

HOUSE BILL NO. 118

INTRODUCED BY B. BENNETT

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING DELIVERY BY ELECTRONIC MEANS OF INSURANCE NOTICES OR DOCUMENTS; CLARIFYING THE VALIDITY OF AN ELECTRONIC REPRESENTATION OF AN INSURANCE CARD AS PROOF OF MOTOR VEHICLE LIABILITY INSURANCE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 61-6-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 9], the following definitions apply:

- (1) "Delivered by electronic means", "delivery by electronic means", or "electronic delivery" means:
  - (a) delivery to an electronic mail address at which a party has consented to receive notices or documents; or
  - (b) (i) posting on an electronic network or site accessible by the internet through use of a mobile application, computer, mobile device, tablet, or any other electronic device; and
  - (ii) sending separate notice of the posting to the electronic mail address at which the party has consented to receive notice of the posting or using any other delivery method to which the party has consented.
- (2) "Party" means a recipient of a notice or document required as part of an insurance transaction and includes an applicant, insured, policyholder, CERTIFICATE HOLDER, or annuity contract holder.

NEW SECTION. **Section 2. Electronic delivery permitted.** (1) Subject to the requirements of Title 30, chapter 18, 33-19-202(7)(c), and [sections 1 through 9], a notice to a party or any other document that is required in an insurance transaction or that is to serve as evidence of insurance coverage may be delivered, stored, and presented by electronic means, WITH THE EXCEPTION OF THE INITIAL PAPER COPY OF THE POLICY AS PROVIDED IN SUBSECTION (2).

(2) AT THE TIME INSURANCE COVERAGE IS FIRST ISSUED, THE INSURER PROVIDING COVERAGE SHALL MAIL A



1 PAPER COPY OF THE INSURANCE POLICY TO THE PARTY OBTAINING COVERAGE. SUBSEQUENT TO THE FIRST PAPER COPY,  
 2 ALL OTHER NOTICES DESCRIBED IN SUBSECTION (1) MAY BE DELIVERED ELECTRONICALLY IF THE INSURER HAS MET THE  
 3 CONDITIONS IN [SECTION 3].

4 ~~(2)~~(3) Electronic delivery of a notice or document as provided in [sections 1 through 9] is equivalent to  
 5 any delivery method otherwise required by law, including delivery by first-class mail, first-class mail postage  
 6 prepaid, certified mail, or certificate of mailing.

7 ~~(3)~~(4) A requirement in law that a notice or document provided to a party expressly requires verification  
 8 or acknowledgment of receipt of the notice or document may be delivered by electronic means only if the method  
 9 used provides for verification or acknowledgment of receipt.

10 ~~(4)~~(5) If an insurer has reason to believe that a party is not receiving notices or documents that the  
 11 insurer attempts to deliver by electronic means, including if the insurer attempts delivery by electronic means and  
 12 receives a notice that the delivery by electronic means has failed, the insurer shall deliver the notices or  
 13 documents by first-class mail or by any other delivery method required for the notices or documents.

14 ~~(5)~~(6) An insurer may not impose on a party a fee or charge because the party:

15 (a) refuses to consent to delivery of a notice or a document by electronic means; or

16 (b) withdraws consent to delivery of a notice or a document by electronic means.

17  
 18 NEW SECTION. Section 3. Conditions for electronic delivery. (1) An insurer may use electronic  
 19 delivery of a notice or a document to a party under [sections 1 through 9] if the insurer meets the requirements  
 20 of subsection (2) of this section and the party:

21 (a) has affirmatively consented to the electronic delivery method and has not withdrawn the consent;

22 (b) is provided, before OR AT THE TIME OF giving consent, with a clear and conspicuous statement  
 23 informing the party of:

24 (i) the right of the party at any time to have the notice or the document provided or made available in  
 25 paper form or by another nonelectronic form;

26 (ii) the right of the party at any time to withdraw consent to have a notice or document delivered by  
 27 electronic means and any conditions or consequences imposed if consent is withdrawn;

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

30 (iv) the means, after consent is given, by which a party may obtain a paper copy of a notice or document

1 delivered by electronic means; and

2 (v) the procedures for a party to follow to update information needed to contact the party electronically  
3 and to withdraw consent to have a notice or a document delivered by electronic means; and

4 (c) is provided, before OR AT THE TIME OF giving consent, with a statement of the hardware and software  
5 requirements for access to and retention of a notice or document delivered by electronic means. The party shall  
6 provide electronic consent to the hardware and software requirements or confirm consent electronically in a  
7 manner that reasonably demonstrates that the party can access information in the electronic form that will be  
8 used for notices or documents delivered by electronic means.

9 (2) After the party consents as provided in subsection (1), if a change occurs in hardware or software  
10 needed to access or retain a notice or document delivered by electronic means that creates a material risk that  
11 the party will not be able to access or retain a notice or document to which the consent applies, the insurer shall  
12 provide the party with a statement that:

13 (a) provides information regarding the revised hardware or software requirements for access to and  
14 retention of a notice or document delivered by electronic means; and

15 (b) recognizes the right of the party to withdraw consent without the imposition of any condition or  
16 consequence that was not disclosed under subsection (1)(b)(ii).

17 (3) Consent to delivery by electronic means remains in effect following a policy modification or renewal  
18 if the original consent makes clear that consent continues after a policy modification or renewal.

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20 **NEW SECTION. Section 4. Withdrawal of consent to electronic delivery.** (1) Withdrawal of consent  
21 to electronic delivery does not affect the legal effectiveness, validity, or enforceability of a notice or a document  
22 that is delivered by electronic means to a party before the withdrawal of consent is effective.

23 (2) (a) Except as provided in subsection (2)(b), withdrawal of consent by a party becomes effective 15  
24 days after the insurer receives notice of the withdrawal PURSUANT TO THE INSURER'S NOTICED PROCEDURES.

25 (b) ~~A~~ EXCEPT AS PROVIDED IN [SECTION 3(2)] OR IF A PARTY UPDATES CONTACT INFORMATION PURSUANT TO  
26 THE INSURER'S NOTICED PROCEDURES, A withdrawal becomes effective immediately ~~if the insurer learns~~ UPON THE  
27 INSURER LEARNING THAT the electronic delivery method currently used is no longer an effective delivery mechanism  
28 with respect to the party.

29 (3) Failure by an insurer to comply with [section 3(2)] may be treated, at the election of the party, as a  
30 withdrawal of consent, BUT THE PARTY SHALL COMMUNICATE THE WITHDRAWAL PURSUANT TO THE INSURER'S NOTICED

1 PROCEDURES.

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3 NEW SECTION. Section 5. Protection of information. An insurer delivering a notice or a document  
4 by electronic means shall take appropriate and necessary measures reasonably calculated to ensure that the  
5 system for furnishing the notices or documents:

6 (1) results in actual receipt of transmitted information; and

7 (2) protects the confidentiality of personal information as defined in 33-19-104.

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9 NEW SECTION. Section 6. Exceptions to electronic delivery. Regardless of whether a party has  
10 consented to delivery by electronic means, an insurer delivering THE INITIAL COPY OF A POLICY OR a notice of  
11 cancellation, nonrenewal, or discontinuation of an insurance policy to the policyholder shall deliver that notice by  
12 a permissible nonelectronic method and may additionally deliver the notice by electronic means.

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14 NEW SECTION. Section 7. Validity of electronic delivery. The legal effectiveness, validity, or  
15 enforceability of a contract or policy of insurance executed by a party may not be denied solely because the  
16 contract or policy was delivered by electronic means if the insurer has obtained the electronic consent of the party  
17 as required in [section 3].

18

19 NEW SECTION. Section 8. Application to other laws. The provisions of [sections 1 through 9] do not  
20 affect requirements related to content or timing of a notice or document required by laws affecting insurance  
21 policies, notices, or documents.

22

23 NEW SECTION. Section 9. Rulemaking. The commissioner may adopt rules necessary to implement  
24 the provisions of [sections 1 through 9].

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26 **Section 10.** Section 61-6-302, MCA, is amended to read:

27 **"61-6-302. Proof of compliance.** (1) The registration receipt required by 61-3-322 must contain a  
28 statement that unless the vehicle is eligible for an exemption under 61-6-303, it is unlawful to operate the vehicle  
29 without a valid motor vehicle liability insurance policy, a certificate of self-insurance, or a posted indemnity bond,  
30 as required by 61-6-301.

1           (2) (a) Each owner or operator of a motor vehicle shall carry in the motor vehicle an insurance card  
 2 approved by the department but issued by the insurance carrier to the motor vehicle owner as proof of  
 3 compliance with 61-6-301. If the card is issued under a commercial automobile insurance policy or a self-insured  
 4 fleet, the card must indicate the status as "commercially insured" or "fleet". A motor vehicle owner or operator  
 5 shall exhibit the insurance card upon demand of a justice of the peace, a city or municipal judge, a peace officer,  
 6 a highway patrol officer, or a field deputy or inspector of the department. A person commits an offense under this  
 7 subsection if the person fails to carry the insurance card in a motor vehicle or fails to exhibit the insurance card  
 8 upon demand of a person specified in this subsection.

9           (b) For the purposes of this subsection (2), "insurance card" includes an electronic representation or  
 10 equivalent of a documentary insurance card that the insurer delivers by electronic means, as defined in [section  
 11 1], to satisfy the requirements of this subsection (2).

12           (3) In lieu of charging an operator who is not the owner of a vehicle with violating subsection (2), the  
 13 officer may issue a complaint and notice to appear charging the owner with a violation of 61-6-301 and serve the  
 14 complaint and notice to appear on the owner of the vehicle:

15           (a) personally; or

16           (b) by certified mail, return receipt requested, at the address for the owner listed on the registration  
 17 receipt for the vehicle or, following query through available law enforcement systems, at the address maintained  
 18 for the vehicle's owner by the jurisdiction in which the vehicle is titled and registered, or both.

19           (4) An owner or operator charged with violating subsection (2) may not be convicted if:

20           (a) the arresting officer or another person authorized to access information from the online motor vehicle  
 21 liability insurance verification system under 61-6-309 submits to the system, when implemented, a request that  
 22 provides proof of insurance valid at the time of arrest; or

23           (b) if the system under 61-6-157 is not available, the person produces in court or the office of the  
 24 arresting officer proof of insurance valid at the time of arrest."

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 26           NEW SECTION. Section 11. Codification instruction. [Sections 1 through 9] are intended to be  
 27 codified as an integral part of Title 33, chapter 15, and the provisions of Title 33, chapter 15, apply to [sections  
 28 1 through 9].

29  
 30           NEW SECTION. Section 12. Effective date. [This act] is effective on passage and approval.

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2           NEW SECTION. **Section 13. Retroactive applicability.** [This act] applies retroactively, within the  
3 meaning of 1-2-109, to confirm the validity of any insurance policy or contract that was electronically delivered  
4 and is in force on [the effective date of this act], but the other requirements of [this act] on insurers and parties  
5 may not impair the existing contracts and are not effective until a policy or contract is renewed.

6   - END -