

**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 Banking and Insurance

BILL: SB 262

INTRODUCER: Senator Smith

SUBJECT: Delivery of Insurance Policies

DATE: March 23, 2013

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	<b>Pre-meeting</b>
2.	_____	_____	CM	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

SB 262 expands the options for providing insurance policies to policyholders to include electronic transmission. The electronic delivery of an insurance policy would not require the prior consent of the insured. However, a paper copy of the policy would be provided to the policyholder or insured upon his or her request. Currently, s. 627.421, F.S., requires every insurance policy to be mailed or delivered to the insured within 60 days after the insurance takes effect.

This bill amends the following section of the Florida Statutes: 627.421.

**II. Present Situation:**

Section 627.421, F.S., requires every insurance policy<sup>1</sup> to be mailed or delivered to the insured (policyholder) 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.

<sup>1</sup> Section 627.402, F.S., defines policy to include endorsements, riders, and clauses. Reinsurance, wet marine and transportation insurance, title insurance, and credit life or credit disability insurance policies do not have to be mailed or delivered. (see s. 627.401, F.S., which excludes these types of policies from the application of Part II, ch. 627, 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.<sup>2</sup> Insurance is specifically included in E-SIGN.<sup>3</sup> 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. E-Sign explicitly specifies that it does not require any person to agree to use or accept electronic records or signatures, other than a governmental entity.<sup>4</sup> E-SIGN provides that information required by law to be in writing can be made available electronically to a consumer only if:<sup>5</sup>

- 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.

While federal law generally preempts state law, by its own terms E-Sign allows states to be exempt from federal preemption by conforming state legislation to one of two options. 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.<sup>6</sup> If, however, the state enactment makes any exception to the scope of

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<sup>2</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>3</sup> 15 USC s. 7001(i).

<sup>4</sup> 15 USC s. 7001(b)(2).

<sup>5</sup> 15 USC s. 7001(c)(1).

<sup>6</sup> 15 USC 7002(a)(1).

UETA, it will be preempted to the extent that the exception is inconsistent with E-Sign.<sup>7</sup> 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 references E-Sign in the state statute.<sup>8</sup>

## FUETA

In 2000, Florida adopted the substantive provisions of UETA, with minor differences.<sup>9</sup> Section 668.50, F.S., is Florida's Uniform Electronic Transaction Act (FUETA). By its stated terms:

- FUETA does not require a record to be sent, communicated, received, or used by electronic means.<sup>10</sup>
- FUETA applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties have agreed to conduct the transaction by electronic means is determined from the context, the surrounding circumstances, and the parties' conduct.<sup>11</sup>

FUETA provides that if 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.<sup>12</sup> FUETA provides that if another provision of law requires a record to be sent by a specified manner, FUETA specifies a number of statutory requirements that apply to the transaction.<sup>13</sup>

### III. Effect of Proposed Changes:

**Section 1** amends. s. 627.421, F.S., to allow an insurer to transmit a policy electronically. The prior consent of the insured would not be required for the electronic delivery of a policy. The section requires that a paper copy of the policy would be provided to the insured or others upon his or her request.

**Section 2** provides that the act takes effect upon becoming a law.

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<sup>7</sup> Id.

<sup>8</sup> 15 USC s. 7002(a)(2).

<sup>9</sup> [http://www.uniformlaws.org/Act.aspx?title=Electronic Transactions Act](http://www.uniformlaws.org/Act.aspx?title=Electronic%20Transactions%20Act) (last viewed March 15, 2013), <http://www.ncsl.org/issuesresearch/telecom/uniform-electronic-transactions-acts.aspx> (last viewed March 17, 2013), and Final Staff Analysis for CS/CS/SB 1334 prepared by the House of Representatives Committee on Utilities & Communications, available at [http://archive.flsenate.gov/session/index.cfm?BI\\_Mode=ViewBillInfo&Mode=Bills&ElementID=JumpToBox&SubMenu=1&Year=2000&billnum=1334](http://archive.flsenate.gov/session/index.cfm?BI_Mode=ViewBillInfo&Mode=Bills&ElementID=JumpToBox&SubMenu=1&Year=2000&billnum=1334) (last viewed March 17, 2013) indicating on page 10 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." Although Florida's adoption of the UETA has been amended five times since adoption in 2000, none of the amendments were substantive.

<sup>10</sup> S. 668.50(5)(a), F.S.

<sup>11</sup> S. 668.50(5)(b), F.S.

<sup>12</sup> S. 668.50(8)(a), F.S.

<sup>13</sup> S. 668.50(8)(b), F.S.

**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:

The bill would provide policyholders with readily available online access to policy information.

The bill will result in an indeterminate reduction in the administrative costs of insurers associated with printing and mailing by allowing the electronic transmission of policies.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill may conflict with the requirements of s. 668.50, F.S., Florida's Uniform Electronic Transaction Act (FUETA), and the federal E-SIGN law. Under E-SIGN, the consumer must affirmatively consent to receive information electronically before that transaction can be recognized as valid. The bill clearly contravenes that requirement, but the provisions of E-SIGN allow states to be exempt from federal preemption by conforming state legislation to the Uniform Electronic Transaction Act (UETA) as approved by the National Conference of Commissioners on Uniform State Laws in 1999. 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.

Section 668.50, F.S., 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 the transaction by electronic means. Whether the bill contravenes that requirement depends on whether the previous communication between the parties is interpreted to be considered an agreement to conduct the transaction by electronic means. Additionally, s. 668.50(8)(b), F.S., also provides that if another provision of law requires a record to be sent by a specified manner, the record can be sent electronically if meets a number of statutory requirements specified in that subsection.

Because the bill does not require the consumer's agreement, it could be interpreted to be in violation of FUETA (s. 668.50(5)(b), F.S.) and thereby in violation of E-SIGN. On the other hand, the bill might be interpreted to fall within the allowance of s. 668.50(8)(b), F.S., but this construction may be questionable for two reasons: (1) Section 668.50(8)(b), F.S., merely adds provisions that must be met when another provision of law requires a record to be sent in a specified manner, but it does not explicitly render s. 668.50(5)(b), F.S., inapplicable, so both provisions of FUETA could be interpreted to apply; and (2) The bill allows alternative methods of delivery, rather than requiring a specified manner, so it might be argued that s. 668.50(8)(b), F.S., does not apply. If either of these two interpretations is reached, the bill would conflict with FUETA.

If the provisions of the bill are interpreted to be allowed under s. 668.50(8)(b), F.S., it is possible that this interpretation could create a conflict with the federal E-SIGN. E-SIGN allows the exemption from federal preemption through the adoption of the Uniform Electronic Transaction Act (UETA), "except that any exception to the scope of [UETA] shall be preempted to the extent such exception is inconsistent with [E-Sign]...."<sup>14</sup> Since this interpretation would allow a separate Florida law to override the consumer agreement provision of FUETA that would otherwise apply, it might be argued that it has created the "exception to the scope of [UETA]" that causes federal preemption to the extent the exception is inconsistent with E-Sign. A federal preemption in this area would apply the E-SIGN requirement for affirmative consumer consent, along with the expansive notification requirements.

## 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.

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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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<sup>14</sup> 15 USC s. 7002(a)(1).