STATE OF NEW YORK

7376

2023-2024 Regular Sessions

IN ASSEMBLY

May 18, 2023

Introduced by M. of A. WEPRIN -- read once and referred to the Committee on Banks

AN ACT to amend the banking law, in relation to electronic notices or documents in premium finance transactions

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

Section 1. The banking law is amended by adding a new section 578-a to read as follows:

§ 578-a. Electronic notes and documents. 1. For purposes of this section, the following words have the following meanings:

(a) "Delivered by electronic means" includes:

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

(ii) 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 such posting which shall be provided by electronic mail to the address at which such party has consented to receive notice or by any other electronic delivery method that has been consented to by such party.

(b) "Party" means any recipient of any notice or document required as part of a premium finance transaction, including, but not limited to, an insured, insurance agent or broker, or insurer.

2. Subject to the requirements of this section, any notice to a party or any other document required under this article in a premium finance transaction or that is to serve as evidence of a premium finance agreement may be delivered, stored, and presented by electronic means so long as it meets the requirements of article three of the state technology law. Where this chapter requires that written notice to an insured or any other document required under this article be mailed or delivered to the insured at his address as shown in such premium finance agreement or at his last known address as shown on the records of the premium finance

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

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agency, the notice may be delivered by electronic means to an electronic address not shown on such premium finance agreement.

3. Delivery of any notice or document in accordance with this section shall be considered equivalent to any mail or delivery method required under this article.

4. A notice or document may be delivered by electronic means by a premium finance agency to a party under this section if:

(a) such party has affirmatively consented to such method of delivery and has not withdrawn such consent;

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

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

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

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

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

(c) such party:

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

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

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

(i) provides such party with a statement that describes:

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

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

(ii) complies with paragraph (b) of this subdivision.

5. (a) Before a notice or document is delivered by electronic means, a premium finance agency shall obtain a party's consent to deliver such notice or document by electronic means. Such party's consent to receive one type of notice or document shall not be construed as a blanket consent for every type of notice and document to be delivered by electronic means. Such party's consent shall only apply to the types of notices and documents identified in the clean and conspicuous information statement provided to the consenting party, as required by subparagraph (ii) of paragraph (b) of subdivision four of this section.

(b) Any electronic mail being sent by a premium finance agency to a party in connection with the delivery of a notice of intent to cancel or notice of cancellation delivered by electronic means shall include in the subject line and body of the communication clear and conspicuous language alerting the receiving party as to the importance of the commu-

nication and the type of notice being delivered by electronic means to such party.

6. This section does not affect requirements related to content or timing of any notice or document required under this article.

7. The legal effectiveness, validity, or enforceability of any premium finance agreement executed by a party may not be denied solely because of the failure to obtain electronic consent or confirmation of consent of the party pursuant to subparagraph (ii) of paragraph (c) of subdivision four of this section.

8. (a) 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 such party before such withdrawal of consent is effective.

(b) A withdrawal of consent by a party is effective within a reasonable period of time after receipt of such withdrawal by a premium finance agency.

(c) Failure by a premium finance agency to comply with paragraph (d) of subdivision four and subdivision ten of this section may be treated, at the election of the party, as a withdrawal of consent for purposes of this section.

9. This section does not apply to a notice or document delivered by a premium finance agency in an electronic form before the effective date of this section to a party who, before such date, has consented to receive a notice or document in an electronic form otherwise allowed by law.

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

(a) provide such party with a statement that describes:

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

(ii) such 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; and

(b) comply with paragraph (b) of subdivision four of this section.

11. A premium finance agency shall mail or deliver a notice or document by any other delivery method permitted by this article other than electronic means if such premium finance agency:

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

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

12. This section shall 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 immediately.