

JAN 18 2013

A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1 SECTION 1. The legislature finds that current state law
2 requires written notification for insurance notices and
3 documents. The legislature further finds that consumers are
4 showing a preference for electronic access to their records in
5 lieu of paper mailings.

6 The purpose of this Act is to:

7 (1) Permit a party to consent to the electronic delivery
8 of insurance notices and documents;

9 (2) Require an insurer to obtain the consent of a party
10 prior to sending a party electronic notices and
11 documents; and

12 (3) Permit a party to withdraw consent for electronic
13 notices and documents.

14 SECTION 2. Chapter 489E, Hawaii Revised Statutes, is
15 amended by adding a new part to be appropriately inserted and to
16 read as follows:

17 **"PART II. INSURANCE AND INSURANCE POLICIES**



1 **§489E- Insurance and insurance policies; electronic**
2 **notices and documents.** (a) Notwithstanding any other
3 provisions in this chapter to the contrary, this section shall
4 apply to insurance and insurance policies.

5 (b) For the purposes of this section:

6 "Delivered by electronic means" or "delivery by electronic
7 means" includes:

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

11 (2) Posting on an electronic network or site accessible
12 via the Internet, mobile application, computer, mobile
13 device, tablet, or any other electronic device,
14 together with a separate notice to a party directed to
15 the electronic mail address at which the party has
16 consented to receive notice of the posting.

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

21 (c) Any notice or other document to a party that is
22 required by applicable law in an insurance transaction or that



1 serves as evidence of insurance coverage may be delivered,
2 stored, and presented by electronic means; provided that it
3 meets all requirements of this part.

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

9 (e) A notice or document may be delivered by electronic
10 means by an insurer to a party if:

11 (1) The party has affirmatively consented to that method
12 of delivery and has not withdrawn the consent;

13 (2) Prior to giving consent, the party is provided with a
14 clear and conspicuous statement informing the party
15 of:

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

19 (B) The right of the party to withdraw consent to
20 delivery by electronic means and any fees,
21 conditions, or consequences imposed if consent is
22 withdrawn;



- 1 (C) Whether the party's consent applies:
 - 2 (i) Only to the particular transaction to which
 - 3 the notice or document must be given; or
 - 4 (ii) To identified categories of notices or
 - 5 documents that may be delivered by
 - 6 electronic means during the course of the
 - 7 parties' relationship;
- 8 (D) The means by which a party may obtain a paper
- 9 copy of a notice or document delivered by
- 10 electronic means, after consent is given and the
- 11 fee, if any, for the paper copy; and
- 12 (E) The procedure a party shall follow to withdraw
- 13 consent for delivery by electronic means and
- 14 requirements for updating any information needed
- 15 to contact the party electronically;
- 16 (3) The party:
 - 17 (A) Prior to giving consent, is provided with a
 - 18 statement of the hardware and software
 - 19 requirements for access to and retention of a
 - 20 notice or document delivered by electronic means;
 - 21 and



1 (B) Consents electronically, or confirms consent
2 electronically, in a manner that reasonably
3 demonstrates the party can access information in
4 the electronic form that will be used for notices
5 or documents delivered by electronic means; and

6 (4) After the party gives consent, if a change in the
7 hardware or software requirements needed to access or
8 retain a notice or document delivered by electronic
9 means creates a material risk that the party will not
10 be able to access or retain a subsequent notice or
11 document to which the consent applies, the insurer
12 shall:

13 (A) Provide the party with a statement of:

14 (i) The revised hardware and software
15 requirements for access and retention of a
16 notice or document delivered by electronic
17 means; and

18 (ii) The right of the party to withdraw consent
19 without the imposition of any fee,
20 condition, or consequence not disclosed
21 under paragraph (2)(B); and

22 (B) Comply with paragraph (2).



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

4 (g) If a provision of this part or applicable law that
5 requires a notice or document to be provided to a party also
6 expressly requires verification or acknowledgment of receipt of
7 the notice or document, the notice or document may be delivered
8 by electronic means only if the method used provides for
9 verification or acknowledgment of receipt.

10 (h) The legal effectiveness, validity, or enforceability
11 of any contract or policy of insurance executed by a party may
12 not be denied solely because of the failure to obtain electronic
13 consent or confirmation of consent in accordance with subsection
14 (e) (3) (B).

15 (i) A withdrawal of consent by a party does not affect the
16 legal effectiveness, validity, or enforceability of a notice or
17 document delivered by electronic means to the party before the
18 withdrawal of consent is effective.

19 A withdrawal of consent by a party is effective within a
20 reasonable period of time after receipt of the withdrawal by the
21 insurer.



1 For purposes of this section, failure by an insurer to
2 comply with subsection (e)(4) may be treated as a withdrawal of
3 consent, at the election of the party.

4 (j) This section does not apply to a notice or document
5 delivered in an electronic form by an insurer to a party who
6 consented prior to the effective date of this section to receive
7 a notice or document in an electronic form otherwise allowed by
8 law.

9 (k) If the consent of a party to receive certain notices
10 or documents in an electronic form is on file with an insurer
11 prior to the effective date of this section, and pursuant to
12 this section an insurer intends to deliver additional notices or
13 documents to the party in electronic form, then prior to
14 delivery by electronic means of the additional notices or
15 documents, the insurer shall notify the party of:

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

19 (2) The party's right to withdraw consent to delivery by
20 electronic means of notices or documents.

21 (1) Except as otherwise provided by law, if an oral
22 communication or a recording of an oral communication from a



1 party can be reliably stored and reproduced by an insurer, the
2 oral communication or recording may qualify as a notice or
3 document delivered by electronic means for purposes of this
4 section.

5 If a provision of this part or applicable law requires a
6 signature, notice, or document to be notarized, acknowledged,
7 verified, or made under oath, the requirement is satisfied if
8 the electronic signature of the person authorized to perform
9 those acts, together with all other information required to be
10 included by the provision, is attached to or logically
11 associated with the signature, notice, or document.

12 (m) Nothing in this section shall be construed to modify,
13 limit, or supersede the federal Electronic Signatures in Global
14 and National Commerce Act, Public Law 106-229, as amended."

15 SECTION 3. Chapter 489E, Hawaii Revised Statutes, is
16 amended by designating sections 489E-1 to 489E-19 as part I and
17 inserting a title before section 489E-1 to read as follows:

18 **"PART I. GENERAL PROVISIONS"**

19 SECTION 4. Section 489E-3, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "~~§489E-3~~ **Scope.** (a) This [~~chapter~~] part shall apply to
2 electronic records and electronic signatures relating to a
3 transaction.

4 (b) This [~~chapter~~] part does not apply to a transaction to
5 the extent it is governed by:

6 (1) A law governing the creation and execution of wills,
7 codicils, or testamentary trusts;

8 (2) The Uniform Commercial Code other than section
9 490:1-201, article 2, and article 2A; [~~and~~]

10 (3) A law or rule governing notice of:

11 [+] (A) [+] Default, including but not limited to notices
12 relating to acceleration, repossession, eviction,
13 foreclosure, or the right to cure;

14 [+] (B) [+] Utility shutoff, including water, telephone, gas
15 and electricity; or

16 [+] (C) [+] Cancellation, termination, lapse, or material
17 alteration of [~~a contract of insurance,~~]
18 insurance benefits, a life settlement or viatical
19 settlement agreement, or a service contract[-];
20 and



1 (4) Part II of this chapter, relating to electronic
 2 notices and documents associated with insurance and
 3 insurance policies.

4 (c) This [~~chapter~~] part applies to an electronic record or
 5 electronic signature otherwise excluded from the application of
 6 this [~~chapter~~] part under subsection (b) when used for a
 7 transaction subject to a law other than those specified in
 8 subsection (b).

9 (d) A transaction subject to this [~~chapter~~] part is also
 10 subject to other applicable substantive law."

11 SECTION 5. Sections 489E-1, 489E-2, 489E-4, 489E-5,
 12 489E-6, 489E-8, 489E-15, and 489E-18, Hawaii Revised Statutes,
 13 are amended by substituting the word "part" wherever the word
 14 "chapter" appears, as the context requires.

15 SECTION 6. Statutory material to be repealed is bracketed
 16 and stricken. New statutory material is underscored.

17 SECTION 7. This Act shall take effect upon its approval.

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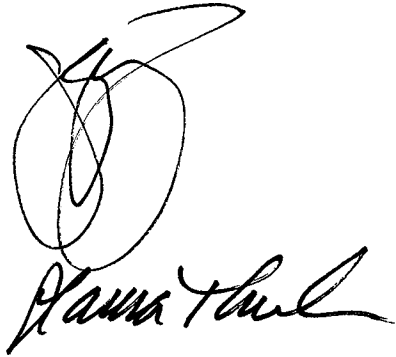
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S.B. NO. 496

Report Title:

Uniform Electronic Transactions Act; Insurance and Insurance Policies; Electronic Notices and Documents

Description:

Permits insurers to send electronic notices and documents relating to insurance and insurance policies. Requires an insurer to obtain the consent of a party prior to sending the party electronic notices and documents. Permits a party to withdraw consent for electronic notices and documents.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

