

# STATE OF NEW YORK

7877--A

2019-2020 Regular Sessions

## IN ASSEMBLY

May 28, 2019

Introduced by M. of A. D. ROSENTHAL -- read once and referred to the Committee on Insurance -- recommitted to the Committee on Insurance in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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

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11 and has not withdrawn the consent;

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

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16 or consequences imposed in the event consent is withdrawn;

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

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

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

24 (3) the party:

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

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

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

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

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

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

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

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

50 (2) Any electronic mail being sent by an insurer to a party in  
51 connection with the delivery of a notice or document delivered by elec-  
52 tronic means shall clearly and conspicuously include a clickwrap agree-  
53 ment embedded into the body of such electronic mail or a hyperlink lead-  
54 ing to a clickwrap agreement which will allow for the receiving party to  
55 acknowledge receipt of a notice being sent to such party by an insurer.  
56 If the receiving party has not acknowledge receipt of such notice pursu-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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