

5249

2015-2016 Regular Sessions

I N S E N A T E

May 11, 2015

Introduced by Sen. SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to electronic delivery of insurance notices and posting insurance policies on the internet

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The insurance law is amended by adding a new section 3114
2 to read as follows:

3 S 3114. ELECTRONIC NOTICES AND DOCUMENTS. (A) AS USED IN THIS SECTION,
4 THE FOLLOWING WORDS SHALL HAVE THE FOLLOWING MEANINGS:

5 (1) "DELIVERED BY ELECTRONIC MEANS" INCLUDES:

6 (A) DELIVERY TO AN ELECTRONIC MAIL ADDRESS AT WHICH A PARTY HAS
7 CONSENTED TO RECEIVE NOTICES OR DOCUMENTS; OR

8 (B) POSTING ON AN ELECTRONIC NETWORK OR SITE ACCESSIBLE VIA THE INTER-
9 NET, MOBILE APPLICATION, COMPUTER, MOBILE DEVICE, TABLET, OR ANY OTHER
10 ELECTRONIC DEVICE, TOGETHER WITH SEPARATE NOTICE OF THE POSTING WHICH
11 SHALL BE PROVIDED BY ELECTRONIC MAIL TO THE ADDRESS AT WHICH THE PARTY
12 HAS CONSENTED TO RECEIVE NOTICE OR BY ANY OTHER DELIVERY METHOD THAT HAS
13 BEEN CONSENTED TO BY THE PARTY.

14 (2) "PARTY" MEANS ANY RECIPIENT OF ANY NOTICE OR DOCUMENT REQUIRED AS
15 PART OF AN INSURANCE TRANSACTION, INCLUDING BUT NOT LIMITED TO AN APPLI-
16 CANT, AN INSURED, A POLICYHOLDER OR AN ANNUITY CONTRACT HOLDER.

17 (B) SUBJECT TO THE REQUIREMENTS OF THIS SECTION, ANY NOTICE TO A PARTY
18 OR ANY OTHER DOCUMENT REQUIRED UNDER APPLICABLE LAW IN AN INSURANCE
19 TRANSACTION OR THAT IS TO SERVE AS EVIDENCE OF INSURANCE COVERAGE MAY BE
20 DELIVERED, STORED, AND PRESENTED BY ELECTRONIC MEANS SO LONG AS IT MEETS
21 THE REQUIREMENTS OF ARTICLE THREE OF THE STATE TECHNOLOGY LAW.

22 (C) DELIVERY OF A NOTICE OR DOCUMENT IN ACCORDANCE WITH THIS SECTION
23 SHALL BE CONSIDERED EQUIVALENT TO ANY DELIVERY METHOD REQUIRED UNDER
24 APPLICABLE LAW, INCLUDING DELIVERY BY FIRST CLASS MAIL; FIRST CLASS

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

LBD10983-02-5

1 MAIL, POSTAGE PREPAID; CERTIFIED MAIL; CERTIFICATE OF MAIL; OR CERTIF-
2 ICATE OF MAILING.

3 (D) A NOTICE OR DOCUMENT MAY BE DELIVERED BY ELECTRONIC MEANS BY AN
4 INSURER TO A PARTY UNDER THIS SECTION IF:

5 (1) THE PARTY HAS AFFIRMATIVELY CONSENTED TO THAT METHOD OF DELIVERY
6 AND HAS NOT WITHDRAWN THE CONSENT;

7 (2) THE PARTY, BEFORE GIVING CONSENT, IS PROVIDED WITH A CLEAR AND
8 CONSPICUOUS STATEMENT INFORMING THE PARTY OF:

9 (A) THE RIGHT OF THE PARTY TO WITHDRAW CONSENT TO HAVE A NOTICE OR
10 DOCUMENT DELIVERED BY ELECTRONIC MEANS, AT ANY TIME, AND ANY CONDITIONS
11 OR CONSEQUENCES IMPOSED IN THE EVENT CONSENT IS WITHDRAWN;

12 (B) THE TYPES OF NOTICES AND DOCUMENTS TO WHICH THE PARTY'S CONSENT
13 WOULD APPLY;

14 (C) THE RIGHT OF A PARTY TO HAVE A NOTICE OR DOCUMENT DELIVERED IN
15 PAPER FORM; AND

16 (D) THE PROCEDURES A PARTY MUST FOLLOW TO WITHDRAW CONSENT TO HAVE A
17 NOTICE OR DOCUMENT DELIVERED BY ELECTRONIC MEANS AND TO UPDATE THE
18 PARTY'S ELECTRONIC MAIL ADDRESS;

19 (3) THE PARTY:

20 (A) BEFORE GIVING CONSENT, IS PROVIDED WITH A STATEMENT OF THE HARD-
21 WARE AND SOFTWARE REQUIREMENTS FOR ACCESS TO AND RETENTION OF A NOTICE
22 OR DOCUMENT DELIVERED BY ELECTRONIC MEANS; AND

23 (B) CONSENTS ELECTRONICALLY, OR CONFIRMS CONSENT ELECTRONICALLY, IN A
24 MANNER THAT REASONABLY DEMONSTRATES THAT THE PARTY CAN ACCESS INFORMA-
25 TION IN THE ELECTRONIC FORM THAT WILL BE USED FOR NOTICES OR DOCUMENTS
26 DELIVERED BY ELECTRONIC MEANS AS TO WHICH THE PARTY HAS GIVEN CONSENT;
27 AND

28 (4) AFTER CONSENT OF THE PARTY IS GIVEN, THE INSURER, IN THE EVENT A
29 CHANGE IN THE HARDWARE OR SOFTWARE REQUIREMENTS NEEDED TO ACCESS OR
30 RETAIN A NOTICE OR DOCUMENT DELIVERED BY ELECTRONIC MEANS CREATES A
31 MATERIAL RISK THAT THE PARTY WILL NOT BE ABLE TO ACCESS OR RETAIN A
32 SUBSEQUENT NOTICE OR DOCUMENT TO WHICH THE CONSENT APPLIES:

33 (A) PROVIDES THE PARTY WITH A STATEMENT THAT DESCRIBES:

34 (I) THE REVISED HARDWARE AND SOFTWARE REQUIREMENTS FOR ACCESS TO AND
35 RETENTION OF A NOTICE OR DOCUMENT DELIVERED BY ELECTRONIC MEANS; AND

36 (II) THE RIGHT OF THE PARTY TO WITHDRAW CONSENT WITHOUT THE IMPOSITION
37 OF ANY CONDITION OR CONSEQUENCE THAT WAS NOT DISCLOSED AT THE TIME OF
38 INITIAL CONSENT; AND

39 (B) COMPLIES WITH PARAGRAPH TWO OF THIS SUBSECTION.

40 (E) THIS SECTION DOES NOT AFFECT REQUIREMENTS RELATED TO CONTENT OR
41 TIMING OF ANY NOTICE OR DOCUMENT REQUIRED UNDER APPLICABLE LAW.

42 (F) IF A PROVISION OF THIS CHAPTER OR APPLICABLE LAW REQUIRING A
43 NOTICE OR DOCUMENT TO BE PROVIDED TO A PARTY EXPRESSLY REQUIRES VERIFI-
44 CATION OR ACKNOWLEDGMENT OF RECEIPT OF THE NOTICE OR DOCUMENT, THE
45 NOTICE OR DOCUMENT MAY BE DELIVERED BY ELECTRONIC MEANS ONLY IF THE
46 METHOD USED PROVIDES FOR VERIFICATION OR ACKNOWLEDGMENT OF RECEIPT.

47 (G) THE LEGAL EFFECTIVENESS, VALIDITY, OR ENFORCEABILITY OF ANY
48 CONTRACT OR POLICY OF INSURANCE EXECUTED BY A PARTY MAY NOT BE DENIED
49 SOLELY BECAUSE OF THE FAILURE TO OBTAIN ELECTRONIC CONSENT OR CONFIRMA-
50 TION OF CONSENT OF THE PARTY IN ACCORDANCE WITH SUBPARAGRAPH (B) OF
51 PARAGRAPH THREE OF SUBSECTION (D) OF THIS SECTION.

52 (H) (1) A WITHDRAWAL OF CONSENT BY A PARTY DOES NOT AFFECT THE LEGAL
53 EFFECTIVENESS, VALIDITY, OR ENFORCEABILITY OF A NOTICE OR DOCUMENT
54 DELIVERED BY ELECTRONIC MEANS TO THE PARTY BEFORE THE WITHDRAWAL OF
55 CONSENT IS EFFECTIVE.

1 (2) A WITHDRAWAL OF CONSENT BY A PARTY IS EFFECTIVE WITHIN A REASON-
2 ABLE PERIOD OF TIME AFTER RECEIPT OF THE WITHDRAWAL BY THE INSURER.

3 (3) FAILURE BY AN INSURER TO COMPLY WITH PARAGRAPH FOUR OF SUBSECTION
4 (D) AND SUBSECTION (J) OF THIS SECTION MAY BE TREATED, AT THE ELECTION
5 OF THE PARTY, AS A WITHDRAWAL OF CONSENT FOR PURPOSES OF THIS SECTION.

6 (I) THIS SECTION DOES NOT APPLY TO A NOTICE OR DOCUMENT DELIVERED BY
7 AN INSURER IN AN ELECTRONIC FORM BEFORE THE EFFECTIVE DATE OF THIS
8 SECTION TO A PARTY WHO, BEFORE THAT DATE, HAS CONSENTED TO RECEIVE A
9 NOTICE OR DOCUMENT IN AN ELECTRONIC FORM OTHERWISE ALLOWED BY LAW.

10 (J) IF THE CONSENT OF A PARTY TO RECEIVE CERTAIN NOTICES OR DOCUMENTS
11 IN AN ELECTRONIC FORM IS ON FILE WITH AN INSURER BEFORE THE EFFECTIVE
12 DATE OF THIS SECTION, AND PURSUANT TO THIS SECTION, AN INSURER INTENDS
13 TO DELIVER ADDITIONAL NOTICES OR DOCUMENTS TO SUCH PARTY IN AN ELECTRON-
14 IC FORM, THEN PRIOR TO DELIVERING SUCH ADDITIONAL NOTICES OR DOCUMENTS
15 ELECTRONICALLY, THE INSURER SHALL:

16 (1) PROVIDE THE PARTY WITH A STATEMENT THAT DESCRIBES:

17 (A) THE NOTICES OR DOCUMENTS THAT SHALL BE DELIVERED BY ELECTRONIC
18 MEANS UNDER THIS SECTION THAT WERE NOT PREVIOUSLY DELIVERED ELECTRON-
19 ICALLY; AND

20 (B) THE PARTY'S RIGHT TO WITHDRAW CONSENT TO HAVE NOTICES OR DOCUMENTS
21 DELIVERED BY ELECTRONIC MEANS, WITHOUT THE IMPOSITION OF ANY CONDITION
22 OR CONSEQUENCE THAT WAS NOT DISCLOSED AT THE TIME OF INITIAL CONSENT.

23 (2) COMPLY WITH PARAGRAPH TWO OF SUBSECTION (D) OF THIS SECTION.

24 (K) AN INSURER SHALL DELIVER A NOTICE OR DOCUMENT BY ANY OTHER DELIV-
25 ERY METHOD PERMITTED BY LAW OTHER THAN ELECTRONIC MEANS IF:

26 (1) THE INSURER ATTEMPTS TO DELIVER THE NOTICE OR DOCUMENT BY ELEC-
27 TRONIC MEANS AND HAS A REASONABLE BASIS FOR BELIEVING THAT THE NOTICE OR
28 DOCUMENT HAS NOT BEEN RECEIVED BY THE PARTY, OR

29 (2) THE INSURER BECOMES AWARE THAT THE ELECTRONIC MAIL ADDRESS
30 PROVIDED BY THE PARTY IS NO LONGER VALID.

31 (L) A PRODUCER SHALL NOT BE SUBJECT TO CIVIL LIABILITY FOR ANY HARM OR
32 INJURY THAT OCCURS AS A RESULT OF A PARTY'S ELECTION TO RECEIVE ANY
33 NOTICE OR DOCUMENT BY ELECTRONIC MEANS OR BY AN INSURER'S FAILURE TO
34 DELIVER A NOTICE OR DOCUMENT BY ELECTRONIC MEANS.

35 (M) THIS SECTION MAY NOT BE CONSTRUED TO MODIFY, LIMIT, OR SUPERSEDE
36 THE PROVISIONS OF THE FEDERAL ELECTRONIC SIGNATURES IN GLOBAL AND
37 NATIONAL COMMERCE ACT, PUBLIC LAW 106-229, AS AMENDED.

38 S 2. The insurance law is amended by adding a new section 3455 to read
39 as follows:

40 S 3455. POSTING OF POLICIES ON THE INTERNET. (A) NOTWITHSTANDING ANY
41 OTHER PROVISIONS OF SECTION THREE THOUSAND ONE HUNDRED FOURTEEN OF THIS
42 CHAPTER OR SECTION THREE HUNDRED NINE OF THE STATE TECHNOLOGY LAW, STAN-
43 DARD PROPERTY AND CASUALTY INSURANCE POLICIES AND ENDORSEMENTS THAT DO
44 NOT CONTAIN PERSONALLY IDENTIFIABLE INFORMATION MAY BE MAILED, DELIV-
45 ERED, OR POSTED ON THE INSURER'S WEBSITE. IF THE INSURER ELECTS TO POST
46 INSURANCE POLICIES AND ENDORSEMENTS ON ITS WEBSITE IN LIEU OF MAILING OR
47 DELIVERING THEM TO THE INSURED, IT MUST COMPLY WITH ALL OF THE FOLLOWING
48 CONDITIONS:

49 (1) THE POLICY AND ENDORSEMENTS MUST BE ACCESSIBLE TO THE INSURED AND
50 PRODUCER OF RECORD AND REMAIN THAT WAY FOR AS LONG AS THE POLICY IS IN
51 FORCE;

52 (2) AFTER THE EXPIRATION OF THE POLICY, THE INSURER MUST ARCHIVE ITS
53 EXPIRED POLICIES AND ENDORSEMENTS FOR A PERIOD OF FIVE YEARS OR OTHER
54 PERIOD REQUIRED BY LAW, AND MAKE THEM AVAILABLE UPON REQUEST;

55 (3) THE POLICIES AND ENDORSEMENTS MUST BE POSTED IN A MANNER THAT
56 ENABLES THE INSURED AND PRODUCER OF RECORD TO PRINT AND SAVE THE POLICY

1 AND ENDORSEMENTS USING PROGRAMS OR APPLICATIONS THAT ARE WIDELY AVAIL-
2 ABLE ON THE INTERNET AND FREE TO USE;

3 (4) THE INSURER PROVIDES THE FOLLOWING INFORMATION IN, OR SIMULTANEOUS
4 WITH, EACH DECLARATIONS PAGE PROVIDED AT THE TIME OF ISSUANCE OF THE
5 INITIAL POLICY AND ANY RENEWALS OF THAT POLICY:

6 (A) A DESCRIPTION OF THE EXACT POLICY AND ENDORSEMENT FORMS PURCHASED
7 BY THE INSURED;

8 (B) A DESCRIPTION OF THE INSURED'S RIGHT TO RECEIVE, UPON REQUEST AND
9 WITHOUT CHARGE, A PAPER COPY OF THE POLICY AND ENDORSEMENTS BY MAIL; AND

10 (C) THE INTERNET ADDRESS WHERE THEIR POLICY AND ENDORSEMENTS ARE POST-
11 ED;

12 (5) THE INSURER, UPON REQUEST AND WITHOUT CHARGE, MAILED A PAPER COPY
13 OF THE POLICY AND ENDORSEMENTS TO THE INSURED; AND

14 (6) THE INSURER PROVIDES NOTICE, IN THE FORMAT PREFERRED BY THE
15 INSURED, OF ANY CHANGES TO THE FORMS OR ENDORSEMENTS, THE INSURED'S
16 RIGHT TO OBTAIN, UPON REQUEST AND WITHOUT CHARGE, A PAPER COPY OF SUCH
17 FORMS OR ENDORSEMENTS, AND THE INTERNET ADDRESS WHERE SUCH FORMS OR
18 ENDORSEMENTS ARE POSTED.

19 (B) NOTHING IN THIS SECTION SHALL AFFECT THE TIMING OR CONTENT OF ANY
20 DISCLOSURE OR OTHER DOCUMENT REQUIRED TO BE PROVIDED OR MADE AVAILABLE
21 TO ANY INSURED UNDER APPLICABLE LAW.

22 S 3. This act shall take effect on the ninetieth day after it shall
23 have become a law.