

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 157 Delivery of Insurance Policies

SPONSOR(S): Insurance & Banking Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Callaway	Cooper

SUMMARY ANALYSIS

Section 627.421, F.S., requires every insurance policy to be mailed or delivered to the insured (policyholder) or any other person entitled to delivery of the policy within 60 days after the insurance takes effect. Insurance policies are typically delivered when the policy is issued and are not delivered each time the policy is renewed.

The PCS allows insurers to deliver insurance policies by electronic transmission. The PCS further specifies electronic transmission of an insurance policy related to commercial risks constitutes deliver of the policy to the policyholder unless the policyholder tells the insurance company in writing or in an electronic format that they do not agree to have their policy delivered by electronic transmission. If a policy covering commercial risks is transmitted to the policyholder electronically, then the transmission must include a notice to the policyholder indicating the policyholder has a right to receive the policy by mail instead of electronic transmission. In addition, a paper copy of the policy must be provided to policyholders upon request.

Electronic transmission of insurance documents is governed by the Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) and Florida's adoption of the Uniform Electronic Transactions Act (UETA) as adopted by the National Conference of Commissioners on Uniform State Laws, which is Florida's Uniform Electronic Transaction Act (FUETA). Under E-SIGN, if a statute requires information to be provided or made available to a consumer in writing, the use of an electronic record to provide or make the information available to the consumer will satisfy the statute's requirement of writing if the consumer affirmatively consents to use of an electronic record. However, FUETA should preempt the provisions of the E-SIGN law because Florida substantively adopted UETA and E-SIGN allows for state preemption if UETA is adopted by the state.

FUETA specifically applies to insurance. One provision of FUETA provides if parties have agreed to conduct a transaction by electronic means and a provision of law requires a person to deliver information in writing to another person, that delivery requirement is satisfied if the information is delivered in an electronic record capable of retention by the recipient. Furthermore, whether parties have agreed to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct. No affirmative consent is required. In addition, another provision of FUETA provides if a Florida law other than FUETA requires a record to be sent or transmitted by a certain method, the record must be sent or transmitted by the method provided in the other law. The PCS could implicate either of these two provisions. If either is implicated, then affirmative consent of the policyholder is not required for the insurer to electronically transmit the insurance policy to the policyholder.

The PCS has no fiscal impact on state or local government. Insurers emailing policies to policyholders instead of mailing them will save costs associated with printing and mailing insurance policies to policyholders. The exact amount of savings cannot be calculated as it is unknown how many insurers will opt to email policies. Any savings realized by insurers should be passed through to policyholders. If insurers incur computer reprogramming costs associated with emailing policies, any increased costs will be passed through to policyholders.

The PCS is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 627.421, F.S., requires every insurance policy¹ to be mailed or delivered to the insured (policyholder) or any person entitled to delivery of the policy 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.

The PCS allows insurers to deliver insurance policies by electronic transmission. The PCS further specifies electronic transmission of an insurance policy related to commercial risks² constitutes delivery of the policy to the policyholder or any other person entitled to delivery of the policy unless the policyholder or other person tells the insurance company in writing or in an electronic format that they do not agree to have their policy delivered by electronic transmission. If a policy covering commercial risks is transmitted to the policyholder or other person entitled to delivery of the policy electronically, then the transmission must include a notice to the policyholder or other person indicating the policyholder has a right to receive the policy by mail instead of electronic transmission. In addition, a paper copy of the policy must be provided to the policyholder or other person upon request.

Applicability of Federal and State Law Relating to Electronic Transactions

The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.³ Insurance is specifically included in E-SIGN.⁴ E-SIGN provides contracts formed using electronic signatures on electronic records will not be denied legal effect only because they are electronic. However, E-SIGN requires consumer disclosure and consent to electronic records in certain instances before electronic records will be given legal effect. Under E-SIGN, if a statute requires information to be provided or made available to a consumer in writing, the use of an electronic record to provide or make the information available to the consumer will satisfy the statute's requirement of writing if the consumer affirmatively consents to use of an electronic record. The consumer must also be provided with a statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right to withdraw consent to electronic records, among other notifications.

E-SIGN allows state law to preempt the E-SIGN law in certain circumstances. State law addressing electronic transmission can preempt E-SIGN if the state law is an enactment of the Uniform Electronic Transactions Act (UETA) as adopted by the National Conference of Commissioners on Uniform State Laws. Alternatively, a state law that is not an enactment of UETA but is not inconsistent with E-SIGN and does not give greater legal status or effect to a specific form of technology or signature can preempt E-SIGN.⁵ Florida adopted the substantive provisions of UETA in 2000 and has not substantively changed the provisions since they were adopted.⁶ Thus, the Florida adoption of UETA should preempt E-SIGN. Section 668.50, F.S., Florida's Uniform Electronic Transaction Act (FUETA), is Florida's adoption of UETA.

¹ s. 627.402, F.S., defines policy to include endorsements, riders, and clauses. Reinsurance, wet marine and transportation insurance, title insurance, and credit life or credit disability insurance policies do not have to be mailed or delivered. (see s. 627.401, F.S.)

² Commercial risks specified in the PCS are: workers' compensation and employers liability, commercial automobile liability, commercial automobile physical damage, commercial lines residential property, commercial nonresidential property, farm owners insurance, and commercial risks listed in s. 627.062(3)(d), F.S. which do not file rates with the OIR for approval for use.

³ Section 101, Electronic Signatures in Global and National Commerce Act, Pub. L. no. 106-229, 114 Stat 464 (2000). Many of the provisions of E-SIGN took effective October 1, 2000.

⁴ *Id.*

⁵ 15 USC 7002

⁶ [http://www.uniformlaws.org/Act.aspx?title=Electronic Transactions Act](http://www.uniformlaws.org/Act.aspx?title=Electronic%20Transactions%20Act) (last viewed March 15, 2013), <http://www.ncsl.org/issues-research/telecom/uniform-electronic-transactions-acts.aspx> (last viewed March 17, 2013), and Final Staff Analysis for CS/CS/SB 1334 prepared by the House of Representatives Committee on Utilities & Communications, available at http://archive.flsenate.gov/session/index.cfm?BI_Mode=ViewBillInfo&Mode=Bills&ElementID=JumpToBox&SubMenu=1&Year=2000&billnum=1334 (last viewed March 17, 2013) indicating on page 10 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." Although Florida's adoption of the UETA has been amended five times since adoption in 2000, none of the amendments were substantive.

Although UETA and E-SIGN overlap in some areas, they differ on some consumer protection issues. E-SIGN focuses on regulating the manner of consent to deal electronically, while UETA focuses on how the parties are to comply with state consumer protections laws.⁷ By adopting the official version of UETA, states can modify, limit, or supersede some E-SIGN provisions, including its consumer protection issues, which includes E-SIGN's requirement of consumer disclosure and affirmative consent for electronic records.⁸

FUETA specifically applies to insurance. One provision provides if parties have agreed to conduct a transaction by electronic means and a provision of law requires a person to deliver information in writing to another person, that delivery requirement is satisfied if the information is delivered in an electronic record capable of retention by the recipient.⁹ Furthermore, whether parties have agreed to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.¹⁰

Emailing an insurance policy to the policyholder could fall under this provision of FUETA, in part, because in order to email a policy, the policyholder must provide an email address to the insurer which could be construed to mean the parties have agreed to conduct a transaction by electronic means. If this is the case, then current law requiring delivery of an insurance policy by mail or other delivery may be satisfied by emailing the policy. The consent of the policyholder to receive the policy by email would not be required in this case because under FUETA, consent is not required when the parties agree to conduct a transaction electronically. Additionally, the PCS requires the insurer to notify the policyholder when the insurance policy is emailed that the policyholder can elect to receive the policy by mail in lieu of email. Once this notice is given, a policyholder's action to not elect to receive the policy by mail may be construed to mean the parties have agreed to conduct a transaction by electronic means and thus, under FUETA, consent is not required for electronic delivery of the policy to the policyholder.

In addition, another provision of FUETA provides if a Florida law other than FUETA requires a record to be sent or transmitted by a certain method, the record must be sent or transmitted by the method provided in the other law.¹¹ This provision may allow an insurance policy to be emailed to a policyholder if the current law requiring delivery of an insurance policy to the policyholder is amended to allow electronic delivery, as the PCS proposes, because the amended law allowing electronic delivery of a policy may control over FUETA.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.421, F.S., relating to delivery of policy.

Section 2: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

⁷ Fry, Patricia Bumfield, *A Preliminary Analysis of Federal and State Electronic Commerce Laws*, available at <http://uniformlaws.org/Narrative.aspx?title=UETA%20and%20Preemption%20Article> (last viewed March 14, 2013).

⁸ <http://www.ncsl.org/issues-research/telecom/uniform-electronic-transactions-acts.aspx> (last viewed March 17, 2013).

⁹ s. 668.50(8)(a), F.S.

¹⁰ s. 668.50(5)(b), F.S.

¹¹ s. 668.50(8)(b), F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Insurers emailing policies to policyholders instead of mailing them will save costs associated with printing and mailing insurance policies to policyholders. The exact amount of savings cannot be calculated as it is unknown how many insurers will opt to email rather than by mail. However, any savings realized by insurers should be passed through to policyholders.

If insurers incur computer reprogramming costs associated with emailing policies, any increased costs will be passed through to policyholders.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This PCS does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the PCS.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES