

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: CS/SB 262

INTRODUCER: Banking and Insurance Committee and Senator Smith

SUBJECT: Delivery of Insurance Policies

DATE: April 12, 2013 **REVISED:** _____

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

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 262 allows an insurer to transmit a policy electronically for certain types of specified commercial risks. For these specified types of coverage, electronic transmission of a policy constitutes delivery to the insured. The electronic transmission of the policy is required to include notice of the recipient's right to receive the policy by United States mail rather than by electronic transmission. The insurer must provide a paper copy of the policy if the insured communicates to the insurer electronically or in writing that he or she does not agree to delivery by electronic means.

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 (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.

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

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.

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).

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 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

⁷ 15 U.S.C. 7002(a).

⁸ 15 U.S.C. 7002(a)(1).

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=View&BillInfo&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.

III. Effect of Proposed Changes:

Section 1 amends s. 627.421, F.S., to allow an insurer to transmit a policy electronically for certain types of specified commercial risks. Electronic transmission of a policy constitutes delivery to the insured or to the person entitled to delivery for the following types of coverage:

- Workers' compensation and employers' liability;
- Commercial automobile liability;
- Commercial automobile physical damage;
- Commercial lines residential property;
- Commercial nonresidential property;
- Farm owners insurance; and
- The types of commercial lines risks that are not subject to the rating requirements of s. 627.062(a) and (f), F.S.

The electronic transmission of the policy is required to include notice of the recipient's right to receive the policy by United States mail rather than by electronic transmission. The insurer must provide a paper copy of the policy 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 provides that the bill takes effect upon becoming a law.

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 permitting certain commercial insurers to deliver insurance policies electronically, the bill may reduce the administrative costs to insurers associated with printing and mailing.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the Office of Insurance Regulation, the 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 delivery of certain commercial policies without the consent of the insured likely complies with UETA and the bill is likely not preempted by E-SIGN. If, however, 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 delivery of policies without the consent of the insured may not comply with UETA and may be preempted by E-SIGN.

¹⁹ 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.

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

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

CS by Banking and Insurance on April 2, 2013:

The CS allows an insurer to transmit a policy electronically for certain types of specified commercial risks. The CS provides that electronic transmission of a policy constitutes delivery to the insured or to the person entitled to delivery for the following types of coverage:

- Workers' compensation and employers' liability;
- Commercial automobile liability;
- Commercial automobile physical damage;
- Commercial lines residential property;
- Commercial nonresidential property;
- Farm owners insurance; and
- The types of commercial lines risks that are not subject to the rating requirements of s. 627.062(a) and (f), F.S.

B. Amendments:

None.