

2018 Regular Session

HOUSE BILL NO. 370

BY REPRESENTATIVE TALBOT

INSURANCE: Authorizes electronic delivery of insurance coverage notices

1 AN ACT

2 To enact Chapter 19 of Title 22 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 22:2461 through 2469, relative to electronic delivery of insurance notices;
4 to authorize electronic delivery of insurance documents and notices; to define key
5 terms; to provide for changes in hardware or software requirements; to provide for
6 applicability; to provide for contracts and policies already in effect; to provide for
7 withdrawal of consent; to provide for consent previously given; to require an
8 alternative method of delivery in certain circumstances; to limit liability for certain
9 acts; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Chapter 19 of Title 22 of the Louisiana Revised Statutes of 1950,
12 comprised of R.S. 22:2461 through 2469, is hereby enacted to read as follows:

13 CHAPTER 19. ELECTRONIC DELIVERY OF INSURANCE

14 DOCUMENTS AND NOTICES

15 §2461. Definitions

16 As used in this Chapter, the following definitions apply:

17 (1) "Delivered by electronic means" means either of the following:

18 (a) Delivery to an electronic mail address at which a party has consented to
19 receive notices or documents.

20 (b) Posting on an electronic network or site accessible via the internet,
21 mobile application, computer, mobile device, tablet, or any other electronic device,

1 together with separate notice of the posting provided by electronic mail to the
2 address at which the party has consented to receive notice or by any other delivery
3 method that has been consented to by the party.

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

7 §2462. Electronic delivery of insurance documents and notices

8 A. Subject to the requirements of this Section, any notice to a party or any
9 other document required by law in an insurance transaction or that is to serve as
10 evidence of insurance coverage may be delivered, stored, and presented by electronic
11 means if the electronic means meet the requirements of the Louisiana Uniform
12 Electronic Transactions Act, R.S. 9:2601 et seq.

13 B. Delivery of a notice or document in accordance with this Section shall be
14 considered equivalent to and have the same effect as any delivery method required
15 by law, including delivery by first class mail, first class mail with postage prepaid,
16 certified mail, certificate of mail, or certificate of mailing.

17 C. A notice or document may be delivered by electronic means by an insurer
18 to a party pursuant to this Section if all of the following apply:

19 (1) The party has affirmatively consented electronically, or confirmed
20 consent electronically, in a manner that reasonably demonstrates that the party can
21 access information in the electronic form that will be used for notices or documents
22 delivered by electronic means to which the party has given consent, and the party has
23 not withdrawn the consent.

24 (2) The party, before giving consent, is provided with a clear and
25 conspicuous statement informing the party of all of the following:

26 (a) The hardware and software requirements for access to and retention of
27 a notice or document delivered by electronic means.

28 (b) The types of notices and documents to which the party's consent would
29 apply.

1 (c) The right of the party to withdraw consent to have a notice or document
2 delivered by electronic means, at any time, and any conditions or consequences
3 imposed in the event consent is withdrawn.

4 (d) The procedures a party must follow to withdraw consent to have a notice
5 or document delivered by electronic means and to update the party's electronic mail
6 address.

7 (e) The right of a party to have a notice or document delivered, upon request,
8 in paper form.

9 D. An insurer shall take all measures reasonably calculated to ensure that
10 delivery by electronic means pursuant to this Section results in receipt of the notice
11 or document by the party.

12 §2463. Change in hardware or software requirements

13 After the consent of a party is given, in the event a change in the hardware
14 or software requirements needed to access or retain a notice or document delivered
15 by electronic means creates a material risk that the party will not be able to access
16 or retain a subsequent notice or document to which the consent applies, the insurer
17 shall not deliver a notice or document to the party by electronic means unless the
18 insurer complies with R.S. 22:2462 and provides the party with a statement that
19 describes all of the following:

20 (1) The revised hardware and software requirements for access to and
21 retention of a notice or document delivered by electronic means.

22 (2) The right of the party to withdraw consent without the imposition of any
23 condition or consequence that was not disclosed at the time of initial consent.

24 §2464. Applicability

25 A. The provisions of this Section shall not be construed to affect
26 requirements related to content or timing of any notice or document required by any
27 other provision of law.

28 B. If a provision of this Title or other applicable law requiring a notice or
29 document to be provided to a party expressly requires verification or

1 acknowledgment of receipt of the notice or document, the notice or document may
2 be delivered by electronic means only if the method used provides for verification
3 or acknowledgment of receipt.

4 C. This Chapter shall not apply to a notice or document delivered by an
5 insurer in an electronic form before the effective date of this Chapter to a party who,
6 before that date, has consented to receive the notice or document in an electronic
7 form otherwise allowed by law.

8 §2465. Contracts and policies not affected

9 The legal effectiveness, validity, or enforceability of any contract or policy
10 of insurance executed by a party shall not be denied solely because of the failure of
11 the insurer to obtain electronic consent or confirmation of consent of the party in
12 accordance with the provisions of this Chapter.

13 §2466. Withdrawal of consent

14 A. A withdrawal of consent by a party shall not affect the legal effectiveness,
15 validity, or enforceability of a notice or document delivered by electronic means to
16 the party before the withdrawal of consent is effective.

17 B. A withdrawal of consent by a party shall be effective within a reasonable
18 period of time after receipt of the withdrawal by the insurer.

19 C. Failure by an insurer to comply with any provision of R.S. 22:2462 or
20 2463 may be treated, at the election of the party, as a withdrawal of consent for
21 purposes of this Chapter.

22 §2467. Prior consent to receive notices or documents in an electronic form

23 If the consent of a party to receive certain notices or documents in an
24 electronic form is on file with an insurer before the effective date of this Chapter,
25 and an insurer intends to deliver additional notices or documents to the party in an
26 electronic form pursuant to this Chapter, then prior to delivering the additional
27 notices or documents electronically, the insurer shall comply with the provisions of
28 R.S. 22:2462 and shall provide the party with a statement that describes both of the
29 following:

1 (1) The notices or documents that shall be delivered by electronic means that
2 were not previously delivered electronically.

3 (2) The party's right to withdraw consent to have notices or documents
4 delivered by electronic means, without the imposition of any condition or
5 consequence that was not disclosed at the time of initial consent.

6 §2468. Alternative method of delivery required

7 An insurer shall deliver a notice or document by any other delivery method
8 permitted by law other than electronic means if either of the following occurs:

9 (1) The insurer attempts to deliver the notice or document by electronic
10 means and has a reasonable basis for believing that the notice or document has not
11 been received by the party.

12 (2) The insurer becomes aware that the electronic mail address provided by
13 the party is no longer valid.

14 §2469. Limitation of liability

15 An insurance producer shall not be subject to civil liability for any harm or
16 injury that occurs because of a party's election to receive any notice or document by
17 electronic means or by an insurer's failure to deliver or a party's failure to receive a
18 notice or document by electronic means.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 370 Reengrossed 2018 Regular Session Talbot

Abstract: Authorizes the delivery of insurance notices and documentation through electronic means.

Proposed law defines "delivered by electronic means" and "party".

Proposed law authorizes an insurer to deliver, store, or present any notice to a party or any other document required by law in an insurance transaction or that is to serve as evidence of insurance coverage by electronic means if the electronic means meets the requirements of the Louisiana Uniform Electronic Transactions Act.

Proposed law requires the party to affirmatively 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 to which the party has given consent.

Proposed law requires the insurer to provide the party, prior to consent being given, a clear and conspicuous statement informing the party of all of the following:

- (1) The hardware and software requirements for access to and retention of a notice or document delivered by electronic means.
- (2) The types of notices and documents to which the party's consent would apply.
- (3) The right of the party to withdraw consent to have a notice or document delivered by electronic means, at any time, and any conditions or consequences imposed in the event consent is withdrawn.
- (4) The procedures a party must follow to withdraw consent to have a notice or document delivered by electronic means and to update the party's electronic mail address.
- (5) The right of a party to have a notice or document delivered, upon request, in paper form.

Proposed law requires an insurer to take all measures reasonably calculated to ensure that delivery by electronic means results in receipt of the notice or document by the party.

Proposed law provides for the applicability of proposed law.

Proposed law provides for the withdrawal of consent by a party.

Proposed law requires an alternative method of delivery if either of the following occurs:

- (1) The insurer attempts to deliver the notice or document by electronic means and has a reasonable basis for believing that the notice or document has not been received by the party.
- (2) The insurer becomes aware that the electronic mail address provided by the party is no longer valid.

Proposed law limits the civil liability of an insurance producer for any harm or injury that occurs because of a party's election to receive any notice or document by electronic means or by an insurer's failure to deliver or a party's failure to receive a notice or document by electronic means.

(Adds R.S. 22:2461-2469)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Insurance to the original bill:

1. Provide that electronic delivery shall have the same effect as any other delivery method required by law.
2. Limit civil liability for a party's failure to receive a notice or document by electronic means.
3. Make technical changes.

The House Floor Amendments to the engrossed bill:

1. Clarify that a paper copy of a notice or document may be delivered upon request.
2. Change the statutory designation of proposed law.