

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 322
97TH GENERAL ASSEMBLY

Reported from the Committee on Small Business, Insurance and Industry, May 8, 2013, with recommendation that the Senate Committee Substitute do pass.

1211S.06C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 303.024 and 303.200, RSMo, and to enact in lieu thereof five new sections relating to providing and presenting certain insurance documents through electronic means, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 303.024 and 303.200, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 301.149, 303.024, 303.200, 379.011, and 379.012, to read as follows:

301.149. 1. Notwithstanding any law to the contrary, proof of financial responsibility required for vehicle registration under section 301.147 may be provided by displaying an electronic image of an insurance identification card on a mobile electronic device.

2. Whenever a person presents a mobile electronic device as proof of financial responsibility to any employee of the department of revenue or any agent authorized by the department of revenue under section 136.055 to register motor vehicles and trailers, the person presenting such mobile electronic device shall assume all liability for any damage that may occur to the mobile electronic device, except for damage willfully or maliciously caused by a department employee or agent.

3. When a person provides evidence of financial responsibility using a mobile electronic device pursuant to this section to any employee of the department of revenue or any agent authorized by the department of revenue under section 136.055 to register motor vehicles

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 **and trailers, such employees or agents shall only view the evidence of**
18 **financial responsibility and shall not view any other content on the**
19 **mobile electronic device.**

20 **4. As used in this section, the term "mobile electronic device"**
21 **means any small handheld computing or communications device that**
22 **has a display screen with a touch input or a miniature keyboard.**

303.024. 1. Each insurer issuing motor vehicle liability policies in this
2 state, or an agent of the insurer, shall furnish an insurance identification card
3 to the named insured for each motor vehicle insured by a motor vehicle liability
4 policy that complies with the requirements of sections 303.010 to 303.050,
5 303.060, 303.140, 303.220, 303.290, 303.330 and 303.370. **Such insurance**
6 **identification card may be produced in either paper or electronic**
7 **format. Acceptable electronic forms include display of electronic**
8 **images on a cellular phone or any other type of portable electronic**
9 **device.**

10 2. The insurance identification card shall include all of the following
11 information:

12 (1) The name and address of the insurer;

13 (2) The name of the named insured;

14 (3) The policy number;

15 (4) The effective dates of the policy, including month, day and year;

16 (5) A description of the insured motor vehicle, including year and make
17 or at least five digits of the vehicle identification number or the word Fleet if the
18 insurance policy covers five or more motor vehicles; and

19 (6) The statement "THIS CARD MUST BE CARRIED IN THE INSURED
20 MOTOR VEHICLE FOR PRODUCTION UPON DEMAND" prominently displayed
21 on the card.

22 3. A new insurance identification card shall be issued when the insured
23 motor vehicle is changed, when an additional motor vehicle is insured, and when
24 a new policy number is assigned. A replacement insurance identification card
25 shall be issued at the request of the insured in the event of loss of the original
26 insurance identification card.

27 4. The director shall furnish each self-insurer, as provided for in section
28 303.220, an insurance identification card for each motor vehicle so insured. The
29 insurance identification card shall include all of the following information:

30 (1) Name of the self-insurer;

31 (2) The word self-insured; and

32 (3) The statement "THIS CARD MUST BE CARRIED IN THE
33 SELF-INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND"
34 prominently displayed on the card.

35 5. An insurance identification card shall be carried in the insured motor
36 vehicle at all times. The operator of an insured motor vehicle shall exhibit the
37 insurance identification card on the demand of any peace officer, commercial
38 vehicle enforcement officer or commercial vehicle inspector who lawfully stops
39 such operator or investigates an accident while that officer or inspector is
40 engaged in the performance of the officer's or inspector's duties. If the operator
41 fails to exhibit an insurance identification card, the officer or inspector shall issue
42 a citation to the operator for a violation of section 303.025. A motor vehicle
43 liability insurance policy, a motor vehicle liability insurance binder, [or] receipt,
44 **or a photocopy or an image displayed on a mobile electronic device**
45 which contains the policy information required in subsection 2 of this section,
46 shall be satisfactory evidence of insurance in lieu of an insurance identification
47 card. **The display of an image of the insurance card on a mobile**
48 **electronic device shall not serve as consent for such officer, inspector,**
49 **or other person to access other contents of the mobile electronic device**
50 **in any manner other than to verify the image of the insurance card. As**
51 **used in this section, the term "mobile electronic device" means any**
52 **small handheld computing or communications device that has a display**
53 **screen with a touch input or a miniature keyboard. Whenever a person**
54 **presents a mobile electronic device as proof of financial responsibility**
55 **to any peace officer, commercial vehicle enforcement officer, or**
56 **commercial vehicle inspector pursuant to this section, that person shall**
57 **assume all liability for any damage to the mobile electronic device,**
58 **except for damage willfully or maliciously caused by a peace officer,**
59 **commercial vehicle enforcement officer, or commercial vehicle**
60 **inspector.**

61 6. Any person who knowingly or intentionally produces, manufactures,
62 sells, or otherwise distributes a fraudulent document, **photocopy, or image**
63 **displayed on a mobile electronic device** intended to serve as an insurance
64 identification card is guilty of a class D felony. Any person who knowingly or
65 intentionally possesses a fraudulent document **or photocopy** intended to serve
66 as an insurance identification card **or knowingly or intentionally uses a**

67 **fraudulent image displayed on a mobile electronic device** is guilty of a
68 class B misdemeanor.

303.200. 1. After consultation with insurance companies authorized to
2 issue automobile liability policies in this state, the director of the department of
3 insurance, financial institutions and professional registration shall approve a
4 reasonable plan or plans for the equitable apportionment among such companies
5 of applicants for such policies and for **personal automobile and commercial**
6 motor vehicle liability policies who are in good faith entitled to but are unable to
7 procure such policies through ordinary methods. When any such plan has been
8 approved, all such insurance companies shall subscribe thereto and participate
9 therein. [Any such plan] **The plan manager, on the plan's behalf,** shall
10 contract with an entity or entities to accept and service applicants and policies
11 for any company that does not elect to accept and service applicants and policies.
12 By October first of each year any company that elects to accept and service
13 applicants and policies for the next calendar year for any such plan shall so notify
14 the plan. **Except as provided in subsection 2 of this section,** any company
15 that does not so notify a plan **established for handling coverage for**
16 **personal automobile risks** shall be excused from accepting and servicing
17 applicants and policies for the next calendar year for such plan and shall pay a
18 fee to the plan or servicing entity for providing such services. The fee shall be
19 based on the company's market share [on the kinds of insurance offered by the
20 plan] **as determined by the company's writings of personal automobile**
21 **risks in the voluntary market.** Any applicant for any such policy, any person
22 insured under any such plan, and any insurance company affected may appeal to
23 the director from any ruling or decision of the manager or committee designated
24 to operate such plan. Any person aggrieved hereunder by any order or act of the
25 director may, within ten days after notice thereof, file a petition in the circuit
26 court of the county of Cole for a review thereof. The court shall summarily hear
27 the petition and may make any appropriate order or decree. **As used in this**
28 **section, the term "personal automobile" means a private passenger non-**
29 **fleet vehicle, motorcycle, camper and travel trailer, antique auto,**
30 **amphibious auto, motor home, named non-owner applicant, or a low-**
31 **speed vehicle subject to chapter 304 which is not primarily used for**
32 **business or nonprofit interests and which is generally used for**
33 **personal, family, or household purposes.**

34 2. If the total premium volume for any one plan established for

35 handling coverage for personal automobile risks exceeds ten million
36 dollars in a calendar year, a company with more than five percent
37 market share of such risks in Missouri shall not be excused from
38 accepting and servicing applicants and policies of such plan under
39 subsection 1 of this section for the next calendar year, unless the
40 governing body of the plan votes to allow any company with such
41 market share the option to be excused.

379.011. 1. As used in this section, the following terms mean:

2 (1) "Delivered by electronic means", includes delivery to an
3 electronic mail address at which a party has consented to receive
4 notices or documents, or posting on an electronic network or site
5 accessible via the internet, mobile application, computer, mobile
6 device, tablet, or any other electronic device, together with a separate
7 notice to a party directed to the electronic mail address at which the
8 party has consented to receive notice of the posting;

9 (2) "Party", any recipient of any notice or document required as
10 part of an insurance transaction, including but not limited to an
11 applicant, an insured or a policyholder.

12 2. Subject to subsection 3 of this section, any notice to a party or
13 any other document required under applicable law in an insurance
14 transaction or that is to serve as evidence of insurance coverage may
15 be delivered, stored, and presented by electronic means so long as it
16 meets the requirements of sections 432.200 to 432.295. Delivery of a
17 notice or document in accordance with this subsection shall be
18 considered equivalent to any delivery method required under
19 applicable law, including delivery by first class mail, first class mail
20 postage prepaid, certified mail, or certificate of mailing.

21 3. A notice or document may be delivered by electronic means by
22 an insurer to a party under this subsection if:

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

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

27 (a) Any right or option to have the notice or document provided
28 in paper or another nonelectronic form at no additional cost;

29 (b) The right of party to withdraw consent to have a notice or
30 document delivered by electronic means;

31 (c) Whether the party's consent applies only to the particular
32 transaction as to which the notice or document must be given or to
33 identified categories of notices or documents that may be delivered by
34 electronic means during the course of the parties' relationship;

35 (d) The means, after consent is given, by which a party may
36 obtain a paper copy of a notice or document delivered by electronic
37 means at no additional cost; and

38 (e) The procedure a party must follow to withdraw consent to
39 have a notice or document delivered by electronic means and to update
40 information needed to contact the party electronically;

41 (3) The party, before giving consent, is provided with a
42 statement of the hardware and software requirements for access to and
43 retention of a notice or document delivered by electronic means and
44 consents electronically, and confirms consent electronically, in a
45 manner that reasonably demonstrates that the party can access
46 information in the electronic form that will be used for notices or
47 documents delivered by electronic means as to which the party has
48 given consent; and

49 (4) After consent of the party is given, the insurer, in the event
50 a change in the hardware or software requirements needed to access
51 or retain a notice or document delivered in electronic means creates a
52 material risk that the party will not be able to access or retain a
53 subsequent notice or document to which the consent applies:

54 (a) Provides the party with a statement of the revised hardware
55 and software requirements for access to and retention of a notice or
56 document delivered by electronic means and of the right of the party
57 to withdraw consent pursuant to paragraph (b) of subdivision (2) of this
58 subsection; and

59 (b) Complies with subdivision (2) of this subsection.

60 4. This section does not affect requirements relating to content
61 or timing of any notice or document required under applicable law. If
62 any provision of applicable law requiring a notice or document to be
63 provided to a party expressly requires verification or acknowledgment
64 of receipt of the notice or document, the notice or document may be
65 delivered by electronic means only if the method used provides for
66 verification or acknowledgment of receipt. Absent verification or
67 acknowledgment of receipt of the initial notice or document on the part

68 of the party, the insurer shall send two subsequent notices or
69 documents at intervals of five business days. The legal effectiveness,
70 validity, or enforceability of any contract or policy of insurance
71 executed by a party may not be made contingent upon obtaining
72 electronic consent or confirmation of consent of the party in
73 accordance with subdivision (3) of subsection 3 of this section.

74 5. A withdrawal of consent by a party does not affect the legal
75 effectiveness, validity, or enforceability of a notice or document
76 delivered by electronic means to the party before the withdrawal of
77 consent is effective. A withdrawal of consent by a party is effective
78 within thirty days after receipt of the withdrawal by the
79 insurer. Failure by an insurer to comply with subdivision (4) of
80 subsection 3 of this section may be treated, at the election of the party,
81 as a withdrawal of consent for purposes of this section.

82 6. This section does not apply to a notice or document delivered
83 by an insurer in an electronic form before the effective date of this
84 section to a party who, before that date, has consented to receive
85 notices or documents in an electronic form otherwise allowed by law.
86 If the consent of a party to receive certain notices or documents in an
87 electronic form is on file with an insurer before the effective date of
88 this section, and pursuant to this section, an insurer intends to deliver
89 additional notices or documents to such party in an electronic form,
90 then prior to delivering such additional notices or documents
91 electronically, the insurer shall notify the party of:

92 (1) The notices or documents that may be delivered by electronic
93 means under this section that were not previously delivered
94 electronically; and

95 (2) The party's right to withdraw consent to have notices or
96 documents delivered by electronic means.

97 7. A party who does not consent to delivery of notices or
98 documents under subsection 3 of this section, or who withdraws their
99 consent, shall not be subject to any additional fees or costs for having
100 notices or documents provided or made available to them in paper or
101 another nonelectronic form.

102 8. If any provision of applicable law requires a signature or
103 notice or document to be notarized, acknowledged, verified, or made
104 under oath, the requirement is satisfied if the electronic signature of

105 the person authorized to perform those acts, together with all other
106 information required to be included by the provision, is attached to or
107 logically associated with the signature, notice, or document.

108 9. This section may not be construed to modify, limit, or
109 supercede the provisions of sections 432.200 to 432.295.

110 10. Nothing in this section shall prevent an insurer from offering
111 a discount to an insured who elects to receive notices and documents
112 electronically in accordance with this section.

379.012. 1. In addition to and notwithstanding any other
2 provisions or requirements of section 379.011 to the contrary, insurance
3 policy forms and endorsements for property insurance as described in
4 subdivisions (1), (2), (3), and (5) of subsection 1 of section 379.010 issued
5 or renewed in this state, or covering risks in this state, which do not
6 contain personally identifiable information, may be made available
7 electronically on the insurer's website in lieu of mailing or delivering
8 a paper copy of policy forms and endorsements to an insured.

9 2. If the insurer elects to make such insurance policy forms and
10 endorsements available electronically on the insurer's website in lieu
11 of mailing or delivering a paper copy to the insured, it shall comply
12 with all the following conditions with respect to such policy forms and
13 endorsements:

14 (1) The policy forms and endorsements issued or sold in this
15 state shall be easily and publicly accessible on the insurer's website
16 and remain that way for as long as the policy form or endorsement is
17 in force or actively sold in this state;

18 (2) The insurer shall retain and store the policy forms and
19 endorsements after they are withdrawn from use or replaced with other
20 policy forms and endorsements for a period of five years and make
21 them available to insureds and former insureds upon request and at no
22 cost;

23 (3) The policy forms and endorsements shall be available on the
24 insurer's website in an electronic format that enables the insured to
25 print and save the policy forms and endorsements using programs or
26 applications that are widely available on the internet and free to use;

27 (4) At policy issuance and renewal, the insurer shall provide
28 clear and conspicuous notice to the insured, in the manner it
29 customarily communicates with an insured, that it does not intend to

30 mail or deliver a paper copy of the policy forms or documents. The
31 notice shall provide instructions on how the insured may access the
32 policy forms and endorsements on the insurer's website. The insurer
33 shall also notify the insured of their right to obtain a paper copy of the
34 policy forms and endorsements at no cost and provide either a toll-free
35 telephone number or the telephone number of the insured's producer
36 by which the insured can make this request;

37 (5) At policy renewal, the insurer shall provide clear and
38 conspicuous notice to the insured, in the manner it customarily
39 communicates with an insured, of any changes which have been made
40 to the policy forms or endorsements since the prior coverage
41 period. Such notice shall be made in accordance with the requirements
42 of subdivision (4) of this subsection; and

43 (6) On each declarations page, or similar coverage summary
44 document, issued to an insured, the insurer shall clearly identify the
45 exact policy forms and endorsements purchased by the insured, so that
46 the insured may easily access those forms on the insurer's website.

47 3. The director may promulgate any rules necessary to
48 implement and administer the provisions of this section. Any rule or
49 portion of a rule, as that term is defined in section 536.010 that is
50 created under the authority delegated in this section shall become
51 effective only if it complies with and is subject to all of the provisions
52 of chapter 536, and, if applicable, section 536.028. This section and
53 chapter 536 are nonseverable and if any of the powers vested with the
54 general assembly pursuant to chapter 536, to review, to delay the
55 effective date, or to disapprove and annul a rule are subsequently held
56 unconstitutional, then the grant of rulemaking authority and any rule
57 proposed or adopted after August 28, 2013, shall be invalid and void.

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