

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: SB 202

INTRODUCER: Senator Bradley

SUBJECT: Insurance Policy Documents

DATE: February 2, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CM</u>	_____

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**I. Summary:**

SB 202 allows an insurer to use electronic transmission as an acceptable means to meet statutory requirements for delivery of a personal lines insurance policy. The insurer may only deliver personal lines policy documents electronically if the policyholder selects electronic delivery instead of delivery by U.S. mail.

The bill also allows a Notice of Change in Policy Terms to be sent separately from the Notice of Renewal Premium. Insurers must also provide a sample copy of the Notice of Change in Policy Terms to the insured's insurance agent before or at the same time the notice is given to the insured.

**II. Present Situation:**

**The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN)**

The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.<sup>1</sup> Insurance is specifically included in E-SIGN.<sup>2</sup> E-SIGN provides contracts formed using electronic signatures on electronic records will not be denied legal effect only because they are electronic. However, E-SIGN requires consumer disclosure and consent to electronic records in certain instances before electronic records will be given legal effect. Under E-SIGN, if a statute requires information to be provided or made available to a consumer in writing, the use of an electronic record to provide or make the information available to the consumer will satisfy the statute's requirement of writing if the consumer affirmatively consents to use of an electronic record. The consumer must also be provided with a statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right to withdraw consent to electronic records,

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<sup>1</sup> Section 101, Electronic Signatures in Global and National Commerce Act, Pub. L. no. 106-229, 114 Stat 464 (2000). Many of the provisions of E-SIGN took effective October 1, 2000.

<sup>2</sup> *Id.*

among other notifications. Arguably, the affirmative consent and notification requirements of E- SIGN apply to the delivery of insurance policies in Florida because Florida law currently requires insurance policies to be delivered to the policyholder by mail or other delivery means.

### **Florida's Uniform Electronic Transaction Act (UETA)**

Section 668.50, F.S., Florida's Uniform Electronic Transaction Act (UETA), is similar to the federal E-SIGN law. UETA specifically applies to insurance and provides a requirement in statute that information that must be delivered in writing to another person can be satisfied by delivering the information electronically if the parties have agreed to conduct a transaction by electronic means.

### **Delivery of Insurance Policies**

Part II of s. 627, F.S., generally applies to all insurance contracts except for those covering reinsurance, wet marine and transportation insurance, title insurance, and credit life or credit disability insurance. Under this part, every insurance policy must be mailed or delivered to the insured (policyholder) within 60 days after the insurance takes effect.<sup>3</sup> In June 2000, Congress enacted the Electronic Signatures in Global and National Commerce Act (ESIGN) to facilitate the use of electronic records and signatures in interstate and foreign commerce by ensuring the validity and legal effect of contracts entered into electronically. ESIGN provides that contracts formed using electronic signatures on electronic records will not be denied legal effect merely because they are electronic. ESIGN, however, requires consumer disclosure and consent to electronic records in certain instances before electronic records will be given legal effect. Under ESIGN, if a statute requires information to be provided or made available to a consumer in writing, the use of an electronic record to provide or make the information available to the consumer will satisfy the statute's requirement of writing if the consumer affirmatively consents to the use of an electronic record. The consumer must also be provided with a statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right to withdraw consent to electronic records, among other notifications. Insurance is specifically included in ESIGN. Section 668.50, F.S., Florida's Uniform Electronic Transaction Act (UETA), has provisions similar to the federal ESIGN. UETA specifically applies to insurance and provides a requirement that information that must be delivered in writing to another person can be satisfied by delivering the information electronically if the parties have agreed to conduct a transaction by electronic means.

### **Notice of Change in Policy Terms**

Section 627.43141, F.S., requires that when an insurer makes a change in the terms of an insurance policy upon the renewal of that policy, the insurer must give the named insured written notice of the change, and the notice must be enclosed with the written notice of renewal premium required by ss. 627.4133, F.S., and 627.728, F.S. Generally, 45 days advance written notice of the renewal premium is required for workers' compensation and employer's liability insurance, property, and casualty insurance.<sup>4</sup> Generally, an insurer is prohibited from nonrenewing a private

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<sup>3</sup> Section 627.421(1), F.S.

<sup>4</sup> Does not include mortgage guaranty, surety, or marine insurance. *See* s. 627.4133, F.S.

passenger motor vehicle insurance policy unless it provides at least 45 days written notice of its intention not to renew and the reasons why the policy is not being renewed.<sup>5</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 627.421, F.S., allowing insurers to deliver personal lines insurance policies by electronic means in lieu of delivery by mail if the policyholder affirmatively elects electronic delivery. The bill does not likely implicate E-SIGN or UETA because it requires the affirmative consent of the policyholder before the electronic delivery of personal lines insurance policy documents. The electronic transmission of the policy is required under E-SIGN to include notice of the recipient's right to receive the policy by mail rather than by electronic transmission. The insurer must provide a paper copy of the policy by mail if the insured communicates to the insurer electronically or in writing that he or she does not agree to delivery by electronic means.

**Section 2** amends s. 627.43141(2), F.S., to allow the Notice of Change in Policy Terms to be sent separately from the Notice of Renewal Premium. If a separate notice is used, it must comply with the nonrenewal mailing time requirement for that particular line of business. Insurers must also provide a sample copy of the Notice of Change in Policy Terms to the insured's insurance agent before or at the same time the notice is given to the insured.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

#### B. Private Sector Impact:

By delivering electronically, insurers may save costs associated with the printing and mailing of insurance policies to policyholders. The exact amount of savings cannot be calculated as it is unknown how many policyholders will choose to receive their policy documents electronically rather than by U.S. mail.

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<sup>5</sup> Section 627.728, F.S.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 627.421, 627.43141.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.