S T A T E O F N E W Y O R K

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:

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

S 3114. 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 AN INSURANCE TRANSACTION, INCLUDING BUT NOT LIMITED TO AN APPLICANT, AN INSURED, A POLICYHOLDER OR AN ANNUITY CONTRACT HOLDER.

(B) SUBJECT TO THE REQUIREMENTS OF THIS SECTION, ANY NOTICE TO A PARTY OR ANY OTHER DOCUMENT REQUIRED UNDER APPLICABLE LAW IN AN INSURANCE TRANSACTION OR THAT IS TO SERVE AS EVIDENCE OF INSURANCE COVERAGE MAY BE DELIVERED, STORED, AND 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

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

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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(1) THE PARTY HAS AFFIRMATIVELY CONSENTED TO THAT METHOD OF DELIVERY AND HAS NOT WITHDRAWN THE CONSENT;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) THIS SECTION DOES NOT AFFECT REQUIREMENTS RELATED TO CONTENT OR TIMING OF ANY NOTICE OR DOCUMENT REQUIRED UNDER APPLICABLE LAW.

(F) 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.

(G) 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.

(H) (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 (J) OF THIS SECTION MAY BE TREATED, AT THE ELECTION OF THE PARTY, AS A WITHDRAWAL OF CONSENT FOR PURPOSES OF THIS SECTION.

(I) 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.

(J) 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.

(K) 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.

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

(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.

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

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

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

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

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

AND ENDORSEMENTS USING PROGRAMS OR APPLICATIONS THAT ARE WIDELY AVAILABLE ON THE INTERNET AND FREE TO USE;

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

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

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

(C) THE INTERNET ADDRESS WHERE THEIR POLICY AND ENDORSEMENTS ARE POSTED;

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

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

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

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