

HOUSE BILL No. 2107

By Committee on Insurance

1-28

1 AN ACT concerning insurance; relating to the transmission of electronic
2 notices and other documents; enacting the electronic notice and
3 document act; *relating to adverse underwriting decisions; allowing*
4 *return of premiums separate from notice; amending K.S.A. 40-2,112*
5 *and repealing the existing section.*
6

7 *Be it enacted by the Legislature of the State of Kansas:*

8 *New* Section 1. The provisions of sections 1 through 4, and
9 amendments thereto, shall be known and may be cited as the electronic
10 notice and document act.

11 *New* Sec. 2. This act allows the use of electronic notices and
12 documents in lieu of any other provision of law for the sending of
13 insurance notices and documents. In order to send electronic notices and
14 documents to another party the insurer must obtain the consent of the other
15 party as provided in this act.

16 *New* Sec. 3. For the purposes of this act:

17 (a) "Delivered by electronic means" includes:

18 (1) Delivery to an electronic mail address at which a party has
19 consented to receive notices or documents; or

20 (2) posting on an electronic network or site accessible via the internet,
21 mobile application, computer, mobile device, tablet or any other electronic
22 device, together with separate notice ~~to a party directed to the~~ **of the**
23 **posting, which shall be provided by** electronic mail **to the** address at
24 which the party has consented to receive notice ~~of the posting or by any~~
25 **other delivery method that has been consented to by the party.**

26 (b) "Party" means any recipient of any notice or document required as
27 part of an insurance transaction, including, but not limited to, an applicant,
28 an insured, a policyholder or an annuity contract holder.

29 *New* Sec. 4. (a) Subject to subsection (c), any notice to a party or any
30 other document required under applicable law in an insurance transaction
31 or that is to serve as evidence of insurance coverage may be delivered,
32 stored and presented by electronic means so long as it meets the
33 requirements of this act.

34 (b) Delivery of a notice or document in accordance with this section

1 shall be considered equivalent to any delivery method required under
2 applicable law, including delivery by first class mail; first class mail,
3 postage prepaid; certified mail; certificate of mail; or certificate of mailing.

4 (c) A notice or document may be delivered by electronic means by an
5 insurer to a party under this section if:

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

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

10 (A) Any right or option of the party to have the notice or document
11 provided or made available in paper or another non-electronic form;

12 (B) the right of the party to withdraw consent to have a notice or
13 document delivered by electronic means and any fees, conditions or
14 consequences imposed in the event consent is withdrawn;

15 (C) whether the party's consent applies: (i) Only to the particular
16 transaction as to which the notice or document must be given; or (ii) to
17 identified categories of notices or documents that may be delivered by
18 electronic means during the course of the parties' relationship;

19 (D) (i) the means, after consent is given, by which a party may obtain
20 a paper copy of a notice or document delivered by electronic means; and
21 (ii) the fee, if any, for the paper copy; and

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

25 (3) the party, before giving consent, is provided with a statement of
26 the hardware and software requirements for access to and retention of a
27 notice or document delivered by electronic means; and consents
28 electronically, or confirms consent electronically, in a manner that
29 reasonably demonstrates that the party can access information in the
30 electronic form that will be used for notices or documents delivered by
31 electronic means as to which the party has given consent; and

32 (4) after consent of the party is given, the insurer, in the event a
33 change in the hardware or software requirements needed to access or retain
34 a notice or document delivered by electronic means creates a material risk
35 that the party will not be able to access or retain a subsequent notice or
36 document to which the consent applies, provides the party with a statement
37 of: (A) The revised hardware and software requirements for access to and
38 retention of a notice or document delivered by electronic means; and (B)
39 the right of the party to withdraw consent without the imposition of any
40 fee, condition, or consequence that was not disclosed under subsection (c)
41 (2).

42 (d) This act does not affect requirements related to content or timing
43 of any notice or document required under applicable law.

1 (e) If a provision of this act or applicable law requiring a notice or
2 document to be provided to a party expressly requires verification or
3 acknowledgment of receipt of the notice or document, the notice or
4 document may be delivered by electronic means only if the method used
5 provides for verification or acknowledgment of receipt.

6 (f) The legal effectiveness, validity, or enforceability of any contract
7 or policy of insurance executed by a party may not be denied solely
8 because of the failure to obtain electronic consent or confirmation of
9 consent of the party in accordance with subsection (c)(3).

10 (g) A withdrawal of consent by a party does not affect the legal
11 effectiveness, validity, or enforceability of a notice or document delivered
12 by electronic means to the party before the withdrawal of consent is
13 effective. A withdrawal of consent by a party is effective within a
14 reasonable period of time after receipt of the withdrawal by the insurer.
15 Failure by an insurer to comply with subsection (c)(4) may be treated, at
16 the election of the party, as a withdrawal of consent for purposes of this
17 section.

18 (h) This section does not apply to a notice or document delivered by
19 an insurer in an electronic form before the effective date of this act to a
20 party who, before that date, has consented to receive a notice or document
21 in an electronic form otherwise allowed by law.

22 (i) If the consent of a party to receive certain notices or documents in
23 an electronic form is on file with an insurer before the effective date of this
24 act, and pursuant to this section, an insurer intends to deliver additional
25 notices or documents to such party in an electronic form, then prior to
26 delivering such additional notices or documents electronically, the insurer
27 shall notify the party of the notices or documents that may be delivered by
28 electronic means under this section that were not previously delivered
29 electronically and the party's right to withdraw consent to have notices or
30 documents delivered by electronic means.

31 **(j) Notwithstanding any other provisions of this section, insurance**
32 **policies and endorsements that do not contain personally identifiable**
33 **information may be mailed, delivered or posted on the insurer's**
34 **website. If the insurer elects to post insurance policies and**
35 **endorsements on its website in lieu of mailing or delivering such**
36 **policies and endorsements to the insured, such insurer shall comply**
37 **with all of the following conditions:**

38 **(1) The policy and endorsements shall be easily accessible and**
39 **remain that way for as long as the policy is in force;**

40 **(2) after the expiration of the policy, the insurer shall archive its**
41 **expired policies and endorsements for ~~seven~~ five years and make them**
42 **available upon request;**

43 **(3) the policies and endorsements shall be posted in a manner**

1 that enables the insured to print and save the policy and endorsements
2 using programs or applications that are widely available on the
3 internet and free to use;

4 (4) the insurer shall provide notice, at the time of issuance of the
5 initial policy forms and any renewal forms, of a method by which
6 insureds may obtain, upon request and without charge, a paper or
7 electronic copy of their policy or endorsements;

8 (5) on each declarations page issued to an insured, the insurer
9 shall clearly identify the exact policy and endorsement forms
10 purchased by the insured; and

11 (6) the insurer shall provide notice of any changes to the forms or
12 endorsements, and of the insured's right to obtain, upon request and
13 without charge, a paper or electronic copy of such forms or
14 endorsements.

15 ~~(j)~~(k) Except as otherwise provided by law, if an oral communication
16 or a recording of an oral communication from a party can be reliably
17 stored and reproduced by an insurer, the oral communication or recording
18 may qualify as a notice or document delivered by electronic means for
19 purposes of this section. If a provision of this title or applicable law
20 requires a signature or notice or document to be notarized, acknowledged,
21 verified or made under oath, the requirement is satisfied if the electronic
22 signature of the person authorized to perform those acts, together with all
23 other information required to be included by the provision, is attached to
24 or logically associated with the signature, notice or document.

25 (l) This section shall not affect any obligation of the insurer to
26 provide notice to any person other than the insured of any notice
27 provided to the insured.

28 ~~(k)~~(m) This section shall not be construed to modify, limit or
29 supersede the provisions of the federal electronic signatures in global and
30 national commerce act, public law 106-229, or the provisions of the
31 uniform electronic transactions act, K.S.A. 16-1601 et seq., and
32 amendments thereto.

33 (n) The provisions of this act shall not apply to any mutual
34 insurance company organized pursuant to article 12a of chapter 40 of
35 the Kansas Statutes Annotated, and amendments thereto.

36 *Sec. 5. K.S.A. 40-2,112 is hereby amended to read as follows: 40-*
37 *2,112. (a) In the event of an adverse underwriting decision the insurance*
38 *company, health maintenance organization or agent responsible for the*
39 *decision shall either provide the applicant, policyholder or individual*
40 *proposed for coverage with the specific reason or reasons for the adverse*
41 *underwriting decision in writing or advise such persons that upon*
42 *written request they may receive the specific reason or reasons in*
43 *writing.*

1 ***(b) Upon receipt of a written request within 60 business days from***
2 ***the date of the mailing of notice or other communication of an adverse***
3 ***underwriting decision to an applicant, policyholder or individual***
4 ***proposed for coverage, the insurance company, health maintenance***
5 ***organization or agent shall furnish to such person within 21 business***
6 ***days of the receipt of such written request:***

7 ***(1) The specific reason or reasons for the adverse underwriting***
8 ***decision, in writing, if such information was not initially furnished in***
9 ***writing pursuant to subsection (a); or***

10 ***(2) if specific items of medical-record information are supplied by a***
11 ***health care institution or health care provider it shall be disclosed either***
12 ***directly to the individual about whom the information relates or to a***
13 ***health care provider designated by the individual and licensed to provide***
14 ***health care with respect to the condition to which the information***
15 ***relates, whichever the insurance company, health maintenance***
16 ***organization or agent prefers; and***

17 ***(3) the names and addresses of the institutional sources that***
18 ***supplied the specific items of information given pursuant to subsection***
19 ***(b)(2) if the identity of any health care provider or health care institution***
20 ***is disclosed either directly to the individual or to the designated health***
21 ***care provider, whichever the insurance company, health maintenance***
22 ***organization or agent prefers.***

23 ***(c) The obligations imposed by this section upon an insurance***
24 ***company, health maintenance organization or agent may be satisfied by***
25 ***another insurance company, health maintenance organization or agent***
26 ***authorized to act on its behalf.***

27 ***(d) The company, health maintenance organization or the agent,***
28 ***whichever is in possession of the money, shall refund to the applicant or***
29 ***individual proposed for coverage, the difference between the payment***
30 ***and the earned premium, if any, in the event of a declination of***
31 ***insurance coverage, termination of insurance coverage, or any other***
32 ***adverse underwriting decision.***

33 ***(1) If coverage is in effect, such refund shall accompany the notice***
34 ***of the adverse underwriting decision, except such refund obligation shall***
35 ***not apply if:***

36 ***(A) Material underwriting information requested by the application***
37 ***for coverage is clearly misstated or omitted and the company or health***
38 ***maintenance organization attempts to provide coverage based on the***
39 ***proper underwriting information; or***

40 ***(B) or such refund may separately be returned in not more than 10***
41 ***days from the date of such notice. The notice shall contain language***
42 ***indicating that any refund due will be returned in not more than 10 days***
43 ***from the date on such notice. The refund requirement shall not apply to life***

1 *insurance if the company or health maintenance organization includes*
2 *with the notice of the adverse underwriting decision an offer of coverage*
3 *to an applicant for life insurance under a different policy or at an*
4 *increased premium. If such a counter-offer is made by the insurer, the*
5 *insured or the insured's legal representative shall have 10 business days*
6 *after receipt thereof in which to notify the company or health*
7 *maintenance organization of acceptance of the counter-offer, during*
8 *which time coverage will be deemed to be in effect under the terms of the*
9 *policy for which application has been made, but such coverage shall not*
10 *extend beyond 30 calendar days following the date of issuance of the*
11 *counter-offer by the insurance company or health maintenance*
12 *organization. The insurance company or health maintenance*
13 *organization shall promptly refund the premium upon notice of the*
14 *insured's refusal to accept the counter-offer or upon expiration of such*
15 *30 calendar day period, whichever occurs first.*

16 *(2) If coverage is not in effect and payment therefor is in the*
17 *possession of the company, health maintenance organization or the*
18 *agent, the underwriting decision shall be made within 20 business days*
19 *from receipt of the application by the agent unless the underwriting*
20 *decision is dependent upon substantive information available only from*
21 *an independent source. In such cases, the underwriting decision shall be*
22 *made within 10 business days from receipt of the external information*
23 *by the party that makes the decision. The refund shall accompany the*
24 *notice of an adverse underwriting decision, or such refund may*
25 *separately be returned in not more than 10 days from the date of such*
26 *notice. The notice shall contain language indicating that any refund due*
27 *will be returned in not more than 10 days from the date on such notice.*

28 **Sec. 6. K.S.A. 40-2,112 is hereby repealed.**

29 **Sec. ~~5~~ 7.** This act shall take effect and be in force from and after its
30 publication in the statute book.