# ELECTRONIC DELIVERY OF INSURANCE POLICIES AND MORE - AN UPDATE

by

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The author wrote an article on the subject of the electronic delivery of insurance policies for the Fall 2011 edition of the *Dec Page Quaterly*, in which the requirements that had to be met for such a delivery to be valid were explained (that article can be found online at http://www.nxtbook.com/nxtbooks/naylor/IIGQ0411/index.php?startid=8). At that time, there was no specific statutory authority for such a delivery of insurance policies. This year's General Assembly provided that authority. HB 645, which by the time you read this should have been signed into law by Governor Deal, made amendments to the Georgia Insurance Code that specifically authorized the electronic delivery of insurance policies if the requirements outlined in the above article were met.

That bill also authorized insurance companies to post insurance policies on the internet instead of actually delivering them to their customers if certain requirements were met. It is unclear whether insurance agents also have this authority, as the language of that part of the bill refers only to "insurers." However, if agents are authorized by and acting on behalf of the insurance company, there appears to be no reason why they could not use this method to "deliver" insurance policies. Even if they are authorized to do so, given some of the requirements that must be met, insurance agents may well not want to use this method of delivery. (A copy of HB 645 can be found online at http://www.legis.ga.gov/Legislation/en-US/display/20132014/HB/645 ).

HB 645 also dealt with a subject that has the potential to make the lives of insurance agents easier. It amends O.C.G.A. Section 33-24-14 to permit the electronic delivery of any document that is required to be mailed if the statute that requires the mailing specifically provides that it can be accomplished as provided for in paragraph (d) of that Code Section. HB 645 made such changes to the provisions of the Insurance Code that govern the mailing of notices of non-renewal, cancellation, an increase in premiums, and a change in any policy provision that limits or restricts the coverage previously provided by the policy, with the exception of any such notices regarding policies insuring against loss resulting from sickness or from bodily injury or death by accident, or both, or any contract to furnish ambulance service. As with respect to the electronic posting of insurance policies, the language of this new Code Section refers only to "insurers", but there is no reason to believe that insurance agents could not also make use of this method of delivery of such notices if specifically authorized to do so on behalf of the insurance company.

HB 645 imposes seven requirements that must be met before such notices can be electronically delivered. These requirements include all the conditions that must be met for the electronic delivery of an insurance policy and define more specifically how the consent of the insured for the electronic delivery of such notices must be obtained. The insured must sign a statement that reads: "I agree to receive all mailings and communications electronically. Such electronic mailing or communications may even include cancellation or nonrenewal notices," or similar language approved by the Insurance Commissioner. In the absence of any procedure for the electronic signing of such a statement that has been approved by the Insurance

Commissioner, the insured must physically sign this statement and it must be on a separate document, written in all capital letters in at least a 12 point font, or in a substantially similar form approved by the Insurance Commissioner.

As with the electronic delivery of insurance policies, the insured may withdraw their consent to the electronic delivery of the above notices at any time. How that can be done is not specified, but it is safe to assume that the same rules that apply to the withdrawal of consent for the electronic delivery of insurance policies would apply. HB 645 does specifically require an "insurer", who becomes aware that an insured's e-mail address at which they had consented to receive such notices is no longer valid, to send all future notices in another manner required by the applicable law. As recommended in the earlier article on the electronic delivery of insurance policies, this language appears to require the consent of the insured to include the e-mail address to which any notices are to be sent, even though no provision for such an address is included in the statutorily mandated consent language.

The recommendations made in the earlier article about how to prove that a policy was delivered electronically also apply to the electronic delivery of notices, as HB 645 requires that a record of such delivery of all notices must be maintained for a minimum of five years after the date of delivery in a form this is "retrievable" and that can be transmitted to the Insurance Commissioner, at his or her request, within a "reasonable time." This record must include the date of the electronic mailing and the address to which the notice was sent.

Finally, as should be expected, HB 645 prohibits an insurance company from canceling or refusing to issue or renew a policy because the insured or potential insured refuses to agree to the electronic delivery of notices.

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