically. Please review proposed s. 610.60 (2) (d) especially carefully.

The previous version of the draft made a distinction between notices and documents by the use of the word "or." I have changed the "or" to "and" in most places so that both notices and documents are delivered electronically. Let me know if you want to keep their treatment separate by using "or" instead.

There is nothing I need to add to the draft to make the effective date ✓ the day after publication. That is the default unless the effective date is explicitly delayed.

I have retained without modification proposed s. 610.60 (4) (d). ✓ It is still confusing to me, however, because that paragraph says that an oral communication *from a party* may qualify as a notice or document delivered by electronic means *for purposes of this section*, but "this section" authorizes an insurer to provide notices and documents electronically, not a party. ✓

Pamela J. Kahler
Senior Legislative Attorney
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1709/P2dn
PJK:jld:jf

April 4, 2013

I have modified the draft so that the language comports with your explanation of what you want the draft to do, i.e., require that all notices and documents, or none, be delivered electronically. I have retained the possibility, however, for a party to obtain a paper copy of a notice or document in a particular instance after having received the notice or document electronically. Please review proposed s. 610.60 (3) (d) especially carefully.

The previous version of the draft made a distinction between notices and documents by the use of the word "or." I have changed the "or" to "and" in most places so that both notices and documents are delivered electronically. Let me know if you want to keep their treatment separate by using "or" instead.

There is nothing I need to add to the draft to make the effective date the day after publication. That is the default unless the effective date is explicitly delayed.

I have retained without modification proposed s. 610.60 (4) (d). It is still confusing to me, however, because that paragraph says that an oral communication *from a party* may qualify as a notice or document delivered by electronic means *for purposes of this section*, but "this section" authorizes an insurer to provide notices and documents electronically, not a party.

Pamela J. Kahler
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Kaister - Rep Weininger

by phone 4-9

ok to change "from party" to "to party"

in s. 610.60 (4)(d)

would like another preliminary draft

4-10

new instructions: modify consent requirements so that it can be given electronically, in writing, or orally as provided in (4)(d)

w(3)(c)

+ remove (4)(d)

4-10

further instructions - keep (3)(c) - want to require electronic consent but change (4)(d) to communication with/between insured & insurer