

CHAPTER 247  
FORMERLY  
HOUSE BILL NO. 223

AN ACT TO AMEND TITLES 18 AND 21 OF THE DELAWARE CODE TO ALLOW THE TRANSMISSION OF ELECTRONIC NOTICES OR DOCUMENTS RELATED TO INSURANCE AND INSURANCE POLICIES UNDER CERTAIN CIRCUMSTANCES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 1, Title 18 of the Delaware Code by adding a new section thereto as follows:

“§ 107. Electronic Notices and Documents.

(a) 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 notice; or

b. Posting on an electronic network, together with separate notice to a party directed to the electronic mail address at which the party has consented to receive notice of the posting.

(2) “Party” means an applicant, an insured, or a policyholder.

(b) Subject to subsection (d) of this section, any notice to a party or any other document required under this title in an insurance transaction may be delivered by electronic means so long as it meets the requirements of the Uniform Electronic Transactions Act [6 *Del.C.* § 12A-101, *et. seq.*].

(c) Delivery of a notice or document in accordance with this section shall be considered equivalent to any delivery method required under this title, including delivery by first class mail, 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(1) The party has affirmatively consented to that method of delivery and has not withdrawn the consent;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. Any right or option of the party to have the notice provided or made available in paper or another non-electronic form.

b. The right of the party to withdraw consent to have notice or a document delivered by electronic means and any fees, conditions, or consequences imposed in the event consent is withdrawn;

c. Whether the party’s consent applies:

1. Only to the particular transaction as to which the notice or document must be given; or

2. To identified categories of notices or documents that may be delivered by electronic means during the course of the parties’ relationship;

d. 1. The means, after consent is given, by which a party may obtain a paper copy of a notice or document delivered by electronic means; and

2. The fee, if any, for the paper copy; and

e. The procedure a party must follow to withdraw consent to have a notice or document delivered by electronic means and to update information needed to contact the party electronically;

(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 to which the consent applies.

a. Provides the party with a statement of:

1. The revised hardware and software requirements for access to and retention of a notice or document delivered by electronic means;

2. The right of the party to withdraw consent without the imposition of any fee, condition, or consequence that was not disclosed under (2)b. of this subsection; and

b. Complies with paragraph (2) of this subsection.

(e) This section does not affect requirements related to content or timing of any notice or document required under this title.

(f) If a provision of this title 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 (d)(3)b. 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 subsection (d)(4) 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 act to a party who, before that date, has consented to receive notice in an electronic form otherwise allowed by law.

(j) If the consent of a party to receive notice or document in an electronic form is on file with an insurer before the effective date of this act, the insurer shall notify the party of:

(1) The notices or documents that may be delivered by electronic means under this section; and

(2) The party's right to withdraw consent to have notices or documents delivered by electronic means.

(k) (1) Except as otherwise provided by law, if an oral communication or a recording of an oral communication from a party can be reliably stored and reproduced by an insurer, the oral communication or recording may qualify as a notice or document delivered by electronic means for purposes of this section.

(2) If a provision of this title requires a signature or record or document to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by the provision, is attached to or logically associated with the record or document.

(l) 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.

(m) The provisions of this section shall apply to any regulatory requirement of or transaction with, the Department of Insurance which requires the filing or exchange of documents, notices, waivers, or forms.”.

Section 2. Amend § 2118(a)(2)f., Title 21 of the Delaware Code by adding at the end of that subparagraph the following:

“Any notices or documents required under this section may be delivered in compliance with the provisions of section 107, Title 18 of the Delaware Code.”.

Approved May 22, 2012