

ASSEMBLY BILL

No. 2710

Introduced by Assembly Member Cooley

February 19, 2016

An act to amend Section 38.5 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2710, as introduced, Cooley. Insurance: notice: electronic transmission.

Existing law authorizes any written notice required to be given or mailed to any person by an insurer relating to any insurance on risks or on operations in this state, with exceptions, to be provided by electronic transmission, pursuant to certain provisions, if each party has agreed to conduct the transaction by electronic means, as provided.

This bill would make nonsubstantive, technical changes to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 38.5 of the Insurance Code, as amended
2 by Section 4 of Chapter 369 of the Statutes of 2013, is amended
3 to read:
4 38.5. (a) ~~Any~~A written notice required to be given or mailed
5 to ~~any~~ a person by an insurer relating to any insurance on risks or
6 on operations in this state not excepted by subdivision (a), (b), (c),
7 (d), (e), or (g) of Section 1851 from the coverage of Chapter 9

1 (commencing with Section 1850.4) of Part 2 of Division 1 of this
2 code may, if not excluded by subdivision (b) or (c) of Section
3 1633.3 of the Civil Code, be provided by electronic transmission
4 pursuant to Title 2.5 (commencing with Section 1633.1) of Part 2
5 of Division 3 of the Civil Code, if each party has agreed to conduct
6 the transaction by electronic means pursuant to Section 1633.5 of
7 the Civil Code. The affidavit of the person who initiated the
8 electronic transmission, stating the facts of that transmission into
9 an information processing system outside of the control of the
10 sender or of ~~any~~ a person that sent the electronic record on behalf
11 of the sender, is prima facie evidence that the notice was
12 transmitted and shall be sufficient proof of notice. ~~Any~~ A notice
13 provided by electronic transmission shall be treated as if mailed
14 or given for the purposes of any provision of this code, except as
15 provided by subdivision (g) of Section 1633.15 of the Civil Code.
16 The insurance company shall maintain a system for confirming
17 that ~~any~~ a notice or document that is to be provided by electronic
18 means has been sent in a manner consistent with Section 1633.15
19 of the Civil Code. A valid electronic signature shall be sufficient
20 for any provision of law requiring a written signature. The
21 insurance company shall retain a copy of the confirmation and
22 electronic signature, when either is required, with the policy
23 information so that they are retrievable upon request by the
24 Department of Insurance while the policy is in force and for five
25 years thereafter.

26 (b) The offer of renewal required by Sections 663 and 678, the
27 notice of conditional renewal required by Section 678.1, and the
28 offer of coverage or renewal or any disclosure required by Section
29 10086 and the offer of renewal for a workers' compensation policy
30 may be provided by electronic transmission if an insurer complies
31 with all of the following:

32 (1) An insurer, or insurer's representative, acquires the consent
33 of the insured to opt in to receive the offer, notice, or disclosure
34 by electronic transmission, and the insured has not withdrawn that
35 consent, prior to providing the offer, notice, or disclosure by
36 electronic transmission. An insured's consent may be acquired
37 verbally, in writing, or electronically. If consent is acquired
38 verbally, the insurer shall confirm consent in writing or
39 electronically. The insurer shall retain a record of the insured's
40 consent to receive the offer, notice, or disclosure by electronic

1 transmission with the policy information so that it is retrievable
2 upon request by the Department of Insurance while the policy is
3 in force and for five years thereafter.

4 (2) An insurer discloses, in writing or electronically, to the
5 insured all of the following:

6 (A) The opt in to receive the offer, notice, or disclosure by
7 electronic transmission is voluntary.

8 (B) That the insured may opt out of receiving the offer, notice,
9 or disclosure by electronic transmission at any time, and the process
10 or system for the insured to opt out.

11 (C) A description of the offer, notice, or disclosure that the
12 insured will receive by electronic transmission.

13 (D) The process or system to report a change or correction in
14 the insured's email address.

15 (E) The insurer's contact information, which includes, but is
16 not limited to, a toll-free number or an insurer's Internet Web site
17 address.

18 (3) An insurer shall include the insured's email address on the
19 policy declaration page.

20 (4) An insurer shall annually provide one free printed copy of
21 any offer, notice, or disclosure described in this subdivision upon
22 request by the insured.

23 (5) An insurer shall maintain a process or system that can
24 demonstrate that the offer, notice, or disclosure provided by
25 electronic transmission was both sent and received consistent with
26 Section 1633.15 of the Civil Code. If a different method of sending
27 or receiving is agreed upon by the insurer and the insured pursuant
28 to Section 1633.15 of the Civil Code, an insurer shall comply with
29 the provisions of this subdivision. The insurer shall retain and
30 document information so that the documentation and information
31 is retrievable upon request by the Department of Insurance while
32 the current policy is in force and for five years thereafter related
33 to its process or system demonstrating that the offer, notice, or
34 disclosure provided by electronic transmission was sent to the
35 insured by the applicable statutory regular mail delivery deadlines
36 and received electronically. The offer, notice, or disclosure
37 provided by electronic transmission shall be treated as if mailed
38 so long as the insurer delivers it to the insured in compliance with
39 the applicable statutory regular mail delivery deadlines.

1 (A) Acceptable methods for an insurer to demonstrate that the
2 offer, notice, or disclosure was sent to the insured include simple
3 mail transfer protocol server log files indicating transmission, or
4 other methodologies indicating sent transmission consistent with
5 standards set forth in Section 1633.15 of the Civil Code.

6 (B) Acceptable methods for an insurer to demonstrate that the
7 offer, notice, or disclosure was received by the insured include
8 server log files indicating that the email or application has been
9 received, or log files showing that the insured logged into his or
10 her secured account with the insurer, or other methodologies
11 indicating received transmission consistent with standards set forth
12 in Section 1633.15 of the Civil Code.

13 (6) If the offer, notice, or disclosure is not delivered directly to
14 the electronic address designated by the insured, but placed at an
15 electronic address accessible to the insured, an insurer shall notify
16 the insured in plain, clear, and conspicuous language at the
17 electronic address designated by the insured that describes the
18 offer, notice, or disclosure, informs that insured that it is available
19 at another location, and provides instructions to the insured as to
20 how to obtain the offer, notice, or disclosure.

21 (7) (A) Upon an insurer receiving information indicating that
22 the offer, notice, or disclosure sent by electronic transmission was
23 not received by the insured, the insurer shall, within two business
24 days, either clause (i) or (ii):

25 (i) Contact the insured to confirm or update the insured’s email
26 address and resend the offer, notice, or disclosure by electronic
27 transmission. If the insurer elects to resend the offer, notice, or
28 disclosure by electronic transmission, the insurer shall demonstrate
29 the transmission was received by the insured, pursuant to paragraph
30 (5). If the insurer is unable to confirm or update the insured’s email
31 address, the insurer shall resend the offer, notice, or disclosure by
32 regular mail to the insured at the address shown on the policy.

33 (ii) Resend the offer, notice, or disclosure initially provided by
34 electronic transmission by regular mail to the insured at the address
35 shown on the policy.

36 (B) If the insurer sends the first electronic offer, notice, or
37 disclosure within the time period required by law and the insurer
38 complies with both paragraph (5) and subparagraph (A) of this
39 paragraph, the electronic offer, notice, or disclosure sent pursuant
40 to clause (i) or (ii) of subparagraph (A) shall be treated as if mailed

1 in compliance with the applicable statutory regular mail delivery
2 deadlines.

3 (8) On or before January 1, 2018, the commissioner shall submit
4 a report to the Governor and to the committees of the Senate and
5 Assembly having jurisdiction over insurance and the judiciary,
6 regarding the impact and implementation of the authorization of
7 the electronic transmission of certain insurance renewal offers,
8 notices, or disclosures as authorized by this section. The report
9 shall include input from insurers, consumers, and consumer
10 organizations, and shall include an assessment of the department's
11 experience pertaining to the authorization of the electronic
12 transmission of insurance renewals as authorized by this section.

13 (c) The department may suspend an insurer from providing
14 offers, notices, or disclosures by electronic transmission if there
15 is a pattern or practices that demonstrate the insurer has failed to
16 comply with the requirements of this section. An insurer may
17 appeal the suspension and resume its electronic transmission of
18 offers, notices, or disclosures upon communication from the
19 department that the changes the insurer made to its process or
20 system to comply with the requirements of this section are
21 satisfactory.

22 (d) This section shall remain in effect only until January 1, 2019,
23 and as of that date is repealed, unless a later enacted statute, that
24 is enacted before January 1, 2019, deletes or extends that date.

25 SEC. 2. Section 38.5 of the Insurance Code, as added by
26 Section 5 of Chapter 369 of the Statutes of 2013, is amended to
27 read:

28 38.5. (a) ~~Any~~A written notice required to be given or mailed
29 to ~~any~~ a person by an insurer relating to any insurance on risks or
30 on operations in this state not excepted by Section 1851 from the
31 coverage of Chapter 9 (commencing with Section 1850.4) of Part
32 2 of Division 1 of this code may, if not excluded by subdivision
33 (b) or (c) of Section 1633.3 of the Civil Code, be provided by
34 electronic transmission pursuant to Title 2.5 (commencing with
35 Section 1633.1) of Part 2 of Division 3 of the Civil Code, if each
36 party has agreed to conduct the transaction by electronic means
37 pursuant to Section 1633.5 of the Civil Code. The affidavit of the
38 person who initiated the electronic transmission, stating the facts
39 of that transmission into an information processing system outside
40 of the control of the sender or of ~~any~~ a person that sent the

1 electronic record on behalf of the sender, is prima facie evidence
2 that the notice was transmitted and shall be sufficient proof of
3 notice. ~~Any~~ A notice provided by electronic transmission shall be
4 treated as if mailed or given for the purposes of any provision of
5 this code, except as provided by subdivision (g) of Section 1633.15
6 of the Civil Code. The insurance company shall maintain a system
7 for confirming that ~~any~~ a notice or document that is to be provided
8 by electronic means has been sent in a manner consistent with
9 Section 1633.15 of the Civil Code. A valid electronic signature
10 shall be sufficient for any provision of law requiring a written
11 signature. The insurance company shall retain a copy of the
12 confirmation and electronic signature, when either is required,
13 with the policy information so that they are retrievable upon request
14 by the Department of Insurance while the policy is in force and
15 for five years thereafter.

16 (b) This section shall become operative on January 1, 2019.