

**ELECTRONIC INSURANCE NOTICES AND DOCUMENTS WORKING GROUP
MINUTES OF SEPTEMBER 3, 2013 MEETING
KING KALAKAUA BUILDING
QUEEN KAPIOLANI CONFERENCE ROOM**

Present: Martha Im, Insurance Division; Gordon Ito, Insurance Commissioner; Isaac Kosasa, Hawaii Insurers Council (HIC); Ann Le Lievre, Insurance Division; Lori Lum, Watanabe Ing LLP, representing Property Casualty Insurers Association of America (PCI); Leeann Oue, Hawaii Insurers Council; Alison Powers, Hawaii Insurers Council; Bob Toyofuku, Commission to Promote Uniform Legislation; Tiffany Yajima, Ashford & Wriston LLLP.

Conference Call Participants: Robert Joslin, Hawaii Public Adjusters; Bob Nash, State Farm Insurance Companies (State Farm); David Leifer, American Council of Life Insurers (ACLI); Mark Sektnan, Property Casualty Insurers Association of America; Joann Waiters, ACLI.

1. Call to order; public notice

Insurance Commissioner Gordon Ito called the meeting to order at 11:03 a.m. Public notice for this meeting was timely filed with the Lieutenant Governor's office on August 23, 2013.

Commissioner Ito opened the meeting by thanking members and participants for attending the meeting, and also reminded members that the Working Group is following the Sunshine Law. Discussion among members should occur in open hearing.

2. Approval of minutes of August 19, 2013 meeting

A draft of the minutes of the August 19, 2013 meeting was previously circulated to members for their review. A copy of the following documents circulated are attached hereto and incorporated as part of the meeting minutes: Model Law, attached as Exhibit A; Kansas Law, House Bill No. 2107, attached as Exhibit B; Missouri House Bill No. 322, attached as Exhibit C.

Bob Toyofuku stated a correction was needed on page 4, paragraph 2, second sentence of the proposed August 19, 2013 minutes. He clarified that he "will be in contact with the chair".

Allison Powers stated the following needed correction: Page 3, section B, paragraph 1, second line, delete "everything other than"; page 3, section B, paragraph 1, line 4, delete "policy" and insert "policyholder".

Allison Powers stated the following needed clarification: Page 3, section B, paragraph 4, last sentence, insert “for standard policy and endorsements” after “copies”; page 3, section B, paragraph 5, line 8, delete “policy” and insert “election form”; page 4, paragraph 5, line 3, insert “and endorsements” after “policy form”; page 5, paragraph 1, line 2, delete “may alert the individual that they will have electronic access to their policies” and insert “would remind the individual that they requested electronic policies”.

Bob Nash stated a clarification was needed on page 2, paragraph 4, line 2, insert after “provisions” the following: “; State Farm does however fully support opt-out provisions”.

Page 5, section 4, paragraph 1, line 2, delete “Mississippi” and insert “Missouri”.

Bob Toyofuku moved, and Allison Powers seconded, to approve the minutes of the August 19, 2013 meeting as amended. The motion passed unanimously.

3. Discussion of Model Law and state laws regarding electronic notices

Documents were circulated to the members of the working group, as well as other participants in advance of today’s meeting. A copy of the following documents circulated are attached hereto and incorporated as part of the meeting minutes for September 3, 2013: Model Merged Insurance Transaction Modernization Electronic Delivery or Posting (“Model Law”) dated March 25, 2013, attached as Exhibit A; Kansas House Bill No. 2107, attached as Exhibit B; 2013 Missouri House Bill No. 322, attached as Exhibit C.

A. Model Law

Commissioner Ito stated that there was confusion at the August 19, 2013 meeting as to the definitions of the terms “opt-in” and “opt-out”. Discussion ensued beginning with the Model Law and the procedures outlined therein.

a. Drafters of Model Law

When asked who drafted the Model Law, Allison Powers believed the Model Law was the effort of insurers and industry participants, one of which was PCI. Bob Nash believed at the last meeting it was represented that the opt-in portion of the Model law, regarding notices to the policyholder that contained personally identifiable information, was based on the federal Electronic Signatures in Global and National Commerce Act (E-SIGN law). The opt-out portion of the Model Law may have involved many industry participants, primarily property and casualty. Mark Sektnan believed the entire Model Law was the

result of the thought process to resolve the opt-in and opt-out provisions between two (2) insurers.

David Leifer of ACLI stated that some life insurance members were involved with drafting the Model Law and ACLI was in contact with the property and casualty side, however the life insurers were not the driving force in the drafting of the Model Law.

b. Model Law Provisions are not solely applicable to Property and Casualty

Commissioner Ito stated the Uniform Electronic Transactions Act (UETA) specifically exempts life and health insurers. The question was raised whether the Model Law was intended to apply only to property and casualty lines of insurance.

David Leifer stated that for life and health insurers, E-SIGN mandates that life and health insurance notices of cancellation or non-renewal must be in paper form. There are no similar provisions for property and casualty.

ACLI supports both UETA and E-SIGN. They have no opposition to a state provision that cancellation and non-renewals of life and health policies must be in paper form. Other than that restriction, life insurers want to be treated the same as other lines of insurance for electronic notices.

Bob Toyofuku stated Hawaii UETA does not apply to cancellation, termination, lapse, or material alteration of a contract of insurance, insurance benefits, life settlement or viatical settlement agreement, or service contract. David Leifer stated ACLI's position is that UETA is pre-empted by E-SIGN. Hawaii's UETA is opt-in. California does not allow life and health notices electronically. E-SIGN prohibits or restricts commerce with the exception of life and health policies.

Alison Powers stated that the Model Law is specific to property and casualty. If carve out for life and health insurance, that must be written-in.

Commissioner Ito asked if any states allow for electronic cancellation of life or health insurance policies. David Leifer was not aware of any states. E-posting and the opt-out provision was mostly a property and casualty effort. One (1) or two (2) states included life and health in e-posting, but do not recall which states. He will find out which states allow life and health insurance notices in the opt-out provisions and the applicable code provisions.

Bob Nash brought up the comment about the Model Law only being applicable to property and casualty policies. Looking at the language, the

property and casualty-specific aspect is only as to posting on the website for opt-out provision. Other portions apply to all policies.

Alison Powers of HIC referred to the second part of the Model Act addressing opt-out provisions as not specific to a particular line of insurance beginning on page 4 of the Model Law: “amend XXXXX of the XXXX Code by adding a new section”. Therefore, a state could include all lines of insurance in this part. But there are no similar provisions for the termination of life and health policies.

c. Opt-In and Opt-Out provisions of the Model Law

Commissioner Ito asked if a consumer purchases an auto policy, what would the Model Law require of insurers and how the opt-in or opt-out provisions are explained to the consumer? Mark Sektnan replied the Model Law gives the opportunity to conduct business electronically. The party would need to consent affirmatively after being asked if they wanted documents and notices electronically. Mark Sektnan suggested any proposed bill language be as technology-neutral as possible due to the changing nature of technology.

Commissioner Ito shared that an attorney from GEICO discussed electronic notices and documents with him at a recent conference. GEICO can already do opt-ins. An opt-in provision for documents containing personally identifiable information as well as standard policy forms and endorsements that do not contain personally identifiable information would result in less confusion when the consumer knows they must choose to have documents and notices in electronic format. Commissioner Ito stated he had not represented any position on use of electronic notices and documents.

Robert Joslin stated there is a problem with a consumer automatically receiving documents and notices electronically, unless that consumer puts it in writing that they want to receive a paper copy of documents and notices. Mark Sektnan stated a consumer will receive everything in paper form unless they “opt-in”. Consumers who do not have a computer will not “opt-in”.

Whether consumers receive documents electronically or in paper form, Alison Powers explained the key or trigger is whether the document contains personally identifiable information. A consumer must “opt-in” to receive in electronic format documents that contain personally identifiable information. The “opt-out” section of the Model Law applies to documents that have no personally identifiable information, and the consumer can obtain these documents that have no personally identifiable information from the insurer’s website unless they request to receive the documents in hard copy. These documents that contain no personally identifiable information will be mailed to the consumer at no charge.

Discussion ensued about the consumers continuing to receive all documents, whether containing personally identifiable information or not, in paper form. Under the Model Law, consumers that have no access to a computer will get all their documents and notices in paper form except for the standard policy form and endorsements. Bob Nash stated a consumer may contact the insurer to receive a paper copy of the standard policy form and endorsement anytime. Robert Joslin stated the time lag is usually three (3) weeks from the time of request to when a paper copy is received. If a copy is available electronically, the consumer is supposed to receive a copy promptly or in one (1) business day. However, a paper copy is very difficult to obtain timely. Robert Joslin continued to voice concerns about the confusion for the consumer between having to “opt-in” to receive an electronic copy of documents and notices, and having to “opt-out” of receiving documents from the insurer’s website in order to receive a paper copy.

Commissioner Ito voiced concerns that industry representatives could not provide a step-by step explanation of how consumers will be informed of their options to receive documents and notices under the Model Law. Mark Sektnan stated PCI is a trade association and PCI rarely knows how companies conduct their business practices. Further, he represented that he does not know the business dynamics of specifics between consumers and the insurer. However, what is being proposed under the Model Law is something other industries have done. Bob Nash stated that the Commissioner and the industry can work together to make this Model Law work.

Commissioner Ito stated that the Working Group needs to know the practices that are occurring in other states before it can formulate a recommendation. He wants reasonable assurances that the consumer is protected if the Model Law is adopted. While he has not made up his mind about “opt-in” provisions for electronic notices and documents, and “opt-out” provisions for paper copies in lieu of documents on an insurer’s website, he would prefer an “opt-in” provision for both sections of the Model Law where the consumer receives everything in paper form and must affirmatively consent to receive documents and notices in electronic format, even those documents that do not have personally identifiable information.

Robert Joslin stated he would advocate opt-in as an affirmative response given by the consumer; otherwise status quo for all consumers. He has a problem with a consumer having to “opt-in” for one category of documents, and then “opt-out” for another category of documents.

Allison Powers stated any fee in the Model Law will apply only after a consumer has stated they wanted documents in electronic format, and after receiving documents electronically, now decide they also want a paper copy. In this situation, a fee may apply. She noted that the Model Law deals with both an “opt-in” provision and an “opt-out” provision. For the opt-in provisions, the trigger

is personally identifiable information. If any document contains personally identifiable information, for example, the notice of cancellation, auto policy, notice of termination, the declaration page, the bill for the premium, for all these documents, the consumer must choose to receive these documents electronically.

Both Allison Powers and Bob Toyofuku stated that Hawaii's UETA must be amended if there is an opt-in provision to receive notices of cancellation and termination.

In states where a consumer wants the standard policy form in paper, how is this option communicated to the insured? Bob Nash stated he does not know the procedures because he is not working with states that have adopted this, but will find out and provide the information by the next meeting. While there may be some proprietary information, he will indicate that when sending out the information.

Commissioner Ito summarized that when dealing with documents containing personally identifiable information, a consumer must "opt-in" to receive electronic documents and notices. If the documents contain no personally identifiable information, the consumer needs to "opt-out" to continue to receive a paper copy of the document. There are problems when a consumer is given an explanation of their options orally; problems with misinformation and miscommunication. Allison Powers represented that she will check with a direct writer as to how this Model Law works in practice and obtain specifics for the next meeting of the Working Group.

For auto policies and selection of UM or UIM optional coverage, Bob Toyofuku asked how insurers obtain consumer acknowledgment of acceptance or declining of that coverage? Bob Nash stated the coverage would be on the declaration page if the consumer requested it. UM and UIM is treated statutorily. It is handled the same way as exists currently.

4. Possible discussion topics and presentations for future meetings

Commissioner Ito asked that all participants review the PCI compendium of laws. There are deviations from the Model Law. A summary comparison sheet based on the PCI compendium would be helpful. Mark Sektnan will work with Martha Im on how to organize the summary.

Commissioner Ito shared that he is not opposed to electronic notices. The Working Group is to formulate a recommendation and present a report to the Legislature. The outcome of these meetings may be that there is no consensus, but may result in a split decision.

The Working Group will need to look at an “opt-in”/“opt-out” draft, or an “opt-in”/“opt-in” draft. Also, consider the scope of the law: whether or not it will apply only to property and casualty; whether or not to include only certain lines within property and casualty and exclude others such as workers compensation; and whether to include life.

Bob Toyofuku stated he sent emails and will probably contact the commissioners from Minnesota and Missouri. He will follow-up with the Minnesota commissioner and ask how the electronic transmissions act is working in that state.

Robert Joslin asked for clarification of reference to fees in the Model Law and to whose benefit the Model Law was drafted. The Model Law allows for imposition of fees for paper copies of documents and notices. If there is no discount on premiums, yet there is a cost-savings for the insurer for not printing out and mailing hard copies of documents and notices, does this ultimately benefit solely the insurers? Allison Powers stated this was not entirely an accurate statement, as she is aware of at least one (1) insurer who offers an up-front discount on premiums for consumers who make an electronic document selection. Bob Nash stated that the fees referred to by Robert Joslin are in the “opt-in” portion of the Model Law. This provision applies to consumers who wanted electronic copies of documents and notices, received the documents in electronic format, then later also wanted a paper copy of those same documents. A fee does not apply to standard policy forms and endorsements that a consumer requests be sent in paper form from the beginning.

Commissioner Ito stated a discussion on fees will be on the agenda for the next meeting. An email will be sent requesting members and participants to provide a written statement as to their position on the topics discussed today. A link to the E-SIGN citation will also be provided.

All materials to be circulated should be sent to Martha Im, in advance of the next meeting. Martha’s contact information remains the same.

5. Submission of testimony by interested parties and members of the public

Interested parties and members of the public may submit testimony to the Working Group by: mail (335 Merchant St #213, Honolulu, HI 96813), fax (808-586-2806), or email (ins@dcca.hawaii.gov).

6. Next meeting

The next meeting will take place on Monday, September 16, 2013 at 10:00 a.m. Hawaii time. Representatives and interested parties should anticipate the next meeting lasting approximately one and a half (1 ½) hours with the discussion focused on whether or not the Working Group is able to come to a consensus on a recommendation for electronic documents and notices, as well the respective position of the representatives.

7. Adjournment

The meeting was adjourned at 12:10 p.m.

Mar. 25, 2013 version

MODEL MERGED INSURANCE TRANSACTION MODERNIZATION
ELECTRONIC DELIVERY OR POSTING

AN ACT TO ALLOW THE TRANSMISSION OF ELECTRONIC NOTICES OR DOCUMENTS RELATED TO INSURANCE AND INSURANCE POLICIES UNDER CERTAIN CIRCUMSTANCES AND POSTING OF PROPERTY AND CASUALTY INSURANCE POLICIES AND ENDORSEMENTS WHERE CERTAIN CONDITIONS ARE MET.

BE IT ENACTED:

Amend XXXXX of the XXXX Code by adding a new section thereto as follows:

§XXXX Electronic Notices and Documents.

1) In this section, the following words shall have the following meanings:

A. "Delivered by electronic means" includes:

1. Delivery to an electronic mail address at which a party has consented to receive notices or documents; or
2. Posting on an electronic network or site accessible via the internet, mobile application, computer, mobile device, tablet, or any other electronic device, together with separate notice of the posting which shall be provided by electronic mail to the address at which the party has consented to receive notice or by any other delivery method that has been consented to by the party.

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

- 2) Subject to subsection (4) of this section, any notice to a party or any other document required under applicable law in an insurance transaction or that is to serve as evidence of insurance coverage may be delivered, stored, and presented by electronic means so long as it meets the requirements of the Uniform Electronic Transactions Act [CITATION].
- 3) Delivery of a notice or document in accordance with this section shall be considered equivalent to any delivery method required under applicable law, including delivery by first class mail; first class mail, postage prepaid; certified mail; certificate of mail; or certificate of mailing.

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

A. The party has affirmatively consented to that method of delivery and has not withdrawn the consent;

B. The party, before giving consent, is provided with a clear and conspicuous statement informing the party of:

1. Any right or option of the party to have the notice or document provided or made available in paper or another non-electronic form.
2. The right of the party to withdraw consent to have a notice or document 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 or document must be given; or
 - b. To identified categories of notices or documents that may be delivered by electronic means during the course of the parties' relationship;
4. (1) The means, after consent is given, by which a party may obtain a paper copy of a notice or document delivered by electronic means; and (2) The fee, if any, for the paper copy; and
5. The procedure a party must follow to withdraw consent to have a notice or document delivered by electronic means and to update information needed to contact the party electronically;

C. The party:

1. Before giving consent, is provided with a statement of the hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and
2. 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 or documents delivered by electronic means as to which the party has given consent; and

D. 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

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

1. Provides the party with a statement of:
 - a. The revised hardware and software requirements for access to and retention of a notice or document delivered by electronic means;
 - b. The right of the party to withdraw consent without the imposition of any fee, condition, or consequence that was not disclosed under (B)(2) of this subsection; and
 2. Complies with paragraph (B) of this subsection.
- 5) This section does not affect requirements related to content or timing of any notice or document required under applicable law.
 - 6) If a provision of this title or applicable law requiring a notice or document to be provided to a party expressly requires verification or acknowledgment of receipt of the notice or document, the notice or document may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt.
 - 7) 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 subparagraph (4)(C)(2) of this section.
 - 8) (1) A withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a notice or document 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 by an insurer to comply with subsection (4)(D) of this section may be treated, at the election of the party, as a withdrawal of consent for purposes of this section.
 - 9) This section does not apply to a notice or document delivered by an insurer in an electronic form before the effective date of this act to a party who, before that date, has consented to receive notice or document in an electronic form otherwise allowed by law.
 - 10) If the consent of a party to receive certain notices or documents in an electronic form is on file with an insurer before the effective date of this act, and pursuant to this section, an insurer intends to deliver additional notices or documents to such party in an electronic form, then prior to delivering such additional notices or documents electronically, the insurer shall notify the party of:

- A. The notices or documents that may be delivered by electronic means under this section that were not previously delivered electronically; and
- B. The party's right to withdraw consent to have notices or documents delivered by electronic means.

- 11)(1) Except as otherwise provided by law, if an oral communication or a recording of an oral communication from a party can be reliably stored and reproduced by an insurer, the oral communication or recording may qualify as a notice or document delivered by electronic means for purposes of this section. (2) If a provision of this title or applicable law requires a signature or notice or document 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, notice or document.
- 12) This section may not be construed to modify, limit, or supersede the provisions of the federal Electronic Signatures in Global and National Commerce Act, Public Law 106-229, as amended.

Amend XXXXX of the XXXX Code by adding a new section thereto as follows:

§ XXXX Posting of Policies on the Internet.

Notwithstanding any other provisions of §XXXX Electronic Notices and Documents, standard property and casualty insurance policies and endorsements that do not contain personally identifiable information may be mailed, delivered, or posted on the insurer's Web site. If the insurer elects to post insurance policies and endorsements on its Web site in lieu of mailing or delivering them to the insured, it must comply with all of the following conditions:

- 1) The policy and endorsements must be accessible and remain that way for as long as the policy is in force;
- 2) After the expiration of the policy, the insurer must archive its expired policies and endorsements for a period of five years, and make them available upon request;

- 3) The policies and endorsements must be posted in a manner that enables the insured to print and save the policy and endorsements using programs or applications that are widely available on the Internet and free to use;
- 4) The insurer provides the following information in, or simultaneous with each declarations page provided at the time of issuance of the initial policy and any renewals of that policy:

A. a description of the exact policy and endorsement forms purchased by the insured;

B. a method by which the insured may obtain, upon request and without charge, a paper copy of their policy; and

C. the internet address where their policy and endorsements are posted,

and;

- 5) The insurer provides notice, in the format preferred by the insured, of any changes to the forms or endorsements, the insured's right to obtain, upon request and without charge, a paper copy of such forms or endorsements, and the internet address where such forms or endorsements are posted.

HOUSE BILL No. 2107

AN ACT concerning insurance; enacting the electronic notice and document act; relating to adverse underwriting decisions; relating to the Kansas uninsurable health plan act; relating to updating certain statutory references; relating to mandate lite health benefit plans; amending K.S.A. 39-719e, 40-2,112, 40-12a08, 40-1612 and 40-19a10 and K.S.A. 2012 Supp. 40-19c09 and 40-2124 and repealing the existing sections; also repealing K.S.A. 40-254.

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

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

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

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

(a) “Delivered by electronic means” includes:

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

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

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

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

(b) Delivery of a notice or document in accordance with this section shall be considered equivalent to any delivery method required under applicable law, including delivery by first class mail; first class mail, postage prepaid; certified mail; certificate of mail; or certificate of mailing.

(c) A notice or document 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 informing the party of:

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

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

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

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

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

(3) the party, before giving consent, is provided with a statement of the hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and 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 or documents 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 or document delivered by electronic means creates a ma-

terial risk that the party will not be able to access or retain a subsequent notice or document to which the consent applies, provides the party with a statement of: (A) The revised hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and (B) the right of the party to withdraw consent without the imposition of any fee, condition, or consequence that was not disclosed under subsection (c)(2).

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

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

(f) 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 (c)(3).

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

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

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

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

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

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

(3) the policies and endorsements shall be posted in a manner that enables the insured to print and save the policy and endorsements using programs or applications that are widely available on the internet and free to use;

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

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

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

(k) Except as otherwise provided by law, if an oral communication or a recording of an oral communication from a party can be reliably stored and reproduced by an insurer, the oral communication or recording may

qualify as a notice or document delivered by electronic means for purposes of this section. If a provision of this title or applicable law requires a signature or notice or document 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, notice or document.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 6. K.S.A. 2012 Supp. 40-2124 is hereby amended to read as follows: 40-2124. (a) Coverage under the plan shall be subject to both deductible and coinsurance provisions set by the board. The plan shall offer to current participants and new enrollees no fewer than four choices of deductible and copayment options. Coverage shall contain a coinsurance provision for each service covered by the plan, and such copayment requirement shall not be subject to a stop-loss provision. Such coverage may provide for a percentage or dollar amount of coinsurance reduction at specific thresholds of copayment expenditures by the insured.

(b) Coverage under the plan shall be subject to a maximum lifetime benefit of ~~\$3,000,000~~ *\$4,000,000* per covered individual.

(c) Coverage under the plan shall exclude charges or expenses incurred during the first 90 days following the effective date of coverage as to any condition:

(1) Which manifested itself during the six-month period immediately prior to the application for coverage in such manner as would cause an ordinarily prudent person to seek diagnosis, care or treatment; or

(2) for which medical advice, care or treatment was recommended or received in the six-month period immediately prior to the application for coverage. In succeeding years of operation of the plan, coverage of preexisting conditions may be excluded as determined by the board, except that no such exclusion shall exceed 180 calendar days, and no exclusion shall be applied to either a federally defined eligible individual provided that application for coverage is made not later than 63 days following the applicant's most recent prior creditable coverage or an individual under the age of 19 years who is eligible for enrollment in the plan under paragraph (3) of subsection (b) of K.S.A. 40-2122, and amendments thereto. For any individual who is eligible for the credit for health insurance costs under section 35 of the internal revenue code of 1986, the preexisting conditions limitation will not apply whenever such individual has maintained creditable health insurance coverage for an aggregate period of three months, not counting any period prior to a 63-day break in coverage, as of the date on which such individual seeks to enroll in coverage provided by this act.

(d) (1) Benefits otherwise payable under plan coverage shall be reduced by all amounts paid or payable through any other health insurance, or insurance arrangement, and by all hospital and medical expense benefits paid or payable under any workers compensation coverage, automobile medical payment or liability insurance whether provided on the basis of fault or nonfault, and by any hospital or medical benefits paid or

payable under or provided pursuant to any state or federal law or program.

(2) The association shall have a cause of action against an eligible person for the recovery of the amount of benefits paid which are not covered expenses. Benefits due from the plan may be reduced or refused as a set-off against any amount recoverable under this section.

Sec. 7. K.S.A. 40-12a08 is hereby amended to read as follows: 40-12a08. No insured shall be liable for any amounts other than the annual premium. The business of the company shall be conducted so as to preclude any distribution of income, profit or property of the company to the individual members thereof except in payment of dividends, debts, claims or indemnities or upon the final dissolution of the company. *Dividends may be credited to a member's account and distributed in accordance with a plan adopted by the board of directors.*

Sec. 8. K.S.A. 39-719e is hereby amended to read as follows: 39-719e. (a) Upon the request of the secretary of ~~social and rehabilitation services for aging and disability services or the Kansas department of health and environment, or both,~~ each medical benefit plan provider that provides or maintains a medical benefit plan, that provides any hospital or medical services or any other health care or other medical benefits or services, or both, in Kansas, shall provide the secretary with information, to the extent known by the medical benefit plan provider, identifying each person who is covered by such medical benefit plan or who is otherwise provided any such hospital or medical services or any other such health care or other medical benefits or services, or both, in Kansas under such medical benefit plan. The information shall be provided in such form as is prescribed by the secretary for the purpose of comparing such information with medicaid beneficiary information maintained by the secretary to assist in identifying other health care or medical benefit coverage available to medicaid beneficiaries. The secretary shall reimburse each medical benefit plan provider that provides information under this section for the reasonable cost of providing such information.

(b) All information provided by medical benefit plan providers under this section shall be confidential and shall not be disclosed pursuant to the provisions of the open records act or under the provisions of any other law. Such information may be used solely for the purpose of determining whether medical assistance has been paid or is eligible to be paid by the secretary for which a recovery from a medical benefit plan provider is due under K.S.A. 39-719a, and amendments thereto.

(c) Failure to provide information pursuant to a request by the secretary of ~~social and rehabilitation services for aging and disability services or the Kansas department of health and environment, or both,~~ under this section shall constitute a failure to reply to an inquiry of the commissioner of insurance and shall be subject to the penalties applicable thereto under K.S.A. ~~40-226-40-2,125,~~ and amendments thereto. If a medical plan provider fails to provide information to the secretary of ~~social and rehabilitation services for aging and disability services or the Kansas department of health and environment, or both,~~ pursuant to a request under this section, the secretary shall notify the commissioner of such failure. The commissioner of insurance may pursue each such failure to provide such information in accordance with K.S.A. ~~40-226-40-2,125,~~ and amendments thereto.

(d) As used in this section:

(1) “Medical benefit plan” means any accident and health insurance or any other policy, contract, plan or agreement that provides benefits or services, or both, for any hospital or medical services or any other health care or medical benefits or services, or both, in Kansas, whether or not such benefits or services, or both, are provided pursuant to individual, group, blanket or certificates of accident and sickness insurance, any other insurance providing any accident and health insurance, or any other policy, contract, plan or agreement providing any such benefits or services, or both, in Kansas, and includes any policy, plan, contract or agreement offered in Kansas pursuant to the federal employee retirement income security act of 1974 (ERISA) that provides any hospital or medical services or any other health care or medical benefits or services, or both, in Kansas; and

(2) “medical benefit plan provider” means any insurance company,

nonprofit medical and hospital service corporation, health maintenance organization, fraternal benefit society, municipal group-funded pool, group-funded workers compensation pool or any other entity providing or maintaining a medical benefit plan.

(e) No medicaid provider who rendered professional services to a medicaid beneficiary and was paid by the secretary for such services shall be liable to the medical benefit plan provider for any amounts recovered pursuant to this act or pursuant to the provisions of K.S.A. 39-719a, and amendments thereto.

Sec. 9. K.S.A. 40-1612 is hereby amended to read as follows: 40-1612. In addition to the provisions of this article, the provisions set forth in the following sections of the Kansas Statutes Annotated, and amendments thereto, which govern other types of insurance companies shall apply to reciprocals to the extent that such provisions do not conflict with the provisions of this article: Sections 40-208, 40-209, 40-214, 40-215, 40-216, 40-218, 40-220, 40-221a, 40-222, 40-223, 40-224, 40-225, 40-229, 40-229a, 40-231, 40-233, 40-234, 40-234a, 40-235, 40-236, 40-237, 40-238, 40-239, 40-240, 40-241, 40-242, 40-244, 40-245, 40-246, except as to contracts written through traveling salaried representatives to whom no commissions are paid, 40-246a, 40-247, 40-248, 40-249, 40-250, 40-251, 40-253, ~~40-254~~, 40-256, 40-281, 40-2,125, 40-2,126, 40-2,127, 40-2,128, 40-2,156, 40-2,156a, 40-2,157, 40-2,159, 40-952, 40-2001, 40-2002, 40-2003, 40-2004, 40-2005, 40-2006 and 40-2404 and article 2a of *chapter 40* of the Kansas Statutes Annotated, and amendments thereto, and any other provision of law pertaining to insurance which specifically refers to reciprocals.

Sec. 10. K.S.A. 40-19a10 is hereby amended to read as follows: 40-19a10. (a) Such corporations shall be subject to the provisions of K.S.A. 40-214, 40-215, 40-216, 40-218, 40-219, 40-222, 40-223, 40-224, 40-225, ~~40-226~~, 40-229, 40-230, 40-231, 40-235, 40-236, 40-237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-252, ~~40-254~~, 40-2,102, 40-2a01 et seq., 40-2215 to 40-2220, inclusive, 40-2253, 40-2401 to 40-2421, inclusive, 40-3301 to 40-3313, inclusive, K.S.A. ~~40-2,125~~, 40-2,154 and 40-2,161, and amendments thereto, except as the context otherwise requires, and shall not be subject to any other provisions of the insurance code except as expressly provided in this act.

(b) No policy, agreement, contract or certificate issued by a corporation to which this section applies shall contain a provision which excludes, limits or otherwise restricts coverage because medicaid benefits as permitted by title XIX of the social security act of 1965 are or may be available for the same accident or illness.

(c) Violation of subsection (b) shall be subject to the penalties prescribed by K.S.A. 40-2407 and 40-2411, and amendments thereto.

Sec. 11. K.S.A. 2012 Supp. 40-19c09 is hereby amended to read as follows: 40-19c09. (a) Corporations organized under the nonprofit medical and hospital service corporation act shall be subject to the provisions of the Kansas general corporation code, articles 60 to 74, inclusive, of chapter 17 of the Kansas Statutes Annotated, and amendments thereto, applicable to nonprofit corporations, to the provisions of K.S.A. 40-214, 40-215, 40-216, 40-218, 40-219, 40-222, 40-223, 40-224, 40-225, ~~40-226~~, 40-229, 40-230, 40-231, 40-235, 40-236, 40-237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-252, ~~40-254~~, 40-2,100, 40-2,101, 40-2,102, 40-2,103, 40-2,104, 40-2,105, 40-2,116, 40-2,117, ~~40-2,125~~, 40-2,153, 40-2,154, 40-2,160, 40-2,161, 40-2,163 through 40-2,170, inclusive, 40-2a01 et seq., 40-2111 to 40-2116, inclusive, 40-2215 to 40-2220, inclusive, 40-2221a, 40-2221b, 40-2229, 40-2230, 40-2250, 40-2251, 40-2253, 40-2254, 40-2401 to 40-2421, inclusive, and 40-3301 to 40-3313, inclusive, K.S.A. 2012 Supp. 40-2,105a, 40-2,105b, 40-2,184 and 40-2,190, and amendments thereto, except as the context otherwise requires, and shall not be subject to any other provisions of the insurance code except as expressly provided in this act.

(b) No policy, agreement, contract or certificate issued by a corporation to which this section applies shall contain a provision which excludes, limits or otherwise restricts coverage because medicaid benefits as permitted by title XIX of the social security act of 1965 are or may be available for the same accident or illness.

(c) Violation of subsection (b) shall be subject to the penalties prescribed by K.S.A. 40-2407 and 40-2411, and amendments thereto.

New Sec. 12. (a) This section shall apply to all insurers transacting business in the state offering individual or group sickness and accident insurance. Such insurers also may offer a mandate lite health benefit plan. A group or individual carrier may also offer a mandate lite health benefit plan.

(b) A mandate lite health benefit plan means an individual or group sickness and accident insurance plan that does not contain one or more of the Kansas-mandated benefits other than K.S.A. 40-2,100 and 40-2,166, and amendments thereto.

(c) The mandate lite health benefit plan shall contain the definitions of group or individual sickness and accident insurance with respect to major medical benefits and standard provisions or rights of coverage.

(d) The mandate lite health benefit plan may be issued on a group or individual basis.

(e) The insured shall be provided with a written notice that one or more of the state-mandated benefits are not included in the mandate lite health benefit plan.

(1) The mandate lite health benefit plan shall specify the health services that are included and shall specifically list the health services that will be limited or not covered from the list of state-mandated coverage other than K.S.A. 40-2,100 and 40-2,166, and amendments thereto.

(2) The insurer is required to retain a signed copy of this notice on file as a part of the original application as evidence that the insured has acknowledged such notice.

(3) Such signed copy may be in original form, electronic file form or in any other reproducible file form as may be consistent with the insurer's method of retaining application copies.

(f) The definition of preexisting conditions may not be more restrictive than the definition of preexisting conditions normally used for the corresponding regular individual or group insurance contracts.

(g) The mandate lite health benefit plan may offer:

(1) Various optional combinations of coverage for generic, formulary and non-formulary drugs.

(2) The mandate lite health benefit plan may offer drug discount plans.

(h) A mandate lite health benefit plan may charge additional premiums for each optional benefit offered. Optional benefits may include mandated benefits that are not included in the mandate lite health benefit plan.

(i) This section shall be known and may be cited as the mandate lite health benefit plan act.

New Sec. 13. (a) Any portion of the health insurance premiums paid by consumers that are in fact passed through as commissions shall not be considered a part of administrative expenses and shall be excluded from all determinations of the medical loss ratio calculations when totaling the ratio of premiums paid by a consumer used for claims versus administrative expenses for a policy. Any portion of premiums identified as commissions must be paid to a nonemployee in order to be excluded. Any portion of the premiums retained by the insurance company or its employees must be considered as a part of the calculation of the medical loss ratio as administrative related income.

(b) For the purposes of this section, "commission" means commissions to agents, consultation fees, counseling fees, consultant fees, and similar advising or sales compensation to a nonemployee licensed agent.

New Sec. 14. (a) For the purposes of this section:

(1) "Specially designed policy" means an insurance policy that by design may not meet all or part of the definitions of a group or individual sickness and accident insurance policy and includes temporary sickness and accident insurance on a short-term basis.

(2) "Short-term" means an insurance policy period of six months or 12 months, based upon policy design, which offers not more than one renewal period with or without a requirement of medical re-underwriting or medical requalification.

(A) Because a short-term policy addresses the special needs for temporary coverage, a short-term policy is not subject to continuation pro-

visions of the health insurance portability and accountability act of 1996 (public law 104-191).

(B) Because a short-term policy addresses the special needs for temporary coverage, a short-term policy shall be exempt from medical loss ratio calculations associated with individual sickness and accident insurance issued within the state unless such calculation excludes any monthly administration fee associated with the sale of such policy.

(b) Specially designed policies shall include policies designed to provide sickness and accident insurance for specific coverage of benefits or services that may be excluded as benefits or services cited under section 12, and amendments thereto. Specially designed policies may include the following stand-alone policies and coverages:

- (1) Chiropractic plans;
- (2) acupuncture coverage plans;
- (3) holistic medical treatment plans;
- (4) podiatrist plans;
- (5) pharmacy plans;
- (6) psychiatric plans;
- (7) allergy plans; and

(8) such other stand-alone plans or combinations of plans of accepted traditional and nontraditional medical practice as shall be allowable for exclusion from group or individual plans under section 12, and amendments thereto.

(c) No specially designed policy shall be deemed to be included under the definition of group sickness and accident insurance, including short-term, limited-duration health insurance, issued or renewed inside or outside of this state and covering persons residing in this state.

Sec. 15. K.S.A. 39-719e, 40-254, 40-2,112, 40-12a08, 40-1612 and 40-19a10 and K.S.A. 2012 Supp. 40-19c09 and 40-2124 are hereby repealed.

Sec. 16. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 322

97TH GENERAL ASSEMBLY

1211S.06T

2013

AN ACT

To repeal sections 303.024 and 303.200, RSMo, and to enact in lieu thereof five new sections relating to providing and presenting certain insurance documents through electronic means, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 303.024 and 303.200, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 301.149, 303.024, 303.200, 379.011, and 379.012, to read as follows:

301.149. 1. Notwithstanding any law to the contrary, proof of financial responsibility required for vehicle registration under section 301.147 may be provided by displaying an electronic image of an insurance identification card on a mobile electronic device.

2. Whenever a person presents a mobile electronic device as proof of financial responsibility to any employee of the department of revenue or any agent authorized by the department of revenue under section 136.055 to register motor vehicles and trailers, the person presenting such mobile electronic device shall assume all liability for any damage that may occur to the mobile electronic device, except for damage willfully or maliciously caused by a department employee or agent.

3. When a person provides evidence of financial responsibility using a mobile electronic device pursuant to this section to any employee of the department of revenue or any agent authorized by the department of revenue under section 136.055 to register motor

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 **vehicles and trailers, such employees or agents shall only view the evidence of financial**
15 **responsibility and shall not view any other content on the mobile electronic device.**

16 **4. As used in this section, the term "mobile electronic device" means any small**
17 **handheld computing or communications device that has a display screen with a touch input**
18 **or a miniature keyboard.**

303.024. 1. Each insurer issuing motor vehicle liability policies in this state, or an agent
2 of the insurer, shall furnish an insurance identification card to the named insured for each motor
3 vehicle insured by a motor vehicle liability policy that complies with the requirements of sections
4 303.010 to 303.050, 303.060, 303.140, 303.220, 303.290, 303.330 and 303.370. **Such**
5 **insurance identification card may be produced in either paper or electronic format.**
6 **Acceptable electronic forms include display of electronic images on a cellular phone or any**
7 **other type of portable electronic device.**

8 2. The insurance identification card shall include all of the following information:

- 9 (1) The name and address of the insurer;
10 (2) The name of the named insured;
11 (3) The policy number;
12 (4) The effective dates of the policy, including month, day and year;
13 (5) A description of the insured motor vehicle, including year and make or at least five
14 digits of the vehicle identification number or the word Fleet if the insurance policy covers five
15 or more motor vehicles; and
16 (6) The statement "THIS CARD MUST BE CARRIED IN THE INSURED MOTOR
17 VEHICLE FOR PRODUCTION UPON DEMAND" prominently displayed on the card.

18 3. A new insurance identification card shall be issued when the insured motor vehicle
19 is changed, when an additional motor vehicle is insured, and when a new policy number is
20 assigned. A replacement insurance identification card shall be issued at the request of the
21 insured in the event of loss of the original insurance identification card.

22 4. The director shall furnish each self-insurer, as provided for in section 303.220, an
23 insurance identification card for each motor vehicle so insured. The insurance identification card
24 shall include all of the following information:

- 25 (1) Name of the self-insurer;
26 (2) The word self-insured; and
27 (3) The statement "THIS CARD MUST BE CARRIED IN THE SELF-INSURED
28 MOTOR VEHICLE FOR PRODUCTION UPON DEMAND" prominently displayed on the
29 card.

30 5. An insurance identification card shall be carried in the insured motor vehicle at all
31 times. The operator of an insured motor vehicle shall exhibit the insurance identification card

32 on the demand of any peace officer, commercial vehicle enforcement officer or commercial
33 vehicle inspector who lawfully stops such operator or investigates an accident while that officer
34 or inspector is engaged in the performance of the officer's or inspector's duties. If the operator
35 fails to exhibit an insurance identification card, the officer or inspector shall issue a citation to
36 the operator for a violation of section 303.025. A motor vehicle liability insurance policy, a
37 motor vehicle liability insurance binder, [or] receipt, **or a photocopy or an image displayed on**
38 **a mobile electronic device** which contains the policy information required in subsection 2 of
39 this section, shall be satisfactory evidence of insurance in lieu of an insurance identification card.
40 **The display of an image of the insurance card on a mobile electronic device shall not serve**
41 **as consent for such officer, inspector, or other person to access other contents of the mobile**
42 **electronic device in any manner other than to verify the image of the insurance card. As**
43 **used in this section, the term "mobile electronic device" means any small handheld**
44 **computing or communications device that has a display screen with a touch input or a**
45 **miniature keyboard. Whenever a person presents a mobile electronic device as proof of**
46 **financial responsibility to any peace officer, commercial vehicle enforcement officer, or**
47 **commercial vehicle inspector pursuant to this section, that person shall assume all liability**
48 **for any damage to the mobile electronic device, except for damage willfully or maliciously**
49 **caused by a peace officer, commercial vehicle enforcement officer, or commercial vehicle**
50 **inspector.**

51 6. Any person who knowingly or intentionally produces, manufactures, sells, or
52 otherwise distributes a fraudulent document, **photocopy, or image displayed on a mobile**
53 **electronic device** intended to serve as an insurance identification card is guilty of a class D
54 felony. Any person who knowingly or intentionally possesses a fraudulent document **or**
55 **photocopy** intended to serve as an insurance identification card **or knowingly or intentionally**
56 **uses a fraudulent image displayed on a mobile electronic device** is guilty of a class B
57 misdemeanor.

303.200. **1.** After consultation with insurance companies authorized to issue automobile
2 liability policies in this state, the director of the department of insurance, financial institutions
3 and professional registration shall approve a reasonable plan or plans for the equitable
4 apportionment among such companies of applicants for such policies and for **personal**
5 **automobile and commercial** motor vehicle liability policies who are in good faith entitled to
6 but are unable to procure such policies through ordinary methods. When any such plan has been
7 approved, all such insurance companies shall subscribe thereto and participate therein. [Any
8 such plan] **The plan manager, on the plan's behalf,** shall contract with an entity or entities to
9 accept and service applicants and policies for any company that does not elect to accept and
10 service applicants and policies. By October first of each year any company that elects to accept

11 and service applicants and policies for the next calendar year for any such plan shall so notify
12 the plan. **Except as provided in subsection 2 of this section**, any company that does not so
13 notify a plan **established for handling coverage for personal automobile risks** shall be
14 excused from accepting and servicing applicants and policies for the next calendar year for such
15 plan and shall pay a fee to the plan or servicing entity for providing such services. The fee shall
16 be based on the company's market share [on the kinds of insurance offered by the plan] **as**
17 **determined by the company's writings of personal automobile risks in the voluntary**
18 **market**. Any applicant for any such policy, any person insured under any such plan, and any
19 insurance company affected may appeal to the director from any ruling or decision of the
20 manager or committee designated to operate such plan. Any person aggrieved hereunder by any
21 order or act of the director may, within ten days after notice thereof, file a petition in the circuit
22 court of the county of Cole for a review thereof. The court shall summarily hear the petition and
23 may make any appropriate order or decree. **As used in this section, the term "personal**
24 **automobile" means a private passenger non-fleet vehicle, motorcycle, camper and travel**
25 **trailer, antique auto, amphibious auto, motor home, named non-owner applicant, or a low-**
26 **speed vehicle subject to chapter 304 which is not primarily used for business or nonprofit**
27 **interests and which is generally used for personal, family, or household purposes.**

28 **2. If the total premium volume for any one plan established for handling coverage**
29 **for personal automobile risks exceeds ten million dollars in a calendar year, a company**
30 **with more than five percent market share of such risks in Missouri shall not be excused**
31 **from accepting and servicing applicants and policies of such plan under subsection 1 of this**
32 **section for the next calendar year, unless the governing body of the plan votes to allow any**
33 **company with such market share the option to be excused.**

379.011. 1. As used in this section, the following terms mean:

2 (1) **"Delivered by electronic means"**, includes delivery to an electronic mail address
3 **at which a party has consented to receive notices or documents, or posting on an electronic**
4 **network or site accessible via the internet, mobile application, computer, mobile device,**
5 **tablet, or any other electronic device, together with a separate notice to a party directed**
6 **to the electronic mail address at which the party has consented to receive notice of the**
7 **posting;**

8 (2) **"Party"**, any recipient of any notice or document required as part of an
9 **insurance transaction, including but not limited to an applicant, an insured or a**
10 **policyholder.**

11 **2. Subject to subsection 3 of this section, any notice to a party or any other**
12 **document required under applicable law in an insurance transaction or that is to serve as**
13 **evidence of insurance coverage may be delivered, stored, and presented by electronic**

14 means so long as it meets the requirements of sections 432.200 to 432.295. Delivery of a
15 notice or document in accordance with this subsection shall be considered equivalent to
16 any delivery method required under applicable law, including delivery by first class mail,
17 first class mail postage prepaid, certified mail, or certificate of mailing.

18 **3. A notice or document may be delivered by electronic means by an insurer to a**
19 **party under this subsection if:**

20 **(1) The party has affirmatively consented to that method of delivery and has not**
21 **withdrawn the consent;**

22 **(2) The party, before giving consent, is provided with a clear and conspicuous**
23 **statement informing the party of:**

24 **(a) Any right or option to have the notice or document provided in paper or**
25 **another nonelectronic form at no additional cost;**

26 **(b) The right of party to withdraw consent to have a notice or document delivered**
27 **by electronic means;**

28 **(c) Whether the party's consent applies only to the particular transaction as to**
29 **which the notice or document must be given or to identified categories of notices or**
30 **documents that may be delivered by electronic means during the course of the parties'**
31 **relationship;**

32 **(d) The means, after consent is given, by which a party may obtain a paper copy**
33 **of a notice or document delivered by electronic means at no additional cost; and**

34 **(e) The procedure a party must follow to withdraw consent to have a notice or**
35 **document delivered by electronic means and to update information needed to contact the**
36 **party electronically;**

37 **(3) The party, before giving consent, is provided with a statement of the hardware**
38 **and software requirements for access to and retention of a notice or document delivered**
39 **by electronic means and consents electronically, and confirms consent electronically, in a**
40 **manner that reasonably demonstrates that the party can access information in the**
41 **electronic form that will be used for notices or documents delivered by electronic means**
42 **as to which the party has given consent; and**

43 **(4) After consent of the party is given, the insurer, in the event a change in the**
44 **hardware or software requirements needed to access or retain a notice or document**
45 **delivered in electronic means creates a material risk that the party will not be able to access**
46 **or retain a subsequent notice or document to which the consent applies:**

47 **(a) Provides the party with a statement of the revised hardware and software**
48 **requirements for access to and retention of a notice or document delivered by electronic**

49 means and of the right of the party to withdraw consent pursuant to paragraph (b) of
50 subdivision (2) of this subsection; and

51 (b) Complies with subdivision (2) of this subsection.

52 4. This section does not affect requirements relating to content or timing of any
53 notice or document required under applicable law. If any provision of applicable law
54 requiring a notice or document to be provided to a party expressly requires verification or
55 acknowledgment of receipt of the notice or document, the notice or document may be
56 delivered by electronic means only if the method used provides for verification or
57 acknowledgment of receipt. Absent verification or acknowledgment of receipt of the initial
58 notice or document on the part of the party, the insurer shall send two subsequent notices
59 or documents at intervals of five business days. The legal effectiveness, validity, or
60 enforceability of any contract or policy of insurance executed by a party may not be made
61 contingent upon obtaining electronic consent or confirmation of consent of the party in
62 accordance with subdivision (3) of subsection 3 of this section.

63 5. A withdrawal of consent by a party does not affect the legal effectiveness,
64 validity, or enforceability of a notice or document delivered by electronic means to the
65 party before the withdrawal of consent is effective. A withdrawal of consent by a party is
66 effective within thirty days after receipt of the withdrawal by the insurer. Failure by an
67 insurer to comply with subdivision (4) of subsection 3 of this section may be treated, at the
68 election of the party, as a withdrawal of consent for purposes of this section.

69 6. This section does not apply to a notice or document delivered by an insurer in
70 an electronic form before the effective date of this section to a party who, before that date,
71 has consented to receive notices or documents in an electronic form otherwise allowed by
72 law. If the consent of a party to receive certain notices or documents in an electronic form
73 is on file with an insurer before the effective date of this section, and pursuant to this
74 section, an insurer intends to deliver additional notices or documents to such party in an
75 electronic form, then prior to delivering such additional notices or documents
76 electronically, the insurer shall notify the party of:

77 (1) The notices or documents that may be delivered by electronic means under this
78 section that were not previously delivered electronically; and

79 (2) The party's right to withdraw consent to have notices or documents delivered
80 by electronic means.

81 7. A party who does not consent to delivery of notices or documents under
82 subsection 3 of this section, or who withdraws their consent, shall not be subject to any
83 additional fees or costs for having notices or documents provided or made available to
84 them in paper or another nonelectronic form.

85 **8. If any provision of applicable law requires a signature or notice or document to**
86 **be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if**
87 **the electronic signature of the person authorized to perform those acts, together with all**
88 **other information required to be included by the provision, is attached to or logically**
89 **associated with the signature, notice, or document.**

90 **9. This section may not be construed to modify, limit, or supercede the provisions**
91 **of sections 432.200 to 432.295.**

92 **10. Nothing in this section shall prevent an insurer from offering a discount to an**
93 **insured who elects to receive notices and documents electronically in accordance with this**
94 **section.**

379.012. 1. In addition to and notwithstanding any other provisions or
2 **requirements of section 379.011 to the contrary, insurance policy forms and endorsements**
3 **for property insurance as described in subdivisions (1), (2), (3), and (5) of subsection 1 of**
4 **section 379.010 issued or renewed in this state, or covering risks in this state, which do not**
5 **contain personally identifiable information, may be made available electronically on the**
6 **insurer's website in lieu of mailing or delivering a paper copy of policy forms and**
7 **endorsements to an insured.**

8 **2. If the insurer elects to make such insurance policy forms and endorsements**
9 **available electronically on the insurer's website in lieu of mailing or delivering a paper**
10 **copy to the insured, it shall comply with all the following conditions with respect to such**
11 **policy forms and endorsements:**

12 **(1) The policy forms and endorsements issued or sold in this state shall be easily**
13 **and publicly accessible on the insurer's website and remain that way for as long as the**
14 **policy form or endorsement is in force or actively sold in this state;**

15 **(2) The insurer shall retain and store the policy forms and endorsements after they**
16 **are withdrawn from use or replaced with other policy forms and endorsements for a period**
17 **of five years and make them available to insureds and former insureds upon request and**
18 **at no cost;**

19 **(3) The policy forms and endorsements shall be available on the insurer's website**
20 **in an electronic format that enables the insured to print and save the policy forms and**
21 **endorsements using programs or applications that are widely available on the internet and**
22 **free to use;**

23 **(4) At policy issuance and renewal, the insurer shall provide clear and conspicuous**
24 **notice to the insured, in the manner it customarily communicates with an insured, that it**
25 **does not intend to mail or deliver a paper copy of the policy forms or documents. The**
26 **notice shall provide instructions on how the insured may access the policy forms and**

27 **endorsements on the insurer's website. The insurer shall also notify the insured of their**
28 **right to obtain a paper copy of the policy forms and endorsements at no cost and provide**
29 **either a toll-free telephone number or the telephone number of the insured's producer by**
30 **which the insured can make this request;**

31 **(5) At policy renewal, the insurer shall provide clear and conspicuous notice to the**
32 **insured, in the manner it customarily communicates with an insured, of any changes which**
33 **have been made to the policy forms or endorsements since the prior coverage period. Such**
34 **notice shall be made in accordance with the requirements of subdivision (4) of this**
35 **subsection; and**

36 **(6) On each declarations page, or similar coverage summary document, issued to**
37 **an insured, the insurer shall clearly identify the exact policy forms and endorsements**
38 **purchased by the insured, so that the insured may easily access those forms on the insurer's**
39 **website.**

40 **3. The director may promulgate any rules necessary to implement and administer**
41 **the provisions of this section. Any rule or portion of a rule, as that term is defined in**
42 **section 536.010 that is created under the authority delegated in this section shall become**
43 **effective only if it complies with and is subject to all of the provisions of chapter 536, and,**
44 **if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of**
45 **the powers vested with the general assembly pursuant to chapter 536, to review, to delay**
46 **the effective date, or to disapprove and annul a rule are subsequently held**
47 **unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted**
48 **after August 28, 2013, shall be invalid and void.**

✓