

**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 Commerce and Tourism

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BILL: CS/CS/SB 202

INTRODUCER: Commerce and Tourism Committee, Banking and Insurance Committee, and Senator Bradley

SUBJECT: Insurer Notifications

DATE: March 2, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Siples</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 202 allows an insurer to deliver a personal lines insurance policy by electronic transmission to meet statutory requirements for delivery, if the policyholder affirmatively elects electronic delivery in lieu 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 provided to the insured.

The bill additionally defines "optional coverage." The bill prohibits the use of the Notice of Change in Policy Terms if the new terms add optional coverage that increases the premium, unless the policyholder affirmatively approves of the addition of the optional coverage.

**II. Present Situation:**

**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, delivered, or

electronically transmitted to the insured (policyholder) within 60 days after the insurance takes effect.<sup>1</sup>

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

The Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.<sup>2</sup> Congress specifically intended for the provisions of E-SIGN to apply to insurance.<sup>3</sup> E-SIGN provides that a contract formed using an electronic signature or an electronic record will not be denied legal effect solely because it is in an electronic form. However, E-SIGN requires certain consumer disclosures and the consumer's affirmative consent to the use of electronic records before such electronic records or transactions may be given legal effect. Under E-SIGN, if a state or federal statute requires information to be provided or made available to a consumer in writing, the use of an electronic record 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 clear and conspicuous statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right of the consumer to withdraw consent to the use of electronic records, among other notifications.<sup>4</sup> The affirmative consent and notification requirements of E-SIGN may apply to the delivery of insurance policies in this state, 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)**

Florida's Uniform Electronic Transaction Act (UETA), similar to the federal E-SIGN law, governs electronic records and electronic signatures relating to a transaction.<sup>5</sup> UETA provides that a statutory requirement that a record be delivered in writing is satisfied by the provision of such record in an electronic format if the parties have agreed to conduct a transaction by electronic means. UETA would apply to insurance documents.

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

If an insurer makes a change in policy terms, the insurer must, upon the renewal of that policy, give the named insured written notice of the change.<sup>6</sup> The notice of change in policy must be enclosed with the written notice of renewal premium required by ss. 627.4133, F.S., and 627.728, F.S., and entitled, "Notice of Change in Policy Terms." Upon receipt of a premium payment by the insurer, the change in terms is deemed to have been accepted by the insured. Generally, 45 days advance written notice of the renewal premium is required for workers'

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

<sup>2</sup> Pub. L. No. 106-229, s. 101, 114 stat. 464 (2000). Many of the provisions of E-SIGN took effect October 1, 2000.

<sup>3</sup> *Id.* at s. 101(i).

<sup>4</sup> *Id.* at s. 101(c)(1).

<sup>5</sup> Section 668.50, F.S. UETA does not apply to: (1) law governing the creation and execution of wills, codicils, or testamentary trusts; (2) the Uniform Commercial Code other than s. 671.107, and ch. 672 and 680, F.S., relating to waiver of claim after breach, sales governed by the Uniform Commercial Code, and leases governed by the Uniform Commercial Code, respectively; and (3) the Uniform Computer Information Transactions Act.

<sup>6</sup> Section 627.43141, F.S. A change in policy terms includes any modification, addition, or deletion of any term, coverage, duty, or condition from the previous policy but does not include correction of typographical or scrivener's errors, or changes required by legislative mandate.

compensation and employer's liability insurance, property, and casualty insurance.<sup>7</sup> An insurer must not fail to renew a private passenger motor vehicle insurance policy unless it provides at least 45 days written notice of its intention not to renew and the reason for the non-renewal.<sup>8</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 627.421, F.S., to allow insurers to deliver personal lines insurance<sup>9</sup> 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 since it requires the affirmative consent of the policyholder before the electronic delivery of personal lines insurance policy documents. Under E-SIGN, the insured must also be provided a notice of the insured's right to receive the policy by mail rather than by electronic transmission. The insurer must also provide a paper copy of the policy by mail if the insured requests, electronically or in writing, that he or she withdraws consent to delivery of the policy by electronic means.

**Section 2** amends s. 627.43141, 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. Additionally, "optional coverage" is defined as the addition of new insurance not previously approved by the policyholder that does not include any changes to the base policy or the deductible or insurance limits. An insurer may not use the Notice of Change in Policy Terms to add optional coverage that increases the policyholder's premium, unless the policyholder affirmatively approves of the addition of the optional coverage.

**Section 3** provides that this act shall take effect July 1, 2015.

### IV. Constitutional Issues:

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

None.

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

None.

#### C. Trust Funds Restrictions:

None.

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<sup>7</sup> Does not include mortgage guaranty, surety, or marine insurance. *See* s. 627.4133(1)(a), F.S.

<sup>8</sup> Section 627.728, F.S.

<sup>9</sup> Personal lines insurance refers to property and casualty insurance sold to individuals and families for noncommercial purposes. *See* s. 626.015(15), F.S.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

By delivering documents 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.

**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 and 627.43141.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

**CS by Commerce and Tourism on March 2, 2015:**

The CS deletes the reenactment of ss. 624.488, 627.4102, and 628.6016, F.S.

**CS by Banking and Insurance on February 3, 2015:**

The CS defines optional coverage in s. 627.43141, F.S. A Notice of Change in Policy Terms containing optional coverage that increases the policyholder's premium may only be used if the policyholder affirmatively indicates to the insurer or agent the policyholder approves of adding the optional coverage.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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