

2013 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB292)

Received: 10/18/2013 Received By: pkahler
 Wanted: As time permits Same as LRB:
 For: Frank Lasee (608) 266-3512 By/Representing: Kisten Reader
 May Contact: Drafter: pkahler
 Subject: Insurance - miscellaneous Addl. Drafters:
 Extra Copies:

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

Pre Topic:

No specific pre topic given

Topic:

Electronic 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>
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FE Sent For:

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1/?	pkahler	10/22 jld	[Signature]	10/22			

FE Sent For:

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Kahler, Pam

From: Reader, Kirsten
Sent: Wednesday, October 16, 2013 10:37 AM
To: Kahler, Pam
Cc: Kovach, Robert
Subject: AB 373, SB 292 - electronic delivery of insurance documents

Hi, Pam:

We'd like to have assembly and senate substitute amendments drafted for AB 373 and SB 292, the electronic delivery of insurance documents and notices.

Basically, it should be drafted to include all insurers (life, property and casualty, and health). Here are the changes that need to be made:

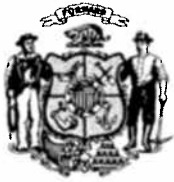
- Page 3, Line 23, after "receipt" add "and such verification or acknowledgement of receipt can be documented."
- Page 5, Line 14, after "because" delete the rest of the paragraph and replace with "the contract or policy was delivered by electronic means if the insurer has complied with subs. (3)(a)3".
- Page 5, Line 25, at the end of the paragraph add: "This paragraph does not apply to notices or documents required by law to be in writing."
- Page 6, Line 9, after that line add:
 - (g) If an insurer attempts to deliver a notice or document electronically to the most recent electronic address for the insured in its files and the insurer receives a notice that the electronic delivery has failed, the insurer shall deliver the notices or documents by 1st class mail or other delivery method required by chs. 600 to 655, or rule promulgated thereunder, for the notice or document.
- Page 7, delete lines 10 and 11 and substitute:
 - (b) An insurer must retain copies of the policy and endorsements to the policy as provided in Chapters 600 thru 655 and regulations thereto, but must make the policy and any endorsements to the policy available upon the request of an insured for at least 3 years.
- Page 8, line 2 delete, "in the format preferred by the insureds".
- Page 8, Line 9, after "applies" delete the remainder of lines 9 and 10 and substitute "to all insurers authorized to write business in this state."

If we could have these substitute amendments rushed and as preliminaries, we would appreciate it.

Thanks, Pam. Please let me know if there are questions,

Kirsten Reader
Research Assistant
Office of Representative Chad Weininger
125 West, State Capitol
608-266-5840 / Kirsten.Reader@legis.wisconsin.gov

*Same as substitute amendment
to AB 373*



State of Wisconsin
2013 - 2014 LEGISLATURE



LRBs 01361
PJK:jld:rs

501621

↑
Keep

SENATE
ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 373
SENATE

SOON
(w/ 10-22)

October 21, 2013 - Offered by Representative WEININGER

X Regen

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

Analysis by the Legislative Reference Bureau

This substitute amendment authorizes any insurer to provide notices and documents to an insurance applicant, an insured, or a policyholder (consumer) by electronic means, and provides that doing so, in compliance with the requirements under the substitute amendment, is equivalent to any other method of delivering notices and documents required under applicable law.

An insurer may provide notices and documents electronically if the consumer has consented to delivery in that manner and has not withdrawn the consent. The consumer must give consent electronically in a manner that reasonably demonstrates that the consumer will be able to receive the notices and documents electronically. If a consumer gives consent for electronic delivery, the consent applies to any notice or document that the insurer elects to deliver electronically. The consumer may, however, receive a paper copy of a notice or document that has been sent electronically, upon request and for a fee, if any, if the insurer offers this option. Before the consumer gives consent for electronic delivery, the insurer must provide the consumer with a clear and conspicuous statement that contains a number of pieces of information, including that the consent applies to any notices and documents that may be delivered electronically; that the consumer may receive notices and documents in paper form instead; how to request a paper copy, if the

insurer offers that option, of a notice or document that has been delivered electronically; and that the consumer may withdraw the consent and the method for doing so.

The substitute amendment contains various related provisions, such as that an oral communication between a consumer and an insurer may qualify as a notice or document delivered electronically if the communication can be reliably stored and reproduced by the insurer and is not required to be in writing under any statute or rule; that withdrawal of consent is effective 30 days after the insurer receives the withdrawal; that the withdrawal of consent does not affect the legality, validity, or enforceability of a notice or document delivered electronically before the withdrawal becomes effective; that the legality, validity, or enforceability of a notice or document delivered electronically may not be denied solely because it was delivered electronically if the consumer consented to electronic delivery in a manner that reasonably demonstrated that the consumer would be able to receive the notices and documents electronically; and that notices and documents delivered electronically must meet the requirements of the provisions of the statutes that codify the Uniform Electronic Transactions Act.

The substitute amendment also authorizes an insurer to post on the insurer's Internet site any standard policy and endorsements to the policy that do not contain personally identifiable information. A number of requirements apply if the insurer elects to post such documents, including: 1) the documents must remain accessible on the Internet site for as long as they are in effect; 2) the insurer must make the documents available upon request for at least three years after the policy terminates; 3) the documents must be posted in such a manner that they can be printed and saved by using programs or applications that are widely available and free to use; 4) in or with each declarations page that is provided when the policy is issued and when it is renewed, the insurer must provide a description of the exact policy and endorsements that the insured has purchased, information about how the insured may obtain a paper copy of the policy and any endorsements, and the address of the Internet site where the documents are posted; and 5) if the insurer makes any changes to the policy or an endorsement form, the insurer must provide notice of the change to the policy or endorsement form, that the insured may obtain a paper copy of the policy or endorsement form, and the address of the Internet site where the policy or endorsement form is posted.

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

- 1 **SECTION 1.** 610.60 of the statutes is created to read:
- 2 **610.60 Electronic delivery of notices and documents.** (1) DEFINITIONS.
- 3 In this section:

1 (a) “Applicable law” means applicable statutory law and rules and regulations
2 having the force of law.

3 (b) “Deliver by electronic means” includes any of the following:

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

6 2. Posting on an electronic network or site that is accessible via the Internet
7 by using a mobile application, computer, mobile device, tablet, or any other electronic
8 device and sending separate notice of the posting to a party, directed to the electronic
9 mail address at which the party has consented to receive notice of the posting.

10 (c) “Party” means a recipient of a notice or document required as part of an
11 insurance transaction, including an applicant, an insured, or a policyholder.

12 **(2) ELECTRONIC DELIVERY PERMITTED; EQUIVALENT TO OTHER METHODS.** (a) Subject
13 to par. (c), subs. (3) and (5) (b), and s. 137.12 (2r) (c), notice to a party, and any other
14 document that is required under applicable law in an insurance transaction or that
15 serves as evidence of insurance coverage, may be stored, presented, and delivered by
16 electronic means, as long as the notice or other document meets the requirements of
17 subch. II of ch. 137.

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

22 (c) If a provision of, or rule promulgated under, chs. 600 to 655 that requires
23 a notice or document to be provided to a party expressly requires verification or
24 acknowledgment of receipt of the notice or document, the notice or document may be
25 delivered by electronic means only if the method used provides for verification or

1 acknowledgment of receipt and the verification or acknowledgement of receipt can
2 be documented.

3 **(3) CONDITIONS PRECEDENT FOR ELECTRONIC DELIVERY.** (a) Unless sub. (5) (b)
4 applies, an insurer may deliver notices and documents to a party by electronic means
5 under this section if all of the following are satisfied:

6 1. The party affirmatively consented to that method of delivery and has not
7 withdrawn the consent.

8 2. Before the party gave consent, the insurer provided the party with a
9 statement of the hardware and software requirements for access to and retention of
10 notices and documents delivered by electronic means.

11 3. The party consented electronically, or confirmed consent electronically, in a
12 manner that reasonably demonstrates that the party is able to access information
13 in the electronic form that the insurer will use for delivery of notices and documents
14 by electronic means.

15 4. Before the party gave consent, the insurer provided the party with a clear
16 and conspicuous statement informing the party of all of the following:

17 a. The right or option of the party to have notices and documents provided or
18 made available in paper or another nonelectronic form instead.

19 b. The right of the party to withdraw consent to have notices and documents
20 delivered by electronic means and any fees, conditions, or consequences that are
21 imposed if consent is withdrawn.

22 c. That the party's consent applies to any notices or documents that may be
23 delivered by electronic means during the course of the relationship between the
24 party and the insurer.

1 d. After consent for delivery by electronic means is given, the means, if any, by
2 which a party may obtain a paper copy of a notice or document that has been
3 delivered by electronic means and the fee, if any, for the paper copy.

4 e. The procedure a party must follow to withdraw consent to have notices and
5 documents delivered by electronic means and to update information needed to
6 contact the party electronically.

7 (b) If the conditions under par. (a) or sub. (5) (b) are satisfied, the insurer may
8 elect to deliver all notices and documents by electronic means or only those notices
9 and documents selected by the insurer.

10 (c) Even if the conditions under par. (a) or sub. (5) (b) are satisfied, the insurer
11 may deliver any notice or document by 1st class mail; 1st class mail, postage prepaid;
12 certified mail; or registered mail.

13 **(4) MISCELLANEOUS RELATED PROVISIONS.** (a) This section does not affect any
14 requirement related to the content or timing of a notice or document required under
15 applicable law.

16 (b) The legal effectiveness, validity, or enforceability of any contract or policy
17 of insurance executed by a party may not be denied solely because the contract or
18 policy was delivered by electronic means if the insurer has obtained the electronic
19 consent or confirmation of consent of the party in accordance with sub. (3) (a) 3. or
20 has complied with sub. (5) (b).

21 (c) 1. A withdrawal of consent by a party becomes effective 30 days after the
22 insurer receives the withdrawal.

23 2. A withdrawal of consent by a party does not affect the legal effectiveness,
24 validity, or enforceability of a notice or document delivered by electronic means to the
25 party before the withdrawal of consent becomes effective.

1 (d) If an oral communication or a recording of an oral communication between
2 a party and an insurer or an insurer's agent can be reliably stored and reproduced
3 by the insurer, the oral communication or recording may qualify as a notice or
4 document delivered by electronic means for purposes of this section. This paragraph
5 does not apply to notices or documents that are required by applicable law to be in
6 writing.

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

13 (f) Except as provided in par. (d), this section does not and may not be construed
14 to modify, limit, or supersede the provisions of the federal Electronic Signatures in
15 Global and National Commerce Act, 15 USC 7001 et seq., as amended.

16 (g) If an insurer attempts to deliver a notice or document by electronic means
17 to the most recent electronic mail address for the insured in the insurer's files and
18 the insurer receives a notice that the delivery by electronic means has failed, the
19 insurer shall deliver the notice or document by 1st class mail or by any other delivery
20 method required for the notice or document by a provision of, or rule promulgated
21 under, chs. 600 to 655.

22 **(5) EFFECT ON EARLIER ELECTRONIC DELIVERY.** (a) This section does not apply to
23 a notice or document delivered by an insurer by electronic means before the effective
24 date of this paragraph [LRB inserts date], to a party who, before that date,

1 consented to receive a notice or document by electronic means otherwise allowed by
2 applicable law.

3 (b) If the consent of a party to receive certain notices or documents by electronic
4 means is on file with an insurer before the effective date of this paragraph [LRB
5 inserts date], and, in accordance with this section, the insurer intends to deliver
6 notices and documents to the party by electronic means, before delivering any
7 additional notices or documents by electronic means, the insurer shall notify the
8 party of all of the following:

9 1. The notices or documents that may be delivered by electronic means under
10 this section that were not previously delivered by electronic means.

11 2. The party's right to withdraw consent to have any notices or documents
12 delivered by electronic means.

13 **(6) POSTING OF POLICIES AND ENDORSEMENTS ON INTERNET.** Notwithstanding subs.
14 (1) to (5), in lieu of delivery to a policyholder, insured, or applicant for insurance by
15 any other method, an insurer may post on the insurer's Internet site any standard
16 policy, and any endorsements to such a policy, that do not contain personally
17 identifiable information. An insurer that elects to post such a policy and any
18 endorsements to the policy on its Internet site shall comply with all of the following
19 requirements:

20 (a) The policy and any endorsements must be accessible on the insurer's
21 Internet site for as long as the policy is in effect.

22 (b) After the policy terminates, the insurer must retain copies of the policy and
23 any endorsements to the policy as provided in any provision of, or rule promulgated
24 under, chs. 600 to 655, but must make the policy and any endorsements to the policy
25 available upon the request of an insured for at least 3 years.

1 (c) The policy and any endorsements must be posted in such a manner that the
2 insured is able to print and save the policy and endorsements by using programs or
3 applications that are widely available on the Internet and free to use.

4 (d) The insurer must provide all of the following information in, or
5 simultaneously with, each declarations page that is provided when the policy is
6 initially issued and when it is renewed:

7 1. A description of the exact policy and endorsement forms purchased by the
8 insured.

9 2. The method by which the insured may obtain, upon request and without
10 charge, a paper copy of the policy and any endorsements to the policy.

11 3. The address of the Internet site where the policy and any endorsements to
12 the policy are posted.

13 (e) If the insurer makes any changes to the policy or an endorsement form, the
14 insurer must provide notice to the insured of all of the following:

15 1. The change to the policy or endorsement form.

16 2. The insured's right to obtain, upon request and without charge, a paper copy
17 of the policy or endorsement form.

18 3. The address of the Internet site where the policy or endorsement form is
19 posted.

20 (7) OPTIONAL METHODS. Nothing in this section requires an insurer to deliver
21 a notice or document by electronic means or to post policies and endorsements on an
22 Internet site.

23 (END)