

Chapter 260

(House Bill 763)

AN ACT concerning

Insurance – Delivery of Notices by Electronic Means – Authorized

FOR the purpose of authorizing any notice to an applicant, insured, or policyholder required to be given by an insurer under certain provisions of law governing insurance policy cancellations, nonrenewals, premium increases, and reductions of coverage to be delivered by certain electronic means under certain circumstances; providing that delivery of a notice by electronic means shall be considered equivalent to the delivery method required under certain provisions of law; ~~requiring this Act to be construed in a manner consistent with a certain federal law;~~ establishing certain requirements, procedures, and conditions for the delivery of a notice by electronic means; requiring an insurer to give certain notices to a party under certain circumstances; providing that an oral communication or a recording of an oral communication may qualify as a notice delivered by electronic means under certain circumstances; specifying the manner in which certain requirements relating to a signature or record may be satisfied; providing for the effect, construction, and application of this Act; defining a ~~certain term~~ certain terms; and generally relating to delivery of notices to applicants, insureds, and policyholders.

BY adding to

Article – Insurance

Section 27–601.2

Annotated Code of Maryland

(2006 Replacement Volume and 2010 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Insurance

27–601.2.

(A) (1) IN THIS SECTION, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “~~DELIVERED~~ DELIVERED BY ELECTRONIC MEANS” INCLUDES:

~~(1)~~ **(I) DELIVERY TO AN ELECTRONIC MAIL ADDRESS AT WHICH AN INSURED OR A POLICYHOLDER A PARTY HAS CONSENTED TO RECEIVE NOTICE; AND**

~~(2)~~ **(II) POSTING ON AN ELECTRONIC NETWORK, TOGETHER WITH SEPARATE NOTICE TO AN INSURED OR A POLICYHOLDER A PARTY DIRECTED TO THE ELECTRONIC MAIL ADDRESS AT WHICH THE INSURED OR POLICYHOLDER PARTY HAS CONSENTED TO RECEIVE NOTICE OF THE POSTING.**

(3) “PARTY” MEANS AN APPLICANT, AN INSURED, OR A POLICYHOLDER.

(B) SUBJECT TO SUBSECTION (D) OF THIS SECTION, ANY NOTICE TO AN INSURED OR POLICYHOLDER A PARTY REQUIRED UNDER THIS SUBTITLE MAY BE DELIVERED BY ELECTRONIC MEANS PROVIDED THE PROCESS USED TO OBTAIN CONSENT OF THE INSURED OR POLICYHOLDER PARTY TO HAVE NOTICE DELIVERED BY ELECTRONIC MEANS MEETS THE REQUIREMENTS OF TITLE 21, SUBTITLE 1 OF THE COMMERCIAL LAW ARTICLE.

(C) DELIVERY OF A NOTICE IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION SHALL BE CONSIDERED EQUIVALENT TO ANY DELIVERY METHOD REQUIRED UNDER THIS SUBTITLE, INCLUDING DELIVERY BY FIRST-CLASS MAIL, CERTIFIED MAIL, CERTIFICATE OF MAIL, OR CERTIFICATE OF MAILING.

~~(D) THIS SECTION SHALL BE CONSTRUED IN A MANNER CONSISTENT WITH THE FEDERAL ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT~~ **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 THAT METHOD OF DELIVERY AND HAS NOT WITHDRAWN THE CONSENT;

(2) THE PARTY, BEFORE GIVING CONSENT, IS PROVIDED WITH A CLEAR AND CONSPICUOUS STATEMENT:

(I) INFORMING THE PARTY OF:

1. ANY RIGHT OR OPTION OF THE PARTY TO HAVE THE NOTICE PROVIDED OR MADE AVAILABLE IN PAPER OR ANOTHER NONELECTRONIC FORM;

2. THE RIGHT OF THE PARTY TO WITHDRAW CONSENT TO HAVE NOTICE DELIVERED BY ELECTRONIC MEANS AND ANY FEES,

CONDITIONS, OR CONSEQUENCES IMPOSED IN THE EVENT CONSENT IS WITHDRAWN;

3. WHETHER THE PARTY'S CONSENT APPLIES:

A. ONLY TO THE PARTICULAR TRANSACTION AS TO WHICH THE NOTICE MUST BE GIVEN; OR

B. TO IDENTIFIED CATEGORIES OF NOTICES THAT MAY BE DELIVERED BY ELECTRONIC MEANS DURING THE COURSE OF THE PARTIES' RELATIONSHIP;

4. A. HOW, AFTER CONSENT IS GIVEN, THE PARTY MAY OBTAIN A PAPER COPY OF A NOTICE DELIVERED BY ELECTRONIC MEANS; AND

B. THE FEE, IF ANY, FOR THE PAPER COPY; AND

5. 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:

(I) 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

(II) 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; 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 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:

(I) PROVIDES THE PARTY WITH A STATEMENT OF:

1. THE REVISED HARDWARE AND SOFTWARE REQUIREMENTS FOR ACCESS TO AND RETENTION OF A NOTICE DELIVERED BY ELECTRONIC MEANS; AND

2. THE RIGHT OF THE PARTY TO WITHDRAW CONSENT WITHOUT THE IMPOSITION OF ANY FEE, CONDITION, OR CONSEQUENCE THAT WAS NOT DISCLOSED UNDER ITEM (2)(I)2 OF THIS SUBSECTION; AND

(II) COMPLIES WITH ITEM (2) OF THIS SUBSECTION.

(E) THIS SECTION DOES NOT AFFECT THE CONTENT OR TIMING OF ANY NOTICE REQUIRED UNDER THIS SUBTITLE.

(F) IF A PROVISION OF THIS SUBTITLE 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 SUBSECTION (D)(3)(II) 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 SUBSECTION (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) THIS SECTION DOES NOT APPLY TO A NOTICE DELIVERED BY AN INSURER IN AN ELECTRONIC FORM BEFORE OCTOBER 1, 2011, TO A PARTY WHO, BEFORE OCTOBER 1, 2011, HAS CONSENTED TO RECEIVE NOTICE IN AN ELECTRONIC FORM OTHERWISE ALLOWED BY LAW.

(J) IF THE CONSENT OF A PARTY TO RECEIVE NOTICE IN AN ELECTRONIC FORM IS ON FILE WITH AN INSURER BEFORE OCTOBER 1, 2011, THE INSURER SHALL NOTIFY THE PARTY OF:

(1) THE NOTICES THAT MAY BE DELIVERED BY ELECTRONIC MEANS UNDER THIS SECTION; AND

(2) THE PARTY'S RIGHT TO WITHDRAW CONSENT TO HAVE NOTICES DELIVERED BY ELECTRONIC MEANS.

(K) (1) EXCEPT AS OTHERWISE PROVIDED BY LAW, IF AN ORAL COMMUNICATION OR A RECORDING OF AN ORAL COMMUNICATION CAN BE RELIABLY STORED AND REPRODUCED BY AN INSURER, THE ORAL COMMUNICATION OR RECORDING MAY QUALIFY AS A NOTICE DELIVERED BY ELECTRONIC MEANS FOR PURPOSES OF THIS SECTION.

(2) IF A PROVISION OF THIS SUBTITLE 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 OR RECORD.

(L) THIS SECTION MAY NOT BE CONSTRUED TO MODIFY, LIMIT, OR SUPERSEDE THE PROVISIONS OF THE FEDERAL ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT 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.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 10, 2011.