

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 1042

AN ACT

To repeal section 379.011, RSMo, and to enact in lieu thereof one new section relating to electronic delivery of insurance documents or notices.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 379.011, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 379.011, to read as follows:

379.011. 1. As used in this section, the following terms mean:

(1) "Delivered by electronic means", includes delivery to an electronic mail address at which a party has consented to receive notices or documents, or posting on an electronic network or site accessible via the internet, mobile application, computer, mobile device, tablet, or any other electronic device, together with a separate notice to a party directed to the electronic mail address at which the party has consented to receive notice of the posting;

(2) "Party", any recipient of any notice or document required as part of an insurance transaction, including but not limited to an applicant, an insured or a policyholder.

2. Subject to subsection 3 of this section, any notice to a party or any other document required under applicable law in an insurance transaction or that is to serve as evidence of insurance coverage may be delivered, stored, and presented by electronic means so long as it meets the requirements of sections 432.200 to 432.295. Delivery of a notice or document in accordance with this subsection shall be considered equivalent to any delivery method required

under applicable law, including delivery by first class mail, first class mail postage prepaid, certified mail, or certificate of mailing.

3. A notice or document may be delivered by electronic means by an insurer to a party under this **[subsection]** section if:

(1) The party has affirmatively consented to that method of delivery and has not withdrawn the consent;

(2) The party, before giving consent, is provided with a clear and conspicuous statement informing the party of:

(a) Any right or option to have the notice or document provided in paper or another nonelectronic form at no additional cost;

(b) The right of the party to withdraw consent to have a notice or document delivered by electronic means;

(c) Whether the party's consent applies only to the particular transaction as to which the notice or document must be given or to identified categories of notices or documents that may be delivered by electronic means during the course of the parties' relationship;

(d) The means, after consent is given, by which a party may obtain a paper copy of a notice or document delivered by electronic means at no additional cost; and

(e) The procedure a party must follow to withdraw consent to have a notice or document delivered by electronic means and to update information needed to contact the party electronically;

(3) The party, before giving consent, is provided with a statement of the hardware and software requirements for access to and retention of a notice or document delivered by electronic means and consents electronically, and confirms consent electronically, in a manner that reasonably demonstrates that the party can access information in the

electronic form that will be used for notices or documents delivered by electronic means as to which the party has given consent; and

(4) After consent of the party is given, the insurer, in the event a change in the hardware or software requirements needed to access or retain a notice or document delivered in electronic means creates a material risk that the party will not be able to access or retain a subsequent notice or document to which the consent applies:

(a) Provides the party with a statement of the revised hardware and software requirements for access to and retention of a notice or document delivered by electronic means and of the right of the party to withdraw consent pursuant to paragraph (b) of subdivision (2) of this subsection; and

(b) Complies with subdivision (2) of this subsection.

4. Notwithstanding any other provisions of this section, if a policy of insurance is purchased directly through an insurer's website, portal, or application, and is initially delivered by electronic means, a party's consent to have all future notices and documents related to the policy, or claims thereunder, delivered by electronic means shall be presumed. Nothing in this subsection shall affect the right of a party under this section to withdraw its consent to have a notice or document delivered by electronic means.

5. This section does not affect requirements relating to content or timing of any notice or document required under applicable law. If any provision of applicable law requiring a notice or document to be provided to a party expressly requires verification or acknowledgment of receipt of the notice or document, the notice or document may be delivered by electronic means only if the method used

provides for verification or acknowledgment of receipt. Absent verification or acknowledgment of receipt of the initial notice or document on the part of the party, the insurer shall send two subsequent notices or documents at intervals of five business days. The legal effectiveness, validity, or enforceability of any contract or policy of insurance executed by a party may not be made contingent upon obtaining electronic consent or confirmation of consent of the party in accordance with subdivision (3) of subsection 3 of this section.

[5.] 6. A withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a notice or document delivered by electronic means to the party before the withdrawal of consent is effective. A withdrawal of consent by a party is effective within thirty days after receipt of the withdrawal by the insurer. Failure by an insurer to comply with subdivision (4) of subsection 3 of this section may be treated, at the election of the party, as a withdrawal of consent for purposes of this section.

[6.] 7. This section does not apply to a notice or document delivered by an insurer in an electronic form before August 28, 2013, to a party who, before that date, has consented to receive notices or documents in an electronic form otherwise allowed by law. If the consent of a party to receive certain notices or documents in an electronic form is on file with an insurer before August 28, 2013, and pursuant to this section, an insurer intends to deliver additional notices or documents to such party in an electronic form, then prior to delivering such additional notices or documents electronically, the insurer shall notify the party of:

(1) The notices or documents that may be delivered by electronic means under this section that were not previously delivered electronically; and

(2) The party's right to withdraw consent to have notices or documents delivered by electronic means.

[7.] 8. A party who does not consent to delivery of notices or documents under subsection 3 of this section, or who withdraws their consent, shall not be subject to any additional fees or costs for having notices or documents provided or made available to them in paper or another nonelectronic form.

[8.] 9. If any provision of applicable law requires a signature or notice or document to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by the provision, is attached to or logically associated with the signature, notice, or document.

[9.] 10. This section may not be construed to modify, limit, or supercede the provisions of sections 354.442, 376.1450, or 432.200 to 432.295. The provisions of this section shall apply to notices and documents issued by insurers organized under this chapter or chapter 380 and to notices and documents relating to life insurance products issued by insurers organized under chapter 376.

[10.] 11. Nothing in this section shall prevent an insurer from offering a discount to an insured who elects to receive notices and documents electronically in accordance with this section.