COMMITTEE REPORT

May 24, 2016

**H. 3969**

Introduced by Rep. Sandifer

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Read the first time April 21, 2016.

**THE COMMITTEE ON BANKING AND INSURANCE**

To whom was referred a Bill (H. 3969) to amend the Code of Laws of South Carolina, 1976, by adding Article 3 to Chapter 5, Title 38 so as to provide for the electronic transmission of electronic notices, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by deleting all after the enacting words and inserting:

/ SECTION 1. Chapter 55, Title 38 of the 1976 Code is amended by adding:

“Article 7

Electronic Documents

Section 38‑55‑710. As used in this article:

(1) ‘Delivered by electronic means’ includes:

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

(b) placement on an electronic network or site accessible by means of the Internet, mobile application, computer, mobile device, tablet, or another electronic device, together with separate written notice of the placement which must be provided by electronic mail to the address at which the party has consented to receive notice or by another delivery method that has been consented to by the party.

(2) ‘Party’ means a recipient of a 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.

Section 38‑55‑720. (A) Subject to the provisions of subsection (C), notice to a party of another 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 if it meets the requirements of Chapter 6, Title 26, the South Carolina Uniform Electronic Transactions Act.

(B) Delivery of a notice or document pursuant to this section must be considered equivalent to the following delivery methods:

(1) first class mail; and

(2) first class mail, postage prepaid.

(C)(1) 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(a) the party has affirmatively consented to that method of delivery and has not withdrawn the consent;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:

(i) the right or option of the party to have the notice or document provided or made available in paper or another non‑electronic form at no additional cost;

(ii) the right of the party at any time to withdraw consent to have a notice or document delivered by electronic means;

(iii) the specific notice or document or categories of notices or documents that may be delivered by electronic means during the course of the relationship between the insurer and the party;

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

(v) 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; and

(c) the transmission or delivery method used for the electronic notice includes conspicuous language concerning its subject or purpose;

(d) 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 or document 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 or documents delivered by electronic means as to which the party has given consent; and

(e) after consent of the party is given, if a change occurs in the hardware or software requirements needed to access or retain a notice or document delivered by electronic means that 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, the insurer shall:

(i) provide the party with a statement of the revised hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and

(ii) comply with the requirements of subsection (A).

(2) No insurer may cancel, refuse to issue, or refuse to renew a policy because the applicant or insured refuses to agree to receive mailings electronically pursuant to this subsection.

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

(E) 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.

(F) The legal effectiveness, validity, or enforceability of the underlying 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 pursuant to subsection (C)(1)(d)(ii).

(G) A withdrawal of consent by a party:

(1) 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; and

(2) is effective four business days after receipt of the withdrawal by the insurer.

(H) Failure by an insurer to comply with subsection (C)(1)(e) 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 or document delivered by an insurer in an electronic form before the effective date of this act to a party who, before that date, had consented to receive notice or document in an electronic form otherwise allowed by law.

(J) 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:

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

(2) the party’s right to withdraw at any time consent to have notices or documents delivered by electronic means.

(K) If a provision of this title or applicable law requires a signature, 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 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. It is intended to provide an insurer additional options for the delivery of electronic notices and documents. An insurer choosing to use procedures outlined in ESIGN, UETA, or other applicable law or regulation governing such notice or documents must be considered to be in compliance with this section.

(M) A producer may not be subject to civil liability for any harm or injury that occurs as a result of a party’s election to receive any notice or document by electronic means or by an insurer’s failure to deliver a notice or document by electronic means.

(N) An insurer delivering a notice or document by electronic means shall take appropriate and necessary measures reasonably calculated to ensure that the system for furnishing the notices of documents is secure and protects the confidentiality of information as defined by applicable law. An insurer who is in compliance with the Health Insurance Portability and Accountability Act, 45 C.F.R. 164.512(b) and the Gramm Leach Bliley Act, 16 C.F.R. 314.1, must be considered to be in compliance with this section.

(O) The director or his designee may promulgate by bulletin, regulation or order the requirements necessary to implement the provisions of this section.”

SECTION 2. This act takes effect on January 1, 2017. /

Renumber sections to conform.

Amend title to conform.

ROBERT W. HAYES, JR. for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 3 TO CHAPTER 5, TITLE 38 SO AS TO PROVIDE FOR THE ELECTRONIC TRANSMISSION OF ELECTRONIC NOTICES OR DOCUMENTS RELATED TO INSURANCE AND INSURANCE POLICIES UNDER CERTAIN CIRCUMSTANCES EFFECTIVE JANUARY 1, 2016; AND TO REDESIGNATE EXISTING SECTIONS IN THE CHAPTER AS ARTICLE 1, ENTITLED “GENERAL PROVISIONS”.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 5, Title 38 of the 1976 Code is amended by adding:

“Section 38‑55‑710. (A) As used in this article:

(1) ‘Delivered by electronic means’ includes:

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

(b) placement on an electronic network or site accessible by means of the Internet, mobile application, computer, mobile device, tablet, or another electronic device, together with separate notice of the placement which must be provided by electronic mail to the address at which the party has consented to receive notice or by another delivery method that has been consented to by the party.

(2) ‘Party’ means a recipient of a 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.

(B) Subject to subsection (D), notice to a party of another 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 if it meets the requirements of Chapter 6, Title 26, the South Carolina Uniform Electronic Transactions Act.

(C) Delivery of a notice or document pursuant to this section must be considered equivalent to the following delivery methods:

(1) first class mail; and

(2) first class mail, postage prepaid.

(D)(1) 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:

(i) the right or option of the party to have the notice or document provided or made available in paper or another non‑electronic form at no additional cost;

(ii) the right of the party at any time to withdraw consent to have a notice or document delivered by electronic means;

(iii) the specific notice or document or categories of notices or documents that may be delivered by electronic means during the course of the relationship between the insurer and the party;

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

(v) 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; and

(c) the transmission or delivery method used for the electronic notice includes conspicuous language concerning its subject or purpose;

(d) 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 or document 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 or documents delivered by electronic means as to which the party has given consent; and

(e) after consent of the party is given, if a change occurs in the hardware or software requirements needed to access or retain a notice or document delivered by electronic means that 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, the insurer shall:

(i) provide the party with a statement of the revised hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and

(ii) comply with the requirements of subsection (B).

(2) No insurer may cancel, refuse to issue, or refuse to renew a policy because the applicant or insured refuses to agree to receive mailings electronically pursuant to this subsection.

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

(F) 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.

(G) The legal effectiveness, validity, or enforceability of the underlying 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 pursuant to subsection (D)(1)(d)(ii).

(H) A withdrawal of consent by a party:

(1) 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; and

(2) is effective three business days after receipt of the withdrawal by the insurer.

(I) Failure by an insurer to comply with subsection (D)(1)(e) may be treated, at the election of the party, as a withdrawal of consent for purposes of this section.

(J) 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, had consented to receive notice or document in an electronic form otherwise allowed by law.

(K) 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:

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

(2) the party’s right to withdraw at any time consent to have notices or documents delivered by electronic means.

(L) If a provision of this title or applicable law requires a signature, 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.

(M) 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.

(N) A producer may not be subject to civil liability for any harm or injury that occurs as a result of a party’s election to receive any notice or document by electronic means or by an insurer’s failure to deliver a notice or document by electronic means.

(O) An insurer delivering a notice or document by electronic means shall take appropriate and necessary measures reasonably calculated to ensure that the system for furnishing the notices of documents is secure and protects the confidentiality of information as defined by applicable law.

(P) The director or his designee may promulgate by bulletin, regulation or order the requirements necessary to implement the provisions of this section.”

SECTION 2. The existing sections of Chapter 5, Title 38 are designated Article 1, “General Provisions”.

SECTION 3. This act takes effect on January 1, 2017.

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