

S.230

Introduced by Senator Cummings

Referred to Committee on Finance

Date: January 3, 2012

Subject: Insurance; property and casualty; electronic notices

Statement of purpose: This bill proposes to permit insurers to send certain notices to policyholders by electronic means.

An act relating to property and casualty insurers and electronic notices

It is hereby enacted by the General Assembly of the State of Vermont:

~~Sec. 1. 8 V.S.A. § 3666 is added to read:~~

~~§ 3666. DELIVERY OF NOTICES BY ELECTRONIC MEANS~~

~~(a) As used in this section:~~

~~(1) "Delivered by electronic means" includes:~~

~~(A) delivery to an electronic mail address at which a party has consented to receive notice; and~~

~~(B) posting on an electronic network, together with separate notice to a party sent to the electronic mail address at which the party has consented to receive notice of the posting.~~

~~(2) "Party" means an applicant, an insured, or a policyholder.~~

1 ~~(b) Subject to subsection (d) of this section, any notice to a party required~~  
2 ~~under section 3880, 3881, 4224, 4225, 4712, or 4713 of this title may be~~  
3 ~~delivered by electronic means provided the process used to obtain consent of~~  
4 ~~the party to have notice delivered by electronic means meets the requirements~~  
5 ~~of 9 V.S.A. chapter 20, the Uniform Electronic Transactions Act.~~

6 ~~(c) Delivery of a notice pursuant to subsection (b) of this section shall be~~  
7 ~~considered equivalent to any delivery method required under section 3883,~~  
8 ~~4226, or 4714 of this title, including delivery by first-class mail, certified mail,~~  
9 ~~certificate of mail, or certificate of mailing.~~

10 ~~(d) A notice may be delivered by electronic means by an insurer to a party~~  
11 ~~under this section if:~~

12 ~~(1) The party has affirmatively consented to such method of delivery~~  
13 ~~and not subsequently withdrawn consent.~~

14 ~~(2) The party, before giving consent, is provided with a clear and~~  
15 ~~conspicuous statement:~~

16 ~~(A) informing the party of:~~

17 ~~(i) any right or option of the party to have the notice provided or~~  
18 ~~made available in paper or another nonelectronic form;~~

19 ~~(ii) the right of the party to withdraw consent to have notice~~  
20 ~~delivered by electronic means and any fees, conditions, or consequences~~  
21 ~~imposed in the event consent is withdrawn;~~

1 ~~(iii) whether the party's consent applies:~~

2 ~~(I) only to the particular transaction as to which the notice must~~

3 ~~be given; or~~

4 ~~(II) to identified categories of notices that may be delivered by~~

5 ~~electronic means during the course of the party's relationship with the insurer;~~

6 ~~(iv)(I) how, after consent is given, the party may obtain a paper~~

7 ~~copy of a notice delivered by electronic means; and~~

8 ~~(II) the fee, if any, for the paper copy; and~~

9 ~~(v) the procedures the party must use to withdraw consent to have~~

10 ~~notice delivered by electronic means and to update information needed to~~

11 ~~contact the party electronically.~~

12 ~~(3) The party:~~

13 ~~(A) before giving consent, is provided with a statement of the~~

14 ~~hardware and software requirements for access to and retention of a notice~~

15 ~~delivered by electronic means; and~~

16 ~~(B) consents electronically or confirms consent electronically, in a~~

17 ~~manner that reasonably demonstrates that the party can access information in~~

18 ~~the electronic form that will be used for notices delivered by electronic means~~

19 ~~as to which the party has given consent.~~

20 ~~(4) After consent of the party is given, the insurer, in the event a change~~

21 ~~in the hardware or software requirements needed to access or retain a notice~~

~~delivered by electronic means creates a material risk that the party will not be~~  
able to access or retain a subsequent notice to which the consent applies:

(A) provides the party with a statement of:

(i) the revised hardware and software requirements for access to  
and retention of a notice delivered by electronic means;

(ii) the right of the party to withdraw consent without the  
imposition of any fee, condition, or consequence not disclosed under  
subdivision (2)(A)(i) of this subsection; and

(B) complies with subdivision (2) of this subsection.

(e) This section does not affect the content or timing of any notice required  
under chapter 105, 113, or 128 of this title.

(f) If a provision of chapter 105, 113, or 128 of this title requiring notice to  
be provided to a party expressly requires verification or acknowledgment of  
receipt of the notice, the notice may be delivered by electronic means only if  
the method used provides for verification or acknowledgment of receipt.

(g) The legal effectiveness, validity, or enforceability of any contract or  
policy of insurance executed by a party may not be denied solely because of  
the failure to obtain electronic consent or confirmation of consent of the party  
in accordance with subdivision (d)(3)(B) of this section.

(h)(1) A withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a notice delivered by electronic means to the party before the withdrawal of consent is effective.

(2) A withdrawal of consent by a party is effective within a reasonable period of time after receipt of the withdrawal by the insurer.

(3) Failure to comply with subdivision (d)(4) of this section may be treated, at the election of the party, as a withdrawal of consent for purposes of this section.

(i) If a provision of chapter 105, 113, or 128 of this title requires a signature or record 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 of record.

(j) This section shall not be construed to modify, limit, or supersede the provisions of the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. chapter 96, relating to the use of an electronic record to provide or make available information that is required to be provided or made available in writing to a party.

1 ~~Sec. 2. INTERPRETATION~~

2 ~~The delivery of notice in accordance with Sec. 1 of this act is intended and~~  
3 ~~shall be construed to meet the requirements of state insurance regulation 78-01,~~  
4 ~~section 1, as revised.~~

5 Sec. 3. EFFECTIVE DATE

6 ~~This act shall take effect on January 1, 2013 and apply to all policies and~~  
7 ~~certificates delivered, issued for delivery, or renewed in this state on or after~~  
8 ~~that date.~~

*Sec. 1. 8 V.S.A. § 3666 is added to read:*

*§ 3666. DELIVERY OF NOTICES BY ELECTRONIC MEANS*

*(a) As used in this section:*

*(1) "Delivered by electronic means" includes:*

*(A) delivery to an electronic mail address at which a party has consented to receive notice; and*

*(B) posting on an electronic network, together with separate notice to a party sent to the electronic mail address at which the party has consented to receive notice of the posting.*

*(2) "Party" means an applicant, an insured, or a policyholder.*

*(b) Subject to subsection (d) of this section, any notice to a party required under section 3880, 3881, 4224, 4225, 4712, or 4713 of this title may be, but is not required to be delivered by electronic means provided the process used to obtain consent of the party to have notice delivered by electronic means meets the requirements of 9 V.S.A. chapter 20, the Uniform Electronic Transactions Act.*

*(c) Delivery of a notice pursuant to subsection (b) of this section shall be considered equivalent to any delivery method required under section 3883, 4226, or 4714 of this title, including delivery by first-class mail, certified mail, certificate of mail, or certificate of mailing.*

*(d) A notice may be delivered by electronic means by an insurer to a party under this section if:*

(1) The party has affirmatively consented to such method of delivery and not subsequently withdrawn consent.

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

(A) informing the party of:

(i) the right of the party to have the notice provided or made available in paper or another nonelectronic form at no additional cost;

(ii) the right of the party to withdraw consent to have notice delivered by electronic means;

(iii) whether the party's consent applies:

(I) only to the particular transaction as to which the notice must be given; or

(II) to identified categories of notices that may be delivered by electronic means during the course of the party's relationship with the insurer;

(iv) how, after consent is given, the party may obtain a paper copy of a notice delivered by electronic means at no additional cost; and

(v) the procedures the party must use to withdraw consent to have notice delivered by electronic means and to update information needed to contact the party electronically.

(3) The party:

(A) before giving consent, is provided with a statement of the hardware and software requirements for access to and retention of a notice delivered by electronic means; and

(B) consents electronically or 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 delivered by electronic means as to which the party has given consent.

(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 delivered by electronic means creates a material risk that the party will not be able to access or retain a subsequent notice to which the consent applies:

(A) provides the party with a statement of:

(i) the revised hardware and software requirements for access to and retention of a notice delivered by electronic means; and

(ii) a revised statement required by subdivision (2) of this subsection; and

(B) the party affirmatively consents to continued delivery of notices by electronic means.

(e) Every notice delivered pursuant to subsection (b) of this section shall include the statement required by subdivision (d)(2) of this section. This section does not otherwise affect the content or timing of any notice required under chapter 105, 113, or 128 of this title.

(f) If a provision of chapter 105, 113, or 128 of this title requiring notice to be provided to a party expressly requires verification or acknowledgment of receipt of the notice, the notice may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt. Absent acknowledgement of receipt of the initial notice on the part of the party, the insurer shall send two subsequent notices on separate business days.

(g) The legal effectiveness, validity, or enforceability of any contract or policy of insurance may not be made contingent upon obtaining electronic consent or confirmation of consent of a party in accordance with subdivision (d)(3)(B) of this section.

(h)(1) A withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a notice delivered by electronic means to the party before the withdrawal of consent is effective.

(2) A withdrawal of consent by a party is effective within 30 days after receipt of the withdrawal by the insurer.

(3) Failure to comply with subdivision (d)(4) of this section shall be treated as a withdrawal of consent for purposes of this section.

(i) A party who does not consent to delivery of notices by electronic means under subsection (b) of this section, or who withdraws his or her consent, shall not be subjected to any additional fees or costs for having notices provided or made available in paper or another nonelectronic form.

(j) This section shall not be construed to modify, limit, or supersede the provisions of the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. chapter 96, relating to the use of an electronic record to provide or make available information that is required to be provided or made available in writing to a party.

## Sec. 2. INTERPRETATION

The delivery of notice in accordance with Sec. 1 of this act is intended and shall be construed to meet the requirements of state insurance regulation 78-01, section 1, as revised.

## Sec. 3. STATEMENT OF CONSUMER RIGHTS; ELECTRONIC NOTICES



The commissioner of banking, insurance, securities, and health care administration shall issue a bulletin regarding the statement to be provided to a party under 8 V.S.A. § 3666(d)(2). The bulletin shall require insurance companies to clearly and conspicuously inform the party of the types of notices (cancellation and nonrenewal) permitted to be delivered by electronic means; the risks associated with electronic notifications and the party's assumption of those risks if he or she consents to receive electronic notifications; the party's right to receive notices by mail at no additional cost; the form of the electronic notices and their provisions; and any other provisions the commissioner deems necessary to protect the interests of Vermonters and otherwise carry out the purposes of this act.

**Sec. 34. EFFECTIVE DATE**

This act shall take effect on January 1, 2013 and apply to all policies and certificates delivered, issued for delivery, or renewed in this state on or after that date.