

1 S.66

2 Introduced by Senators Cummings and Westman

3 Referred to Committee on

4 Date:

5 Subject: Insurance; property and casualty; electronic notices

6 Statement of purpose of bill as introduced: This bill proposes to permit
7 insurers to send certain notices to policyholders by electronic means.

8 An act relating to insurance notices by electronic means

9 It is hereby enacted by the General Assembly of the State of Vermont:

10 Sec. 1. 8 V.S.A. § 3666 is added to read:

11 § 3666. DELIVERY OF NOTICES BY ELECTRONIC MEANS

12 (a) As used in this section:

13 (1) “Delivered by electronic means” includes:

14 (A) delivery to an electronic mail address at which a party has
15 consented to receive notice; and

16 (B) posting on an electronic network, together with separate notice to
17 a party sent to the electronic mail address at which the party has consented to
18 receive notice of the posting.

19 (2) “Party” means an applicant, an insured, or a policyholder.

1 (b) Subject to subsection (d) of this section, any notice to a party required
2 under section 3880, 3881, 4224, 4225, 4712, or 4713 of this title may be but is
3 not required to be delivered by electronic means provided the process used to
4 obtain consent of the party to have notice delivered by electronic means meets
5 the requirements of 9 V.S.A. chapter 20, the Uniform Electronic
6 Transactions Act.

7 (c) Delivery of a notice pursuant to subsection (b) of this section shall be
8 considered equivalent to any delivery method required under section 3883,
9 4226, or 4714 of this title, including delivery by first-class mail, certified mail,
10 or certificate of mailing.

11 (d) A notice may be delivered by electronic means by an insurer to a party
12 under this section if:

13 (1) The party has affirmatively consented to such method of delivery
14 and not subsequently withdrawn consent.

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

17 (A) the right of the party to have the notice provided or made
18 available in paper or another nonelectronic form at no additional cost;

19 (B) the right of the party to withdraw consent to have notice
20 delivered by electronic means;

21 (C) whether the party's consent applies:

1 (i) only to the particular transaction as to which the notice must be
2 given; or

3 (ii) to identified categories of notices that may be delivered by
4 electronic means during the course of the party's relationship with the insurer;

5 (D) how, after consent is given, the party may obtain a paper copy of
6 a notice delivered by electronic means at no additional cost; and

7 (E) the procedures the party must use to withdraw consent to have
8 notice delivered by electronic means and to update information needed to
9 contact the party electronically.

10 (3) The party:

11 (A) before giving consent, is provided with a statement of the
12 hardware and software requirements for access to and retention of a notice
13 delivered by electronic means; and

14 (B) consents electronically and confirms consent electronically, in a
15 manner that reasonably demonstrates that the party can access information in
16 the electronic form that will be used for notices delivered by electronic means
17 as to which the party has given consent.

18 (4) After consent of the party is given, the insurer, in the event a change
19 in the hardware or software requirements needed to access or retain a notice
20 delivered by electronic means creates a material risk that the party will not be
21 able to access or retain a subsequent notice to which the consent applies:

1 (A) provides the party with a statement of:

2 (i) the revised hardware and software requirements for access to
3 and retention of a notice delivered by electronic means; and

4 (ii) a revised statement required by subdivision (2) of this
5 subsection; and

6 (B) the party affirmatively consents to continued delivery of notices
7 by electronic means.

8 (e) Every notice delivered pursuant to subsection (b) of this section shall
9 include the statement required by subdivision (d)(2) of this section. This
10 section does not otherwise affect the content or timing of any notice required
11 under chapter 105, 113, or 128 of this title.

12 (f) If a provision of chapter 105, 113, or 128 of this title requiring notice to
13 be provided to a party expressly requires verification or acknowledgment of
14 receipt of the notice, the notice may be delivered by electronic means only if
15 the method used provides for verification or acknowledgment of receipt.
16 Absent verification or acknowledgment of receipt of the initial notice on the
17 part of the party, the insurer shall send two subsequent notices at intervals of
18 five business days.

19 (g) The legal effectiveness, validity, or enforceability of any contract or
20 policy of insurance may not be made contingent upon obtaining electronic

1 consent or confirmation of consent of a party in accordance with subdivision
2 (d)(3)(B) of this section.

3 (h)(1) A withdrawal of consent by a party does not affect the legal
4 effectiveness, validity, or enforceability of a notice delivered by electronic
5 means to the party before the withdrawal of consent is effective.

6 (2) A withdrawal of consent by a party is effective within 30 days after
7 receipt of the withdrawal by the insurer.

8 (3) Failure to comply with subdivision (d)(4) of this section shall be
9 treated as a withdrawal of consent for purposes of this section.

10 (i) A party who does not consent to delivery of notices by electronic means
11 under subsection (b) of this section or who withdraws his or her consent shall
12 not be subjected to any additional fees or costs for having notices provided or
13 made available in paper or another nonelectronic form.

14 (j) This section shall not be construed to modify, limit, or supersede the
15 provisions of the federal Electronic Signatures in Global and National
16 Commerce Act, 15 U.S.C. chapter 96, relating to the use of an electronic
17 record to provide or make available information that is required to be provided
18 or made available in writing to a party.

1 Sec. 2. INTERPRETATION

2 The delivery of notice in accordance with Sec. 1 of this act is intended and
3 shall be construed to meet the requirements of state insurance regulation 78-01,
4 section 1, as revised.

5 Sec. 3. STATEMENT OF CONSUMER RIGHTS; ELECTRONIC NOTICES

6 The Commissioner of Financial Regulation shall issue a bulletin regarding
7 the statement to be provided to a party under 8 V.S.A. § 3666(d)(2). The
8 bulletin shall require insurance companies to clearly and conspicuously inform
9 the party of the types of notices (cancellation and nonrenewal) permitted to be
10 delivered by electronic means; the risks associated with electronic notifications
11 and the party's assumption of those risks if he or she consents to receive
12 electronic notifications; the party's right to receive notices by mail at no
13 additional cost; and any other provisions the commissioner deems necessary to
14 protect the interests of Vermonters and otherwise carry out the purposes of this
15 act. In addition, the bulletin shall provide guidance to insurers on the
16 appropriate form of the electronic notices and their provisions as well as on the
17 specific withdrawal of consent procedures required under 8 V.S.A.
18 § 3666(d)(2)(D).

1 Sec. 4. EFFECTIVE DATES

2 This section shall take effect on July 1, 2013, and Secs. 1, 2, and 3 of this
3 act shall take effect on January 1, 2014 and apply to all policies and certificates
4 delivered, issued for delivery, or renewed in this state on or after that date.