

REFERENCE TITLE: insurance contracts; oral agreements

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

SB 1081

Introduced by
Senator Livingston

AN ACT

AMENDING SECTION 20-239, ARIZONA REVISED STATUTES; RELATING TO TRANSACTION OF INSURANCE BUSINESS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 20-239, Arizona Revised Statutes, is amended to
3 read:

4 20-239. Electronic communications and records; applicability;
5 definitions

6 A. Any notice to a party or any other document that is required
7 under this title in an insurance transaction or that is to serve as
8 evidence of insurance coverage may be delivered, stored and presented by
9 electronic means if it meets the requirements of title 44, chapter 26,
10 article 1. If an insurer uploads a document or notice to a portal or
11 secure website, the insurer shall send a separate notice to the party that
12 specifies that the document or notice has been uploaded and that includes
13 a description of the document or notice that has been uploaded.

14 B. An insurer may deliver a notice or document by electronic means
15 to a party pursuant to this section if the party electronically consents
16 to that method of electronic delivery and has not withdrawn consent. A
17 named insured that effectuates insurance transactions by electronic means
18 shall be deemed to have consented to receive notices and documents by
19 electronic means in accordance with this section unless the named insured
20 opts out of electronic delivery and elects delivery by hard copy.

21 C. An oral communication **WITH A CONTEMPORANEOUS RECORD MADE OF THE**
22 **COMMUNICATION** or a recording of an oral communication ~~does not~~ **MAY** qualify
23 as consent for the purposes of this section.

24 D. Notwithstanding subsection A of this section, an insurer sending
25 a notice pursuant to section 20-1632, subsection A, for a period of five
26 years after the date of the notice, shall maintain in its files
27 verification that the notice was sent by electronic means with a United
28 States postal service electronic postmark or another email delivery
29 service that provides electronic postmarks substantially similar to a
30 United States postal service electronic postmark. The verification must
31 contain sufficient information from which the department may determine
32 that the notice was properly sent.

33 E. An insurer providing notice to an insured pursuant to section
34 20-1632 by electronic means shall also send that notice to the named
35 insured by United States postal service certified mail, certificate of
36 mailing or first class mail using intelligent mail barcode or another
37 similar tracking method used or approved by the United States postal
38 service pursuant to section 20-1632 if either of the following applies:

39 1. The notice being electronically delivered is rejected for
40 delivery or returned to the insurer.

41 2. The insurer becomes aware that the email address provided by the
42 party is no longer valid.

43 F. Delivery of a notice or document pursuant to this section is
44 equivalent to any delivery method required or allowed under this title,
45 including delivery by the United States postal service by first class

1 mail, postage prepaid, certified mail, certificate of mailing or first
2 class mail using intelligent mail barcode or another similar tracking
3 method used or approved by the United States postal service.

4 G. After the party elects to receive notices and documents by
5 electronic means, if a change in the hardware or software requirements
6 needed to access or retain a notice or document delivered by electronic
7 means creates a material risk that the party will not be able to access or
8 retain a subsequent notice or document to which the consent applies, the
9 insurer must inform the party of:

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

12 2. The party's right to withdraw consent without the imposition of
13 any fee, condition or consequence.

14 H. This section does not affect the requirements related to content
15 or timing of any notice or document required under this title.

16 I. If a provision of this title expressly requires verification or
17 acknowledgment of receipt of a notice or document, the notice or document
18 may be delivered by electronic means only if the method used provides for
19 verification or acknowledgment of receipt.

20 J. The legal effectiveness, validity or enforceability of any
21 insurance contract or policy executed by a party may not be denied solely
22 because the insurer failed to obtain electronic consent or confirmation of
23 consent.

24 K. A party's withdrawal of consent:

25 1. Does not affect the legal effectiveness, validity or
26 enforceability of a notice or document delivered by electronic means to
27 the party before the withdrawal of consent is effective.

28 2. Is effective within seven days after the insurer receives the
29 withdrawal.

30 L. If an insurer fails to comply with subsection G of this section,
31 the party may treat that failure as a withdrawal of consent for the
32 purposes of this section.

33 M. This section does not apply to a notice or document delivered by
34 an insurer in an electronic format before July 24, 2014 to a party who,
35 before that date, has consented to receive a notice or document in an
36 electronic format as otherwise provided by law.

37 N. If a party's consent to receive certain notices or documents in
38 an electronic format is on file with an insurer before July 24, 2014 and
39 the insurer intends to deliver additional notices or documents to that
40 party in an electronic format pursuant to this section, before delivering
41 the additional notices or documents electronically the insurer must notify
42 the party of both of the following:

43 1. The notices or documents that may be delivered by electronic
44 means under this section that were not previously delivered
45 electronically.

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

3 0. An insurer may not charge a fee to a party who does not consent
4 to receive notices or documents by electronic means and who chooses to
5 receive the notices or documents in hard copy.

6 P. This section applies only to property, casualty, disability,
7 marine and transportation, surety, prepaid legal, prepaid dental, title,
8 identity theft, workers' compensation and life insurance policies and
9 annuities that are subject to this title, including policies and contracts
10 issued by health care services organizations and hospital, medical, dental
11 and optometric service corporations.

12 Q. This section does not modify, limit or supersede the electronic
13 signatures in global and national commerce act (P.L. 106-229; 15 United
14 States Code sections 7001 through 7031).

15 R. For the purposes of this section:

16 1. "Delivered by electronic means" includes either:

17 (a) The delivery to an email address at which a party has consented
18 to receive notices or documents.

19 (b) The posting on an electronic network or site accessible via the
20 internet or a mobile application, computer, mobile device, tablet or other
21 electronic device, together with a separate notice of the posting that
22 includes a description of the document or notice that has been posted and
23 that is provided by email to the email address at which the party has
24 consented to receive notice or by any other delivery method that has been
25 consented to by the party.

26 2. "Party" means a recipient of any notice or document as part of
27 an insurance transaction, including an applicant, an insured or a
28 policyholder.