

# STATE OF NEW YORK

2526--B

Cal. No. 1384

2017-2018 Regular Sessions

## IN SENATE

January 13, 2017

Introduced by Sens. SEWARD, LARKIN -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- recommitted to the Committee on Insurance in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

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

3 § 3457. 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 a property/casualty insurance transaction, including but not  
16 limited to an applicant, an insured, or a policyholder.

17 (b) Subject to the requirements of this section, any notice to a party  
18 or any other document required under applicable law in a  
19 property/casualty insurance transaction or that is to serve as evidence

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

LBD02638-06-8

1 of property/casualty insurance coverage may be delivered, stored, and  
2 presented by electronic means so long as it meets the requirements of  
3 article three of the state technology law.

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

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

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12 and has not withdrawn the consent;

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

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17 or consequences imposed in the event consent is withdrawn;

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

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

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

25 (3) the party:

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

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

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

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

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

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

45 (B) complies with paragraph two of this subsection.

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

48 (f) If a provision of this chapter or applicable law requiring a  
49 notice or document to be provided to a party expressly requires verifi-  
50 cation or acknowledgment of receipt of the notice or document, the  
51 notice or document may be delivered by electronic means only if the  
52 method used provides for verification or acknowledgment of receipt.

53 (g) The legal effectiveness, validity, or enforceability of any  
54 contract or policy of insurance executed by a party may not be denied  
55 solely because of the failure to obtain electronic consent or confirma-

1 tion of consent of the party in accordance with subparagraph (B) of  
2 paragraph three of subsection (d) of this section.

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

7 (2) A withdrawal of consent by a party is effective within a reason-  
8 able period of time after receipt of the withdrawal by the insurer.

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

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

16 (j) If the consent of a party to receive certain notices or documents  
17 in an electronic form is on file with an insurer before the effective  
18 date of this section, and pursuant to this section, an insurer intends  
19 to deliver additional notices or documents to such party in an electron-  
20 ic form, then prior to delivering such additional notices or documents  
21 electronically, the insurer shall:

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

23 (A) the notices or documents that shall be delivered by electronic  
24 means under this section that were not previously delivered electron-  
25 ically; and

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

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

30 (k) An insurer shall deliver a notice or document by any other deliv-  
31 ery method permitted by law other than electronic means if:

32 (1) the insurer attempts to deliver the notice or document by elec-  
33 tronic means and has a reasonable basis for believing that the notice or  
34 document has not been received by the party, or

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

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

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