

**Representative James A. Dunnigan** proposes the following substitute bill:

**INSURANCE AMENDMENTS**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the Insurance Code to address electronic delivery of certain insurance documents.

**Highlighted Provisions:**

This bill:

- ▶ provides for electronic delivery of notices and other documents.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill takes effect on July 1, 2014.

**Utah Code Sections Affected:**

ENACTS:

**31A-21-316**, Utah Code Annotated 1953

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **31A-21-316** is enacted to read:

**31A-21-316. Electronic notices and documents.**

(1) As used in this section:



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

27 (i) delivery to an electronic mail address at which a party has consented to receive a  
28 notice or document; or

29 (ii) posting on an electronic network or site accessible by way of the Internet, a mobile  
30 application, a computer, a mobile device, a tablet, or any other electronic device, together with  
31 separate notice of the posting that is provided by:

32 (A) electronic mail to the address at which the party has consented to receive notice; or

33 (B) any other delivery method that has been consented to by the party.

34 (b) (i) "Party" means a recipient of a notice or document required as part of an  
35 insurance transaction.

36 (ii) "Party" includes an applicant, an insured, or a policyholder.

37 (2) Subject to Subsection (4), a notice to a party or another document required under  
38 applicable law in an insurance transaction or that serves as evidence of insurance coverage may  
39 be delivered, stored, and presented by electronic means if it meets the requirements of Title 46,  
40 Chapter 4, Uniform Electronic Transactions Act.

41 (3) Delivery of a notice or document in accordance with this section is considered  
42 equivalent to any delivery method required under applicable law.

43 (4) Subject to Subsection (5), a notice or document may be delivered by electronic  
44 means by an insurer to a party under this section if:

45 (a) the party has affirmatively consented to that method of delivery and has not  
46 withdrawn the consent;

47 (b) the party, before giving consent, is provided with a clear and conspicuous statement  
48 informing the party of:

49 (i) any right or option of the party to have the notice or document provided or made  
50 available in paper or another non-electronic form;

51 (ii) the right of the party to withdraw consent to have a notice or document delivered  
52 by electronic means, including:

53 (A) a condition or consequence imposed if consent is withdrawn;

54 (B) when the insurer will make the party's withdrawal effective, during or at the  
55 conclusion of the policy term; and

56 (C) the procedure a party is to follow to withdraw consent to have a notice or document

57 delivered by electronic means;

58 (iii) whether the party's consent applies:

59 (A) only to the particular transaction as to which the notice or document must be given;

60 or

61 (B) to identified categories of notices or documents that may be delivered by electronic  
62 means during the course of the party's relationship with the insured; and

63 (iv) the means, after consent is given, by which a party may obtain a paper copy of a  
64 notice or document delivered by electronic means;

65 (c) the party:

66 (i) before giving consent, is provided with a statement of the electronic delivery and  
67 retrieval method requirements for access to and retention of a notice or document delivered by  
68 electronic means;

69 (ii) consents electronically, or confirms consent electronically, in a manner that  
70 reasonably demonstrates that the party can access information in the electronic form that will  
71 be used for a notice or document delivered by electronic means as to which the party has given  
72 consent; and

73 (iii) is provided a process to update information needed to contact the party  
74 electronically;

75 (d) after consent of the party is given and if a change in the electronic delivery or  
76 retrieval methods creates a substantial risk that the party will not be able to access or retain a  
77 subsequent notice or document to which the consent applies, the insurer shall:

78 (i) provide the party with a statement of:

79 (A) the revised electronic delivery or retrieval methods; and

80 (B) the right of the party to withdraw consent without the imposition of any condition  
81 or consequence that was not disclosed under Subsection (4)(b)(ii); and

82 (ii) comply with Subsection (4)(b);

83 (e) failure by an insurer to comply with Subsection (4)(d) is treated, at the election of  
84 the party, as a withdrawal of consent for purposes of this section; and

85 (f) when an email address provided by the party to facilitate delivery by electronic  
86 means is returned with a message as undeliverable each time electronic delivery is attempted  
87 over a period not to exceed two business days, the party is presumed to have withdrawn

88 consent for the purposes of this section.

89 (5) (a) An insurer shall file with the department a notice or document described under  
90 Subsection (4), that includes conditions or consequences for a party to revoke the party's  
91 consent to conduct an insurance transaction, electronically.

92 (b) An insurer shall file the notice or document described in Subsection (5)(a) before  
93 the insurer uses the notice or document.

94 (c) The insurer shall communicate to the party in accordance with Subsection (4)(b) the  
95 conditions or consequences for a party to revoke the party's consent.

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

99 (7) This section does not affect requirements related to content or timing of any notice  
100 or document required under applicable law.

101 (8) If a provision of this title or applicable law requiring a notice or document to be  
102 provided to a party expressly requires verification or acknowledgment of receipt of the notice  
103 or document, the notice or document may be delivered by electronic means only if the method  
104 used provides for verification or acknowledgment of receipt.

105 (9) The legal effectiveness, validity, or enforceability of a contract or policy of  
106 insurance executed by a party may not be denied solely because of the failure to obtain  
107 electronic consent or confirmation of consent of the party in accordance with Subsection  
108 (5)(c)(ii).

109 (10) This section does not apply to a notice or document delivered by an insurer in an  
110 electronic form before May 13, 2014, to a party who, before May 13, 2014, has consented to  
111 receive notice or document in an electronic form otherwise allowed by law.

112 (11) If the consent of a party to receive certain notices or documents in an electronic  
113 form is on file with an insurer before May 13, 2014, and pursuant to this section, an insurer  
114 intends to deliver an additional notice or document to the party in an electronic form, then  
115 before delivering the additional notices or documents electronically, the insurer shall notify the  
116 party of:

117 (a) the notices or documents that may be delivered by electronic means under this  
118 section that were not previously delivered electronically; and

119 (b) the party's right to withdraw consent to have notices or documents delivered by  
120 electronic means.

121 (12) (a) Except as otherwise provided by Section [31A-21-102](#), if an oral  
122 communication or a recording of an oral communication from a party can be reliably stored and  
123 reproduced by an insurer, the oral communication or recording may qualify as a notice or  
124 document delivered by electronic means for purposes of this section.

125 (b) If a provisions of this title or applicable law requires a signature, notice, or  
126 document to be notarized, acknowledged, verified, or made under oath, the requirement is  
127 satisfied if the electronic signature of the party authorized to perform those acts together with  
128 all other information required to be included by the provision, is attached to or logically  
129 associated with the signature, notice, or document.

130 (13) This section may not be construed to modify, limit, or supersede the federal  
131 Electronic Signatures in Global and National Commerce Act, P. Law 106-229, as amended.

132 **Section 2. Effective date.**

133 This bill takes effect on July 1, 2014.