STATE OF NEW YORK

651

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. D. ROSENTHAL, DICKENS, L. ROSENTHAL, SIMON, NIOU -- Multi-Sponsored by -- M. of A. BLANKENBUSH -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to electronic delivery of property/casualty insurance notices

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The insurance law is amended by adding a new section 3457 to read as follows:

§ 3457. Electronic notices and documents. (a) As used in this section, the following words shall have the following meanings:

(1) "Delivered by electronic means" includes:

(A) delivery to an electronic mail address at which a party has consented to receive notices or documents; or

(B) posting on an electronic network or site accessible via the internet, mobile application, computer, mobile device, tablet, or any other electronic device, together with separate notice of the posting which shall be provided by electronic mail to the address at which the party has consented to receive notice or by any other delivery method that has been consented to by the party.

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

(3) "Clickwrap agreement" means a digital prompt that offers individuals the opportunity to acknowledge receipt of an electronic document.

(b) Subject to the requirements of this section, any notice to a party or any other document required under applicable law in a property/casualty insurance transaction or that is to serve as evidence of property/casualty insurance coverage may be delivered, stored, and

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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presented by electronic means so long as it meets the requirements of article three of the state technology law.

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

(d) A notice or document may be delivered by electronic means by an insurer to a party under this section if:

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

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

(A) the right of the party to withdraw consent to have a notice or document delivered by electronic means, at any time, and any conditions or consequences imposed in the event consent is withdrawn;

(B) the types of notices and documents to which the party's consent would apply;

(C) the right of a party to have a notice or document delivered in paper form; and

(D) the procedures a party must follow to withdraw consent to have a notice or document delivered by electronic means and to update the party's electronic mail address;

(3) the party:

(A) before giving consent, is provided with a statement of the hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and

(B) consents electronically, or confirms consent electronically, in a manner that reasonably demonstrates that the party can access information in the electronic form that will be used for notices or documents delivered by electronic means as to which the party has given consent; and

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

(A) provides the party with a statement that describes:

(i) the revised hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and

(ii) the right of the party to withdraw consent without the imposition of any condition or consequence that was not disclosed at the time of initial consent; and

(B) complies with paragraph two of this subsection.

(e) (1) Any electronic mail being sent by an insurer to a party in connection with the delivery of a notice or document delivered by electronic means shall include in the subject line clear and conspicuous language alerting the receiving party as to what type of notice is being delivered to such party electronically.

(2) Any electronic mail being sent by an insurer to a party in connection with the delivery of a notice or document delivered by electronic means shall clearly and conspicuously include a clickwrap agreement embedded into the body of such electronic mail or a hyperlink leading to a clickwrap agreement which will allow for the receiving party to acknowledge receipt of a notice being sent to such party by an insurer. If the receiving party has not acknowledge receipt of such notice pursu-

ant to this section within two weeks of such notice being sent, an insurer shall redeliver such notice in paper form to such party.

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

(g) If a provision of this chapter or applicable law requiring a notice or document to be provided to a party expressly requires verification or acknowledgment of receipt of the notice or document, the notice or document may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt.

(h) The legal effectiveness, validity, or enforceability of any contract or policy of insurance executed by a party may not be denied solely because of the failure to obtain electronic consent or confirmation of consent of the party in accordance with subparagraph (B) of paragraph three of subsection (d) of this section.

(i) (1) A withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a notice or document delivered by electronic means to the party before the withdrawal of consent is effective.

(2) A withdrawal of consent by a party is effective within a reasonable period of time after receipt of the withdrawal by the insurer.

(3) Failure by an insurer to comply with paragraph four of subsection (d) and subsection (k) of this section may be treated, at the election of the party, as a withdrawal of consent for purposes of this section.

(j) This section does not apply to a notice or document delivered by an insurer in an electronic form before the effective date of this section to a party who, before that date, has consented to receive a notice or document in an electronic form otherwise allowed by law.

(k) If the consent of a party to receive certain notices or documents in an electronic form is on file with an insurer before the effective date of this section, and pursuant to this section, an insurer intends to deliver additional notices or documents to such party in an electronic form, then prior to delivering such additional notices or documents electronically, the insurer shall:

(1) provide the party with a statement that describes:

(A) the notices or documents that shall be delivered by electronic means under this section that were not previously delivered electronically; and

(B) the party's right to withdraw consent to have notices or documents delivered by electronic means, without the imposition of any condition or consequence that was not disclosed at the time of initial consent.

(2) comply with paragraph two of subsection (d) of this section.

(l) An insurer shall deliver a notice or document by any other delivery method permitted by law other than electronic means if:

(1) the insurer attempts to deliver the notice or document by electronic means and has a reasonable basis for believing that the notice or document has not been received by the party, or

(2) the insurer becomes aware that the electronic mail address provided by the party is no longer valid.

(m) This section may not be construed to modify, limit, or supersede the provisions of the federal Electronic Signatures in Global and National Commerce Act, Public Law 106-229, as amended.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law.