

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.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 418

INTRODUCER: Senator Detert

SUBJECT: Insurance

DATE: April 12, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Burgess</u>	<u>BI</u>	Favorable
2.	<u>Malcolm</u>	<u>Hrdlicka</u>	<u>CM</u>	Pre-meeting
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 418 allows insurers to post certain insurance policies not containing policyholder personal identifiable information on the insurer’s website instead of mailing the policy to the insured. If an insurer opts to post an insurance policy online instead of mailing it, the policy must be easily accessible and posted in a format that allows the policy to be saved and printed by the policyholder for free. Insurers posting policies online must archive all expired policies and archived policies from at least the last 5 years must be available to policyholders at their request. Insurers must also notify each policyholder of his or her right to obtain a paper or electronic copy of the policy and any forms or endorsements without charge.

This bill amends s. 627.421, F.S.

II. Present Situation:

Section 627.421, F.S., requires every insurance policy¹ to be mailed or delivered to the insured within 60 days after the insurance takes effect. Insurance policies are typically only delivered when the policy is issued and are not delivered each time the policy is renewed.

¹ Section 627.402(1), F.S., defines “policy” to include endorsements, riders, and clauses. However, reinsurance, wet marine and transportation insurance, title insurance, and credit life or credit disability insurance policies do not have to be mailed or delivered pursuant to s. 627.421, F.S. See s. 627.401, F.S.

Applicability of Federal and State Law Relating to Electronic Transactions

E-SIGN

The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.² Insurance is specifically included in E-SIGN.³ E-SIGN provides that a signature, contract, or other record will not be denied legal effect solely because it is in electronic format or because electronic signatures or records were used in its formation.⁴ E-SIGN states that it does not require any person to agree to use or accept electronic records or signatures, other than a governmental record.⁵ E-SIGN provides that information required by law to be in writing can be made available electronically to a consumer only if:

- The consumer has affirmatively consented to receive the information electronically and has not withdrawn that consent;
- The consumer has been provided a “clear and conspicuous statement”:
 - Informing the consumer of any right to receive the record in paper format;
 - Informing the consumer of the right to withdraw the consent;
 - Informing the consumer whether the consent applies only to the particular transaction or identified categories of records;
 - Describing the procedures for the consumer to withdraw consent;
 - Informing the consumer of how a paper copy may be obtained; and
 - Informing the consumer whether a fee will be charged for the paper copy.
- The consumer has been provided a statement of the hardware and software needed to access and retain the electronic records;
- The consumer consents electronically, reasonably demonstrating the ability to access the information; and
- If a change in the hardware or software requirements creates a material risk that the consumer will not be able to access or retain records, the provider of the records must:
 - Provide the consumer with a statement of the revised hardware and software that would be needed; and
 - Provide the consumer with a statement of the right to withdraw consent without the imposition of any fees or other consequence that was not specified in the initial disclosures.⁶

While federal law generally preempts state law, E-SIGN allows states to be exempt from federal preemption by conforming state legislation to one of two options.⁷ First, a state may avoid federal preemption by E-SIGN if the state enacts the Uniform Electronic Transaction Act (UETA) as approved by the National Conference of Commissioners on Uniform State Laws in 1999.⁸ If, however, the state enactment makes any exception to the scope of UETA, it will be

² See Section 101, Pub. L. No. 106-229, 106th Cong. (June 30, 2000).

³ 15 U.S.C. s. 7001(i).

⁴ 15 U.S.C. s. 7001(a)(2).

⁵ 15 U.S.C. s. 7001(b)(2).

⁶ 15 U.S.C. s. 7001(c)(1).

⁷ 15 U.S.C. 7002(a).

⁸ 15 U.S.C. 7002(a)(1).

preempted to the extent that the exception is inconsistent with E-SIGN.⁹ Second, a state may avoid federal preemption by E-SIGN if the state enacts legislation that specifies alternative procedures for the use and determination of legal validity of electronic transactions that: (1) are consistent with E-SIGN; (2) do not give greater legal status to specific types of technologies or security measures; and (3) specifically reference E-SIGN in the state statute.¹⁰

FUETA

In 2000, Florida adopted the substantive provisions of UETA, with minor differences added to reflect Florida law, as Florida's Uniform Electronic Transaction Act (FUETA).¹¹ FUETA contains a number of provisions regarding the use of electronic records and signatures in a transaction. The goal of FUETA is to make sure that transactions that are finalized electronically are as enforceable as transactions memorialized on paper with manual signatures.¹²

FUETA does not require a record to be sent, communicated, received, or used electronically.¹³ It applies only to transactions in which each party has agreed to conduct the transaction electronically.¹⁴ Whether the parties have agreed to conduct the transaction electronically is determined from the context, the surrounding circumstances, and the parties' conduct.¹⁵ If a party agrees to conduct a transaction electronically, that party may refuse to conduct other transactions electronically.¹⁶ If the parties have agreed to conduct a transaction electronically and a provision of law requires the delivery of information in writing, that requirement is satisfied by an electronic transmission.¹⁷ However, if another provision of law requires a record to be sent in a specified manner, the record must comply with the posting, transmittal, and content requirements of the other statute.¹⁸

III. Effect of Proposed Changes:

Section 1 amends s. 627.421, F.S., to allow insurers to post certain insurance policies not containing policyholder personal identifiable information on the insurer's website instead of mailing or delivering the policy to the insured. Only policies for commercial motor vehicles,

⁹ *Id.*

¹⁰ 15 USC s. 7002(a)(2).

¹¹ Chapter 2000-164, s. 1, L.O.F.; s. 668.50, F.S.; see Final Staff Analysis for CS/CS/SB 1334 by the House Committee on Utilities & Communications, 10, available at http://archive.flsenate.gov/session/index.cfm?BI_Mode=ViewBillInfo&Mode=Bills&ElementID=JumpToBox&SubMenu=1&Year=2000&billnum=1334 (last visited April 9, 2013) (indicating that "the bill is identical to the act recommended by the National Commissioners for Uniform State Laws except for provisions that were added to conform to Florida law and provisions added to subsection (11) requiring a first time notary to complete certain training requirements."); Uniform Electronic Transactions Act (1999), available at http://www.uniformlaws.org/shared/docs/electronic%20transactions/ueta_final_99.pdf (last visited April 9, 2013); National Conference of State Legislatures, *Uniform Electronic Transactions Act*, available at <http://www.ncsl.org/issuesresearch/telecom/uniformelectronic-transactions-acts.aspx> (last visited April 9, 2013). Although FUETA has been amended five times since adoption in 2000, none of the amendments were substantive.

¹² Uniform Law Commission, *Electronic Transactions Act Summary*, available at <http://www.uniformlaws.org/ActSummary.aspx?title=Electronic%20Transactions%20Act> (last visited April 9, 2013). See s. 668.50(7), F.S.

¹³ Section 668.50(5)(a), F.S.

¹⁴ Section 668.50(5)(b), F.S.

¹⁵ *Id.*

¹⁶ Section 668.50(5)(c), F.S.

¹⁷ Section 668.50(8)(a), F.S.

¹⁸ Section 668.50(8)(b), F.S.

personal casualty insurance, and personal lines property insurance are allowed to be posted online. Policyholder consent is not required for an insurer to post an insurance policy online.

If an insurer opts to post an insurance policy online instead of mailing it, the policy must be easily accessible and posted in a format that allows the policy to be saved and printed by the policyholder free of charge. Insurers posting policies online must archive all expired policies and archived policies from at least the last 5 years must be available to policyholders at their request.

Insurers posting policies on their website must notify each policyholder of his or her right to request and obtain a paper or electronic copy of the policy and any forms or endorsements without charge. Insurers must also notify policyholders of this right if the insurer changes or renews a policy. If an insurer posts policies online, the policy declarations page provided to the policyholder must clearly identify the exact policy form and endorsements purchased by the policyholder.

Section 2 provides that the bill takes effect July 1, 2013.

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:

Insurers posting policies online may save costs associated with printing and mailing insurance policies to policyholders. The exact amount of savings cannot be calculated as it is unknown how many insurers will opt to post policies online and how many policyholders will choose to obtain their policies online rather than by mail.

Insurers may incur costs associated with posting policies online, and any increased costs may be passed through to policyholders.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill specifies it applies to commercial motor vehicle or personal lines property and casualty insurance. Commercial motor vehicle is a type of casualty insurance, thus, separately specifying that the bill applies to commercial motor vehicle insurance is unnecessary.

Because the bill does not allow insurers to post policies or endorsements that contain personally identifiable information, the policies and endorsements posted online may be of limited value to the insured. The policy declarations page, which contains personal information about the policyholder and the policy, likely could not be posted online under the bill and instead may have to be provided to the policyholder in another manner, usually by mail.

VII. Related Issues:

The Office of Insurance Regulation recently stated that a similar bill may be preempted by E-SIGN because it may conflict with FUETA.¹⁹ Under E-SIGN, the consumer must affirmatively consent to receive information electronically before that transaction can be recognized as valid.²⁰ However, E-SIGN allow states to be exempt from federal preemption by conforming state legislation to the Uniform Electronic Transaction Act (UETA).²¹ If, however, the state enactment makes any exception to the scope of UETA, the state law will be preempted to the extent that the exception is inconsistent with E-SIGN.²²

As explained above, Florida adopted substantially all of UETA in s. 668.50, F.S. Under s. 668.50, F.S., 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 the transaction electronically.²³ Whether the parties have agreed to conduct the transaction electronically is determined from the context and the parties' conduct.²⁴

Section 668.50(8)(b), F.S., provides that if another provision of law requires a record to be sent by a specified manner, the record can be sent electronically if it complies with the posting, transmittal, and content requirements of the other statute. However, s. 668.50(8)(b), F.S., does not specify that the parties must agree to conduct the transaction electronically.

If it is interpreted that a transaction for which s. 668.50(8)(b), F.S., applies does not require both parties consent to conduct the transaction electronically, then the bill's provision allowing electronic posting of certain insurance policies and endorsement without the consent of the insured likely complies with UETA and the bill is likely not preempted by E-SIGN. If, however,

¹⁹ See Office of Insurance Regulation, *Bill Analysis: SB 262* (Jan. 23, 2013) (on file with the Senate Committee on Commerce and Tourism).

²⁰ 15 U.S.C. 7001(c)(1).

²¹ 15 U.S.C. 7002(a)(1).

²² *Id.*

²³ See ss. 668.50(8)(a); 668.50(7)(c), (d); 668.50(5)(b), F.S.

²⁴ Section 668.50(5)(b), F.S.

it is interpreted that a transaction for which s. 668.50(8)(b), F.S., applies simply specifies additional requirements for these specific types of transactions and the consent requirements of s. 668.50, F.S., also apply, then the electronic posting of policies without the consent of the insured may not comply with UETA and may be preempted by E-SIGN.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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